

\$500.00



20090707000260720 1/20 \$72.50  
Shelby Cnty Judge of Probate, AL  
07/07/2009 02:23:34 PM FILED/CERT

THIS INSTRUMENT PREPARED BY:

*Matthew S. Atkins*  
*Bradley Arant Rose & White LLP*  
*One Federal Place*  
*1819 Fifth Avenue North*  
*Birmingham, Alabama 35203*

**DECLARATION OF NONEXCLUSIVE EASEMENT**  
**FOR INGRESS AND EGRESS AND UTILITIES**

This Declaration of Nonexclusive Easement for Ingress and Egress and Utilities (this "Declaration") is made as of the 13th day of March, 2006, by **CAROL and G. JOSEPH RINDONE**, husband and wife (collectively, "Rindone"), **AMY and JAMES WATKINS**, husband and wife (collectively, "Watkins"), **GANN ENTERPRISES, LLC**, an Alabama limited liability company ("Gann"), **DEXTER T. CUNG**, an individual ("Cung"), and **STONEGATE FARMS, LLC**, an Alabama limited liability company (the "Developer"), in its capacity as the Developer under the Covenants, as hereinafter defined.

**RECITALS**

A. Rindone is the owner of that certain lot of real property (the "Rindone Lot"), being more particularly described in the legal description attached hereto as Exhibit "A" and made a part hereof.

B. Watkins is the owner of that certain lot of real property (the "Watkins Lot"), being more particularly described in the legal description attached hereto as Exhibit "B" and made a part hereof.

C. Gann is the owner of that certain lot of real property (the "Gann Lot") being more particularly described in the legal description attached hereto as Exhibit "C" and made a part hereof.

D. Cung is the owner of that certain lot of real property (the "Cung Lot") being more particularly described in the legal description attached hereto as Exhibit "D" and made a part hereof (For purposes of this Declaration, the Rindone Lot, the Watkins Lot, the Gann Lot and the Cung Lot are sometimes hereinafter collectively referred to as the "Lots".)

E. All Lots are contained within a residential subdivision located in Shelby County, Alabama commonly known as Stonegate Farms (the "Subdivision"), which such subdivision is subject to that certain Amended and Restated Covenants, Conditions and Restrictions pertaining to Stonegate Farms as recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument # 2001-12016 (the "Covenants").

Shelby County, AL 07/07/2009

State of Alabama

Deed Tax : \$.50

F. Rindone, Watkins, Gann and Cung desire to declare and create a nonexclusive easement (the "Easement") for ingress and egress and utilities to benefit and burden the Lots, as applicable, over, upon and across the Lots, as described in Exhibit "E" attached hereto and made a part hereof (the "Easement Property").

NOW THEREFORE, in consideration of the recitals, Ten and No/100 Dollars (\$10.00) in hand paid by each party to the other, the mutual promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Declaration of Easement.** Subject to the terms and conditions of this Declaration and all applicable restrictions, easements, covenants and governmental ordinances, rules and regulations, Rindone, Watkins, Gann and Cung do hereby declare for the benefit of (a) Developer, as such party is defined under the Covenants, and (b) all present and future owners of any of the Lots (collectively, the "Owners"), a nonexclusive easement to utilize the roadways, driveways, means of access, exits and entrances, as same may exist from time to time on the Easement Property for the use and benefit of Developer, the Owners, and their respective successors, assigns, heirs, employees, agents, tenants, contractors, subcontractors, guests, invitees and licensees, for purposes of (i) pedestrian and vehicular ingress and egress to and from each of the Lots, (ii) installation and maintenance of utilities serving each of the Lots, and for no other purposes whatsoever.

2. **Costs of Construction; Repair, Replacement, Maintenance.**

A. The Developer, at Developer's expense, shall construct or place a driveway and/or roadway driving surface on the Easement Property according to the standards set forth on the attached Exhibit "F", which such driveway shall by its design be intended for the common use of all Owners and not serving any single Lot (the "Common Drive"); provided however, that after completion of the initial improvements to the Common Drive by Developer, Developer shall have no further obligations as to the Common Drive. The Owners hereby agree that upon completion of such initial improvements constituting the Common Drive, all subsequent repairs or improvements thereof shall be performed by the Association (as hereinafter defined) in accordance with the terms of Section 2.C. hereinbelow. Any other extension from the Common Drive that serves only a particular Lot (even though the same may exist within the Easement Property) shall be constructed and maintained by such respective Owner.

B. So much of the Easement Property as exists as a part of any Lot shall, for ad valorem tax purposes, remain a part of such Lot as assessed by the appropriate taxing authority. In the event that the Easement Property is separately assessed from the Lots, then the Owners, at the Owners' expense (to be divided equally among the Owners, or on such other basis as the Owners may agree among themselves), shall be responsible for the payment of all ad valorem taxes on the Easement Property. Further, the Owners, at the Owners' expense (to be divided equally among the Owners, or on such other basis as the Owners may agree among themselves), shall be responsible for the payment of all costs and expenses for any landscaping of the Easement Property as may be required by the Stonegate Farms Architectural Review Committee pursuant to the Covenants. Each of the Owners, at such Owner's expense, shall also be responsible for the installation of all utilities within the Easement Property as needed to

service such Owner's Lot. Any damage to the Easement Property and/or the pavement or landscaping thereon caused by any such utility installation or other construction or use thereof by an Owner shall be paid by the Owner who is responsible for such damage, to the Stonegate Property Owners' Association, Inc. (the "Association"), within thirty (30) days after the Association's written demand to any such Owner with respect thereto, for the Association's use in the repair and/or replacement of such damaged pavement or landscaping.

C. The Common Drive, together with all landscaping installed as required by the Stonegate Farms Architectural Review Committee as noted above, shall be maintained, repaired and replaced by the Association, provided that (except as described in Section 2.B. above) the total expense of such maintenance, repair and replacement of the Common Drive and landscaping on the Easement Property (the "Easement Maintenance Expense") will be divided equally among the Owners and paid by the Owners to the Association within thirty (30) days after the Association's written demand to the Owners with respect thereto. Rindone, Watkins, Gann and Cung hereby grant to and for the benefit of the Association, its contractors, subcontractors, agents and employees, a right of access to and from the Easement Property to be used in connection with the Association's maintenance, repair and replacement duties as set forth in this Section 2.

