

FIRST AMENDMENT TO RESTRICTIVE AGREEMENT

THIS FIRST AMENDMENT TO RESTRICTIVE AGREEMENT (this "Amendment") is made and entered into as of the 18th day of Nov., 2008 by and between **New Horizon, LLC**, an Alabama limited liability company ("New Horizon"), and the **Most Reverend Robert J. Baker, Bishop of Birmingham in Alabama**, a corporation sole (the "Diocese").

Recitals

A. Prior to October 3, 2007, David E. Foley was Bishop of the Diocese. Pursuant to Certificate of Succession as Corporation Sole dated October 3, 2007 issued by the Alabama Secretary of State and recorded in BK: LR200715, Page 11487 in the Office of the Judge of Probate of Jefferson County, Alabama, The Most Reverend Robert J. Baker succeeded to and was officially certified as the Bishop of Birmingham in Alabama, a corporation sole. As a result thereof, The Most Reverend Robert J. Baker has succeeded to the position of Bishop of Birmingham in Alabama and all references hereinto the Diocese shall mean and refer to the Most Reverend Robert J. Baker, Bishop of Birmingham in Alabama, as successor corporation sole to David E. Foley, Bishop of Birmingham in Alabama.

B. The Diocese and Brook Highland Highway, LLC, a Delaware limited liability company ("Brook Highland"), entered into that certain Restrictive Agreement (the "Restrictive Agreement") dated as of November 5, 1999, and recorded as Instrument No. 1999-45934 in the Office of the Judge of Probate of Shelby County, Alabama, setting forth certain covenants and restrictions for the benefit of that certain real property owned by the Diocese and described as the Buyer Property in the Restrictive Agreement, which covenants and restrictions run with the land and encumber the Retained Parcel, as described in the Restrictive Agreement. *Unless otherwise defined herein, capitalized terms shall have the same meanings given to them in the Restrictive Agreement.*

C. The Diocese continues to own the Buyer Parcel as described in the Restrictive Agreement.

D. New Horizon is the owner of that certain real property (the "Burdened Parcel") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Burdened Parcel constitutes part of the Retained Parcel and is subject to the terms and provisions of the Restrictive Agreement.

E. New Horizon has developed a gasoline station, a convenience mart and other improvements (collectively, the "Development") on the Burdened Parcel. The Development does not comply with the requirements contained within the Restrictive Agreement.

F. The parties desire to temporarily modify certain terms of the Restrictive Agreement, and have agreed to execute this Amendment to reflect such modifications.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Temporary Remedy of Violations.**

(a) In consideration of the Diocese approving certain otherwise non-conforming improvements constructed as part of the Development and agreeing to waive its rights under the Restrictive Agreement regarding such non-conforming improvements, New Horizon covenants and agrees, within ninety (90) days from the date of this Amendment, to undertake and complete the following:

(i) New Horizon agrees that it will paint all exterior portions of the building on the Burdened Parcel, including the roof, utilizing one of the two following color schemes:

(1) Benjamin Moore – Danville Tan, North Hampton Putty or Woodstock; or

(2) Sherwin Williams - #2827, #2842 or #2820;

(ii) New Horizon agrees that it will remove the entire canopy on the Burdened Parcel, including, without limitation, the “lazy S” internally lit fascia, and replace said canopy with the specific version or model of Shell canopy that is in use at the Shell station in Riverchase at 1801 Montgomery Highway, Hoover, Alabama 35244;

(iii) New Horizon agrees that it will landscape the rear portion of the Burdened Parcel in a manner consistent with the Landscape Plan designed by Chuck Kelly, dated as of August 16, 2006, a copy of which is attached hereto as Exhibit D and made a part hereof; and

(iv) New Horizon agrees that it will eliminate or dim, to a reasonable level agreed upon by the Diocese and New Horizon all lighting from the rear of the building and the rear portions of the canopy on the Burdened Parcel which is projected toward the Buyer Parcel.

