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**DECLARATION OF CONDOMINIUM  
OF  
TWO-EIGHTY VILLAGE,  
A CONDOMINIUM**

Date: January 30, 2007

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| Exhibit "B" | Bylaws of the Association                             |
| Exhibit "C" | Plan of the Condominium                               |
| Exhibit "D" | List of Units, Allocated Interests and Votes Per Unit |
| Exhibit "E" | Proposed Operating Budget                             |
| Exhibit "F" | Easements and Restrictions of Record                  |

**DECLARATION OF CONDOMINIUM  
OF  
TWO-EIGHTY VILLAGE,  
A CONDOMINIUM DEVELOPMENT**

  
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THIS DECLARATION is made this 30th day of January, 2007, by **CALVINE SOUTH, LLC**, an Alabama limited liability company (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, CODE OF ALABAMA 1975 §§ 35-8A-101 *et seq.* (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

**W I T N E S S E T H:**

**WHEREAS**, Developer is the owner of certain real property located in the City of Hoover, Shelby County, Alabama, more particularly described on Exhibit "A" attached hereto on which is located two (2) buildings; containing one (1) level of units; each building containing seven (7) Units for a total of fourteen (14) commercial Units, and certain other improvements in accordance with the Plan of Two-Eighty Village, a condominium prepared by Ray & Gilliland, P.C., in January, 2007 and recorded in Map Book 38, page 34 in the Office of the Judge of Probate of Shelby County, Alabama, a copy of which is included in Exhibit "C" attached to this Declaration (the "Property" or "Condominium Property");

**WHEREAS**, it is the desire and intention of the Developer, by recording this Declaration, to establish a condominium (as defined in the Act) to be known as TWO-EIGHTY VILLAGE, a condominium, under the provisions of the Act and to impose upon the real property covered hereby mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units contained therein and the owners thereof;

**NOW, THEREFORE**, Developer, upon recording hereof, does submit that certain real property situated in the City of Hoover, Shelby County, Alabama, more particularly described on Exhibit "A" attached to this Declaration, together with the improvements thereon, and owned by the Developer in fee simple absolute to the provisions of the Alabama Uniform Condominium Act of 1991 to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of said Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in said property or any part thereof, and shall be for the benefit of each Owner of any portion of said property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

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## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) **"Act"** shall mean the Alabama Uniform Condominium Act of 1991, CODE OF ALABAMA §§ 35-8A-101 *et seq.*, as the same may be amended from time to time.

(b) **"Association"** shall mean TWO-EIGHTY VILLAGE ASSOCIATION, INC., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, CODE OF ALABAMA §§ 10-3A-1 *et seq.*, of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, control and administration of the Condominium Property.

(c) **"Board of Directors" or "Board"** shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

(d) **"Bylaws"** shall mean the set of Bylaws, a copy of which is attached hereto as Exhibit "B," recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with § 35-8A-301 of the Act, and such amendments thereto as may be recorded from time to time pursuant to the provisions of the Act.

(e) **"Common Elements"** shall mean and include the following:

- (i) The Land;
- (ii) The foundations and footings, bearing walls, perimeter walls of each Unit, structural slabs, columns, beams and supports;
- (iii) The roofs, mechanical equipment and storage areas designated as common, if any, and entrances and exits or communication ways;
- (iv) The compartments or installations of any central services such as power, light, electricity, cold and hot water, plumbing, sewer lines and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use in the Units;
- (v) The premises and facilities, if any, used for the maintenance or repair of the Property;

(vi) All parking areas, landscaped islands, lighting, yards and walkways;

(vii) All greens, gardens, planters, roadways, yards and landscaping;

(viii) All easements, rights or appurtenances affecting or relating to the use of the Condominium Property; and

(ix) All other elements (other than Units) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(f) **"Common Expenses"** shall mean the expenses arising out of the ownership of the Common Elements for which the Owners are liable to the Association and shall include, but not be limited to, expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(g) **"Common Surplus"** shall mean the excess of all the receipts of the Association including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

(h) **"Condominium Documents"** shall mean the Declaration of Condominium and all exhibits hereto, the Bylaws, and the Articles of Incorporation of the Association, as the same shall be amended from time to time.

(i) **"Declaration of Condominium"** or **"Declaration"** shall mean this instrument and all exhibits hereto as it, from time to time, may be amended.

(j) **"Developer"** or **"Declarant"** shall mean Calvin South, LLC, an Alabama limited liability company, its successors and assigns, other than an Owner, who shall receive by assignment from the said Developer all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

(k) **"Land"** shall mean the parcel or tract of real estate described in Exhibit A to this Declaration, submitted to the provisions of the Act, and such other parcels or tracts of real estate as may be submitted to the provisions of the Act by amendment of this Declaration.

(l) **"Limited Common Elements"** shall mean and include any area designated as Limited Common Elements on the Plan and any amendment to the Plan and

any areas defined in the Act as Limited Common Elements. The Limited Common Elements shall include among any other property so designated, the chutes, flues, wires, conduit, bearing walls, bearing columns or any other fixture serving only that Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Units to which it was originally assigned as a Limited Common Element.

(m) **"Limited Common Expenses"** shall mean the expenses arising out of the ownership of the Limited Common Elements, if any, for which the Unit Owners to which the Limited Common Elements are assigned may be liable to the Association on a pro rata basis should the Association decide to make such assessment. The Association may combine the Limited Common Expenses with the Common Expenses and assess the Limited Common Expenses the same as Common Expenses. Limited Common Expenses shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(n) **"Member"** shall mean a Unit Owner who by his ownership of a Unit is a Member of the Association.

(o) **"Mortgage"** shall mean a first lien Mortgage on one or more Units.

(p) **"Mortgagee"** shall mean a holder of a Mortgage who has given notice to the Association that it is the holder of a Mortgage affecting any unit or any part of the Condominium Property as hereinafter provided.

(q) **"Occupant"** shall mean a person or persons in possession of a Unit, regardless of whether that person is the Unit Owner.

(r) **"Owner"** or **"Unit Owner"** shall mean and refer to every person or entity who is a record owner of a Unit.

(s) **"Plan"** or **"Plat"** shall mean the as-built Plan showing the Units, the Common Elements and the Limited Common Elements of the Condominium Property attached hereto as Exhibit "C", and made a part hereof for all purposes, as such Plan may from time to time be amended.

(t) **"Property"** or **"Condominium Property"** shall mean the Land and all improvements and structures erected, constructed or contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit

or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as amended from time to time.

(u) **"Rules and Regulations"** shall mean those Rules and Regulations adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents.

(v) **"Unit"** or **"Condominium Unit"** shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Unit is identified in a diagrammatic floor plan of the building in which it is situated as shown on the Plan and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(i) *Upper and Lower Boundaries:* The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:

(1) The upper boundary shall be the plane of the lower unfinished surface of the support structure of the roof. The bracing and structural support of the roof of the building is part of the Common Elements.

(2) The lower boundary shall be the plane of the upper surface of the concrete material which serves as the Unit's floor, which Unit includes any floor covering such as carpeting, vinyl, hardwood or ceramic tile.

(ii) *Perimetrical Boundaries:* The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls, which Unit includes all paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

Each Unit shall include all non-structural interior partition walls located within the boundaries of the Unit except such part as may comprise part of the Common Elements; the decorated surfaces of all boundary walls, ductwork, individual Unit electrical conduit, electronic wiring for individual Unit use, drop ceilings and floors, including wallpaper, paint, interior brick surface, lathe, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, cabinets, and water and sewage pipes located within the boundaries of the Unit and serving only the Unit; and the mechanical systems and installations providing electrical power, water, heating and air conditioning service to the Unit (including the individual compressor even though such equipment may be located outside the boundaries of the Unit), provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities

situated within such Unit and forming a part of any system serving one or more other Unit or the Common Elements shall be deemed to be a part of such Unit; and provided further that no bearing wall providing structural support and located within the boundaries of the Unit shall be deemed part of the Unit. The storefront windows of the Units cannot be changed in any way by a Unit Owner without the prior express written consent of the Board of Directors.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.01 Description of Improvements and Identification of Units.** The Condominium Property shall consist of two (2) commercial buildings containing one (1) level, each building containing seven (7) Units for a total of fourteen (14) commercial Units. A plat of the Land and improvements thereon and a graphic description of the improvements in which the Units are located, identifying each Unit by a number and letter so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in a copy of the Plan attached hereto as Exhibit "C".

**Section 2.02 Amendment of Condominium Plan.** Developer reserves the right to change the interior design and arrangement of all Units, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Changes in the boundaries between Units, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units owned by Developer need be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in Common Elements or Limited Common Elements or a change in the share of Common Expenses or Limited Common Expenses with respect to Owners of Units other than Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

**Section 2.03 Easements and Restrictions.** The Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Units, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described on Exhibit "F" attached hereto.

(a) Utility Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, sewer, electricity, telephone, internet service and cable television) in order to adequately serve the Condominium Property.

(b) Utility Equipment. There may be utility equipment located on the Common Elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by Developer and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed on any part of the Common Elements or Limited Common Elements other than the present location unless the written approval of the Association shall have first been obtained.

(c) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways, and other common areas in favor of all Owners and the Developer for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

(d) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

(e) Easements for Encroachments. To the extent that any Unit, Common Element or Limited Common Element encroaches on any other Unit, Common Element, or Limited Common Element, whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Unit, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability for his or his agent's negligence or intentional acts in cases of willful and intentional misconduct by him or his agents or employees. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any other Unit, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

(f) Easement of Support. Each Unit and the Common Elements and Limited Common Elements shall have an easement of support from every other Unit, Common Elements or Limited Common Elements which provide such support.

(g) Easement for Use of Limited Common Elements. Each Owner of the Limited Common Elements shall have an easement for the repair, maintenance and upkeep of the Limited Common Elements and for vehicular and pedestrian ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Owner of the Limited Common Elements and its lessees, licensees and invitees.

(h) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as are herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Developer and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

**Section 2.04 Ownership of Common Elements.** Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless changed in accordance with the provisions of Section 2.02 hereof or by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit "D" attached hereto.

**Section 2.05 Ownership of Limited Common Elements.** The ownership of the Limited Common Elements shall be expressed by a designation or description of the Limited Common Elements which are appurtenant to a given Unit, and the Owners of such Units shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted in Section 2.02 hereof or by the unanimous approval of the Owners of the Limited Common Elements and the respective Mortgagees. Each Owner of a Unit to which the Limited Common Element is attached shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Units to which the Limited Common Elements are attached.

## ARTICLE III

### ORGANIZATION AND MANAGEMENT

**Section 3.01 Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by TWO-EIGHTY VILLAGE ASSOCIATION, INC., an Alabama nonprofit corporation. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, CODE OF ALABAMA 1975 §§ 10-3A-1 *et seq.*, this Declaration, the Articles of Incorporation and the Bylaws.

**Section 3.02 Members.** The members of the Association shall consist of all record Owners of the Units. Change of membership in the Association shall be established by recording in the public records of Shelby County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of the Declaration, the Bylaws and the Rules and Regulations, as the same may be amended from time to time. The votes for a Unit shall be cast by the record Owner thereof or the duly authorized proxy of the record Owner in the manner provided in the Bylaws. Each Unit Owner is entitled to the number of votes for each Unit owned by him as set forth in Exhibit "D" attached hereto.

**Section 3.03 Bylaws.** The Bylaws of the Association shall be in the form attached as Exhibit "B" to this Declaration, and may be amended from time to time as set forth therein.

## ARTICLE IV

### ASSESSMENTS

**Section 4.01 Liability, Lien and Enforcement.** The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect annual assessments against the Owners of all Units to pay Common Expenses and such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. The Association is also authorized to make, collect and levy assessments against Unit Owners for reimbursement of expenses the Association is caused to incur by reason of any act of the Unit Owner, Occupant, guests, invitees or tenants for damages of any nature and for penalties for rules violations. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses

for the operation and management of the Condominium Property, the following provisions shall be effective and binding upon the Owners of all Units.

**Section 4.02 Assessments.**

(a) All assessments for the payment of Common Expenses shall be levied annually against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements appurtenant to said Unit. The assessments for Common Expenses shall be payable as may be determined by the Board of Directors of the Association.

(b) Assessments for the payment of Limited Common Expenses may be levied against the Owners of those Units to which the Limited Common Elements are appurtenant if the Board of Directors determines that it is the most equitable method of assessment for Limited Common Expenses. The Limited Common Expenses may also be included in Common Expenses and assessed in the same proportion as Common Expenses if the Board of Directors chooses this method of assessment. The assessments for Limited Common Expenses, if any, shall be payable in such installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Association may assess the Owners of Units for the repair and maintenance of various components of the Common Elements or Limited Common Elements based on the usage of any component of the Common Elements or Limited Common Elements. Such assessments shall not be included in the assessment for Common Expenses, but shall be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

**Section 4.03 Annual Budget.** Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors of the Association shall adopt a proposed annual budget for such calendar year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefor, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be made available to each Unit Owner and the Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of the Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified, the assessment for said year shall be established based upon such budget.

Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act. The initial projected and estimated annual maintenance budget for the Condominium Property is attached to the Declaration as Exhibit "E".

**Section 4.04 Omission of Assessment.** The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

**Section 4.05 Detailed Records.** The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements, Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Owner or his representative at convenient hours of weekdays in the county where the condominium is located.

**Section 4.06 Payment of Common Expenses and Limited Common Expenses by Unit Owners.** All Unit Owners shall be obligated to pay any assessment for Common Expenses and Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Article IV. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, Limited Common Expenses or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefor. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association upon written request of the Owner or purchaser of such Unit shall furnish to the Owner, the purchaser or any proposed Mortgagee (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be applied by purchaser or Mortgagee to the payment of any

delinquent assessment or installment due the Association before application of the payment to the selling Unit Owner.

**Section 4.07 Default in Payment of Assessments.**

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the maximum legal rate or 18%, whichever is greater, until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama but the Association shall give reasonable advance notice of its proposed action to the Unit Owner, the Mortgagee and all other lienholders of record of the Unit. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments or 18%, whichever is greater, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Probate Office of Shelby County, Alabama, the Declaration of Condominium of Two-Eighty Village, a condominium and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

**Section 4.08 Election of Remedies.** Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it. Nor shall proceeding by foreclosure to effect such collection be deemed to be an

election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

## ARTICLE V

### **MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY**

**Section 5.01 The Association's Obligation to Repair.** The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:

- (i) The Common Elements, which by definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of a Unit;
- (ii) Incidental damage caused to a Unit by any work done by the Association; and
- (iii) Portions of the Units contributing to the support of the building, including outside walls and load bearing columns, excluding, however, interior wall and floor surfaces.

The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the entrance doors, and windows of a Unit, the cost of which shall be charged to the Unit to which said windows or doors being maintained repaired or replaced are a part.

This Section 5.01 shall not relieve a Unit Owner of liability for damage to the Common Elements, Limited Common Elements, a Unit of another person, adjacent property or any other property caused by the Unit Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, his family members, guests, invitees, lessees or licensees, shall be a special assessment against the Unit Owner responsible therefor.

### **Section 5.02 Each Owner's Obligation to Repair.**

(a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain the property attributable to his Unit in good tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in his Unit:

(i) The fixtures and equipment in his Unit, including all appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, window frames, and glass; all wall coverings including paint, wallpaper and light coverings; and all floor coverings including carpeting, vinyl and ceramic tile within a Unit.

(ii) The plumbing, heating, air conditioning and electrical systems serving only that Unit, whether located within or without the boundary of that Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, or mechanical systems. In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 5.02;

(ii) To pay all utilities as herein provided and all taxes levied against his Unit;

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Unit but required to be maintained by him under subparagraph 5.02(a)(ii) except by licensed plumbers or electricians authorized to do such work by the Association or its delegate;

(iv) Not to make any addition or alteration to his Unit or to the Common Elements or Limited Common Elements or to do any act that would impair the structural soundness, safety or overall design scheme of any part of the Condominium Property or that would impair any easement or right of a Unit Owner without the prior written consent of the Association and all Unit Owners affected thereby;

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or additions made pursuant to the procedure described in subparagraph (iv) above and including, but not limited to, altering in any way exterior doors, affixing outshutters to windows or painting any part of the exterior part of his Unit, without the prior written consent of the Board of Directors; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to

the work which may be adopted by the Association and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise;

(vi) To have power on in each Unit, and to maintain a minimum temperature of fifty degrees (50°) Fahrenheit and a maximum temperature of eighty degrees (80°) Fahrenheit; and

(vii) To promptly report to the Association any defects or needed repairs for which the Association is responsible.

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Unit Owner. The Association shall have the power to review all improvements; such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to an Owner other than Developer.

**Section 5.03 Alterations, Additions and Improvements by the Association.** Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article VIII of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with the Declaration and which does not require expenditures of more than \$10,000, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors of the Association and ratified by the affirmative vote of the voting members casting not less than 60% of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article IV hereof except as otherwise provided in this Section 5.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 60%

of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners.

**Section 5.04 Utilities.** Each Unit Owner shall be required to pay all charges for utilities and utilities deposit; including electricity, water, cable television, and telephone service, used or consumed in his Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority, but not the obligation, to pay the cost of any utilities not separately metered and used or consumed in the Units and have the costs thereof apportioned among the Units based upon the Common Expense liability, use of the utility, or any other formula the Association may deem appropriate.

## ARTICLE VI

### **RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

**Section 6.01 Rules and Regulations of the Association.** The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, Occupants, and tenants of the Units and any person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a Member, or Occupant, guests, invitees, tenants, including the payment of penalties for such violations.

**Section 6.02 Restrictions on Use.** The use of the Condominium Property is subject to the following restrictions:

- (a) Unless a different use is designated for a Unit in the Plan, each Unit is hereby restricted to and can only be used for general business and professional office use and general retail use subject to written approval by the Board of Directors; provided, however, the following uses are specifically prohibited: liquor store, gas

station/convenience store, night club, game room, billiard parlor, automotive repair and/or parts store or business, adult bookstore or other business selling or displaying pornographic material or sexually explicit items, or any business which creates strong, unusual or offensive odors, fumes, dust or vapors or any business which constitutes a public nuisance, causes an increase in insurance rates, or creates unusual fire, explosive or other hazards. The parking spaces shall be used exclusively for the parking of passenger automobiles.

(b) There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or Limited Common Elements, nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements or Limited Common Elements in any other way be altered without the prior written consent of the Association.

(c) No immoral, improper, offensive or unlawful use shall be made of any Unit, Common Elements or Limited Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

(d) No Owner shall permit anything to be done or kept in his Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements or Limited Common Elements.

(e) Signage must be approved by the Board of Directors and must have a standard, uniform design and must be located in a designated area for the Owners or Occupants name and logo. The Owner or Occupants name will be allowed on the glass entrance door to each Unit with express written approval by the Board of Directors of the Association. No other signage is allowed unless approved by the Board of Directors except signs temporarily used by the Developer in the selling or leasing of the Units.

(f) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium Property which in the judgment of the Board of Directors of the Association, may be or become an unreasonable annoyance or nuisance to the other Owners or Occupants.

(g) No Owner shall cause or permit anything to be placed on the outside walls of his Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, without the prior written consent of the Board of Directors of the Association.

(h) No satellite dishes over one (1) meter shall be allowed on the Condominium Property at any time. Satellite dishes less than one (1) meter shall not be allowed on any part of the Common Elements or Limited Common Elements except with prior written approval of the Board of Directors as to location of the receiving equipment or dish.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements or Limited Common Elements. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

**Section 6.03 Leasing of Units.** The leasing of a Unit by any Owner, except Declarant, shall be subject to the following provisions:

(a) All leases must be in writing and must reflect the existence of and the requirement to be bound by the Declaration, Rules and Regulations and Bylaws of the Condominium.

(b) All leases and lessees are subject to provisions of the Declaration and Bylaws. The Unit Owner must make available to the tenant copies of the Condominium documents including the Declaration, Bylaws and Rules and Regulations. Any tenant must, by occupancy in a Unit, agrees to the applicability of the covenants and restrictions as set forth and agrees to comply strictly with all provisions of the Condominium Documents, as they may be amended from time to time.

(c) Any tenant charged with a violation of the Declaration, Bylaws or Rules and Regulations, is entitled to the same rights to which an Owner is entitled as provided in the Association's Rules and Regulations. The Unit Owner is responsible for the actions of its tenant, and any guests, invitees, customers or clients thereof and may be held responsible for any fine, damages or charges made against the tenant.

**Section 6.04 Right of Access.** Each Unit Owner grants a right of access to his Unit to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in his Unit and threatening other Units, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to his Unit to the Developer or his agent, or other authorized representative who is not Developer's agent, for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of his Unit. To the extent that damages are inflicted on the Common Elements, Limited Common Elements or any Unit

through which access is taken, the Unit Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof. All parties recognize that some Tenants or Unit Owners may have "security clearance" issues with access; and all parties agree to comply with government regulations as to security of facilities.

**Section 6.05 Limitation of Liability.** The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements or Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, Limited Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.

**Section 6.06 Abatement of Violations.** The violation of any Rule or Regulation adopted by the Board of Directors of the Association or breach of the provisions of the Condominium Documents, shall give the Developer, the Association or any Unit Owner the right appropriate after/notice to impose fines, correct the violation through self-help or, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such Association actions or proceedings against a defaulting Unit Owner, including court costs, attorneys fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner or Owner of the Unit occupied by a defaulting Occupant, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner or Owner of the Unit occupied by a defaulting Occupant, upon all of his additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

**Section 6.07 Failure of the Association to Insist on Strict Performance; No Waiver.** Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed

as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

**Section 6.08 Use by Developer.** Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and of the Common Elements and Limited Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein. These Special Declarant Rights exist so long as Developer holds any Unit in the Condominium for sale in the ordinary course of business. The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

## ARTICLE VII

### **RIGHTS OF MORTGAGEES**

**Section 7.01 Notification of Mortgagees Required.** Any Mortgagee shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds \$10,000; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds \$1,000; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

**Section 7.02 Right of Inspection.** Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association.

### **Section 7.03 Priority of Mortgagees.**

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 4.07 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made

in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 4.07 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

Notwithstanding the above, the lien created pursuant to Section 4.07 hereof is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six months immediately preceding institution of an action to enforce the lien or the lien of the Mortgage.

(b) No provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements, the Limited Common Elements or any portion thereof.

(c) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium Property as a whole.

(d) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

**Section 7.04 Request for Protection by Mortgagees.** Whenever the holder of any Mortgage desires the benefit of the provisions of this Article VII to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to its address stated herein, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee. Should the Association send notice of any action requiring the affirmative vote of the Mortgagee, and the Mortgagee shall not respond within thirty (30) days from notice of such right, the Mortgagee shall be deemed to have given its implied consent to such action.

## ARTICLE VIII

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### CASUALTY LOSS AND INSURANCE

**Section 8.01 Responsibility of Owners; Separate Insurance Coverage.** The Owner or Occupant of each Unit may, at his expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, files, records, inventory, equipment, or machinery and other property belonging to such Owner or Occupant, and shall, at his expense, obtain at least \$1,000,000 in liability insurance coverage for any occurrence within the Unit. Risk of loss of or damage to any furniture, furnishings, files, records, equipment, inventory and personal property belonging to or carried on the person of the Owner or Occupant, or which may be stored in any Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner or Occupant of each Unit. All furniture, furnishings, files, records, equipment and personal property constituting a portion of the Common Elements or Limited Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of \$1,000. All insurance obtained by the Owner or Occupant of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners or Occupants, the Association or Developer, and their respective servants, agents, employees and guests.

### **Section 8.02 Insurance to be Maintained by the Association.**

(a) **Hazard Insurance.** The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than 100% of the then current replacement cost of the improvements which constitute the Condominium Property, including the Common Elements, Limited Common Elements and the Unit as purchased by the Unit Owner (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association should obtain an

opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 8.03 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner or Occupant.

(b) Public Liability and Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount (but not less than \$1,000,000) and in such form as shall be required by the Association to protect said Association and the Owners of all Units which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain at all times a policy or policies of workmen's compensation insurance to meet the requirements of the laws of the State of Alabama.

(d) Fidelity Bonds. The Association may require fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of three months' assessments on all Units plus the reserve funds of the Association.

(e) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

**Section 8.03 Governing Provisions.** All insurance obtained and maintained by the Association as provided in Section 8.02 above shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Alabama and holding a financial rating of Class V or better and a general policyholders rating of "A" or better by Best's Insurance Reports or other then comparable rating.

(b) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representatives.

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Developer or the Owners;

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;

(iii) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss; and

(iv) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

**Section 8.04 Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by an Owner shall be assessed against that Owner.

**Section 8.05 Insurance Trustee.** The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$20,000, the Association, upon written demand of the Mortgagee of any Unit, shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee

the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

**Section 8.06 Loss to Common Elements Only.** In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

**Section 8.07 Loss to Common Elements, Limited Common Elements and/or Units.**

In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Limited Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 8.05 above. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Limited Common Elements and Units sustaining any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and the Units. In said latter event, the assessment to be levied and collected from the Owners of the Limited Common Elements shall be pro rata to the extent there are Limited Common Elements appurtenant to a Unit and the assessment to be levied and collected from the Owner of each Unit sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Unit bears to the cost applicable to all of said Unit sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Limited Common Elements or of a Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment

from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Unit to which the Limited Common Elements attach and the Owners of the Unit sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Unit sustaining loss or damage.

**Section 8.08 Estimates of Repair; Plans and Specifications; Payment of Assessments.** In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original building, as reflected on Exhibit "C" to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors of the Association, by all of the Owners of the damaged Units, and by not less than seventy-five percent (75%) of the Owners of all Units including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors of the Association may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

## ARTICLE IX

### **CONDEMNATION OR EMINENT DOMAIN**

**Section 9.01 Condemnation Considered a Casualty Loss.** The taking of a portion of a Unit, the Common Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 9.02 below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article VIII. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount

of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 7.01, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

**Section 9.02 Partial Condemnation.** In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The Unit shall be made tenantable and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.

(iii) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then recomputing the shares of all Owners in the Common Elements and the Owners of all Limited Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Mortgagee of the Unit, as their respective interests may appear.

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the

Owners, in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements under Section 5.03 above.

(iii) The shares in the Common Elements and Limited Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of the Units after the changes in the Condominium Property affected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes affected by the taking.

(c) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined by three independent qualified appraisers with one appraiser to be selected by the Association, one appraiser to be selected by the Owner and Mortgagee, and the third appraiser to be selected by the two appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes affected by the taking.

(d) Changes in the Units, in the ownership of the Common Elements and Limited Common Elements, and in the share of liability for Common Expenses and Limited Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which need be approved only by a majority of the Board of Directors of the Association.

**Section 9.03 Association Appointed As Attorney-In-Fact for Unit Owners.** The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

## ARTICLE X

### TERMINATION

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#### Section 10.01 Destruction of the Condominium Property.

(a) Notwithstanding anything to the contrary contained in this Declaration, if the Board of Directors shall determine that either of the following conditions exist:

(i) Two-thirds ( $\frac{2}{3}$ ) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire or other casualty (including condemnation); or

(ii) The Condominium Property has been in existence in excess of forty (40) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

then, the Board of Directors may call a meeting of the members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act. If the termination of the Declaration and the removal of the Condominium Property from the provisions of the Act is approved by the affirmative vote of at least eighty percent (80%) of the Owners of all Units (based upon one vote for each Unit) and by at least sixty-seven percent (67%) of all Mortgagees (based upon one vote for each Mortgagee owned) after notice given as provided in Section 7.01 hereof, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Shelby County, Alabama. If less than eighty percent (80%) of the Owners of all Units and/or less than sixty-seven percent (67%) of the Mortgagees vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with the provisions of Sections 8.06, 8.07 and 8.08 above.

