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This instrument prepared by:

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20100218000048660 1/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
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STATE OF ALABAMA )

COUNTY OF SHELBY )

**DECLARATION OF ROADWAY AND UTILITY EASEMENTS**

THIS **DECLARATION OF ROADWAY AND UTILITY EASEMENTS** (this "Declaration") is made as of the 10<sup>th</sup> day of February, 2010, by **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company ("CBI"), and consented to by the **EDENTON OFFICE CONDOMINIUM OWNERS' ASSOCIATION, INC.**, an Alabama non-profit corporation (the "Office Association").

**WITNESSETH**

**WHEREAS**, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Office Property"), on which CBI has constructed and developed certain buildings, roadways, parking lots and related improvements for sale and use as an office condominium (the "Office Condominium"); and

**WHEREAS**, in connection with the Office Condominium, CBI recorded that certain Declaration of Edenton Office Condominium recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), on April 10, 2007, as Instrument Number 20070410000163990 (as amended from time to time, the "Office Declaration"); and

**WHEREAS**, the Office Condominium project is operated and maintained by the Office Association; and

**WHEREAS**, CBI was also the developer of a certain residential condominium project located adjacent to the Office Property known as Edenton, A Condominium (the "Existing Edenton Residential Condominium");

**WHEREAS**, the Existing Edenton Residential Condominium project is operated and maintained by the Edenton Residential Owners' Association, Inc., an Alabama non-profit corporation (the "Existing Edenton Residential Association"); and

Shelby County, AL 02/18/2010  
State of Alabama  
Deed Tax : \$.50



**WHEREAS**, the Existing Edenton Residential Condominium is the beneficiary of a certain non-exclusive easement for access, roadway and utility facilities over a portion of the Office Property, pursuant to that certain Declaration of Roadway and Utility Easement recorded in the Probate Office on February 16, 2007, as Instrument Number 20070216000072120 (the "Existing Easement"), a copy of which is attached hereto as **Exhibit B**; and

**WHEREAS**, the Existing Easement provides that the Office Association and the Existing Residential Association will equally share the cost associated with maintaining the drives, roadways and sidewalks located in the easement area described in the Existing Easement; and

**WHEREAS**, in accordance with the provisions of the Office Declaration and Section 35-8A-210 of the Alabama Uniform Condominium Act of 1991, *Code of Alabama* (1975), CBI has exercised its development rights to withdraw that certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit C** attached hereto and made a part hereof (the "Residential Property," collectively with the Office Property, the "Parcels," and each individually, a "Parcel"), by recording that certain Second Amendment to Declaration of Edenton Office Condominium in the Probate Office on January 15, 2010, as Instrument Number 20100115000015260 (the "Second Amendment"); and

**WHEREAS**, the Residential Property does not have existing access to a dedicated public road; and

**WHEREAS**, CBI intends to construct and develop on the Residential Property certain buildings, roadways and related improvements for sale and use as a residential condominium development to be known as "The Lofts at Edenton, A Condominium," which will be operated and maintained by The Lofts at Edenton Condominium Association, Inc., an Alabama non-profit corporation (the "Residential Association," together with the Office Association, the "Associations"); and

**WHEREAS**, pursuant to the Second Amendment, CBI reserved for itself, and its successors and assigns, certain access, roadway and utility easements over a portion of the Office Property for the benefit of the Residential Property; and

**WHEREAS**, a portion of the easement areas described in this Declaration below will overlap with a portion of the easement areas described in the Existing Easement; and

**WHEREAS**, to further evidence the aforementioned easements, CBI is desirous of declaring and creating the access, roadway and utility easements described herein over the Office Property for the benefit of the Residential Property to afford the Residential Property access and utilities, among other easements, over the Office Property to a dedicated, public roadway or street and to provide other rights and benefits in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and mutual benefit to be derived by CBI, its successors and assigns, transferees, invitees and third parties, and their respective successors and assigns, the following easements are hereby imposed on the Office Property:



1. **Easements.** CBI hereby declares and imposes the following easements on the Office Property for its own benefit and for the benefit of the Residential Property and each of the current and future owners, successors, assigns, mortgagees and invitees of any part or all of the Residential Property (each individual or entity hereafter acquiring or holding an ownership interest in the Parcels being hereinafter called an "Owner" or collectively, the "Owners"):

(a) **Vehicular and Pedestrian Access.** A perpetual, non-exclusive vehicular and pedestrian ingress, egress and access easement and right of use, of all access, entrance drives, roadways and sidewalks over and across that certain real property located on the Office Property as more particularly described on **Exhibit D** attached hereto and made a part hereof (the "Access/Utility Easement Area"), on which CBI has constructed and developed, or may construct and develop, a roadway, sidewalks and related improvements. These non-exclusive easements shall be for the use and benefit of all present and future Owners and users of the Residential Property, their invitees, and their successors and assigns.

