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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
 :
SHELBY COUNTY)

DECLARATION OF REAL PROPERTY RESTRICTIONS,
COVENANTS AND AGREEMENTS

This Declaration of Real Property Restrictions, Covenants and Agreements (this "Declaration") is entered into this the 8th day of February, 2006, by the undersigned **52 PELHAM, LLC**, an Alabama limited liability company (hereinafter "52 Pelham") and **C&A ENTERPRISES, L.L.C.**, an Alabama limited liability company, **AWTREY INVESTMENT REALTY, LLC**, an Alabama limited liability company, and **COLE INVESTMENT REALTY, LLC**, an Alabama limited liability company (collectively referred to hereinafter as "Cole and Awtrey").

W I T N E S S E T H:

Simultaneously with the execution of this Declaration, 52 Pelham has acquired from Cole and Awtrey, as a like-kind exchange of real properties, an undivided seventy-eight percent (78%) interest ("52 Pelham's 78%") in and to that certain twenty-three (23) acre parcel of real property more particularly described in the attached *Exhibit A*. Cole and Awtrey have retained an undivided twenty-two percent (22%) interest ("Cole and Awtrey's 22%") in and to said 23 acre parcel. The entirety of the 23 acre parcel shall sometimes hereinafter be referred to as the "23 Acre Parcel."

Also simultaneously with the execution of this Declaration, 52 Pelham has entered into an agreement (the "Purchase Agreement") for the purchase of Cole and Awtrey's 22%, which is conditioned upon 52 Pelham's investigation of the 23 Acre Parcel and the determination by 52 Pelham that the entire 23 acres is suitable for development in accordance with plans as determined by 52 Pelham and approved by Cole and Awtrey. The closing of the acquisition by 52 Pelham of the Cole and Awtrey 22%, if it should occur, will occur on or before the 5th day of March, 2007, as more particularly described in the Purchase Agreement.

Also simultaneously with the execution of this Declaration, H. Albert Awtrey, Rose Marie J. Awtrey, Eugene K. Cole, and Samuel W. Sharp have formed SAC, LLC ("SAC"), into which Cole and Awtrey have contributed an approximately thirty-one (31) acre parcel of real property which is adjacent to the 23 Acre Parcel and more particularly described on the attached *Exhibit B*.

As a condition to the agreement by Cole and Awtrey to convey to 52 Pelham the 52 Pelham 78%, and the willingness of Cole and Awtrey to enter into the agreement to convey to 52 Pelham the Cole and Awtrey 22%, 52 Pelham has agreed to the covenants, restrictions and agreements with respect to the 52 Pelham 78% as more particularly set forth herein below.

NOW, THEREFORE, in consideration of the foregoing recitals, ten dollars (\$10) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is hereby declared, covenanted and agreed as follows:

1. Until such time as 52 Pelham has paid in full to Cole and Awtrey the purchase price for the acquisition of the Cole and Awtrey 22% pursuant to the Purchase Agreement, the title to the 52 Pelham 78% shall not be sold, contracted for sale, conveyed, mortgaged, leased, subjected to easements, encumbered, or altered in any manner without the express written consent of Cole and Awtrey, which consent may be withheld in their discretion; nor shall the 52 Pelham 78% interest be rezoned, resurveyed, resubdivided, or physically improved or altered in any manner without the express written consent of Cole and Awtrey, which may be withheld in their discretion.

2. In the event that 52 Pelham does not close the acquisition of the Cole and Awtrey 22% and pay in full the consideration established pursuant to the Purchase Agreement, on or before the 5th day of March, 2007 (or such later date upon which both SAC and 52 Pelham agree, if any), then 52 Pelham shall, on that date, by statutory warranty deed, free and clear of all exceptions, liens, mortgages or encumbrances of any kind or nature other than those set forth in the conveyance into 52 Pelham from Cole and Awtrey, convey the 52 Pelham 78% to SAC. In the event that the Purchase Agreement should be terminated as the result of the failure by 52 Pelham to extend its inspection period as therein provided or for any other reason whatsoever, then 52 Pelham shall, on or before January 5, 2007, make said conveyance of the 52 Pelham 78% to SAC. Immediately upon such conveyance by 52 Pelham to SAC, Cole and Awtrey shall, by statutory warranty deed, convey the Cole and Awtrey 22% to SAC. Upon said conveyance by 52 Pelham to SAC of the 52 Pelham 78%, the provisions of this Declaration shall terminate.

