

LIMESTONE MARKETPLACE DECLARATION OF PROTECTIVE COVENANTS

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

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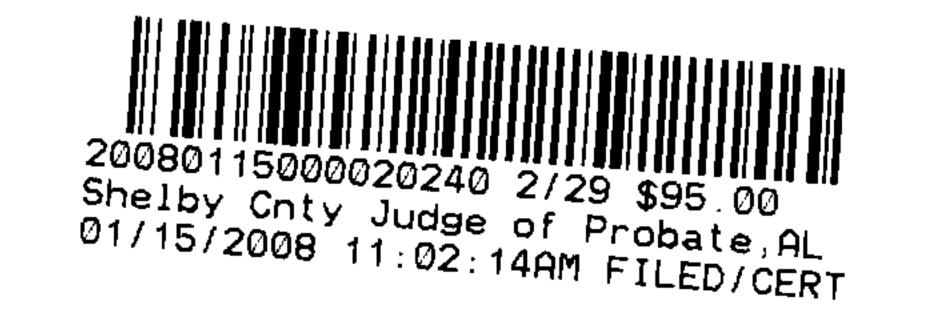
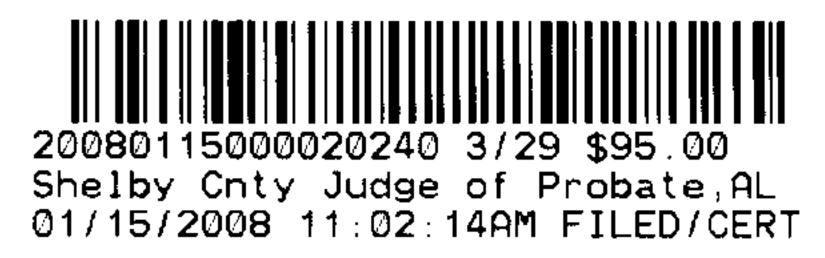


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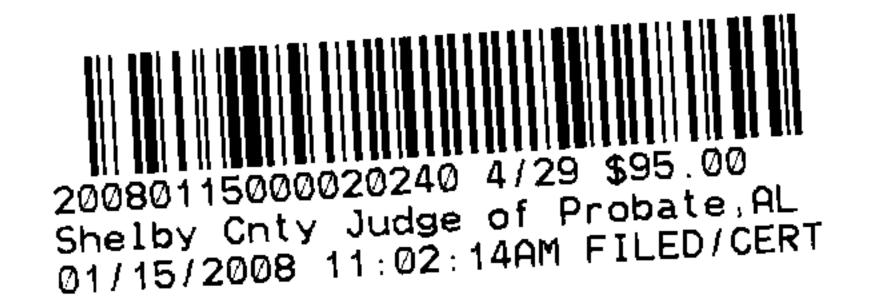
LIMESTONE MARKETPLACE

DECLARATION OF PROTECTIVE COVENANTS

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LIMESTONE MARKETPLACE

DECLARATION OF PROTECTIVE COVENANTS

THIS LIMESTONE MARKETPLACE DECLARATION OF PROTECTIVE COVENANTS (this "Declaration") is declared, made and entered into on this ____ day of January, 2008 by CALERA COMMONS, LLC, an Alabama limited liability company (the "Developer"), which declares that the Property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens on hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

RECITALS

WHEREAS, Developer is the owner of the Property, as described in <u>Section 1.17</u> below and desires to own, develop, improve, lease, and sell the Property for retail, office, and commercial purposes;

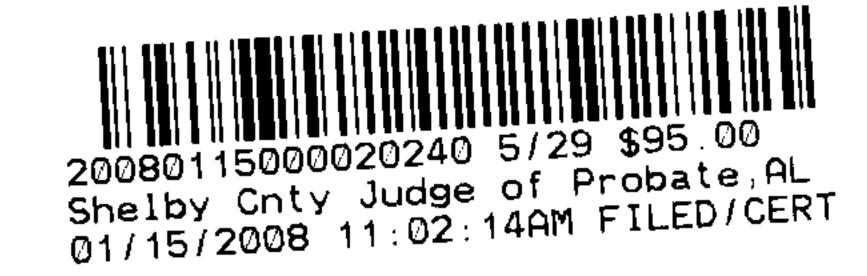
WHEREAS, Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of the Property and for the development, maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the said real property and each owner thereof.

NOW, THEREFORE, Developer declares that the Property, and such additions thereto as may hereafter be made pursuant to Section 2.3 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said real property, as well as their heirs, successors and assigns.

ARTICLE I DEFINITIONS

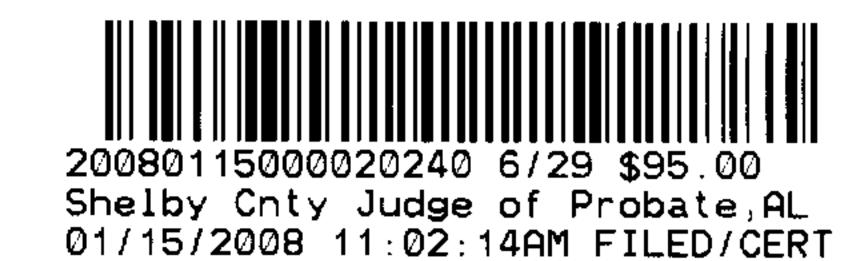
The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- Section 1.1. "ADEM Concurrence Letter" shall have the meaning set forth in Section 5.4 hereof.
- Section 1.2. "Architectural Guidelines" shall mean and refer to any written architectural, landscaping, and use regulations, specifications, procedures, guidelines and



policies which may be promulgated by the Developer in accordance with applicable provisions of this Declaration.

- **Section 1.3.** "**Brownsfield Area**" shall mean that portion of the Property affected by the ADEM Concurrence Letter as is described in <u>Section 5.4</u> hereof and shown on <u>Exhibit B</u> attached hereto.
- Section 1.4. "Building" shall mean and refer to any building or other structure constructed or situated on any portion of the Property.
- Section 1.5. "Common Area" shall mean and refer to all public or private roadways or easements upon which roadways providing ingress to or egress from the Property have been or will be constructed within the boundaries of the Property, all storm water detention areas or ponds within the boundaries of the Property, and street lighting, provided, however, that the foregoing shall not constitute Common Areas if the same is dedicated and accepted for maintenance by the City of Calera, Alabama or, otherwise conveyed to the City of Calera, Alabama.
- Section 1.6. "Developer" shall mean and refer to Calera Commons, LLC, an Alabama limited liability company, or its successors or assigns if such successors or assigns acquire any portion of the Property from the Developer and is designated as successor developer by Developer.
 - Section 1.7. "Development" means the Property and all Improvements thereon.
- Section 1.8. "Governmental Authority" 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 Development.
- Section 1.9. "Hotel Limitation Restriction" shall have the meaning set forth in Section 5.3 hereof.
- Section 1.10. "Hotel Use" means any hotel, motel, or similar business offering overnight accommodations for sale.
- Section 1.11. "Improvements" shall mean and refer to all Buildings and any other improvement constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Building or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, piers, decking, docks, foundations, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any grading, any excavation or fill in excess of what is reasonably necessary for routine landscaping maintenance and repair.
- Section 1.12. "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or

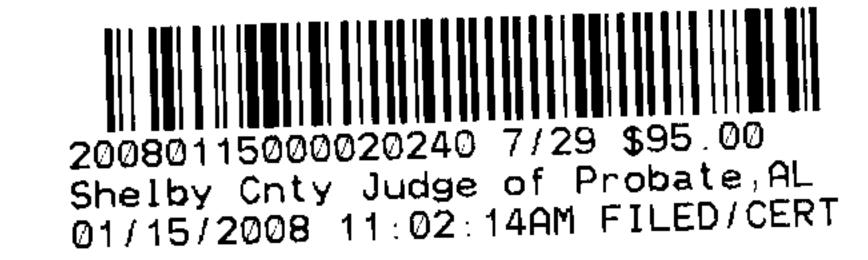


portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Shelby County, Alabama.

