



20070329000141970 1/10 \$38.50
Shelby Cnty Judge of Probate, AL
03/29/2007 01:20:04PM FILED/CERT

STATE OF ALABAMA)

Shelby County, AL 03/29/2007
State of Alabama

SHELBY COUNTY)

Deed Tax: \$.50

SANITARY SEWER EASEMENT AGREEMENT

THIS **SANITARY SEWER EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of the 27th day of March, 2007, by **MJM CHELSEA, LLC**, an Alabama limited liability company ("MJM Chelsea"), and **B & F REALTY #1, LLC**, an Alabama limited liability company ("B & F Realty"), and is joined in by **COMPASS BANK** for the purpose of evidencing its consent to the provisions of this Agreement.

Recitals

WHEREAS, pursuant to that certain Purchase Agreement between MJM Chelsea and B & F Realty dated as of June 20, 2006, as amended from time to time (the "Purchase Agreement"), MJM Chelsea has conveyed to B & F Realty certain real property located in Chelsea, Shelby County, Alabama more particularly described on Exhibit A attached hereto (the "B & F Property"). The location of the B & F Property is illustrated on the preliminary plan for Chelsea Crossings shopping center as shown on Exhibit B attached hereto (the "Plan").

WHEREAS, MJM Chelsea is in the process of developing the property surrounding the B & F Property (the "Development"), which is shown more fully on the Plan.

WHEREAS, B & F Realty has requested, and MJM Chelsea has agreed to provide, an easement for sanitary sewer as described more fully herein.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid to MJM Chelsea, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MJM Chelsea does hereby grant, bargain, sell and convey to B & F Realty, upon the conditions and subject to the limitations hereinafter set forth, the easements and rights hereinafter set forth.

TO HAVE AND TO HOLD, said easements and rights unto B & F Realty, its successors and assigns.

1. Representations and Warranties.

(a) By MJM Chelsea. MJM Chelsea does hereby represent and warrant that it is the owner of the fee simple interest in and to such real property comprising the Sanitary Sewer Easement Area (as such term is defined hereinbelow) and that all necessary steps have been taken to authorize it to enter into this Agreement.

(b) By B & F Realty. B & F Realty does hereby represent and warrant that it has taken all steps necessary to authorize it to enter into this Agreement.

2. **Sanitary Sewer Easement Area.** MJM Chelsea does hereby declare, establish, grant and convey a perpetual, non-exclusive easement for the purposes of installing, constructing, maintaining, repairing and replacing sanitary sewer facilities (the "Sanitary Sewer Easement") for the benefit of the B & F Property over, across, through and upon the property more fully described on Exhibit C attached hereto (the "Sanitary Sewer Easement Area").

3. **Nature of Easement.** The Sanitary Sewer Easement shall be permanent, perpetual and non-exclusive in nature.

4. **Private Easement.** The easements, rights and covenants established, created and granted in this Agreement are for the benefit of the parties hereto, their successors and assigns, and shall not be construed as creating any rights in the public.

5. **Agreements Run with Land.** Both the benefits and the burdens of all easements and rights established by this Agreement shall run with and bind the lands described herein and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, licensees, invitees, employees, personal representatives, heirs, successors, and assigns.

6. **Interpretation.** The easements, benefits, rights and obligations set forth herein shall be interpreted so as to allow the owners of the lands affected hereby to enjoy the commercially reasonable use and benefit of the same while fulfilling the essential purposes of such easement, covenants and restrictions.

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

8. **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenants, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

9. **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama.

10. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto in respect of the easement hereby conveyed, and neither party is bound by any previous representations or agreements of any kind regarding the Sanitary Sewer Easement except as herein contained. This Agreement and any provision herein contained may be terminated, extended, modified or amended only with the express written consent of the then-owners of the B & F Property and the portion of the Development so affected.

[signature pages to follow]

[signature page to Sanitary Sewer Easement Agreement]

B & F REALTY #1, LLC

By: B & F Holdings, Ltd.
Its: Member

By: B & F Holdings GP, LLC
Its: General Partner

By: *Jerrell M. Baird*
Name: Jerrell M. Baird
Title: President

STATE OF Alabama)
Jefferson COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jerrell M. Baird, whose name as President of B & F Holdings GP, LLC, in its capacity as General Partner of B & F Holdings, Ltd., in its capacity as Member of B & F Realty #1, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/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 27th day of March, 2007.

