

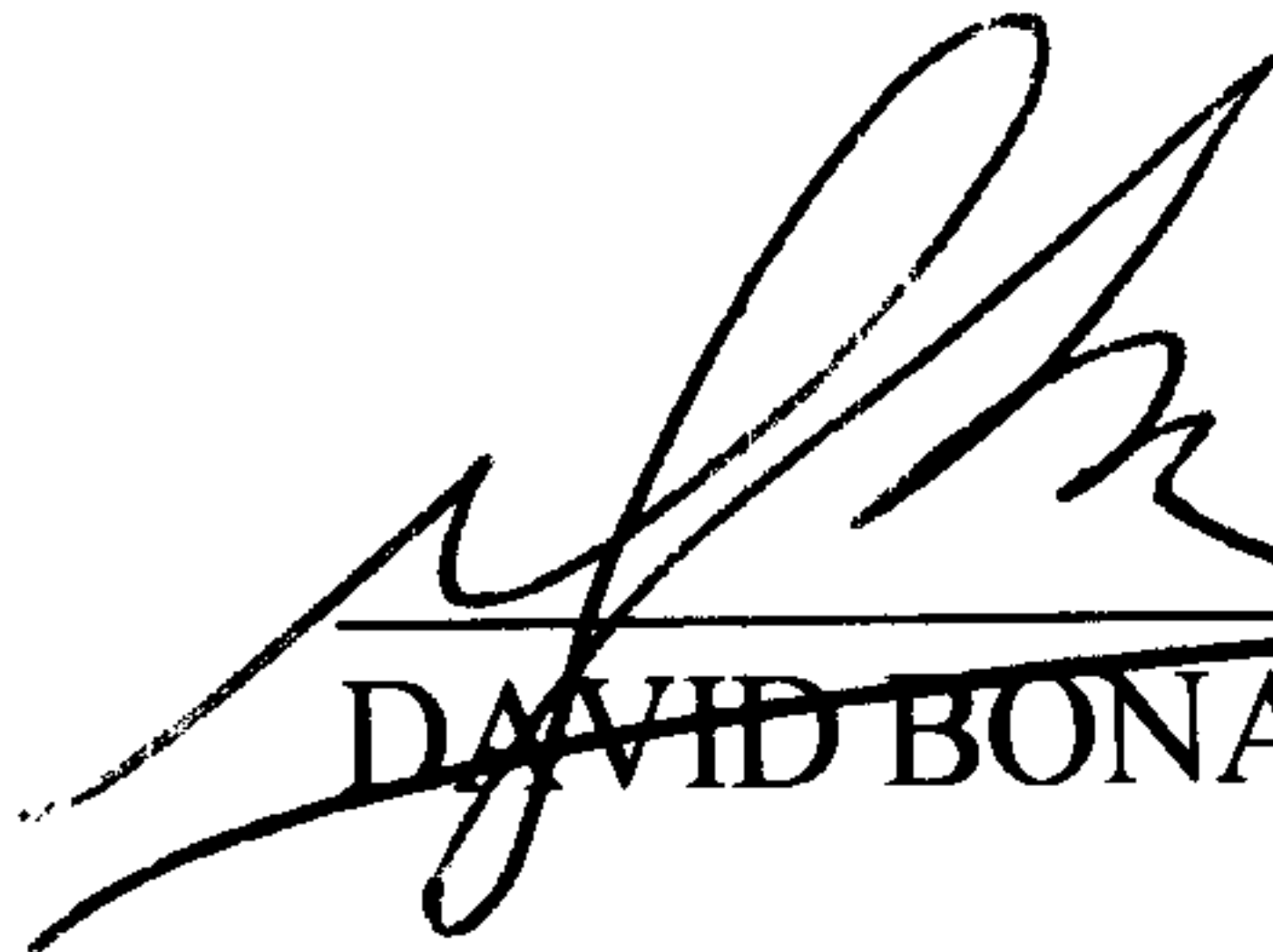
STATE OF ALABAMA )  
SHELBY COUNTY )

**AFFIDAVIT**

Before me, the undersigned authority, a Notary Public in and for the State of Alabama, personally appeared before me **DAVID BONAMY**, who is known to me, and who, being by me first sworn, and in accordance with Alabama Code § 35-4-69 (1975), deposed and stated the following:

1. I am an officer of HPH Properties, LLC, an Alabama limited liability company ("HPH").
2. Attached hereto is a true, correct and complete copy of the original Builder Lot Sales Contract dated April 29, 2004 (the "Contract"), executed by HPH, as purchaser, and SILVER CREEK DEVELOPMENT, LLC, an Alabama limited liability company ("Silver Creek"), as Seller, for HPH's purchase of certain lots and real property as therein described (the "Property").
3. The Contract grants HPH a right of first offer to purchase any other lots and properties developed by Silver Creek in later phases or sectors, and related to Silver Creek's development of the Property.