- Section 1.13. "Lot" shall mean and refer to any portion of the Property upon which it is intended that a Building be constructed thereon. Upon the recordation of any subdivision plat (or re-plat) for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration.
- Section 1.14. "Maintenance Cost" shall have the meaning set forth in Section 3.6 hereof.
- Section 1.15. "Mani," "Mani Lot," and "Mani Contract" shall have the meanings set forth in Section 5.3 hereof.
- Section 1.16. "Occupant" shall mean and include any Owner and any guest, tenant, agent, employee or invitee thereof and any other person who occupies or uses any Lot or Building within the Development. All actions or omissions of any Occupant shall be deemed the actions and omissions of the Owner of such Lot or Building.
- Section 1.17. "Owner" shall mean and refer the record owner, including Developer, of fee simple title to any Lot or Building, whether a corporation, partnership, limited liability company, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any Institutional Mortgagee unless and until such Institutional Mortgagee has foreclosed on its mortgage and purchased such Lot or Building at the foreclosure sale with respect to the foreclosure of such mortgage or has accepted a deed in lieu of foreclosure with respect to same; or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.
- Section 1.18. "Property" means Lot 2, according to a Resurvey of Lot 2, Plat of Limestone Marketplace Subdivision, prepared by Lawrence D. Weygand and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 39, at Page 50, together with all real property which is presently or may hereafter be subject to this Declaration pursuant to Section 2.3 hereof.
- Section 1.19. "Protective Covenants" shall be defined as set forth in the heading of this Declaration.
- Section 1.20. "Supplementary Declaration" shall be defined as set forth in <u>Section 2.3</u> hereof.

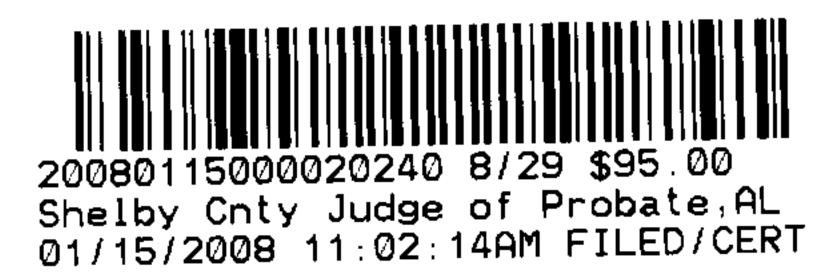
ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

Section 2.1. General Declarations. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot, Building, Improvement and Common Area thereof shall be held, owned, sold, transferred, conveyed,



hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title of the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants and of their respective heirs, executors, assigns and successors of the Property and any Lot, Building, Improvement or Common Area thereto.

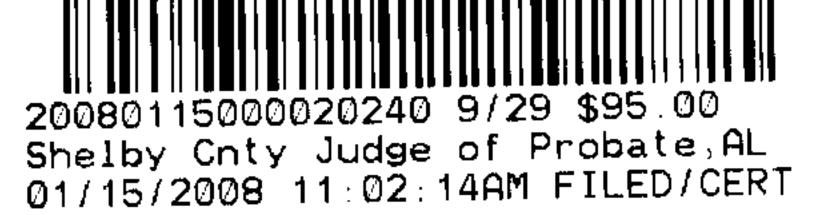
- Section 2.2. Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the Probate Office of Shelby County, Alabama (which deed, contract, or other instrument shall be deemed an amendment to this Declaration which need not be consent to or approved by any Owner, Occupant, or Mortgagee of any Lot), modify the provisions of this Declaration as the same apply to any such Lot.
- Section 2.3. Additions to Property. Upon the approval in writing of the Developer, which approval may be granted or refused by Developer in its sole discretion, the owner of any property who desires to subject it to this Declaration, may file a supplement to this Declaration (a "Supplementary Declaration") to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of the Protective Covenants as the Developer shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are not inconsistent with the general plan of this Declaration.
- Section 2.4. Platting and Subdivision of the Property. The Developer shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto as the Developer may deem necessary with respect to the Development. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such plat were specifically incorporated into this Declaration. Without limiting anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned, leased or otherwise controlled by Developer.
- Section 2.5. <u>Mutuality of Benefit and Obligation</u>. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Building and Common Area and are intended to create mutual, equitable servitudes upon and in favor of each Lot, Building and Common Area, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Development, and (c) to create a privity of contract and estate between Developer and the Owners and their respective heirs, successors, and assigns.
- Section 2.6. <u>Development of Property</u>. Developer shall have the right, but not the obligation, for so long as Developer owns, leases or otherwise controls any Lot in the Development, to make improvements and changes to all Common Areas and to all Lots owned, leased or otherwise controlled by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changes in the location of the boundaries of any Lots owned, leased or otherwise controlled by Developer or of the Common



Areas, (c) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas and (d) installation of security and trash and refuse facilities.

ARTICLE III EASEMENTS

- Section 3.1. Owner's Easement With Respect To Common Areas. Subject to the limitations set forth in Section 3.8 and the restrictions in Articles IV and V of this Declaration, every Owner shall have the non-exclusive right, privilege and easement of access to and enjoyment in and to all Common Areas in common with Developer, its successors, assigns, and all other Owners and Occupants.
- Section 3.2. Mutual, Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage. Developer hereby establishes and creates for the benefit of each Lot, the following reciprocal, non-exclusive easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors, and with respect to any Common Areas which are hereafter publicly dedicated, in favor of Governmental Agencies, which such reciprocal, nonexclusive easement(s) shall be under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposes and use; and (2) impound storm water within the storm water drainage and detention or retention ponds, and all other facilities for the drainage and impoundment of storm water drainage, including, without limitation, those shown on a subdivision plat or replat of the Property, together with such easements as shall be necessary for (i) the purpose of inspecting said facilities, and for (ii) maintaining and or repairing said facilities after reasonable prior notice to the Owner of any Lot burdened by said facility, except in the case of an emergency, when no notice shall be required.
- Section 3.3. Grant of Easement to Governmental Authorities. Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon any private roadways within the Development forming a part of the Common Areas for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.
- Section 3.4. Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer shall have the right, upon the written approval, which shall not be unreasonably withheld or delayed, of the Owner(s) of the portion(s) of the Property affected, to grant such additional electric, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, or service easements or facilities in any portion of the Property which has not been improved with any Building or Improvement, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer shall deem reasonably necessary for the proper operation and maintenance of the Property, or any

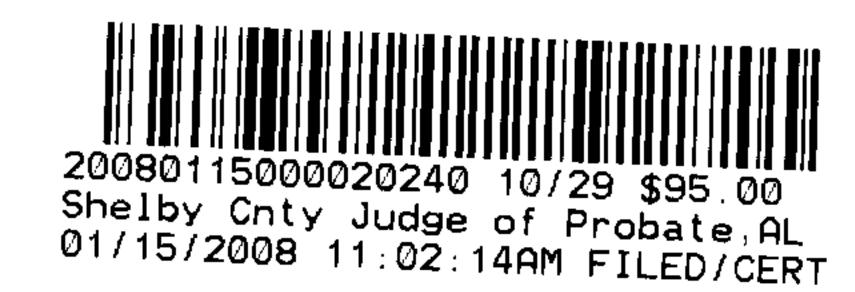


portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided such new easements or relocation of existing easements will not, in the reasonable opinion of the Developer, interfere with any Owner's enjoyment of the portion of the Property owned by such Owner. Such right of the Developer shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable. If Developer exercises this right, it shall be responsible for promptly repairing and otherwise restoring those portions of the Property which may be damaged by the installation, use or maintenance of structures or systems in the additional easement areas.

establish and reserve for itself and its respective agents, employees, representatives, invitees, successors and assigns, and for applicable Governmental Agencies, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Building, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Building directly affected thereby.