D. By acceptance of a deed conveying any of the Lots or by its joinder hereto, each of the Owners shall be deemed to have agreed to pay their respective share of (i) the cost of landscaping as set forth in Section 2.B. above, and (ii) the Easement Maintenance Expense as set forth in subparagraph C. above. By acceptance of a deed conveying a Lot or by its joinder hereto, the Owner of such Lot shall also be deemed to have agreed that, upon such Owner's failure to pay any cost or expense required under this Section 2, such cost or expense shall be a continuing lien on such Owner's Lot, and the Association and/or the Developer, as applicable, shall have the same rights of collection and enforcement as in the case of a violation of the Covenants as provided therein.

### 3. Indemnity.

A. By acceptance of a deed conveying a Lot or by its joinder hereto, the Owner of each Lot shall be deemed to have agreed to indemnify, defend, and hold the Developer and the Association, their respective successors and assigns, harmless from and against any and all claims, costs, demands, damages, liabilities, judgments, and expenses (including attorney fees and other legal costs) for any personal injury (including death) or property damage or any other damages of any nature whatsoever arising out of the use of the Easement by such Owner or such Owner's guests, invitees, agents, tenants, subtenants, customers, contractors, subcontractors, or licensees.

B. Each of the Owners, and their respective successors and assigns (each, respectively, herein "Indemnitor"), agrees to indemnify, defend and hold the other parties hereto (herein "Indemnitee") harmless from and against any and all claims, demands, actions, losses, liabilities, damages and expenses, including reasonably attorneys' fees and expenses, consultants' fees and expenses and other legal costs suffered, paid or incurred by the Indemnitee arising from the use of the Easement by such Indemnitor or its respective successors, assigns, members, directors, officers, agents, representatives, employees, independent contractors, invitees or licensees; provided, however, that the foregoing indemnification obligation shall not

extend or be applicable to any claims, demands, judgments, liabilities or losses arising out of the grossly negligent or intentional wrongful acts of such Indemnitee.

4. **Interference with Use.** The Owners, or any of them, shall not unreasonably prevent, hinder or interfere in any way with the free flow and passage of vehicular and pedestrian traffic along the Common Drive, pursuant to the Easement herein declared, established and created. The flow and passage of vehicular and pedestrian traffic along the Common Drive may only be interrupted or disrupted for limited periods of time, and then only to the extent reasonably necessary, for repair, maintenance, and restoration or to prevent a public taking through condemnation or other means of public acquisition.

5. **Private Property.** This Declaration is not intended and shall not be construed to create, grant or dedicate any public rights, privileges, licenses, or easements in the Easement Property whatsoever to the general public. Subject to the terms of this Declaration, the portion of each Lot as encumbered by this Declaration shall be and remain the private property of each respective Owner, and the Easement Property shall be for the sole use of the Developer and the Owners, and their respective successors, assigns, employees, agents, tenants, contractors, subcontractors, guests, licensees and invitees, as herein set forth.

6. **Perpetual Easement.** The rights set forth herein with respect to the Easement Property shall be perpetual easements, appurtenant to the Lots and running with the land, and shall be binding upon and inure to the benefit of the Developer, the Association, the Owners, and their respective successors, assigns, heirs, employees, agents, tenants, contractors, subcontractors, guests, invitees and licensees.

7. **Waiver.** No provision of this Declaration shall be deemed to have been waived unless such waiver is in writing and is signed by the party waiving such provision, and any such waiver shall be effective only for the specific purpose for which it is given and in the specific instance in which it is given. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Declaration in any instance shall not be construed as a waiver or relinquishment for the future performance of such obligations, and such obligations shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

8. **Modification and Amendment.** This Declaration shall not be modified or amended in any respect except by a written instrument executed by the Developer (provided the Developer owns any lot, parcel or portion of the Subdivision), the Owners, the Association, their respective successors or assigns, and any mortgagee holding a mortgage on any of the Lots.

9. **Captions and Headings.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Declaration.

10. **Pronouns and Plurals.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.

11. **Severability**. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

12. **Governing Law**. This Declaration shall governed by and construed in accordance with the laws of the State of Alabama.

13. **Binding Arbitration**. If there are any disputes, claims or controversies between any or all of them arising out of the transactions contemplated under this Declaration, Developer, the Association, the Owners, and their respective successors and assigns, must submit them to an arbitrator. The arbitrator does not have to give any written reasons for the decision. The arbitrator's decision is final and binding and may be entered as a judgment by any court of competent jurisdiction. The Developer, and, by acceptance of a deed to any portion of the Lots, each Owner acknowledges and agrees it is hereby giving up its right to a jury trial in connection with any such dispute, claim or controversy. Neither the Developer nor any of the Owners may sue the other(s) where the basis of the suit is this Declaration other than for enforcement of the arbitrator's decision. Any controversy or claim arising from or relating to this Declaration, or the breach thereof, shall be settled by the American Arbitration Association, under its Rules for Commercial Arbitration, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Rules for Commercial Arbitration will determine which party will pay expenses of arbitration, except that each party shall each be responsible for payment of their respective attorneys' fees.

**[Signatures Begin on Following Page]**

IN WITNESS WHEREOF, each of Gann and Developer have caused this Declaration to be executed by its duly authorized Manager or Member, and Rindone, Watkins and Cung have executed the same on the date above first written.

**RINDONE:**

Carol Rindone  
Carol Rindone

G. Joseph Rindone  
G. Joseph Rindone

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Carol Rindone and G. Joseph Rindone, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3 day of April, 2006.

