

\$10,000.00 *Net*



20070611000271480 1/11 \$51.00
Shelby Cnty Judge of Probate, AL
06/11/2007 11:55:31AM FILED/CERT

STATE OF ALABAMA)
 :
SHELBY COUNTY)

CONDITIONAL DECLARATION OF EASEMENTS

THIS CONDITIONAL DECLARATION OF EASEMENTS (this "Declaration") is entered into this 11 day of June, 2007, by **SHELBY COMMERCE PARK, L.L.C.**, an Alabama limited liability company ("Shelby" or "Declarant"), **DIXON, LLC**, an Alabama limited liability company ("Dixon"), and **O'BRIEN, LLC**, an Alabama limited liability company ("O'Brien").

RECITALS:

A. Shelby, Dixon and O'Brien are the owners of Lot 1, Graham's Resurvey of Lot 2, Shelby Commerce Park, Map Book 31, Page 138, Shelby County Probate Office ("Lot 1").

B. Shelby is the contract purchaser of that certain real property adjacent to Lot 1 described on Exhibit A attached hereto (the "Allen Foster Property" and together with Lot 1, the "Parcels") as set forth in that certain Sales Agreement dated October 24, 2006, by and between Shelby and Allen Foster III (the "Allen Foster Contract"). The conveyance of the easements set forth in this Declaration is subject to the condition that Shelby purchases the Allen Foster Property, on or before December 31, 2007.

C. The parties have determined that it is necessary and appropriate to create, grant and reserve certain easements, rights and requirements with respect to drainage, utilities and other matters with respect to the Parcels, for the use and benefit of the owners of each of the Parcels, and their respective successors and assigns (each an "Owner" and collectively, the "Owners"), and the respective agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors, mortgagees and tenants of the Owners.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Shelby, Dixon and O'Brien hereby declare that subject to Section 15 hereof, the Parcels shall be benefited and burdened by the following easements and rights:

Section 1. Declaration and Grant of Easements.

(a) Utility Easement. Shelby, Dixon and O'Brien do hereby grant, bargain and sell to Shelby a non-exclusive easement over, across and under Lot 1 within the area more particularly described on Exhibit B attached hereto (the "Utility Easement Area") for the construction, installation, operation, maintenance, repair and replacement of gas, water and sewer lines to serve the Allen Foster Property.

(b) Drainage Easement. Shelby, Dixon and O'Brien do hereby grant, bargain, sell and convey to Shelby a non-exclusive easement over, across and under those parts of Lot 1 more particularly described on Exhibit C attached hereto (the "Drainage Easement Area") for the purpose of flowing, transporting, removing and/or holding storm water from the Parcels.

Section 2. Unimpeded Access. No barricade or other divider shall be constructed within the Utility Easement Area or the Drainage Easement Area (collectively, the "Easement Areas") and the Owners shall do nothing to prohibit or discourage the use of the Easement Areas in a manner consistent with the easements and rights granted in this Declaration.

Section 3. Maintenance of Easement Areas. The Owner of the Allen Foster Property shall be responsible for maintaining the Easement Areas at its sole cost and expense provided however that the Owner of Lot 1 shall continue to maintain the surface of the Utility Easement Area. In the event that the Owner of the Allen Foster Property disturbs the surface of the Utility Easement Area in connection with its maintenance or installation of utility lines it shall, at its sole expense, promptly after the completion of such work, restore the Utility Easement Area to its condition existing prior to the commencement of such work. If the Owner of the Allen Foster Property shall fail to maintain the Easement Areas, the Owner of Lot 1, after first giving the Owner of the Allen Foster Property not less than 60 days prior written notice (except in the case of emergency repairs), may cause such work to be performed in a good and workmanlike manner. The Owner of Lot 1 shall thereafter submit to the Owner of the Allen Foster Property a statement of charges for such work, together with supporting documentation. The Owner of Lot 1 shall use reasonable efforts to cause the charges for such work to be minimized. The Owner of the Allen Foster Property shall pay all such costs calculated as provided above within 30 days after receipt of such a statement. If the Owner of the Allen Foster Property shall fail to pay such charges, the Owner of Lot 1 shall have the right to place a lien against the Allen Foster Property and to enforce such lien in the same manner as provided in the case of mechanics' and materialmen's liens under Alabama law. In addition, the Owner of the Allen Foster Property shall pay all reasonable attorneys' fees and costs of collections incurred by the Owner of Lot 1 in connection with collecting, or attempting to collect, such costs.

Section 4. Duration of Easements. This Declaration and each easement created hereby will continue for a term of twenty (20) years from the date of this Declaration and will thereafter continue in full force and effect so long as any easement created hereby is used by any Owner.

Section 5. Legal Effect. Each of the easements and rights created by this Declaration shall run with the land and shall be appurtenant to the Parcel to which it relates for the term specified above and shall not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Declaration (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in any Parcel, and such Owner's successors, assigns and mortgagees, and (iii) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Declaration

Section 6. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration will be strictly limited to the private use of the Owners and their respective agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors, mortgagees and tenants. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees.