Section 3.6. Reservation of Maintenance Easement. Developer does establish and reserve for the itself and its agents, employees, successors and assigns, a permanent and perpetual right (but not the obligation) and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer to perform any of the foregoing actions, and provided further that Developer shall give not less than ten (10) business days prior written notice to the Owner of such Lot of its intent to enter the Lot for such purposes unless the owner takes appropriate steps to cure or commence to cure the problem. Any costs incurred by Developer in performing any of the actions contemplated by this Section 3.6 (the "Maintenance Costs") shall be reimbursed by the applicable Owner within ten (10) business days of Developer's demand for same. The Maintenance Costs, together with reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Maintenance Costs is made, which lien may be enforced in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The lien for Maintenance Costs provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot.

Section 3.7. Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, and its respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon the unimproved portions of all Lots for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities; provided, however, that Developer



shall give not less than thirty (30) days prior written notice to the Owner of such Lot of its intent to enter the Lot for such purposes unless the owner takes appropriate steps to cure or commence to cure the problem in a manner satisfactory to Developer. The easement and right established and reserved herein shall include, without limitation, the right (but not the obligation) to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities. Except in the case of any perceived emergency situation, the exercise by Developer of the rights reserved in this Section shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot.

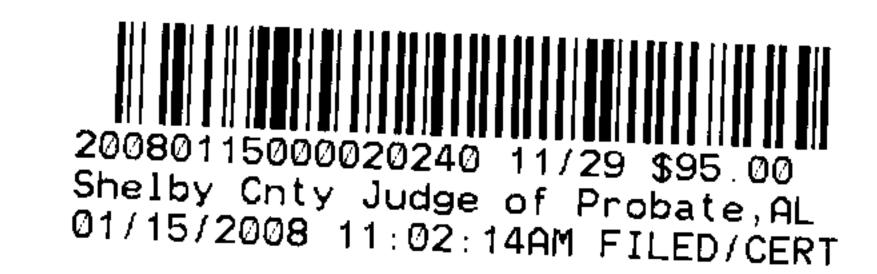
- Section 3.8. <u>Limitations</u>. Any easements which may be created pursuant to this Article shall be appurtenant to and the benefits and burdens thereof shall pass along with the title to every Lot and are further subject to the following limitations:
 - (a) All provisions of this Declaration; and
- (b) All encumbrances, restrictions and limitations regarding the use and enjoyment of the Common Areas or any other part or parts of the Property.
- Section 3.9. <u>Additional Documents</u>. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

ARTICLE IV ARCHITECTURAL REVIEW AND DEVELOPMENT STANDARDS

Section 4.1. Approval of Plans and Specifications.

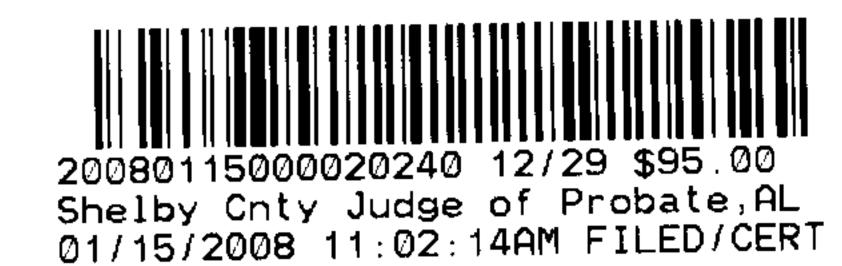
- (a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE OF THE DEVELOPMENT, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE DEVELOPMENT AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS AND ALL BUILDINGS AND IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, OR PLACED ON ANY LOT BY ANY OWNER, OTHER THAN DEVELOPER, UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY DEVELOPER IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.1(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY BUILDINGS, SIDEWALKS, PARKING AREAS AND ANY OTHER STRUCTURES OR IMPROVEMENTS ON ANY LOT SHALL NOT BE UNDERTAKEN UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY DEVELOPER IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.01(b) BELOW.
- (b) All Building or other Improvements shall be constructed in conformity with the ARC Guidelines and in accordance with the provisions of this Declaration. Developer is hereby authorized and empowered to approve all plans and specifications and the construction of all Buildings and other Improvements on any part of the Property. In appropriate cases, the

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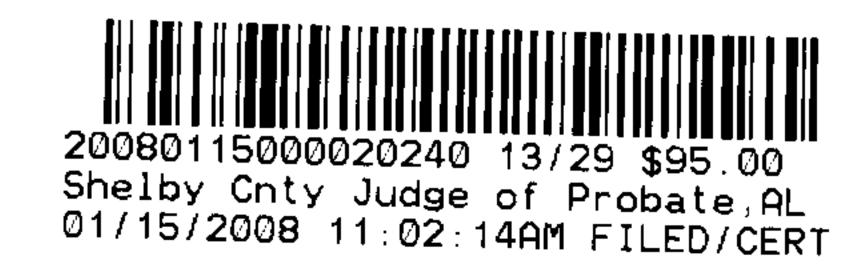
Developer shall be entitled to grant variances from the ARC Guidelines, as described in Section 4.7 hereof. Prior to the commencement of any Building or other Improvements on any Lot, the Owner thereof shall submit to Developer plans and specifications and related data for all such Improvements, which shall include the following:

- (i) An accurately drawn and dimensioned site development plan and grading plan indicating the nature and extent of all grading and excavation for such Lot, the location of any and all Improvements, including, specifically, the Building to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot and the number and location of all parking areas, parking spaces and curbcuts onto adjoining public or private roadways;
- (ii) A foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Building to be constructed on the Lot, which plans shall also indicate the total gross square footage of space, the number of stories and height of the Building to be built on such Lot;
- (iii) Written specifications and, if requested by Developer, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Building on such Lot or any other Improvements thereto, including, without limitation, the type and color of all materials (including roofing materials) to be utilized on the exterior of any Building;
- (iv) A lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Building;
- (v) A landscaping plan, including screening for trash receptacles and service areas;
 - (vi) A signage plan for such Lot and the Building to be built thereon; and
- (vii) Such other plans, specifications or other information or documentation as may be required by Developer.
- (c) Developer shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable; provided, however, that Developer will not unreasonably withhold its consent if the same comply with the ARC Guidelines. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within a Building that do not affect exterior appearance without the necessity or requirement that approval or consent of Developer be obtained.
- (d) Developer shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations. Developer shall have the right to approve plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated



to comply and which must be incorporated into the plans and specifications for such Improvements.