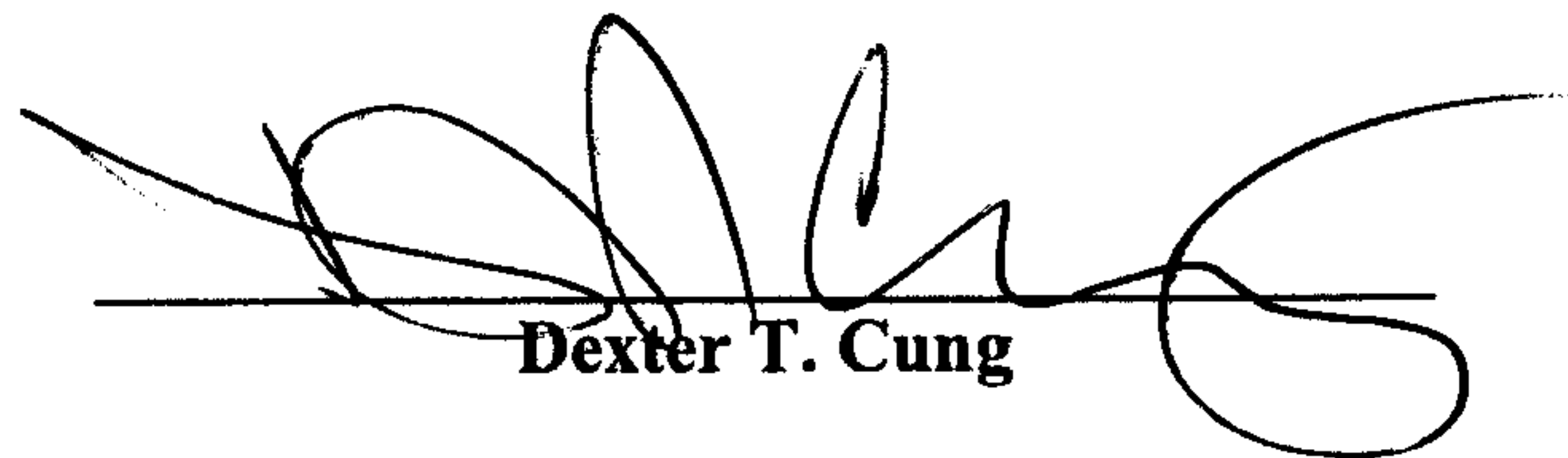
[Signature]  
Notary Public

MY COMMISSION EXPIRES OCTOBER 15, 2008

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

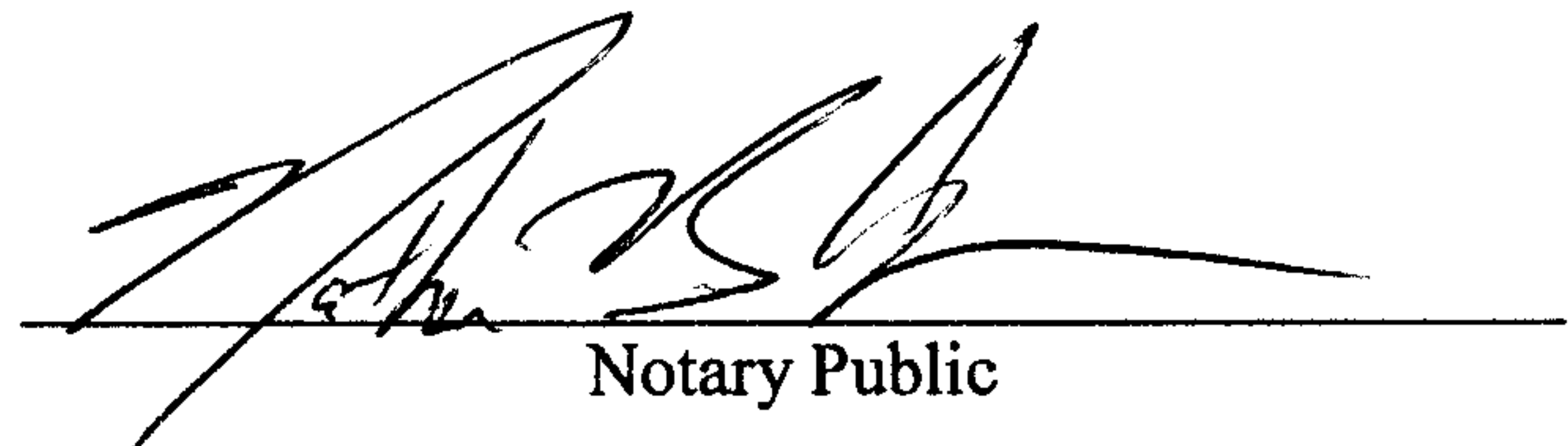
CUNG:

  
Dexter T. Cung

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Dexter T. Cung, whose name 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 executed the same voluntarily on the day the same bears date.

April Given under my hand and official seal this 5th day of April, 2006.

  
Notary Public

[NOTARIAL SEAL]

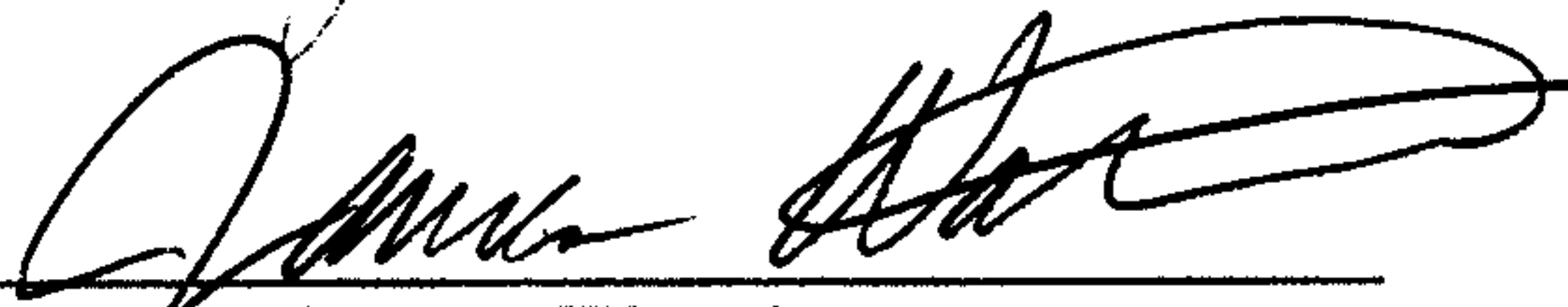
My commission expires: My Commission Expires January 26, 2009



