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Shelby Cnty Judge of Probate,AL
02/16/2007 09:30:47AM FILED/CERT

This instrument prepared by:

Kevin C. Gray
Balch & Bingham LLP
P.O. Box 18668
Huntsville, Alabama 35804-8668
Tel. (256) 551-0171

STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF
ROADWAY AND UTILITY EASEMENT Amount: 520.00

THIS DECLARATION OF ROADWAY AND UTILITY EASEMENT (this "Declaration") is made as of the 14 day of February, 2007, by **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company ("CBI").

WHEREAS, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit A** attached hereto and made a part hereof, on which CBI intends to construct and develop certain buildings, roadways, parking lots and related improvements for sale and use as an office building complex (the "Office Property"); and

WHEREAS, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit B** attached hereto and made a part hereof, on which CBI intends to construct and develop certain buildings, roadways and related improvements for sale and use as a residential condominium development (the "Residential Property," collectively with the Office Property, the "Parcels," and each individually, a "Parcel"); and

WHEREAS, the Residential Property does not have existing access to a dedicated public road; and

WHEREAS, CBI intends to impose a condominium regime on the Office Property to be known as the "Edenton Office Condominium," which will be governed by the Edenton Office Condominium Owners' Association, Inc., a to-be-formed Alabama non-profit corporation (the "Office Association"); and

WHEREAS, CBI intends to impose a condominium regime on the Residential Property to be known as "Edenton, A Condominium," which will be governed by the Edenton Residential Condominium Owners' Association, Inc., a to-be-formed Alabama non-profit corporation (the "Residential Association," together with the Office Association, the "Associations"); and

WHEREAS, CBI is desirous of declaring and creating a certain access, roadway and utility easement over the Office Property for the benefit of the Residential Property to afford the

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Residential Property access to a dedicated, public roadway or street and to provide other rights and benefits in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual benefit to be derived by CBI, its successors and assigns, transferees and third parties, and their respective successors and assigns, the following easements are hereby imposed on the Office Property:

1. Easements. CBI hereby declares and imposes the following easements on the Office Property for its own benefit and for the benefit of the Residential Property and each of the current and future owners, successors, assigns and mortgagees of any part or all of the Residential Property (each individual or entity hereafter acquiring or holding an ownership interest in the Parcels being hereinafter called an "Owner" or collectively, the "Owners"):

(a) Vehicular and Pedestrian Access. A perpetual, non-exclusive ingress, egress and access easement and right of use, of all access, entrance drives, roadways and sidewalks over and across that certain real property located on the Office Property as more particularly described on **Exhibit C** attached hereto and made a part hereof (the "Easement Area"), on which CBI intends to construct and develop a roadway, sidewalks and related improvements. These non-exclusive easements shall be for the use and benefit of all present and future Owners and users of the Residential Property, their successors and assigns.

(b) Utility Easements. Non-exclusive easements for the installation, operation, maintenance, repair, replacement and removal of: water lines and systems, telephone lines and systems, gas lines and systems, sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems, and any other utility lines or systems hereafter developed to serve the Residential Property which are or may be located in the Easement Area (the "Utility Facilities"); provided, however, that all such Utility Facilities shall be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Office Property or any improvements located thereon.

(c) Sign Easements. The exclusive right to erect and maintain an entrance monument, sign or marker where the Easement Area joins Cahaba Beach Road identifying the residential condominium development located on the Residential Property. In its development of the Parcels, CBI will install and erect the initial monument, sign or maker identifying the Residential Property. The Residential Association shall maintain or replace such monument, sign or marker in substantially the same condition as that initially erected by CBI. In no event may the Residential Association impair or impede the visibility of any monument, sign or marker identifying the Office Property.

2. Unimpeded Access. CBI, its successors and assigns, will not construct a barricade or other divider that would inhibit or impede the use and enjoyment of the easements granted herein to the Residential Property Owners. The Residential Property Owners, in their use and enjoyment of the easements granted herein, shall not interfere with, inhibit or impede the Office Property Owners or their transferees, successors or assigns' use and enjoyment of the

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Office Property. Nothing contained herein shall be deemed to limit or prevent CBI, the Residential Property Owners or the Residential Association from erecting gated or controlled access to the Residential Property.