Section 7. Effect of Breach. Breach of any of the covenants contained in this Declaration shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any Parcel, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure and otherwise.

Section 8. Notices. All notices, statements, demands, approvals or other communications to be given under or pursuant to this Declaration shall be in writing and shall be delivered in person or by certified or registered mail, postage prepaid. If mailed, notice will be deemed to have been given three (3) days after the date of mailing. The address of each Owner for purposes of this Section 8 is the address for tax notices for such Owner's Parcel as of the date notice is given.

Section 9. No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Declaration should be breached by any Owner and thereafter waived by another Owner, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10. Amendment. Except as set forth in Section 15 below, this Declaration may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

Section 11. Severability. The provisions of this Declaration are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

Section 13. Time of the Essence. Time is of the essence in this Declaration.

Section 14. Captions. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 15. Allen Foster Contract Condition Precedent. It shall be a condition precedent ("Condition") to the effectiveness of the conveyance of the easements described in this Declaration that Shelby shall have purchased the Allen Foster Property, with the easements conveyed pursuant



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to this Declaration to become effective automatically and without further action upon the recordation in the Probate Office of Shelby County, Alabama of the conveying deed for the Allen Foster Property. In the event that Shelby does not satisfy the Condition on or before December 31, 2007, then this Declaration shall be of no force and effect and may be terminated of record by a writing signed by any party hereto and recorded in the public records of the Shelby County Probate Office.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed on the day and year first above written.

SHELBY COMMERCE PARK, L.L.C.

By: H. Michael Graham
H. Michael Graham
Its Member

O'BRIEN, LLC

By _____

Its _____

DIXON, LLC

By _____

Its _____


This instrument was prepared by:
J. David Dresher
Bradley Arant Rose & White LLP
1819 5th Avenue North
Birmingham, AL 35203

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed on the day and year first above written.

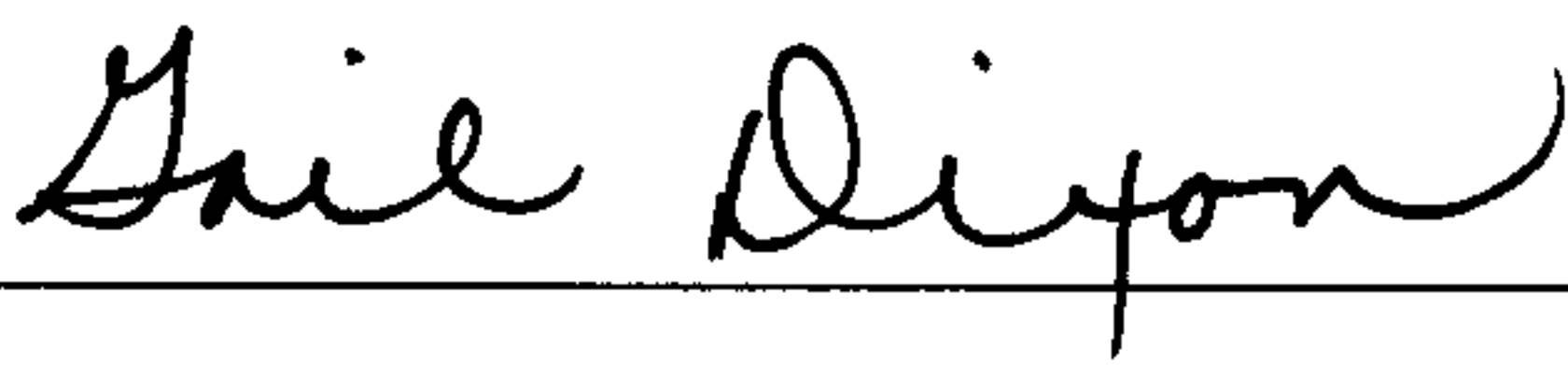
SHELBY COMMERCE PARK, L.L.C.

By: _____
H. Michael Graham
Its Member

O'BRIEN, LLC

By: 
Its MEMBER

DIXON, LLC

By: 
Its member

This instrument was prepared by:
J. David Drescher
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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that H. MICHAEL GRAHAM, whose name as Member of Shelby Commerce Park, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such 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 11 day of JUNE, 2007.

Robin L. Domit
Notary Public

AFFIX SEAL

My commission expires: Robin L. Domit
NOTARY PUBLIC
STATE OF ALABAMA
Jefferson County
MY COMM. EXP. 3-9-08

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that GAIL DIXON, whose name as GAIL DIXON of Dixon, 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 the 11th day of June, 2007.

Margaret S. Aldrich
Notary Public

AFFIX SEAL

My commission expires: 3/2/11

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that DENNIS O'BRIEN, whose name as DENNIS O'BRIEN of O'Brien, 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 the 11th day of June, 2007.