(b) In the event that the Circuit Court of Shelby County shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (a) above, all of the Owners of Units shall be and become tenants in common as to ownership of the Land and any then remaining improvements thereon. The undivided interest in the Land and remaining improvements held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Land and then remaining improvements as above provided. Upon

termination of this Declaration and the plan of condominium ownership established herein, the Owners of all Units still inhabitable shall, within sixty (60) days from the date of grant of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their respective Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy of casualty insurance to the Owners of the Units and their Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with his then undivided interest in the Land and remaining improvements as herein provided. The Land and any remaining improvements thereon shall be subject to all easements of record, except the easements created in the Condominium Documents. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall then be distributed to the Owner of each Unit and his Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

**Section 10.02 Termination by Consent.** Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the consent of eighty percent (80%) of the Owners of all Units and all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens, or other encumbrances. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office of Shelby County, Alabama.

**Section 10.03 The Association Appointed as Attorney-In-Fact for Unit Owners.** The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

## ARTICLE XI

### AMENDMENT

**Section 11.01 Amendments by Developer.** Without limiting the rights of the Developer to alter the Plan and Units as described in Section 2.02 above, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Developer from any obligations as a

Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents.

(a) The Developer reserves the right to amend the Bylaws of the Association until such time as Developer relinquishes control of the Association as provided in Section 12.01 below.

(b) The Developer reserves the right to amend this Declaration so long as there is no Unit Owner other than the Developer.

(c) The Developer reserves the right to amend this Declaration to correct any scrivener's errors.

(d) The Developer reserves the right at any time to amend this Declaration without the consent of other Owners if required by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided that any such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Condominium Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, attributable to each Unit Owner.

**Section 11.02 Amendments by Unit Owners.** At such time as there is a Unit Owner other than the Developer, then, in addition to the amendments permitted under Section 11.01 above, the Declaration may be amended in the following manner:

(a) A proposal to amend this Declaration may be considered at any meeting of the members of the Association called for that purpose in accordance with the provisions of the Bylaws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided in Section 7.01 above. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-seven percent (67%) of the total allocated votes of the Association and by the affirmative vote of the Mortgagees representing fifty-one percent (51%) of the total allocated votes of the Units subject to Mortgages.

(b) Notwithstanding the foregoing, no amendment to the Declaration under this Article XI shall:

(i) change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or

(ii) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

**Section 11.03 Effectiveness of Amendments.** A copy of each amendment so adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been duly adopted, and shall be effective when recorded in the Probate Office of Shelby County, Alabama.

## ARTICLE XII

### **CONTROL OF THE ASSOCIATION**

  
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**Section 12.01 Election of Board of Directors.** Developer, its successors or assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill the vacancies, until such time as either (a) sixty (60) days have elapsed since 75% of the total number of Units have been conveyed to purchasers of Units other than Developer; (b) two years have lapsed since the Developer has offered Units for sale in the ordinary course of business; or (c) the Developer elects, at its option, to terminate its control of the Association, whichever first occurs. Notwithstanding the foregoing, within ninety (90) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Developer shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. Not later than ninety (90) days after conveyance of 50% of the Units to Unit Owners other than Developer, not less than thirty-three and one-third percent (33⅓%) of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least one (1) Unit within the Condominium.

**Section 12.02 Notice of Meeting.** Within sixty (60) days before the date of termination of control of the Association by the Developer, the Association shall call and give not less than ten (10) days nor more than thirty (30) days notice of a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors of the Association. Such meeting shall be called and the notice given in accordance with the Bylaws.

### **Section 12.03 Status of Unsold Units.**

(a) Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

(b) Any person having a first mortgage lien against any Unit which has not been conveyed to a person other than Developer, whether under a blanket mortgage affecting the Condominium Property generally or under a mortgage on one or more

specific Units, shall be deemed to be a Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Mortgagee of any such Unit under the Condominium Documents.

(c) Notwithstanding the provisions of Sections 4.02 and 12.03(a) above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until such time as sixty (60) days after the conveyance of the first Unit. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by the Association for Common Expenses and Limited Common Expenses. The Developer shall be solely responsible for the maintenance, repair and operation of the unsold Units.

**Section 12.04 Professional Management and Other Contracts.** Any management contract, employment contract or lease of recreational or parking facilities or any agreement between the Association and an affiliate of the Developer entered into by the Association prior to the passage of control of the Association from the Developer pursuant to Section 12.01 above shall provide the following:

(a) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(b) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

## ARTICLE XIII

### MISCELLANEOUS

  
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**Section 13.01 Rights and Powers of Successors and Assignees.** The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Act may be exercised by any successor or assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure, or (ii) to whom the Developer specifically assigns such rights and powers.

**Section 13.02 Headings.** The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

**Section 13.03 Gender/Number.** Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

**Section 13.04 Exhibits.** Exhibits "A", "B", "C", "D", "E", and "F", attached to this Declaration are an integral part of this Declaration.

**Section 13.05 Invalidity and Severability.** It is the intention of the Developer that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

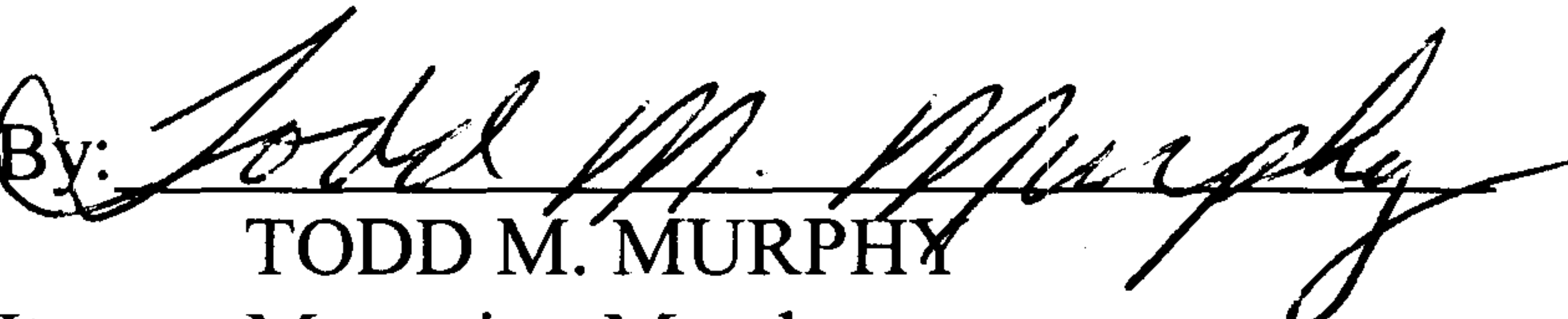
**Section 13.06 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.



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IN WITNESS WHEREOF, the Developer has hereunto set its signature and seal on the day and year first above written.

**CALVINE SOUTH, LLC,**  
an Alabama limited liability company

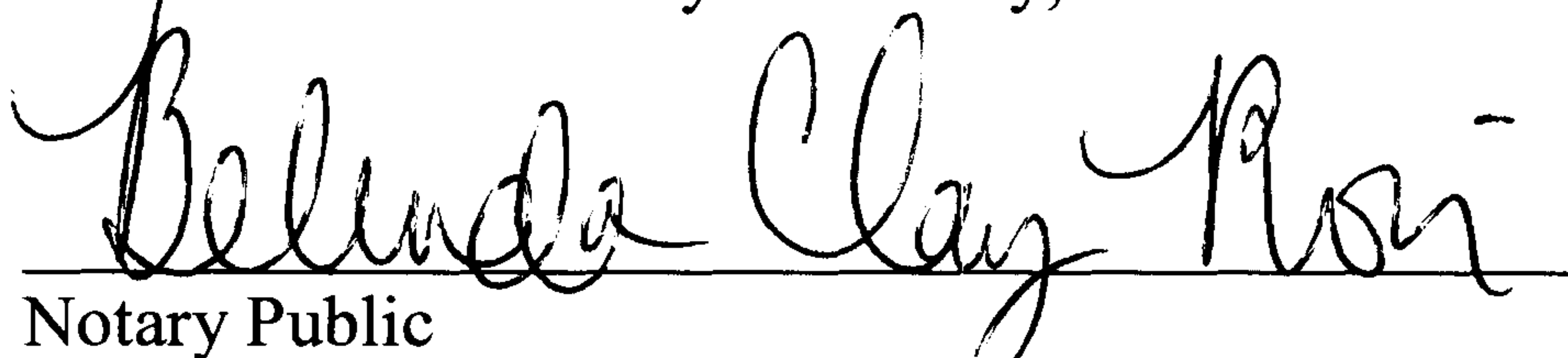
By:   
TODD M. MURPHY  
Its: Managing Member

STATE OF ALABAMA     )  
SHELBY COUNTY        )

  
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Shelby Cnty Judge of Probate, AL  
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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **TODD M. MURPHY**, whose name as Managing Member of **CALVINE SOUTH, LLC**, an Alabama limited liability company, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he, as such officer, and with full authority, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this 19th day of January, 2007.

  
Notary Public

[NOTARY SEAL]

My Commission Expires **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
**MY COMMISSION EXPIRES: Sep 12, 2008**  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS**

The undersigned, as *Mortgagee* under the Mortgage encumbering the real property identified in the foregoing Declaration of Condominium of Two-Eighty Village, a condominium joins in the execution of the foregoing Declaration of Condominium of Two-Eighty Village, a condominium for the sole purpose of consenting to the recording of the Declaration of Condominium of Two-Eighty Village, a condominium as required by §§ 35-8A-1, *et seq.* of the CODE OF ALABAMA. The undersigned is not the Developer, and does not assume any obligation whatsoever under the terms, covenants and conditions of the foregoing Declaration of Condominium, and the execution hereof does not in any way subordinate or make the said Mortgage inferior to the said Declaration of Condominium.

**RED MOUNTAIN BANK**

By: Arthur M. Freeman, IV  
ARTHUR M. FREEMAN, IV

Its: VF

STATE OF ALABAMA                    )  
JEFFERSON COUNTY                 )

  
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Shelby Cnty Judge of Probate, AL  
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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **ARTHUR M. FREEMAN, IV**, whose name as Vice President of Commercial Real Estate of **RED MOUNTAIN BANK**, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration of Condominium, he/she as such officer, and with full authority, executed the same voluntarily for and as the act of said banking association on the day the same bears date.

Given under my hand and seal of office this 19th day of January, 2007.

Belinda Clay Ross  
Notary Public

[NOTARY SEAL]

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Sep 12, 2008  
BONDED THRU NOTARY PUBLIC UNDERWRITER

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

A COMMERCIAL SUBDIVISION LOCATED IN SECTION 5 TOWNSHIP 19 SOUTH RANGE 1 WEST SHELBY COUNTY AL. LOCATED ON LOT 7 GREYSTONE HIGHLANDS COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 20 PAGE 25 CITY OF HOOVER SHELBY COUNTY ALABAMA.

  
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## EXHIBIT B

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### BYLAWS OF TWO-EIGHTY VILLAGE ASSOCIATION, INC.

#### ARTICLE I

##### THE ASSOCIATION

**Section 1. Identity.** These are the Bylaws of Two-Eighty Village Association, Inc., a not for profit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §§10-3A-1 et seq.] by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Shelby County, Alabama on January 30, 2007. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of Two-Eighty Village, a condominium, (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 [Code of Alabama §§ 35-8A-101 et seq.] and the Declaration of Condominium of Two-Eighty Village, a condominium (the "Declaration") as filed with the Office of the Judge of Probate of Shelby County, Alabama in accordance with the provisions of said Act.

**Section 2. Principal Office.** The principal office of the Association in the State of Alabama shall be located in the City of Hoover, County of Shelby, Alabama. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

**Section 3. Registered Office.** The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

#### ARTICLE II

##### MEMBERSHIP

**Section 1. Annual Meeting.** The annual meeting of the Membership shall be held in the month of November each year, beginning with the year 2007 on a date to be designated by the Board of Directors, or at such other time as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of Developer control has ended, and for the transaction of such other business as may come before the meeting.

**Section 2. Special Meetings.** Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than ten percent (10%) of all the outstanding votes of the Membership.

**Section 3. Place of Meeting.** The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

**Section 4. Notice of Meeting.** Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

**Section 5. Fixing of Record Date.** The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the Membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

**Section 6. Voting Lists.** The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

**Section 7. Quorum.** The presence at any meeting of the Membership of the members entitled to cast forty (40%) percent of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

**Section 8. Majority Vote.** The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these Bylaws.

**Section 9. Proxies.** At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one year from the date of its execution, unless a shorter term is provided in the proxy.

**Section 10. Voting Rights.** If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

**Section 11. Informal Action by Members.** Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

### ARTICLE III

#### **BOARD OF DIRECTORS**

  
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**Section 1. General Powers.** The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

**Section 2. Number, Tenure and Qualifications.** The number of directors of the Association shall consist of not less than three (3) nor more than seven (7) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The initial Board of Directors shall consist of three (3) directors.

**Section 3. Election of Directors.**

(a) Election of directors shall be held at the annual meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The owner of each whole Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board

of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) sixty (60) days have elapsed since 75% of the total number Units in the Condominium have been conveyed to purchasers of Units other than Developer; (b) two years have lapsed since Developer has ceased to offer Units for sale in the ordinary course of business; or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of 25% of the Units which may be created, the Unit Owners other than Developer shall be entitled to elect 25% of the members of the Board. Not later than ninety (90) days after conveyance of 50% of the Units which may be created to Unit Owners other than Developer, not less than 33 1/3% of the members of the Board may be elected by the Unit Owners. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least one Unit in the Condominium. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

**Section 4. Regular Meetings.** A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

**Section 5. Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.

**Section 6. Notice.** Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**Section 7. Quorum.** A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment,

notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

**Section 8. Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 9. Action Without a Meeting.** Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

**Section 10. Vacancies.** Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

**Section 11. Compensation.** By resolution of the Board of Directors, the Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a Director or both. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

**Section 12. Committees.** The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the Bylaws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

**Section 13. Resignations.** Any Director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor, and the acceptance of such resignation shall not be necessary to make it effective.

**Section 14. Place of Meeting.** The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

**Section 15. Presumption of Assent.** A Director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

## ARTICLE IV

### OFFICERS

**Section 1. Number.** The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officers other than a President and a Secretary shall not constitute a violation of these Bylaws.

**Section 2. Election and Term of Office.** The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

**Section 3. Removal.** Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

**Section 4. Vacancies.** A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 5. President.** The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be

executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 6. Vice President.** In the absence of the President or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

**Section 7. Secretary.** The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the mailing address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the transfer books of the members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

**Section 8. Treasurer.** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these Bylaws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

**Section 9. Assistant Secretaries and Assistant Treasurers.** The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

## ARTICLE V

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

**Section 1. Contracts.** The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 2. Loans.** No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**Section 3. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 4. Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

## ARTICLE VI

### BOOKS AND RECORDS

**Section 1. Accounting.** The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time. Such records shall include:

(a) **Association Accounts.** The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

(i) **Current Expenses.** All funds to be expended during the year for the maintenance of the Common Elements and Limited Common Elements (as defined in the Declaration) and the operation and working capital of the Association shall be held in the Current Expense Account. Any balance in this fund at the end of each year may be used to pay Common Expenses and Limited Common Expenses incurred in any successive year or may be placed in the Reserve Fund Account.

(ii) **Reserve Funds.** All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of Common Elements

and Limited Common Elements shall be held in the Reserve Fund Account. Reserve funds will be accumulated through regular or special assessments.

(b) Member Accounts. An account for each member shall be maintained setting forth the name and address of the member, the interest percentage in the Common Elements and Limited Common Elements, if any, the amount of each assessment, the dates and amounts in which the assessments become due, the amounts paid upon the account and the balance due.

**Section 2. Budget.** Within sixty (60) days prior to the beginning of each calendar year the Board of Directors shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within thirty (30) days of adoption of the proposed budget copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of all Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

**Section 3. Assessments.** Assessments against the members for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

**Section 4. Assessments for Emergencies.** Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due 30 days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

**Section 5. Audit or Compilation.** A tax return or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report shall be made available for review by each member.

**Section 6. Bonds.** Fidelity bonds may be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the total annual assessments against members for Common Expenses and Limited Common Expenses. The premiums of such bonds shall be paid by the Association.

## ARTICLE VII

### WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these Bylaws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Alabama Uniform Condominium Act of 1991, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE VIII

### FISCAL YEAR

The fiscal year of the Association shall be a calendar year starting on January 1 of each year and ending on December 31 of each year.

## ARTICLE IX

### INDEMNIFICATION

**Section 1.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**Section 2.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and

reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under Sections (1) and (2) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections (1) and (2). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the membership.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## ARTICLE X

### AMENDMENT

**Section 1. Amendment to Bylaws.** These Bylaws may be amended, altered or repealed in the following manner:

(a) By the Developer until such time as Developer relinquishes its control of the Association; or

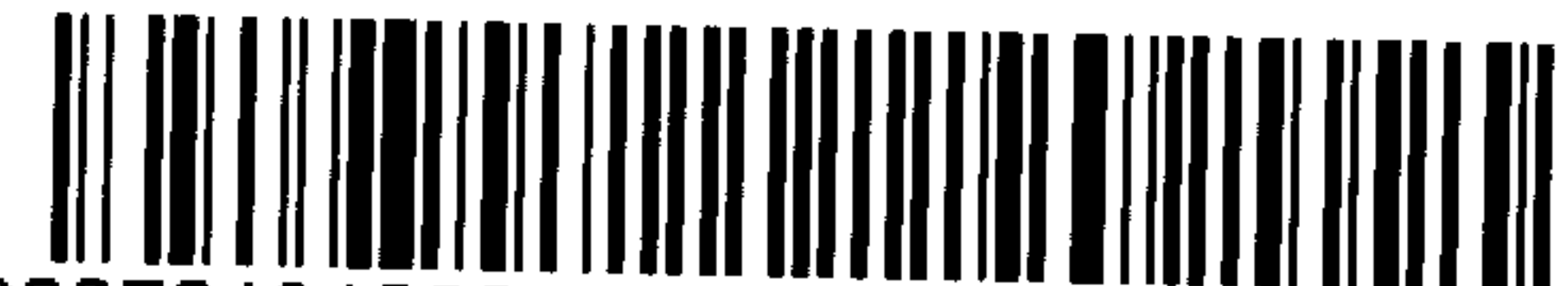
(b) By the members at any regular or special meeting upon the affirmative vote of the holders of not less than two-thirds of the outstanding votes.

**Section 2. Recordation.** No modification or amendment to the Bylaws shall be valid and effective until the President and Secretary of the Association shall certify as to the adoption of such amendment and shall file their certificate setting forth the text of the amendment with the Office of the Judge of Probate of Shelby County, Alabama.



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**EXHIBIT "C"**  
**PLAN OF THE CONDOMINIUM**



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## **EXHIBIT "D"**

### **LIST OF UNITS, ALLOCATED INTERESTS AND VOTES PER UNIT**

| <b>UNIT #</b> | <b>ALLOCATED<br/>INTEREST</b> | <b>VOTE</b> |
|---------------|-------------------------------|-------------|
| 10            | 8.4%                          | 1           |
| 12            | 6.6%                          | 1           |
| 14            | 6.6%                          | 1           |
| 16            | 6.6%                          | 1           |
| 18            | 6.3%                          | 1           |
| 20            | 8.8%                          | 1           |
| 30            | 8.4%                          | 1           |
| 32            | 6.7%                          | 1           |
| 34            | 6.6%                          | 1           |
| 36            | 6.6%                          | 1           |
| 38            | 6.6%                          | 1           |
| 40            | 6.6%                          | 1           |
| 42            | 6.8%                          | 1           |
| 44            | 8.4%                          | 1           |
| <b>TOTAL</b>  | <b>100%</b>                   | <b>14</b>   |

**EXHIBIT "E"**

**PROPOSED OPERATING BUDGET OF  
TWO-EIGHTY VILLAGE ASSOCIATION, INC.**

**Income**

**Total Annual Income**

**Operating Expenses**

**Monthly**

**Yearly**

|                                       |  |             |
|---------------------------------------|--|-------------|
| Alabama Prof. Services (Termite Bond) |  | \$585.00    |
| Water and Sewer                       |  | \$6,515.00  |
| Alabama Power Company                 |  | \$3,177.00  |
| A & J Lawn Service                    |  | \$2,294.00  |
| Heritage Lawn & Treecare              |  | \$1,210.00  |
| Fed Ex/Kinkos                         |  | \$130.00    |
| Insurance                             |  | \$14,065.00 |

**Total Operating Expenses**

**\$27,976.00**

**Repair and Replacement Reserve**

**TOTAL ANNUAL BUDGET**

  
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**EXHIBIT "F"**

**EASEMENTS AND RESTRICTIONS OF RECORD**



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This instrument prepared by and upon  
recording should be returned to:

✓ Mr. Elton B. Stephens, Jr.  
EBSCO Realty  
#6 Office Park Circle  
Suite 310  
Birmingham, AL 35223

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR GREYSTONE HIGHLANDS COMMERCIAL SUBDIVISION

Inst # 1995-18410

07/12/1995-18410  
04:19 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DET HCD 73.50

THIS DECLARATION made as of the 31st day of December, 1994 by EBSCO Industries, Inc., a Delaware corporation (the "Developer").

RECITALS:

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WHEREAS, the Developer, is the owner of that certain real estate situated in Shelby County, Alabama and more particularly described on Exhibit "A" attached hereto and made a part hereto (the "Property"); and

WHEREAS, in order to develop, lease and sell said real estate, the Developer has subdivided it as a commercial subdivision to be known as Greystone Highlands Commercial Subdivision (the "Subdivision"), and desires to subject the Property to certain covenants, conditions, restrictions and rights which shall be binding upon and run with the Property.

NOW THEREFORE, the Developer does hereby declare that the Property is and shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions and restrictions hereinafter set forth in this Declaration, which shall be binding upon the Developer and all parties, their heirs, successors and assigns, acquiring or having any right, title or interest in any part of the Property and which shall be and are covenants running with the Property.

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## **ARTICLE I DEFINITIONS**

As used throughout this Declaration, the following terms shall have the meanings set forth below:

1.01 Amendment. The term "Amendment" or "Amendments" shall mean any and all amendments and modifications to this Declaration as may from time to time be duly adopted pursuant to Section 3.02 hereof and filed of record in the Probate Office of Shelby County.

1.02 Assessment. The term "Assessment" or "Assessments" shall mean both the annual and special assessments made by the Association pursuant to Section 7.04 hereof.

1.03 Articles of Incorporation. The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.04 Association. The term "Association" shall mean Greystone Highlands Commercial Subdivision Owners Association, Inc., an Alabama non-profit corporation.

1.05 Board. The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors.

1.06 Bylaws. The term "Bylaws" shall mean and refer to the Bylaws of the Association and all amendments thereto.

1.07 Committee. The term "Committee" shall mean the Architectural Review Committee appointed pursuant to Article V hereof with the rights and obligations conferred upon such committee pursuant to this Declaration.

1.08 Common Areas. The term "Common Areas" shall mean those areas within the Property (a) designated as such on the recorded plat map of the Property, as said plat map may be amended from time to time, and (b) any other areas of the Property which may from time to time be designated as Common Areas by the Developer or which may be conveyed or granted by Deed from the Developer in its sole discretion to the Association. The Common Areas shall be owned and maintained by the Developer until such time as same are conveyed by the Developer to the Association, at which time maintenance responsibility shall become the Association's responsibility; provided, that the responsibility for the costs of maintaining the Common Areas facing on Greystone Highlands Drive shall be shared equally with the certain Greystone Highlands residential subdivision described in Instrument #1994-33988 filed in the Probate Office of Shelby County, Alabama.

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1.09 Declaration. The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Greystone Highlands Commercial Subdivision and all Amendments thereto.

1.10 Deed. The term "Deed" shall mean and refer to any deed, lease, assignment or other instrument other than a Mortgage conveying any interest in any Lot.

1.11 Developer. The term "Developer" shall mean EBSCO Industries, Inc., a Delaware corporation, and any successors to the rights, powers, duties and obligations of the Developer as herein provided by reasons of a written assignment as provided in Section 9.02 of this Declaration.

1.12 Development Criteria. The term "Development Criteria" shall mean the criteria prepared, issued and amended from time to time by the Committee for the purpose of reviewing and approving all Improvements to each Lot.

1.13 Easement Areas. The term "Easement Areas" shall mean and refer to (a) those areas of the Property described in any Deed or plat map of the Property as Easement Areas and (b) those areas of the Property described in Article VI herein.

1.14 Governmental Authorities. The term "Governmental Authorities" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property and any Improvements thereon.

1.15 Improvement. The term "Improvement" or "Improvements" shall mean and refer to any building, structure or device constructed, erected or placed upon any Lot which in any way affects the physical appearance of any Lot. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural environment of any Lot as it is presently situated as of the date of this Declaration. "Improvement" shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards, or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters any natural or artificial stream, wash or drainage channel upon or across any Lot.

1.16 Lender. The term "Lender" shall mean the lender, beneficiary, trustee or other holder of any Mortgage or other interest in a Lot as security for the payment for an obligation, provided that the name and address of such lender, beneficiary, trustee or other holder appears in the Mortgage or a recorded assignment of same.

1.17 Lot. The term "Lot" or "Lots" shall mean any numbered subdivision of the Property as shown on the recorded plat map of the Property, including any lot or lots

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resulting from any consolidation, division or redivision of a Lot or Lots by the Developer pursuant to the provisions of Section 4.12 hereof.

1.18 Member. The term "Member" or "Members" shall mean each person or entity who holds membership in the Association pursuant to the provisions of Article VII hereof.

1.19 Mortgage. The term "Mortgage" shall mean and refer to a leasehold or fee mortgage, deed of trust or other security device encumbering a Lot or Lots or any interest therein and which shall have been recorded in the Probate Office of Shelby County, Alabama.

1.20 Owner. The term "Owner" shall mean and refer to the record owner (including the Developer) of fee simple title to any Lot or any portion thereof, whether one or more persons or entities, but excluding Lenders so long as they hold an interest merely as security for the payment of an obligation.

1.21 Property. The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama, and described on Exhibit "A" attached hereto; provided, that upon recordation of the plat map of the Subdivision, the term "Property" shall thereafter mean and refer to Greystone Highlands Commercial Subdivision, the plat of survey of which is recorded at Map Book { 20 }, page { 25 }, in the Probate Office of Shelby County, Alabama, as said plat map may be amended from time to time.

1.22 Setback Lines. The term "Setback Lines" shall mean any setback requirements for each Lot as outlined in the Development Criteria or as set forth in the plat map of the Property, as said plat map or Development Criteria may be amended from time to time by the Committee.

1.23 Utility Service. The term "Utility Service" shall mean and include any utilities servicing any portion of the Property or any Common Areas, including, without limitation, water, public or private sewage and sewer service, storm drains, steam, gas, electricity, telephone, solar or other energy sources or any other utilities of any nature whatsoever.

## ARTICLE II PROPERTY SUBJECT TO THE DECLARATION

2.01 General Declaration. The Developer for itself, the Owners, the Association, and their respective successors and assigns, hereby declares that the Property is and shall be subject to the covenants, conditions and restrictions of this Declaration, and the Property, any part thereof, and each Lot, shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved or transferred, in whole or in part, subject to the terms of this Declaration, which covenants, conditions and restrictions shall

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run with the title to the Property and shall be binding upon and inure to the benefit of the Developer, the Association, each Owner, and their respective successors and assigns. This Declaration shall not apply to or affect any real property which is not subjected specifically by written instrument to this Declaration.