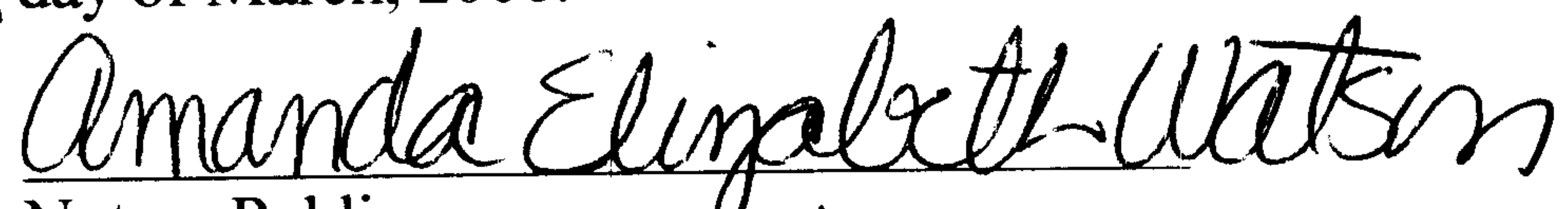
2nd IN WITNESS WHEREOF, this Affidavit has been executed by the undersigned on this day of March, 2006.

  
DAVID BONAMY

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public, hereby certify that **DAVID BONAMY**, whose name is signed to the foregoing Affidavit, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Affidavit, he executed the same voluntarily on the day the same bears date.

Given under my hand this the 2nd day of March, 2006.

  
Notary Public  
My Commission Expires: Jan 30, 2010

[ AFFIX NOTARY SEAL ]

Apr-30-04 03:03P

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Shelby Cnty Judge of Probate, AL  
03/02/2006 09:36:45AM FILED/CERT**BUILDER LOT SALES CONTRACT****April 29, 2004**

The undersigned **HPH PROPERTIES, LLC** ("Purchaser"), an Alabama limited liability company, its successors and assigns hereby agrees to purchase and the undersigned **Silver Creek Development, LLC**, its successors or assigns, an Alabama limited liability company ("Seller"), hereby agrees to sell the following described real property situated in the City of Alabaster, Shelby County, State of Alabama (hereinafter sometimes referred to individually as a "Lot" and collectively as the "Lots"), on the terms stated below:

4-R1 lots, 4-R2 lots, and 39 R-3 lots located in the subdivision of Silver Creek in Alabaster, Alabama, as more particularly shown on the plat attached hereto as Exhibit A

The Lots shall be conveyed to Purchaser subject to all of the following (collectively, the "Permitted Exceptions"): real estate ad valorem taxes for the current and all subsequent tax years, all easements, restrictions, rights-of-way, building setback lines and other matters of record

1. **PURCHASE PRICE.** The purchase price for the Lots shall be as follows:

4-R1 Lots as follows: \$31,500

4-R2 Lots as follows: \$28,500

39-R3 Lots as follows: \$25,500

Total Purchase Price .....\$1,234,500.00

Earnest Money ..... \$ 5,000.00

The Lot Purchase Price will be paid by Purchaser to Seller for each Lot purchased by Purchaser at each Closing in immediately available federal funds, subject to the credits, adjustments and pro-rations provided for in this Agreement and the Addendum.

2. **AGENCY DISCLOSURE.**

Purchaser represents and warrants that no real estate agent, broker or other sales person has represented them in this transaction as listing agent, selling agent or otherwise. Each does hereby indemnify, agree to defend and hold the other harmless from and against any and all claims, suits, demands, causes of action, judgments, liabilities, expenses, including attorneys' fees, and any other



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costs of any nature suffered, paid or incurred by either as a result of or in connection with any claims for brokerage commissions, fees or other compensation asserted by any real estate agent, firm, corporation, broker or sales person with respect to the purchase and sale transaction between Seller and Purchaser as contemplated in this Agreement. Seller represents that Green & Company Real Estate Inc. has represented them as selling agent. Any commissions due to Green & Company Real Estate, Inc. is agreed to be the burden of the Seller and Purchaser will have no liability and will be held harmless in any disputes arising between Seller and Green & Company Real Estate, Inc.

Purchaser's Initials     Seller's Initials     

3. **EARNEST MONEY AND DEFAULT.** Purchaser shall provide the Earnest Money to Magic City Title who will act as the Escrow Agent and hold the money in an interest bearing account pending the fulfillment of this Agreement. In the event Purchaser fails to carry out and perform the terms of this Agreement, the Earnest Money shall be forfeited to and retained by Seller as liquidated damages, this Agreement shall be canceled and neither party shall have any further obligations hereunder. In the event Seller fails to carry out and perform Seller's obligations under this Agreement (other than as a result of any default hereunder by Purchaser), then Purchaser may seek specific performance of this agreement or terminate this Agreement and obtain a refund of the Earnest Money in which event neither party shall have any further obligation hereunder. If the Earnest Money is evidenced by a check and the check is returned by a financial institution as unpaid, then Seller shall have the right to unilaterally cancel and terminate this Agreement without further recourse on the part of Purchaser. The Earnest Money shall be refundable by Seller to Purchaser only as set forth in this Contract and the Addendum. Upon the Closing of lots the amount of the Earnest Money shall be credited toward payment of the purchase price as defined in the Addendum.