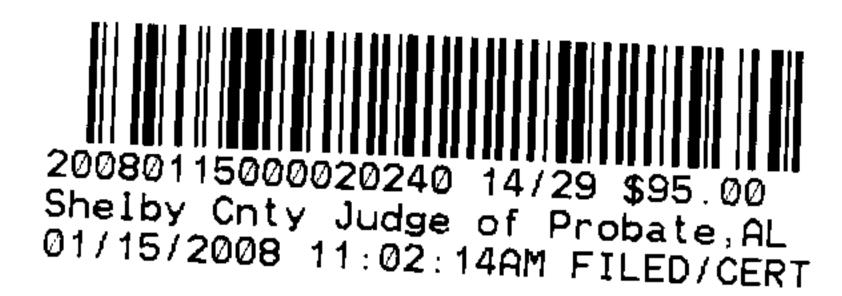
- (e) In the event Developer fails to approve in writing any such proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.
- (f) Any material revisions, modifications or changes in any plans and specifications previously approved by Developer must be approved by Developer in the same manner specified above.
- Section 4.2. Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without Developer's prior written approval of the plans and specifications for the same or (b) Developer shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and Developer shall have the right to exercise any of the rights and remedies set forth in Section 4.5 below.
- Section 4.3. <u>Inspection</u>. Developer and its agents, employees and representatives may at any reasonable time and from time to time enter upon and inspect any Lot, Building or any other Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by Developer.
- Section 4.4. Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer nor any agent, employee, representative, contractor, consultant, member, shareholder, partner, officer of director of Developer, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article IV, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article IV, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Buildings, Improvements or the personal property of any Owner, Occupant or the respective tenants, employees, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Buildings or Improvements or the plans and specifications therefor, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connections with the use and occupancy of any Lot or any Improvements situated thereon.



- Section 4.5. Enforcement and Remedies. In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant on the respective tenants, employees, agents and invitees of any Owner or Occupant, then Developer shall have the right, at its option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specification approved by Developer for such Improvements and/or (b) through its designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach.
- Section 4.6. <u>Compliance Certificates</u>. Developer or any authorized representative thereof shall, upon request and upon the payment of such reasonable charges as may from time to time be established by Developer, furnish to an Owner a certificate in writing setting forth whether all necessary approvals have been obtained and whether any Building or Improvements has been constructed in accordance with the provisions of this Declaration.
- Section 4.7. <u>Variances</u>. Developer, in its discretion, shall have the authority to modify the requirements of these Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If Developer grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of these Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on Developer, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

ARTICLE V RESTRICTIONS

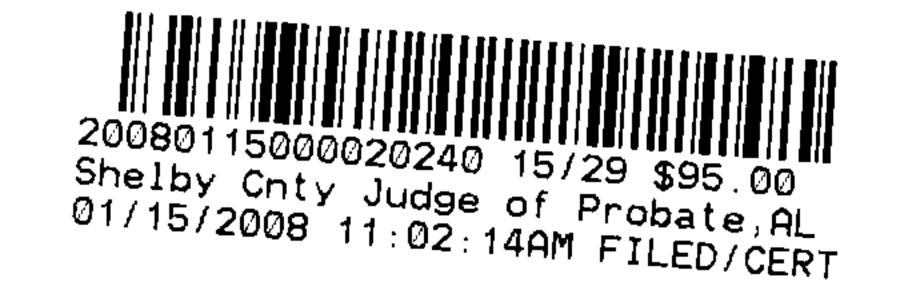
- Section 5.1. <u>Use Restrictions</u>. For a period of twenty (20) years from the date of this Declaration, the primary use of the Lots shall be restricted to commercial uses as permitted by the applicable zoning laws and regulations of the City of Calera, as the same may be amended from time to time.
- Section 5.2. <u>Prohibited Uses</u>. Without limitation on the provisions of <u>Section 5.1</u> above, no portion of any Lot may be used for any of the following purposes without the prior written consent of Declarant, which permission may be withheld in the sole discretion of Declarant:
- (a) a tavern, bar, nightclub, discotheque, gentlemen's club, burlesque, topless, or other type "strip joint" or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant with the sale of alcoholic beverages therein comprised less than forty percent (40%) of the restaurant's gross revenues;
- (b) any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building on the Property;
- (c) any "second hand" store or "surplus" store, thrift shop or other business principally engaged in the sale of used merchandise;



- (d) any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
 - (e) a flea market;
- (f) any casino or other gambling facility or operation, including but not limited to, off-tract or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls (except that this provision shall not prohibit governmental sponsored gambling activities or charitable gambling activities if such activities are incidental to the business operation being conducted by the occupant);
- (g) an adult-type book store or other establishment selling or exhibiting pornographic materials;
 - (h) a massage parlor, tattoo parlor, pawn shop, or head shop;
 - (i) a mobile home or trailer court, labor camp, junkyard or stockyard;
- (j) a landfill, garbage dump or for the dumping, disposing, incineration or reduction of garbage;
 - (k) a medical facility that performs abortions; or
- (l) any dangerous, noxious, offensive or excessively noisy activities, oil or mineral exploration and the keeping of animals, birds or fowl.

Section 5.3. Specific Limitations on Hotel Uses.

- (a) Subject to the provisions of paragraphs (b) and (c), Developer declares that not more than a total of four (4) Lots in the Development (inclusive of the Mani Lot hereafter described) shall be used as a Hotel Use (the "Hotel Limitation Restriction").
- (b) Notwithstanding the foregoing, in the event that closing of the sale of approximately 2.19 acres of the Property (the "Mani Lot") to Mani Investments, LLC (or its permitted assignee) ("Mani") has not occurred by December 31, 2008, all in accordance with the terms and conditions set forth in that certain Purchase and Sale Agreement dated July 14, 2006 between Developer and Mani Investments, LLC, as amended by Amendment thereto dated July _____, 2007 (as amended, the "Mani Contract"), Developer shall have the right, in its sole discretion, to terminate the Hotel Limitation Restriction by filing of record an amendment to this Declaration in the Office of the Judge of Probate of Shelby County, Alabama and upon such filing, the Hotel Limitation Restriction shall be null and void.
- (c) Further notwithstanding the foregoing, the Hotel Limitation Restriction will expire and terminate on the earlier to occur of (i) five (5) years from the date of recording of the deed of the Mani Lot to Mani; (ii) Mani's failure to construct and operate a Hotel Use on the Mani Lot within twelve (12) months from the date of recording of the deed of the Mani Lot to Mani; or (iii) Mani's cessation of operation of such Hotel Use on the Mani Lot (other than cessations incident to casualty or condemnation) for a period of sixty (60) days or more. In the



event of the occurrence of any of the termination events set forth in this paragraph, Declarant shall have the right, at its option, to file of record an amendment to this Declaration in the Office of the Judge of Probate of Shelby County, Alabama and such amendment shall be deemed prima facie evidence that the Hotel Limitation Restriction is null and void.