(b) **Utility Easements.** Non-exclusive easements for the installation, operation, maintenance, repair, replacement and removal of: water lines and systems, telephone and other communications lines and systems, cable lines and systems, gas lines and systems, sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems, and any other utility lines or systems hereafter developed to serve the Residential Property which are or may be located in the Access/Utility Easement Area (the "Utility Facilities"); together with the right to cut away and keep clear of the Utility Facilities all trees and other obstructions that may unreasonably obstruct, endanger or interfere with the proper maintenance and operation of the Utility Facilities, and together with the right of ingress, egress and regress at all reasonable times to enter onto the Office Property for the foregoing purposes and subject to the foregoing conditions and limitations. Provided, however, that all such Utility Facilities shall be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Office Property or any improvements located thereon.

(c) **Waterline Easement.** A non-exclusive easement over and across that certain real property located on the Office Property as more particularly described on **Exhibit E** attached hereto and made a part hereof (the "Waterline Easement Area") for the installation, operation, maintenance, repair, replacement and removal of water lines and systems to serve the Residential Property which are or may be located in the Waterline Easement Area (the "Waterline Facilities"); together with the right to cut away and keep clear of the Waterline Facilities all trees and other obstructions that may unreasonably obstruct, endanger or interfere with the proper maintenance and operation of the Waterline Facilities, and together with the right of ingress, egress and regress at all reasonable times to enter onto the Office Property for the foregoing purposes and subject to the foregoing conditions and limitations. Provided, however, that all such Waterline Facilities shall be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Office Property or any improvements located thereon.



2. **Unimpeded Access.** Neither CBI nor the Office Property Owners, nor their successors and assigns, will (a) construct a barricade or other divider that would inhibit or impede the use and enjoyment of the easements granted herein by the Residential Property Owners, or (b) permit any parking in the Access/Utility Easement Area or the Waterline Easement Area. The Residential Property Owners, in their use and enjoyment of the easements granted herein, shall not interfere with, inhibit or impede the Office Property Owners or their transferees, successors or assigns' use and enjoyment of the Office Property. Nothing contained herein shall be deemed to limit or prevent CBI, the Residential Property Owners or the Residential Association from erecting gated or controlled access to the Residential Property.

3. **Maintenance Obligations Regarding Access/Utility Easement Area.**

(a) The Office Association shall be responsible for ensuring that all maintenance associated with maintaining the landscaping, roadway and sidewalks located in the Access/Utility Easement Area in good order and repair is performed.

(b) The Residential Association shall reimburse the Office Association for fifty-percent (50%) of the costs and expenses actually incurred and paid by the Office Association (after taking into consideration the cost-sharing arrangement between the Existing Residential Association and the Office Association as set forth more fully in the Existing Easement) in keeping and maintaining the Access/Utility Easement Area in accordance with the standards set forth in **Section 3(c)** hereof. The Associations may pass such costs through to their respective members as part of such Associations' assessments.

(c) Maintenance of the Access/Utility Easement Area shall include, without limitation: regular and timely removal and cleaning of all trash, garbage, litter or waste from the Access/Utility Easement Area; regular landscape maintenance (including mowing, pruning and trimming) of all landscaping within the Access/Utility Easement Area; watering and weed control of landscaping within the Access/Utility Easement Area; and keeping walks, driveways, roadways and sidewalks in the Access/Utility Easement Area clean and in good repair. The standard for such maintenance shall be that which would be equal in quality at least to that maintained by owners of first class facilities of the same type in the vicinity of the Parcels.

(d) In the event any maintenance to the Access/Utility Easement Area is necessary as a result of the installation, operation, maintenance, repair, replacement and removal of any Utility Facilities that benefit solely the Office Property or the Residential Property, the respective Association over the Property benefited shall be solely responsible for all maintenance and repair of the Access/Utility Easement Area to restore it, to the extent reasonably possible, to the condition existing before such work with respect to the Utility Facilities. In the event any maintenance to the Access/Utility Easement Area is necessary as a result of the negligence or willful misconduct of any Owner, the Association of which such Owner is a member shall be responsible for such maintenance or repair of the Access/Utility Easement Area; provided that nothing contained herein shall limit such Association from assessing all such costs and expenses against such Owner's unit and exercising any lien rights applicable thereto.