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WATKINS:

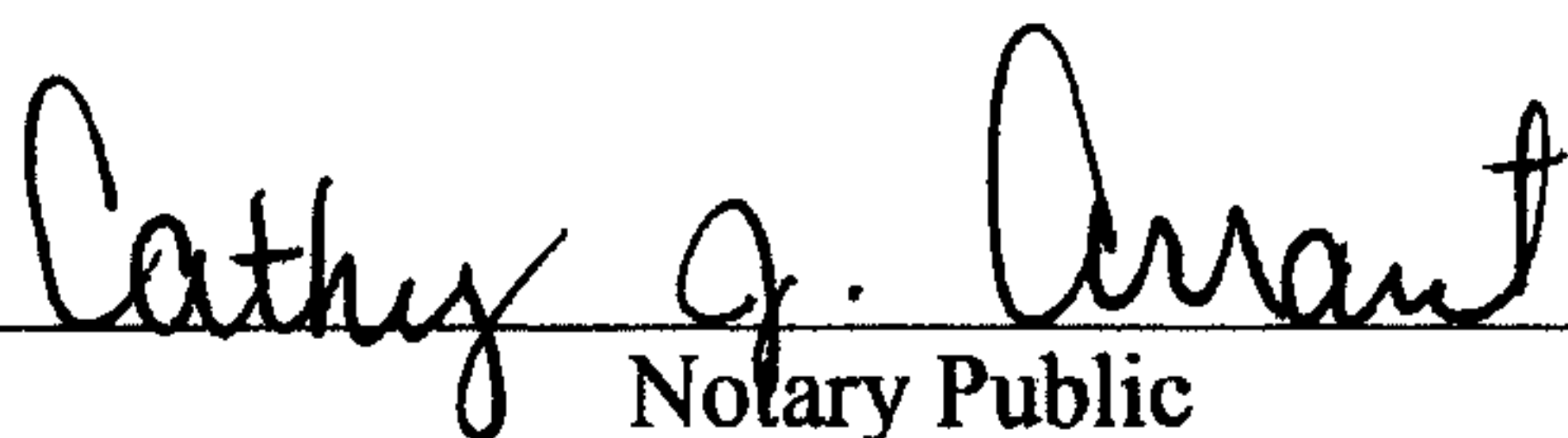
  
Amy Watkins

  
James Watkins

STATE OF ALABAMA                    )  
                                              :  
Shelby COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Amy Watkins and James Watkins, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29<sup>th</sup> day of March, 2006.

  
Notary Public

[NOTARIAL SEAL]

My commission expires NOV 22, 2009  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Nov 22, 2009  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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**GANN:**

**Gann Enterprises, LLC,**  
an Alabama limited liability company

By:   
Keith B. Miller  
Its Authorized Member

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Keith B. Miller, whose name as Authorized Member of Gann Enterprises, 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 member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 17<sup>TH</sup> day of APRIL, 2006.

John Symon  
Notary Public

[NOTARIAL SEAL]

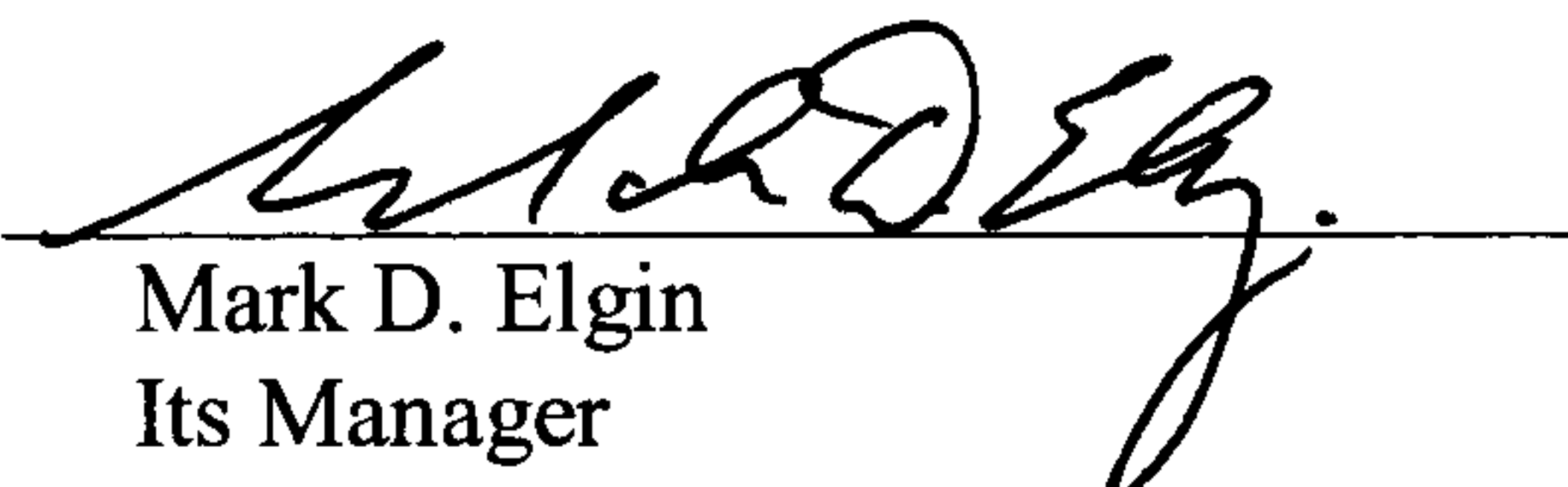
My commission expires: 07/1/2008

**DEVELOPER:**

**Stonegate Farms, LLC,  
an Alabama limited liability company**

**By: Stonegate Projects (Alabama), LLC,  
an Alabama limited liability company,  
Its Manager**

**By: Stonegate Realty Company, LLC,  
an Oklahoma limited liability company,  
Its Manager**

By:   
Mark D. Elgin  
Its Manager

STATE OF ALABAMA                     )  
                                                  :  
JEFFERSON COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Mark D. Elgin, whose name as Manager of Stonegate Realty Company, an Oklahoma limited liability company, which is the Manager of Stonegate Projects (Alabama), LLC, an Alabama limited liability company, which is the Manager of Stonegate Farms, 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 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 13<sup>th</sup> day of March,  
2006.

