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Shelby Cnty Judge of Probate, AL  
09/08/2009 12:55:50 PM FILED/CERT

STATE OF ALABAMA )

SHELBY COUNTY )

PERPETUAL, EXCLUSIVE EASEMENT

3 This Perpetual, Exclusive Easement (the "Agreement") is made and entered into this the day of September, 2009, by and between J. Thomas Holton, a married man ("Holton") and Howard Wise and Emily R. Wise (collectively "Wise").

RECITALS:

Holton is the fee owner of that certain real property located in Shelby County, Alabama, which is more particularly described on Exhibit A attached hereto and incorporated by reference herein which property is referred to herein as the "Servient Estate"; and,

Wise is the fee owner of that certain real property located in Shelby County, Alabama, which is more particularly described on Exhibit B attached hereto and incorporated by reference herein which property is referred to herein as the "Dominant Estate"; and,

Wise desires to purchase from Holton a perpetual, exclusive easement on, under and over that certain real property described on Exhibit C attached hereto and incorporated by reference herein "the Easement Area"; and,

Wise has requested, and Holton has agreed, to grant to Wise a perpetual, exclusive easement for the exclusive use of the Easement Area, in order to afford Wise and Wise's heirs, successors and assigns such exclusive use, all upon the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein, and for other good and valuable consideration paid by Wise to Holton, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Subject to the terms of this Agreement, Holton does hereby grant, bargain, sell and convey to Wise, as joint tenants with all rights of survivorship and to the Dominant Estate the Easement Area as a perpetual, exclusive easement, running with the land of the Dominant Estate for all purposes whatsoever. Without limiting the generality of the foregoing, the parties intend that the Easement Area and the use thereof be treated as if Wise was the owner of the fee interest in the Easement Area, with the use thereof being absolutely exclusive to Wise and their heirs, successors and assigns. Notwithstanding the foregoing, the Easement area is subject to all regulations, restrictions and covenants affecting the Easement Area, including, without limitation, those matters having to do with Lake Woodmere, Inc. All costs and expenses for the maintenance, upkeep and use

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of the Easement Area shall be borne exclusively by the owner of the Dominant Estate. TO HAVE AND TO HOLD, unto Wise, their heirs, successors and assigns forever. Holton makes no warranty or covenant respecting the nature of the quality of the title to the Easement Area hereby conveyed other than that Holton has neither permitted nor suffered any lien, encumbrance or adverse claim to the Easement Area since the date of acquisition thereof by Holton.

2. The Easement Area is not nor ever has been the homestead of Holton or his spouse.
3. As set forth in paragraph 4 below, the owner of the Dominant Estate shall be responsible for ad valorem taxes, assessments, and other charges relating to the Easement Area, as if the owner of the Dominant Estate were the fee simple owner of the Easement Area. Notwithstanding anything to the contrary herein, the Servient Estate and the owner thereof shall be responsible for all assessments, advancements or other charges imposed by Lake Woodmere, Inc. or it's successor upon the Servient Estate and the Easement Area.
4. If the owner of the Dominant Estate is unable to separately assess the Easement Area in their name, then the owner of the Servient Estate will pay the ad valorem taxes, assessments and other charges relating to the Easement Area when due and after payment will invoice the owner of the Dominant Estate for reimbursement. If the owner of the Servient Estate fails to make such payment(s), the owner of the Dominant Estate may make such payments and charge those portions of the same attributable to the owner of the Servient Estate pursuant to this Agreement to the owner of the Servient Estate. For purposes of reimbursements hereunder, the parties have agreed that the owner of the Servient Estate shall be responsible for all ad valorem taxes and assessments having to do with that part of the Servient Estate which is not the Easement Area and the owner of the Dominant Estate shall be responsible for twenty percent (20%) of the ad valorem taxes, assessments and other charges attributable to the land of the Servient Estate and 100% of the ad valorem taxes, assessments and other charges attributable to improvements on the Easement Area until such time as the owner of the Dominant Estate is able to separately assess the Easement Area in the name of the owner of the Dominant Estate. Notwithstanding anything to the contrary herein, the Servient Estate and the owner thereof shall be responsible for all assessments, advancements or other charges imposed by Lake Woodmere, Inc. or it's successor upon the Servient Estate and the Easement Area. Nothing in this Agreement shall be construed to imply that the easement granted herein shall terminate in the event of non-payment of taxes and assessments as set forth in this paragraph by the owner of the Dominant Estate. In the event of action by either party to this Agreement or their heirs, successors and assigns, the prevailing party shall be entitled to all costs of such action and reasonable attorney's fees.