(b) New Horizon acknowledges and agrees that the non-conforming improvements at the Development, including the use of concrete block (or split face block) and metal on the exterior of the building, even as modified as required by the terms and provisions of Paragraph 3(a) above, do not satisfy the requirements of the Restrictive Agreement but that the Diocese has agreed to allow the non-conforming improvements to remain on the Burdened Parcel subject to the remaining terms and

provisions of this Amendment and New Horizon's agreement to take the actions required by the terms and provisions of Paragraph 3(a) above.

2. **Additional Requirements under the Restrictive Agreement.** The Restrictive Agreement is amended by adding the following additional terms, covenants and agreements thereto, which additional terms, covenants and agreements shall be effective from and after the date of this Amendment:

(a) Upon any change in either the use or ownership of the Burdened Parcel or any of the improvements thereto other than as set out in subparagraph(e) below, the Development must be renovated and/or replaced in order to comply in all respects with the original terms and provisions of the Restrictive Agreement.

(b) Any additions or changes to the building, lighting, canopy, landscaping or any other improvements on the Burdened Parcel must be approved in writing by the Diocese, and such approval will not be unreasonably withheld.

(c) In the event New Horizon or any of its successors or assigns breaches or is otherwise in default under any of the terms, covenants, requirements or conditions of the Restrictive Agreement, as amended by this Amendment, then the Diocese, its successors and assigns, shall be entitled to institute any action or proceeding against the then owner of the Burdened Parcel and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, paid or incurred by the Diocese in connection therewith shall be due and payable to the Diocese on demand by the then owner of the Burdened Parcel.

(d) All of the terms and provisions of this Paragraph 4 shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of New Horizon and the Diocese and their respective successors and assigns, forever.

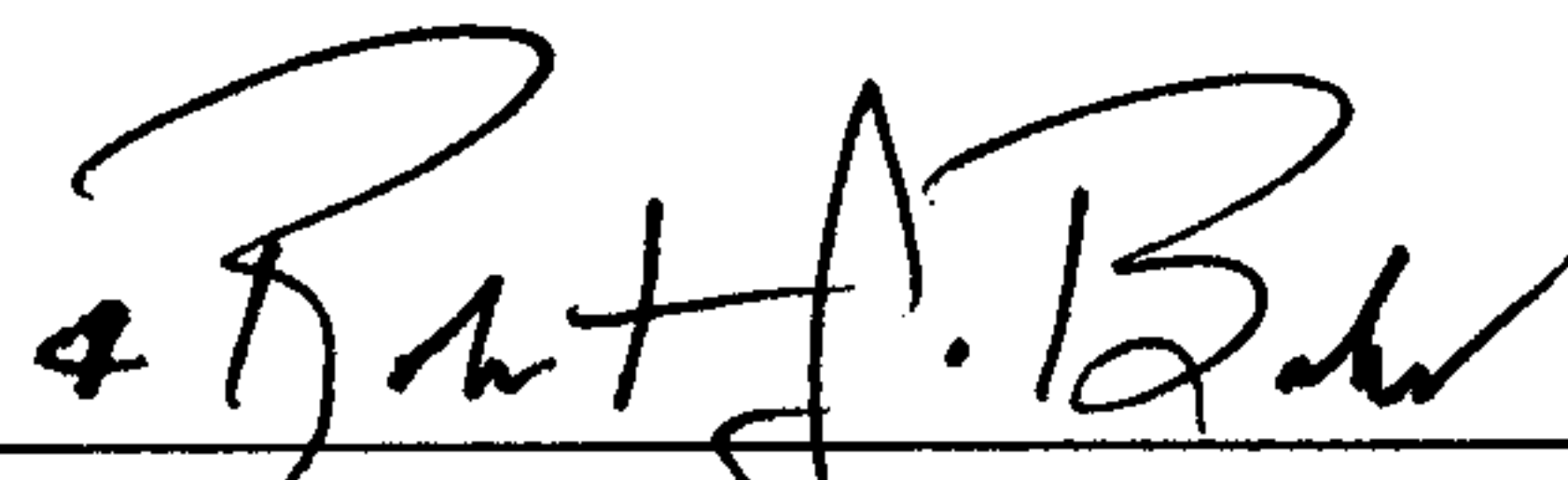
(e) The provisions of Paragraph 2(a) above shall not be binding on the first purchaser of any interest in the Burdened Parcel which purchase occurs at any time within six (6) months of the date hereof; however, all of the remaining terms hereof shall be binding on such first purchaser. Otherwise, all subsequent purchasers of the Burdened Parcel, or any interest in the ownership entity owning the Burdened Parcel, will be bound by all of these terms.