4. **TITLE INSURANCE.** On or prior to closing, Seller agrees to furnish to Purchaser a standard form owner's title insurance policy for the Lots, issued by a company selected by Purchaser and qualified to insure titles in Alabama, in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, unless herein excepted; otherwise, the Earnest Money shall be refunded. The Lots are sold and are to be conveyed subject to all of the Permitted Exceptions, less and except any mineral and mining rights not owned by Seller, and subject to present Qualified R-1, R-2, and R-3 zoning classifications as evidenced by map in Exhibit A, and are not located in a flood plain. The cost of such policies shall be split between Seller and Purchaser.

5. **PRORATIONS.** Ad valorem property taxes (whether paid in arrears or advance) for the Lots, as determined on the date of closing, are to be prorated between Seller and Purchaser as of the date of delivery of the deed. All ad valorem taxes, except municipal taxes, are assumed to be paid in arrears for purposes of proration; municipal taxes, if any, are assumed to be paid in advance for purposes of proration.

6. **CLOSING AND POSSESSION DATES.** The Lot sales shall be closed and the deeds delivered as provided for in the attached **ADDENDUM A** except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Lots; provided, however, that in no event shall the closing occur (a) prior to the recordation of the final Subdivision Plat in the Probate Office. Possession is to be given on delivery of the deed.



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7. **CONVEYANCE.** Seller agrees to convey the Lots to Purchaser by general warranty deed free of all monetary liens and encumbrances, but subject to the Permitted Exceptions and Seller and Purchaser agree that any encumbrance not herein excepted or assumed may be cleared at the time of closing.

8. **SELECTION OF ATTORNEY, CLOSING COSTS AND DOCUMENTS.** Seller and Purchaser hereby agree to share equally the fees of closing attorney, to be mutually agreed upon by Purchaser and Seller. Seller and Purchaser acknowledge and agree that such sharing may involve a potential conflict of interest and each may be required to execute an affidavit at closing acknowledging their recognition and acceptance of the same. The parties further acknowledge and agree that they have a right to be represented at all times in connection with this Agreement and at the closing by an attorney of their own choosing at their own expense. All other closing costs, other than survey, title insurance and closing attorney's fees shall be paid by Purchaser. Seller and Purchaser agree to execute such other documents as may be reasonably required to consummate the closing contemplated by this Agreement.

9. **ROADS.** Seller represents and warrants that access to the Lots will be provided by Seller, at Seller's expense, via a public roadway which will abut the Lots, which roadway will be paved and constructed in accordance with the minimum requirements of the City of Alabaster, Alabama (the "City"). If the aforesaid street or roadway has not been completed by the closing, it will be bonded by Seller with the City pursuant to a surety bond or other financial guaranty required by and acceptable to the City. Further, Seller shall dedicate and the City of Alabaster shall accept such roadway as public pursuant to the recording of the final plat.

10. **UTILITIES.** Seller represents and warrants that water, sanitary sewer, underground electricity, and telephone lines will be constructed and installed to each Lot. Seller is responsible for all fees associated with underground power services and their subsequent connection to the residence as is customary in Residential development. Purchaser, at Purchaser's sole expense, shall be solely responsible for connecting water and sewer services to stubs and laterals provided to each Lot by Seller to any dwelling or other improvements to be located on the Lots.

Further, Seller agrees that Purchaser shall have and reserves the right to designate whether the Subdivision shall be an Alabama Power Good Cents product or an Alagasco product and Purchaser shall have the right to keep all incentives for marketing.

11. **PURCHASER'S WARRANTIES.** Purchaser represents and warrants to Seller that Purchaser is purchasing the Lots for the purpose of engaging in the business of constructing a residential dwelling thereon for resale in the ordinary course of business or is otherwise acquiring the Lots solely for residential purposes.

12. **OPTION OF FIRST RIGHT.** Seller covenants that any additional Lots developed in future phases or sectors would be offered to Purchaser at a stated price, prior to any other builder. Seller further agrees that in the event Purchaser elects to pass on the offer, it will not reduce the stated offer price of any lots without first offering the reduced lot price to Purchaser.



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**13. MEDIATION/ARBITRATION.**

Both Purchaser and Seller agree that any dispute arising pursuant to this agreement shall be submitted first to mediation and then to binding arbitration. In the event either party institutes an action to enforce its' rights under this Contract, the prevailing party shall be entitled to recover its' litigation costs, including court costs and reasonable attorney fees.

**14. MARKETING.** Purchaser reserves the right to use the marketing and sales team or brokerage of its choice. Purchaser and Seller agree that 1% of the base selling price of a finished home will be split 1/2% each and will be collected upon sale of a home.

**15. MISCELLANEOUS.** This Agreement shall be binding upon and, subject to the terms and provisions of the immediately preceding sentence, shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, successors and assigns. This Agreement and any addendum attached hereto constitutes the sole and entire agreement between the parties hereto and this Agreement may not be modified or amended except in a writing signed by both parties hereto. This Agreement supersedes all prior written or oral discussions, negotiations and agreements between Seller and Purchaser with respect to the purchase and sale of the Lots.