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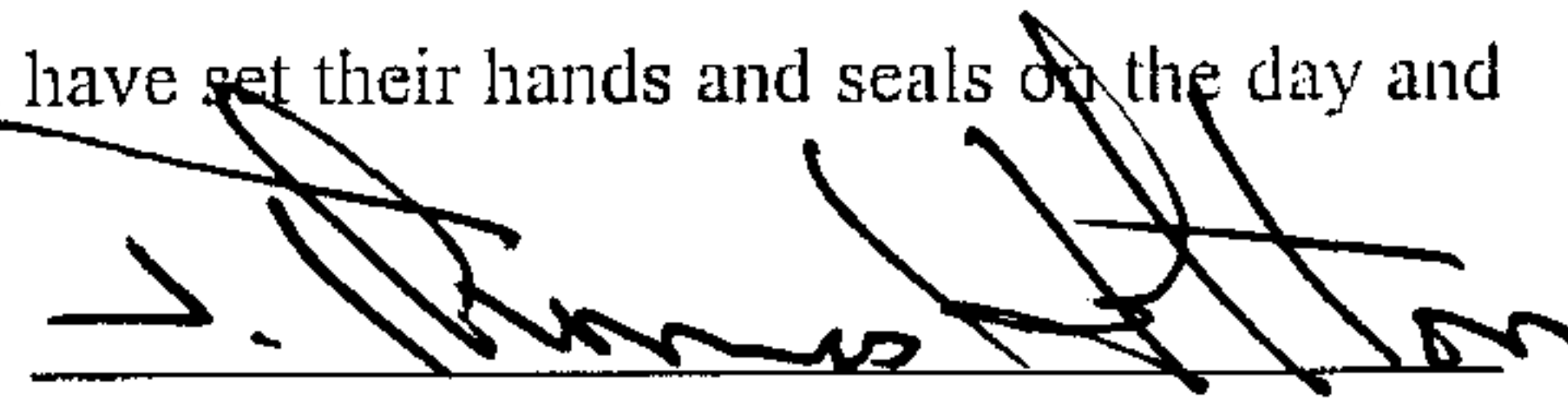
5. The owner of the Dominant Estate does indemnify and hold harmless the owner of the Servient Estate from and against any and all claims, expenses, liabilities, losses, damages and costs, including reasonable attorneys' fees and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any person or any accident, injury, loss or damage, howsoever caused to any person or property as shall occur in or about the Easement Area, and from any mechanic's or materialman's lien or claim therefor arising by, through or under such owner. The owner of the Dominant Estate shall provide the owner of the Servient Estate with written evidence of commercial general liability insurance, with limits of not less than \$1,000,000.00, covering Bodily Injury and Property Damage Liability on the Easement Area arising out of the use of the Easement Area; it being further understood and agreed that such policy shall be issued by entities with an A.M. Best Rating of A-VII or higher and shall name the owner of the Servient Estate, and the respective lenders, as an additional insured.
6. Holton entered into that certain non exclusive easement on June 12, 2001, with M. M. Argo, Jr. and Dorothy W. Argo (the "Argo Easement"), which Argo Easement is recorded in Instrument No. 2001-24331. The Argo Easement is for a twenty (20) foot non exclusive access easement to the Easement Area and by the terms of the Argo Easement it runs with the land and is binding on and inures to the successors and assigns of Holton. Holton does hereby grant, bargain and convey unto Wise any right, title and interest Holton has in the Argo Easement. TO HAVE AND TO HOLD unto Wise as joint tenants with all rights of survivorship and their personal representatives, heirs, successors and assigns forever.
7. Upon determination that such is not in violation of any governmental rule, regulation or statute, the Owner(s) of the Servient Estate and for the consideration received in this Agreement will convey the Easement Area by Statutory Warranty Deed, free of monetary encumbrance but subject to all regulations, restrictions and covenants affecting the Easement Area, including, without limitation, those matters having to do with Lake Woodmere, Inc. to the owner(s) of the Dominant Estate (as joint tenants with rights of survivorship if requested), and upon such conveyance the owner(s) of the Dominant Estate shall fully assess the Easement Area in their names.
8. All of the provisions hereof shall run with the land that is the subject hereof and shall bind the land which is the subject hereof, and shall inure to the benefit of, and be enforceable by, the parties hereto and their respective legal representatives, heirs, successors, and assigns.
9. This Agreement shall be construed under the laws of the State of Alabama.
10. The Easement Area which is being granted hereby is hereby granted in its "as is" "where is" condition with no warranty or representation by Holton as to the physical condition of the Easement Area.

  
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11. Upon request by the owner(s) of the Servient Estate, the owner(s) of the Dominant Estate shall execute any reasonable estoppel certificates required by the Servient Estate in conjunction with a sale or encumbrance of the Servient Estate.
12. All notices required herein shall be deemed sufficient if given to the owner of the Dominant or the Servient Estate at such address as listed for such properties by the Tax Assessor of Shelby County, Alabama. All notices must be in writing and shall be deemed sufficient if given by United States Mail postage prepaid.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the day and year first written above.