3. **Ratification of the Restrictive Agreement.** Except as expressly modified and amended herein, all of the terms and provisions of the Restrictive Agreement shall remain in full force and effect and are hereby ratified, confirmed and approved by the Diocese and New Horizon.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

**MOST REVEREND ROBERT J.
BAKER, BISHOP OF BIRMINGHAM
IN ALABAMA, a corporation sole**

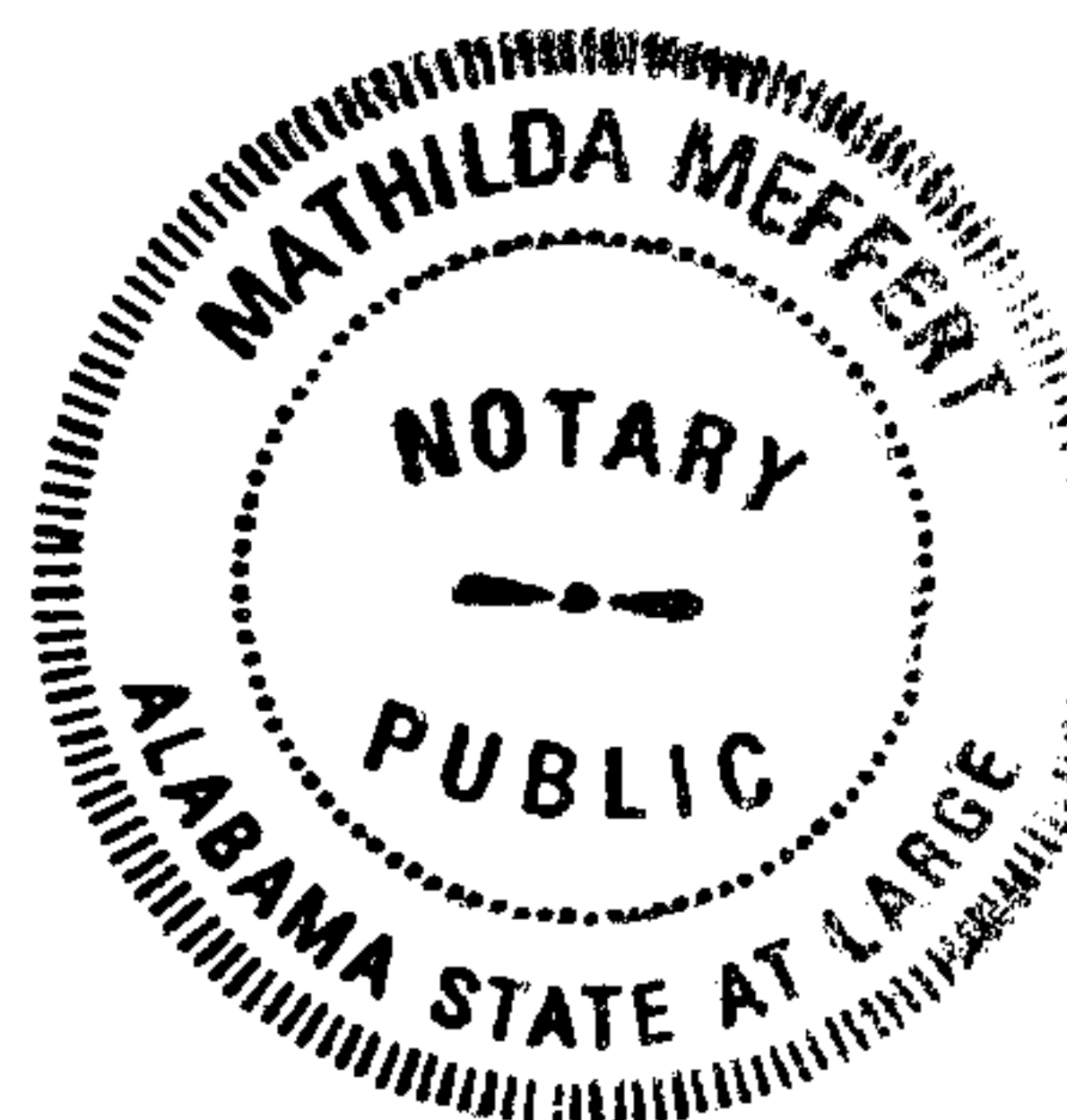
By: 
Most Reverend Robert J. Baker, Bishop