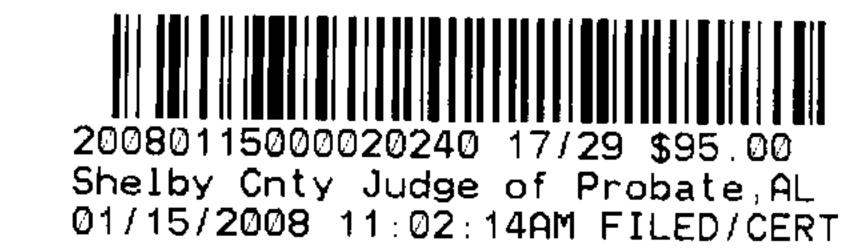
- (d) For purposes of this <u>Section 5.3</u>, closing of the sale of the Mani Lot to Mani shall be established and evidenced by the recording of a deed from Developer to Mani in the real property records of Shelby County, Alabama.
- Section 5.4. Brownsfield Covenants. Certain portions of the Property as identified on Exhibit A attached hereto (the "Brownsfield Area") are subject to that certain Conditional Letter of Concurrence, Site No. 461-9413, dated December 6, 2006, issued by the Alabama Department of Environmental Management, a copy of which is attached hereto as Exhibit B (the "ADEM Concurrence Letter"). Therefore, in order to comply with the express requirements of the ADEM Concurrence Letter, the Brownsfield Area of the Property is hereby conveyed subject to the following restrictive covenants which shall remain in full force and effect unless and until the same are revised pursuant to actions taken in accordance with Code of Alabama 1975 §22-30E-1 et seq. (as the same may hereafter be amended) and an amendment placed of record to reflect such revision:
- (a) The Brownsfield Area of the Property shall be used only for industrial or commercial purposes (but any industrial use must first be approved by Developer); and
 - (b) Use of groundwater for potable purposes is expressly prohibited.
- Section 5.5. Lot Size. No Lot shall be subdivided without the prior written approval of the Developer unless otherwise permitted in Article II of this Declaration.

Section 5.6. Buildings and Other Improvements.

- (a) <u>Construction</u>. After commencement of construction of any Building on or Improvements to any Lot, the Owner or Occupant so commencing such construction shall diligently prosecute the work thereon, to the end that the Buildings and Improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. The Owner or Occupant of any Lot on which Buildings or Improvements are being constructed shall at all times keep all streets, roadways or Common Areas contiguous to said Lot free from any dirt, mud, garbage, trash, construction equipment, storage trailers, vehicles of any type, debris or other items which might be occasioned by construction of any Buildings or Improvements on such Lot.
- Section 5.7. Parking. Parking on the streets, road, or other Common Areas in the Development is strictly prohibited. All parking within the Development shall be limited to designated parking areas, and each Lot shall contain adequate parking for such Lot in accordance with applicable laws of the Governmental Authorities. No cross-parking easements or other agreements shall be permitted across separate Lots, unless otherwise agreed by the Owners of such Lots. Off-street parking facilities shall be so designated and so located that maneuvering within any street, roadway or Common Area will be unnecessary.

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- Section 5.8. Signs and sign locations within the Property shall be subject to the review and approval of the Developer prior to any commencement of installation or construction as set forth in Article IV. Without limiting the foregoing:
- (a) <u>Approval by Developer</u>. Building identification or directional signage shall be permitted in the front setback area and the rear setback area. No signs, billboards, flashing lights, advertising or identification of any type shall be erected, placed or maintained on any real property in the Development prior to its specific approval by the Developer.
- (b) <u>Compliance with Law</u>. No signs, billboards, flashing lights, advertising or identification of any type shall be erected, placed or maintained on any real property or any Improvements on said real property in the Development which are not in accordance with current provisions of any applicable government agency having jurisdiction over such issues.
- (c) <u>Subject Matter</u>. No signs, billboards, advertising or identification of any type shall be erected, placed or maintained on any real property or any Building on said real property in the Development which identify anything other than the name, business and logo of the person or firm occupying the Building and those offering the premises for sale or for lease.
- (d) <u>Prohibited Signs</u>. The following types of signs are specifically prohibited within the Development.
 - (i) Any sign other than those used for traffic control which, by reason of its shape, position or color, may be confused with a County-authorized traffic sign or signal;
 - (ii) Any sign that contains the wording "stop," "look," "danger," or other similar wording not used as a directional or warning sign that may confuse or mislead traffic;
 - (iii) Any animated sign or any sign with flashing lights;
 - (iv) Any temporary sign that is attached to a tree or utility pole or is attached to or painted on a building or any natural feature on the site or is of a self-supporting mobile type; and
 - (v) Any sign that is located within a public street, roadway or Common Area, except as authorized by the Developer.
- (e) <u>Identification Signs</u>. Freestanding Building identification signage shall be constructed in compliance with local codes and ordinances, and no signage shall be erected or displayed in the Development without the prior written approval of the Developer. In consideration of signage requests, the Developer shall seek to achieve compatibility of all signage in the Development so that overall appearance of signs shall be in scale and harmony with the development and landscape of the individual tracts and the Development as a whole.
- Section 5.9. Storage. Any outside storage trailer, other than Owner or Occupant owned vehicles and trailers and other than trailers used in connection with the sale of seasonal

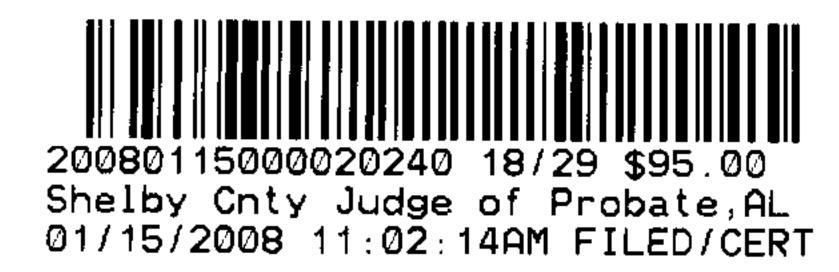


items, must be kept at the rear of the Building on each Lot unless otherwise expressly approved by Developer.

- Section 5.10. <u>Building Equipment</u>. Any building equipment including, but not limited to, electrical, HVAC and plumbing systems at ground level shall be installed or constructed sufficiently to be enclosed as an integral part of the architectural design of the Building and as approved by the Developer.
- Section 5.11. <u>Utilities</u>. All electrical and telecommunication lines located upon the Property, other than those existing on the date of this Declaration, shall be installed and maintained underground. No overhead utility, power, telephone, cable television or other lines shall be installed or maintained without prior written approval of the Developer.
- Section 5.12. <u>Compliance with Governmental Regulations</u>. Each Owner or Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

Section 5.13. Maintenance.

