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12/01/2005 12:13:10PM FILED/CERT

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**LEASE AGREEMENT**

**Dated November 1, 2005**

**Between**

**THE PUBLIC PARK AND RECREATION BOARD OF JEFFERSON COUNTY**

**and**

**THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF BIRMINGHAM**

**Relating to the issuance of  
\$19,000,000**

**Revenue Bonds (YMCA Project), Series 2005**

**by**

**The Public Park and Recreation Board of Jefferson County**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** dated November 1, 2005 is entered into by **THE PUBLIC PARK AND RECREATION BOARD OF JEFFERSON COUNTY**, an Alabama public corporation (the "Board"), and **THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF BIRMINGHAM**, a nonprofit corporation organized under the laws of the State of Alabama (the "Association").

### Recitals

This Lease Agreement is being entered into in connection with the issuance by the Board of its \$19,000,000 aggregate principal amount of Revenue Bonds (YMCA Project), Series 2005 pursuant to a Trust Indenture dated November 1, 2005 between the Board and Wachovia Bank, National Association, a national banking association (the "Trustee"). The purpose of this Lease Agreement and of related financing documents is described in the recitals to the Indenture.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

## ARTICLE 1

### Definitions and Other Provisions of General Application

#### SECTION 1.1 Definitions

For all purposes of this Lease Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meaning assigned in the Indenture.

#### SECTION 1.2 General Rules of Construction

For all purposes of this Lease Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.
- (b) The definitions in the recitals to this instrument are for convenience only and shall not affect the construction of this instrument.
- (c) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.
- (d) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.



(e) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) The term “person” shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

### **SECTION 1.3 Effect of Headings and Table of Contents**

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

### **SECTION 1.4 Date of Lease Agreement**

The date of this Lease Agreement is intended as and for a date for the convenient identification of this Lease Agreement and is not intended to indicate that this Lease Agreement was executed and delivered on said date.

### **SECTION 1.5 Separability Clause**

If any provision in this Lease Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **SECTION 1.6 Governing Law**

This Lease Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

### **SECTION 1.7 Counterparts**

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

## **ARTICLE 2**

### **Demising Clause**

For and in consideration of the performance and observance by the Association of the agreements and covenants of this Lease Agreement to be performed and observed by the Association, the Board does hereby lease and demise to the Association, and the Association does hereby lease, take and hire from the Board the following property constituting the Bond-Financed Facilities subject to this Lease Agreement:



**I.**

**Real Property**

The real property and interests therein described in Exhibit A attached hereto, together with all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges and immunities pertaining or applicable to said real property and interests therein.

**II.**

**Buildings and Structures**

All buildings and structures now or hereafter located on such real property, including without limitation the buildings and structures to be acquired, constructed, altered or improved as part of the Bond-Financed Facilities.

**III.**

**Personal Property and Fixtures**

The following personal property and fixtures: (i) all personal property and fixtures now existing or to be acquired and installed on such real property as part of the Bond-Financed Facilities financed by the Bonds, including without limitation the personal property and fixtures described in Exhibit A to this Lease Agreement, (ii) all personal property and fixtures acquired by (or in the name of) the Board and installed on such real property as a substitute or replacement for personal property or fixtures transferred or otherwise disposed of pursuant to the terms of this Lease Agreement, and (iii) all personal property and fixtures acquired by (or in the name of) the Board and installed on such real property with the proceeds of any insurance or condemnation award pursuant to the terms of this Lease Agreement.

**SUBJECT, HOWEVER,** to Permitted Encumbrances, which are described in Exhibit B to this Lease Agreement.

**ARTICLE 3**

**Acquisition of the Bond-Financed Facilities**

**SECTION 3.1 Agreement to Acquire**

(a) The real property that constitutes part of the Bond-Financed Facilities has been acquired by the Board in accordance with the instructions of the Association is described in Exhibit A to this Lease Agreement.

(b) The Board shall use proceeds of the Bonds to acquire and construct buildings and structures on such real property in accordance with the instructions of the Association. The buildings and structures to be constructed as part of the Bond-Financed Facilities are described in Exhibit A to this Lease Agreement.

(c) The Board shall use the proceeds of the Bonds to acquire and install personal property and fixtures on such real property in accordance with the instructions of the Association. The personal property and fixtures to be acquired and installed as part of the Bond-Financed Facilities are described in Exhibit A to this Lease Agreement.



(d) The Association shall be solely responsible for the planning and design of the Bond-Financed Facilities, the preparation of contracts and purchase orders for the Bond-Financed Facilities, and the supervision of the work on the Bond-Financed Facilities. The acquisition and construction of the Bond-Financed Facilities shall be in accordance with all applicable zoning, planning and building restrictions, and the Association shall obtain all necessary governmental permits, licenses, certificates, authorizations and approvals necessary therefor and for the operation of the Bond-Financed Facilities.

(e) The Board shall, at the request of the Association, enter into, assume or accept the assignment of such contracts and purchase orders for the Bond-Financed Facilities as the Association shall request in writing. The Board has appointed the Association as its agent for acquisition and construction of the Bond-Financed Facilities and does hereby confirm such appointment. The Association, as agent of the Board, may enter into, assume or accept the assignment of contracts and purchase orders for the Bond-Financed Facilities. The obligations of the Board under all such contracts and purchase orders (whether entered into directly by the Board or by the Association as agent of the Board) shall be limited as provided in Section 10.1, and the Board's limited liability shall be plainly and conspicuously stated thereon. At the request of the Association, the Board shall execute such instruments or other documents as shall be necessary or appropriate to confirm the Association's status as agent of the Board with respect to the acquisition and construction of the Bond-Financed Facilities.

(f) The Board will cooperate with the Association in good faith in the acquisition and construction of the Bond-Financed Facilities in order that the Bond-Financed Facilities may be completed and placed in service as soon as practicable.

(g) The Association may cause changes or amendments to be made in the plans and specifications for the Bond-Financed Facilities, provided (1) such changes or amendments will not change the nature of the Bond-Financed Facilities to the extent that they would not qualify for financing under the Enabling Law, and (2) the Association delivers to the Trustee a Favorable Tax Opinion.

### **SECTION 3.2 Withdrawals From Acquisition Fund**

The Association may cause withdrawals to be made from the Acquisition Fund for the payment of Acquisition Costs and Costs of Issuance (including reimbursement to the Association for any such costs paid directly by the Association), but only if (1) no Lease Default exists and no event has occurred and is continuing which, with notice or lapse of time or both, would constitute a Lease Default, (2) the Association delivers to the Trustee a duly completed requisition for each such withdrawal in the form attached to the Indenture as Exhibit 6.9(c), executed on behalf of the Association by an Authorized Association Representative, and (3) such requisition is approved by the Bank.

### **SECTION 3.3 No Warranty; the Association to Complete Bond-Financed Facilities**

(a) The Association recognizes that since the plans, specifications and directions for acquiring and constructing the Bond-Financed Facilities have been, or will be, furnished by it, the Board makes no warranty, either express or implied, with respect to the Bond-Financed Facilities and does not offer any assurances that the Bond-Financed Facilities will be suitable for the Association's purposes or needs or that the proceeds derived from the sale of the Bonds will be sufficient to pay in full all Acquisition Costs and Costs of Issuance.

(b) If the proceeds derived from the sale of the Bonds are insufficient to pay in full all Acquisition Costs and Costs of Issuance, the Association shall complete the acquisition and construction of the Bond-Financed Facilities and pay any remaining Issuance Costs at its own expense.



### **SECTION 3.4 Remedies Against Contractors, etc.**

If any vendor, contractor or subcontractor shall default under any contract or purchase order in connection with the acquisition or construction of the Bond-Financed Facilities, the Board shall follow the written instructions of, and shall cooperate in good faith with, the Association in the pursuit of any remedies that may be available under the circumstances. Upon the written request of the Association, the Board shall assign to the Association all rights of the Board under any such contract or purchase order and the Association may, in its own name or in the name of the Board, pursue any such remedies.

### **SECTION 3.5 Completion of the Bond-Financed Facilities**

(a) The completion of the Bond-Financed Facilities shall be evidenced by a certificate signed by an Authorized Association Representative stating that

(1) the acquisition and construction of the Bond-Financed Facilities has been completed in accordance with the plans and specifications therefor (including any changes or amendments to such changes pursuant to Section 3.1), and

(2) all amounts due for labor, materials, supplies and other costs incurred in connection with the acquisition and construction of the Bond-Financed Facilities have been paid.