The paragraph headings of this Agreement are used for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement.

**Time is of the essence of this Agreement.**

This Agreement has been executed in the State of Alabama and shall be governed by the laws of the United States (including, specifically, the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq) and, to the extent not inconsistent therewith, the laws of the State of Alabama. If any provision of this Agreement should be invalid or unenforceable, then such provision only shall be held unenforceable and the validity and enforceability of the remaining provisions hereof shall not be affected thereby. All of the terms and provisions of this Agreement shall survive the closing and the conveyance of any of the Lots by Seller to Purchaser.

**15. ADDENDUM.** Check if attached.

X Additional terms are set forth on the Addendum attached hereto and made a part of this Agreement.

Seller's Initials 

Purchaser's Initials \_\_\_\_\_

THIS AGREEMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS AGREEMENT, SEEK LEGAL ADVICE BEFORE SIGNING THIS AGREEMENT. SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT EACH HAS THE RIGHT TO BE REPRESENTED AT ALL TIMES IN CONNECTION WITH THIS AGREEMENT BY AN ATTORNEY OF HIS, HER OR ITS CHOOSING, AT HIS, HER OR ITS SOLE COST AND EXPENSE.

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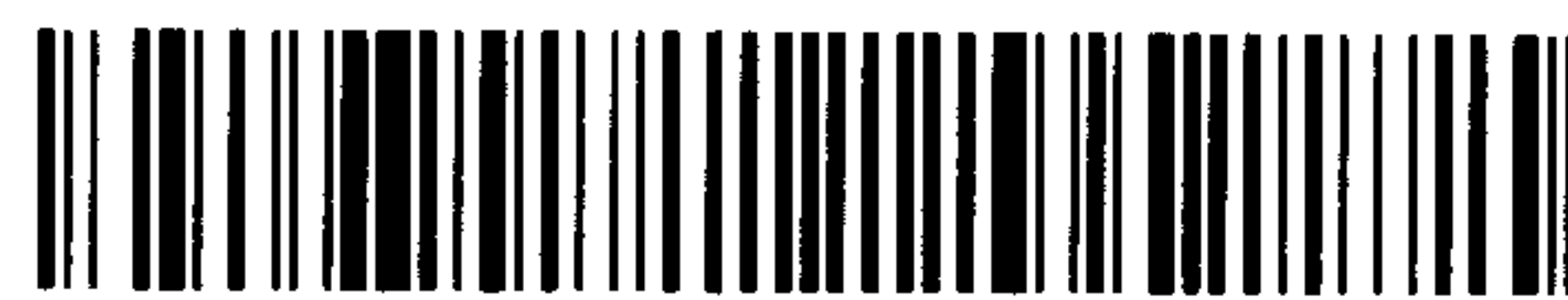
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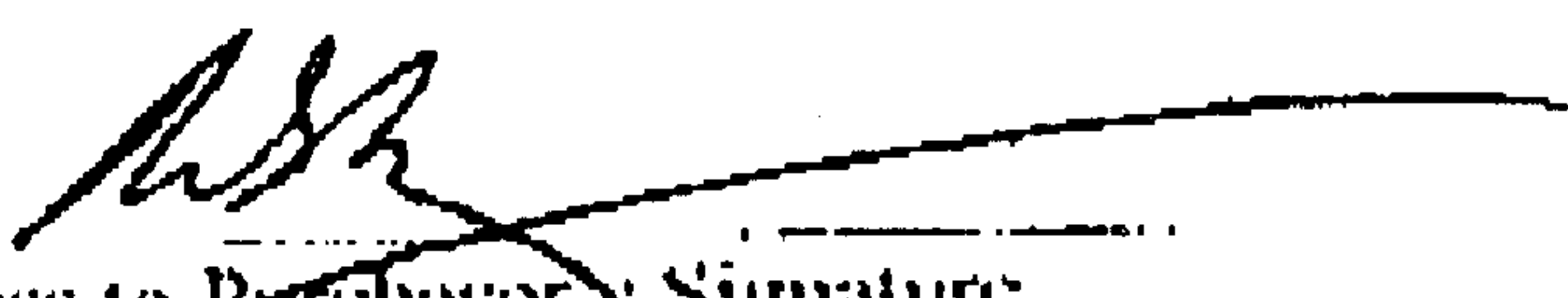
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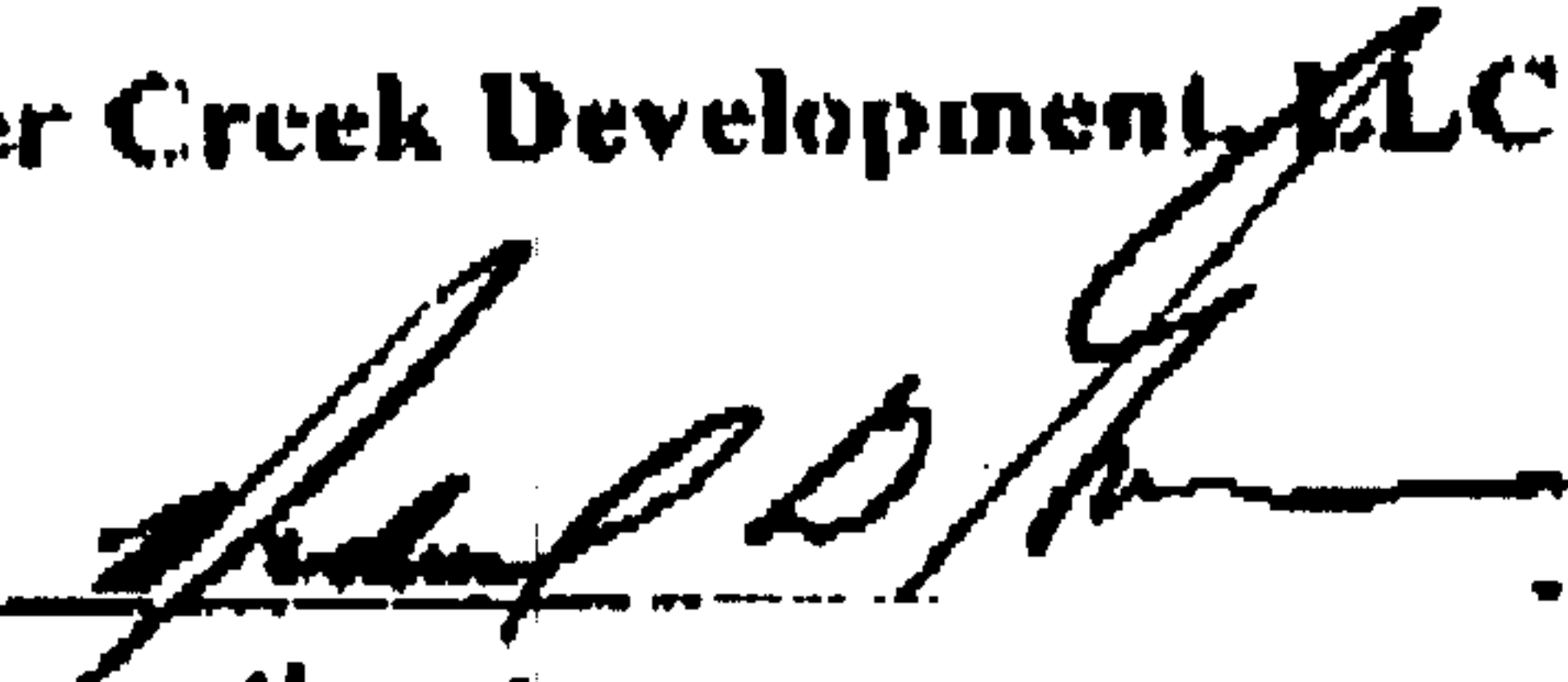
HPH PROPERTIES, LLC