- (a) <u>Trash</u>. All trash and garbage shall be placed in designated containers, or within the Owner's contained service area and all such service areas shall be screened from view and properly landscaped. The permissible size of containers shall be determined by the decision of the Developer and its decision shall be final. Yards and landscape areas will be kept free of trash, leaves, dead landscaping materials and other debris.
- (b) Parking Lot and Sidewalks. All parking lots, sidewalks, and other hard surface areas shall be swept and cleaned regularly and cracks and damaged areas of such hard surface areas shall be repaired or replaced as required. Damaged or eroding areas of any asphalt parking surface shall be replaced as required and an overall resurfacing of the parking area will be done as necessary. Broken bumper stops and/or curbing shall be replaced as required and drainage inlets, storm sewers and any surface drainage facilities shall be maintained in good repair and shall remain clear of debris so as to enable the proper flow of water.
- (c) <u>Lighting</u>. Levels of light intensity in the parking areas of all exterior walkways shall be maintained at safe levels and bulbs shall be replaced expeditiously as failure occurs. Light poles and standards shall be maintained in good repair and shall be kept functional at all times.
- (d) Painting. All exterior painted surfaces shall be repainted on a regular schedule as required to maintain an exterior appearance which is uniformly clean, neat and orderly. Unless previously approved by the Developer, the color and quality of paint selected for such repainting is subject to the review of the Developer.
 - (e) Signs. All signs shall be maintained in good repair so as to be clear and legible.
- Section 5.14. Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by it or him receives a copy of this Declaration and that every lease utilized by such Owner contains a provision therein stating that



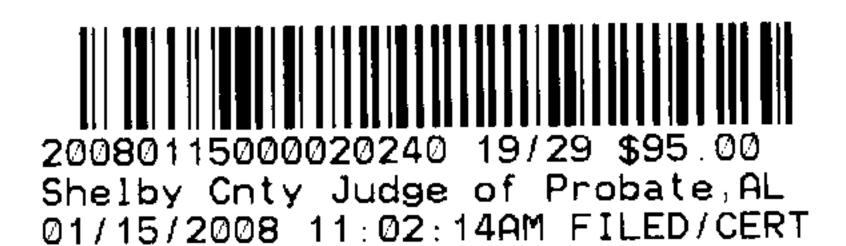
every tenancy is subject to all of the terms and provisions of this Declaration and the rules and regulations adopted pursuant thereto. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and any rules and regulations adopted pursuant thereto for all costs of enforcing the same.

Section 5.15. Enforcement. If a determination is made by the Developer that any of the restrictions set forth herein are being or have been violated upon any Lot, then the Developer has the right, but not the obligation to notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the Developer shall make a second determination that sufficient progress has not been made to remedy the violation, the Developer may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation. The Owner shall be liable for the cost and expense of all such actions, including, without limitation, attorney's fees and costs incurred by Developer, and the Developer may treat all such costs and expenses therefor as a charge which shall become a lien of the Developer on the affected Lot enforceable as a materialman's lien.

Section 5.16. Approval. Developer agrees not to unreasonably withhold or delay any approval or consent requested hereunder. In the event Developer denies a request for approval or consent, Developer shall provide a reason for such denial and shall suggest a reasonable alternative or alternatives, if any are readily apparent to the Developer, to the requested action, which suggested alternative the Developer may find acceptable so long as the suggested alternative (as implemented by the requesting Owner) does not violate any provision of this Declaration. The provisions of this section shall not obligate Developer to expend any costs or expenses in providing alternatives to a denied request. If requested by an Owner or Occupant, Developer agrees, at the Owner's or Occupant's sole expense, to issue a certificate stating that an Improvement has been approved and is in compliance with this Declaration. Such certificate shall in no way be deemed a waiver or release of any claim Developer may have against the requesting Owner or Occupant, and Developer shall in no way be liable to the Owner or Occupant for any inaccuracy of the compliance evidenced by such certificate.

ARTICLE VI CASUALTY, CONDEMNATION AND INSURANCE

Section 6.1. <u>Damage or Destruction to Lots and Buildings</u>. In the event of any fire or other casualty which damages or destroys any portion of any Lot, Building or any other Improvements thereto, then the Owner of such damaged Lot or Building shall promptly repair and otherwise restore, subject to compliance with the terms and provisions of Articles IV and V hereof, such Lot, Building or other Improvements to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that if such restoration is impracticable or economically unfeasible, then the Owner of such Lot or Building shall promptly clear away, demolish and remove from the Lot any Improvements damaged or destroyed and return the remainder of the Lot and any remaining Improvements thereto to a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by the Developer pursuant to Article IV hereof) which shall comply with all of the rules and regulations of the appropriate Governmental Authorities.



Section 6.2. Condemnation of Lots and Buildings. In the event that all or any portion of a Lot, Building or any other Improvements thereto is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Building shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot, Building or any Improvements thereto, as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Articles IV and V hereof and all the applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot, Building or other Improvements is impracticable, economically unfeasible or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by the Developer pursuant to Article IV hereof).

Section 6.3. <u>Insurance</u>.

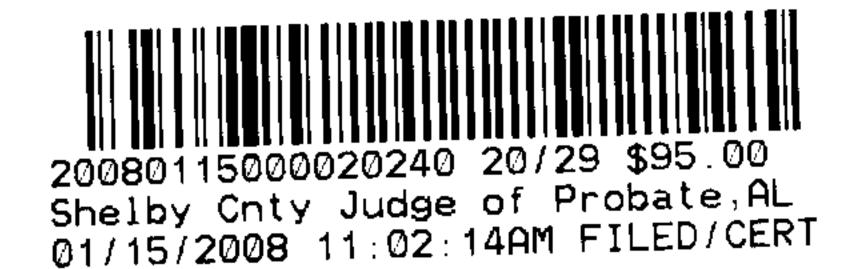
Each Owner shall be solely responsible for obtaining and maintaining comprehensive public liability, property damage, title and all other types of insurance with respect to its Lot, and Building, and any other Improvements. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot does hereby waive and release the Developer and its agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner, even if such loss or damage is caused by the fault or negligence of the Developer or any of its agents, employees, representatives, members, officers and directors.

ARTICLE VII POWERS OF DEVELOPER

Section 7.1. Powers of Developer. In addition to the rights, duties, responsibilities and obligations of the Developer otherwise set forth in this Declaration, the Developer may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration or any rules and regulations adopted from time to time by the Developer, then the provisions of the Code of Alabama, this Declaration and any rules and regulations adopted by the Developer, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and to execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

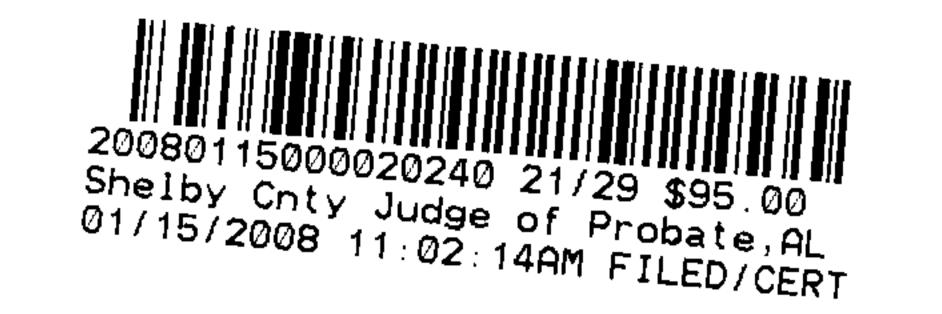
Section 7.2. Enforcement by Developer. In performing its responsibilities hereunder, the Developer shall have the right and authority to delegate to such persons of its choice such

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duties of the Developer as may be determined by the Developer. In furtherance of the foregoing and not in limitation thereof, the Developer may obtain and pay for the services of any person or entity to enforce any provisions of this Declaration, to the extent it deems advisable, as well as such other personnel as the Developer shall deem necessary or desirable for the enforcement of any of its duties and obligations as set forth in this Declaration, whether such personnel are furnished or employed directly by the Developer or by independent contract with the Developer. During the terms of any such agreement entered into by the Developer with a third party, such person or entity may, if authorized by the Developer, exercise all the powers and shall be responsible for the performance of all of the duties of the Developer, excepting any of such powers or duties specifically and exclusively reserved to the Developer. Such person or entity may be an individual, corporation or other legal entity and may be bonded in such manner as the Developer may require. In addition to the foregoing, the Developer may hire, contract for and pay for such legal and accounting services as are necessary or desirable in connection with the enforcement of this Declaration. Any reasonable costs or expenses born by the Developer under this Section shall be reimbursed by any Owner or Occupant against whom enforcement of a violation of this Declaration is sought if such Owner or Occupant shall fail to cure such violation (or commence to cure and thereafter diligently continue to cure to completion if the violation cannot be immediately cured) within ten (10) days after receipt of written notice of such violation, and any non-payment of such costs or expenses shall become a lien against such Owner or Occupant's Lot enforceable as a materialman's lien.