(b) After the delivery of the aforesaid certificate to the Trustee, any money then remaining in the Acquisition Fund shall be applied as provided in the Indenture.

## **ARTICLE 4**

### **Lease Term and Lease Payments**

#### **SECTION 4.1 Lease Term**

The term of this Lease Agreement shall begin on the date of the delivery of this Lease Agreement and, unless renewed and extended in accordance with the terms of this Lease Agreement, shall continue until midnight of September 1, 2025.

#### **SECTION 4.2 Basic Lease Payments**

(a) Prior to 12:00 noon on each Bond Payment Date the Association shall make payments ("Basic Lease Payments") to the Trustee, for the account of the Board, in an amount equal to the Debt Service on the Bonds due on such Bond Payment Date.

(b) The Association shall receive a credit against the Basic Lease Payments as follows:

(1) The amount of accrued interest received from the sale of the Bonds to the original purchaser or purchasers thereof shall be deducted from the amount of interest due on the first Interest Payment Date for purposes of calculating the required Basic Lease Payment due on such Date.

(2) Money received by the Trustee from a draw on the Letter of Credit with respect to Debt Service due on the related Bond Payment Date shall be credited against the Basic Lease Payment due on such Bond Payment Date.



(3) Investment income and profits remaining in the Debt Service Fund after reimbursement of the Bank for amounts due under the Credit Agreement shall be credited against Basic Lease Payments as directed by the Association.

(4) Any other money held by the Trustee and available under the terms of the Indenture and this Lease Agreement for the payment of Debt Service on the Bonds remaining after reimbursement of the Bank for amounts due under the Credit Agreement shall be credited against Basic Lease Payments as directed by the Association. Such directions must be consistent with any mandatory provision of the Indenture and this Lease Agreement with respect to the required use of such money.

(c) All Basic Lease Payments shall be made in funds immediately available at the Office of the Trustee on the due date of such Payments.

(d) The Association acknowledges that (1) Basic Lease Payments required by this Section have been calculated to provide amounts which will be sufficient to pay Debt Service on the Bonds as the same matures and comes due and (2) money drawn under the Letter of Credit may not be used to pay Debt Service on Obligor Bonds. If on any Bond Payment Date the amount on deposit in the Debt Service Fund is not sufficient to pay Debt Service on the Bonds due and payable on such Date, the Association shall immediately deposit the amount of such deficiency in the Debt Service Fund.

(e) Money on deposit in the Debt Service Fund may be used to reimburse the Bank for amounts due to the Bank under the Credit Agreement, as provided in Section 8.1 of the Indenture.

#### **SECTION 4.3 Additional Lease Payments**

(a) The Association shall make additional payments ("Additional Lease Payments") as follows:

(1) Prior to 12:00 noon on each Tender Date, the Association shall pay to the Trustee an amount equal to the Purchase Price of Bonds to be tendered for purchase on such Tender Date. Such payments shall be made in funds immediately available at the Office of the Trustee on the related Tender Date.

(2) Within 10 days after receipt by the Association of an invoice therefor, the Association shall pay to the Trustee (A) the acceptance fee of the Trustee, (B) the normal fees, charges and expenses of the Trustee, and (C) any amount to which the Trustee may be entitled under Section 12.7 of the Indenture.

(3) Within 10 days after receipt by the Association of an invoice therefor, the Association shall pay to Board the reasonable expenses of the Board incurred (A) at the request of the Association, (B) in the performance of the Board's duties under any of the Bond Documents, (C) in connection with any litigation which may at any time be instituted involving the Bond-Financed Facilities or the Bond Documents, or (D) in the pursuit of any remedies under the Bond Documents.

(4) The Association shall pay to the Remarketing Agent the fees and expenses due to it in accordance with the agreement appointing it to serve in such capacity.

(b) The Association shall receive a credit against the Additional Lease Payments required by Section 4.3(a)(1) as follows:



(1) Remarketing Proceeds in the Bond Purchase Fund on any Tender Date shall be credited against the related Additional Lease Payment due on such Tender Date.

(2) Money received by the Trustee from a draw on the Letter of Credit with respect to the Purchase Price of Tendered Bonds due on any Tender Date shall be credited against the related Additional Lease Payment due on such Tender Date.

(3) Investment income and profits remaining in the Bond Purchase Fund on any Tender Date after reimbursement of the Bank for any amounts due to the Bank under the Credit Agreement shall be credited against the related Additional Lease Payment due on such Tender Date.

(c) Money on deposit in the Bond Purchase Fund may be used to reimburse the Bank for amounts due to the Bank under the Credit Agreement, as provided in Section 8.2 of the Indenture.

#### **SECTION 4.4 Overdue Payments**

Any overdue Basic Lease Payment shall bear interest from the related Bond Payment Date until paid at the Post-Default Rate for overdue Debt Service payments. Any overdue Additional Lease Payment shall bear interest from the date due until paid at the Post-Default Rate for such Additional Lease Payments specified in the Indenture.

#### **SECTION 4.5 Unconditional Obligation of the Association**

The Association's obligation to make the payments required by this Lease Agreement and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Board or any other Financing Participant. The Association will not suspend or discontinue any such Lease Payment or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, (a) failure to complete the Bond-Financed Facilities, (b) any acts or circumstances that may constitute an eviction or constructive eviction, (c) failure of consideration or commercial frustration of purpose, (d) the invalidity of any provision of this Lease Agreement, (e) any damage to or destruction of the Bond-Financed Facilities or any part thereof, (f) the taking by eminent domain of title to, or the use of, all or any part of the Bond-Financed Facilities, (g) any change in the laws or regulations of the United States of America, the State of Alabama or any other governmental authority, or (h) any failure of any of the Financing Participants to perform and observe any agreement or covenant, whether express or implied, to be performed or observed by them under any of the Bond Documents.

### **ARTICLE 5**

#### **Concerning the Bonds, the Indenture and the Trustee**

#### **SECTION 5.1 Assignment of Lease Agreement and Lease Payments by Board**

(a) Simultaneously with the delivery of this Lease Agreement, the Board shall, pursuant to the Indenture, assign and pledge to the Trustee all right, title and interest of the Board in and to the Lease Payments and the Lease Agreement. The Association hereby consents to such assignment and pledge.



(b) Until all Indenture Indebtedness has been Fully Paid, the Trustee may exercise all rights and remedies herein accorded to the Board, and any references herein to the Board shall be deemed, with the necessary changes in detail, to include the Trustee; provided, however, that the Trustee will not exercise any of its remedies under this Lease Agreement without the prior written consent of the Bank (subject to the provisions of Section 15.7 of the Indenture); provided further that the Board shall retain the rights to indemnification and reimbursement of expenses granted to it by this Lease Agreement.

## **SECTION 5.2 Redemption of Bonds**

(a) The Board will cause the Trustee to redeem any or all of the Bonds in accordance with the mandatory redemption provisions of the Bonds without any direction from or consent by the Association.

(b) If no Lease Default exists, (1) any right of optional redemption with respect to the Bonds may be exercised only upon the written direction of the Association and (2) the Association may, on behalf of the Board, direct the Trustee to effect an optional redemption of Bonds. The Association shall deliver to the Board a copy of any such direction. The Board will cooperate with the Association in good faith to effect any such optional redemption so directed.

## **SECTION 5.3 Amendment of Bond Documents**

The Board will not cause or permit the amendment of the Bond Documents without the prior written consent of the Association.

## **SECTION 5.4 The Indenture Funds**

(a) If no Lease Default exists, the Board shall cause any money held as part of an Indenture Fund to be invested or reinvested by the Trustee in accordance with the terms of the Indenture and the instructions of the Association.

(b) The Association shall be solely responsible for (1) determining that any such investment of Indenture Funds under the Indenture complies with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code, and (2) calculating the amount of, and making payment of, any rebate due to the United States under Section 148(f) of the Internal Revenue Code.

(c) As security for the performance by the Association of the covenants hereunder, the Association hereby assigns and pledges to the Board, and grants to the Board a security interest in, all right, title and interest of the Association in and to all money and investments from time to time on deposit in, or forming a part of, the Indenture Funds, subject to the provisions of this Lease Agreement and the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and in the Indenture. The Association acknowledges that the rights of the Board created by this Section shall be assigned by the Board to the Trustee pursuant to the Indenture.