  
Witness to Purchaser's Signature

By:   
Its: Managing Member

Silver Creek Development, LLC

  
Witness to Seller's Signature

By:   
Its: Member



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ADDENDUM TO  
BUILDER LOT SALES CONTRACT  
DATED April 29, 2004 (the "Agreement")  
BY AND BETWEEN  
Silver Creek Development, LLC ("Seller")  
AND  
HPH PROPERTIES, LLC ("Purchaser")

DATE OF THIS ADDENDUM: April 29, 2004

THIS ADDENDUM (this "Addendum") is attached to and made a part of the Agreement to purchase 47 Lots in Silver Creek Subdivision in Alabaster, Alabama. To the extent of any conflict or ambiguity between the terms and provisions of the Agreement and this Addendum, the terms and provisions of this Addendum shall control. Seller and Purchaser further agree as follows:

1. Definitions. Capitalized terms not otherwise expressly defined in this Addendum shall have the same meanings given to them in the Agreement. In addition to the other defined terms set forth in the Agreement and this Addendum, the following defined terms shall have the meanings assigned to them as provided below and shall include the plural as well as the singular and *vice versa*:

(a) "Additional Lots" with respect to any R-1, R-2, or R-3 Lots purchased by Purchaser after the First Closing Lots.

(b) "City" means the City of Alabaster, Alabama, a municipal corporation.

(c) "Closing" shall have the meaning set forth in Paragraph 3(c) of this Addendum.

(d) "Final Subdivision Plat" means the final subdivision plat for all of the Lots or phases of the Lots which have been approved by the City's Planning Commission and City Council.