**2.02 Right of Developer to Amend Restrictions or Plat Map with Respect to Lots Owned by Developer.** With respect to any Lot owned by the Developer, the Developer may, by deed, contract, plat map or other instrument filed for record in the manner specified in Section 3.02 hereof, amend the plat map or the provisions of this Declaration as the same apply to any such Lots.

**2.03 Mutuality of Benefit and Obligation.** The provisions of this Declaration and any Amendments are made (a) for the mutual and reciprocal benefit of each Lot and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners, their respective heirs, successors and assigns, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

### ARTICLE III DURATION AND MODIFICATION

**3.01 Duration.** Except as set forth herein, this Declaration shall remain in full force and effect for a period of thirty (30) years, and thereafter shall, as then in force, be continued automatically and without further notice indefinitely, unless modified or terminated in the manner set forth in Section 3.02 hereof.

**3.02 Amendment, Modification or Termination.** For so long as the Developer owns any Lot or other portion of the Property, the Developer may at any time and from time to time, without the consent or approval of any Owner or Lender, modify, amend, or otherwise alter any portion of this Declaration or the plat map of the Property; provided, that no such Amendment shall materially adversely affect the title, use, cost of use or enjoyment of any Owner or Lender to any Lot without the written consent of said Owner or Lender to the Amendment. At any time after the original 30-year term of this Declaration, or at such earlier time as the Developer no longer owns any Lot or other portion of the Property, this Declaration may be amended by an instrument executed by the then record Owners of at least two-thirds (2/3) of the Lots. No amendment permitted or contemplated hereunder shall be effective as an Amendment until filed for record in the Probate Office of Shelby County, Alabama. For purposes of this Section 3.02, the Developer shall be deemed to be the Owner of any Lot owned by the Developer or by a partnership in which the Developer is a general partner and shall be entitled to the voting rights with respect to said Lot or Lots.

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**ARTICLE IV**  
**USE RESTRICTIONS: MAINTENANCE OF LOTS AND ADJACENT AREAS**

**4.01 Use.** The use of each Lot and all Improvements thereon must (a) comply at the time of construction and of any major modification in use or construction with all zoning, building and land use laws, ordinances and regulations of the Governmental Authorities, (b) comply with this Declaration and the plat map of the Property and (c) be approved in advance by the Committee. In the event of any conflict, the most restrictive of such laws, ordinances and regulations, terms or approvals shall govern.

**4.02 Nuisances and Offensive Activities.** No obnoxious, offensive or illegal activity shall be carried on in, on or upon any Lot or any Improvement thereon.

**4.03 Underground Utilities.** No pipe, conduit, cable or transmission line for any Utility Service shall be installed or maintained above the surface of the ground of any Lot; provided, however, that street light standards, similar lighting equipment and temporary irrigation hoses, pipes and systems may be placed (and replaced) upon the surface of any Lot with the prior written approval of the Committee. All exterior machinery, equipment and facilities used or necessary to supply Utility Service to any Lot or Improvement shall be located and screened on each Lot in the manner and upon such conditions as approved or required by the Committee.

**4.04 Parking and Roadways.**

(a) No on-street parking or parking in Common Areas shall be permitted. Each Owner shall provide off-street parking on its respective Lot in accordance with minimum parking requirements as may be specified from time to time in the Development Criteria or as may be required by the appropriate Governmental Authorities. All parking areas on each Lot shall, in accordance with requirements of the Development Criteria or as otherwise may be required by the Committee, (i) be paved to provide dust-free, all weather surfaces, (ii) be adequate in area and number of parking spaces provided, (iii) contain adequate driveways and space for the movement of vehicles, (iv) meet at grade with connecting public or private streets, (v) be striped to designate parking spaces, (vi) contain concrete curbing, sidewalks and walkways and proper drainage, (vii) be lighted and (viii) be landscaped in accordance with any requirements set forth in the Development Criteria or as may be required by the Committee.

(b) All roadways located solely within a Lot must (i) be approved by the Committee prior to commencement of construction of the same, (ii) be adequate in size to provide sufficient means of ingress and egress to and from the Lot, (iii) be paved to provide dust-free, all weather surfaces, (iv) meet at grade with existing public or private roads, (v) contain concrete curbing, sidewalks and walkways and proper drainage and (vi) be subject to such additional specifications or requirements as may from time to time be required by the

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Committee. All curb cuts shall be subject to the prior written approval of the Committee.

**4.05 Loading, Storage and Parking.** All loading facilities and delivery areas for each Lot and Improvements thereon shall be located and screened from street and driveway visibility in a manner approved by the Committee. No materials, supplies, equipment or machinery shall be stored outside of an Improvement or on any Lot nor shall any outside operations of the business be conducted on any Lot without the prior written approval of the Committee. No truck, trailer, house trailer, boat, boat trailer or other vehicle of any nature (other than automobiles and small trucks) shall be permitted on any Lot unless parked in a garage or loading dock area so that the same is not open to view by the public or adjacent Lots.

**4.06 Signs.** The location, size, design, materials and construction of all signs to be erected or placed on any Lot must be in compliance with the Development Criteria and approved in writing in advance by the Committee.

**4.07 Maintenance, Landscaping, Refuse and Trash.**

(a) Each Owner shall at all times keep and maintain its Lot and the Improvements situated thereon in a first-class condition. All exterior paint or stain finishes of an Improvement shall at all times be well and properly painted. Each Owner shall at all times maintain its Lot and any Improvements thereon in accordance with all requirements and regulations of the appropriate Governmental Authorities. During the construction of any Improvements on a Lot, each Owner shall keep its Lot in a neat, orderly and safe condition, free from unsightly accumulations of trash, rubbish, debris and construction materials. During construction, the Committee may, at its discretion, permit construction materials to be stored on a Lot, but the Committee may require the Owner to install protective fencing and/or screening around any such construction materials.

(b) Each Lot (including Easement Areas and areas within Setback Lines) shall be landscaped in accordance with plans and specifications submitted to and approved by the Committee. All areas of each Lot not used for Improvements shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubs and trees. Grass, hedges, shrubs, vines or other vegetation of any type on each Lot, and down to the edge of the curb of any public street or roadway adjacent to the Lot, shall be kept and trimmed by the Owner at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Each Owner (excluding the Developer so long as Property held by Developer has not been improved.) shall install and maintain landscaping on its Lot to the edge of the curb of any adjacent public or private street or roadway. No weeds, vegetation, rubbish, debris, garbage or waste material shall be placed or permitted to accumulate upon any portion of a Lot or any adjacent public or private street or road which would render the Lot unsanitary, unsightly, offensive or detrimental to any of the Property

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or to any of the other Owners or their respective Lots. The natural environment of any bank, slope or stream situated on or running through any Lot shall not be altered, except with the prior written approval of the Committee and necessary Governmental Authorities.

(c) All outdoor refuse collection areas for each Lot shall be subject to the prior written approval of the Committee, shall be visually screened so as not to be visible from any street or roadway or adjacent Lots, and shall be maintained in such a manner to prevent unsightly, unsanitary or offensive accumulation of trash, garbage, debris, rubbish or refuse. No refuse collection areas shall be maintained between any street or roadway and any improvement.

(d) In the event any Owner fails to perform or fails to complete the performance of any of the obligations provided in this Section 4.07 and such failure continues for a period of ten (10) days for Section 4.07 (a) and (b) and five (5) days for Section 4.07 (c) after written notice from the Committee or the Association to remedy the same, then the Developer or the Association shall have the option to perform such obligations on behalf of any such Owner, at the Owner's expense, subject to and in accordance with the terms and provisions of Article VIII hereof.

**4.08 Animals.** No animals (i.e., livestock, poultry, dogs, cats, birds, reptiles or household pets) of any type shall be raised, bred or kept on, in or upon any Lot or Improvement thereon except with the prior written approval of the Committee.

**4.09 Emissions.** Except as may be otherwise approved in writing by the Committee, no use shall be permitted to exist or operate upon any Lot or from any Improvement thereon which:

(a) Emits dust, sweepings, dirt, cinders, fumes, odors, radiation, gases or vapors, or which discharges liquid or solid wastes or any other harmful matter or hazardous waste (as determined by any Governmental Authorities) into the atmosphere or into any stream, river or other body of water which are in such quantity or volume that they may adversely affect (i) the health or safety of any person or (ii) vegetation. No water or any substance or materials of any kind shall be discharged or released in violation of any regulations of any of the Governmental Authorities or any person supplying, furnishing, maintaining or regulating any applicable public or private sewer;

(b) Produces intense glare or heat unless such use is performed only within an enclosed or screened area and then only in such manner that the glare or heat emitted will not be discernible from outside the Lot;

(c) Creates a sound pressure level in violation of any regulation of any of the Governmental Authorities or which creates a nuisance;

(d) Allows the visible emissions of smoke outside any Improvement in violation of

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any regulation of any of the Governmental Authorities; or

(c) Creates a ground vibration that is perceptible, without instruments, at any point outside the Lot.

4.10 Temporary Improvements. No temporary building, trailer, garage or building of any nature shall be erected, placed or maintained on any Lot without the prior written approval of the Committee. Buildings and trailers necessary for construction of Improvements on any Lot, not used or intended to be used for living accommodations, may be erected and maintained on any Lot during the course of such construction upon the prior written approval of the Committee.

4.11 Fences. No fences, whether of chain link, wire, metal, wood, brick or other material, shall be erected on any Lot without the prior written approval of the Committee.

4.12 Division of Lots. No Lot shall be further divided or redivided, without the prior written approval of (1) the appropriate Governmental Authorities and (2) the Developer, so long as the Developer owns any Lot, or the Committee, after the Developer ceases to own any Lot; provided, however, that the Developer may at any time and from time to time divide and redive any Lot owned by Developer.

4.13 Aerials. No radio, television or other aerial, antenna, satellite dish, tower or transmitting or receiving aerial or support equipment thereof shall be erected, installed, placed or maintained on any Lot or the exterior portion of any Improvement without the prior written approval of the Committee.

4.14 Setback Lines and Easement Areas. No Improvements shall be built within the Setback Lines or the Easement Areas of any Lot without the prior written consent of the Committee, or in violation of the applicable zoning and Governmental Authority regulations.

4.15 Prohibited Uses. In addition to any uses which the Committee may from time to time prohibit on the Property, the following operations and uses shall not be permitted on any Lot: (a) residential housing, (b) trailer courts, (c) labor camps, (d) junk yards, (e) boring, mining, quarrying, exploring, refining, extraction or excavation for stone, oil, gas, coal, hydrocarbons, gravel, earth or other minerals, (f) dumping, disposal, incineration or reduction of garbage, sewage or refuse, or hazardous waste, (g) cemeteries, (h) stockyards or animal slaughter houses, (i) jails, prisons or work farms, (j) industrial manufacturing operations or (k) farming.

4.16 Zoning. In addition to the restrictions and obligations set forth in this Article IV, the use of each Lot shall be subject to and shall comply with all zoning and use laws and other rules and regulations of the appropriate Governmental Authorities.

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4.17 Variances. The Committee shall have the exclusive right to grant variances from the requirements of this Declaration with respect to any Lot, as the Committee may, in its sole discretion, determine necessary for the successful development of the Property. Any variance granted hereunder shall be effective only if it is in writing and executed by the Committee and the affected Owner; provided, that no such variance shall relieve the Owner granted such variance from complying with any requirements of Governmental Authorities.

4.18 Connection Points for Utility Service Lines and Storm Drainage. To the extent of the interest of the Owner of each Lot, each Owner agrees to connect Utility Service lines and storm drainage lines at points designated by the Committee.

## ARTICLE V

### ARCHITECTURAL REVIEW COMMITTEE; ARCHITECTURAL CONTROL

#### 5.01 Committee Appointment and Composition.

(a) The Committee shall consist of not less than three (3) nor more than five (5) persons. For so long as the Developer owns any Lot or other portion of the Property, the majority of the members of the Committee shall be appointed by the Developer. Thereafter, the Members of the Committee shall be appointed by the Board.

(b) By a majority vote of the members of the Committee, one (1) representative, who must be a member of the Committee, may be appointed to act for the Committee. In the event of the death or resignation of a member of the Committee, then the Developer (or the Board, if it then has the right to pursuant to (a) above) shall, promptly after any such death or resignation, appoint a substitute member of the Committee. The Committee members shall not be entitled to any compensation for services rendered pursuant to this Section 5.01; provided, however, that they shall be reimbursed for expenses incurred on behalf of the Committee.

5.02 Procedure and Meetings. The affirmative vote of a majority of the membership of the Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. The decision of a majority of the members of the Committee with respect to any matter shall be final and binding. Notwithstanding anything provided herein to the contrary, if the Committee appoints a representative to act for it pursuant to Section 5.01 above, then that representative, without any additional consent or authorization from the Committee, shall have the rights, powers and authorizations set forth herein. The Committee may meet informally, by meeting, telephone, letter or otherwise, as necessary to properly perform its duties hereunder and, unless authorized by a majority of the members of the Committee, no one shall have any right to be present or participate in any meetings of the Committee other than the members themselves. The Committee shall have the right to adopt and

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establish such rules and regulations as it may determine necessary concerning procedure, notice of meetings and all other matters concerning the conduct of its business.

**5.03 Submission of Plans and Specifications.** No Improvements shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any approved Improvement be altered in any way which materially changes the exterior appearance thereof, nor shall any initial or subsequent use be commenced on any Lot, unless plans and specifications (including a description of any proposed use) therefor have been submitted to and approved in writing by the Committee. Such plans and specifications shall be in such form and shall contain such information, as may be required by the Committee, but in any event shall include (i) a site development plan of the Lot showing the nature, grading scheme, kind, shape, materials and location with respect to the particular Lot (including proposed front, rear and side Setback Lines) of all Improvements, the location thereof with reference to Improvements on adjoining portions of the Property, and the number and location of all parking spaces, parking areas and driveways on the Lot and all loading areas and screening of such, (ii) a landscaping plan for the particular Lot, including the design for appropriate screening or enclosures for trash and refuse containers, (iii) a signage and lighting plan and (iv) a building elevation plan showing dimensions, building height, materials and exterior color scheme.

THE SCOPE OF REVIEW BY THE COMMITTEE SHALL BE LIMITED TO THE USES, EXTERIOR APPEARANCE AND COMPATIBILITY OF ANY IMPROVEMENTS TO THE OVERALL DEVELOPMENT PLAN FOR THE PROPERTY AND SHALL NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW OR EVALUATE THE STRUCTURAL SOUNDNESS OR INTEGRITY, COMPLIANCE WITH BUILDING, ZONING OR OTHER APPLICABLE REGULATIONS OF THE GOVERNMENTAL AUTHORITIES OR ANY OTHER DESIGN OR CONSTRUCTION ASPECTS OF ANY IMPROVEMENT. THE DEVELOPER, FOR ITSELF AND COMMITTEE, DOES HEREBY DISCLAIM ANY RESPONSIBILITY OR LIABILITY FOR ANY DESIGN OR STRUCTURAL DEFECTS IN OR TO ANY IMPROVEMENTS.

**5.04 Disapproval.**

(a) The Committee shall have the right to disapprove any plans and specifications submitted hereunder for any one or more of the following reasons:

- (i) Failure to comply with any of the provisions of this Declaration;
- (ii) Failure to include information in such plans and specifications as may have been reasonably requested by the Committee;
- (iii) Objection to the exterior design, appearance or materials of any proposed Improvement;

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- (iv) Objection on the ground of incompatibility of any proposed Improvement or use with existing Improvements or uses upon other Lots or other properties in the vicinity;
- (v) Objection to the location of any proposed Improvement upon any Lot;
- (vi) Objection to the grading or landscaping plan for any Lot;
- (vii) Objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Improvement;
- (viii) Objection to the number or size of parking spaces, or to the design or location of parking areas or roadways proposed for any Lot; or
- (ix) Any other matter which, in the sole judgment of the Committee, would render the proposed Improvement or Improvements or use thereof not in harmony with the general plan of development of the Property or with Improvements located upon other Lots or other properties in the vicinity.

(b) In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a written statement specifying the grounds upon which such disapproval was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

(c) The Committee in its sole discretion may, from time to time, employ such third party architects or consultants as it deems appropriate in reviewing any plans and specifications. The opinions of such third party architects or consultants shall be of an advisory nature only and shall not be binding upon the Committee. All fees, costs and expenses incurred by such third party architects or consultants shall be paid by the Owner of the Lot for which the plans and specifications are submitted for such review.

**5.05 Approval.** Upon approval by the Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee and a copy of such plans and specifications bearing such approval shall be returned to the applicant submitting the same.

**5.06 Rules and Regulations; Time for Approval.**

(a) The Committee (i) shall promulgate rules governing the form and content of plans and specifications to be submitted for approval, (ii) may adopt and issue specific site criteria for any of the Lots and (iii) may issue from time to time statements of design policy

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and development guidelines with respect to the approval or disapproval of the architectural styles, details or other matters which may be presented for approval. Such rules, site planning, design and development criteria and statements of policy shall, upon issuance by the Committee, be binding upon such Owner and Lot and may be amended or revoked by the Committee at any time. Approval of plans or specifications for one Lot shall not require, obligate or be deemed a waiver by the Committee to approve similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided (i) the Improvements or uses shown or described on or in such plans and specifications do not violate any specific prohibitions contained in this Declaration and (ii) the plans and specifications, as approved, and any conditions attached to such approval, have been adhered to and complied with in all respects with regard to all Improvements and uses on the Lot. All revisions, modifications and changes in any of such plans and specifications must be approved by the Committee in the manner provided herein.

(b) In the event that the Committee fails to approve or disapprove any plans and specifications submitted by or on behalf of an Owner within sixty (60) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required to evidence such approval; provided, however, that (i) the sixty (60) day period for approval or disapproval shall not be deemed to have commenced until all required plans and specifications reasonably requested by the Committee have been submitted to it, (ii) such approval shall apply only to the plans and specifications submitted and (iii) in the event the plans submitted were for the purpose of schematic or preliminary approval, such approval shall not relieve the Owner from its obligation to obtain the approval of the Committee for any subsequent plan submissions required pursuant to the rules and regulations promulgated by the Committee.

**5.07 Construction Without Approval.** If any Improvement shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, without the prior written approval of the Committee pursuant to the provisions of this Article V, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article V and without the approval required herein; and, upon written notice from the Committee, any such Improvement so altered, erected, placed or maintained upon any Lot in violation hereof shall, at the Owner's expense, be removed or altered, and any such use shall be terminated, so as to extinguish such violation. If, within ten (10) days after notice of such violation, the Owner of the Lot upon which such violation exists shall not have taken steps determined by the Committee to be reasonable toward the removal of termination of the same, the Developer or the Association after its formation may exercise any or all of the rights and remedies set forth in Article VIII hereof.

**5.08 Certificate of Compliance.** Upon completion of the construction or alteration of any Improvement in accordance with plans and specifications approved by the

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Committee, the Committee shall, upon written request of the Owner or any Lender thereof, issue a certificate of compliance (a) identifying such Improvement and the Lot on which such Improvement is placed and (b) stating that the plans and specifications for such Improvement and the use or uses to be conducted thereon have been approved, subject to a disclaimer of obligation as set forth in Section 5.03 hereof. Preparation of such certificate shall be at the expense of such Owner or Lender. Any certificate of compliance issued in accordance with provisions of this Section 5.08 shall be prima facie evidence of the facts therein stated and may be relied upon by any bona fide purchaser of such Lot, Lender or any title insurer.

**5.09 Inspection.** The Committee, or any agent thereof, may at any reasonable time enter upon and inspect any Lot and any Improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of Improvements thereon and the use or uses conducted thereon are in compliance with the provisions hereof; and neither the Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry inspection. The right of inspection granted herein shall be subject to any reasonable security requirements of the Owner of the Lot.

**5.10 Liability.** Notwithstanding anything provided herein or by law to the contrary, the Developer, the Committee, the Association, the Manager, any agent or member thereof and their respective heirs, successors and assigns, shall have no liability of any nature whatsoever for any damage, loss or prejudice suffered or claimed by any Owner or other person or entity whomsoever on account of (a) any defects in any plans or specifications submitted, reviewed or approved in accordance with the forgoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, (b) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (c) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications and (d) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid, or incurred by any Owner or other person or entity whomsoever arising out of or in connection with the use or occupancy of any Lot, Improvement or any of the Common Areas or from the enforcement of any of the terms, provisions, covenants and conditions of this Declaration. Each Owner and each other person or entity, by entry onto the Property, any Lot, the Common Areas or any part thereof, shall be deemed to have consented to and approved each and every term, provision, covenant and condition set forth in this Declaration, including, specifically, the provisions of this Section 5.10.

**5.11 Completion of Construction.** Once construction on a Lot has commenced, the Owner of such Lot shall diligently and continuously pursue completion, in accordance with and subject to the provisions of this Declaration, provided, however, that such construction shall not in any event take longer than thirty-six (36) months from the date of commencement. Completion of any Improvements shall be deemed to occur upon issuance

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of a certificate of occupancy by the appropriate Governmental Authorities and an architect's certificate of completion. If landscaping improvements are not completed when the Certificate of Occupancy is issued, the landscaping improvements shall be completed within ninety (90) days from the issuance of the Certificate of Occupancy. In addition to all other rights and remedies provided herein, the Developer shall have the right to exercise the repurchase option rights provided in Section 8.04 hereof in the event the terms of this Section 5.11 are not satisfied within the time periods specified herein.

## ARTICLE VI EASEMENTS

6.01 Easement for Ingress and Egress and Inspection. The Developer, for itself, the Association and the Committee, their respective representatives, agents, successors and assigns, does hereby establish and reserve a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress and egress to and from each Lot for (a) the inspection of each Lot in order to determine compliance with the provisions of this Declaration, (b) fire, police, medical and other emergency personnel and for all representatives of the Governmental Authorities and (c) any other action required or permitted to be taken by the Developer, the Association or the Committee pursuant to the provisions of this Declaration.

6.02 Easement for Utilities. The Developer, for itself and the Association and their respective successors and assigns, does hereby establish and reserve a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon the Easement Areas of each Lot for the purposes of (a) installing, erecting, replacing and relocating line, pipes, conduits, sewage lines, septic tanks with field lines, drainage lines, storm sewers, drainage sewers, capped sewers and all other auxiliary equipment or machinery necessary for any Utility Service and (b) maintaining and repairing all such utility equipment necessary for any Utility Service; provided, however, that any such easements shall not unreasonably interfere with the use or occupancy of any Lot or Improvements situated thereon.

6.03 Easement for Streets and Grading. The Developer, for itself and its successors and assigns, does hereby establish and reserve a non-exclusive easement appurtenant over, across, under, through and upon the Easement Areas of each Lot for the purposes of grading, excavating and moving dirt and soil from or onto any Lot in connection with the construction of roadways (either public or private) throughout the Property; provided, however, that any such easements shall not unreasonably interfere with the use or occupancy of any Lot or Improvements situated thereon.

6.04 Easement for Slope Control, Drainage and Waterway Maintenance. The Developer, for itself, the Association, each Owner and the Committee, their respective successors and assigns, does hereby establish and reserve a permanent and perpetual non-

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exclusive easement appurtenant over, across, under, through and upon each Lot for the purposes of (a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which area or may be subject to soil erosion, (b) drainage of natural or man-made water flow and water areas from any portion of the Property, (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot, (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Property and (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Property; provided, however, that any such easements shall not unreasonably interfere with the use or occupancy of any Lot or Improvements situated thereon.

**6.05 Additional Easements.** The Developer, for itself and the Committee, their respective successors and assigns, does hereby establish and reserve such other further or different easements over, across, under, through and upon any Lot which may be necessary or convenient for the further development of the Property or to provide ingress or egress to any part of the Property; provided, however, that any such additional easement shall not unreasonably interfere with the use or occupancy of any Lot or Improvements situated thereon.

## **ARTICLE VII ASSOCIATION**

**7.01 Membership.** The Developer may, at such time as it deems appropriate but in any event no later than the date it sells and conveys the last Lot owned by it in the Property, cause to be incorporated under the laws of Alabama, a non-profit corporation to be named "Greystone Highlands Commercial Subdivision Owners Association, Inc.", or a similar name (the "Association"). Upon organization of the Association, the Owner of each Lot shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) the Developer shall be deemed a Member of the Association and shall have the voting rights set forth in Section 7.03 below with respect to any Lots it owns, (b) in the event any Lot is owned by more than one (1) person, then the Owners of such Lot shall, by written notice to the Board, designate no more than two (2) representatives to exercise the Owner's rights (and to receive any notice from the Association or the Committee), as a Member of the Association (which representatives' acts or omissions shall be binding upon such Owner) and (c) no Lender shall become a Member of the Association until such time, if at all, that the Lender becomes an Owner by virtue of (i) foreclosure of its Mortgage or acceptance of a deed in lieu of foreclosure, (ii) title to such encumbered Lot is vested in Lender pursuant to a duly recorded Deed and (iii) notice of such foreclosure or transfer of title has been given by such Lender to the Association. The transfer by any Owner of title to any Lot by Deed, other than a transfer by a Mortgage or as security for the payment of an obligation, shall include the transfer of all membership rights of such Owner in the Association. Each Member of the Association shall at all times comply with the provision of this Declaration,

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the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Association.

**7.02 Board.** The Association shall be governed by a Board of Directors (the "Board"). The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. For so long as the Developer owns a Lot or any other portion of the Property, the Developer shall appoint the members of the Board. Thereafter, the Board members shall be elected by the Owners.

**7.03 Voting Rights.** When entitled to vote, each Member shall have one vote for each Lot owned by the Member. The total number of votes in the Association may be increased or decreased from time to time if and when the Developer exercises its rights under this Declaration to consolidate or to further divide any Lot or Lots owned by it.

**7.04 Assessments and Creation of Lien.** The Developer, for each Lot, hereby covenants, and each Owner by acceptance of a Deed with respect thereto, regardless of whether any such Deed contains a reference to this Declaration, is hereby deemed to covenant and agree, to pay to the Association (a) annual assessments or charges for the maintenance, upkeep and repair of the Common Areas and for the purposes set forth in Section 7.05 below and (b) special assessments which may from time to time be made by the Association (such assessments or charges being hereinafter and in this Declaration referred to collectively as "Assessments" and individually as an "Assessment"). All Assessments shall be paid by the Owners in accordance with their respective pro rata share as calculated in accordance with Section 7.06. All Assessments, together with interest, attorneys fees and costs, as provided in Section 7.07, shall be a charge upon each Lot, shall be a continuing lien upon each Lot for all Assessments, and shall be a personal obligation of the Owner of each Lot at the time when the Assessment was made.

**7.05 Purpose of Assessments and Use of Funds.** The Assessments shall be used and applied exclusively toward the payment of the costs and expenses incurred by the Association for the purpose of (a) upkeep and maintenance of the Common Areas, (b) installing, maintaining, repairing and replacing any signage, traffic signals, traffic and pedestrian signage and property identification signage on any portion of the Common Areas, (c) installing, maintaining, repairing and replacing all walkways and paths adjacent to or within any of the Common Areas, (d) insurance premiums paid by or for the Association for public liability, fire and extended coverage, officers and directors liability and all other insurance which may from time to time be maintained by the Association, (e) attorneys' and accountants' fees incurred for the benefit of the Association, (f) fees of consultants, architects, engineers and other advisory personnel incurred by the Association or the Committee, as well as other costs for which the Committee members are entitled to be reimbursed and which costs are not payable by an individual Owner and (g) any other costs or expenses incurred by the Association in carrying out, performing or enforcing any of the terms or provisions of this Declaration. The Association shall not be obligated to spend in any calendar year all sums collected and may carry forward into subsequent years as surplus

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any balances remaining; provided that, if the surplus to be carried forward exceeds budgeted requirements (including any special assessment requirements) by more than \$50,000.00, said surplus shall be applied in reduction or abatement of subsequent annual assessments. The Association shall not be entitled to borrow money.