## **SECTION 5.5 Effect of Full Payment of Indebtedness**

(a) After the Indenture Indebtedness is Fully Paid, all references in this Lease Agreement to the Bonds, the Indenture and the Trustee shall be ineffective and neither the Trustee nor the Holders of the Bonds shall thereafter have any rights hereunder, except those rights that shall have theretofore vested.



(b) After all Indebtedness is Fully Paid, any money or investments remaining in the Indenture Funds shall be delivered to the Association.

(c) If all Indebtedness is Fully Paid prior to the expiration of the term of this Lease Agreement, the Association shall be entitled to the use and occupancy of the Bond-Financed Facilities until the expiration of the term of this Lease Agreement without the payment of any further Basic Lease Payments, but otherwise subject to all the terms and conditions hereof, except that the Association shall no longer be required to perform and observe the agreements and covenants of this Lease Agreement that are for the sole benefit of the Bank, the Trustee or the Holders of the Bonds.

## **ARTICLE 6**

### **The Bond-Financed Facilities**

#### **SECTION 6.1 Possession and Use of Bond-Financed Facilities**

(a) So long as no Lease Default exists, the Association shall be permitted to possess, use, manage, operate and enjoy the Bond-Financed Facilities without hindrance on the part of the Board, subject, however, to all the terms and conditions of this Lease Agreement.

(b) The Board shall be permitted such possession of the Bond-Financed Facilities as shall be necessary and convenient for it to construct and install the Bond-Financed Facilities in accordance with the terms of this Lease Agreement.

#### **SECTION 6.2 Maintenance and Other Operating Expenses**

The Association will, at its own expense, (a) maintain the Bond-Financed Facilities in good condition, repair and working order, (b) make all necessary repairs, renewals, replacements and improvements to the Bond-Financed Facilities, and (c) pay all gas, electric, water, sewer and other charges for the operation, use and upkeep of the Bond-Financed Facilities.

#### **SECTION 6.3 Taxes, Assessments, Etc.**

The Association will pay all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Bond-Financed Facilities or any part thereof or upon any income therefrom, and also all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Trustee or of the Bondholders in the Trust Estate; provided, however, that the Association shall not be required to pay and discharge any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings.

#### **SECTION 6.4 Improvements, Alterations, Etc.**

The Association may, at its own expense, make additions, improvements or alterations to the buildings and structures constituting a part of the Bond-Financed Facilities. At the written request of the Association, the Board will enter into a contract for such additions, improvements, or alterations, subject, however, to the requirements of Section 10.1.



#### **SECTION 6.5 Utility Easements**

The Board will, upon request of the Association, grant utility and other similar easements over, across or under the real property constituting part of the Bond-Financed Facilities.

#### **SECTION 6.6 Transfer or Encumbrance Created by Board**

Without the prior written consent of the Association, the Board (a) will not sell, transfer or convey the Bond-Financed Facilities or any part thereof, except as provided in this Lease Agreement, and (b) will not create or permit any mortgage, lien, charge or encumbrance on the Bond-Financed Facilities or any part thereof.

#### **SECTION 6.7 Assignment, etc. of Leasehold Interest**

The Association may assign its rights under this Lease Agreement or mortgage its leasehold interest in the Bond-Financed Facilities, or sublease the Bond-Financed Facilities or any part thereof, subject to the following limitations:

(a) The Association shall continue to be primarily liable for the performance and observance of the agreements and covenants to be performed and observed by it under this Lease Agreement, and no such assignment, mortgage or sublease shall in any way diminish or abate the obligations of the Association hereunder.

(b) No such assignment, mortgage or sublease shall permit or result in the use of the Bond-Financed Facilities for any purpose that would not be permitted for facilities financed under the Enabling Law.

(c) Within 30 days after the delivery of any such assignment, mortgage or sublease, the Association shall deliver a copy thereof to the Board and to the Trustee.

#### **SECTION 6.8 Disposition and Substitution of Personal Property and Fixtures**

(a) If no Lease Default exists, the Association shall have the right, from time to time, in the name and on behalf of the Board, without any release from or consent by the Board or the Trustee, to sell or otherwise dispose of any item of the personal property or fixtures constituting part of the Bond-Financed Facilities that may have become obsolete or unfit for use or no longer useful, necessary or profitable in the conduct of the business carried on by the Association at the Bond-Financed Facilities. The Board shall not be required to replace such personal property and fixtures. The Association may, if it so chooses, replace such personal property and fixtures at its own expense. At the request of the Association, the Board will enter into contracts and purchase orders for the acquisition of replacement items, provided that (1) the Association shall pay all costs of such acquisition with its own funds and (2) the Board's liability under any such contract or purchase order is limited as provided in Section 10.1. Any replacement items so acquired by the Board shall become a part of the personal property and fixtures subject to this Lease Agreement.

(b) The Board will cooperate with the Association in good faith in the exercise of the rights and privileges granted by this Section and shall, from time to time, execute a written instrument to confirm any action taken by the Association under this Section, upon receipt by the Board of (1) a certificate signed by an Authorized Association Representative requesting the same and expressing any required opinions and (2) an Opinion of Counsel that such action was duly taken by the Association in



conformity with such provisions and that execution of such written instrument is appropriate to confirm such action under this Section.

(c) Any disposition of personal property or fixtures pursuant to this Section shall be subject to a lien of the Bank Security Agreement unless by the terms of such instrument the Association is entitled to release the affected property from the lien thereof.

#### **SECTION 6.9 The Association's Personal Property and Fixtures**

(a) The Association may, at its own expense, install at the Bond-Financed Facilities any personal property or fixtures which, in the Association's judgment, are necessary or desirable for the conduct of the business carried on by the Association at the Bond-Financed Facilities. Any such personal property or fixtures which are installed at the Association's expense and which do not constitute a part of the personal property and fixtures subject to this Lease Agreement shall be and remain the property of the Association and may be removed by the Association at any time while no Lease Default exists; provided, that any damage to the Bond-Financed Facilities occasioned by such removal shall be repaired by the Association at its own expense.

(b) If any personal property or fixtures described in this Section are leased by the Association or the Association shall have granted a security interest in such property in connection with the acquisition thereof by the Association, then the lessor of such property or the party holding a security interest therein, as the case may be, may remove such property from the Bond-Financed Facilities even though a Lease Default shall then exist or this Lease Agreement shall have been terminated following a Lease Default hereunder; provided, that the foregoing permission to remove shall be subject to the agreement by such lessor or secured party to repair at its own expense any damage to the Bond-Financed Facilities occasioned by such removal.

#### **SECTION 6.10 Insurance**

(a) The Board shall not be required to maintain any insurance with respect to damage or destruction of the Bond-Financed Facilities. The Association may carry such insurance as it deems necessary or appropriate.

(b) The Association will at all times (whether or not all Indebtedness is Fully Paid) maintain insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Bond-Financed Facilities or in any way related to the condition or operation of the Bond-Financed Facilities, in the minimum amounts of \$1,000,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$1,000,000 for property damage. Such insurance shall insure the Board, as well as the Association, against such liability.

(c) All insurance required by Section 6.10(b) shall be effected with responsible insurance carriers. All policies or other contracts evidencing such insurance or a certificate of the respective insurers attesting the fact that such insurance is in force and effect, shall be deposited with the Board. Prior to the expiration of such insurance, the Association shall furnish to the Board evidence that such insurance has been renewed or replaced. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Board for at least 10 days after written notice to the Board of cancellation.



### **SECTION 6.11 Damage and Destruction**

If the Bond-Financed Facilities are damaged or destroyed by fire or other casualty, the Board shall not be required to repair or replace the Bond-Financed Facilities damaged or destroyed. The Association may, if it so chooses, repair or replace such Bond-Financed Facilities at its own expense. At the request of the Association, the Board will enter into contracts or purchase orders for the repair or replacement of the Bond-Financed Facilities, provided that (a) the Association shall pay all costs of such repair or replacement with its own funds and (b) the Board's liability under any such contract or purchase order shall be limited as provided in Section 10.1. Any property acquired by the Board in connection with such repair or replacement shall become a part of the Bond-Financed Facilities subject to this Lease Agreement.