3. In the event that 52 Pelham closes the acquisition from Cole and Awtrey of the Cole and Awtrey 22% and pays the consideration for such acquisition as established in the Purchase Agreement, then 52 Pelham shall, simultaneously with the closing of said acquisition, make a capital contribution to SAC, LLC in the amount of \$2,333,333.33. The obligation of Cole and Awtrey to convey the Cole and Awtrey 22% interest to 52 Pelham shall be conditioned upon 52 Pelham making said capital contribution simultaneously with the conveyance. Said contribution by 52 Pelham to SAC, LLC in the amount of \$2,333,333.33 shall be disbursed by SAC, LLC as follows: to Eugene K. Cole the sum of \$1,166,666.66; and to H. Albert Awtrey and Rose Marie J. Awtrey the sum of \$1,166,666.67.

4. The covenants, restrictions, agreements and provisions of this Declaration shall bind and run with the lands forever. The obligation of 52 Pelham to convey into SAC the 52 Pelham 78% pursuant to this Declaration shall be enforceable by any one or more of the parties to this Declaration and SAC, acting independently or jointly, by all remedies available under Alabama law, including but not limited to the remedy of specific performance. In such event, 52 Pelham shall also be obligated to pay to such parties any damages which they have suffered and the legal fees and other expenses incurred in the enforcement of said obligations of 52 Pelham. Any party which acquires, succeeds to, or receives any title, claim of title, interest, claim of interest, lien, or encumbrance of any kind or nature with respect to the 52 Pelham 78% shall be subject to the terms and provisions of this Declaration, including, but not limited to, the provisions of this paragraph, and the provisions of this Declaration which require, under the



conditions set forth herein, the conveyance, without additional consideration or payment of any kind, of the 52 Pelham 78% to SAC, and any such parties and any such interest that they might have or claim with respect to the 52 Pelham 78% shall be subject to said obligations and remedies.

5. The rights and obligations of the parties as set forth in this Declaration are also referenced, in part, in other documentation entered into among the parties. Any such other documentation shall not in any manner be deemed to amend, limit or otherwise affect the rights and obligations of the parties as set forth in this Declaration.

6. The terms and provisions of this Declaration shall be binding upon and shall inure to the benefit of each of the undersigned and their respective heirs, successors and assigns.

7. The terms and provisions of this Declaration shall be interpreted and constructed in accordance with the laws of the State of Alabama.

8. In the event of any dispute among any of the parties to this Declaration with respect to the provisions hereof, for the enforcement of any obligation or right set forth herein, or the pursuit of any remedy set forth herein, then the prevailing party or parties shall be entitled to recover the attorneys' fees and costs of litigation incurred in connection therewith from the nonprevailing party or parties.