  
Notary Public

[NOTARIAL SEAL]

NOTARY PUBLIC, ALABAMA STATE AT LARGE  
My commission expires: MY COMMISSION EXPIRES 3/6/08

**ACKNOWLEDGEMENT, CONSENT AND RATIFICATION OF  
THE STONEGATE FARMS PROPERTY OWNERS' ASSOCIATION, INC.**

Pursuant to Unanimous Written Consent of the Board of Directors of the Stonegate Farms Property Owners' Association, Inc., an Alabama nonprofit corporation ("the Association"), the Association does hereby specifically acknowledge, ratify, approve, confirm and consent to the provisions of the foregoing Declaration (including, without limitation, the assumption of all responsibilities delegated to it thereunder), which ratification, approval, confirmation and consent shall be binding upon the Association and its successors and assigns.

Dated as of the 13th day of March, 2006.

**STONEGATE FARMS PROPERTY  
OWNERS' ASSOCIATION, INC.**

By: Robert C. McLean

Its VICE-PRESIDENT

STATE OF ALABAMA                    )  
                                              :  
Jefferson COUNTY                )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Robert C. McLean, whose name as Vice President of Stonegate Farms Property Owners' Association, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 13<sup>th</sup> day of March, 2006.

Angela A. Chapman  
Notary Public

[NOTARIAL SEAL]

NOTARY PUBLIC, ALABAMA STATE AT LARGE  
My commission expires: MY COMMISSION EXPIRES 3/6/08

**ACKNOWLEDGMENT, CONSENT AND RATIFICATION**  
**OF MORTGAGEE OF GANN**

For value received, Aliant Bank, an Alabama state banking corporation, as mortgagee and holder of that certain mortgage executed by Gann Enterprises, LLC, an Alabama limited liability company, encumbering the Gann Lot as defined in the foregoing Declaration, which mortgage is dated April 20, 2005, and recorded April 21, 2005 in Instrument #20050421000189700 in the Probate Office of Shelby County, Alabama, does hereby acknowledge, ratify and consent to the foregoing Declaration, and further ratifies and consents to the recordation of such Declaration in the Probate Office of Shelby County, Alabama.

Dated as of the 14<sup>th</sup> day of April, 2006.

**ALIAN BANK, an Alabama State Banking Corporation**

By: *Jack Naramore*  
its President, Birmingham Region

STATE OF ALABAMA )  
:  
SHELBY COUNTY )

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

Given under my hand and official seal this 14<sup>th</sup> day of April, 2006.

*Mary K. Shannon*  
Notary Public

[NOTARIAL SEAL]

My commission expires: May 27, 2009

**EXHIBIT "A"**

**RINDONE LOT**

Lot 44B, according to the Final Plat of Stonegate Realty – Resurvey of Lot 44A, as recorded in Map Book 36, page 75, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

  
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**EXHIBIT "B"**

**WATKINS LOT**

Lot 43A, according to the Final Plat of Stonegate Realty – Subdivision of Lots 41, 42, 43 and 44, as recorded in Map Book 32, page 108, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

  
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**EXHIBIT "C"**

**GANN LOT**

Lot 42B, according to the Final Plat of Stonegate Realty – Subdivision of Lots 41, 42, 43 and 44, as recorded in Map Book 32, page 108, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

  
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**EXHIBIT "D"**

**CUNG LOT**

Lot 43B, according to the Final Plat of Stonegate Realty – Subdivision of Lots 41, 42, 43 and 44, as recorded in Map Book 32, page 108, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

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**EXHIBIT "E"**

**EASEMENT PROPERTY**

A parcel of land situated in the Southwest 1/4 of Section 24, Township 18 South, Range 1 West, being a part of lots 42B, 43A, 43B according to the survey of Stonegate Realty Resubdivision of Lots 41, 42, 33 and 44, as recorded in Map Book 32, Page 108, in the Probate Office of Shelby County, Alabama, located in Shelby County, Alabama, being more particularly described as follows:

**Parcel 1**

Begin at the common corner of lots 42B, 43B and 44A and run N61°21'50"W along the common lot line between lots 44A and 42B for a distance of 60.10 feet; thence run N25°22'48"E for a distance of 150.00 feet; thence run S64°37'12"E for a distance of 60.00 feet; thence run S25°22'48"W for a distance of 153.41 feet to the Point of Beginning.

**Parcel 2**

A parcel of land being 30 feet in width laying 15 feet on both sides of, and parallel to the following describe centerline:

Commence at the common corner of lots 42B, 43B and 44A and run N61°21'50"W along the common lot line between lots 44A and 42B for a distance of 30.05 feet; thence run N25°22'48"E for a distance of 116.64 feet; thence run S81°00'11"E for a distance of 26.47 feet to the POINT OF BEGINNING; thence run S81°00'11"E for a distance of 84.78 feet; thence run N71°46'42"E for a distance of 165.24 feet; thence run N67°46'08"E for a distance of 133.97 feet; thence run N54°09'13"E for a distance of 125.50 feet; thence run S89°14'15"E for a distance of 135 feet, more or less, to the right-of-way of Connemara Trail, and the POINT OF ENDING.