### **SECTION 6.12 Condemnation**

(a) If title to, or the use of, the Bond-Financed Facilities or any part thereof shall be taken by the exercise of the power of eminent domain, the entire proceeds of any related award shall be paid to the Association. The Board shall not be required to replace the property so taken. The Association may, if it so chooses, replace such property at its own expense. At the request of the Association, the Board will enter into contracts or purchase orders for replacement of the Bond-Financed Facilities so taken, provided that (1) the Association shall pay all costs of such replacement with its own funds and (2) the Board's liability under any such contract or purchase order shall be limited as provided in Section 10.1. Any property acquired by the Board in connection with such replacement shall become a part of the Bond-Financed Facilities subject to this Lease Agreement.

(b) The Board shall cooperate in good faith with the Association in the conduct of any condemnation proceeding with respect to the Bond-Financed Facilities and will, to the extent it may lawfully do so, permit the Association to appear in such proceeding in the name and on behalf of the Board. The Board will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the Association.

### **SECTION 6.13 Mortgage at Request of Association**


At the request of the Association, the Board shall execute or join in any mortgage or security agreement with respect to the Bond-Financed Facilities or the Association's leasehold interest in the Bond-Financed Facilities; provided, however, that (a) the Board's liability under any such mortgage or security agreement shall be limited as provided in Section 10.1 and (b) nothing contained in such mortgage or security agreement shall adversely affect the rights of the Trustee and the Bondholders with respect to the Lease Payments and this Lease Agreement.

### **SECTION 6.14 Rights of Bank Under Bank Security Agreement**

The Board and the Association acknowledge that the Bank Security Agreement creates certain rights in favor of the Bank with respect to the Bond-Financed Facilities, including without limitation rights relating to maintenance, alteration, disposition and insurance of the Bond-Financed Facilities, and rights to damage or condemnation proceeds. Nothing contained in this Lease Agreement shall be construed to diminish or impair any such rights of the Bank.



## ARTICLE 7

  
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### Representations and Covenants

#### SECTION 7.1 General Representations

The Association makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a nonprofit corporation duly organized under the laws of the state of its organization and is not in default under any of the provisions contained in its articles of incorporation or bylaws or in the laws of the state of its organization.

(b) It has the power to consummate the transactions contemplated by the Bond Documents to which it is a party.

(c) By proper corporate action it has duly authorized the execution and delivery of the Bond Documents to which it is a party and the consummation of the transactions contemplated therein.

(d) It has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of the Bond Documents to which it is a party.

(e) The execution and delivery by it of the Bond Documents to which it is a party and the consummation by it of the transactions contemplated therein will not (1) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under its charter or bylaws, or any agreement, instrument, order or judgment to which it is a party or is subject, or (2) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired, except as contemplated by the Bond Documents.

(f) The Bond Documents to which it is a party constitute legal, valid and binding obligations and are enforceable against it in accordance with the terms of such instruments, except as enforcement thereof may be limited by (1) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (2) general principles of equity, including the exercise of judicial discretion in appropriate cases.

#### SECTION 7.2 Eligibility of Bond-Financed Facilities for Financing

(a) The Association makes the following representations and warranties regarding the eligibility of the Bond-Financed Facilities for financing under the Enabling Law:

(1) The financing of the Bond-Financed Facilities through the issuance of the Bonds and the leasing of the Bond-Financed Facilities to the Association will further the purpose of the Board to provide recreation facilities.

(2) The Association intends to operate the Bond-Financed Facilities for health, sport, and recreation facilities.



(3) The Bond-Financed Facilities are located (A) within the corporate limits of the Cities of Birmingham, Trussville, and Vestavia Hills, all in Jefferson County, and (B) in unincorporated Shelby County within 30 miles of Jefferson County. As required under the Enabling Law, the Association has obtained the approval of such Cities and Shelby County to the location of the Bond-Financed Facilities within their respective jurisdictions.

(b) So long as this Lease Agreement is in effect, the Association will not make any use of the Bond-Financed Facilities prohibited by the terms of the Enabling Law.

### **SECTION 7.3 Corporate Existence**

(a) The Association will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises.

(b) The Association may not consolidate with or merge into any other corporation or transfer its property substantially as an entirety to any person unless:

(1) the corporation formed by such consolidation or into which the Association is merged or the person which acquires by conveyance or transfer the Association's property substantially as an entirety (the "Successor") shall execute and deliver to the Board and the Trustee an instrument in form acceptable to the Board and the Trustee containing an assumption by such Successor of the performance and observance of every covenant and condition of this Lease Agreement to be performed or observed by the Association;

(2) immediately after giving effect to such transaction, no Lease Default, or any event which upon notice or lapse of time or both would constitute such a Lease Default, shall have occurred and be continuing;

(3) the Association shall have delivered to the Trustee a certificate executed by an Authorized Association Representative and an Opinion of Counsel, each of which shall state that such consolidation, merger, conveyance or transfer complies with this Section and that all conditions precedent herein provided relating to such transactions shall have been complied with; and

(4) the Association shall have delivered to the Trustee a Favorable Tax Opinion.

(c) Upon any consolidation or merger or any conveyance or transfer of the Association's property substantially as an entirety in accordance with this Section, the Successor shall succeed to, and be substituted for, and may exercise every right and power of, the Association under this Lease Agreement with the same effect as if such Successor had been named as the Association herein.

### **SECTION 7.4 Inspection of Records**

The Association will at any and all times, upon the written request of the Board or the Trustee, permit the Board or the Trustee by their representatives to inspect the Bond-Financed Facilities and any books, records, reports and other papers of the Association relating to the Bond-Financed Facilities.

### **SECTION 7.5 Advances by Board or Trustee**

If the Association shall fail to perform any of its covenants in this Lease Agreement, the Board or the Trustee may, at any time and from time to time, after written notice to the Association if no Lease



Default exists, make advances to effect performance of any such covenant on behalf of the Association. Any money so advanced by the Board or the Trustee, together with interest at the Post-Default Rate, shall be repaid upon demand.

#### **SECTION 7.6 Indemnity of Board and Trustee**

(a) To the extent permitted by law, the Association agrees to indemnify the Board and the Trustee for, and hold each of them harmless against, any loss, liability or expense (including reasonable attorneys' fees) incurred without bad faith or willful misconduct on their part, arising out of or in connection with the issuance of the Bonds, the acceptance of their duties and responsibilities under the Bond Documents, or their performance or observance of any agreement or covenant on their part to be observed or performed under the Bond Documents, including without limitation (1) the acquisition or construction of, or other work on, the Bond-Financed Facilities, (2) any injury to, or the death of, any person or any damage to property at the Bond-Financed Facilities, or in any manner growing out of, or connected with, the use, nonuse, condition or occupation of the Bond-Financed Facilities or any part thereof, (3) any damage, loss or destruction of the Bond-Financed Facilities, (4) violation or breach by the Association of any contract, agreement or restriction affecting the Bond-Financed Facilities or the use thereof or of any law, ordinance or regulation affecting the Bond-Financed Facilities or any part thereof or the ownership, occupancy or use thereof, (5) the offer and sale of the Bonds or a subsequent sale or distribution of any of the Bonds, (6) the exercise, or failure to exercise, any right, privilege or power of the Board or the Trustee under the Bond Documents and (7) the administration of the trust established by the Indenture.

(b) The covenant of indemnity by the Association contained in this Section shall survive the termination of this Lease Agreement.

#### **SECTION 7.7 Compliance with Tax Certificate and Agreement**

The Board and the Association will comply with the covenants and agreements on their part contained in the Tax Certificate and Agreement.

### **ARTICLE 8**

#### **Remedies**

#### **SECTION 8.1 Events of Default**

Any one or more of the following shall constitute an event of default (a "Lease Default") under this Lease Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any Basic Lease Payment when such Basic Lease Payment becomes due and payable; or

(b) default in the payment of any Additional Lease Payment with respect to the Purchase Price of Tendered Bonds when such Additional Lease Payment becomes due and payable; or

(c) default in the performance, or breach, of any covenant or warranty of the Association in this Lease Agreement (other than a covenant or warranty, a default in the



performance or breach of which is elsewhere in this Section specifically dealt with), and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Association and the Bank by the Board or by the Trustee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder; or

(d) the occurrence of an event of default, as therein defined, under the Indenture or Bond Guaranty, and the expiration of the applicable grace period, if any, specified therein.