3. Maintenance Obligations.

(a) CBI intends to construct and develop the first phase of the Office Property prior to its construction and development of the first phase of the Residential Property, although some construction and development activities with respect to the properties may be simultaneously occurring. Until the organization and formation of the Residential Association, CBI or the Office Association, as applicable, shall be responsible for all maintenance associated with maintaining the landscaping, roadway and sidewalks located in the Easement Area in good order and repair.

(b) Upon the organization and formation of the Residential Association, the Office Association and Residential Association shall be equally responsible for maintaining the drives, roadways and sidewalks located in the Easement Area in good order and repair. Each Association shall be responsible for fifty-percent (50%) of all costs and expenses incurred in keeping and maintaining the Easement Area in accordance with the standards set forth in **Section 3(c)** hereof. The Associations may pass such costs through to their respective members as part of such Associations' assessments.

(c) Maintenance of the Easement Area shall include, without limitation: regular and timely removal and cleaning of all trash, garbage, litter or waste from the Easement Area; regular landscape maintenance (including mowing, pruning and trimming) of all landscaping within the Easement Area; watering and weed control of landscaping within the Easement Area; and keeping walks, driveways, roadways and sidewalks in the Easement Area clean and in good repair. The standard for such maintenance shall be that which would be equal in quality at least to that maintained by owners of first class facilities of the same type in the vicinity of the Parcels.

(d) In the event any maintenance to the Easement Area is necessary as a result of the installation, operation, maintenance, repair, replacement and removal of any Utility Facilities that benefit solely the Office Property or the Residential Property, the respective Association over the Property benefited shall be solely responsible for all maintenance and repair of the Easement Area to restore it to the condition existing before such work with respect to the Utility Facilities. In the event any maintenance to the Easement Area is necessary as a result of the negligence or willful misconduct of any Owner, the Association of which such Owner is a member shall be responsible for such maintenance or repair of the Easement Area; provided that nothing contained herein shall limit such Association from assessing all such costs and expenses against such Owner's unit and exercising any lien rights applicable thereto.

4. Maintenance Committee. Upon the organization of the last condominium association to be formed on either of the Parcels, there shall be established a Maintenance Committee (the "Committee"). The Committee shall be comprised of two (2) delegates from the Residential Association and one (1) delegate from the Office Association, to be appointed by the

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respective Associations' board of directors. Each delegates' term shall be for a period of one (1) year. The Committee shall determine when to perform necessary maintenance in accordance with the standards set forth in **Section 3(c)** hereof.

5. Enforcement.

(a) Either Association or any Owner shall have the right to enforce this Declaration at all times. Enforcement of this Declaration may be by any proceeding at law or in equity against the person or persons, or entity or entities violating or attempting to violate any covenant, restriction or other term of this Declaration, either to restrain such violation or to recover damages. Failure or delay by any Association or Owner to enforce this Declaration shall in no event be deemed to waive the right to do so.

(b) In the event a party shall fail or refuse to comply with any term, provision or covenant of this Declaration and does not cure the failure or refusal within thirty (30) days after written notice thereof is given by another party (provided that if such default cannot be reasonably cured within said thirty (30) days, then the failing party shall have an additional reasonable period of time within which to cure such default, provided that such party has commenced to cure such default within such 30-day period and is diligently pursuing a cure), then the party sending such notice of default may pursue any and all remedies it may have provided by law, in equity or otherwise, including, without limitation, the right to enter upon the other party's property, perform the work to be done and sue the defaulting party for all costs incurred in connection therewith. The pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any damage occurring to the harmed party by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by the harmed party to enforce one or more of the remedies herein provided upon occurrence of such a default, shall not be deemed or construed to constitute a waiver of such default. The remedies provided herein are in addition to any other remedies, either legal or equitable, available under applicable law.

6. Nature of Declaration . This Declaration shall run with and be binding upon the Office Property and inure to the benefit of the Residential Property and each Residential Property Owner and their respective successors in interest or title, assigns, tenants, and legal representatives.