J. Thomas Holton



Howard Wise



Emily R. Wise

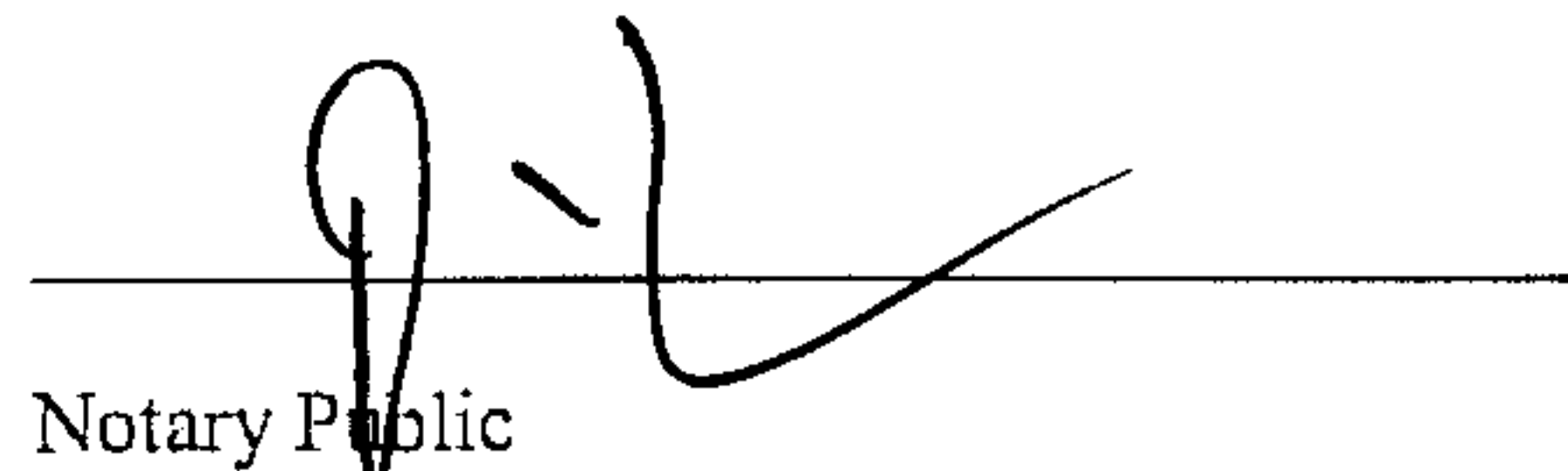
STATE OF ALABAMA     )

Jefferson COUNTY     )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that J. Thomas Holton, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3 day of Sept., 2009.

Deed Tax : \$100.00



Notary Public

My Commission Exp. 3-1-2010

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STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Howard Wise, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3 day of SEPTEMBER, 2009.

Wm. Frank Pitt II

Notary Public

My Commission Exp. 8/7/12

STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Emily R. Wise, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3 day of SEPTEMBER, 2009.

Wm. Frank Pitt II

Notary Public

My Commission Exp. 8/7/12

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EXHIBIT A

SERVIENT ESTATE

Beginning at the northeast corner of the southeast quarter of Section 11, Township 21 South, Range 2 West, Shelby County, Alabama and run thence North 87° 40' 31" West along the north line of said quarter-quarter section a distance of 1,322.60' to a found concrete monument corner representing the northwest corner of same said quarter-quarter; Thence run South 00° 31' 07" East along the west line of said quarter-quarter a distance of 463.72' to a set capped rebar corner; Thence run North 88° 04' 21" East a distance of 578.85' to a property corner in Bounds Lake; Thence run South 00° 31' 12" East within Bounds Lake a distance of 423.48' to a property corner within Bounds Lake; Thence run North 89° 31' 07" East a distance of 531.13' to a property corner within Bounds Lake; Thence run South 88° 43' 15" East a distance of 213.67' to a set capped rebar corner on the east line of said southeast quarter of the northwest quarter; Thence run North 00° 41' 15" West along said east line of said quarter-quarter a distance of 814.42' to the point of beginning, containing 20.00 acres, more or less.



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**EXHIBIT B**

**DOMINANT ESTATE**

A parcel of land situated in the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 11, Township 21 South, Range 2 West in Shelby County, Alabama and being more particularly described as follows:

Begin at the SW corner of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 11, Township 21 South, Range 2 West; thence N 3 deg. 19' 22" W along the western line of said  $\frac{1}{4}$ -  $\frac{1}{4}$  section a distance of 1384.61' to the NW corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence S 89 deg. 54' 44" E along the northern line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section a distance of 793.64'; thence S 3 deg. 19.22' E a distance of 1364.61' to the southern line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence S 88 deg. 38' 42" W along the southern line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence S 88 deg. 38' 42" W along the southern line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section of a distance of 792.70' to the Point of Beginning.



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## EXHIBIT C

### EASEMENT AREA

Beginning at the northeast corner of the southeast quarter of the northwest quarter of Section 11, Township 21 South, Range 2 West, Shelby County, Alabama and run N 87 degrees 40' 31" W along the north line of said quarter-quarter a distance of 213.99' to a corner; Thence run S 00 41' 55" E a distance of 818.33' to a corner; Thence run S 88 43' 15" E a distance of 213.67' to a steel corner; Thence run N 00 41' 15" W a distance of 814.42' to the point of beginning.



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