## **SECTION 8.2 Remedies on Default**

If a Lease Default occurs and is continuing, the Board may exercise any of the following remedies:

(a) declare all installments of Basic Lease Payments for the remainder of the term of this Lease Agreement to be immediately due and payable in an amount not to exceed the principal amount of all Outstanding Bonds, plus the redemption premium (if any) payable with respect thereto, plus the interest accrued thereon to the date of such declaration;

(b) reenter the Bond-Financed Facilities, without terminating this Lease Agreement, and, upon 10 days' prior written notice to the Association, relet the Bond-Financed Facilities or any part thereof for the account of the Association, for such term (including a term extending beyond the term of this Lease Agreement) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Bond-Financed Facilities or any part thereof, as the Board may deem advisable, and such reentry and reletting of the Bond-Financed Facilities shall not be construed as an election to terminate this Lease Agreement nor relieve the Association of its obligations to make payments required by this Lease Agreement and to perform and observe any of its other agreements and covenants under this Lease Agreement, all of which shall survive such reentry and reletting, and the Association shall continue to make all payments required by this Lease Agreement until the end of the term of this Lease Agreement, less the net proceeds, if any, of any reletting of the Bond-Financed Facilities after deducting all of the Board's expenses in connection with such reletting, including, without limitation, all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(c) terminate this Lease Agreement, exclude the Association from possession of the Bond-Financed Facilities and, if the Board elects so to do, lease the same for the account of the Board, holding the Association liable for all payments due under this Lease Agreement up to the date of such termination; and

(d) take whatever legal proceedings may appear necessary or desirable to collect the payments under this Lease Agreement then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the Association under this Lease Agreement or by law.

## **SECTION 8.3 No Remedy Exclusive**

No remedy herein conferred upon or reserved to the Board, the Bank or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power



accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

#### **SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses**

If the Association should default under any of the provisions of this Lease Agreement and the Board or the Trustee should employ attorneys or incur other expenses for the collection of payments due under this Lease Agreement or the enforcement of performance or observance of any agreement or covenant on the part of the Association herein contained, the Association will on demand therefor pay to the Board or the Trustee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred.

#### **SECTION 8.5 No Additional Waiver Implied by One Waiver**

In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

#### **SECTION 8.6 Remedies Subject to Applicable Law**

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Lease Agreement invalid or unenforceable.

### **ARTICLE 9**

#### **Options**

##### **SECTION 9.1 Option to Terminate**

If no Lease Default exists, the Association shall have the option to cancel or terminate this Lease Agreement at any time after the Indebtedness has been Fully Paid, by giving the Board notice in writing of such termination. Such termination shall become effective 10 days after such notice is given.

##### **SECTION 9.2 Option to Purchase Bond-Financed Facilities**

If no Lease Default exists, the Association shall have the option to purchase the Bond-Financed Facilities for a Purchase Price of \$1.00 after the Indebtedness has been fully paid. Such option may be exercised by the Association prior to the termination of this Lease Agreement upon written notice to the Board. Such option shall be deemed automatically exercised on the date of termination of this Lease Agreement unless the Association notifies the Board in writing that it does not intend to exercise such option. The closing for such purchase shall take place on (a) a Business Day designated by the Association that is not less than 7 days nor more than 21 days from the date of such notice, or the date of termination of this Lease Agreement, as the case may be, or (b) such other date as shall be mutually acceptable to the Board and the Association.



### **SECTION 9.3 Disposition of Portions of Bond-Financed Facilities While Bonds are Outstanding**

(a) If no Lease Default exists, the Association shall have the right, from time to time, in the name and on behalf of the Board, without any release from or consent by the Board or the Trustee, to sell or otherwise dispose of any portion of the Bond-Financed Facilities, whether or not any Bonds are Outstanding.

(b) Any such disposition shall be subject to the lien of the Bank Security Agreement unless by the terms of such instrument the Association is entitled to release the affected property from the lien thereof.

(c) No disposition effected pursuant to this Section shall result in any reduction or abatement of Basic Lease Payments; provided, however, that if any such disposition will effectively result in the disposition of all remaining portions of the Bond-Financed Facilities, then (i) prior to or simultaneously with such disposition provisions must be made for the payment of all Outstanding Bonds in accordance with the terms of Article 14 of the Indenture, and (ii) the Association shall take all action necessary for the termination of this Lease Agreement as of the date of such disposition.

(d) The Board will cooperate with the Association in good faith in the exercise of the rights and privileges granted by this Section and shall, from time to time, execute a written instrument to confirm any action taken by the Association under this Section, upon receipt by the Board of (i) a certificate or certificates signed by an Authorized Association Representative requesting the same and expressing any required opinions and stating that such action was duly taken in conformity with this Section and (ii) an Opinion of Counsel that such action was duly taken by the Association in conformity with such provisions and that execution of such written instrument is appropriate to confirm such action under this Section.

### **SECTION 9.4 Conveyance on Exercise of Option to Purchase**

Upon the exercise of any option to purchase granted herein, the Board will deliver to the Association documents conveying to the Association the property with respect to which such option was exercised, as such property then exists, subject to the following: (a) all easements or other rights, if any, required to be reserved by the Board under the terms and provisions of the option being exercised by the Association; (b) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Board; (c) those liens and encumbrances created by the Association or to the creation or suffering of which the Association consented; and (d) those liens and encumbrances resulting from the failure of the Association to perform or observe any of the agreements or covenants on its part contained in this Lease Agreement.

## **ARTICLE 10**

### **Miscellaneous**

#### **SECTION 10.1 Board's Liabilities Limited**

(a) The covenants and agreements contained in this Lease Agreement and in any contract, purchase order or other agreement entered into pursuant to this Lease Agreement shall never constitute or give rise to a personal or pecuniary liability or charge against the general credit of the Board, and in the event of a breach of any such covenant or agreement, no personal or pecuniary liability or charge payable directly or indirectly from the general assets or revenues of the Board shall arise therefrom. Nothing



contained in this Section, however, shall relieve the Board from the observance and performance of the covenants and agreements on its part contained herein.

(b) No recourse under or upon any covenant or agreement of this Lease Agreement or of any contract or other agreement entered into pursuant to this Lease Agreement shall be had against any past, present or future incorporator, officer or member of the governing body of the Board, or of any successor corporation, either directly or through the Board, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Lease Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the governing body of the Board or any successor corporation, or any of them, under or by reason of the covenants or agreements contained in this Lease Agreement.

(c) The liability of the Board for the payment of any money due under any contract or purchase order entered into by it, or for any other costs incurred in connection with the acquisition, construction or improvement of, or other work on, the Bond-Financed Facilities shall be limited solely to (1) the available proceeds of the Board's revenue bonds, if and when issued for the Bond-Financed Facilities, (2) any money made available to the Board for such purpose by the Association, and (3) any revenues or other receipts derived by the Board from the Bond-Financed Facilities, subject to prior encumbrances. The limited liability of the Board shall be plainly and conspicuously stated on each such contract or purchase order.

## **SECTION 10.2 Corporate Existence of Board**

The Board shall not consolidate with or merge into any other corporation or transfer its property substantially as an entirety, except as provided in Section 10.6 of the Indenture.

## **SECTION 10.3 Notices**

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Lease Agreement to be made upon, given or furnished to, or filed with, the Board, the Association, the Trustee or the Bank must (except as otherwise expressly provided in this Lease Agreement) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified pursuant to Section 17.1 of the Indenture, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified pursuant to Section 17.1 of the Indenture, or (3) if facsimile transmission facilities for such party are identified in Section 17.1 of the Indenture or pursuant to a separate notice from such party, sent by facsimile transmission to the number specified in Section 17.1 of the Indenture or in such notice. Any of such parties may change the address for receiving any such notice or other document by giving notice of the change to the other parties named in this Section.

(b) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, partner or other legal representative of the party) at the address or number specified pursuant to this Section, or, if sent by mail, 3 days after such notice or document is deposited in the United States mail, addressed as provided above.

## **SECTION 10.4 Successors and Assigns**

All covenants and agreements in this Lease Agreement by the Board or the Association shall bind their respective successors and assigns, whether so expressed or not.



#### **SECTION 10.5 Benefits of Lease Agreement**

Nothing in this Lease Agreement, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, the Trustee, the Holders of the Bonds and the Bank, any benefit or any legal or equitable right, remedy or claim under this Lease Agreement.

#### **SECTION 10.6 Limited Liability of Trustees, Directors, Officers, Employees or Agents of the Association**

None of the trustees, directors, officers, employees or agents of the Association shall have any personal or pecuniary liability whatever hereunder or any liability for the breach by the Association of any of the agreements on its part herein contained. Nothing contained in this section, however, shall relieve any trustee, director, officer or employee of the Association from performing all duties of their respective offices that may be necessary to enable the Association to perform the covenants and agreements on its part herein contained.