Carolyn N. Lantier
Notary Public

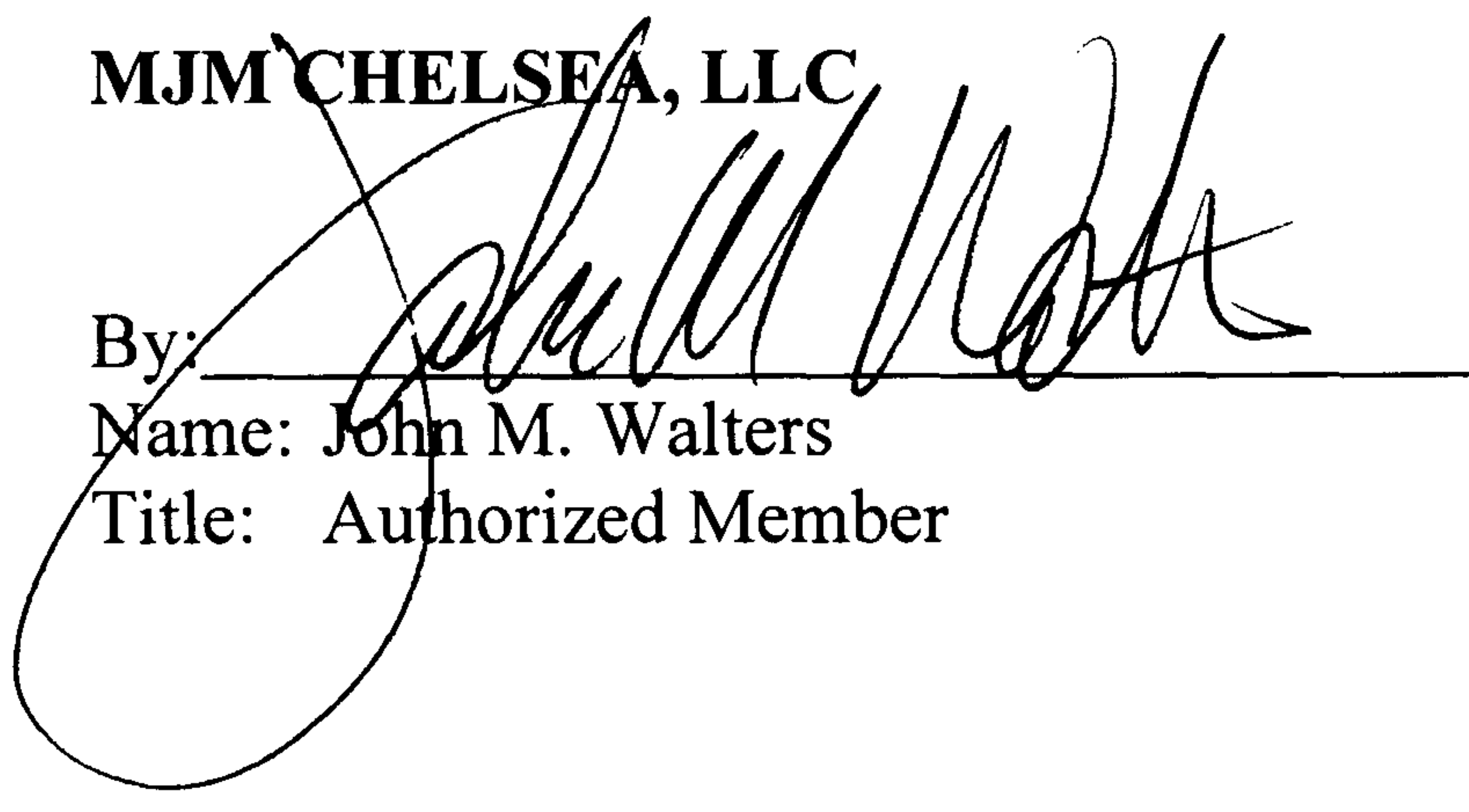
[NOTARIAL SEAL]

My commission expires: _____

My Commission Expires September 29, 2009

[signature page to Sanitary Sewer Easement Agreement]

MJM CHELSEA, LLC

By: 