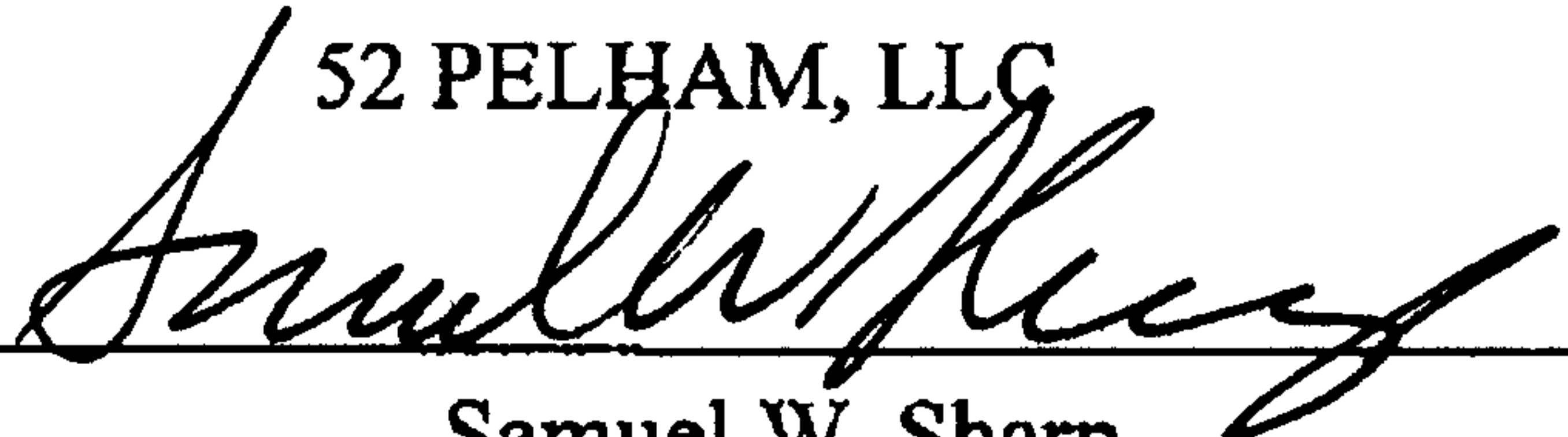
9. 52 Pelham does hereby irrevocably appoint Cole and Awtrey, acting independently or acting jointly, as 52 Pelham's attorneys-in-fact, coupled with an interest, with full power and authority, as fully as it might or could do if personally present, with full power of substitution and revocation, to execute the deed of conveyance by 52 Pelham of the 52 Pelham 78% to SAC upon the occurrence of the conditions set forth in paragraph 2 of this Declaration and the failure of 52 Pelham to cause said deed of conveyance to be executed and delivered in accordance with the provisions of said paragraph 2 of this Declaration. 52 Pelham does hereby ratify and confirm all that said attorney-in-fact shall lawfully do or cause to be done by virtue hereof, and this power of attorney shall not be affected by the subsequent disability, incompetency, or incapacity of any member of 52 Pelham, or any subsequent change in the legal status of 52 Pelham.

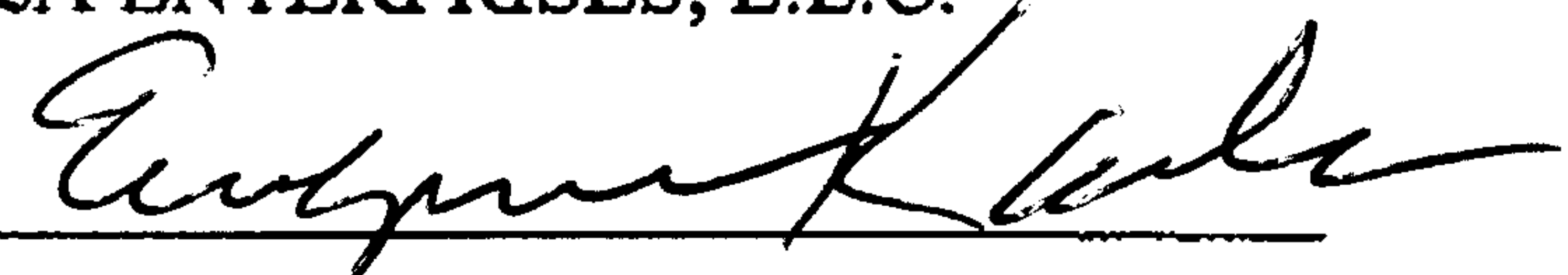
[SIGNATURES ON FOLLOWING PAGE]





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Executed by each of the undersigned under seal, effective the same date as first hereinabove written.