IN WITNESS WHEREOF, the Board and the Association have caused this instrument to be duly executed and their respective corporate seals to be hereunto affixed and attested.

**THE PUBLIC PARK AND RECREATION BOARD  
OF JEFFERSON COUNTY**

By *Laura Benedict Jones*  
Vice Chairman of its Board of Directors

[S E A L]

Attest:

*Donna B. Mann Jr*  
Its Secretary

**THE YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF BIRMINGHAM**

By: *John M. Leland*  
Its: *Pres/CEO*

[S E A L]

Attest: *Anthony A Joseph*  
Its: *Secretary*

This instrument was prepared by:  
John H. Burton, Jr.  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
Suite 2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2618



STATE OF ALABAMA

JEFFERSON COUNTY

I, Kelly Rushin, a Notary Public in and for said County in said State, hereby certify that Laura Benedict Jones, whose name as Vice Chairman of the Board of Directors of The Public Park and Recreation Board of Jefferson County, an Alabama public corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 22nd day of November, 2005.

Kelly Rushin  
Notary Public

[NOTARIAL SEAL]

My commission expires: 3-18-06

STATE OF ALABAMA

JEFFERSON COUNTY

I, Sonya Lynn Harris, a Notary Public in and for said County in said State, hereby certify that James N. Lombard, whose name as President/CEO of The Young Men's Christian Association of Birmingham, a nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 21st day of November, 2005.

Sonya Lynn Harris  
Notary Public

[NOTARIAL SEAL]

My commission expires: 10-19-08



## EXHIBIT A

### Description of Bond-Financed Facilities

The Bond-Financed Facilities subject to this Lease Agreement include the following components:

1. **Real Property.**

A. The following real property located in Jefferson County, Alabama:

#### **MOUNTAIN BROOK**

##### **Parcel I:**

LOT "A", SCOTT'S RESURVEY, AS RECORDED IN MAP BOOK 128, PAGE 26, IN THE OFFICE OF THE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA.

##### **Parcel II:**

LOT 1-B, LANE PARK GARDEN HOMES, AS RECORDED IN MAP BOOK 128, PAGE 77, IN THE OFFICE OF THE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA.

##### **Parcel III:**

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 2 WEST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT "A", SCOTT'S RESURVEY, AS RECORDED IN MAP BOOK 128, PAGE 26, IN THE OFFICE OF THE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA; THENCE RUN IN A SOUTHEASTERLY DIRECTION ALONG THE SOUTH LINE THEREOF FOR A DISTANCE OF 126.06 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 92 DEGREES 58 MINUTES 32 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 119.98 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 194 DEGREES 53 MINUTES 35 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 85.76 FEET TO A POINT ON A CURVE TO THE LEFT; SAID CURVE HAVING A RADIUS OF 460.14 FEET, A CENTRAL ANGLE OF 24 DEGREES 30 MINUTES 17 SECONDS, AN EXTERIOR CHORD ANGLE TO THE LEFT OF 120 DEGREES 37 MINUTES 29 SECONDS, AND A CHORD DISTANCE OF 195.30 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 196.80 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT FROM CHORD OF SAID CURVE OF 167 DEGREES 40 MINUTES 51 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 31.58 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 108 DEGREES 41 MINUTES 51 SECONDS AND RUN IN A NORTHERLY DIRECTION FOR A DISTANCE OF 26.40 FEET; THENCE TURN A DEFLECTION ANGLE TO THE LEFT OF 108 DEGREES 36 MINUTES 49 SECONDS AND RUN IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 40.00 FEET TO A



POINT ON A CURVE TO THE RIGHT; SAID CURVE HAVING A RADIUS OF 428.48 FEET, A CENTRAL ANGLE OF 24 DEGREES 40 MINUTES 15 SECONDS, AN EXTERIOR CHORD ANGLE TO THE LEFT OF 167 DEGREES 39 MINUTES 42 SECONDS, AND A CHORD LENGTH OF 184.79 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 186.22 FEET; THENCE TURN AN EXTERIOR ANGLE FROM THE CHORD OF SAID CURVE TO THE LEFT OF 167 DEGREES 45 MINUTES 08 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION FOR A DISTANCE OF 165.28 FEET; THENCE TURN A INTERIOR ANGLE TO THE RIGHT OF 88 DEGREES 41 MINUTES 57 SECONDS AND RUN IN A SOUTHERLY DIRECTION FOR A DISTANCE OF 225.44 FEET TO THE POINT OF BEGINNING. SAID PARCEL OF LAND CONTAINS 37,707 SQUARE FEET OR 0.87 ACRES MORE OR LESS.

Overall Description:

ALL THE ABOVE DESCRIBED PROPERTY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT "A", SCOTTS RESURVEY, AS RECORDED IN MAP BOOK 128, PAGE 26, IN THE OFFICE OF THE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA; THENCE RUN IN A NORTHERLY DIRECTION ALONG THE WESTERN MOST LOT LINE FOR A DISTANCE OF 225.35 FEET TO THE NORTHWEST CORNER OF SAID LOT "A"; THENCE TURN A DEFLECTION ANGLE RIGHT 93 DEGREES 10 MINUTES 14 SECONDS AND RUN IN AN EASTERLY DIRECTION ALONG THE NORTHERN MOST LINE OF SAID LOT "A" FOR A DISTANCE OF 9.58 FEET TO THE SOUTHWESTERN CORNER OF LOT 1-B, LANE PARK GARDEN HOMES, AS RECORDED IN MAP BOOK 128. PAGE 77, IN THE OFFICE OF THE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA; THENCE TURN A DEFLECTION ANGLE LEFT 101 DEGREES 50 MINUTES 55 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION ALONG THE WESTERN MOST LINE OF SAID LOT 1-B FOR A DISTANCE OF 22.17 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT OF 02 DEGREES 19 MINUTES 00 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION ALONG THE SAID WESTERN MOST LINE FOR A DISTANCE OF 25.37 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 00 DEGREE 00 MINUTE 10 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION ALONG THE EASTERN-MOST RIGHT OF WAY LINE OF 20TH STREET FOR A DISTANCE OF 114.05 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 00 DEGREE 36 MINUTES 54 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 18.82 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 80 DEGREES 39 MINUTES 00 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION ALONG THE SAID WESTERN MOST LINE FOR A DISTANCE OF 140.75 FEET; THENCE TURN A DEFLECTION ANGLE LEFT 02 DEGREES 27 MINUTES 00 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION FOR A DISTANCE OF 51.75 FEET TO THE NORTHWESTERN CORNER OF LOT 1-B, LANE PARK GARDEN HOMES; THENCE TURN A DEFLECTION ANGLE RIGHT 101 DEGREES 47 MINUTES 00 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHERN MOST LINE OF SAID LOT 1-B FOR A DISTANCE OF 63.68 FEET; THENCE TURN A DEFLECTION ANGLE LEFT 03 DEGREES 15 MINUTES 29 SECONDS AND RUN IN AN EASTERLY