7. Legal Effect. Each of the easements and rights created by this Declaration are appurtenant to the Parcels to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of such easements and rights, the Residential Property will constitute the dominant estate and the Office Property will constitute the servient estate. Each covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Parcel; (b) constitutes a covenant running with the land; (c) binds every Owner now having or hereafter acquiring an interest in any part of any Parcel; and (d) will inure to the benefit of each Owner and each Owner 's successors, assigns and mortgagees. Each Owner agrees that on conveyance of any part of a Parcel (including a condominium unit located thereon), the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration.

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8. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of CBI that this Declaration will be strictly limited to the private use of the Owners. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an Owner a third party beneficiary hereunder or give any such person any rights whatsoever.

9. Amendment. This Declaration may be amended or terminated at anytime by the mutual agreement of all of (*i*) the Owners of the Residential Property and (*ii*) any first mortgages of any part of the Residential Property.

10. Severability. If any provision of this Declaration shall become invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Declaration shall continue to be in full force and effect and shall not be affected thereby.

11. Priority of Declaration; Subordination by Mortgagees. The covenants, conditions, restrictions, and easements shall be prior and superior to any mortgage lien or liens encumbering a property covered hereby or any portion thereof. The declarations, easements, covenants, restrictions, and rights created hereby are subject and subordinate to all other declarations, easements, covenants, and restrictions of record as of the date hereof.

12. Governing Law. This Declaration and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Alabama.

13. No Conflict. In the event of a conflict between any provision of this Declaration and any provision of the Prior Declarations, the provisions of this Declaration shall control with respect to the Property.

IN WITNESS WHEREOF, Cahaba Beach Investments, LLC has executed this Declaration as of the date first set forth above.

CAHABA BEACH INVESTMENTS, LLC

By: _____
Its: Member

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STATE OF ALABAMA)

COUNTY OF SHELBY)

I, a Notary Public in and for said County in said State, hereby certify that Dwight A Sandlin, whose name as Member of **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Give under my hand and official seal of office this 15th day of February, 2007.

Loretta Lynne White
Notary Public

[NOTARY SEAL]

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr 13, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

My commission expires _____

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JOINDER OF MORTGAGE
(Residential Property)

The undersigned joins in this Declaration for the purpose of evidencing its consent thereto, as the mortgagee of record with respect to the real property described on **Exhibit A** attached hereto.

Compass Bank

By: Ben Hendrix

Its: Vice President

STATE OF ALABAMA)

COUNTY OF Jefferson **)**

I, a Notary Public in and for said County in said State, hereby certify that Ben Hendrix, whose name as Vice President of Compass Bank, a corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 14th day of February, 2007.

B. Ann Moore
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10

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JOINDER OF MORTGAGE
(Office Property)

The undersigned joins in this Declaration for the purpose of evidencing its consent thereto, as the mortgagee of record with respect to the real property described on **Exhibit B** attached hereto.

Compass Bank

By: _____
Its: Vice President

STATE OF Alabama
COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Ben Hendry, whose name as Vice President of Compass Bank, a corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 14th day of February, 2007.