52 PELHAM, LLC
By: 
Samuel W. Sharp
Its Member

C&A ENTERPRISES, L.L.C.
By: 
Eugene K. Cole
Its Managing Member

AWTREY INVESTMENT REALTY, LLC
By: 
H. Albert Awtrey
Its Member

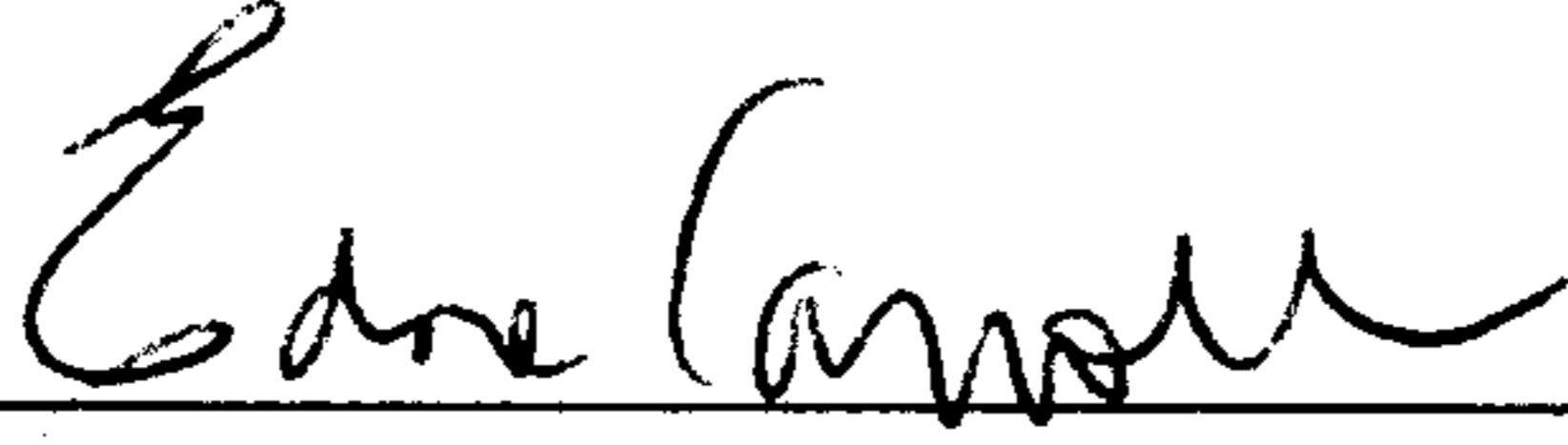
COLE INVESTMENT REALTY, LLC
By: 
Eugene K. Cole
Its Member

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)


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I, the undersigned, a notary public in and for said county in said state, hereby certify that Samuel W. Sharp, whose name as Member of 52 Pelham, LLC, an Alabama limited liability company, 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 Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 8th day of February, 2006.



Notary Public

[NOTARIAL SEAL]

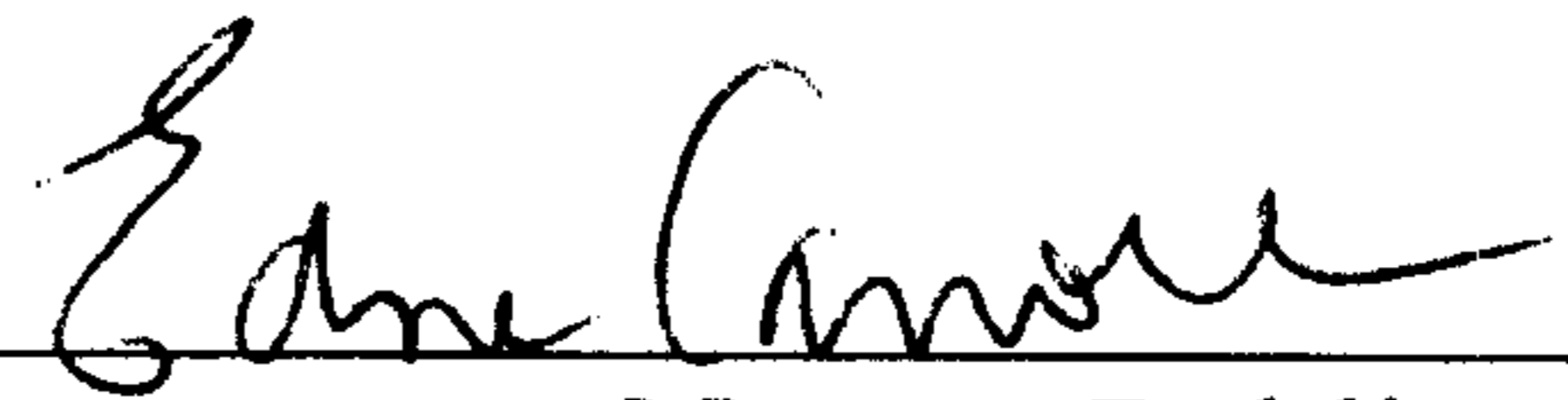
My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES May 16, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Eugene K. Cole, whose name as Managing Member of C&A Enterprises, L.L.C., an Alabama limited liability company, 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 Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 8th day of February, 2006.



Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES May 16, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that H. Albert Awtrey, whose name as Member of Awtrey Investment Realty, LLC, an Alabama limited liability company, 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 Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 7th day of February, 2006.