DIRECTION ALONG SAID NORTHERN MOST LINE FOR A DISTANCE OF 210.80 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 90 DEGREES 00 MINUTES 00 SECONDS AND RUN IN A SOUTHERLY DIRECTION ALONG THE SAID NORTHERN MOST LINE FOR A DISTANCE OF 42.00 FEET; THENCE TURN A DEFLECTION ANGLE LEFT 90 DEGREES 00 MINUTES 00 SECONDS AND RUN IN AN EASTERLY DIRECTION ALONG THE SAID NORTHERN MOST LINE FOR A DISTANCE OF 125.00 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 16 DEGREES 20 MINUTES 00 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION ALONG THE SAID NORTHERN MOST LINE FOR A DISTANCE OF 65.24 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 18 DEGREES 10 MINUTES 56 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION ALONG THE SAID NORTHERN MOST LINE FOR A DISTANCE OF 40.39 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE TURN A DEFLECTION ANGLE RIGHT 52 DEGREES 25 MINUTES 56 SECONDS AND RUN IN A SOUTHERLY DIRECTION ALONG THE EASTERN MOST LINE OF SAID LOT FOR A DISTANCE OF 251.02 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE LEAVING SAID LOT, CONTINUE ALONG LAST DESCRIBED COURSE FOR A DISTANCE OF 26.40 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 71 DEGREES 18 MINUTES 09 SECONDS AND RUN IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 31.58 FEET TO THE POINT OF COMMENCEMENT OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 460.14 FEET, A CENTRAL ANGLE OF 24 DEGREES 30 MINUTES 17 SECONDS, A CHORD LENGTH OF 195.30 FEET AND HAVING A DEFLECTION ANGLE TO CHORD OF 12 DEGREES 19 MINUTES 09 SECONDS TO THE RIGHT; THENCE RUN ALONG ARC OF SAID CURVE FOR A DISTANCE OF 196.80 FEET; THENCE TURN A DEFLECTION ANGLE LEFT 59 DEGREES 22 MINUTES 31 SECONDS FROM CHORD, AND RUN IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 85.76 FEET; THENCE TURN A DEFLECTION ANGLE LEFT 14 DEGREES 54 MINUTES 57 SECONDS AND RUN IN A SOUTHERLY DIRECTION FOR A DISTANCE OF 119.98 FEET; THENCE TURN A DEFLECTION ANGLE RIGHT 87 DEGREES 01 MINUTE 28 SECONDS AND RUN IN A WESTERLY DIRECTION FOR A DISTANCE OF 204.32 FEET TO THE SOUTHWEST CORNER OF LOT "A" AND BEING THE POINT OF BEGINNING. SAID PARCEL CONTAINS 221,327 SQUARE FEET OR 5.08 ACRES MORE OR LESS.

THE ABOVE DESCRIBED LEGAL DESCRIPTION BEING THE SAME PARCELS AS IN THOSE CERTAIN DEEDS RECORDED IN REAL 3338, PAGE 60; REAL 2435, PAGE 604; REAL 1435, PAGE 624; AND REAL 3536, PAGE 891; AND INSTRUMENT 200512/2556 IN THE PROBATE OFFICE OF JEFFERSON COUNTY, ALABAMA.

### TRUSSVILLE

Lot A, according to the Survey of Valley View Annex, as recorded in Map Book 173, Page 67 in the Probate Office of Jefferson County, Alabama.

Together with that certain beneficial 35' drainage easement per Map Book 173, Page 67 in the Office of the Judge Probate of Jefferson County, Alabama.



Together with the certain beneficial Parking Easement per Instrument No. 200512/2209 in the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described as follows:

Beginning at the Northwest corner of Lot A, run in Southwesterly direction for a distance of 241.94 feet; thence turn an interior angle to the right of 89 degrees 26 minutes 04 seconds and run in a Southeasterly direction for a distance of 8.97 feet to a point on a curve to the left; said curve having a radius of 42.00 feet, central angle of 89 degrees 58 minutes 14 seconds and a chord length of 59.38; thence run along the arc of said curve for a distance of 65.95 feet; thence turn an interior chord angle to the right of 135 degrees 00 minutes 53 seconds and run in a Southeasterly direction for a distance of 157.35 feet; thence turn an interior angle to the right of 90 degrees 38 minutes 37 seconds and run in a Northeasterly direction for a distance of 281.67 feet; thence turn an interior angle to the right of 89 degrees 58 minutes 26 seconds and run in a Northwesterly direction for a distance of 209.20 feet to the Point of Beginning.

### **VESTAVIA**

Lot 1, according to the Survey of Vestavia Commerce Center, as recorded in Map Book 171, Page 37, in the Probate Office of Jefferson County, Alabama.

TOGETHER WITH those certain benefiting rights and easements granted by that certain Declaration of Covenants and Easement Agreement recorded in Real 4289, Page 615 in said Probate Office, including easements for ingress, egress, passage and access to Lot 1 for vehicular and pedestrian traffic, parking lots covered with asphalt pavement on Lot 2 for the purpose of parking, and easement to all existing facilities on Lot 2 used to provide sanitary sewerage, storm drainage, electricity and water to Lot 1.

B. The following real property located in Shelby County, Alabama:

### **GREYSTONE**

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA, AND RUN IN AN EASTERLY DIRECTION ALONG THE SOUTH LINE OF SAID SECTION A DISTANCE OF 1336.01 FEET TO A 1½ INCH OPEN PIPE AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 32, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE DEFLECT AN ANGLE TO THE LEFT OF 132 DEGREES 49 MINUTES 41 SECONDS AND RUN IN A NORTHWESTERLY DIRECTION A DISTANCE OF 102.14 FEET; THENCE TURN AN INTERIOR ANGLE OF 185 DEGREES 01 MINUTE 08 SECONDS AND RUN TO THE LEFT IN A NORTHWESTERLY DIRECTION A DISTANCE OF 112.31 FEET; THENCE TURN AN INTERIOR ANGLE OF 176 DEGREES 02 MINUTES 57 SECONDS AND RUN TO THE RIGHT IN A NORTHWESTERLY DIRECTION A DISTANCE OF 102.30 FEET; THENCE TURN AN INTERIOR ANGLE OF 106 DEGREES 17 MINUTES 55 SECONDS AND RUN TO THE RIGHT IN A NORTHEASTERLY DIRECTION 276.15 FEET; THENCE TURN AN INTERIOR ANGLE OF 175 DEGREES 00 MINUTES 09 SECONDS AND RUN TO THE RIGHT IN A NORTHEASTERLY DIRECTION A



DISTANCE OF 226.42 FEET; THENCE TURN AN INTERIOR ANGLE OF 94 DEGREES 23 MINUTES 04 SECONDS AND RUN TO THE RIGHT IN A SOUTHEASTERLY DIRECTION A DISTANCE OF 57.56 FEET; THENCE TURN AN INTERIOR ANGLE OF 265.00 DEGREES 36 MINUTES 56 SECONDS AND RUN TO THE LEFT IN A NORTHEASTERLY DIRECTION A DISTANCE OF 174.46 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY OF U.S. HIGHWAY 280, ALSO BEING A POINT ON A CURVE; THENCE TURN AN INTERIOR ANGLE OF 90 DEGREES 32 MINUTES 33 SECONDS TO TANGENT AND RUN TO THE RIGHT IN A SOUTHEASTERLY DIRECTION ALONG SAID RIGHT OF WAY AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2714.79 FEET AND A CENTRAL ANGLE OF 16 DEGREES 34 MINUTES 27 SECONDS FOR A DISTANCE OF 785.31 FEET TO A POINT; THENCE TURN AN INTERIOR ANGLE OF 91 DEGREES 55 MINUTES 23 SECONDS FROM THE TANGENT OF LAST DESCRIBED CURVE AND RUN TO THE RIGHT IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 104.50 FEET; THENCE TURN AN INTERIOR ANGLE OF 112 DEGREES 46 MINUTES 44 SECONDS AND RUN TO THE RIGHT IN A NORTHWESTERLY DIRECTION A DISTANCE OF 378.71 FEET; THENCE TURN AN INTERIOR ANGLE OF 270 DEGREES 18 MINUTES 59 SECONDS AND RUN TO THE LEFT IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 208.95 FEET; THENCE TURN AN INTERIOR ANGLE OF 205 DEGREES 46 MINUTES 45 SECONDS AND RUN TO THE LEFT IN A SOUTHERLY DIRECTION A DISTANCE OF 144.62 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 32; THENCE TURN AN INTERIOR ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS AND RUN TO THE RIGHT IN A WESTERLY DIRECTION ALONG THE SOUTH LINE OF SAID SECTION 32 A DISTANCE OF 258.72 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THOSE CERTAIN BENEFITTING RIGHTS GRANTED IN THE RECIPROCAL EASEMENT AGREEMENT RECORDED IN INSTRUMENT 1999/33954, AS MODIFIED BY THAT CERTAIN MODIFICATION OF RECIPROCAL EASEMENT AGREEMENT RECORDED IN INSTRUMENT 2001/07233, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

ALSO TOGETHER WITH THOSE CERTAIN BENEFITTING RIGHTS GRANTED IN THE RECIPROCAL EASEMENT AGREEMENT RECORDED IN INSTRUMENT 20030307000141400 IN SAID PROBATE OFFICE. AS AMENDED BY INSTRUMENT 20050902000453650 IN SAID PROBATE OFFICE.