B. Ann Moore
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10

Exhibit A

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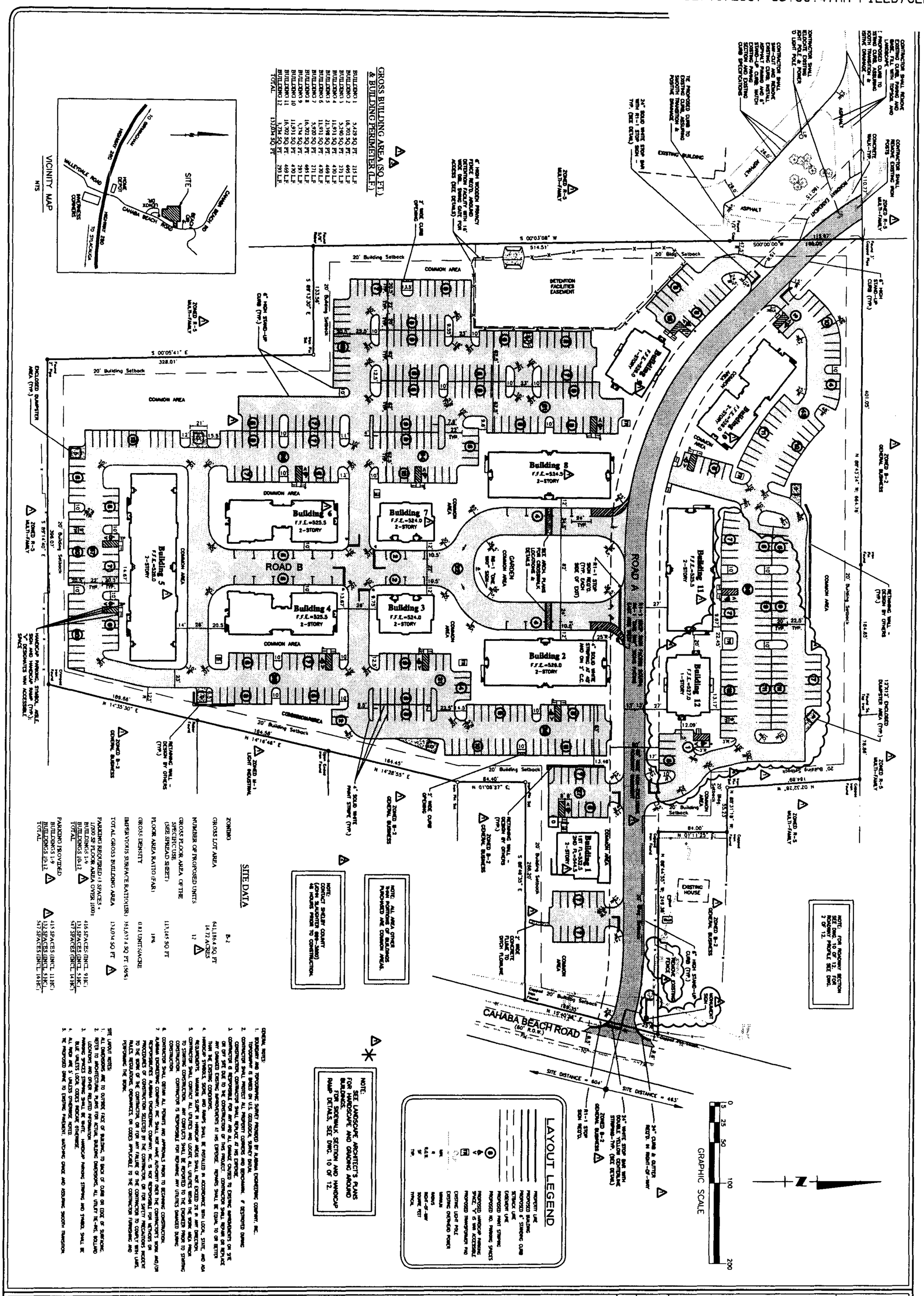

Date 11/14/2005	Scale 1"=50'	Layout Plan	Alabama Engineering Company, Inc.	No.	Date	Revisions
Sheet No. 1	Drawn by DSM	Edenton Office Condominiums	2 Office Park Circle, Suite 11	1	03/06/2006	Revisions and additions per Shelby County; Revised Bldg. 1 F.F.E.
Sequence No. 1 of 12	Checked RWB	Cahaba Beach Road	Birmingham, Alabama 35223			per arch., moved flume & added l.f. to ret. walls; Revised entrance
	File Name Edenton.dwg	Shelby County, Alabama	Phone (205) 803-2161	2	04/25/2006	Added note per Shelby County.
			Fax (205) 803-2162	3	05/17/2006	Added linear footage of each building perimeter per Shelby County
				4	06/27/2006	Moved Building 12 & revised parking; Deleted retaining wall at entrance; Revised transformers; Added monument sign.