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Most Reverend Robert J. Baker, whose name as Bishop **OF BIRMINGHAM IN ALABAMA**, a corporation sole, 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 the said instrument, he, as said Bishop of Birmingham in Alabama, a corporation sole, with full authority, executed the same voluntarily for and as he offered and of said corporation sole.

Given under my hand and official seal, this the 18th day of NOVEMBER, 2008.



Mathilda R. Meffert
Notary Public

My Commission Expires: June 19, 2008
(SEAL)

NEW HORIZON, LLC

By: 
Name: Clayton Harris
Its: Managing Member

20081230000479510 5/7 \$29.00
Shelby Cnty Judge of Probate, AL
12/30/2008 02:41:42PM FILED/CERT

STATE OF ALABAMA)

JEFFERSON COUNTY)

20081120000444630 5/5 \$23.00
Shelby Cnty Judge of Probate, AL
11/20/2008 11:33:52AM FILED/CERT

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Clinton Harris, whose name as Managing member of **NEW HORIZON, 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 the said instrument, he, as such Managing member and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 12th day of August, 2008.

Sandra Wilson
Notary Public

My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 31, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

(SEAL)

20081230000479510 6/7 \$29.00
Shelby Cnty Judge of Probate, AL
12/30/2008 02:41:42PM FILED/CERT

EXHIBIT A

A parcel of land containing 52949.67 Square Feet (1.22 Acres) being located in the South Half of Section 29, Township 18 South, Range 1 West, Shelby County, Alabama, being part of LOT 3B of a RESURVEY OF LOT 3, BROOK HIGHLAND COMMERCIAL No. 3, as recorded in Map Book 26, Page 41 in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