Name: John M. Walters

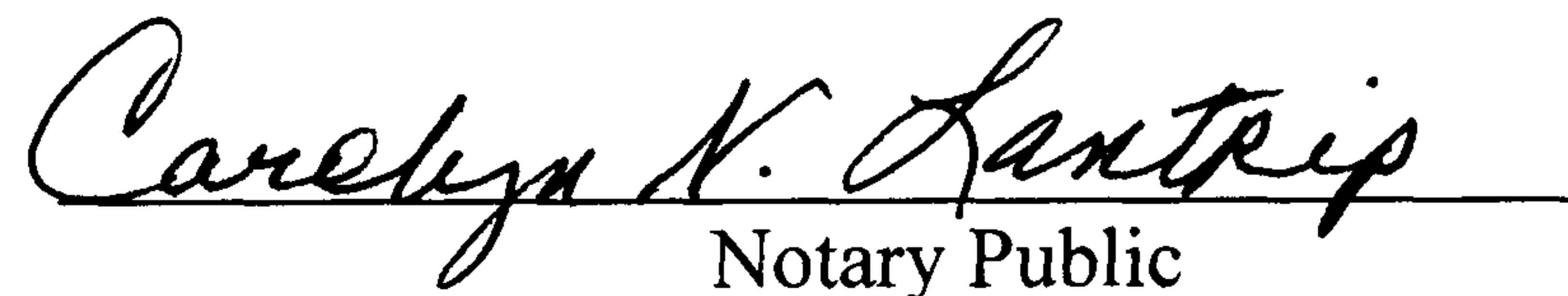
Title: Authorized Member

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John M. Walters, whose name as Authorized Member of MJM Chelsea, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Authorized Member 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 27th day of March, 2007.


Notary Public

[NOTARIAL SEAL]

My commission expires: _____

My Commission Expires September 29, 2009

[signature page to Sanitary Sewer Easement Agreement]

COMPASS BANK

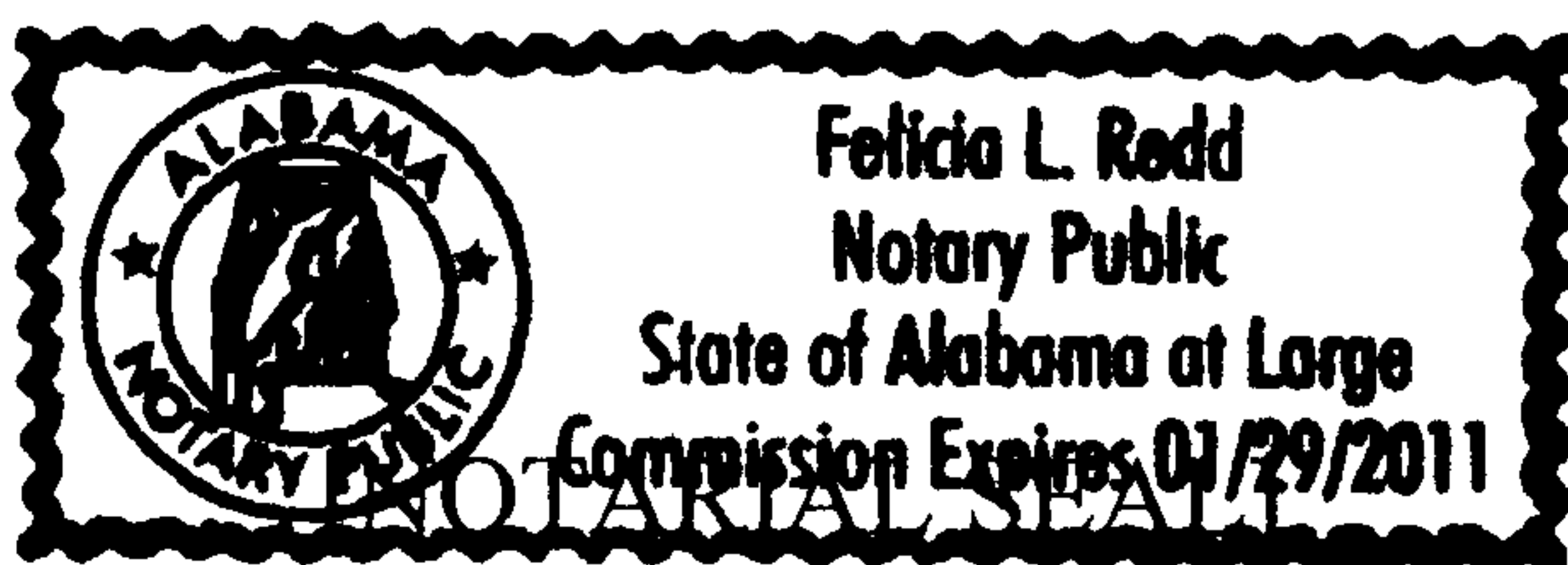
By: Melissa Schmitt
Name: Melissa Schmitt
Title: Assistant Vice President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Melissa Schmitt, whose name as Assistant Vice President of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this 29th day of March, 2007.



Felicia Redd
Notary Public
My commission expires: 1/29/2011

THIS INSTRUMENT PREPARED BY:

Matthew W. Grill
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203
(205) 254-1000

EXHIBIT A


20070329000141970 7/10 \$38.50
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(Description of B & F Property)

Outparcel 3, Chelsea Crossings, according to the plat thereof recorded in Map Book 37, Page 49, of the records in the Office of the Judge of Probate, Shelby County, Alabama.