Margaret S. Aldrich
Notary Public

AFFIX SEAL

My commission expires: 3/2/11

EXHIBIT A

EXHIBIT A

ALLEN FOSTER PROPERTY

A part of the Northeast Quarter of the Southeast Quarter of Section 21 and part of the Northwest Quarter of the Southwest Quarter of Section 28, Township 21 South, Range 2 West, situated in Shelby County, Alabama, being more particularly described as follows: Begin at the Northwest corner of Northeast of Southeast Quarter of said Section 29, run thence South 1 degree 51 minutes 10 seconds East, along the west line of said Northeast Quarter of Southeast Quarter, a distance of 622.84 feet (Deed, South 2 degrees 30 minutes East, 661.9 feet, more or less) to Northeasterly right of way line of the L&N Railroad as now existing; thence run South 28 degrees 39 degrees 20 seconds East along said right of way line a distance of 531.88 feet (deed, 481.8 feet); thence run North 86 degrees 38 minutes 21 seconds East, a distance of 1,152.91 feet (Plat dimension of 1,152.83 feet, Shelby Commerce Park, MB. 31, Pg. 138) to a point on the east section line of Section 29, Township 21 South, Range 2 West (west section line of Section 28); thence North 88 degrees 10 minutes 04 seconds East, a distance of 878.13 feet (Plat dimension of 878.08 feet Shelby Commerce Park, MB. 31, Pg. 138); to the westerly right of way line of U.S. Highway 31; (Note: Deed Book 286, Page 157 describes this south boundary as a single line: "thence North 87 degrees 18 minutes East a distance of 2,038.25 feet, more or less, to the westerly right of way line of U.S. Highway 31 as now existing"); thence run northwesterly along said right of way and along a curve having a radius of 1,098.79 feet, a chord bearing of North 15 degrees 48 minutes 37 seconds West, an arc distance of 116.77 feet, to the point of a tangent to said curve; thence continue along the tangent to curve and along said right of way North 18 degrees 51 minutes 09 seconds west, a distance of 979.02 feet to the North line of the Northwest Quarter of Southwest Quarter of Section 28, Township 21 South, Range 2 West; (Note: Deed Book 286, Page 157 describes this east boundary, paralleling the westerly right of way of Highway 31, as a single line: "thence North 18 degrees 00 minutes West along said Highway right of way line a distance of 1077.70 feet, more or less, to the North line of the Northwest Quarter of Southwest Quarter of Section 28, Township 21 South, Range 2 West"); thence South 88 degrees 26 minutes 00 seconds West, a distance of 594.44 feet to a point on the west section line of Section 28, Township 21 South, Range 2 West (east section line of Section 29); thence South 88 degrees 46 minutes 53 seconds West, a distance of 1361.73 feet to the Point of Beginning; (Note: Deed Book 286, Page 157 describes this north boundary as a single line: "thence South 89 degrees 00 minutes West along said North line of said 1/4-1/4 section a distance of 1,958.1 feet, more or less, to the Point of Beginning");

Containing 50.58 Acres, more or less:



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EXHIBIT B

UTILITY EASEMENT AREA

LEGAL DESCRIPTION OF UTILITY EASEMENT

Being part of Lot 1, of Shelby Commerce Park, as recorded in Map Book 31, Page 138, in the Probate Office of Shelby County, Alabama and being more particularly described as follows; Commence at the Northeast corner of said Lot 1 and run S09°18'35"E along the Southwesterly Right of Way of U.S. Highway No. 31 101.85 feet to the Point of Beginning of herein described easement; thence continue S09°18'35"E along said Right of Way 100.99 feet to an offset in said Right of Way; thence run N82°18'50"E, 14.90 feet; thence run S07°20'25"E along said Right of Way, 100.01 feet to an offset in said Right of Way; thence run S82°39'00"W, 14.98 feet; thence run S07°11'56"E along said Right of Way 358.29 feet to a Point of Curve of a curve to the right, having a radius of 125.00 feet and a central angle of 98°02'42"; thence run S41°49'25"W along the chord of said curve 188.74 feet (arc = 213.90') to the Point of Tangent of said curve being on the Northerly Right of Way of Distribution Way; thence run N00°50'46"E, 25.00 feet; to the Point of Curve of a curve to the left, having a radius of 100.00 feet and a central angle of 98°02'42"; thence run N41°49'25"E along the chord of said curve 150.99 feet (arc = 171.12') to the Point of Tangent; thence run N07°11'56"W, 453.24 feet to a point on the Southerly line of above described Drainage Easement; thence run S88°21'33"E, along said Southerly line of Drainage Easement 25.46 feet to the Point of Beginning.



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EXHIBIT C

DRAINAGE EASEMENT AREA

LEGAL DESCRIPTION OF DRAINAGE EASEMENT

Being part of Lot 1, of Shelby Commerce Park, as recorded in Map Book 31, Page 138 in the Probate Office of Shelby County, Alabama and being more particularly described as follows; Begin at the Northeast corner of said Lot 1, being on the Southwesterly Right of Way of U.S. Highway No 31 and run S09°18'35"E along said Right of Way 101.85 feet; thence run N88°21'33"W, 119.34 feet; thence run N01°38'27"E, 100.00 feet to a point on the North line of said Lot 1, thence run S88°21'33"E, 100.00 feet to the Point of Beginning.

Shelby County, AL 06/11/2007
State of Alabama

Deed Tax: \$10.00