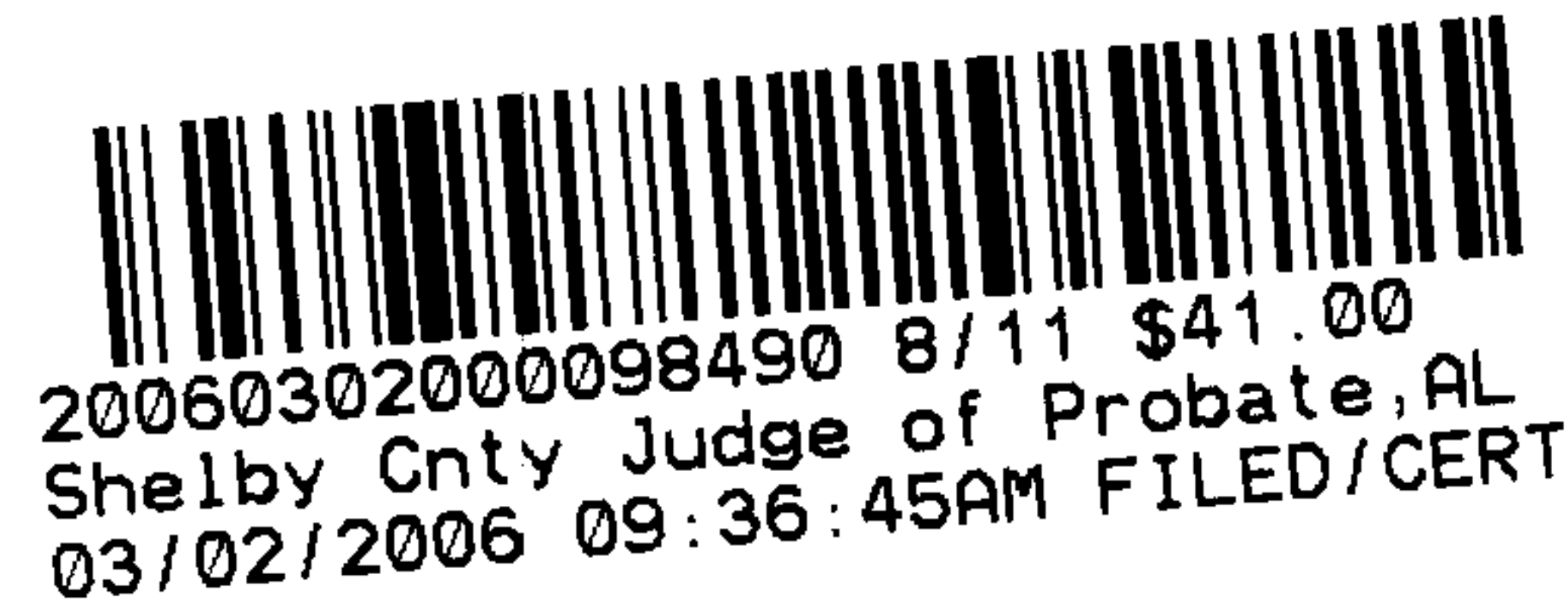
(e) "First Closing Lots" shall mean TWENTY (20) Lots (comprised of two (2) R-1 Lots, two (2) R-2 Lots, and Sixteen (16) R-3 Lots) from the Final Subdivision Plat.

(f) "Force Majeure" means acts of God, strikes, riots, fire, flood, war, casualty, material shortages, inclement weather, moratoriums imposed by any utility company or utility provider or governmental agency, interference or interruption of the Lot Development Work resulting from the acts or omissions of Purchaser, its agents, employees, contractors or invitees and any other matters beyond the control of Seller which prevents or otherwise limits Seller or its contractors in undertaking or completing any portion of the Lot Development Work.

(h) "Governmental Requirements" means all statutes, ordinances, laws, code provisions, regulations, rules and requirements of all applicable federal, state, county and local governmental agencies and authorities having jurisdiction over the Lot Development Work.



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(i) "Home Sale" means the sale of a residence built by purchaser on a lot purchased from seller, as evidenced by a statutory warranty deed fully acknowledged and signed by purchaser conveying the property to a homebuyer.

(j) "Lot Development Work" means the development of the Lots in substantial accordance with the Plans and Subdivision Plat attached hereto.

(k) "Lots" means up to, but not more than, forty-seven (47) single-family residential home lots, comprised of R-1, R-2, and R-3 Lots to be developed by Seller on the Real Property in substantial accordance with the Plans.

(l) "Plans" means the preliminary subdivision plat for all of the Lots and engineering plans and drawings for the development of all of the Lots. The Plans shall provide that the grade for all Lots will be typical for garden homes, such that the grade for each Lot shall not exceed a six (6) inch fall from the front of the Building Pad for such Lot to the rear of the Building Pad for such Lot and from side to side. Further, the Lots as graded shall provide a minimum rear yard of twenty (20) feet from the rear of the house based upon a sixty (60) foot house plan being constructed on said Lot. The rear yard grades shall not have a rise or fall in excess of two feet over the length of the rear yard and shall provide for positive drainage away from the Building Pad. The front yard shall be a minimum of 1 foot over the curb and will provide positive drainage to the street. In addition, Seller will test compaction on all lots and supply Purchaser with a certificate of compliance prior to the First or Subsequent Closings, as applicable. Furthermore, Seller will provide Purchaser with the results of testing and ensure compliance with FHA on all fills over 24 inches.