**7.06 Date of Commencement of Annual Assessments; Due Dates.**

(a) The Board shall determine the budget for the Association as soon as possible after January 1 of each calendar year after the Association's formation and shall forward copies of the same to each Owner together with written notice of the amount of each such Owner's annual Assessment for each Lot for such calendar year. The due dates for the payment of such Assessment shall be established by the Board and will be monthly, quarterly, semi-annually or annually. The Association shall collect and each Owner shall pay the Assessment with respect to each Owner's respective Lot for the then current calendar year. Special Assessments, if any, may be made by the Board at any time and from time to time. The Association shall, upon written request and for a reasonable charge, furnish a certificate to any Owner signed by a member of the Board or an officer of the Association setting forth whether the Assessments payable with respect to such Lot have been paid.

(b) The annual Assessment for each Lot will be calculated as follows:

Assessment Factor = (1 divided by the total number of all Lots then existing in the Property, including those owned by the Developer)

Estimated Annual Assessment for each Lot = (assessment factor multiplied by the Associations's total annual budget)

**7.07 Effect of Nonpayment of Assessments; Remedies of the Association.** All Assessments and other sums payable hereunder by each Owner, together with interest on any unpaid balance, costs and attorneys' fees incurred by the Association in collecting the same, shall be the personal obligation of the Owner of each Lot at the time when the Assessment was made. All Assessments shall be due on or before the first day of each month or as may be otherwise provided in the notice to each Owner from the Association. If any Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the lesser of: (a) the prime rate of interest as established by Citibank N.A., New York, New York, plus two percent (2%) as said prime rate may fluctuate from time to time, or (b) the maximum interest rate allowed by applicable law. In addition to other rights and remedies of the Association as provided herein or by law, the Association shall also have the following rights and remedies (which rights and remedies shall be cumulative and may be taken together or separately):

- (i) bring an action at law against the Owner, who is personally obligated to pay the same; or

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- (ii) foreclose the lien against the Lot, whereby all accrued interest, costs, and reasonable attorneys' fees, shall be added to the amount of such Assessment.

Each Owner, by acceptance of a Deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien in the same manner and by all methods available for the enforcement of such liens, and each Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Article VII shall be in favor of the Association and shall be for the benefit of the Association, and all other Lots and the Owners thereof. The Association, acting for itself and on behalf of the Owners, may hold, lease, mortgage and convey the Lot foreclosed. In the event an Owner becomes more than thirty (30) days in arrears in payment of any installment of its Assessment, then the entire annual Assessment shall become due and payable immediately at the discretion of the Association.

**7.08 Subordination of the Lien to Mortgage.** The lien for Assessments provided for herein shall be subordinate to the lien of any Mortgage made in good faith and for value now or hereafter existing on any Lot. The sale or transfer of any Lot shall not affect the Assessment lien thereon; provided, however, that the sale or transfer of any Lot pursuant to a foreclosure or any proceedings in lieu thereof with respect to a Mortgage made in good faith and for value shall extinguish the Assessment liens as against the purchaser (if other than the Owner prior to such foreclosure or other proceedings in lieu thereof) at such foreclosure. Notwithstanding the extinguishment of any such Assessment lien upon any such foreclosure or deed in lieu of foreclosure, the Association shall retain all rights to enforce the payment of past due Assessments against the Owner pursuant to all other rights and remedies provided herein.

## ARTICLE VIII VIOLATIONS OF DECLARATION: REMEDIES

**8.01 Violations of Declaration; Enforcement.** In the event the Owner of any Lot or its respective agents, employees, lessees, independent contractors, invitees or licensees, violates or breaches any of the provisions of this Declaration or allows a violation or breach of the provisions of this Declaration to occur, then, in addition to any other rights or remedies set forth in this Declaration, the Developer, the Owner(s) of Lot(s), the Association, their successors and assigns, or any other party to whose benefit these covenants and restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said covenants and restrictions, to sue for and recover damages or other dues or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to it upon the recurrence or continuation of said

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violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief at law or in equity.

Any party to a proceeding who succeeds in enforcing the provisions hereof, or enjoining the violation of any provision of this Declaration, against an Owner may be awarded a reasonable attorney's fee against such Owner.

**8.02 Right of Entry; Liens.** Upon any such violation or breach as set forth in Section 8.01 above, the Developer or the Association, their respective agents or representatives, shall have the right to enter upon such Lot or any Improvement thereon and take any and all appropriate action under the circumstances which may be necessary to summarily abate, remove or extinguish such violation or breach. Any such entry shall not be deemed a forcible entry, constructive or actual eviction or trespass upon such Lot or any Improvement thereon and shall not subject the Developer or the Association, their respective agents or representatives, to any liability. Any and all costs, including reasonable attorneys' fees, incurred by the Developer or the Association, their respective agents and representatives, in the abatement, removal or extinguishment of such violation or breach, together with interest thereon at the lesser of (a) the prime rate of interest as established by Citibank, N.A., New York, New York, as said prime rate may fluctuate from time to time, plus two percent (2%) or (b) the maximum interest allowed by the applicable law, shall be a binding, personal obligation of the Owner of the Lot upon which such violation or breach has occurred and shall also constitute a lien upon such Lot which shall be enforceable in the manner set forth in Section 7.07 hereof.

**8.04 Repurchase and Assignment Options.**

(a) In the event (i) of any violation or breach of any of the provisions of this Declaration prior to completion of any Improvements on a Lot or (ii) any Owner desires to sell its Lot prior to any Improvements being made thereto by such Owner, then, in either event, the Developer does hereby retain and reserve the option to repurchase any such Lot sold by the Developer, in accordance with the following provisions of this Section 8.04.

(b) In the event of any breach of this Declaration as provided in Section 8.04 (a) (i) above with respect to any Lot, the Developer shall, after any applicable cure period provided in this Declaration, give written notice to the Owner of said Lot of the Developer's election to exercise the option to repurchase set forth in Section 8.04(a). In the event any Owner desires to sell its Lot or any interest therein as provided in Section 8.04 (a) (ii) above, such Owner shall give written notice of such contemplated sale to the Developer, who will have thirty (30) days after receipt of such notice to exercise the option provided herein; provided, however, that if the Developer fails to exercise such option by notifying

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such Owner in writing within thirty (30) days of the receipt of such notice of the proposed sale, then the options provided in Section 8.04(a)(ii) above shall (i) be null and void with respect to such proposed sale and (ii) continue and be applicable to any future sales of said Lot by such Owner;

(c) Within sixty (60) days after the Developer has given notice of the exercise of the repurchase option specified in Section 8.04 (a) above, the Owner shall convey such Lot to the Developer by a Deed in the same form and containing only those title exceptions as were contained in the original Deed executed by the Developer in favor of such Owner; and simultaneously therewith, the Developer shall pay to such Owner as the purchase price for such Lot an amount equal to the purchase price paid by such Owner to the Developer, without interest thereon. The affected Owner shall pay, prior to the delivery of the Deed, any and all outstanding Assessments or other charges due and owing under this Declaration and shall cure or cause to be cured all title defects or exceptions not existing at the time the Owner acquired the Lot from the Developer. Real estate ad valorem taxes and prepaid Assessments shall be prorated as of the date of delivery of the Deed by the Owner to the Developer. The repurchase rights reserved in this Section 8.04 shall be enforceable by the Developer by specific performance.

(d) The rights of the Developer under the provisions of this Section 8.04 shall be and are hereby subject and subordinate to the rights of any Lender under any Mortgage made in good faith and for value.

8.05 Failure to Enforce. The failure of any person entitled to enforce any of the provisions of this Article VIII shall in no event be deemed a waiver of the rights of any such person to enforce the same against any other Owner or waiver of any rights with respect to subsequent acts of such Owner.

## ARTICLE IX MISCELLANEOUS

9.01 Good Faith Lender's Clause. No violation of any of the terms or provisions of this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value upon any Lot, nor shall any lien created hereunder be superior to the lien of any such Mortgage unless legal action has been commenced hereunder in the appropriate courts of the State of Alabama prior to the recordation of any such Mortgage; provided, however, that any Lender in actual possession of any Lot or any purchaser at a foreclosure sale of any Lot shall, from and after the date of such actual possession or such foreclosure sale, be bound by and subject to all of the terms and provisions of this Declaration as fully as any other Owner is bound by and subject to the terms and provisions hereof.

9.02 Assignment. The Developer shall have the right to assign any and all of its rights, powers, reservations and duties herein contained at any time to any persons or

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entities who shall thereupon have the same rights, powers, reservations and duties herein contained. Any such assignment shall be evidenced by a written instrument which may be recorded in the Probate Office of Shelby County, Alabama.

**9.03 Severability.** The determination by any court of competent jurisdiction that any provisions of this Declaration are unlawful, void or unenforceable, either in whole or in part, shall not affect the validity of any other provisions of this Declaration.

**9.04 Captions and Headings.** The captions and headings contained in this Declaration are for the convenience of reference only and shall not be used in the construction or interpretation of any provision of this Declaration.

**9.05 Rules and Regulations.** The Developer and the Committee, to the extent specified herein, may adopt reasonable rules and regulations regarding the administration, interpretation and provisions of this Declaration.

**9.06 Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction relating to construction against the Developer, the Association or the Committee are hereby waived by each Owner and, to the extent allowed by law, all conflicts and ambiguities shall be resolved in favor of the Developer, the Association or the Committee.

**9.07 Conflict with Applicable Laws.** This Declaration shall not be construed as permitting any action or thing prohibited by applicable laws of the Governmental Authorities. In the event of any conflict between the terms and provisions of this Declaration and the terms and provisions of any applicable laws of the Governmental Authorities, the terms and provisions of this Declaration shall at all times control.

**9.08 No Reverter.** Except as provided in section 8.04 hereof, no restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of the Developer nor shall any such provision be deemed to vest any reversionary interest in Developer.

**9.09 Gender.** Whenever and wherever applicable, the singular tense shall include the plural and the masculine shall include the feminine and neuter gender and vice versa.

**9.10 Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, its heirs, successors and assigns, and shall (except to the extent otherwise indicated by the context) inure to the benefit of the Developer, the Committee, the Association and each Owner, their respective successors and assigns.

**9.11 Further Assurances.** Each Owner covenants and agrees to sign, execute and deliver, or cause to be signed, executed and delivered and to do or make, or cause to be done or made, any and all agreements, instruments, papers, deeds, acts or things,

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supplemental, confirmatory or otherwise, as may be reasonably requested by the Developer or the Association for the purpose of or in connection with clarifying, amending or otherwise consummating the transactions and matters set forth herein.

**9.12 Reservation of Rights.** Upon the sale and transfer of any Lot by the Developer the rights and obligations of the Developer hereunder as an Owner of that Lot (but not as the Developer) shall automatically transfer to such Owner. No sale, transfer, conveyance, lease, pledge, mortgage, encumbrance or other hypothecation by the Developer of any Lot or any of the Developer's interest in any Lot shall constitute a transfer of any of the following rights or obligations of the Developer: (a) the right to modify this Declaration pursuant to 2.03, (b) the right to approve the division of any Lot pursuant to Section 4.12, (c) the right to appoint members of the Committee pursuant to Section 5.01, (d) the creation of and right to grant or reserve easements pursuant to Sections 6.01, 6.02, 6.03, 6.04 and 6.05, (e) the repurchase or assignment options and rights of the Developer set forth in Section 8.04, (f) the right to assign its rights under this Declaration pursuant to Section 9.02, (g) the right to adopt rules and regulations pursuant to Section 9.05, (i) the provisions concerning interpretation of this Declaration as provided in Section 9.06 and (j) the applicable review standards set forth in Section 9.13 below.

**9.13 Standards for Review.** Whenever in this Declaration the Developer, the Association or the Committee has the right to approve, consent or require any action to be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein, be in the sole and absolute discretion of the Developer, the Association or the Committee, respectively, and such approval, consent or required action shall be final and conclusive.

IN WITNESS WHEREOF, the Developer has executed this Declaration as of the day and date first set forth above by and through its duly authorized officer.

EBSCO INDUSTRIES, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
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[See acknowledgment on next page.]

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J. T. Stephens, whose name as President of EBSCO Industries, Inc., a 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 the instrument, he/she as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 12 day of July, 1995.

Sandra Bullock  
Notary Public

[NOTARIAL SEAL]

My commission expires: 12-10-98

[See Consent and acknowledgment on next page.]

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**CONSENT OF TERRYCO, L.L.C. AS LOT OWNER**

Terryco, L.L.C., an Alabama limited liability company ("Terryco") has purchased from Developer that certain Lot situated within the Property which Lot is as follows:

Lot 8, according to the survey of Lot 8, Greystone Highlands Commercial Subdivision as recorded in Map Book 19, page 56, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Terryco hereby consents to and joins in the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Greystone Highlands Commercial Subdivision (the "Declaration"), and all of the terms and provisions set forth therein, for the purpose of the application of the Declaration to said Lot 8 purchased by Terryco prior to the date hereof. Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.

Dated as of the 1st day of July, 1995.

TERRYCO, L.L.C., an Alabama  
limited liability company

By: \_\_\_\_\_

Its Member and Manager

By: \_\_\_\_\_

Its Member and Manager

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Terry Ponder, whose name as Member and Manager of Terryco, 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 the said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 1st day of July, 1995.

\_\_\_\_\_  
Notary Public

My Commission Expires: 6/17/99

[NOTARIAL SEAL]

[See Consent and acknowledgments on next page.]

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STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Paula B. Ponder, whose name as Member and Manager of Terryco, 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 the said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 12 day of July, 1995.

[NOTARIAL SEAL]

Suzanne C. Edwards  
Notary Public

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES NOVEMBER 14, 1998

### CONSENT OF HIGHLAND BANK AS MORTGAGEE

Highland Bank, an Alabama banking association, as the holder of a mortgage encumbering the aforesaid Lot 8, Greystone Highlands Commercial Subdivision, hereby consents to the foregoing Declaration of Covenants, Conditions and Restrictions for Greystone Highlands Commercial Subdivision.

HIGHLAND BANK

By: Sydney R. Gibbs, Jr.

Its Commercial Loan Officer

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Sydney R. Gibbs, Jr., whose name as Commercial Loan Officer of Highland Bank, an Alabama banking association, 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 the instrument, he/she as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 12<sup>th</sup> day of July, 1995.

[NOTARIAL SEAL]

Johnny J. Simonetti  
Notary Public

My Commission Expires: Nov. 18, 1997

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## EXHIBIT A

LEGAL DESCRIPTION

STATE OF ALABAMA  
SHELBY COUNTY

A parcel of land situated in the East 1/2 of the NW 1/4 and the West 1/2 of the NE 1/4 of Section 5, Township 19 South, Range 1 West in Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest Corner of the NE 1/4 of the NW 1/4 of said Section 5 and run North 89°05'00" East along the North Line of said 1/4 - 1/4 section for a distance of 727.58 feet to the Point of Beginning of said parcel; thence leaving said line run South 19°52'31" West for a distance of 163.56 feet to a point on a curve to the right having a radius of 275.00 feet and a central angle of 42°30'04"; thence run along the arc of said curve for a distance of 203.99 feet to the end of said curve; thence run South 27°37'26" East tangent to said curve for a distance of 184.56 feet; thence run South 62°22'34" West for a distance of 92.97 feet; thence run South 27°37'26" East for a distance of 225.00 feet; thence run South 35°20'31" East for a distance of 75.00 feet; thence run South 14°15'48" East for a distance of 115.64 feet; thence run South 17°41'38" West for a distance of 135.91 feet; thence run South 27°33'38" West for a distance of 242.59 feet; thence run South 13°44'59" West for a distance of 328.65 feet to a point in the SE 1/4 of the NW 1/4 of said Section 5; thence run South 30°38'54" West for a distance of 139.61 feet; thence run North 89°07'17" East for a distance of 750.00 feet to a point in the SW 1/4 of the NE 1/4 of said Section 5, said point being on the Westerly Right-of-Way of U.S. Highway 280; thence run North 7°49'30" West along said right-of-way for a distance 255.40 feet to the beginning of a spiral curve; thence run North 7°32'31" West along the chord of said spiral curve and along said right-of-way for a distance of 325.15 feet to a point in the NW 1/4 of the NE 1/4 of said Section 5; thence run North 52°37'53" West along said right-of-way for a distance of 86.80 feet to a point in the NE 1/4 of the NW 1/4 of said Section 5, said point being on a curve to the left having a radius of 2664.79 feet; thence run in a northwesterly direction along said curve and along said right-of-way for a measured chord distance of 400.54 feet; thence run North 2°43'14" East along said right-of-way for a distance of 101.75 feet to a point on a curve to the left having a radius of 2704.79 feet; thence run in a northwesterly direction along said curve and along said right-of-way for a measured chord distance of 590.96 feet to a point on said North Line of said NE 1/4 of the NW 1/4 of said Section 5; thence run South 89°05'00" West along said North Line for a distance of 200.00 feet to the Point of Beginning of the lands herein described. Said parcel contains 15.22 acres.

Inst # 1995-18410

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STATE OF ALABAMA )  
SHELBY COUNTY )

COVENANT AND AGREEMENT FOR WATER SERVICE

This Agreement is made this 24 day of April, 1989, by and between EBSCO Industries, Inc., a Delaware corporation, and its associates, successors in interest, and assigns ("Owner"), and Shelby County, a political subdivision of the State of Alabama ("County");

Whereas, the County is the owner and operator of a water distribution utility system and sells water to public distribution systems and retail consumers of water within Shelby County;

Whereas, Owner owns certain tracts of land within Shelby County which are contemplated to be sold or developed and, in either case, will require water service and Owner desires to contract for County water to be supplied to said tracts and covenant said property for exclusive service from the County water system,

Now, therefore, in consideration of the mutual agreements, covenants and obligations set forth herein, it is Agreed by and between the Owner and County as follows:

1. County covenants and agrees to make water from its water system available to the lands owned by Owner as shown on Exhibit A, as attached hereto and incorporated by reference (the "Subject Lands").

2. County covenants and agrees to construct and operate its main transmission lines in accordance with the plans and specifications as shown on Exhibit B, which is attached hereto and incorporated herein by this reference, as amended from time to time, and which, together with the current water distribution utility system owned and operated by the County and all other water distribution utility systems owned or operated by the County, now or in the future, are hereinafter collectively referred to the "County Main Water System"; provided however, the County shall at all times fulfill its obligations hereunder and not prejudice the quality and capacity of water service to the Subject Lands regardless of whatever areas the County may serve in the future.

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3. Owner covenants and agrees that all water distributed to or within the Subject Lands shall be received from the County Main Water System; provided, however, that Owner may, in its sole and absolute discretion, utilize water obtained from its own wells for landscaping and irrigation purposes for any portion of the Subject Lands. Notwithstanding anything provided herein to the contrary, the provisions of this Paragraph 3 and of Paragraphs 7, 8, and 17 below shall be cancelled, terminated, deemed null and void and of no further force or effect if, for any reason (including any of the reasons specified in Paragraph 9 below), the County fails or is unable to provide water service to any portion of the Subject Lands on or after the date specified in Paragraph 4 and such failure continues for fourteen (14) consecutive days.

4. County irrevocably and unconditionally agrees to furnish through the County Main Water System the water necessary to serve the needs and requirements of the Subject Lands and all present or future uses thereof and improvements constructed thereon. The County covenants and agrees that water mains shall be constructed and be in good operating condition in order to provide water for public consumption to all of the Subject Lands on or before May 1, 1990.

5. Owner agrees to construct, at its expense, the necessary lines to access the Subject Lands to the County Main Water System and obtain all necessary easements, licenses and rights-of-way. Owner agrees that all lines shall be constructed in accord with the reasonable design criteria and specifications required by the County, which are attached hereto as Exhibit C and incorporated herein by reference and as may be amended from time to time and, except for service lines (lines constructed from the trunk line or water main in a roadway to provide water service to an individual building site, which lines shall be owned and maintained by the owner of such building site), shall be the property of the County, its successors and assigns. Notwithstanding anything provided herein to the contrary, County covenants and agrees that its design criteria and specifications shall (a) apply only to the type of piping and methods of installation of piping for water lines (b) be uniformly applied to all users of the County Main Water System and (c) not exceed the minimum design criteria and specifications of the American Water Works Association as the same may be applicable to the Subject Lands.

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6. County agrees to furnish water to the Subject Lands at its usual and customary rates as provided in its rate schedule for all uses of water from the County Main Water System as adopted and as may be amended or modified from time to time. The initial proposed rate schedule is attached as Exhibit D. The water rates and other charges payable by Owner shall at all times be based on actual usage in terms of Equivalent Dwelling Units (EDU) (as measured by water meters) and shall be assessed on the same uniform, nondiscriminatory basis as such rates and charges shall be assessed to all other users of the County Main Water System. Impact fees or connection (hook-up) charges shall be payable on a per lot basis at the time that the owner of such lot requests that water service be provided for such property. The aggregate charges (impact, reservation, connection and monthly usage) for water service shall at all times be within the limitations of applicable law governing the reasonability of such charges.

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7. (a) So long as the County is not in material default which remains uncorrected for 30 days following written notice, or as long as the County is exercising its best efforts to correct such default, except as otherwise provided in this Agreement, Owner covenants and agrees to only allow water utility lines installed within the Subject Lands which distribute water sold or obtained from the County. Except as otherwise provided in this Agreement, all water sold or distributed to the Subject Lands shall be obtained directly or indirectly from the County.

(b) The covenants and agreements of Owner set forth in Paragraph 7(a) above shall not apply to existing water utility lines currently situated on the Subject Lands or the future installation of water lines by third parties pursuant to the exercise of any legal rights by said third parties; provided, however, that the existence of such water lines or the future installation of water lines on the Subject Lands by third parties shall not abrogate the obligations of Owner pursuant to Paragraph 3 above or otherwise under this Agreement. This provision shall be enforceable by the County and the County is authorized to defend any proceeding on behalf of Owner.

8. Subject to any existing easements or rights of others under applicable law, the terms and conditions of this Agreement shall be covenants running with the land and binding upon and inure to the benefit of all future owners, assignees, and successors in interest of the Owner.

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9. The parties may be excused from full performance with the requirements of this Agreement due to strikes, riots, national emergency, Acts of God, weather emergency, drought, or other acts beyond the reasonable control of the parties. Upon the occurrence of any of the foregoing events, the party whose performance is so delayed or excused shall use its best efforts to remedy, alleviate or circumvent any cause or causes that may prevent it from fully performing all of its obligations hereunder and will resume and proceed with the performance of such obligations as soon as it is able to do so.

10. The County may promulgate reasonable regulations and further conditions regarding the furnishing of water from the County Main Water System; provided, however, that notwithstanding anything provided in this Agreement or in any other rule, regulation or promulgation of the County to the contrary, the County agrees that any regulations or further conditions regarding the furnishing of water from the County Main Water System shall only relate to regulations governing rates and charges (as specified and limited by the provisions of Paragraph 6 above) and the design criteria and specifications which shall be applicable to the installation of necessary water lines by Owner (as specified and limited by the provisions of Paragraph 5 above).

11. This Agreement or the duties and responsibilities placed under the parties may be assigned to any successors in interest of either party; provided, however, that any assignee (or successor in interest) to the County must agree in writing to be bound by and otherwise perform all of the duties and obligations of the County as set forth in this Agreement.

12. The County covenants and agrees that it will supply water to Owner and the Subject Lands without condition, restriction or requirement respecting annexation of any portion of the Subject Lands served by the County Main Water System into any municipality.

13. The County covenants and agrees to at all times construct, operate and maintain at its sole cost and expense the County Main Water System, including all water lines and pumps constructed by Owner pursuant to Paragraph 5 above, in accordance with all applicable governmental rules, regulations, statutes, ordinances and regulations, whether federal, state or local in nature.

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14. In the event either party defaults in the performance of or breaches any of its respective covenants, representations or warranties set forth herein, then the other party shall be entitled, in addition to the exercise of any other rights or remedies available at law or in equity, to seek and obtain specific performance by the other party of its obligations hereunder or seek and obtain damages (including loss of profits, business opportunity and all other direct or consequential damages) suffered, paid or incurred as a result of default, together with all costs and reasonable attorneys' fees paid or incurred in connection therewith.

15. Owner shall grant or cause to be granted to the County permanent easements for all necessary main or transmission lines necessary to perform its obligations hereunder and shall use its best efforts to obtain or grant additional easements to the County in the future to the extent that such easements are needed to enable the County to construct and operate the water system. County agrees to cooperate with Owner in the locating of its easements and lines to not unreasonably interfere in the development of the Subject Lands and agrees that such easements shall not interfere with the use or occupancy of any improvements now or hereafter situated on the Subject Lands.

16. Anything herein to the contrary notwithstanding, the parties hereto shall cooperate with each other following the delivery of this Covenant and Agreement in order to accomplish their respective obligations hereunder.

17. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter described herein and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by all parties hereto. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Alabama. If any term, covenant or condition of this Agreement or the application thereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement

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shall be valid and enforceable to the fullest extent permitted by law.

18. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "day" shall refer to calendar days and not business days.

19. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All counterparts shall collectively constitute a single agreement.

20. Each party hereto shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees of attorneys, engineers, and accountants, except as otherwise expressly provided herein.

21. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by hand, or sent by the United States mail, certified postage prepaid, return receipt requested, at the addresses and with such copies as designated below. Any notice, request, demand or other communication delivered or sent in the manner aforesaid shall be deemed given or made (as the case may be) when actually delivered to the intended recipient, in the case of any deliveries by hand, or upon deposit in the United States mail as provided above.

For Owner: EBSCO Industries, Inc.  
Attn: Elton B. Stephens, Jr.  
6 Office Park Circle  
Suite 310  
Birmingham, Alabama 35223

a copy to : Charles A. J. Beavers, Jr., Esquire  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
Birmingham, Alabama 35203



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For County: Gregg Rushton, Administrator of  
Water & Sewer Services  
Shelby County Commission  
P. O. Box 467  
Columbiana, Alabama 35051

a copy to : Raymond P. Fitzpatrick, Jr., Esquire  
P. O. Box 360187  
Birmingham, Alabama 35236-0187

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and attested by their duly authorized officers or officials as of the date first above written.

EBSCO Industries, Inc.

By: [Signature]

Its Vice President

WITNESS:

SHELBY COUNTY, a political subdivision  
of the State of Alabama

By: [Signature]

Its Commissioner

ATTEST:

Its [Signature]



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STATE OF ALABAMA )  
Shelby COUNTY )

I, Rebecca W. Tatum, a notary public,  
do hereby certify that on this 21st day of April,  
1989, personally appeared before me Elton B.  
Stephens Jr., who, being by me first duly sworn,  
declared that he is the Vice President  
of EBSCO Industries Inc., that he executed  
the foregoing document.

Rebecca W. Tatum  
Notary Public  
My Commission expires: \_\_\_\_\_

MY COMMISSION EXPIRES MARCH 19, 1990

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STATE OF ALABAMA )  
Shelby COUNTY )

I, Delwood B. Foster, a notary public,  
do hereby certify that on this 24th day of April,  
1989, personally appeared before me Howard Foster,  
who, being by me first duly sworn,  
declared that he is the Commissioner  
of Shelby County, that he executed  
the foregoing document.