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**EXHIBIT "F"**

**DRIVEWAY PLAN/DESIGN**

[See attached two pages]



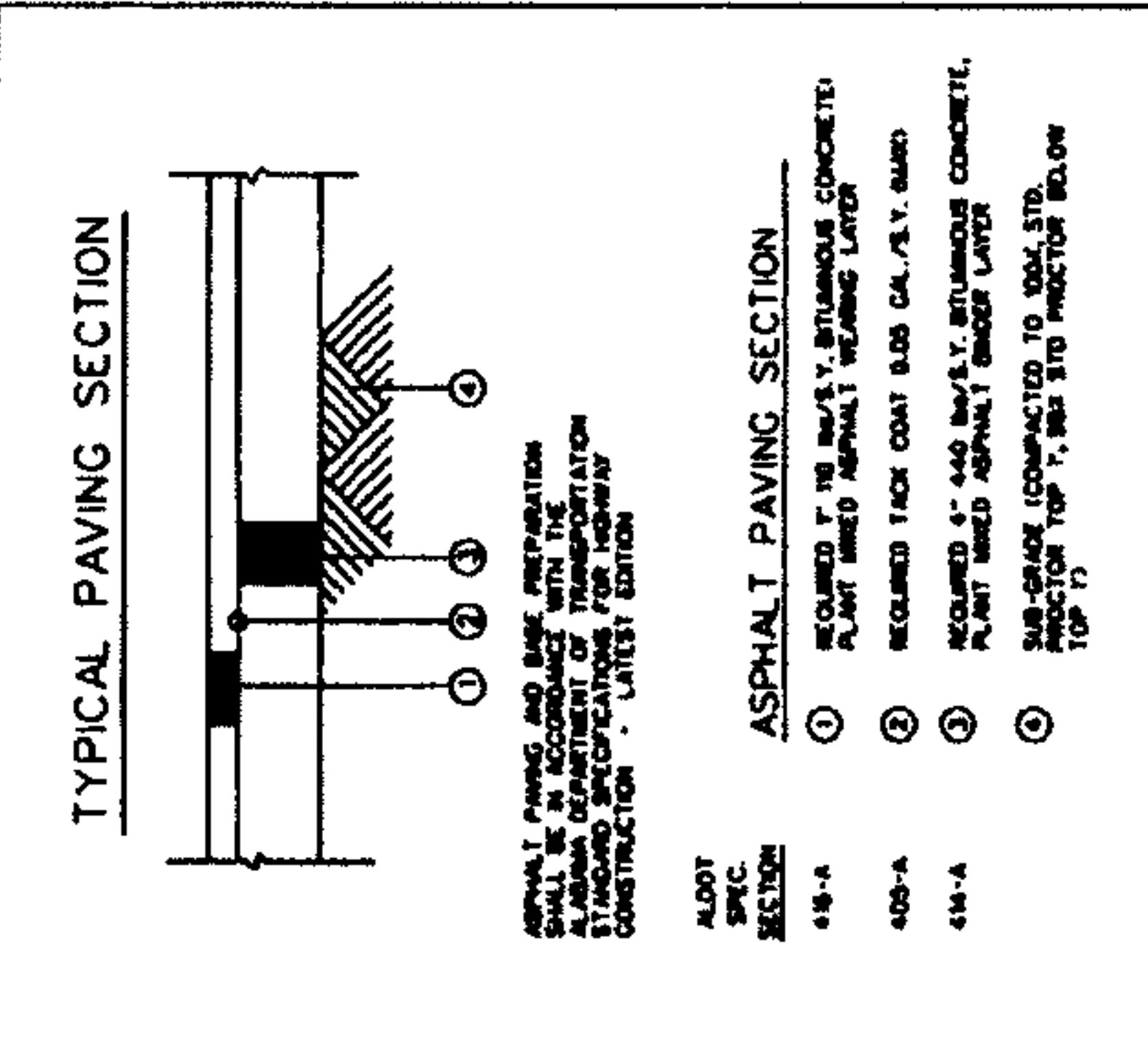