(m) "Real Property" means that certain real property situated upon which the Lots will be developed by Seller in Silver Creek Subdivision

(n) "Subsequent Closings" shall have the meaning set forth in Paragraph 3(c) of this Addendum.

(o) "Substantial Completion" means the date on which the Final Subdivision Plat of the Lots is recorded in the Office of the Judge of Probate of Shelby County, Alabama. Further, the Lots must be ready for construction defined as water and sewer complete and ready to top, building permits ready for release, and all utilities available for immediate use.

(p) "Under Construction" means the construction of a home on a Lot which has been purchased by and is then owned by Purchaser as evidenced by all of the following:

- (i) Purchaser has obtained a building permit from the City for the construction of such single family home, (ii) the footings (or concrete slab) for such single-family garden home have been poured and (iii) framing has commenced for such single-family garden home.



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## 2. Development of Lots.

Seller shall be solely responsible for the payment of all costs and expenses of the Lot Development Work, the preparation of the Plans and the preparation and recordation of the Final Subdivision Plat. Purchaser covenants and agrees not to take any action which would interfere or interrupt any of the Lot Development Work.

## 3. Purchase of Lots and Closing.

(a) Not later than fourteen (14) days following the recording of the Final Subdivision Plat and Lots are completed as defined by "Substantial Completion" (the "First Closing"), Seller shall sell and Purchaser purchase the First Closing Lots at the Lot Purchase Price, as defined in accordance with all of the terms and provisions of the Agreement and this Addendum.

(b) Following the First Closing, Purchaser is obligated and required to: (i) start and maintain at all times ten (10) Homes Under Construction on Lots purchased and owned by Purchaser and during the first twelve months shall maintain in Purchaser's inventory five (5) unimproved lots (except as noted in item 3(c) and comply with the terms and provisions of Paragraph 3(c) herein as to Subsequent Closings. (Following the closing of a home Under Construction, Purchaser will have a 30 day lead time to close an additional lot and start a new home to meet the definition of "Under Construction").

(c) Following the First Closing, Purchaser shall guarantee the purchase of the remaining lots as follows: Purchaser shall close the remaining two (2) R-1 Lots, two (2) R-2 Lots, and Twenty Three (23) R-3 Lots not later than twelve months from the sale of the First Closing.

(d) In addition to the mandatory obligation of Purchaser to purchase Lots pursuant to Paragraphs 3(a), 3(b), and 3(c) of this Addendum, Purchaser may elect, in its sole discretion, to purchase any number of Additional R-1, R-2, or R-3 Lots at any time.

(e) The closing of each purchase and sale transaction pursuant to Paragraphs 3(b), 3(c), and 3(d) of this Addendum is hereinafter referred to as a "Subsequent Closing". The First Closing and each Subsequent Closing is hereinafter sometimes referred to as a "Closing".

(f) Should the number of home sales not reach a total of 20 at the time of the 12 month closing, seller agrees to extend the subsequent closing until the total home sales meets 20. Should the total number of home sales not exceed 20 in a 18 month period from the First Closing, purchaser may terminate this contract and be entitled to receive 75% of the then outstanding earnest money from seller.

## 4. Earnest Money and Purchaser's Default.

(a) The Earnest Money shall be applied at the rate of \$500.00 per Lot for the closing of



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the last 10 Lots as a credit on the Closing Statement.

(b) Purchaser shall be deemed in default ("Default") hereunder the event Purchaser defaults in the performance of any of its covenants or agreements set forth herein or fails to carry out and perform the terms and provisions of the Agreement or this Addendum, including, without limitation, the obligation to timely purchase the First Closing Lots and all of the Additional Lots in strict accordance with the terms and provisions of Paragraph 3 of this Addendum and the obligations set forth in the Agreement. Upon the occurrence of any Default hereunder by Purchaser, Seller shall have the right to cancel and terminate the Agreement and this Addendum, retain the Earnest Money as liquidated damages in which event the Agreement and this Addendum shall be deemed null and void and neither party shall have any further obligation or liability to the other hereunder. If the first closing occurs subsequent to August 31, 2004, Purchaser shall be entitled to a refund of one-half of the Earnest Money within 5 days. Purchaser remains obligated to the terms of this contract and addendum and will be required to meet the first closing in accordance with section 3 above. Should this occur, the remaining earnest money will be credited at the rate of \$250 per lot at closing of the last 10 lots.

5. Notices. Any and all notices requiring or permitted hereunder shall be in writing and shall be served on the parties hereto at the addresses set forth below their signatures on the Agreement. Any and all notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the addresses set forth immediately below their respective signatures on the Agreement or (ii) deposited in the United States mail by first class, postage prepaid mail and addressed in accordance with the addresses set forth below the signatures of the parties on the Agreement. Either party may change its address by written notice to the other given in the manner set forth above. With respect to the delivery of the Plans to Purchaser for approval only, the Plans shall be deemed to have been received by purchaser on the day that the same have been personally delivered to Purchaser.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Addendum as of the day and year first above written.