Delwood B. Foster  
Notary Public  
My Commission expires: 1/10/93

STATE OF ALABAMA )  
\_\_\_\_ COUNTY )

I, \_\_\_\_\_, a notary public,  
do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_,  
1989, personally appeared before me \_\_\_\_\_,  
who, being by me first duly sworn,  
declared that he is the \_\_\_\_\_  
of \_\_\_\_\_, that he executed  
the foregoing document.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

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1.056 +-Acres

## EXHIBIT "A"

PARCEL 1The following in Section 1:

SW 1/4 of NE 1/4; NW 1/4; N1/2 of SW 1/4

The following in Section 2:E 1/2; SE 1/2 of NE 1/4 of NW 1/4; SE 1/4 of NW 1/4;  
NE 1/4 of SW 1/4; SE 1/2 of NW 1/4 of SW 1/4; S 1/2 of  
SW 1/4

Containing 800 acres, more or less.

PARCEL 2The following in Section 3:NW 1/2 of NE 1/4 of NW 1/4; W 1/2 of NW 1/4;  
NW 1/2 of NW 1/4 of SW 1/4The following in Section 3:SE 1/4 of NE 1/4; NE 1/4 of SE 1/4; NW 1/4 of SE 1/4,  
less the following: Commence at the SW corner of NW 1/4 of  
SE 1/4 of Section 3, Township 19 South, Range 1 West and  
run North to a certain branch and the first branch; thence  
up said branch to the first fork, thence up the right hand  
prong of said branch to the South boundary of the above  
described forty, containing 4 acres, more or less.

W 1/2 of SW 1/4 of NE 1/4

Containing 256 acres, more or less.

All of the above in Township 19 South, Range 1 West,  
Shelby County, Alabama.20070131000045880 95/140 \$428.00  
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## Exhibit A - Continued - page 2

The NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  West of US Highway 280; the North 10 acres of the SE $\frac{1}{4}$  of NW $\frac{1}{4}$ ; also beginning at the SE corner of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  running North to the West Right of Way of US Highway 280; thence SE and South along said Right of Way to the South line of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ; thence West along the South line of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  to the point of beginning. All in section 5, Tp 19 South Range One West containing 47 acres, more or less. All of the North 330' of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  lying West of Highway 280 situated in Section 5 Tp 19 South Range West containing  $\frac{1}{4}$  acre, more or less.

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2,100 +-Acres

EXHIBIT "A" (p33)

## PARCEL 1:

All of Section 19, Township 18 South, Range 1 East, lying South and East of easternmost ridge of Double Oak Mountain, the old ridge road to be the dividing line.

## PARCEL 2:

That part of Section 30, Township 18 South, Range 1 East described as follows: Begin at the intersection of the old ridge road running along the crest of Double Oak Mountain with the west Section line and run thence South along section line 24 chains, more or less, to an old woods road; thence Northeasterly along the old woods road to the North line of said Section; thence West along said Section line 27 chains, more or less, to the old ridge road running along the crest of Double Oak Mountain; thence southwesterly along the old ridge road to the point of beginning.

## PARCEL 3:

The Southeast diagonal one-half of SE 1/4; SE 1/4 of NE 1/4 lying East of the crest of Double Oak Mountain, being situated in Section 25, Township 18 South, Range 1 West.

## PARCEL 4:

NE 1/4; SW 1/4; NW 1/4 of SE 1/4; and Southeast diagonal one-half of NW 1/4; being situated in Section 36, Township 18 South, Range 1 West.

## PARCEL 5:

That part of the following described land that lies North and West of County Highway No. 43:

NW 1/4 of NE 1/4; SW 1/4 of NE 1/4; NW 1/4; and W 1/2 of NW 1/4 of SE 1/4, All in Section 11, Township 19 South, Range 1 West.

Also SW 1/4 of Section 11, Township 19 South, Range 1 West, lying North and West of County Highway No. 43, LESS AND EXCEPT the following parcel of land belonging to Brasher's Chapel Full Gospel Church of God and/or Brasher Chapel Church and Cemetery, viz: A part of SW 1/4 of Section 11, Township 19 South, Range 1 West, more particularly described as follows: Commence at the Northeast corner of NW 1/4 of SE 1/4 of said Section and run West along North line of said 1/4 1/4 Section 781.65 feet to the center line of a County Road (said point being 153.4 feet Southwest of point of curve of said County Road); thence an angle to

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phs -



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EXHIBIT "A" (P19)

the left of 43 deg. 11 min. and run in a Southwesterly direction along said center line of County Road, 1451.0 feet to the point of curve of a curve to the left; thence continue in a Southwesterly direction along tangent of said curve 139.0 feet; thence an angle to the right of 105 deg. 33 min. and run in a Northwesterly direction 38.72 feet to Northwesterly right of way of said County Road to the point of beginning of tract herein described; thence continue along same course 356.22 feet; thence an angle to the left of 110 deg. 33 min. 30 sec. and run in a Southwesterly direction 375.0 feet; thence an angle to the left of 69 deg. 26 min. 30 sec. and run Southeastwardly 342.59 feet to the Northwesterly right of way of said road; thence turn an angle to the left and run along said road right of way 371.28 feet to the point of beginning of the parcel of property herein described in Shelby County, Alabama.

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PARCEL 6:

Begin at the Northeast corner of the SE 1/4 of NW 1/4, Section 10, Township 19 South, Range 1 West, Shelby County, Alabama; from said point of beginning run South along the East line of said quarter-quarter section 90 feet; thence turn right and run West parallel to the North line of the S 1/2 of NW 1/4 of said Section to the East right-of-way line of the Dunnivant Road; thence turn right and run in a Northerly direction along said right of way to the North line of the S 1/2 of NW 1/4 of said Section; thence turn right and run East along the North line of the S 1/2 of the NW 1/4 of said Section to the point of beginning, being a 90 foot strip of property across the North side of the S 1/2 of NW 1/4, East of Dunnivant Road.

PARCEL 7:

LOT 4, according to the survey of Double Oak Estates, as recorded in Map Book 8 Page 129 in the Probate Office of Shelby County, Alabama.

PARCEL 8:

All of Section 10, Township 19 South, Range 1 West, LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS:

BH



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EXHIBIT A (pg 5)

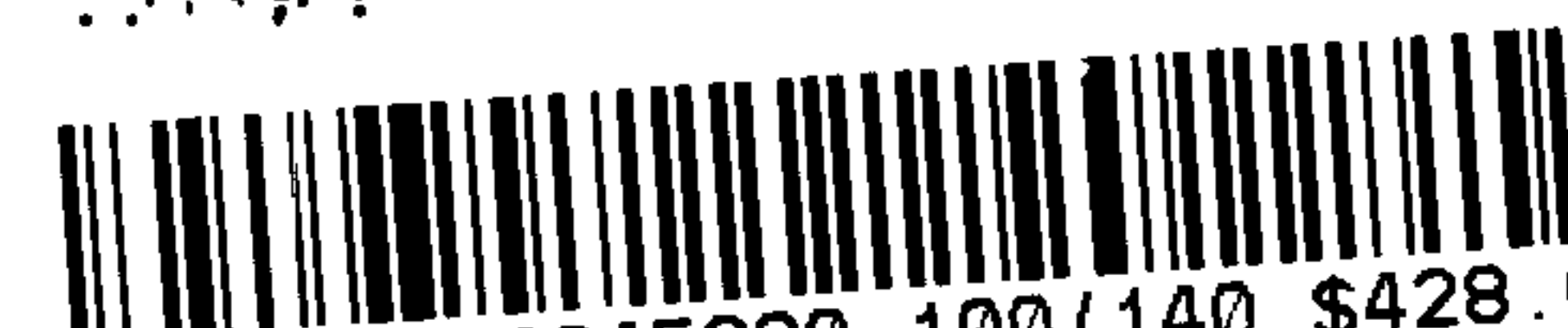
(a) Except the NW 1/4, LESS Parcel 6 which lies in said NW 1/4 and is conveyed hereinabove, and except the NW 1/4 of SW 1/4, all in Section 10, Township 19 South, Range 1 West.

(b) Except Lots 1, 2, 3 and 5 of Double Oak Estates, as recorded in Map Book 8 Page 129 in the Probate Office of Shelby County, Alabama.

(c) Except property conveyed to Nolan D. Downs and Barrett H. Downs described as a part of the NW 1/4 of the NE 1/4 and a part of the NE 1/4 of the NE 1/4 of Section 10, Township 19 South, Range 1 West, beginning at the Northwest corner of said NE 1/4 of the NE 1/4; then East along the North line of said section a distance of 287.55 feet; then 116 deg. 05 min. 16 sec. right a distance of 1270.52 feet to the Northeast corner of Lot 2 of Double Oak Estates, as recorded in Map Book 8 Page 129; then 88 deg. 27 min. 10 sec. right and run Northwesterly along the North lot line of said Lot 2 to the Easterly right-of-way line of Double Oak Lane; thence 13 deg. 09 min. 25 sec. left a distance of 50 feet along the North right-of-way line of said road; thence 100 deg. 00 min. right a distance of 341.35 feet; then 38 deg. 07 min. 46 sec. right a distance of 176.48 feet; thence 38 deg. 25 min. right a distance of 145.31 feet; thence 57 deg. 47 min. 10 sec. left a distance of 227.17 feet; then 71 deg. 35 min. left a distance of 173.42 feet; thence 61 deg. 05 min. 10 sec. right a distance of 186.30 feet to the North line of said Section; thence right 59 deg. 14 min. 45 sec. along said section line a distance of 349.13 feet to the point of beginning.

(d) EXCEPT property conveyed to Jeffrey H. Flannery and Judith L. Flannery described as a part of the NW 1/4 of the NE 1/4, Section 10, Township 19 South, Range 1 West, described as beginning at the Northwest corner of said NW 1/4 of the NE 1/4, thence South along the West one-quarter line of said 1/4-1/4 section a distance of 651.01 feet to the Northwest corner of Lot 1 of Double Oak Estates as recorded in Map Book 8 Page 129, Shelby County; thence 90 deg. 00 min. left a distance of 291.31 feet along the North boundary of Lot 1; thence 84 deg. 51 min. right a distance of 335.23 feet to the Northwest right of way line of Double Oak Lane; thence 162.51 feet left a distance of 150.53 feet along said right of way line; thence 90 deg. right a distance of 50 feet along the North right of way line of Double Oak Lane; thence 80 deg. left a distance of 341.35 feet; thence 38 deg. 07 min. 46 sec. right a distance of 176.48 feet; thence 38 deg. 25 min. right a distance of 145.31 feet; thence 57 deg. 47 min. 10 sec. left a distance of 227.17 feet; thence 71 deg. 35 min. left a distance of 173.42

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# EXHIBIT A (pg 6)

feet; thence 61 deg. 05 min. 10 sec. right a distance of 186.30 feet to the North line of said Section; thence 120 deg. 45 min. 15 sec. left a distance of 979.17 feet along the North line of said Section to the point of beginning.

## PARCEL 9:

That part of the NW 1/4 of NW 1/4 of Section 14, Township 19 South, Range 1 West that lies North and West of County Highway No. 43.

## PARCEL 10:

All that part of the following described land lying North and West of County Highway 43, viz: NW 1/4 of NE 1/4; NW 1/4; N 1/2 of SW 1/4 and SW 1/4 of SW 1/4, Section 15, Township 19 South, Range 1 West.

## PARCEL 11:

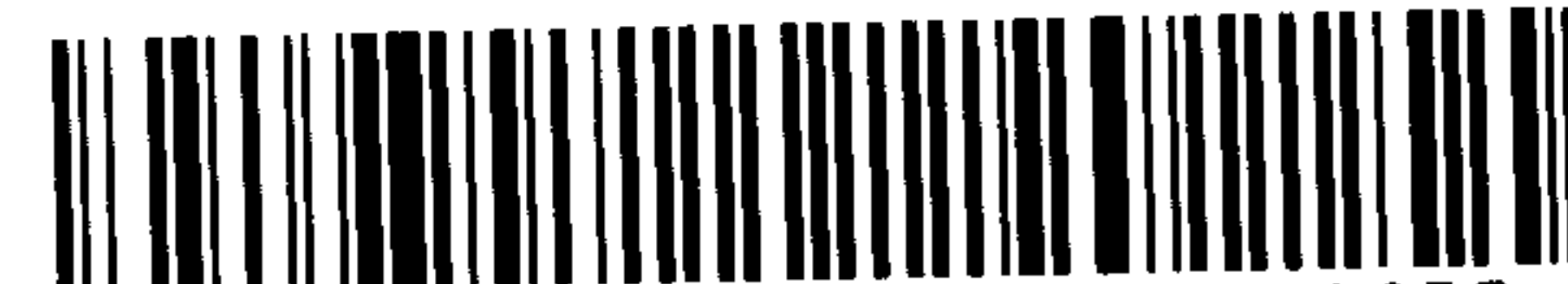
The SE 1/4 of NE 1/4 and NE 1/4 of SE 1/4, Section 16, Township 19 South, Range 1 West, Shelby County, Alabama.

## PARCEL 12:

All that part of the SE 1/4 of the SE 1/4 of Section 9, Township 19 South, Range 1 West, Shelby County, Alabama, that lies East of the right of way of the New Dunavant Road right of way more particularly described as follows: Begin at the Southeast corner of Section 9, Township 19 South, Range 1 West, thence run in a Northerly direction along the East line of said Section for a distance of 1,378.86 feet to the most Northeasterly corner of said property, said point being the Northeast corner of the SE 1/4 of the SE 1/4 of Section 9, Township 19 South, Range 1 West; thence turn an angle to the left of 92 deg. 52 min and run in a Westerly direction along the North line of said 1/4-1/4 for a distance of 188.00 feet; thence turn an angle to the left of 107 deg. 50 min. and run in a Southeasterly direction for a distance of 284.60 feet; thence turn an angle to the right of 68 deg. 50 min. and run in a Southwesterly direction for a distance of 290.70 feet; thence turn an angle to the right of 90 deg. 00 min. and run in a Northwesterly direction for a distance of 328.40 feet; thence turn an angle to the right of 90 deg. 00 min. and run in a Northeasterly direction for a distance of 315.80 feet to its intersection with the North line of the SE 1/4 of Section 9, Township 19 South, Range 1 West; thence turn an angle to the left of 141 deg. 00 min. and run in a Westerly direction along the North line of said 1/4-1/4 for a distance of 112.05 feet to a

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*BVA*



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EXHIBIT A (pg 7)

point on the Easterly right of way line of the New Dunavant Road; thence turn an angle to the left of 54 deg. 54 min. and run in a South-westerly direction along the Easterly right of way line of the New Dunavant Road for a distance of 1,459.71 feet; thence turn an angle to the left of 66 deg. 32 min. 24 sec. and run in a Southeasterly direction for a distance of 173.92 feet to a point on the South line of the SE 1/4 of Section 9, Township 19 South, Range 1 West; thence run in an Easterly direction along the South line of said Section 9, for a distance of 1,080.27 feet to the point of beginning; situated in Shelby County, Alabama.

PARCEL 13:

Begin at the Southeast corner of Section 35, Township 18 South, Range 1 West, and run West along the South line of said Section 1950 feet; turn an angle to the right and run Northeastwardly in a straight line to the centerpoint of the East line of said Section 35; turn thence an angle to the right and run South along said East section line to the point of beginning; LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS

(a) Land sold to BellSouth Mobility Inc. described as, Commence at the Southwest corner of Southeast 1/4 of Section 35, Township 18 South, Range 1 West, and run East along the South quarter line 1730.32 feet; thence North 32 deg. 47 min. 17 sec. East and run 284.70 feet to the point of beginning; thence continue along last said described course and run 80.0 feet; thence North 57 deg. 12 min. 43 sec. West and run 60.0 feet; thence South 32 deg. 47 min. 17 sec. West and run 80.0 feet; thence South 57 deg. 12 min. 43 sec. East and run 60.0 feet to the point of beginning.

(b) Land sold to South Central Bell described as, Begin at the Southwest corner of the SE 1/4 of Section 35, Township 18 South, Range 1 West and run East along the South line of said 1/4 section for a distance of 1730.32 feet; thence turn an angle to the left of 56 deg. 11 min. 47 sec. in a Northeasterly direction for a distance of 34.70 feet to the point of beginning; thence continue along said line for a distance of 250.0 feet; thence turn an angle to the left of 90 deg. 00 min. 00 sec. for a distance of 175.0 feet; thence turn an angle to the left of 90 deg. 00 min. 00 sec. for a distance of 250.0 feet; thence turn an angle to the left of 90 deg. 00 min. 00 sec. for a distance of 175.0 feet to the point of beginning.

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### Exhibit A (pg 8)

#### Parcel 14:

All interest in and to a right of way in Section 35, Township 18 South, Range 1 West, 60 feet in width and described as follows: Begin at the Southeastern corner of Section 35, Township 18 South, Range 1 West, Shelby County, Alabama, and run West along the South line of said Section 2, 046.54 feet to a point on said South section line, which point is an old iron pipe found; from said iron pipe found, turn an angle to the left of 1 deg. 24 min. 24 sec. and continue Westerly 41.07 feet to the center of an old road on the westernmost crest of Double Oak Mountain, which point is the point of beginning of the right of way hereby conveyed; from said point of beginning, turn an angle to the right of 134 deg. 31 min. and 03 sec. and run 199.84 feet, more or less along the center of said old road on the said westernmost crest of Double Oak Mountain to a point; thence turn an angle to the right of 17 deg. 19 min. 08 sec. and run 217.40 feet along the same old road bed leaving the crest of said mountain and running northeastwardly to a point on the eastern boundary line of Grantor's property, which point is the western boundary line of Grantee's property.

#### PARCEL 15:

ALL interest of the Grantor in and to a 50 foot easement for ingress and egress being situated in the West 1/2 of Section 1, Township 19 South, Range 1 West, Shelby County, Alabama, and lying 25 feet on either side of the center line herein described: Commence at the Northeast corner of the NE 1/4 of the NW 1/4 of Section 1, Township 19 South, Range 1 West; thence run West along the North line of said Section a distance of 852.69 feet to the point of beginning of said easement center line; thence run South 29 deg. 41 min. 06 sec. West, a distance of 643.23 feet; thence run South 38 deg. 43 min. 24 sec. East a distance of 118.97 feet; thence run South 29 deg. 45 min. 16 sec. West a distance of 337.70 feet; thence run South 7 deg. 10 min. 54 sec. East a distance of 158.35 feet; thence run South 9 deg. 53 min. 59 sec. West a distance of 195.97 feet; thence run South 40 deg. 34 min. 01 sec. East a distance of 257.23 feet; thence run South 29 deg. 17 min. 29 sec. West a distance of 322.12 feet; thence run South 2 deg. 19 min. 31 sec. East a distance of 380.35 feet; thence run South 60 deg. 39 min. 01 sec. East a distance of 173.96 feet; thence run South 35 deg. 20 min. 31 sec. East a distance of 183.47 feet; thence run South 17 deg. 02 min. 31 sec. East a distance of 328.42 feet; thence run South 0 deg. 42 min. 11 sec. East a distance of 362.37 feet; thence run South 48 deg. 05 min.

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EXHIBIT A (pg 9)

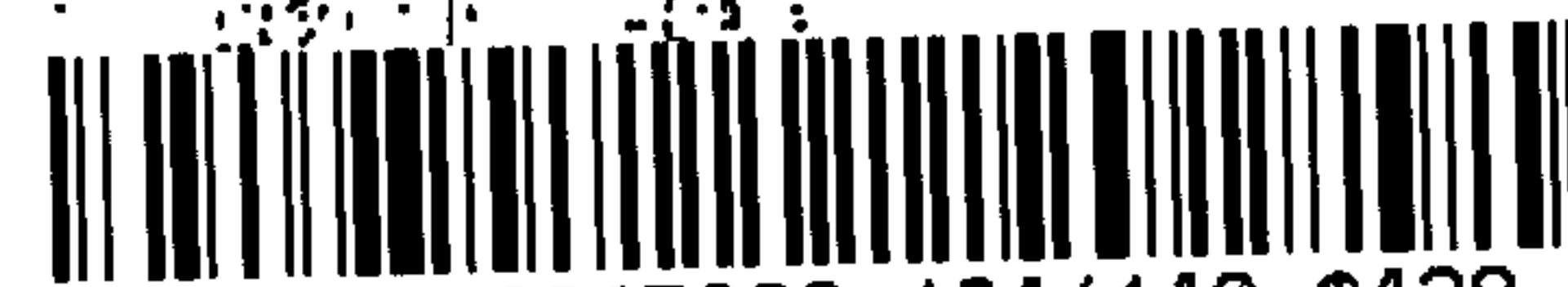
01 sec. East a distance of 174.51 feet; thence run South 44 deg. 42 min  
 51 sec. East a distance of 160.81 feet; thence run North 51 deg. 10 min  
 19 sec. East a distance of 242.99 feet; thence run South 80 deg. 19 min  
 41 sec. East a distance of 89.47 feet; thence run South 3 deg. 31 min.  
 19 sec. West a distance of 314.53 feet; thence run South 33 deg. 26 min  
 51 sec. East a distance of 135.84 feet to the center line of an  
 existing paved County Road and the point of ending of the center line  
 of said 50 foot easement for ingress and egress; being situated in  
 Shelby County, Alabama.

PARCEL 16:

Also all right, title and interest in and to the easements heretofore  
 reserved by the Grantors in that certain deed to EBSCO Industries, Inc.  
 dated April 20, 1983, and recorded in Deed Book 346 Page 636 in said  
 Probate Office

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to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable, if such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate.

(ii) the amount of insurance stated in Schedule A.  
 (b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation brought by or for the insured.

# Lawyers Title Insurance Corporation

## Schedule A

Hallenbeck/9.75 +- Acres  
 OWNER'S POLICY

| CASE NUMBER | DATE OF POLICY                   | AMOUNT OF INSURANCE |
|-------------|----------------------------------|---------------------|
| NG-1729     | October 3, 1984<br>at 12:27 P.M. | \$34,000.00         |

THE POLICY NUMBER SHOWN  
 ON THIS SCHEDULE MUST  
 AGREE WITH THE PREPRINTED  
 NUMBER ON THE COVER SHEET

| POLICY NUMBER |
|---------------|
| 85-00-219848  |

### 1. Name of Insured:

EBSCO INDUSTRIES, INC.

### 2. The estate or interest in the land described herein and which is covered by this policy is:

Fee Simple.

### 3. The estate or interest referred to herein is at Date of Policy vested in:

EBSCO INDUSTRIES, INC.

### 4. The land referred to in this policy is described as follows:

All that part of the NW 1/4 of SE 1/4, Section 17, Township 19 South, Range 1 West, lying Northwest of centerline of County Highway #43, Situated in Shelby County, Alabama.

Being the same property conveyed from George A. Hallenbeck and wife, Nancy Puck Hallenbeck to EBSCO INDUSTRIES, INC., by Warranty Deed dated September 17, 1984, and filed for record on October 3, 1984, at 12:27 P.M. and recorded in Real Record 4, page 324, in the Probate Office of Shelby County, Alabama.

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EXHIBIT A (pg 10)

SHELBY COUNTY ABSTRACT & TITLE COMPANY, INC.  
 Agent by:

*Jack L. Stetson*  
 Notary Authorized Officer of Agent

Columbiana, Alabama 35051

Phone 669-6204

This Policy is invalid unless the cover

Policy Form 8 (970) 7-70 Copyright 1988

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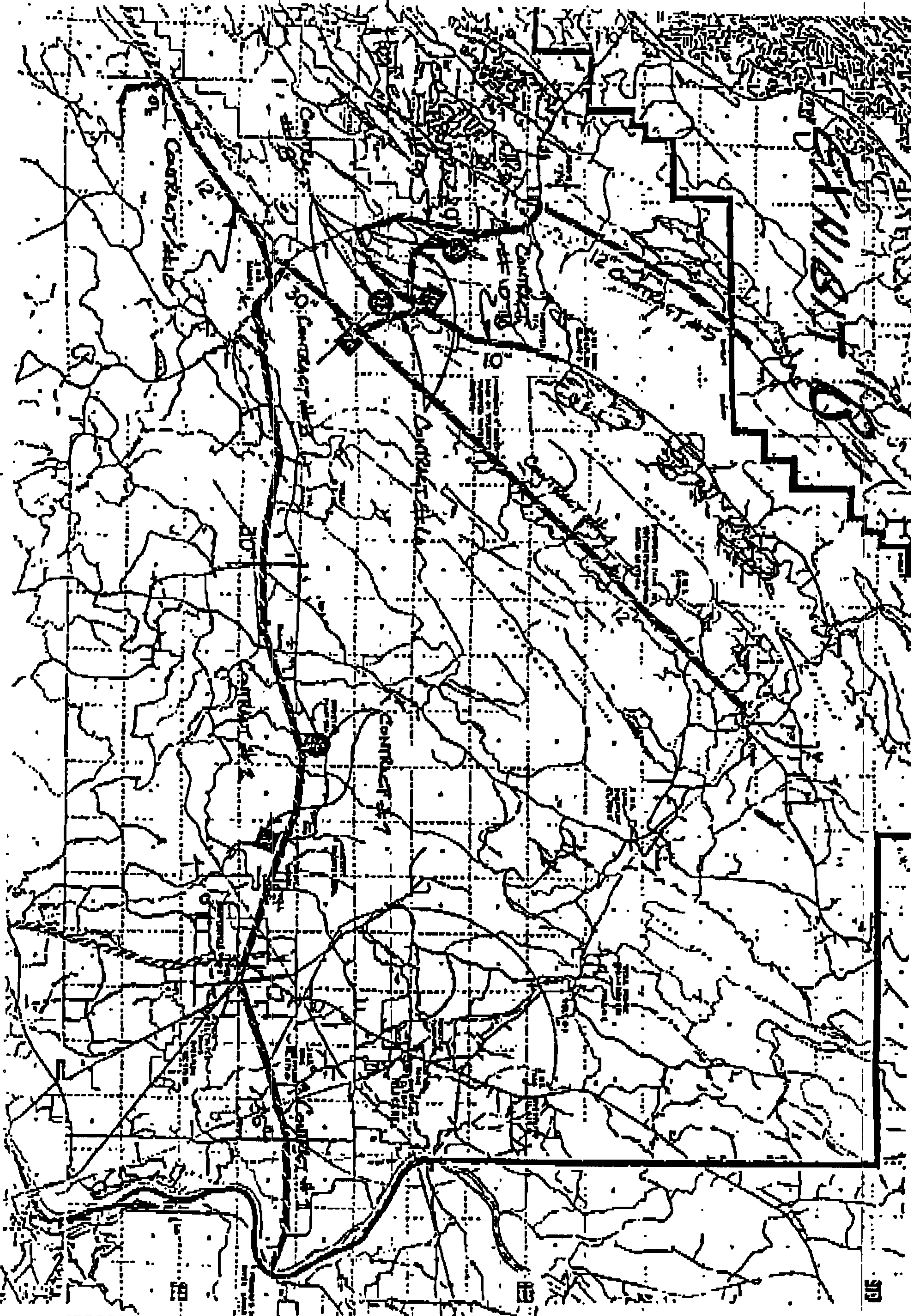


