

Declaration

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the 29th day of February, 2008 by AACalera, LLC, a Delaware limited liability company ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner in fee simple of those certain tracts or parcels of real property located in the City of Calera, County of Shelby, State of Alabama (the "Property"), which Property is more particularly described on Exhibit A attached hereto and is shown on the site plan attached hereto as Exhibit B (the "Site Plan"), both of which exhibits are incorporated herein by this reference; and

WHEREAS, Declarant and Advance Stores Company, Incorporated, a Virginia corporation ("Advance"), have entered into a lease (such lease, including all future amendments thereto and renewals and extensions thereof, shall be hereinafter referred to as the "Advance Lease") to construct an Advance Auto Parts store upon that portion of the Property designated as the "Advance Leased Premises" on the Site Plan (the "Advance Leased Premises"); and

WHEREAS, Declarant wishes to subject the Property to certain covenants, conditions and restrictions as set forth herein.

NOW, THEREFORE, in consideration of the benefits to be realized by the covenants set forth herein, Declarant hereby declares and agrees that the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Property.

1. Use Restrictions.

a. For so long as the Advance Lease is in effect, no portion of the Property, except for the Advance Leased Premises, nor any portion of any land, building, premises or space owned, leased, sold, transferred, operated or otherwise occupied (whether presently owned, leased, operated or occupied or hereafter acquired), either directly or indirectly, by Declarant or any stockholder, member, partner, beneficiary, successor, assign, personal representative, heir, subsidiary or affiliate of Declarant, or any person(s) or entity(ies) having a direct or indirect interest in Declarant, located within two (2) miles of the Property, may be used for any of the following purposes:

(i) any business similar to that being conducted by Advance on the Advance Leased Premises; or

- (ii) the sales, display or rental of automotive parts, accessories, supplies and/or maintenance items.

b. For so long as the Advance Lease is in effect, neither Declarant nor any stockholder, member, partner, beneficiary, successor, assign, personal representative, heir, subsidiary or affiliate of Declarant, nor any person(s) or entity(ies) having a direct or indirect interest in Declarant, shall lease, sell or otherwise transfer or convey any such premises adjacent to and/or contiguous with the Advance Leased Premises without imposing thereon a restriction to secure compliance herewith, or permit any tenant or occupant of any such premises or any part thereof to sublet or assign in any manner, directly or indirectly, any part thereof to any person, firm, corporation or other entity engaged in any such business described above, without the prior written consent of Advance, which consent may be withheld by Advance in Advance's sole discretion.

2. Term and Enforcement. The covenants, conditions, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, successors-in-title, assigns, tenants, customers, employees and invitees for so long as the Advance Lease is in effect. Such restrictions and obligations shall be unaffected by any change in the ownership of all or any portion of the Property or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by (i) the owner of any portion of the Property, (ii) any mortgagee of any portion of the Property and (iii) Advance; however, enforcement hereunder shall be sought solely against the then owner(s) of the Property (or the owner of an interest in the Property) alleged to be in default.

3. Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

4. Breach. In the event of breach or threatened breach of this Declaration, Declarant and/or Advance (so long as the Advance Lease is in effect) shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach. In the event that a party shall institute any action or proceeding against another party relating to the provisions hereof, or any default hereunder, then, and in that event, to the extent permitted by applicable law, the unsuccessful party in such action or proceeding shall reimburse the successful party therein the reasonable expenses of attorneys' fees, court costs and other costs incurred therein by the successful party through all levels of proceedings.

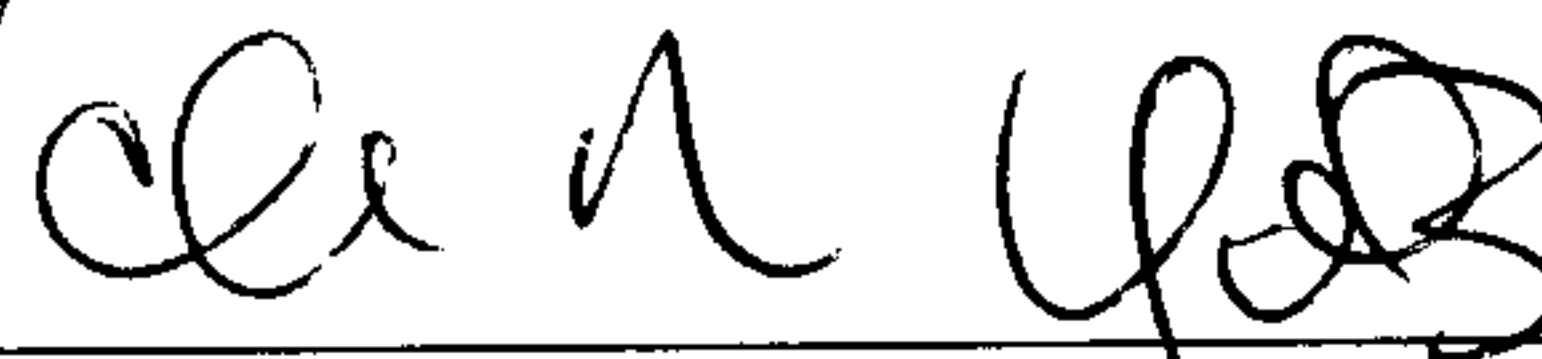
5. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

6. Amendment to Declaration. This Declaration shall not be amended or modified without the prior written consent of Declarant and Advance.

IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the day and year first written above.

DECLARANT:

AACalera, LLC, a Delaware limited liability company

By: 

Name: Chris R. Yates

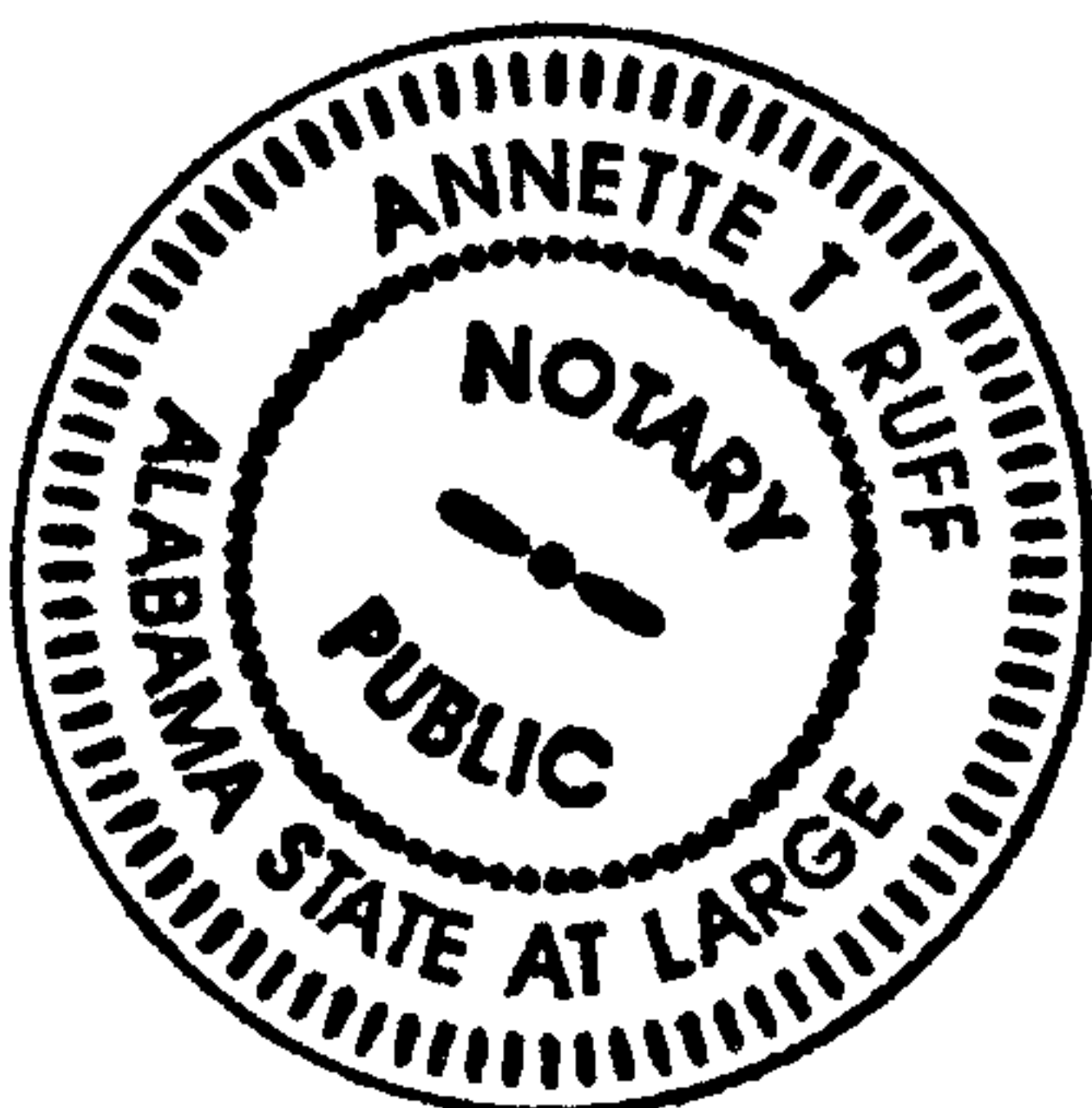
Title: Its Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Chris R. Yates, whose name as Manager of AACalera, LLC, a Delaware 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 manager 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 29th day of February, 2008.