Exhibit B

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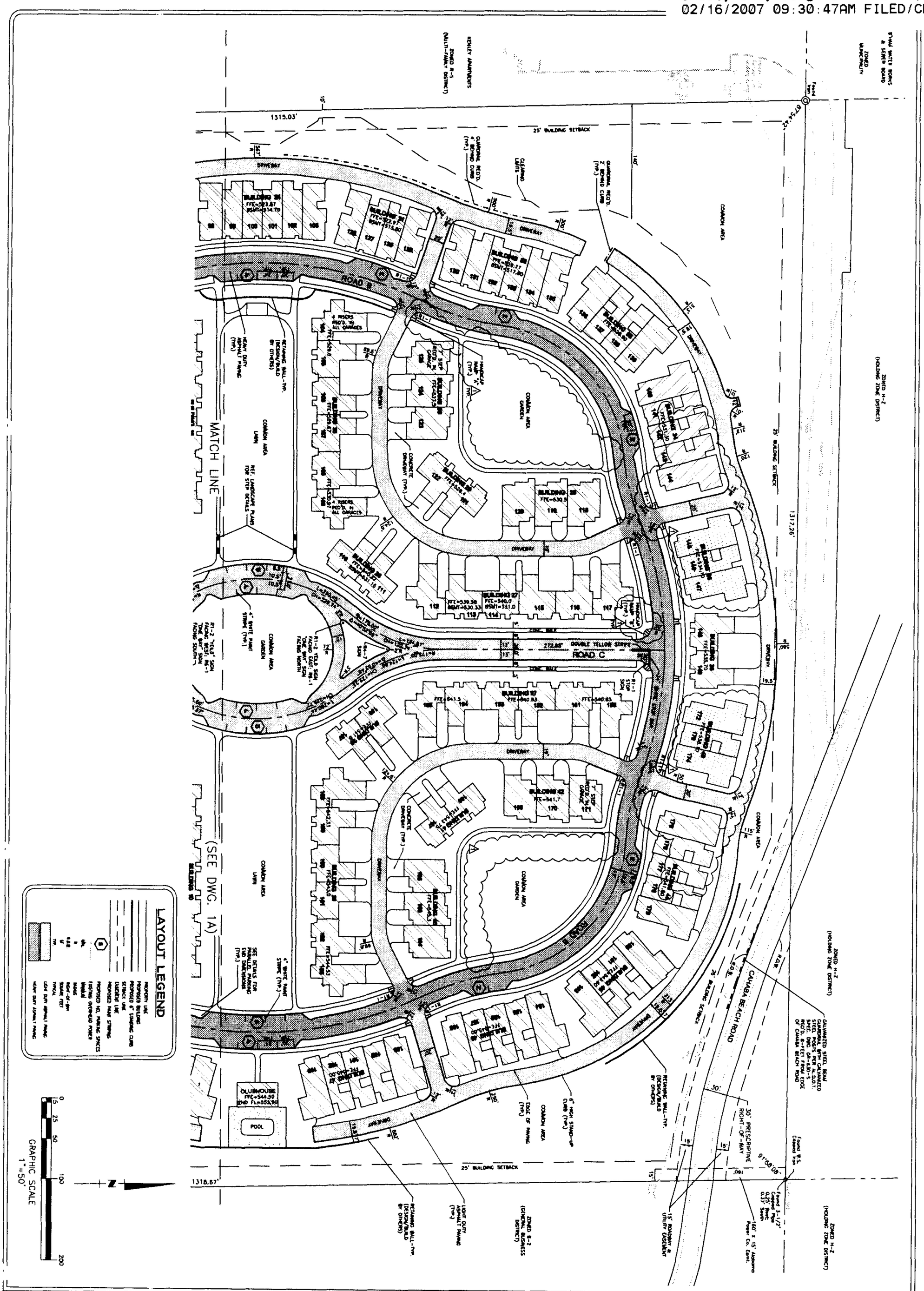

Date 5/01/2006	Scale 1"=50'	Layout Plan	Alabama Engineering Company, Inc.	No.	Date	Revisions
Sheet No. 1B	Drawn by DEM	Edenton Townhome Condominiums	2 Office Park Circle, Suite 11	1	07/07/06	Added handicap ramps & drives, Realigned drives & revised Bldgs. 34,35,45 & 44, Reserved one-way drive, parking & sidewalk in Common Area (at per County).
Sequence No. 3 of 26	Checked RWE	Cahaba Beach Road	Birmingham, Alabama 35223			
	File Name Edenton Const. Plans.dwg	Shelby County, Alabama	Phone (205) 803-2161			
			Fax (205) 803-2162			