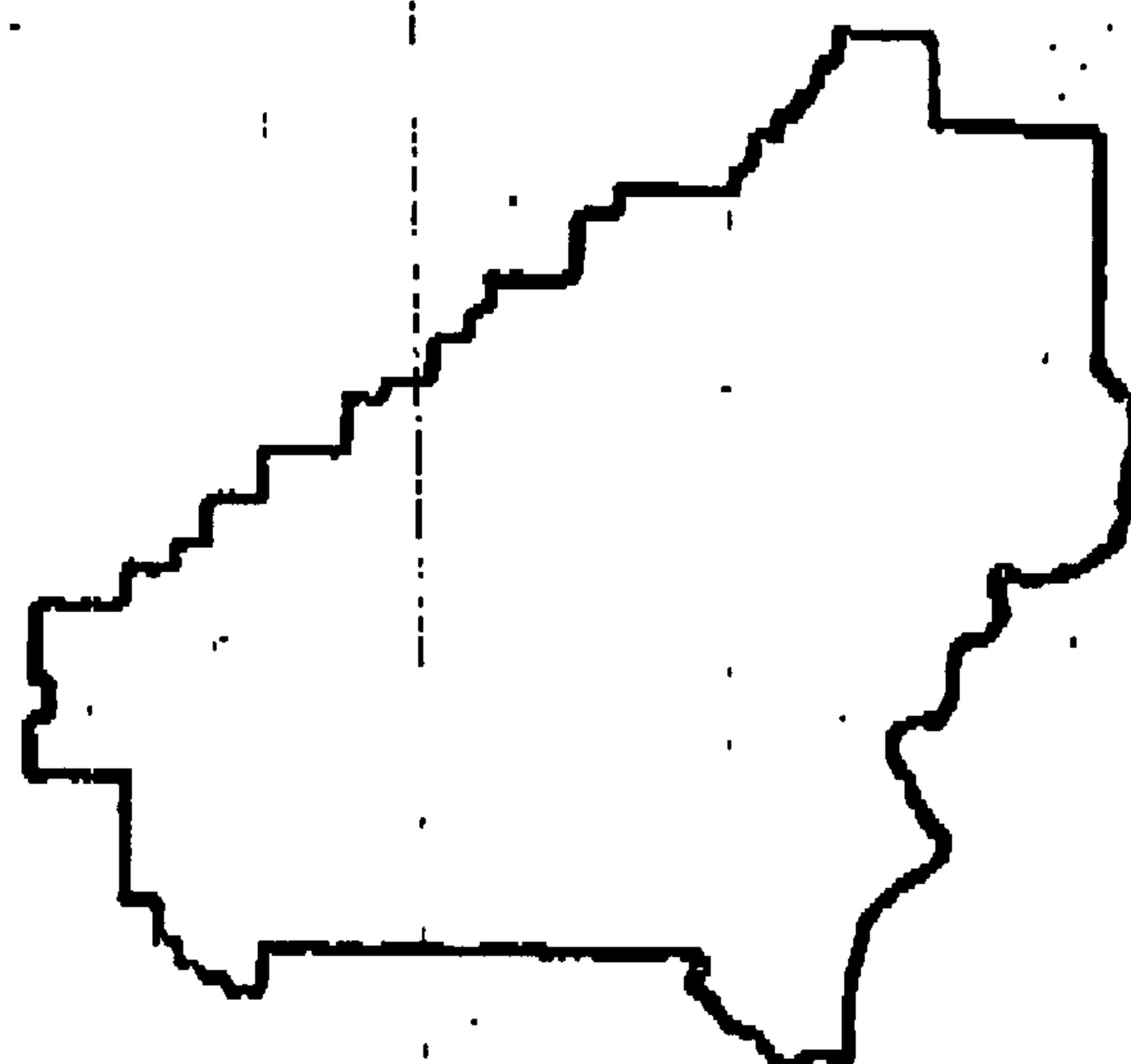
EXHIBIT C

SHELBY COUNTY  
STANDARD WATER  
SPECIFICATIONS



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PUBLIC WORKS  
WATER DIVISION



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**SHELBY COUNTY**

**STANDARD WATER SPECIFICATIONS**

**SHELBY COUNTY COMMISSION**

*Chairman, Thomas A. Snowden, Probate Judge*  
*Commissioner, Steve Chambers*  
*Commissioner, Howard Foster*  
*Commissioner, Ken Wilson*  
*Commissioner, Paul Yeager*

*Public Works Director/County Engineer*  
*John Gary Ray*

ROOM 235 PAGE 631

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# **I. DEFINITION OF TERMS AND EXPLANATIONS OF ABBREVIATIONS**

a. **"CALENDAR MONTH"** - A calendar month according to the standard calendar at the time in effect.

b. **"CONSUMER"** - The person legally or equitably responsible for the payment of charges of water service furnished through the system, whether used or wasted on any premises within or without the system.

c. **"CORPORATION COCK"** - A special brass valve designed for insertion in the water mains of the County to which can be attached the service line of the owner.

d. **"COUNTY"** - The Public Works Department of Shelby County, Alabama, acting from time to time by and through its duly authorized officers, agents and employees.

e. **"CURB COCK"** - A special brass valve designed for installation between the service line and meter.

f. **"DOMESTIC SERVICE"** - A tap, lateral, meter and box that supplies water to the residential consumer or consumer requiring water for domestic purposes only.

g. **"FIRE LINE"** - A system of pipes and equipment used to supply water in an emergency for extinguishing fire.

h. **"DISTRIBUTION SYSTEM"** - The pipes, mains, valves, fittings and other related appliances through which water is transmitted to consumers of the County's Water System.

i. **"MAINS"** - The pipe in the street, avenue or alley, extending parallel or nearly parallel to the line of property abutting thereon.

j. **"MONTH"** - One-twelfth of a year, or the period between two consecutive monthly readings of the County's water meters, as near thirty days apart as practical.

k. **"OCCUPANT"** - The person actually in possession or control of any premises or part thereof, who is a consumer.

l. **"OWNER"** - The person who has legal or equitable title to any premises.

m. **"PAVING"** - The surface of a street or the treatment thereof.

n. **"PERSON"** - Every individual, firm, association, partnership or corporation.

o. **"PREMISES"** - Land, building, or other structure and appurtenances thereto.

p. **"PRIVATE FIRE PROTECTION SYSTEM"** - Water mains, pipes, hydrants, sprinklers, and other facilities on private premises.

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q. "PUBLIC FIRE PROTECTION SYSTEM" - Water mains, pipes, hydrants, and other facilities in a street, used in whole or in part, for the protection of premises from fire.

r. "SERVICE MAIN" - The temporary supply pipe installed on streets where no standard water main exists.

s. "STREET" - Every way or place of whatever nature in Shelby County, open to the use of the public, including streets, alleys, highways, park or other roads, and all other public places.

t. "TAP" - A corporation cock, valve or fitting, installed in the main of the Shelby County Water System to which can be connected the service pipe of owner.

u. "WATER LATERAL" - The pipe fittings and equipment in a street connected to a main used to conduct water to any premises.

v. "WATER SERVICE" - The furnishing or supplying of water through the County water system for residential, commercial, industrial or fire protection uses, or the readiness to furnish water for said purposes, from the County's water system.

w. "WATER SYSTEM" - The County's water treatment and distribution system supplying the county and citizens thereof with water service, together with any extensions and additions thereto hereafter made.

x. "YEAR" - Any period of twelve consecutive months.

## 2. APPLICATION FOR CONNECTION TO WATER SYSTEM

a. Connection with the mains of the County will be made upon the written application of the owner of the premises to be supplied with water (or his duly authorized agent), upon blanks provided by the County conditioned upon the agreement of applicant to be bound by the Rules and Regulations of the County. Each applicant shall provide at his expense the service pipe or line between the main and water meter, including all appurtenant fittings, fixtures and appliances. The size, type and kind of material which applicant desires to use, shall be subject to approval of the County and installation thereof shall be made by a plumber, licensed by the County to perform work in connection with the County system. No service lateral of a size less than three-quarter inch inside diameter, shall be allowed. No material other than Type K copper, Class 50 ductile iron, or Class 150 P.V.C. shall be permitted or approved by the County.



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b. When application is made for a connection with the mains of the County to supply water to a house or houses on a street where there is no 6-inch ductile iron water main, because the property is sparsely settled or developed, consideration will be given to each specific case for permission to install a suitable Service Main. Standard 6-inch mains or larger shall be required.

c. In every instance when a new small tap (3/4" to 2") is to be made, a plumber licensed by the County must sign the application book in the Building Inspection Office and payment must be received before the tap shall be made.

### 3. APPLICATION FOR WATER SERVICE

a. Upon the application of the owner or any authorized agent (plumber, licensed by the County), or tenant of the owner, water will be furnished through connections already made or applied for by the owner. Such applicant shall be bound by the Rules and Regulations of the County.

b. The applicant may make application by telephone. Such applicant shall be bound by the Rules and Regulations and shall acknowledge such by accepting water bills at the current address.

235 REC 635  
BOOK  
c. The application shall state the name of the applicant, owner of the premises, the character and extent of the service desired, a description of the premises, including the names of street and house number, if any, the number and kind of fixtures through which water will be supplied, and such other information as may reasonably be required by the County to enable it to give the desired service. No water service will be furnished through any new connection (except for construction purposes involving the use of only one faucet or opening, or where no sanitary facilities are installed) until certificate has been issued by the County Building Inspector certifying that all plumbing and fixtures have been installed in accordance with the Southern Building Code.

d. The applicant, by requesting to be supplied with water by the County for the purpose stated, agrees to pay at the regular schedule of rates and to comply with the Rules and Regulations governing the service to water consumers of the County as they now exist or may hereafter be modified. Applicant further agrees to pay the charges for water service for the premises subscribed for at the County Engineer's Office. For failure to comply with the Rules and Regulations governing thereof, the County may turn-off the water from such premises without notice.

### 4. APPLICATION FOR CONSTRUCTION WATER

a. The Builder or the Builder's plumber shall make application for construction water at the Shelby County Building Inspector's Office, prior to obtaining a plumbing permit, OR the plumber may complete the "Construction Water Permit" form and either take it or mail it along with the application for plumbing permit to the County Building Inspector's Office.

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b. The plumber is then authorized to connect the lateral from the water main directly to the house lateral for supplying water for construction purposes. It is the responsibility of the County to identify the location of the lateral by marking the curb with a "W". If the County measurements are incorrect and the lateral cannot be located within reasonable time and effort, County personnel should be notified to uncover the lateral.

c. The Builder will be billed each month for each lot for which a plumbing permit was obtained. A monthly flat rate amount as determined by the County will be charged as "Construction Water". A single meter may be installed to provide construction water for a shopping center, office complex, etc.

d. Just prior to requesting final plumbing inspection, the plumber will notify the County to install each meter and box.

e. Flat rate billing will be discontinued on the date meter is set, and regular billing based on meter reading will begin.

5. CHANGE IN TENANCY OR SERVICE

a. A new application must be made and approved by the County upon any change in tenancy or in the service, as described in the application, and the County shall have the right to discontinue the water supply until such new application is made and approved. Should a new consumer occupying such premises fail to apply to the County for water service within forty-eight hours after occupying such premises, the new consumer shall be liable for all water charges that have accrued since the last reading of the meter, prior to the date said new consumer occupied such premises, and shall continue to be liable for all water consumed and all other charges imposed under the Rules and Regulations of the County.

6. TAPPING WATER MAINS

a. The County shall establish tap fees for 3/4", 1", 1-1/2", and 2" taps.

b. The tap fee for 3/4" and 1" shall include tapping material, meter, meter box, meter couplings, and labor to make tap (after main is properly exposed by the plumber) and set meter and box.

c. The scheduled tapping fee for 1-1/2" and 2" taps shall include only labor and material to make the tap (after the main has been properly exposed by the plumber). Cost of the meter, meter box, meter couplings and labor for installation shall be in addition to the scheduled tapping fee and shall be established for each job as required. The basis for this cost shall be the cost of the meter, the cost of associated installation material, current equipment cost, and the estimated cost of labor. Price quotes for 1-1/2" and 2" meters shall be firm for sixty (60) calendar days. These taps will be handled by the County or its Contractor.



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d. Charges for taps or connections metered or fire line services in excess of two-inches will be furnished at a firm price for a period of sixty (60) calendar days from the date of the initial request (written application) on such work. The County shall make all such large taps. Prices for large taps are subject to change by the County. The price shall include the labor only for the tap. All material, including meter and subsequent connections shall be furnished to the County's Standard Subdivision Specifications by the owner or his agent. Upon installation, title and ownership will revert to the County who will provide all maintenance and replacement in size of such meters.

e. The installation of the 3/4" through 2" laterals from the tap to the final location of the meter shall be done by a plumber and paid for by the customer requesting service. The plumber must sign the application book in the Building Inspection Office before a tap shall be made.

f. Only one tap fee will be charged for a water connection to any single lot regardless of the number of units such connection serves, e.g., a manifold placed on the connection to serve one or more units upon property; however, charges will be made for additional material, labor and equipment required.

g. Where an existing connection serving two or more units is now metered by a single meter, and request is made that each unit be metered separately, necessitating amplification of lateral from water main to manifold, for multiple meter connection, the charge will not be applicable except for actual cost of additional material, labor and equipment required.

h. If both water service and sewer service are available, the County will require that both connections be made before either service is provided by the County except in cases where the rules of the County Health Department permit an existing septic tank.

i. The County reserves the exclusive right to tap or install connections in its water mains and it shall be unlawful for any plumber or any other person to introduce a ferrule or other fixture into the County's water mains, except as provided for in Section 6A.

j. All tapping fees, meter costs and fire line costs shall be paid in advance before any work will be initiated by the County.

k. No plumber or any other person shall attach any fittings, fixtures or appliances to any service line connected to the County's water mains, change location thereof, or in any manner alter or interfere with any service line connected with the County's system, without first having obtained a written permit from the County.

l. Should any plumber in making a connection to the County's water system, the owner's service line, or shutting off water at the curb cock, injure any property of the County or the property owner, such plumber shall either replace said damaged property or pay the cost thereof within five days after written demand therefor.

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m. No plumber is authorized to turn water on at any house or premises except for the express purpose of testing any work performed by said plumber and upon failure to turn water off after said testing has been completed, will make said plumber liable to the County for charges due for the quantity of water used or wasted, as recorded by registration of meter, if no meter is installed in the service line at the flat rate charge applicable to the house or premises where such act occurred.

n. No plumber shall allow his name to be used by any person or party for the purpose of obtaining permits or doing any work under his license.

o. No faucet or hose shall be connected directly to meter coupling. Line must be extended a minimum of ten (10) feet from meter before faucet or hose is attached.

p. Property owner will be responsible for meters and meter boxes during construction and landscaping.

q. It shall be unlawful to lay pipe across lots or adjoining premises. Each water and/or sewer service shall serve a single platted lot and that lot only. Separate facilities occupying the same lot may be served by a common service.

r. No service connections will be allowed where there is a water main in front of or to the side of the premises to be supplied.

s. A violation of any rule or regulation governing service to water consumers of the County as now in effect or any future alterations, modifications, or enlargements thereof, shall constitute sufficient cause for the County to revoke the license of any plumber and authorize him to perform work in connection with the County's water system.

t. That portion of a water lateral between the water main and the water meter at the curb will be maintained at the expense of the County, but maintenance of the remainder of the fittings, and fixtures shall be the responsibility of the owner. Any leaks or breaks that occur in the portion of the aforementioned owner's responsibility shall be promptly repaired or replaced and, upon failure to do so, water service may be discontinued until such repairs or replacements are made by the owner.

u. Any and all work performed in conjunction with the County's water and sewer system must be applied for in advance and work completed by a master plumber licensed in the State of Alabama.

v. Plumbers are authorized to make 3/4" and 1" taps only on lines not connected to the County's system. Taps on active 1-1/2" through 12", will be made by the County. This includes projects under contract let by the County or the County's Consulting Engineers.

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#### 6A. TAPPING WATER MAINS IN NEW SUBDIVISIONS

a. Small taps on water lines installed by Utility Contractors shall be made by the Utility Contractor (or a Plumbing Contractor) during installation of the water line. A tap shall be made for each platted lot and required appurtenances and a copper service lateral shall be installed. Taps must be made by persons qualified in accordance with the Southern Plumbing Code (Master Plumbers). Taps must be made prior to final pressure testing and chlorination, and the main must be valved off from the existing system. The Utility Contractor (or his agent) shall make application for the Tapping Permit upon forms provided by the County conditioned upon the agreement of applicant to be bound by the Rules and Regulations of the County.

b. The Utility Contractor (or his agent) shall pay the required Tapping Permit fee. The fee shall include the cost of the meter, meter box and lid, meter couplings, and meter installation. The Contractor shall provide at his expense the copper service line, corporation stop, corporation adapter and curb stop.

c. All makes, sizes, and types of materials used by the Contractor shall be approved by and in accordance with specifications of the County.

d. Taps made under this section shall be 3/4" and 1" only.

e. Each tap made and each lateral installed shall be subject to visual inspection by personnel of the County.

#### 7. INSPECTION

a. All water pipes, meters, and fixtures on the premises shall at all reasonable hours be subject to inspection by the County.

b. The utility contractor and/or plumber is responsible for notification of County inspectors when work is begun, delayed, or resumed. All work completed without notification is subject to be refused final approval until satisfactory inspection can be made at the contractor's expense.

#### 8. DAMAGES

a. The owner of property served by the County shall maintain his service line and appurtenances thereto in such condition as to safeguard the property, life, and health of others, and said owner shall be responsible for any damages caused by failure to maintain his service line properly; and he shall save the County harmless from all claims, damages, or any other liability that might be caused by such failure to maintain his service in satisfactory condition.

b. Should a consumer fail to repair his service line within the prescribed limit of time when notified by the County that repairs are needed, the County may shut off the water at the main and a charge based on the actual cost thereof to the County, shall be made to cover the cost of shutting off water, and water shall not be turned on to said premises until repairs to service lines have been made by a licensed plumber.

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c. All damage to service lines, street mains, meters, fire plugs, or other property caused by carelessness or negligence of any consumer or by careless, negligent or improper work on property of a consumer may be charged to such consumer and may be billed to such consumer with his regular bill and shall be due and payable at the same time as the water bill. Failure to pay for such damage shall be good and sufficient reason for the County to discontinue service and not to restore same until the consumer has complied with all rules and regulations governing service to water consumers of the County, including the payment of charges for such damage.

d. As necessity may arise in case of break, emergency or for other unavoidable cause, the County shall have the right to temporarily turn-off the water supply in order to make necessary repairs, connections, etc. In such case the County shall not be liable for any damage or inconvenience suffered by the consumer to either person or property. The County shall not be liable for any claim against it at any time for interruption in service, lessening of the supply, inadequate pressure, a poor quality of water, or for any cause reasonably beyond its control.

e. The County shall have the right to reserve a sufficient supply of water at all times in its reservoirs to provide for fires and other emergencies, or may restrict or regulate the quantity of water used by consumers in case of scarcity, or whenever the public welfare may require it. No street or lawn sprinkling shall be done at times of water shortages.

9. WATER CONSUMERS

a. A "Consumer" is defined to be a person, firm, or corporation taking water through a single service line for a single building or business, served by a separate meter provided, however:

1. That the owner of a single building, used as a dwelling or apartment house and occupied by one or more families, may connect such building or apartment house and be served by a single service line for which one monthly or bi-monthly charge shall be paid, in which case the application for service shall be made by the owner or his duly authorized agent and the bills for water shall be paid by the owner.

2. Where two or more buildings or two or more families or establishments in a single building on the same platted lot are supplied by a single service line with the approval of the County, and where the owner or occupants of such buildings or such families or establishments desire to contract separately for water furnished, or new service is required for an additional structure, the owner shall first arrange the several house connections or the plumbing in such a way that a separate meter and stop and waste cock with seal approved by the County can be placed upon the supplyline of each of said consumers, there upon the County shall install separate meters for each consumer making application therefor. In such cases, a separate monthly or bi-monthly charge shall be assessed against each consumer. All such yokes on existing service lines shall be between the meter and main and installed by a plumber licensed by the State of Alabama application, approval, and payment to the County, by the owner or his representative, i.e., the plumber.

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3. Where a servant's house is located on the same lot as the dwelling and such servant's house is occupied by the servants of the family occupying the main dwelling, and where a single service line supplies both the dwelling and the servant's house, and the owner or tenant of the dwelling is responsible for the entire water bill, the County will only assess a single monthly or bi-monthly charge on the dwelling and none against the servant's house.

4. A separate service line and meter is required for each individually owned and platted lot including applicable town houses and condominiums.

#### 10. CUSTOMER DEPOSITS

a. The County MAY require a deposit, in advance, as security against future charges for water from a consumer. The amount of deposit will be determined by the County from time to time.

Deposits MAY be refunded upon request after a period of twelve (12) consecutive months at the same service address, provided each monthly bill is paid within the time allowed before becoming delinquent.

When a consumer who has a deposit on record transfers service, his deposit will be transferred to the new account.

#### 11. STOP AND WASTE

a. A stop and waste cock or cut-off valve must be placed in the water pipe line on the premises of the consumer to be used in case of break, freezing or other necessity, whereby pipe to be repaired can be cut off without the necessity of using the County's corporation cock or curb stop.

The stop and waste should be located outside of any structure located on the premises, usually on the line just outside the structure served. It must be easily accessible.

#### 12. WATER METERS

a. All water meters shall be maintained by the County at its expense.

b. All meters shall be conveniently located at a point approved by the County so as to control the entire supply, and when located on premises of consumer a proper place and protection thereof shall be provided by the consumer. The County agrees to replace meters purchased without additional cost when determined necessary.

c. If meters are damaged by freezing, hot water, etc, either by carelessness or neglect of the owner or occupants of the premises or their agents, the owner or occupants must pay for the repairs of such damages but the cost of ordinary maintenance of meters shall be borne by the County. Such damages shall be billed to the consumer with his regular water bill and same shall be due and payable at the same time as the water bill. Failure to pay for such repairs shall be deemed good and sufficient reason for the County to discontinue service and not restore

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same until the consumer has complied with all the rules and regulations governing service to water consumers of the County.

e. The consumer shall notify the County of any injury to or the non-working of the meter as soon as it comes to his knowledge.

f. Should the water meter fail to register the total amount of water consumed, the consumer shall pay for such period an estimated amount based upon consumption in a similar period. On request the County will test any meter through which the consumer is receiving service. Any adjustment necessary on account of inaccuracy of meter shall extend over a period not to exceed sixty (60) days prior to date of such test.

g. Whenever, in judgment of the County, a meter or connection is found to be too large to register accurately the amount of water consumed, or is too small to withstand the demand made upon the meter, then the County may reduce or enlarge the size of the meter or connection or both.

h. No water meter or curb cock shall be enclosed within a fence, wall or other structure so as to deprive the County of immediate and ready access thereto. If the owner, agent, or consumer fails to remove such fence, wall or structure, or to provide ready access at all times to employees of the County upon written request from the County, the water may be turned off and will not be turned on until full compliance has been made with all rules and regulations governing water service to water consumers of the County.

i. In the event mains and/or laterals exist on private property for the purpose of providing domestic service and/or fire protection, the maintenance of said lines shall be the responsibility of the property owner except for any meters, meter boxes and coupling associated with meters. Exception shall be taken where mains exist on easements and all materials and installation meet the County's specifications.

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### 13. PAYMENT OF WATER BILLS

a. All bills for water service will be rendered monthly or bi-monthly and shall become payable at the office of the Shelby County Engineering Department upon receipt of bill. Failure to receive bill will not release consumer from this obligation.

b. An advance charge as determined by the County shall be due and payable in advance. All charges for water delivered to premises of consumer and measured by meter at that location shall be due and payable in arrears at the same time.

c. Any consumer's bill or account including final bill not paid within fifteen (15) days from the stated billing date shall be delinquent. The County may at any time after a consumer's account has become delinquent, give to such consumer a notice of his delinquency and of the County's intention to discontinue service, if such delinquent account is not paid within five (5) days after the date such notice is given. Such notice may be mailed, or delivered in person, or left at the address where the service is rendered, any one of which methods shall be deemed sufficient. If such delinquent account is not paid within five (5) days from the date such notice is given, the County notwithstanding cash deposit, may then discontinue service without further notice provided, however, that the consumer shall have the privilege of paying such delinquent account at any time prior to the actual disconnection or turning off of water service being supplied to him. Provided further, however, that payment at the office of the County Engineer's Office within four hours of the time of actual disconnection or turning off of service shall not affect the right to disconnect or turn off service for non-payment. Any time after such bill becomes delinquent, the County may dispatch an employee or collector to see the consumer at his premises, or elsewhere, for the purpose of collecting such delinquent account. Whenever the County dispatches an employee or collector to the premises of any consumer for the purpose of collecting the account or for discontinuing the service, a collection fee (amount to be determined from time to time by the County) shall be added to and made a part of the consumer's delinquent account to cover in part the additional collection expense of the County provided this fee shall not be charged more than one time in any billing period.

d. Whenever service is discontinued for non-payment and consumer request that service be restored, a reconnection fee (amount to be determined from time to time by the County) in addition to collection fee (if applicable) shall be added to consumer's delinquent account and shall become due and payable at the same time as though the amount was part of the account for service rendered, all of which amount shall be paid or payment arranged for before service is restored.

e. The County may extend the time for paying any one or more bills, or any part thereof, and its action in so doing whether by taking the note of the consumer or anyone else with or without security or merely extending the time for paying such bill or bills, shall be without prejudice to its right to thereafter suspend service as above provided, and by so doing the County shall not be held or considered as waiving its right at its option to thereafter suspend service and to treat the contract, under which the consumer is served, as cancelled and at an end.

f. When the consumer is a partnership, each partner shall be liable for the water bill of the partnership and such bill may be added to the individual water bill of one or all such partners, and the individual bill of such partner shall be subject to all rules and regulations governing service to water consumers of the County.

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g. Whenever service is discontinued whether by request or not and a final bill has been rendered and remains unpaid beyond the authorized limits for payment, the bill will be filed in a suspense file and should the consumer subsequently be found to have water service at another location, then the unpaid final bill shall be taken from the suspense file and made an item of charge against the consumer at his new address.

#### 14. USE OF PUBLIC FIRE HYDRANTS

a. No person, except an employee of the County shall take water from any fire hydrant for any purpose unless specifically permitted in writing by a duly authorized representative of the County.

b. When it is necessary or expedient to draw water from any fire hydrant by other than authorized personnel, the County will install appropriate connections to fire hydrants, metered and equipped with a hand operated gate valve which will enable use of water desired without actually operating the hydrant.

The following requirements must be met:

1. Apply in writing or in person at the Shelby County Engineer's Office, with information concerning the size of supply and specific location desired.

2. Make a deposit (as established by the County) with the application to cover any damage or repairs to County equipment.

3. Prompt payment of monthly bills rendered for water used and change of fire plug connection.

4. Give minimum notice of four (4) hours when service from fire hydrant is to be discontinued.

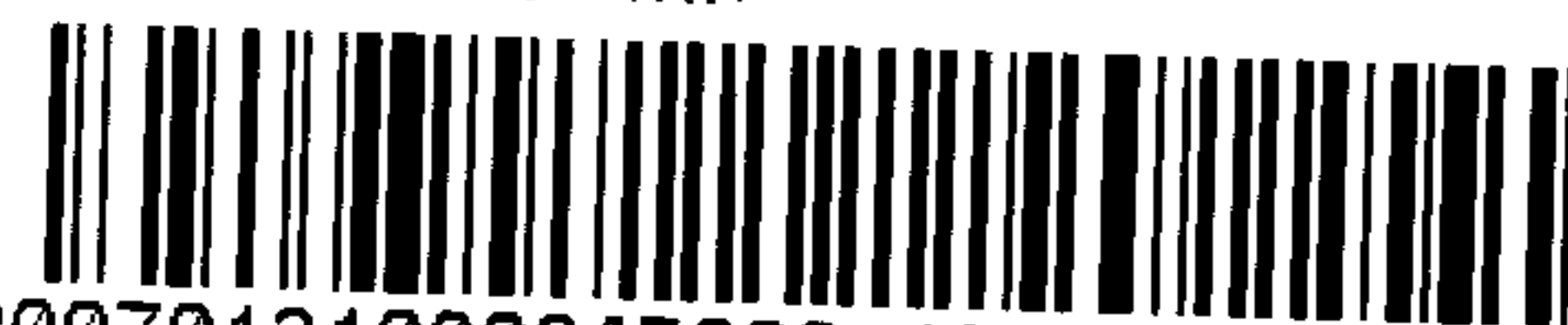
5. Payment of a meter installation charge and payment of a meter removal charge, in addition to the the charge for water used (charges to be determined from time to time by the County).