EXHIBIT B

(The Plan)


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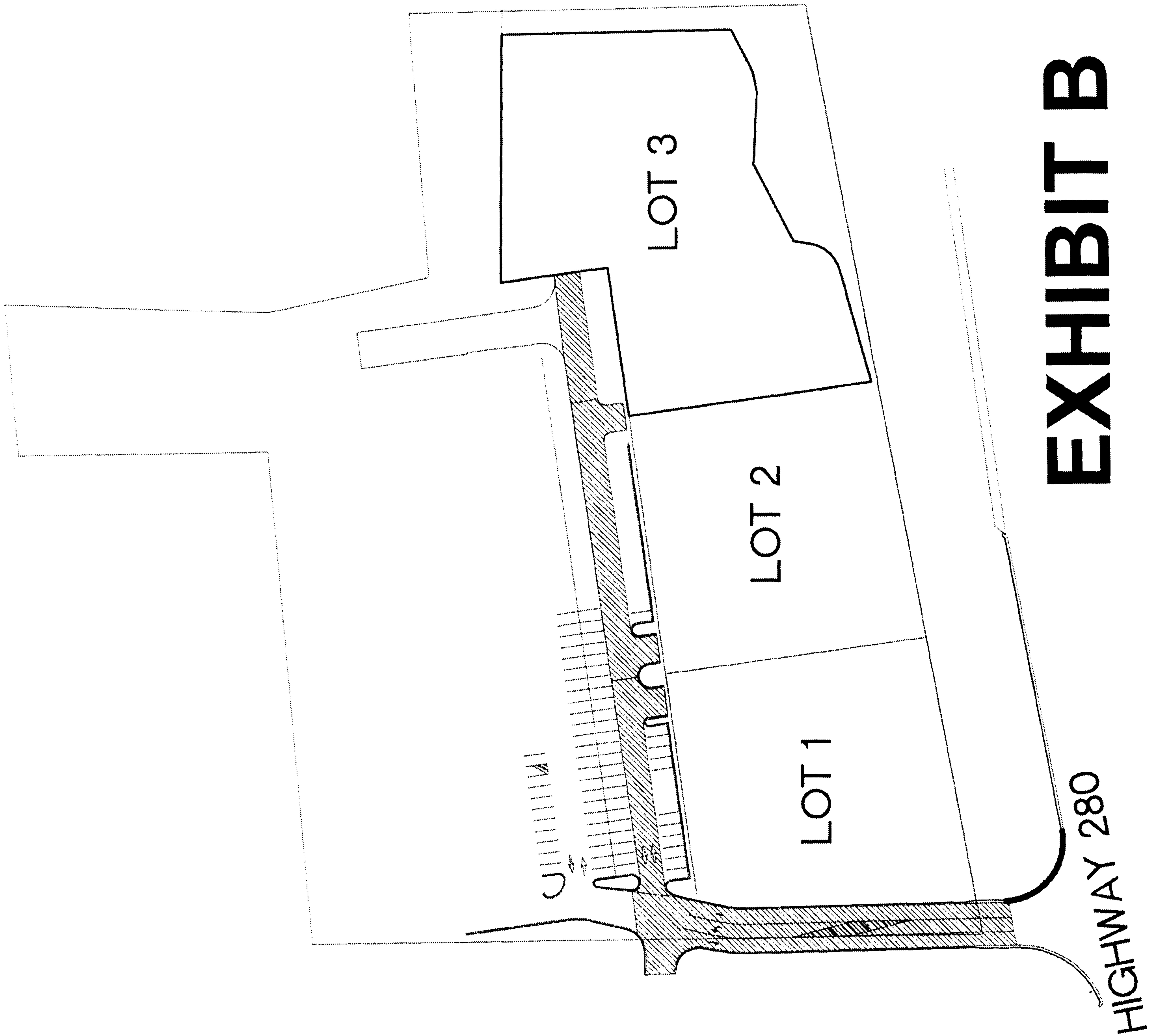


EXHIBIT B

EXHIBIT C

(Description of Sanitary Sewer Easement Area)

Commence at the northwest corner of Outparcel 3, as recorded in map book 37 page 49 in the office of the judge of probate, Shelby County, Alabama; thence run south 7 degrees 42 minutes 12 seconds east for a distance of 30.80' to the point of beginning and centerline of a 20' wide sanitary sewer easement; from the point of beginning thus obtained, thence run south 80 degrees 52 minutes 15 seconds west for a distance of 30.51' to the point of ending of said 20' wide easement; said point also being on the east line of an existing 20' sanitary sewer easement as recorded in map book 37 page 49 in the Office of the Judge of Probate, Shelby County, Alabama.