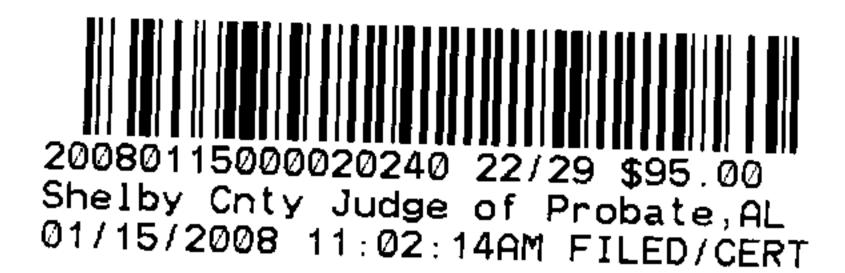
Section 7.3. Indemnification. The Owners and Occupants shall and do hereby indemnify, defend and agree to hold each and every officer, director, agent, representative and member of the Developer harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any such officer, director, agent, representative or member of the Developer in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding if approved by the Developer), resulting from Developer's actions or inactions arising from the enforcement of this Declaration (so long as such enforcement is made in good faith by Developer) or any approval given or denied under this Declaration (including a certificate issued under Section 4.6), to which such person may be made a party by reason of being or having been an officer, director, agent, representative or member of the Developer. The officers, directors, agents, representatives and members of the Developer shall not be liable for any mistake in judgment, negligence or otherwise except for their own finally determined by a court of competent jurisdiction. The officers, directors, agents, and representatives of the Developer shall have no personal liability with respect to any contract or other commitment made by them, in good faith, for the enforcement of this Declaration or the grant or denial of an approval, and the Owners and Occupants shall and do hereby indemnify, defend and agree to forever hold each such officer, director, agent, and representative of the Developer harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, director, agent, or representative of the Developer may be entitled, including anything provided to the contrary contained in its Articles of Incorporation or Bylaws. The indemnification obligations and rights provided for herein shall survive any amendment, removal, repeal or other termination or cancellation of this Declaration.



6.4 <u>Termination of Developer's Rights, Duties or Obligations</u>. All provisions in this Declaration pertaining to Developer's rights, duties or obligations, including without limitation the review and approval of any restrictions or the enforcement of any violations, shall only apply and be effective until such time that: (i) Developer no longer owns, leases or otherwise controls any Lots in the Development, (ii) the Developer delegates, assigns, conveys or otherwise transfers such rights, duties or obligations to a third party or (iii) this Declaration has been amended, repealed, removed or otherwise cancelled or terminated alleviating such rights, duties or obligations.

ARTICLE VIII TERM OF PROTECTIVE COVENANTS; DEFAULTS AND REMEDIES

- Section 8.1. <u>Term</u>. The terms, covenants, conditions, and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Institutional Mortgagees, and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by all Owners of the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama; provided, however, that the rights of way and easements established and granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.
- Section 8.2. <u>Default</u>. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Developer shall provide written notice thereof to any Owner and any Institutional Mortgagee who or which has requested the same and provided to the Developer an address for such notices.
- Section 8.3. Remedies for Default. The existence of any default which has not been cured within thirty (30) days of the notice specified above shall give the Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them.
- Section 8.4. Nature of Remedies; Waiver. All rights, remedies and privileges granted to the Developer pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.



ARTICLE IX AMENDMENT OF DECLARATION

Section 9.1. <u>Amendment By Developer</u>. Developer reserve the right to amend this Declaration, and to do so at such time, and upon such conditions, in such form and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto, provided, however, that this right of amendment shall expire after all Lots have been sold to Owners other than the Developer, after which time this Declaration may be amended only in the manner set forth in <u>Section 9.2</u> hereof.

Section 9.2. Restrictions on Amendment.

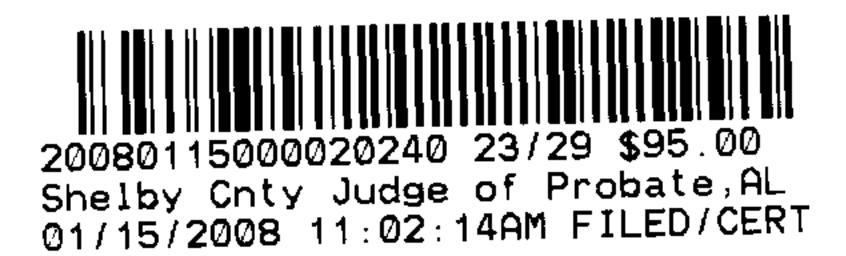
- (a) No amendment shall materially adversely affect the rights of any Owner or group of Owners, unless such Owner or all Owners so adversely affected shall consent thereto. For example, no amendment shall place more burdensome restrictions on any Lot which would materially adversely affect any Owner or Owners, as opposed to other Owners, unless the Owner or Owners so adversely affected shall consent thereto.
- (b) No amendment shall materially adversely affect the rights and priorities of any Institutional Mortgagees of record or change the provisions of this Declaration with respect to Institutional Mortgagees, unless all Institutional Mortgagees of record so adversely affected shall consent thereto.
- (c) No amendment shall be made to this Declaration so long as the Developer owns, leases or otherwise controls any Lot, unless the Developer shall consent thereto. Such consent may be withheld by the Developer for any reason or no reason at all.
- (d) Without limiting the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of an amendment to this Declaration consented to by the Developer and any Owners or mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment to this Declaration executed by the Developer without the consent of any other party.

ARTICLE X GENERAL PROVISIONS

Section 10.1. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of such Owner as it appears on the records of the Developer at the time of such mailing. Any notice to Developer shall be sent to the following address:

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Calera Commons, LLC 3900 Messer Airport Road Birmingham, AL 35222



Attention: Chris Hoyt

Section 10.2. Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and effect.

Section 10.3. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

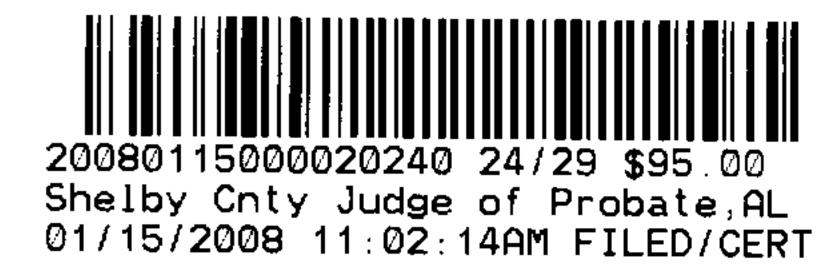
Section 10.4. <u>Captions</u>. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

Section 10.5. <u>Binding Effect</u>. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Institutional Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner, Occupant and Institutional Mortgagee, and shall inure to the benefit of Developer, all of the Owners and their respective mortgagees and their respective heirs, executors, administrators, personal representative, successors and assigns.