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Exhibit B

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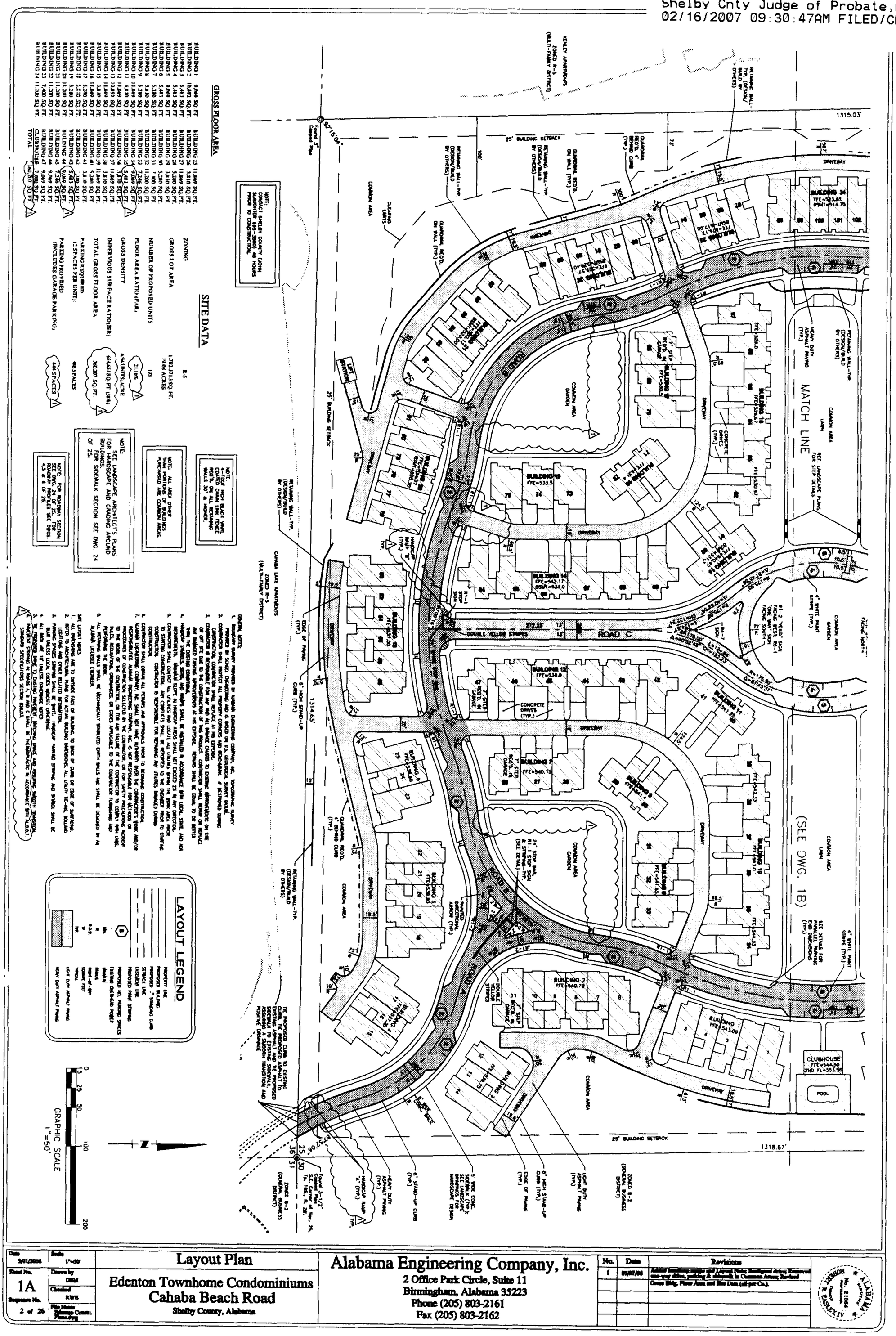