#### 15. PRIVATE FIRE PROTECTION, AUTOMATIC SPRINKLERS, ETC.

a. All persons, firms or corporations who may hereafter desire to install automatic sprinkler systems for fire protection and to put in connection to the water mains of the County for supply water for fire protection through such automatic sprinkler systems, shall be permitted to have said connections; and all persons, firms or corporations that have at any time heretofore installed automatic sprinkler systems for fire protection and have put in connections to the water mains of the County for supply water for fire protection through such automatic sprinkler systems shall be permitted to maintain such connections subject to the following conditions and provisions.

1. Whenever inspection reveals usage other than for fire, all private fire connections shall be metered at the expense of the consumer.

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2. Any and all drain valves located below the alarm attachment shall be sealed shut. Except in emergency cases, seals must not be broken without permission of the County. If seals are broken in an emergency and whenever the seal on any valve or drain has been broken, the owner shall notify the County at once so that they may be resealed.

3. Frequent breaking of seals without said permission shall be cause for the County to require the immediate installation of a meter approved by it.

4. Fire protection systems must have a valve installed no more than three (3) feet from the main whether the connection is made by tapping or the cutting in of a tee. When the fire line crosses a dedicated street, road, or highway, an additional valve will be required at the opposite property line or ROW. The County's responsibility will end at the cut off at the property line, ROW, or detector check and meter. Fire protection systems with fire hydrants shall be equipped with a detector check and meter installed to the Water Works specifications, however, the County may, at its discretion, waive the requirement for a detector check and meter when the fire protection system has fire hydrants if the design of the system is such that illegal use of the fire hydrant is unlikely. Mains used for fire protection and domestic service shall be metered where connected to existing mains.

5. In the event that domestic service is provided from a fire line for the convenience of the customer, the County will only be responsible for the maintenance of the meter, meter box and meter couplings. Any portion of the fire line or lateral to the meter shall be the responsibility of the owner. Any relocation of the domestic service of fire line must be done by a plumber at the owner's expense and under the supervision of the County and the County's Building Inspector.

6. The application to the County for private fire protection shall be upon a form to be furnished by the County and shall contain such information as the County deems appropriate.

7. Plans for fire lines and sprinkler systems must be submitted to the Engineering Department for approval and payment received before a tap will be made.

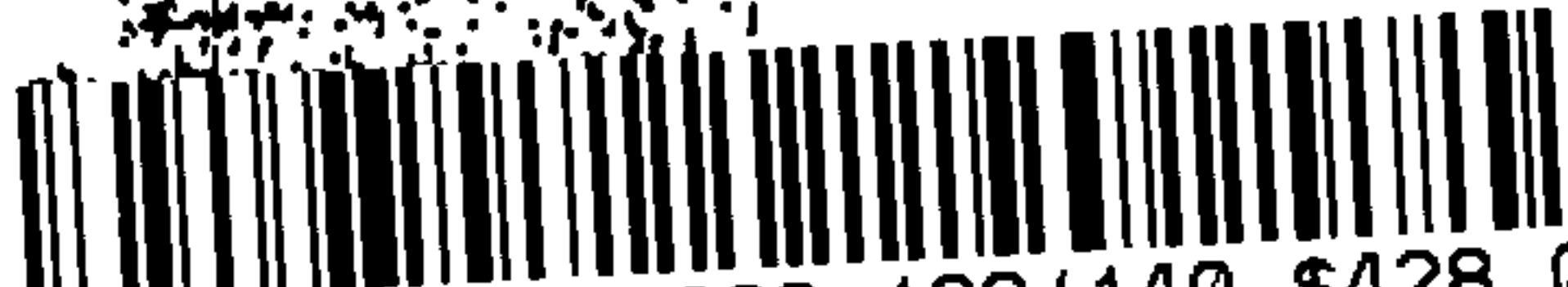
#### 16. ADDITIONAL GROUNDS FOR DISCONTINUING WATER SERVICE

a. In addition to the foregoing rules and regulations, the County shall have the right to discontinue water service to any consumer for any of the following reasons:

1. Misrepresentation in application as to property or fixtures to be supplied, or the use to be made of the water supply.

2. Under flat rate service for adding to said property or fixtures or for changing the use to be made of the water supply without notice to and consent of the County.

3. Willful or negligent waste of water through improper or imperfect service pipe, fixtures, meters, private fire protection systems or otherwise.



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4. Failure to protect the connections, service lines and fixtures or to maintain them in good order.

5. Molesting any service pipe, meter, curb stop, cock seal or any other appliances of the County controlling or regulating the water supply.

6. Vacancy of premises.

7. If any plumber, owner or other unauthorized person shall turn the water on or off at any corporation stop or curb stop, or disconnect or remove the meter without the consent of the County.

8. When any consumer allows or permits any other person or non-consumer to use water furnished the consumer, except in cases of emergency and then only for a limited time.

9. Where the consumer does any act or attempts to do any act with malicious intent to injure or deface any of the equipment or facilities of the County used by it to supply water to its consumers, or where the County has good reason to believe that the consumer is violating any rules here provided or subsequently adopted.

10. Violating any rules or regulations of the County respecting its water works operation.

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4. Failure to protect the connections, service lines and fixtures or to maintain them in good order.

5. Molesting any service pipe, meter, curb stop, cock seal or any other appliances of the County controlling or regulating the water supply.

6. Vacancy of premises.

7. If any plumber, owner or other unauthorized person shall turn the water on or off at any corporation stop or curb stop, or disconnect or remove the meter without the consent of the County.

8. When any consumer allows or permits any other person or non-consumer to use water furnished the consumer, except in cases of emergency and then only for a limited time.

9. Where the consumer does any act or attempts to do any act with malicious intent to injure or deface any of the equipment or facilities of the County used by it to supply water to its consumers, or where the County has good reason to believe that the consumer is violating any rules here provided or subsequently adopted.

10. Violating any rules or regulations of the County respecting its water works operation.

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## SHELBY COUNTY HOMEOWNER COMPARISON

|       | <u>ACCESS FEES</u> | <u>MONTHLY MINIMUM</u> |
|-------|--------------------|------------------------|
| WATER | \$ 500.00          | \$10.75                |
| SEWER | 2,480.50           | \$18.50                |
|       | \$2,980.50         | \$29.25                |

## BIRMINGHAM WATER WORKS BOARD HOMEOWNER'S COMPARISON

|       |            |         |
|-------|------------|---------|
| WATER | \$ 135.00  | \$ 8.75 |
| SEWER | 2,718.35   | 22.75   |
|       | \$3,849.25 | \$31.06 |

\*DOES NOT INCLUDE FIRE HYDRANT  
 DOES INCLUDE PROVISION FOR SUMMER SURCHARGE

WATER RATES FOR  
SHELBY COUNTY

One residential unit is equivalent to 400 gallons per day "water usage". The minimum charge for each residential unit shall be as follows:

|                        |         |
|------------------------|---------|
| meter fee              | \$ 2.00 |
| minimum usage fee      | 8.75    |
| monthly minimum charge | \$10.75 |

This charge covers the first 5,000 gallons per month. All usage after the allotted minimum shall be billed at the rate of \$1.24 per 1000 gallons.

All commercial rates shall be calculated in equivalent dwelling units "E.D.U." One E.D.U. will be equal to 400 gallons per day. Each "E.D.U." shall have a basic minimum charge of \$8.06 per month. This will cover meter fee and fire hydrant fees. This charge does not cover installation charges for meters or fire hydrants, these charges shall be the responsibility of the owners.

The commercial usage fee shall be 95¢ per 1000 gallons.

Customer E.D.U. allotment - 2 E.D.U., which is the equivalent to - 24,000 gallons per month. Customer monthly use is 36,000 gallons per month which is 3 E.D.U. The customer's normal minimum would be \$16.12 and his usage fee would be \$13.68.

With the adjustable E.D.U. rate, his minimum bill for the month would be adjusted to 3 E.D.U., which would be \$24.18 and his usage would be \$20.32.

The Birmingham Water Works Board has a flexible rate for the large commercial users in which the rate declines as usage increases. This type of rate is beneficial to industrial users only.

STATE OF ALA. SHELBY CO.  
 I CERTIFY THIS  
 INSTRUMENT WAS FILED  
 89 APR 24 PM 4:29  
 CLERK OF PROBATE

EXHIBIT "D"

BOOK 235 PAGE 648

Value: 100,000.00

20070131000045880 125/140 \$428.00  
Shelby Cnty Judge of Probate, AL  
01/31/2007 08:23:18AM FILED/CERTThis instrument prepared without  
examination of title by:Mary P. Thornton  
Dominick, Fletcher, Yeilding.  
Wood & Lloyd, P.A.  
2121 Highland Avenue  
Birmingham, Alabama 35205

Send Tax Notice To

Greystone Highlands Owner's Association, Inc  
c/o Accord Management Services, Inc  
1820 1st Avenue South, Suite K  
Birmingham, Alabama 35210**STATUTORY WARRANTY DEED**

STATE OF ALABAMA )

) KNOW ALL MEN BY THESE PRESENTS:

SHELBY COUNTY )

That for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration to the undersigned EBSCO INDUSTRIES, INC., a Delaware corporation ("Grantor"), in hand paid by GREYSTONE HIGHLANDS OWNER'S ASSOCIATION, INC ("Grantee"), the receipt and sufficiency of which are hereby acknowledged, Grantor does by these presents grant, bargain, sell and convey unto the said Grantee the following described real estate situated in Shelby County, Alabama, to-wit

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

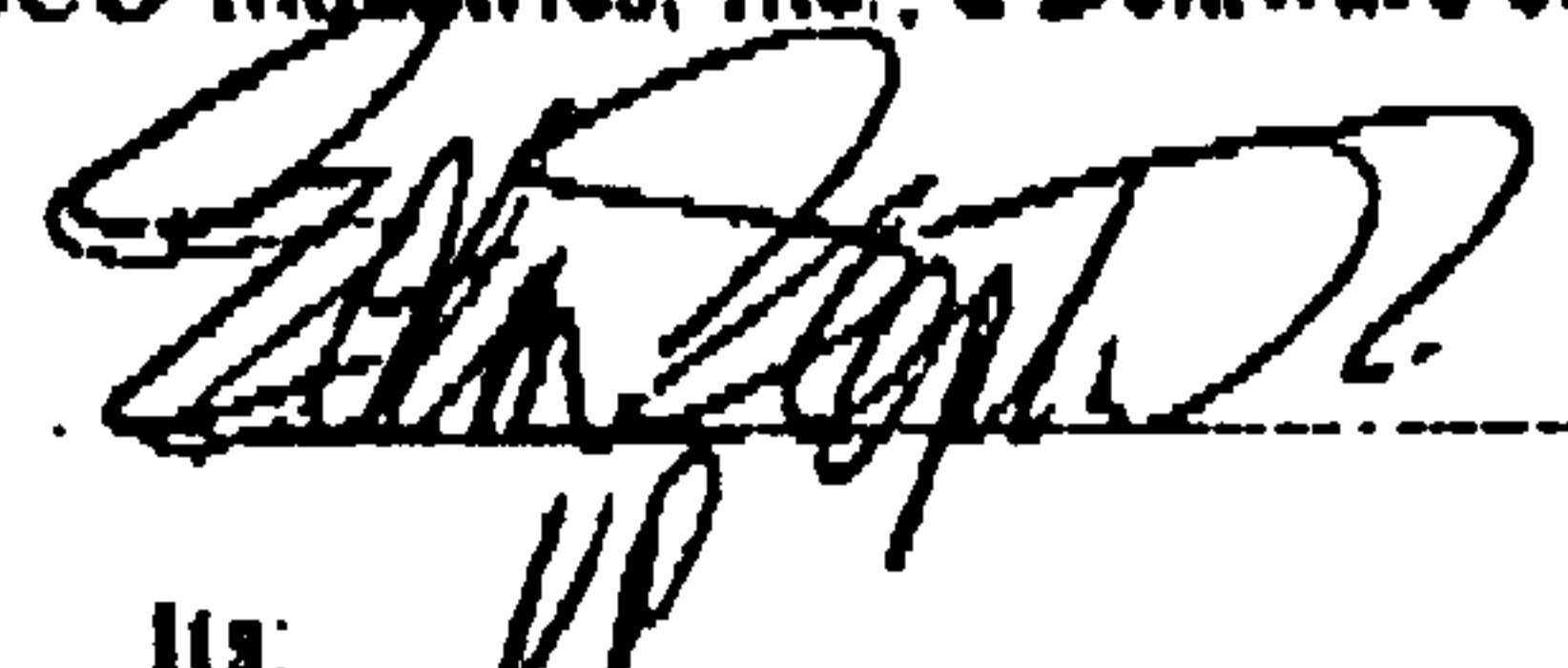
Subject to: (1) Ad valorem taxes due and payable October 1, 1997 and all subsequent years thereafter; (2) Fire district dues and library district assessments for the current year and all subsequent years thereafter; (3) Mining and mineral rights not owned by Grantor; (4) All applicable zoning ordinances; (5) All easements, restrictions, reservations, agreements, rights-of-ways, building setback lines and any other matters of record; and (6) Greystone Highlands Declaration of Covenants, Conditions and Restrictions dated November 14, 1994 and recorded as Instrument #1994-33988 in the Probate Office of Shelby County, Alabama (the "Declaration").

Grantee, by acceptance of this deed, acknowledges, covenants and agrees for itself, and its successors and assigns, that, pursuant to and as required by Section 3.09 of the Declaration, the property conveyed herein shall perpetually remain in its natural and undisturbed condition, shall be free from any improvements, as defined in the Declaration, and shall be used only as a wildlife and nature preserve

TO HAVE AND TO HOLD unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor, EBSCO Industries, Inc., has hereto set its signature and seal this 14 day of October, 1996.

EBSCO Industries, Inc., a Delaware corporation

By: Its: STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Elmer B. Stephens whose name as President EBSCO Industries, Inc., a Delaware corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance,

10/17/1996-34645  
09:33 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
JTB WCD 12:33

Inst # 1996-34645

he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation

Given under my hand and seal, this 14 day of October, 1996

  
Notary Public

[SEAL]

My commission expires:

7/26/97

01/05/2007

  
20070131000045880 126/140 \$428.00  
Shelby Cnty Judge of Probate, AL  
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**EXHIBIT "A"****NATURAL AREA #1**

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

Commence at the Northwest Corner of the SE 1/4 of the NW 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama and run South 0 degrees 00 minutes 00 seconds East along the West Line thereof for a distance of 331.24 feet; thence leaving said West Line run North 89 degrees 07 minutes 17 seconds East for a distance of 231.99 feet to the Point of Beginning of the following described Natural Area. From said Point of Beginning continue North 89 degrees 07 minutes 17 seconds East for a distance of 466.83 feet; thence run North 30 degrees 38 minutes 54 seconds East for a distance of 139.61 feet; thence run North 13 degrees 44 minutes 59 seconds East for a distance of 328.65 feet; thence run North 27 degrees 33 minutes 38 seconds East for a distance of 242.59 feet; thence run North 17 degrees 41 minutes 38 seconds East for a distance of 135.91 feet; thence run North 14 degrees 15 minutes 48 seconds West for a distance of 115.64 feet; thence run North 35 degrees 28 minutes 31 seconds West for a distance of 75.00 feet; thence run North 27 degrees 37 minutes 26 seconds West for a distance of 225.00 feet to a point on the Southeast Right-of-Way Line of Graystone Highlands Drive, said point being the beginning of a curve to the left having a radius of 225.00 feet and a central angle of 31 degrees 40 minutes 11 seconds; thence run along said right-of-way line and along the arc of said curve for a distance of 124.37 feet to the Northernmost Corner of Lot 78 of Graystone Highlands - Phase 2, as recorded in Map Book 19, Page 4 in the Office of the Judge of Probate in Shelby County, Alabama; thence leaving said right-of-way line run South 63 degrees 07 minutes 26 seconds East along the Northeast Line of said Lot 78 for a distance of 89.50 feet to the Easternmost Corner of said Lot 78; thence run South 26 degrees 52 minutes 34 seconds West along the Rear Lot Lines of lots 70 thru 78 of said Graystone Highlands - Phase 2 for a distance of 499.27 feet; thence run South 31 degrees 07 minutes 34 seconds West along the Rear Lot Lines of Lots 59A, Lots 59 thru 69, and an extension of said line for a distance of 693.07 feet to the Point of Beginning. Said Natural Area contains 8.29 acres.



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NATURAL AREA #2

STATE OF ALABAMA  
SHELBY COUNTY

Begin at the Northwest Corner of the NE 1/4 of the NW 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama and run South 0 degrees 00 minutes 00 seconds East along the West Line thereof for a distance of 1315.78 feet to the Northwest Corner of the SE 1/4 of the NW 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence run South 0 degrees 00 minutes 00 seconds East along the West Line thereof for a distance of 331.24 feet; thence leaving said West Line run North 89 degrees 07 minutes 17 seconds East for a distance of 231.99 feet; thence run North 31 degrees 07 minutes 34 seconds for a distance of 21.81 feet to the Southernmost Corner of Lot 59A of Greystone Highlands - Phase 2, as recorded in Map Book 19, page 4 in the Office of the Judge of Probate in Shelby County, Alabama; thence run North 58 degrees 52 minutes 26 seconds along the Southwest Line of said Lot 59A for a distance of 144.00 feet to the Westernmost Corner of said Lot 59A; thence run North 31 degrees 07 minutes 34 seconds East along the Northwest Line of said Lot 59A for a distance of 1.00 feet to a point on the Southwest Right-of-Way Line of Greystone Highlands Drive, said point being on a curve to the right having a radius of 54.00 feet and a central angle of 164 degrees 35 minutes 03 seconds; thence run along said right-of-way line and along the arc of said curve for a distance of 155.12 feet to the Southernmost Corner of Lot 58 of said Greystone Highlands - Phase 2; thence run North 58 degrees 52 minutes 26 seconds West along the Southwest Line of said Lot 58 for a distance of 71.65 feet to the Westernmost Corner of said Lot 58; thence run North 31 degrees 07 minutes 34 seconds East along the Rear Line of Lots 50 thru 58 of said Greystone Highlands - Phase 2 for a distance of 497.94 feet; thence run North 29 degrees 08 minutes 19 seconds East along the Rear Line of Lots 48 and 49 of said Greystone Highlands - Phase 2 for a distance of 108.39 feet; thence run North 26 degrees 52 minutes 34 seconds East along the Rear line of Lots 40 thru 47 of said Greystone Highlands - Phase 2 for a distance of 495.00 feet to the Northernmost Corner of said Lot 40; thence run South 63 degrees 07 minutes 26 seconds East along the Northeast Line of said Lot 40 for a distance of 99.07 feet to the Easternmost Corner of said Lot 40, said point being on a curve to the right having a radius of 275.00 feet and a central angle of 20 degrees 44 minutes 49 seconds and also being located on the Northwest Right-of-Way Line of Greystone Highlands Drive; thence run along said right-of-way line and along the arc of said curve for a distance of 99.58 feet to the end of said curve and the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 90 degrees 00 minutes 00 seconds, said curve being at the intersection of the Northwest Right-of-Way Line of Greystone Highlands Drive with the Southwest Right-of-Way Line of Greystone Highlands Circle; thence run along the arc of said curve for a distance of 39.27 feet to the end of said curve; thence run North 27 degrees 37 minutes 26 seconds West



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tangent to said curve and along the Southwest Right-of-Way Line of said Greystone Highlands Circle for a distance of 109.56 feet to the beginning of a curve to the left having a radius of 225.00 feet and a central angle of 23 degrees 31 minutes 01 seconds; thence run along said right-of-way line and along the arc of said curve for a distance of 92.35 feet to the Easternmost Corner of Lot 39 of the Amended Map of Greystone Highlands - Phase 1, as recorded in Map Book 19, Page 24 in the Office of the Judge of Probate in Shelby County, Alabama; thence run South 38 degrees 51 minutes 34 seconds West along the Southeast Line of said Lot 39 for a distance of 90.00 feet to the Southernmost Corner of said Lot 39, said point being the beginning of a curve to the left having a radius of 135.00 feet and a central angle of 39 degrees 46 minutes 34 seconds; thence run along the Rear Line of Lots 38 and 39 of said Greystone Highlands - Phase 1 and along the arc of said curve for a distance of 93.72 feet to the Southwest Corner of said Lot 38 and the end of said curve; thence run South 89 degrees 05 minutes 00 seconds West along the Rear Line of Lots 35 thru 37 of said Greystone Highlands - Phase 1 for a distance of 153.40 feet to the Southwest Corner of said Lot 35 and the beginning of a curve to the left having a radius of 135.00 feet and a central angle of 89 degrees 05 minutes 00 seconds; thence run along the Rear Line of Lots 30 thru 34 of said Greystone Highlands - Phase 1 and along the arc of said curve for a distance of 209.90 feet to the Southeast Corner of said Lot 30 and the end of said curve; thence run South 0 degrees 00 minutes 00 seconds East tangent to said curve and along the Rear Line of Lots 20 thru 29 of said Greystone Highlands - Phase 1 for a distance of 550.00 feet to the Southeast Corner of said Lot 20; thence run South 90 degrees 00 minutes 00 seconds West along the South Line of said Lot 20 for a distance of 90.00 feet to the Southwest Corner of said Lot 20, said point being on the East Right-of-Way Line of Greystone Highlands Circle and being the beginning of a curve to the right having a radius of 54.00 feet and a central angle of 254 degrees 35 minutes 03 seconds; thence run along the right-of-way line of Greystone Highlands Circle and along the arc of said curve for a distance of 239.94 feet to the Southeast Corner of Lot 19C of said Greystone Highlands - Phase 1 and the end of said curve; thence leaving said right-of-way line run South 90 degrees 00 minutes 00 seconds West along the South Line of said Lot 19C for a distance of 71.65 feet to the Southwest Corner of said Lot 19C; thence run North 0 degrees 00 minutes 00 seconds West along the Rear Line of Lots 14 thru 19C of said Greystone Highlands - Phase 1 for a distance of 497.94 feet to the Northwest Corner of said Lot 14 and the beginning of a curve to the right having a radius of 365.00 feet and a central angle of 89 degrees 05 minutes 00 seconds; thence run along the Rear Line of Lots 5 thru 13 of said Greystone Highlands - Phase 1 and along the arc of said curve for a distance of 567.50 feet to the end of said curve; thence run North 89 degrees 05 minutes 00 seconds East tangent to said curve and along the Rear Line of Lots 2 thru 5 of said Greystone Highlands - Phase 1 for a distance of 153.40 feet to the beginning of a curve to the right having a radius of 365.00 feet and a central angle of 16 degrees 27 minutes 57 seconds; thence run along the Rear Line of

Lots 1 and 2 of said Greystone Highlands - Phase 1 and along the arc of said curve for a distance of 104.89 feet to the Northeast Corner of said Lot 1 and the end of said curve; thence run South 15 degrees 32 minutes 57 seconds West along the Southeast Line of said Lot 1 for a distance of 90.00 feet to the Southeast Corner of said Lot 1, said point being on the Northeast Right-of-Way Line of Greystone Highlands Circle and on a curve to the right having a radius of 275.00 feet and a central angle of 4 degrees 19 minutes 34 seconds; thence run along said right-of-way line and along the arc of said curve for a distance of 20.76 feet; thence leaving said right-of-way line, run North 19 degrees 52 minutes 31 seconds East for a distance of 163.56 feet to a point on the North Line of the NW 1/4 of Section 5, Township 19 South, range 1 West, Shelby County, Alabama; thence run South 89 degrees 05 minutes 00 seconds West along said North Line for a distance of 727.58 feet to the Point of Beginning. Said Natural Area contains 10.63 acres and is subject to easements and restrictions of record.

  
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09:33 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 MCD 121.00

1400  
EASEMENT - DISTRIBUTION FACILITIES

STATE OF ALABAMA

County of SHELBYTHIS INSTRUMENT PREPARED  
BY Don Bailey  
ALABAMA POWER COMPANY  
P. O. BOX 2641  
BIRMINGHAM, AL 35291

All Facilities on Grantor:

WE Number 61700-06-0006-8-00

Parcel Number:

STA 1+00 To STA 2+00A. GRANT. KNOW ALL MEN BY THESE PRESENTS, That PRESS-A-VENT

as grantor(s), (the "Grantor", whether one or more) for and in consideration of the sum of One and No/100 (\$1.00), and other good and valuable considerations, to Grantor in hand paid by Alabama Power Company (the Company), a corporation, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to the Company, the easements, rights and privileges described and designated in Section B below, together with the right to permit other persons, partnerships and corporations to use and exercise such easements, rights and privileges in common with the Company.

B. RIGHTS The easements, rights and privileges granted hereby are as follows (if less than all of 1-3 are granted, then check and initial applicable paragraph):

☒ 1. **OVERHEAD AND UNDERGROUND.** The right from time to time to construct, install, operate and maintain, upon, over, under and across the Property described in Section C below, along a route to be selected by the Company which is generally shown on the attached drawing (which shows the general location of the underground facilities, if any, by cross hatching indicating an area not greater than ten (10) feet in width), all poles, towers, wires, conduits, fiber optics, cables, transducers, transformers, anchors of concrete, metal or other material, guy wires and other materials, appliances, facilities and other apparatuses of whatever type, whether now or in the future existing or known which are useful or necessary in connection therewith (collectively, "Facilities"), for the overhead and/or underground transmission and distribution of electric power and for the overhead and/or underground communication service, and also the right to clear a strip extending fifteen (15) feet to either side of the centerline of the line of poles and keep it cleared of all trees, undergrowth or other obstructions; further, the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees, limbs outside the thirty (30) foot strip which, in the sole opinion of the Company, might endanger, interfere with or fall upon the poles, lines or other appliances of the Company.

☐ 2. **LINE CLEARING.** The right of cut and trim and to keep cut and trimmed, and remove all dead, weak, leaning or dangerous trees or limbs, which in the sole opinion of the Company, now or may hereafter endanger or interfere with the electric transmission lines, telephone lines, poles, towers or other facilities of the Company or others now constructed, or which may hereafter be constructed, on or adjacent to the Property described in Section C below, and also the right to clear a strip fifteen (15) feet to either side of the center line of the line of poles and keep it clear of all trees, undergrowth or other obstructions.

☐ 3. **GUY WIRE and ANCHOR.** The right to implant, install and maintain anchor(s) of concrete, metal or other materials at \_\_\_\_\_ point(s) on the Property described in Section C below, and to construct, extend and maintain guy wires from such anchor(s) to structures now erected on such Property or property adjacent thereto (collectively, "Guy Wire Facilities").

In addition to the easements, rights and privileges granted in all or any of 1, 2 or 3 above, Grantor hereby grants to the Company all easements, right and privileges necessary or convenient for the full enjoyment and use thereof, including without limitations the right of ingress and egress to and from the Company's Facilities and Guy Wire Facilities, as applicable, and the right to excavate for installation, replacement, repair and removal thereof, and also the right to cut, remove and otherwise keep clear any and all structures, obstructions or obstacles of whatever character, on under and above said Facilities and Guy Wire Facilities, as applicable.

C. **PROPERTY DESCRIPTION.** The easement, rights and privileges granted hereby shall apply to, and the word "Property" as used in the instrument shall mean, the following described real property situated in SHELBY County, Alabama (the "Property"):

Lot 3B of Block \_\_\_\_\_ of GREYSTONE COMMERCIAL Subdivision  
as recorded in Map Book 20, page 25 and being located in the SE 1/4 of the NW 1/4 of  
Section 5, Township 19S, Range 1W and recorded in Deed Book 2121, page 87  
all being recorded in the Office of the Judge of Probate in said County.