[NOTARY SEAL]




NOTARY PUBLIC

My commission expires: _____

ANNETTE T RUFF
NOTARY PUBLIC
ALABAMA STATE AT LARGE
MY COMM. EXP. 2-23-09

Prepared By:

Law Office of Annette T. Ruff, LLC
402 Office Park Drive, Suite 212
Birmingham, Alabama 35223
Phone: (205) 803-1640


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Shelby Cnty Judge of Probate, AL
04/03/2008 10:12:55AM FILED/CERT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel #1

Commence at an existing 1-1/4" pipe marking the Northeast corner of Lot 1, Block 46 of Dunstons Map of Calera, an unrecorded subdivision; thence run South 00°06'38" West along the East line of Lot 1, also being the West right-of-way line of the L & N Railroad a distance of 71.15 feet to an existing iron pin with cap stamped ALA PE-LS #9500 and the point of beginning. From said point of beginning run South 00°06'38" West along said West right-of-way line a distance of 54.94 feet to an existing iron pin with cap stamped ALA PE-LS #9500; thence run North 85°56'51" West a distance of 224.30 feet to an existing iron pin with cap stamped B. Lucas #23005 on the East right-of-way line of U.S. Highway #31; thence run along said right-of-way line and along a curve to the left having a Delta = 00°32'46", Radius = 5769.59 feet a distance of 55.00 feet measured along the chord of said curve having a chord bearing of North 04°34'31" East to an existing iron pin with cap stamped B. Lucas #23005; thence run South 85°53'51" East a distance of 220.02 feet to the point of beginning.

Said Parcel #1 being a portion of the NE 1/4, Section 21, T-22-S, R-2-W, being subject to a sanitary sewer easement 10 feet in width along the West side of the property, lying and being in the City of Calera, Shelby County, Alabama, and containing 0.28 acre, more or less.

Parcel #2

Commence at an existing 1-1/4" pipe marking the Northeast corner of Lot 1, Block 46 of Dunstons Map of Calera, an unrecorded subdivision; thence run South 00°06'38" West along the East line of Lot 1, also being the West right-of-way line of the L & N Railroad a distance of 71.15 feet to an existing iron pin with cap stamped ALA PE-LS #9500; thence run North 85°53'51" West a distance of 220.02 feet to an existing iron pin with cap stamped B. Lucas #23005 on the East right-of-way line of U.S. Highway #31; thence run along said right-of-way line and along a curve to the left having a Delta = 00°20'50", Radius = 5769.59 feet a distance of 34.96 feet measured along the chord of said curve having a chord bearing of North 04°07'12" East to an iron pin set (1/2" rebar with cap stamped JBW&T, Inc. CA0046LS); thence continue along said right-of-way line North 03°42'34" East a distance of 21.42 feet to an iron pin set; thence leaving said right-of-way line run South 89°46'49" East a distance of 215.70 feet to the point of beginning.

Said Parcel #2 being a portion of the NE 1/4, Section 21, T-22-S, R-2-W, being subject to a sanitary sewer easement 10 feet in width along the West side of the property, lying and being in the City of Calera, Shelby County, Alabama, and containing 0.32 acre, more or less.

Parcel #3

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY


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Commence at an existing 1-1/4" pipe marking the Northeast corner of Lot 1, Block 46 of Dunstons Map of Calera, an unrecorded subdivision; thence run South 00°06'38" West along the East line of Lot 1, also being the West right-of-way line of the L & N Railroad a distance of 71.15 feet to an existing iron pin with cap stamped ALA PE-LS #9500; thence continue South 00°06'38" West along said West right-of-way line a distance of 54.94 feet to an existing iron pin with cap stamped ALA PE-LS #9500 and the point of beginning. From said point of beginning continue South 00°06'38" West along said West right-of-way line a distance of 134.31 feet to an existing iron pin with cap stamped ALA PE-LS #9500; thence run North 85°56'25" West a distance of 236.57 feet to an existing iron pin with cap stamped B. Lucas #23005 on the East right-of-way line of U.S. Highway #31; thence run North 05°31'27" East along said right-of-way line a distance of 72.91 feet to an iron pin set (1/2" rebar with cap stamped JBW&T, Inc. CA0046LS); thence continue along said right-of-way line and along a curve to the left having a Delta = 00°36'24", Radius = 5769.59 feet a distance of 61.09 feet measured along the chord of said curve having a chord bearing of North 05°08'30" East to an existing iron pin with cap stamped B. Lucas #23005; thence leaving said right-of-way line run South 85°56'51" East a distance of 224.30 feet to the point of beginning.

Said Parcel #3 being a portion of the NE 1/4, Section 21, T-22-S, R-2-W, being subject to a sanitary sewer easement 10 feet in width along the West side of the property, lying and being in the City of Calera, Shelby County, Alabama, and containing 0.71 acre, more or less.

EXHIBIT B

SITE PLAN


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