Date 5/01/2006	Scale 1"=50'	Layout Plan	Alabama Engineering Company, Inc.	No.	Date	Revisions
Sheet No. 1A	Drawn by DBM	Edenton Townhome Condominiums	2 Office Park Circle, Suite 11	1	07/07/06	Added buildings, pools and Layout Notes. Realigned drive. Removed one-way drive, parking & sidewalk in Common Area. Revised Cover Bldg. Floor Area and Site Data (all per Co.).
Sheet No. 2 of 26	Checked RWE	Cahaba Beach Road	Birmingham, Alabama 35223			
	File Name Shelby County	Shelby County, Alabama	Phone (205) 803-2161			
			Fax (205) 803-2162			

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Exhibit C

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Roadway, Utility & Sign Easement

A Roadway, Utility & Sign Easement located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:
Commence at a 3" capped pipe locally accepted as the the N.W. corner of said Section 31;
thence S 00°00'00" W and along the West line of said Section 31 a distance of 15.70 feet to the POINT OF BEGINNING of said Roadway, Utility & Sign Easement;
thence continue S 00°00'00" W along the West line of said Section 31 a distance of 85.55 feet;
thence leaving said Section line S 44°31'59" E, a distance of 133.49 feet to the beginning of a curve to the left, said curve having a radius of 405.00 feet and a central angle of 44°12'56";
thence along the arc of said curve, in a Southeasterly direction, a distance of 312.54 feet to the end of said curve;
thence S 88°44'55" E a distance of 487.77 feet to the beginning of a curve to the right, said curve having a radius of 320.00 feet and a central angle of 13°06'45";
thence along arc of said curve, in a Southeasterly direction, a distance of 73.23 feet to end of said curve;
thence S 74°19'04" E a distance of 14.03 feet to a point on the Westerly right-of-way of Cahaba Beach Road;
thence N 15°40'56" E, along said right-of-way, a distance of 75.99 feet;
thence leaving said right-of-way N 88°44'55" W a distance of 600.04 feet to the beginning of a curve to the right, said curve having a radius of 345.00 feet and a central angle of 44°12'56";
thence along arc of said curve, in a Northwesterly direction, a distance of 266.24 feet to end of said curve;
thence N 44°31'59" W a distance of 194.48 feet to the POINT OF BEGINNING.