Cheryl R. Abbott
Notary Public

[NOTARIAL SEAL]

My commission expires: 1-26-07

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Eugene K. Cole, whose name as Member of Cole Investment Realty, LLC, an Alabama limited liability company, 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 Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 8th day of February, 2006.

Eugene K. Cole
Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 16, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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EXHIBIT A

23 Acre Parcel

Part of the southwest quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the southeast corner of the southwest quarter of the southwest quarter of said Section 19; thence north $89^{\circ} 26' 05''$ west a distance of 778.22 feet; thence with a curve turning to the right with an arc length of 339.33 feet, with a radius of 780.00 feet, with a chord bearing of north $20^{\circ} 11' 30''$ east, with a chord length of 336.66 feet; thence with a curve turning to the left with an arc length of 153.46 feet, with a radius of 270.00 feet, with a chord bearing of north $16^{\circ} 22' 20''$ east, with a chord length of 151.40 feet; thence north $00^{\circ} 05' 23''$ east a distance of 622.22 feet; thence with a curve turning to the left with an arc length of 209.83 feet, with a radius of 270.00 feet, with a chord bearing of north $22^{\circ} 10' 25''$ west, with a chord length of 204.59 feet; thence with a curve turning to the right with an arc length of 81.74 feet, with a radius of 330.00 feet, with a chord bearing of north $37^{\circ} 20' 27''$ west, with a chord length of 81.53 feet; thence north $68^{\circ} 44' 35''$ east a distance of 249.16 feet; thence south $00^{\circ} 05' 23''$ west a distance of 202.89 feet; thence south $85^{\circ} 27' 19''$ east a distance of 285.10 feet; thence north $04^{\circ} 33' 49''$ east a distance of 244.99 feet to the southerly right-of-way of Shelby County Highway #52; thence along said right-of-way with a curve turning to the left with an arc length of 219.66 feet, with a radius of 1864.69 feet, with a chord bearing of south $74^{\circ} 26' 58''$ east, with a chord length of 219.53 feet; thence along said right-of-way with a curve turning to the left with an arc length of 128.83 feet, with a radius of 7797.80 feet, with a chord bearing of south $79^{\circ} 26' 09''$ east, with a chord length of 128.83 feet; thence leaving said right-of-way south $01^{\circ} 11' 07''$ west a distance of 450.25 feet; thence north $70^{\circ} 07' 01''$ west a distance of 37.90 feet; thence south $00^{\circ} 31' 35''$ west a distance of 935.34 feet; thence north $89^{\circ} 34' 06''$ west a distance of 75.19 feet to the point of beginning.



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EXHIBIT B

31 Acre Parcel

Part of the southwest quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the southwest corner of the southwest quarter of the southwest quarter of said Section 19; thence north $00^{\circ} 19' 06''$ west a distance of 1837.23 feet; thence north $62^{\circ} 57' 28''$ east a distance of 187.42 feet; thence north $80^{\circ} 26' 41''$ east a distance of 122.46 feet to the southerly right-of-way line of Shelby County Highway #52; thence south $60^{\circ} 03' 21''$ east, along said right-of-way, a distance of 506.78 feet; thence south $52^{\circ} '5' 42''$ east, along said right-of-way, a distance of 171.75 feet; thence leaving said right-of-way, south $00^{\circ} 05' 23''$ west a distance of 161.98 feet; thence south $68^{\circ} 44' 35''$ west a distance of 249.16 feet; thence with a curve turning to the left with an arc length of 81.74 feet, with a radius of 330.00 feet, with a chord bearing of south $37^{\circ} 20' 27''$ east, with a chord length of 81.53 feet; thence with a curve turning to the right with an arc length of 209.83 feet, with a radius of 270.00 feet, with a chord bearing of south $22^{\circ} 10' 25''$ east, with a chord length of 204.59 feet; thence south $00^{\circ} 05' 23''$ west a distance of 622.22 feet; thence with a curve turning to the right with an arc length of 153.46 feet, with a radius of 270.00 feet, with a chord bearing of south $16^{\circ} 22' 20''$ west, with a chord length of 151.40 feet; thence with a curve turning to the left with an arc length of 339.33 feet, with a radius of 780.00 feet, with a chord bearing of south $20^{\circ} 11' 30''$ west, with a chord length of 336.66 feet; thence north $89^{\circ} 26' 05''$ west a distance of 586.51 feet to the point of beginning.