Section 10.6. <u>Usage</u>. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 10.7. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Shelby County, Alabama.

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IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date first above written.

	DEVELOPER:			
	CALERA COMMONS, LLC, an Alabama limited liability company By: Print Name: Christophor Title: General Manager			
STATE OF ALABAMA)				
COUNTY OF SHELBY)				
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Christopher Hout, whose name as <u>G.m.</u> of Calera Commons, 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 <u>G.m.</u> , and with full authority, executed the same voluntarily for and as the act of said limited liability company, as aforesaid. Given under my hand this <u>15</u> day of <u>Jan.</u> , Notary Public				
	My Commission Expires: 3-11-08			

MINIMULATION OF THE ORIGINAL PROPERTY OF THE O

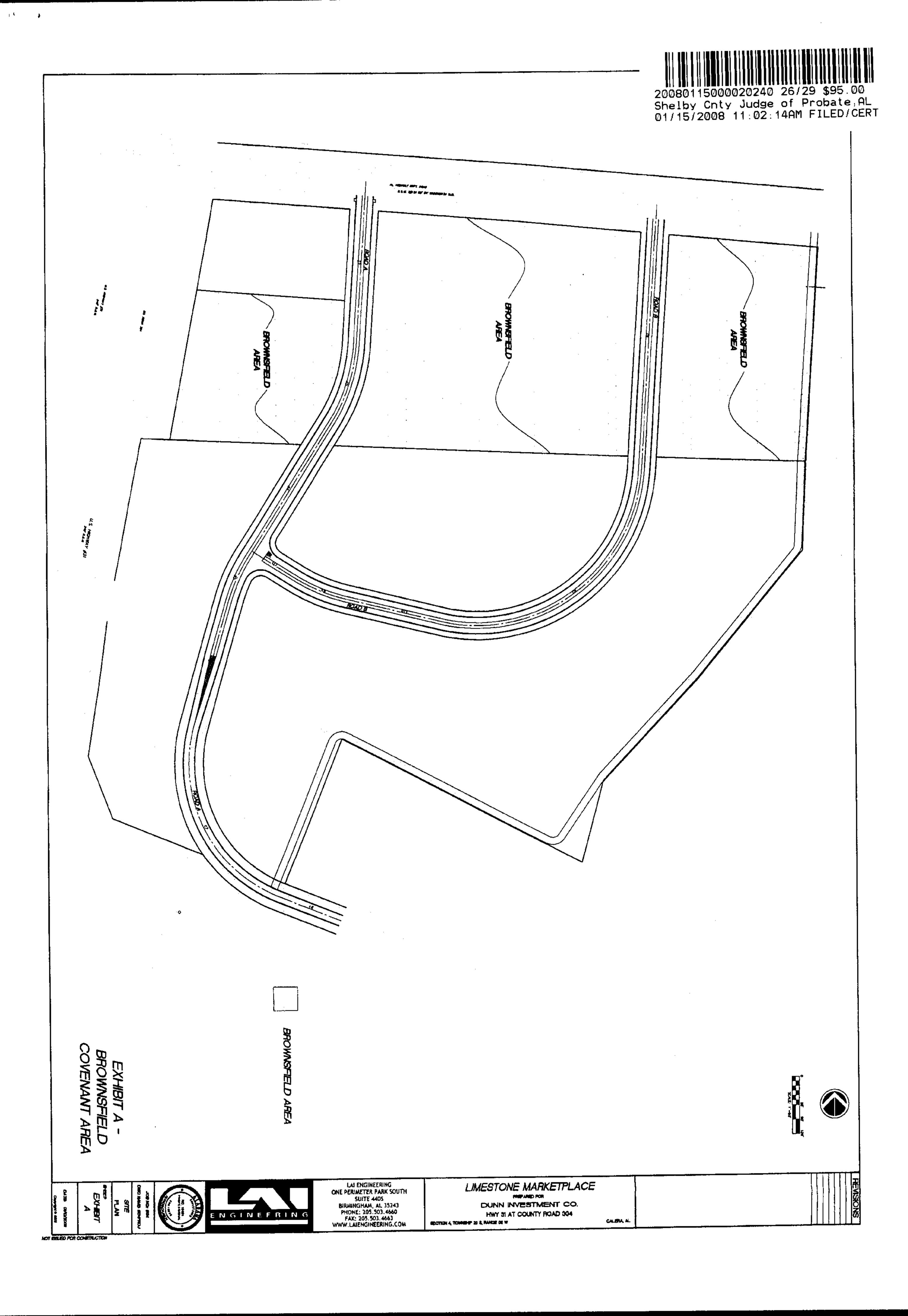
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EXHIBIT A

Brownsfield Area of the Property

[SEE ATTACHED]

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EXHIBIT B

ADEM CONCURRENCE LETTER

[SEE ATTACHED]



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301463 36130-1463 + 1400 COLISEUM BLVD. 36110-2059
MONTGOMERY, ALABAMA

ONIS "TREY" GLENN, III, P.E.

WWW.ADEM.STATE.AL.US (334) 271-7700

BOB RILEY
GOVERNOR

Facsimiles: (334)

Administration: 271-7950 General Counsel: 394-4332 Communication: 394-4383 Air: 279-3044 Land: 279-3050

Water: 279-3051 Groundwater: 270-5631 Field Operations: 272-8131 Laboratory: 277-6718

Mining: 394-4326

December 6, 2006

Christopher Hoyt, Manager Calera Commons, LLC Post Office Drawer 247 Birmingham, Alabama 35201

Re: Conditional Letter of Concurrence

Former Alabama Department of Transportation Property

Site No. 461-9413

Dear Mr. Hoyt:

On March 14, 2006, Gallet & Associates, Inc. submitted an application on behalf of Calera Commons, LLC to the Department for coverage under the Brownfield Redevelopment and Voluntary Cleanup Program. The program details procedures necessary for the assessment and remediation of the former Alabama Department of Transportation Property located at the description below.

The former Alabama Department of Transportation Property is located at 5185 Highway 31, Calera, Shelby County, Alabama. The site is depicted on the United States Geological Survey 7.5-minute Topographic Quadrangle Bounds Lake, Alabama, dated 1980. The site is located in the eastern portion of Section 4, Township 22 South, Range 2 West.

The Alabama Department of Environmental Management (ADEM) has determined that Calera Commons, LLC has successfully completed the requirements of the Brownfields Redevelopment and Voluntary Cleanup Program and hereby issues this Conditional Letter of Concurrence for the former Alabama Department of Transportation Property. Successful completion of the ADEM Voluntary Cleanup Program requirements grants this site applicable liability protections cited in the Alabama Land Recycling and Economic Redevelopment Act.

Pursuant to Code of Alabama 1975 § 22-30E-9 (c) (5), the limitations of liability for this site shall remain in effect provided the following land use and institutional controls are adequately maintained:

- 1. Restriction of the property for industrial and commercial use.
- 2. Prohibition on the use of groundwater for potable purposes.
- Deed notations to ensure that future purchasers are advised of the restrictions on site use.

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Christopher Hoyt, Manager December 6, 2006 Page 2

If you have questions or comments regarding this matter, please contact Neoshia M. Simmons at (334) 271-7910 or via email at nsimmons@adem.state.al.us.

Sincerely,

Wm. Gerald Hardy, Chief

Land Division

WGH/nms

cc: Terrell Rippstein, Gallet & Associates, Inc.