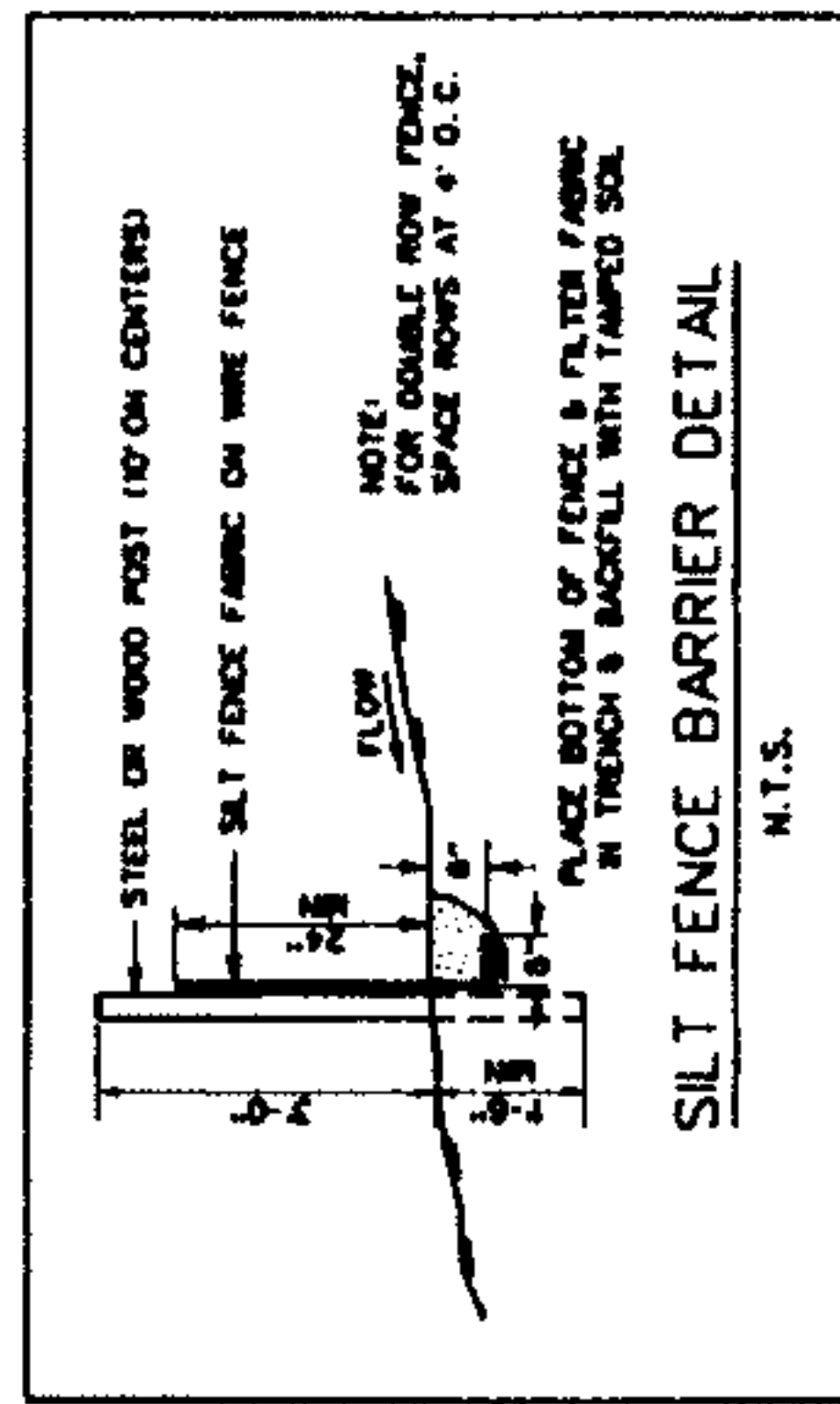
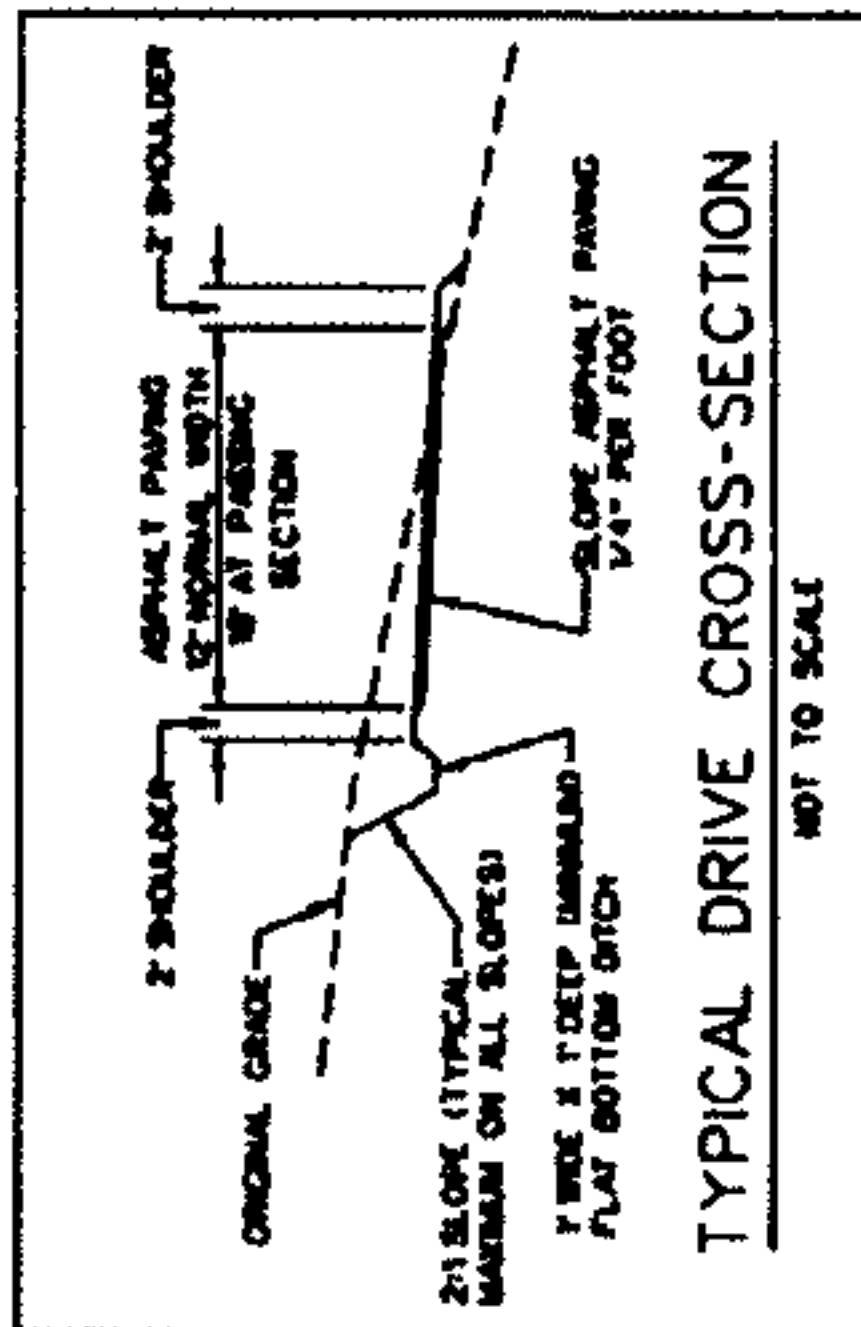
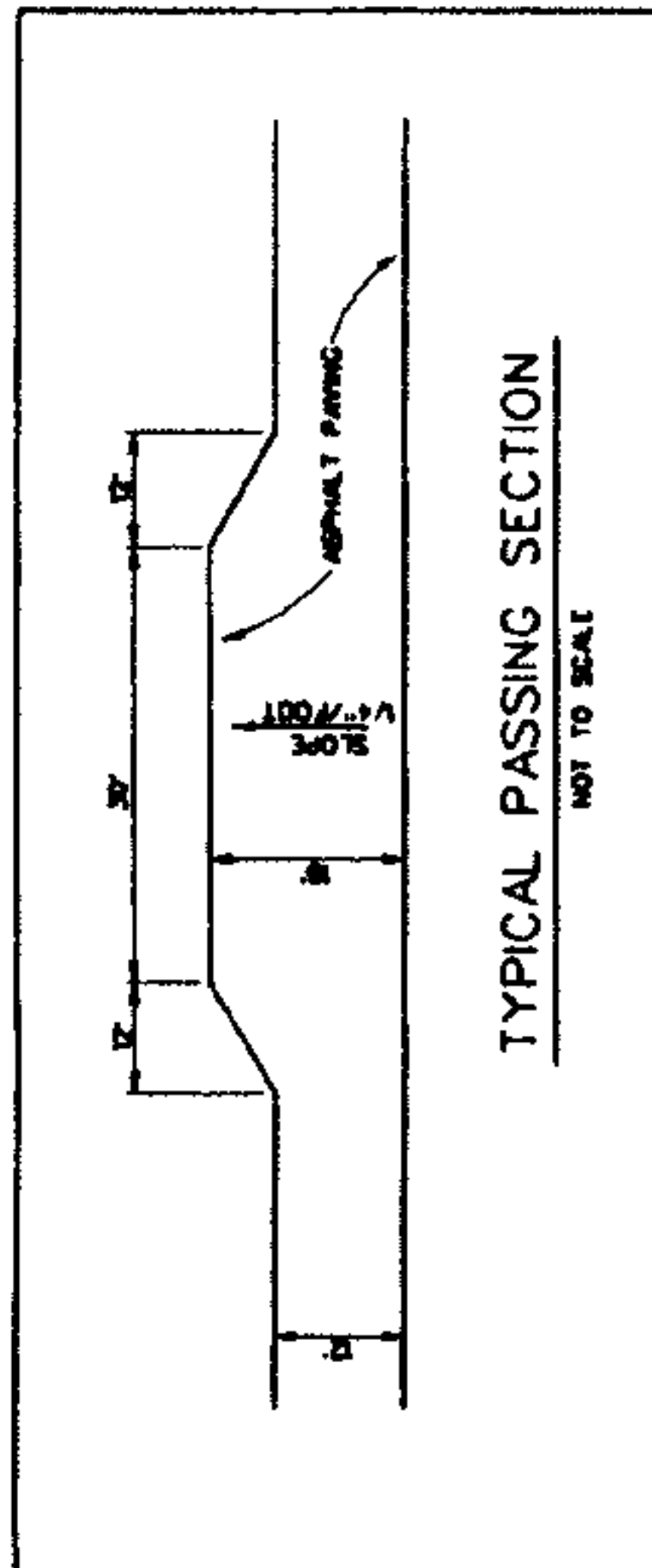