**SIGNATURES APPEAR ON NEXT PAGE**



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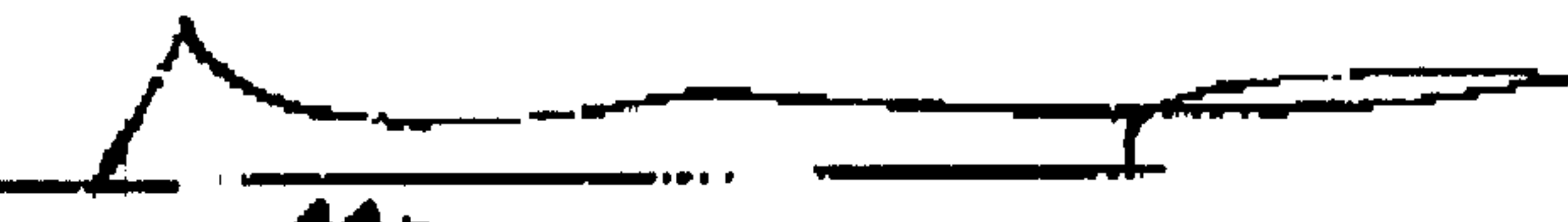



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HPH PROPERTIES, LLC.

  
Witness to Purchaser's Signature

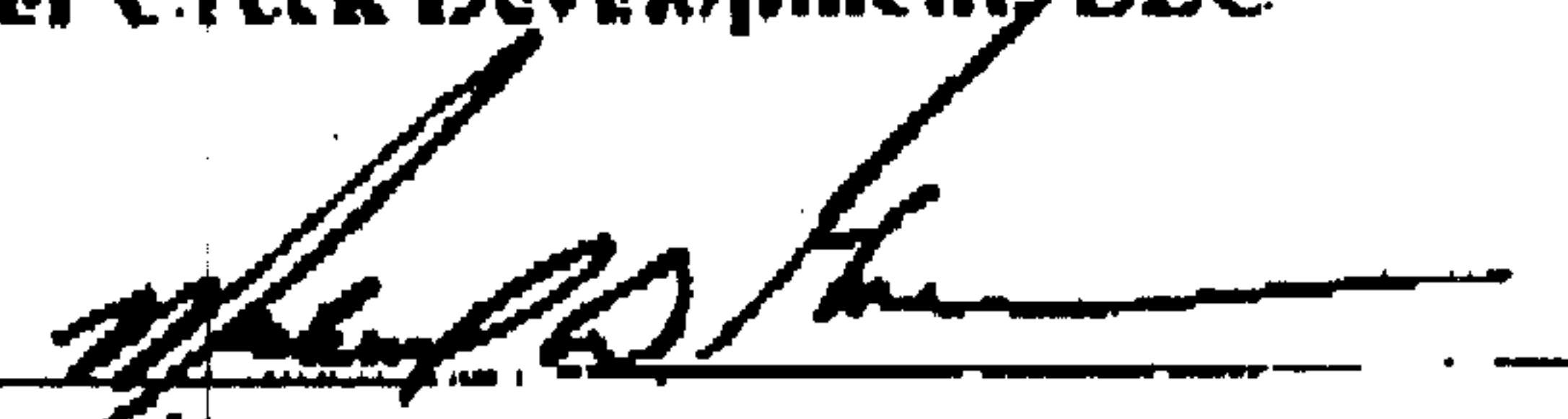
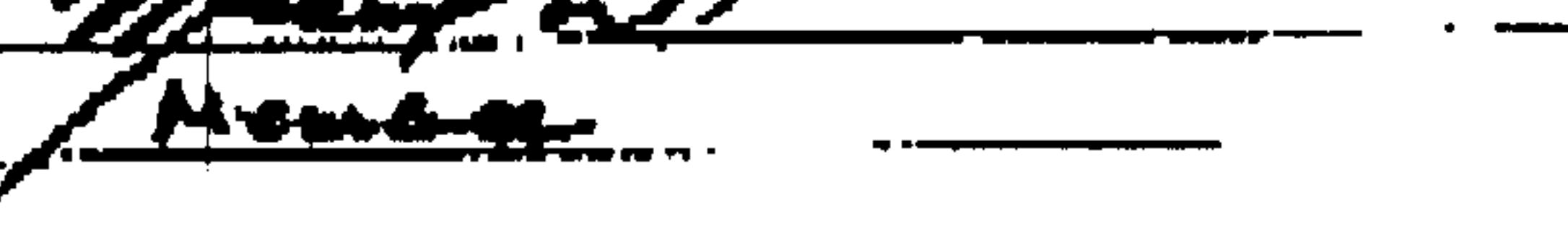
By:   
Its: 

Date of Execution by Purchaser

Purchaser's Address:  
2236 Cahaba Valley Drive  
Suite 100  
Birmingham, Alabama 35242  
Telephone: (205) 980-5350

Silver Creek Development, LLC

  
Witness to Seller's Signature

By:   
Its: 

4/30/04  
Date of Execution by Seller

Seller's Address:  
2151 Old Rocky Ridge Rd  
Suite 112  
Birmingham, Ala 35216