Exhibit C

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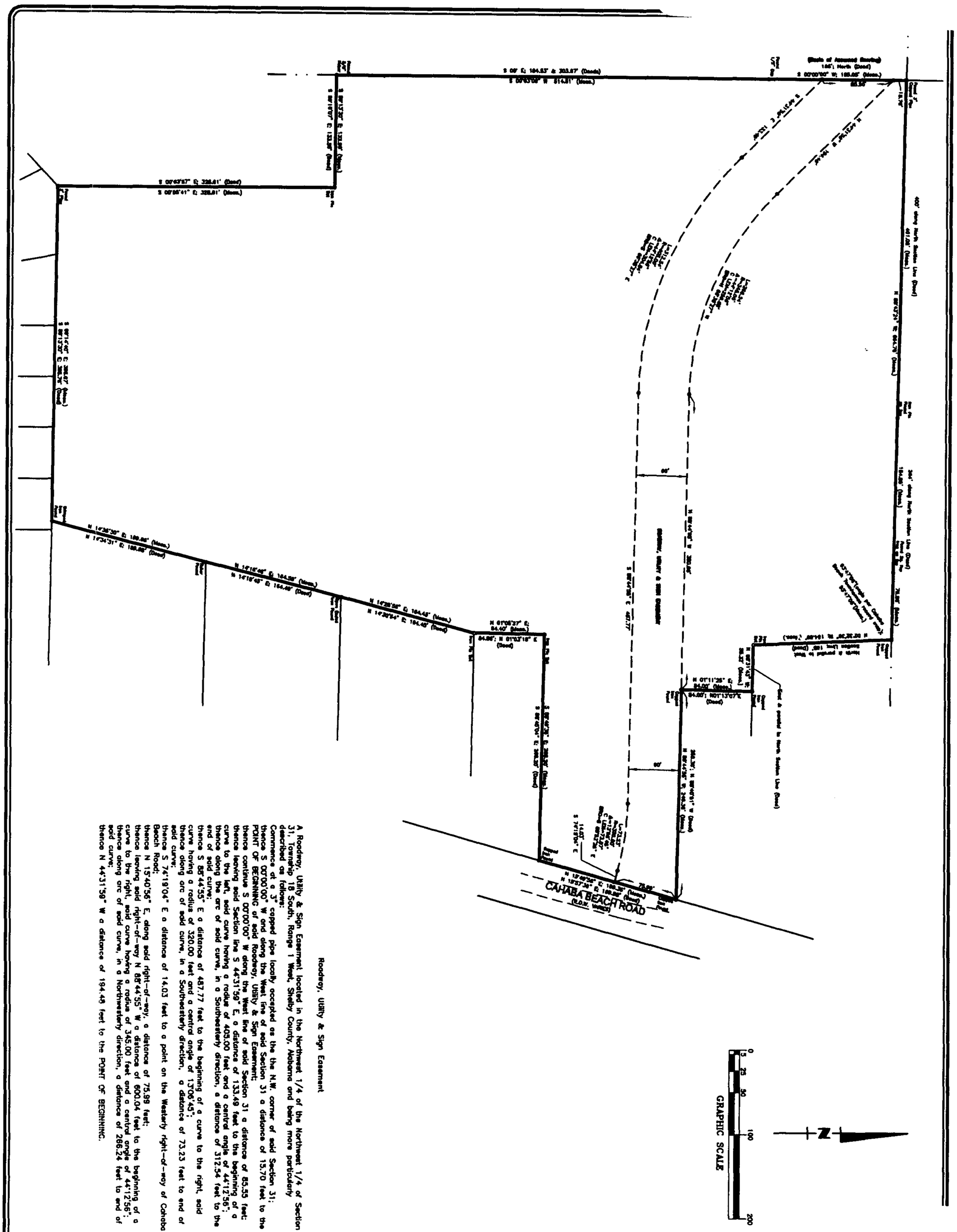

Roadway, Utility & Sign Easement

A Roadway, Utility & Sign Easement located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commence at a 3" capped pipe locally accepted as the the N.W. corner of said Section 31; thence S 00°00'00" W and along the West line of said Section 31 a distance of 15.70 feet to the POINT OF BEGINNING of said Roadway, Utility & Sign Easement;

thence continue S 00°00'00" W along the West line of said Section 31 a distance of 85.53 feet; thence leaving said Section line S 44°31'59" E, a distance of 133.49 feet to the beginning of a curve to the left, said curve having a radius of 405.00 feet and a central angle of 44°12'56"; thence along the arc of said curve, in a Southeasterly direction, a distance of 312.54 feet to the end of said curve;

thence S 88°44'55" E a distance of 487.77 feet to the beginning of a curve to the right, said curve having a radius of 320.00 feet and a central angle of 13°06'45"; thence along arc of said curve, in a Southeasterly direction, a distance of 73.23 feet to end of said curve;

thence S 74°19'04" E a distance of 14.03 feet to a point on the Westerly right-of-way of Cahaba Beach Road;

thence N 15°40'56" E, along said right-of-way, a distance of 75.99 feet;

thence leaving said right-of-way N 88°44'55" W a distance of 600.04 feet to the beginning of a curve to the right, said curve having a radius of 345.00 feet and a central angle of 44°12'56"; thence along arc of said curve, in a Northwesterly direction, a distance of 266.24 feet to end of said curve;

thence N 44°31'59" W a distance of 194.45 feet to the POINT OF BEGINNING.

Shelby County, AL 02/16/2007
State of Alabama

Deed Tax:$.50

Date 02/06/2007	Scale 1"=50'	Roadway, Utility & Sign Easement	Alabama Engineering Company, Inc.	No.	Date	Revisions
Sheet No. 1	Drawn by DBM	Edenton Office Condominium NSH Corp.	2 Office Park Circle, Suite 11			
Sequence No. 1 of 1	Checked RWE	Shelby County, Alabama	Birmingham, Alabama 35223			
	File Name Roadway, Util & Sign Easement		Phone (205) 803-2161			
			Fax (205) 803-2162			