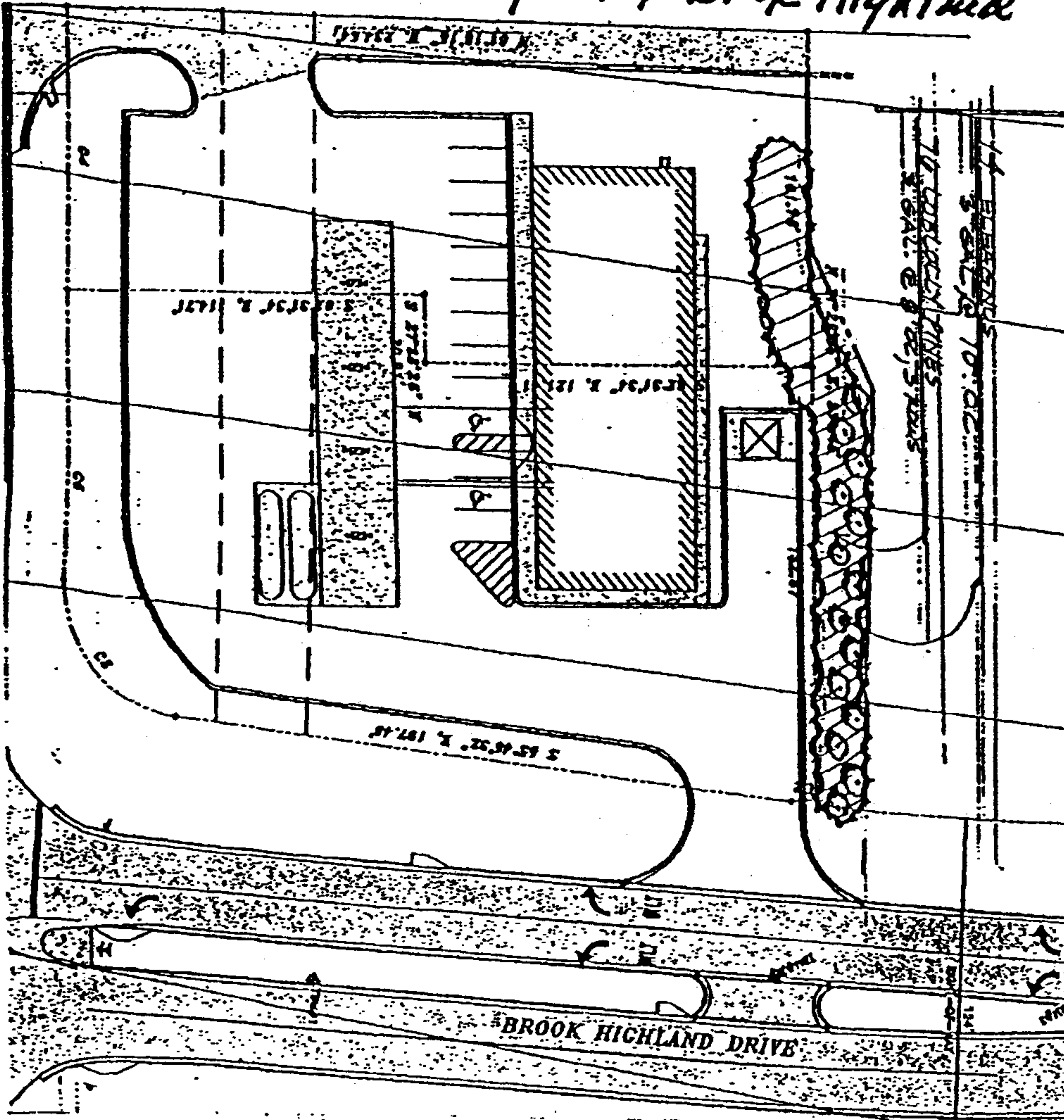
Commence at the Southwest Corner of the Southeast Quarter of Section 29, Township 18 South, Range 1 West, Shelby County, Alabama; thence run North along the Half-Section Line 1328 feet to a point on the Southerly line of LOT 3A of a RESURVEY OF LOT 3, BROOK HIGHLAND COMMERCIAL No. 3, as recorded in Map Book 26, Page 41 in the Probate Office of Shelby County, Alabama; thence North 02°23'01" East 132.43 feet to a point along the Southerly line of said Lot 3A; thence South 56°20'17" East 499.43 feet to a point at the Southeasterly Corner line of said Lot 3A along the Northwestern right-of-way line of Alabama Highway No. 119; thence North 27°26'38" East 634.24 feet along the Northwestern right-of-way line of Alabama Highway No. 119 to the P.C. of a curve to the right with a radius of 5423.75 feet and a central angle of 00°15'08"; thence run Northeasterly, then Easterly 52.87 feet along the arc of said curve to the Point of Beginning; thence North 61°16'15" West 234.54 feet to a point; thence North 27°26'35" East 236.20 feet to a point along the Southerly line of Brook Highland Parkway at a point on a curve to the right with a radius of 896.93 feet, a central angle of 00°30'43" and a chord bearing of South 55°53'22" East; thence run Easterly, then Southeasterly 8.01 feet along the curve and along the Southerly right-of-way line of Brook Highland Parkway; thence South 55°45'32" East 197.48 feet to along the Southerly right-of-way line of Brook Highland Parkway to the P. C. of a curve to the right with a radius of 42.00 feet, a central angle of 80°44'47" and a chord bearing of South 12°54'18" East; thence Southeasterly, then Southerly 59.19 feet along the arc of said curve to a P. R. C. of a curve to the left with a radius of 5423.75 feet, a central angle of 02°09'47" and a chord bearing of South 29°00'30" West; thence run Southerly, then Southeasterly 175.77 feet along the arc of said curve and along the Northwestern right-of-way line of Alabama Highway No. 119 to the Point of Beginning.

EXHIBIT D



20081230000479510 7/7 \$29.00
Shelby Cnty Judge of Probate, AL
12/30/2008 02:41:42PM FILED/CERT

Slope Buffer Planting
SHELL STORE
@ Hwy 119 & Brook Highland



8/16/06 • 1" = 60' M/L