D. **GENERAL** In the event it becomes necessary or desirable for the Company to move any of its Facilities in connection with the construction or improvement of any public road or highway in proximity to its Facilities, Grantor hereby grants to the Company the right to relocate its Facilities on said Property, provided, however, the Company shall relocate its Facilities at a distance no greater than ten (10) feet outside the boundary of the right of way of any public road or highway as established or re-established from time to time. In the event that none of options 1 through 3 in Section B above are marked, then Grantor hereby grants all easements, rights and privileges described in such option 1. This grant and agreement shall be binding upon and inure to the benefit of Grantor, the Company and each of their respective heirs, personal representatives, successors and assigns and the words "Company" and "Grantor" as used in this instrument shall be deemed to include the heirs, personal representatives, successors and assigns of such parties.

TO HAVE AND TO HOLD the foregoing easements, rights and privileges to the Company, its successors and assigns, forever.

03/23/1999-12009  
09:25 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
003 CSH 14.00

20070131000045880 131/140 \$428.00  
Shelby Cnty Judge of Probate, AL  
01/31/2007 08:23:18AM FILED/CERT

IN WITNESS WHEREOF, the undersigned Grantor(s) has/have set his/her/their hand(s) and seal(s) this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

WITNESSES:

GRANTOR(S)

(Husband)

(Wife)

(Seal)

(Seal)

IN WITNESS WHEREOF, the said Grantor, has caused this instrument to be executed DAVE JOHNSON, its authorized representative, as of 13 day of JUNE JULY, 1998.

GRANTOR

PRESS-A-DENT

(Name of Corporation/Partnership)

ATTEST:

(Witness/Secretary)

(Signature of Officer/Partner)

(Indicate title of Officer or Partner)

## INDIVIDUALS NOTARY

STATE OF ALABAMA

County of Shelby

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Dave Johnson whose name is/are signed to the foregoing instrument and is/are known to me, acknowledged before me on this day that being informed of the contents of the instrument, he/she/they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 15<sup>th</sup> day of August, 1998.

Amanda Myrick  
Notary Public

My commission expires March 5, 2000

## CORPORATION/PARTNERSHIP/LLC'S NOTARY

STATE OF ALABAMA

County of \_\_\_\_\_

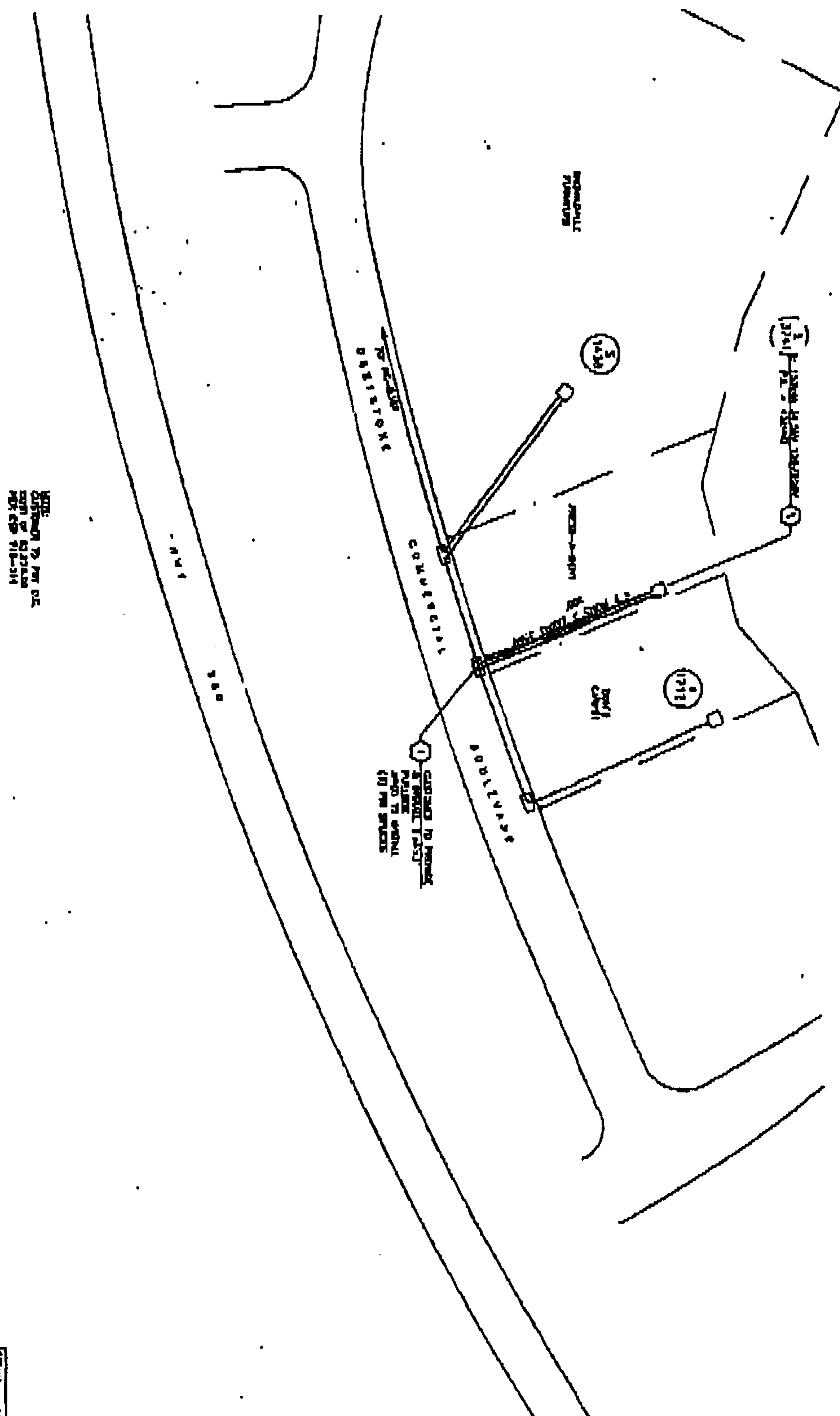
I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_ is signed to the foregoing instrument, whose name as \_\_\_\_\_ of \_\_\_\_\_ and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he/she, as such officer/partner and with full authority, executed the same voluntarily for and as the act of said Corporation/Partnership.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

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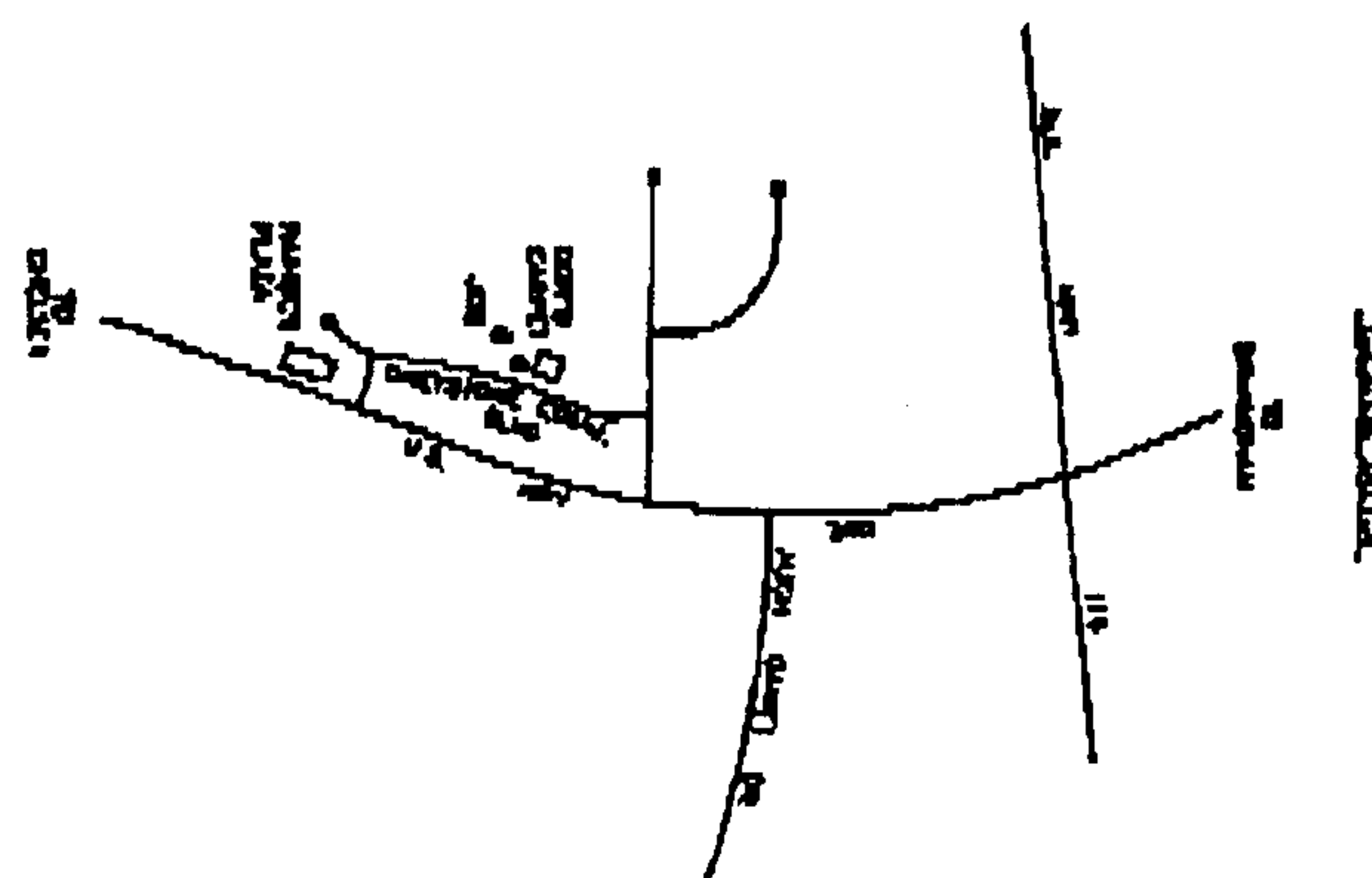
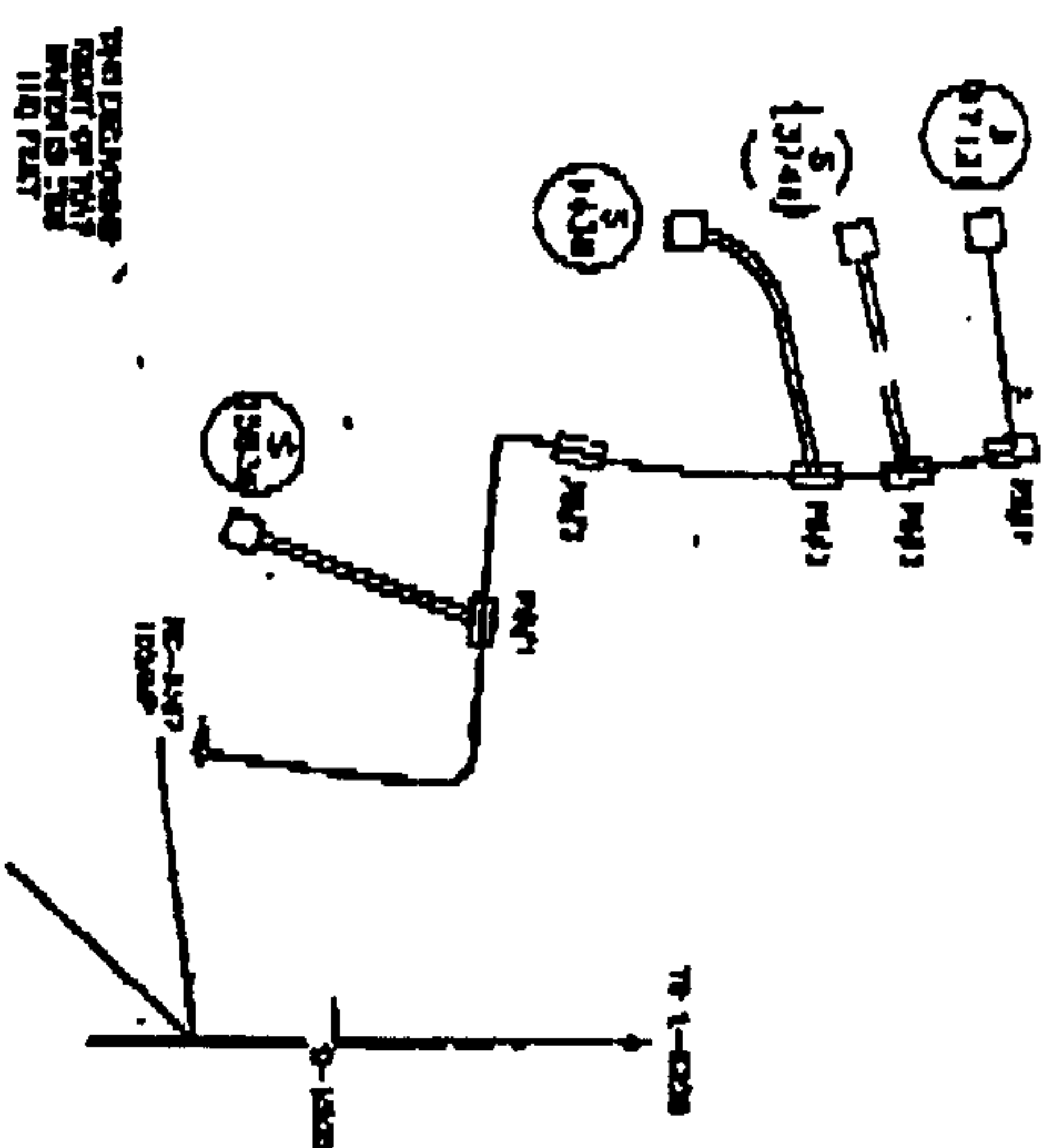


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Shelby Cnty Judge of Probate, AL  
06/22/2006 02:02:40PM FILED/CERT

Prepared by, recording requested by,  
and after recording return to:

✓ Phillip G. Stutts, Esq.  
✓ Lcitman, Siegal & Payne, P.C.  
600 North 20th Street, Suite 400  
Birmingham, Alabama 35203

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### ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made as of June 19, 2006, by CALVINE SOUTH, LLC, a Alabama limited liability company, whose address is 217 Lacey Avenue, Maylene, Alabama 35114 (hereinafter called "Assignor"), in favor of RED MOUNTAIN BANK, N.A. ("Lender"), at 5 Inverness Center Parkway, Birmingham, Alabama 35242 (hereinafter called "Lender").

#### WITNESSETH:

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto LENDER all right, title and interest of Assignor in, to and under all written and oral leases and rental agreements of the real estate described in Exhibit A attached hereto and incorporated herein ("Property"), whether now in existence or hereafter entered into, and all guaranties, amendments, extensions, renewals and subleases of said leases and any of them, all of which are hereinafter called the "Leases", all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property, any award hereafter made in any bankruptcy, insolvency or reorganization proceeding in any state or federal court involving any of the tenants of the Leases, and any and all payments made by such tenants in lieu of rent.

This Assignment is made for the purpose of securing:

A. The payment of the indebtedness (including any extensions or renewals thereof) evidenced by a certain Promissory Note ("Note") of Assignor of even date herewith in the principal sum of **Three Million Eighty Thousand and 00/100 Dollars (\$3,080,000.00)** and secured by a certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Mortgage") of even date herewith encumbering the Property; and

B. The payment of all other sums with interest thereon becoming due and payable to LENDER under the provisions of the Mortgage and any other instrument constituting security for the Note; and

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Shelby Cnty Judge of Probate, AL  
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C. The performance and discharge of each and every term, covenant and condition contained in the Note, Mortgage and any other instrument constituting security for the Note.

Assignor represents, warrants, covenants and agrees with LENDER as follows:

1. The sole ownership of the entire Lessor's interest in the Leases is or shall be vested in Assignor, and Assignor has not, and shall not, perform any acts or execute any other instruments which might prevent LENDER from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.
2. The Leases are and shall be valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, canceled, renewed or surrendered nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by LENDER.
3. Assignor shall not alter the term or the amount of rent payable or the term of any Lease without notice to LENDER and LENDER's consent, which consent shall not be unreasonably withheld, conditioned or delayed.
4. To the best of Assignor's knowledge, there are no defaults now existing under any of the Leases, and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.
5. Assignor shall give prompt notice to LENDER of any notice received by Assignor claiming that a default has occurred under any of the Leases on the part of Assignor, together with a complete copy of any such notice.
6. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.
7. Assignor will not permit any Lease to become subordinate to any lien other than the lien of the Mortgage.
8. All existing Leases are described on a rent roll provided by Assignor to Assignee.

The parties further agree as follows:

This Assignment is an absolute, present assignment from Assignor to LENDER, effective immediately, and is not merely an assignment for security purposes. Notwithstanding the foregoing, until a notice is sent to the Assignor in writing that an Event of Default (as defined in the Note and/or Mortgage) has occurred under the terms and conditions of the Note or any other instrument constituting additional security for the Note (which notice is hereafter called a

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"Notice"), Assignor is granted a license to receive, collect and enjoy the rents, income and profits accruing from the Property.

If an Event of Default (as defined in the Note and Mortgage) shall occur, LENDER may, at its option, after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Property. LENDER shall thereafter continue to receive and collect all such rents, income and profits, until LENDER shall otherwise agree in writing. All sums received by Assignor after service of such Notice shall be deemed received in trust and shall be immediately turned over to LENDER.

Assignor hereby irrevocably appoints LENDER its true and lawful attorney-in-fact with power of substitution and with full power for LENDER in its own name and capacity or in the name and capacity of Assignor, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Assignor or otherwise, which LENDER may deem reasonably necessary or desirable in order to collect and enforce the payment of the rents, income and profits and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such rents. Such appointment is coupled with an interest and is irrevocable. LENDER shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss is due to the gross negligence or willful misconduct of LENDER.

LENDER shall apply the rents received from Assignor's lessees, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Assignor in a timely manner. Nothing contained herein shall be construed to constitute LENDER as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Assignor also hereby irrevocably appoints LENDER as its true and lawful attorney-in fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Assignor pursuant to the Leases to LENDER or such nominee as LENDER may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

If an Event of Default shall occur, LENDER is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, reasonably deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of LENDER or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude the Assignor, its agents and servants, wholly therefrom. Assignor hereby grants full power and authority to LENDER to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all

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of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Assignor to LENDER, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Assignor to LENDER on the Note and the Mortgage, all in such order as LENDER may determine. LENDER shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon LENDER, nor shall it operate to make LENDER liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

Waiver of or acquiescence by LENDER in any default by the Assignor, or failure of LENDER to insist upon strict performance by the Assignor of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

The rights and remedies of LENDER under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which LENDER shall have under the Note or any other instrument constituting security for the Note, or at law or in equity.

If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Any and all notices, elections, demands, or requests permitted or required to be made under this Assignment, including without limitation a Notice, shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address set forth above, or to such other party and at such other address within the United States of America as any party may designate as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) days after the date of mailing by registered or certified mail, (iii) one (1) day after the date of mailing by Express Mail, or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

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Assignor hereby authorizes LENDER to give written notice of this Assignment, which may include a copy hereof, at any time to any tenant under any of the Leases.

The terms "Assignor and "LENDER" shall be construed to include the legal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

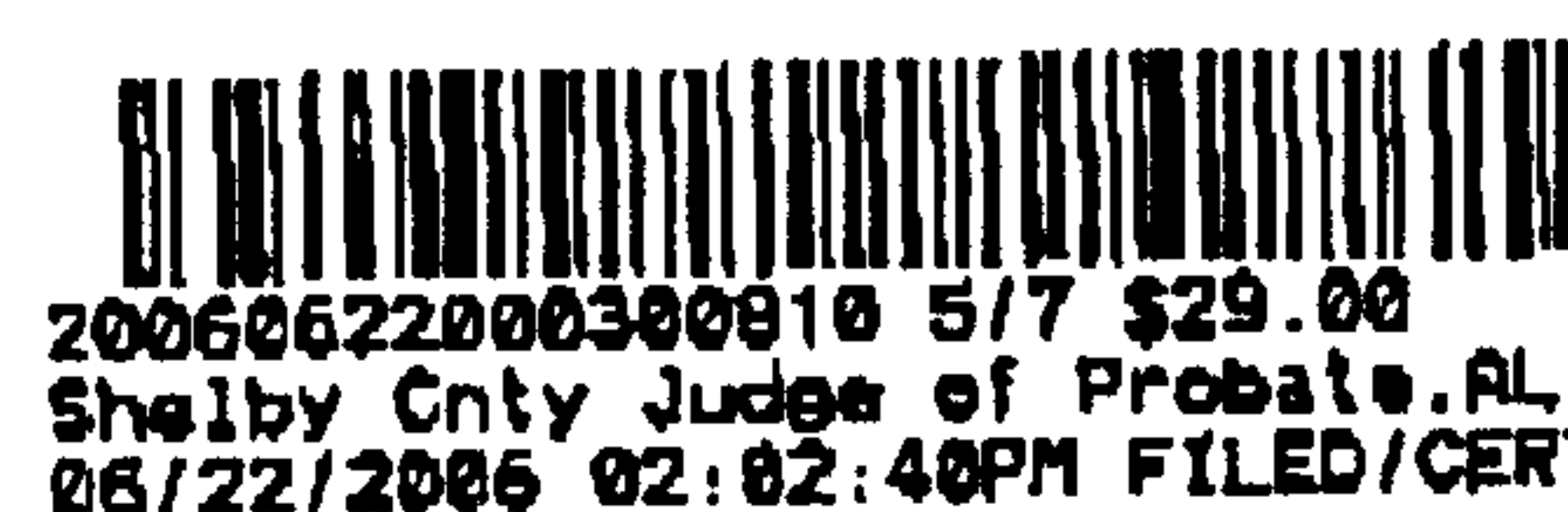
This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

Notwithstanding anything contained herein to the contrary, in no event shall this Assignment be deemed to reduce the indebtedness evidenced by the Note by an amount in excess of the actual amount of cash received by LENDER under the Leases, whether before, during or after the occurrence of an Event of Default, and Assignor acknowledges that in no event shall the indebtedness secured hereby be reduced by the value from time to time of the rents, income and profits of or from the Property. In addition, LENDER reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize this Assignment as merely constituting security for the indebtedness of Assignor to LENDER, which recharacterization shall be made by written notice delivered to Assignor. LENDER's receipt of any rents, issues, and profits pursuant to this Assignment after the institution of foreclosure proceedings, either by court action or by the private power of sale contained in any mortgage now or hereafter securing the Note, shall not cure an Event of Default, as defined in the Note, or affect such proceedings or sale.

This Assignment shall be construed and enforced under the laws of the State of Alabama (excluding choice-of-law principles).

The recordation of a satisfaction of the Mortgage shall release this Assignment and render it null and void.

IN WITNESS WHEREOF, the said Assignor has caused this instrument to be signed and sealed as of the date first above written.



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## ASSIGNOR:

CALVINE SOUTH, LLC  
an Alabama limited liability company

By: Todd Murphy

Todd Murphy

Its: Member

By: Ray Murphy

Ray Murphy

Its: Member

STATE OF ALABAMA )

) ss.

COUNTY OF JEFFERSON )

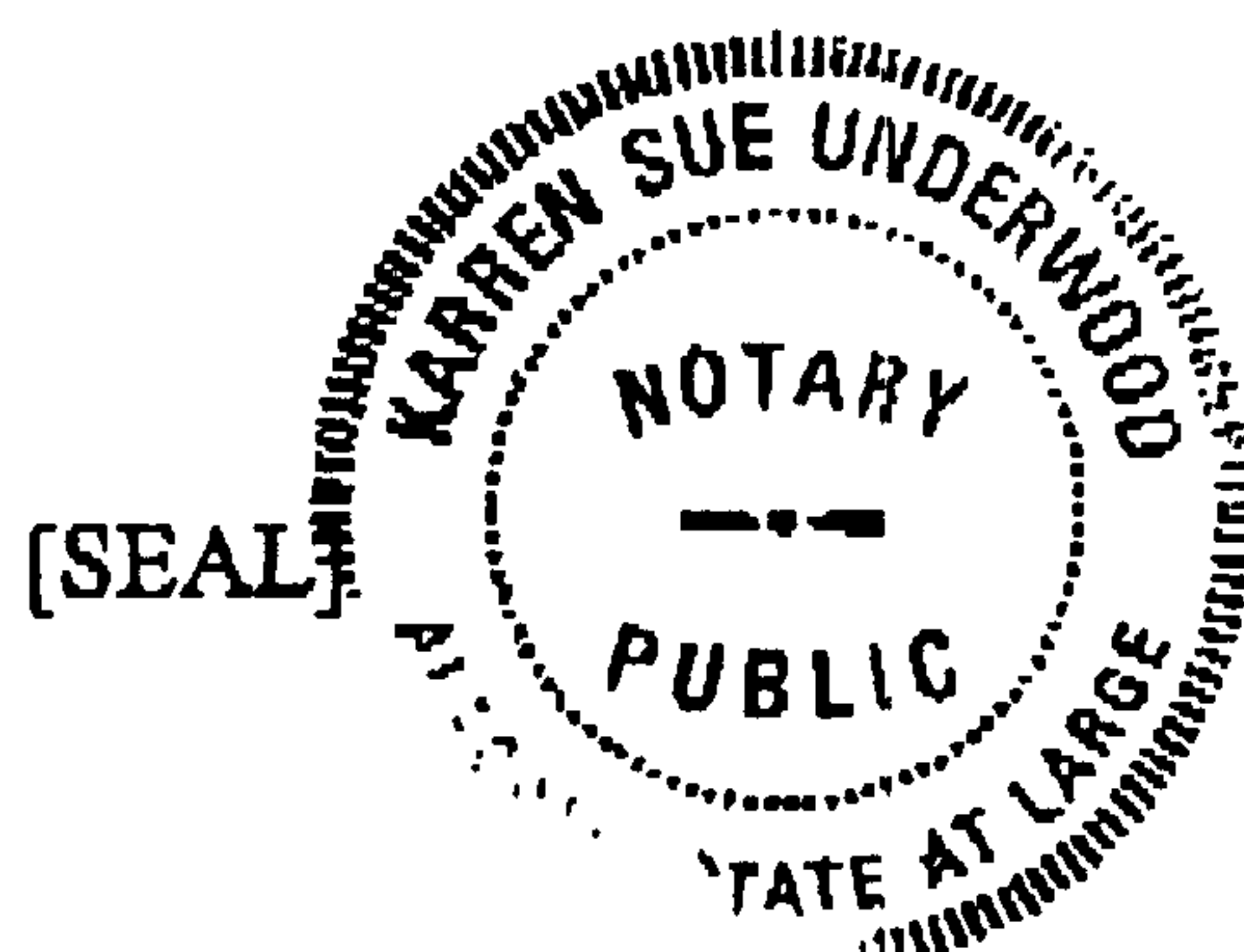


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ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Todd Murphy and Ray Murphy, whose names as Members of CALVINE SOUTH, LLC, an Alabama limited liability company, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents thereof, they, as such members and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 19th day of June, 2006.



Notary Public

My Commission Expires:

MY COMMISSION EXPIRES  
MAY 3, 2010



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**EXHIBIT "A"****Legal Description of Property**

Lot 7, according to the Survey of Greystone Highlands Commercial Subdivision, as recorded in Map Book 20, page 25, in the Probate Office of Shelby County, Alabama.



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