LESS AND EXCEPT:

A PARCEL OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 1 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 1 WEST AND RUN IN A EASTERLY DIRECTION ALONG THE SOUTH LINE THEREOF FOR A DISTANCE OF 1336.01 FEET TO THE SOUTHWEST CORNER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE FOR A DISTANCE OF 258.68



FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 89 DEGREES 59 MINUTES 53 SECONDS AND RUN IN A NORTHERLY DIRECTION FOR A 144.62 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 205 DEGREES 46 MINUTES 45 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 208.94 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT OF 270 DEGREES 18 MINUTES 45 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 378.74 FEET; THENCE TURN AN INTERIOR ANGLE TO THE RIGHT 112 DEGREES 46 MINUTES 58 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 74.52 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE LAST DESCRIBED COARSE FOR A DISTANCE OF 30.00 FEET TO THE SOUTHERN-MOST RIGHT OF WAY LINE OF U.S. HIGHWAY 280, SAID POINT ALSO BEING ON A CURVE TURNING TO THE LEFT, SAID CURVE HAVING A RADIUS OF 2714.79 FEET, A CENTRAL ANGLE OF 01 DEGREES 53 MINUTES 58 SECONDS, AN INTERIOR TANGENT ANGLE TO THE RIGHT OF 91 DEGREES 55 MINUTES 42 SECONDS AND A TANGENT DISTANCE OF 45.01; THENCE RUN IN A NORTHWESTERLY DIRECTION ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 90.00 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE TURN AN INTERIOR ANGLE TO THE RIGHT FROM TANGENT OF SAID CURVE 90 DEGREES 02 MINUTES 56 SECONDS AND RUN IN A SOUTHWESTERLY DIRECTION 29.92 FEET; THENCE TURN AN EXTERIOR ANGLE TO THE LEFT OF 269 DEGREES 03 MINUTES 01 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 90.04 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,719 SQUARE FEET OR 0.06 ACRES MORE OR LESS.

THE ABOVE DESCRIBED LEGAL DESCRIPTION BEING THE SAME PARCEL AS IN THAT CERTAIN QUITCLAIM DEED WITH REVERSION RECORDED AS INSTRUMENT #20040827000480270 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

2. **Buildings and Structures.** The following buildings and structures to be acquired, constructed, altered or improved on the real property described above:

The sport, recreation, gymnasium, office and related facilities located on the four parcels described above.

3. **Personal Property and Fixtures.** The personal property and fixtures constituting a part of the Bond-Financed Facilities acquired and installed on the real property described above.



## EXHIBIT B

20051201000622110 32/34 \$110.00  
Shelby Cnty Judge of Probate, AL  
12/01/2005 12:13:10PM FILED/CERT

### Permitted Encumbrances

(1) The Bank Security Agreement.

(2) Encumbrances on real estate.

#### A. Mountain Brook

1. Building lines as shown by recorded map recorded in Map Book 128, Page 26 and Map Book 128, Page 77 in the Office of the Judge of Probate of Jefferson County, Alabama (Parcel II).
2. 20' sanitary sewer easement as shown by map recorded in Map Book 128, Page 26 and Map Book 128, Page 77 in said Probate Office (Parcel II).
3. Restrictions appearing of record in Real 677, Page 513 and Real 2754, Page 958 in the Probate Office of Jefferson County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin. (Parcel II).
4. Easement to Alabama Power Company recorded in Real 1171, Page 460, in said Probate Office. (Parcel II).
5. Mineral and mining rights and rights incident thereto recorded in Volume 64, Page 69 in said Probate Office. (Parcel II).
6. Restrictions appearing of record in Real 1805, Page 508, and Real 1805, Page 512, in said Probate Office. (Parcel II).
7. Right of Way granted to Alabama Power Company by instrument recorded in Instrument 200114/9547 in said Probate Office. (All Parcels).
8. Coal, oil, gas and other mineral interests in, to or under the land. (Parcels I & II).
9. The following matters of survey as delineated on the survey by Gonzalez-Strength & Associates, Inc. dated August 23, 2005:
  - a. Encroachment of fence over property line.
  - b. Encroachment of parking over property line.
  - c. Encroachment of building, pool, tennis court and sheds into 20 foot sanitary sewer easement.

#### B. Trussville

1. Easement to Alabama Power company recorded in Instrument 9407/2227 in the Probate Office of Jefferson County, Alabama.

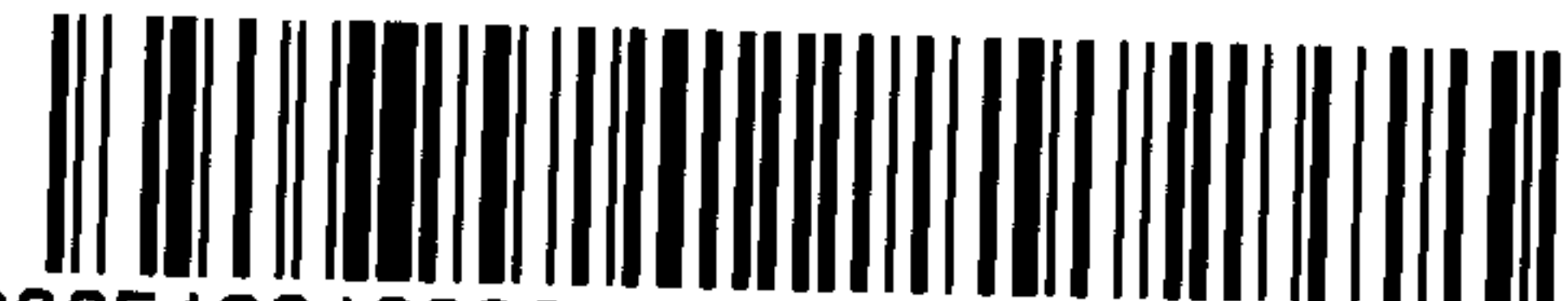


2. Thirty foot driveway easement as shown on Map Book 173, Page 67 in said Probate Office.
3. The following matters of survey as delineated on the survey by Gonzalez-Strength & Associates, Inc. dated August 18, 2005:
  - a. Encroachment of curbing over property line.
  - b. Encroachment of metal building, metal shed and fence into building setback lines.

**C. Vestavia**

1. Easement granted to Emergency Animal Clinic as recorded in Instrument 200108/2399, recorded in the Probate Office of Jefferson County, Alabama.
2. 35' building line as shown by map recorded in Map Book 171, Page 37 in said Probate Office.
3. Easements as shown by recorded map recorded in Map Book 171, Page 37 in said Probate Office.
4. Restrictions, Covenants, Conditions, Reservations, Easements, Release of Damages, and mineral and mining rights incident thereto recorded in Volume 5877, Page 38 in said Probate Office.
5. Right of Way granted to Alabama Power Company by instrument recorded in Volume 6319, Page 199; Volume 6319, Page 133, and Volume 3347, Page 652 in said Probate Office.
6. Title to all minerals within and underlying the premises together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Volume 2373, Page 351 in said Probate Office.
7. Rights of others granted in that certain Declaration of Covenants and Easement Agreement as recorded in Real 4289, Page 615 in said Probate Office.
8. The following matters of survey as delineated on the survey by Gonzalez-Strength & Associates, Inc. dated August 18, 2005:
  - a. Encroachment of curbing over property line.
  - b. Encroachment of curb inlet over property line.
  - c. Encroachment of riprap into 20 foot easement.
  - d. Encroachment of asphalt into 20 foot easement.
  - e. Encroachment of concrete into 20 foot easement.
  - f. Encroachment of metal building into 35 foot building setback line.
  - g. Encroachment of fence line into easement.






### D. Greystone

1. Rights of others in that certain Reciprocal Easement Agreement recorded in Instrument 1999/33954 and Modification of Reciprocal Easement Agreement recorded in Instrument 2001/7233 in the Probate Office of Shelby County, Alabama.
2. Sign License Agreement recorded in Instrument 20030320000169960 in said Probate Office.
3. Rights of others in that certain Reciprocal Easement Agreement recorded in Instrument 20030307000141400 in said Probate Office.
4. Coal, oil, gas and other mineral interests in, to or under the land.

**STATE OF ALABAMA - JEFFERSON COUNTY**  
**I hereby certify that no mortgage tax or deed tax**  
**has been collected on this instrument.**

*Mark Jones* Judge of Probate

**"NO TAX COLLECTED"**

State of Alabama - Jefferson County  
I certify this instrument filed on:  
2005 NOV 29 01:45:27:71PM  
Recorded and \$ Mtg. Tax  
and \$ Deed Tax and Fee Amt.  
\$ 87.00 Total \$ 87.00  
MARK GAINES, Judge of Probate  
  
200515/8659