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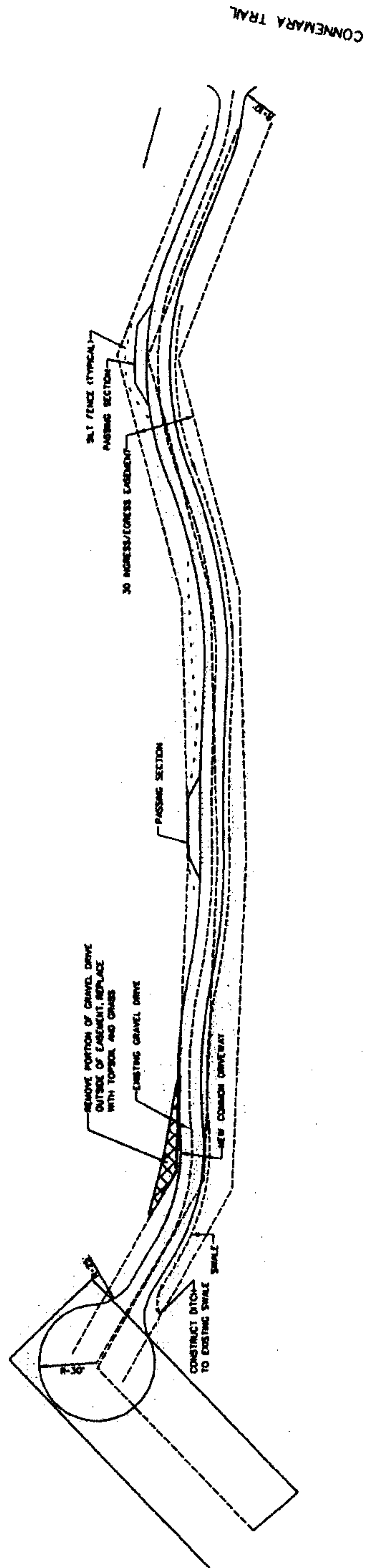
OK - Todd R. Dyer  
OK - Carol R. Dyer  
OK - Jim Watkins

Tim Watkins 11-04-05

Cathy G. Durant



- ASPHALT PAVING SECTION
- 1. REQUIRED 1" 100% BITUMINOUS CONCRETE PLANT MIXED ASPHALT WEARING LAYER
  - 2. REQUIRED 1" 100% BITUMINOUS CONCRETE PLANT MIXED ASPHALT BASE LAYER
  - 3. REQUIRED 1" 100% BITUMINOUS CONCRETE PLANT MIXED ASPHALT SUBGRADE LAYER
  - 4. SUBGRADE (COMPACTED TO 100% STD. PROCTOR TOP 1" BELOW PROCTOR BELOW TOP 1")



| No. | Date     | By | Checked | Revision Description |
|-----|----------|----|---------|----------------------|
| 1   | 03/20/01 | ME | ME      | GENERAL REVISION     |
|     |          |    |         |                      |
|     |          |    |         |                      |
|     |          |    |         |                      |
|     |          |    |         |                      |

| Alabama Engineering Company, Inc.                                                                         |  | Connemara Trail - Common Driveway                                                         |  |
|-----------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------|--|
| 2 Office Park Circle, Suite 11<br>Birmingham, Alabama 35223<br>Phone (205) 803-2161<br>Fax (205) 803-2162 |  | Stonegate Realty - Phase Two<br>Stonegate Realty Company L.L.C.<br>Shelby County, Alabama |  |
| Not valid for construction unless signed in this block                                                    |  | Scale: 1"=30'                                                                             |  |
| Robert W. Conley, P.E.                                                                                    |  | Checked: [Signature]                                                                      |  |
| Date:                                                                                                     |  | Sheet No. 1 of 1                                                                          |  |