4. **Maintenance Obligations Regarding Waterline Easement Area.** The Residential Association shall be responsible for all maintenance associated with maintaining the Waterline Easement Area in good order and repair. The Residential Association may pass such costs through to its members as part of the Residential Association's assessments.

5. **Enforcement.**

(a) Either Association or any Owner shall have the right to enforce this Declaration at any time. Enforcement of this Declaration may be by any proceeding at law or in equity against the person or persons, or entity or entities violating or attempting to violate any covenant, restriction or other term of this Declaration, either to restrain such violation or to recover damages. Failure or delay by any Association or Owner to enforce this Declaration shall in no event be deemed to waive the right to do so.

(b) In the event a party shall fail or refuse to comply with any term, provision or covenant of this Declaration and does not cure the failure or refusal within thirty (30) days after written notice thereof is given by another party (provided that if such default cannot be reasonably cured within said thirty (30) days, then the failing party shall have an additional reasonable period of time within which to cure such default, provided that such party has commenced to cure such default within such 30-day period and is diligently pursuing a cure), then the party sending such notice of default may pursue any and all remedies it may have provided by law, in equity or otherwise, including, without limitation, the right to enter upon the other party's property, perform the work to be done and sue the defaulting party for all costs incurred in connection therewith. The pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any damage occurring to the harmed party by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by the harmed party to enforce one or more of the remedies herein provided upon occurrence of such a default, shall not be deemed or construed to constitute a waiver of such default. The remedies provided herein are in addition to any other remedies, either legal or equitable, available under applicable law.

6. **Nature of Declaration.** This Declaration shall run with and be binding upon the Office Property and inure to the benefit of the Residential Property and each Residential Property Owner and their respective successors in interest or title, assigns, tenants, and legal representatives.

7. **Legal Effect.** Each of the easements and rights created by this Declaration are appurtenant to the Parcels to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of such easements and rights, the Residential Property will constitute the dominant estate and the Office Property will constitute the servient estate. Each covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Parcel; (b) constitutes a covenant running with the land; (c) binds every Owner now having or hereafter acquiring an interest in any part of any Parcel; and (d) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Each Owner agrees that on conveyance of any part of a Parcel (including a condominium unit located thereon), the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration.

8. **No Dedication.** Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of CBI that this Declaration will be strictly limited to the private use of the Owners. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an Owner a third party beneficiary hereunder or give any such person any rights whatsoever.

9. **Amendment.** This Declaration may be amended at anytime by the mutual agreement of all of (a) the Owners of the Residential Property; (b) the owners of the Office Property; and (c) any holder of a mortgage of any part of the Residential Property.

10. **Severability.** If any provision of this Declaration shall become invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Declaration shall continue to be in full force and effect and shall not be affected thereby.

11. **Priority of Declaration; Subordination by Mortgagees.** The covenants, conditions, restrictions, and easements contained in this Declaration shall be prior and superior to any mortgage lien or liens encumbering a property covered hereby or any portion thereof now or in the future. The declarations, easements, covenants, restrictions, and rights created hereby are subject and subordinate to all other declarations, easements, covenants, and restrictions of record as of the date hereof.

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

13. **No Conflict.** In the event of a conflict between any provision of this Declaration and any provision of the Prior Declarations, the provisions of this Declaration shall control with respect to the Property.

**[signature page to follow]**



IN WITNESS WHEREOF, Cahaba Beach Investments, LLC has executed this Declaration of Roadway and Utility Easement as of the date first set forth above.

CAHABA BEACH INVESTMENTS, LLC

By: [Signature]  
Name: Jonathan Belcher  
Its: President

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, a Notary Public in and for said County in said State, hereby certify that JONATHAN BELCHER, whose name as President of **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, JONATHAN BELCHER, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Give under my hand and official seal of office this 18<sup>th</sup> day of February, 2010.

[NOTARY SEAL]

[Signature]  
Notary Public  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: July 5, 2010  
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS  
My commission expires \_\_\_\_\_



20100218000048660 8/33 \$109.50  
 Shelby Cnty Judge of Probate, AL  
 02/18/2010 12:00:02 PM FILED/CERT

**JOINDER OF MORTGAGEE  
 (Office Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto (including the provisions of Section 11), as the mortgagee of record with respect to the real property described on Exhibit A attached hereto.

**COMPASS BANK**

By: [Signature]  
 Name: BEN C. HENDRIX  
 Its: SILVER PRESIDENT

STATE OF Alabama  
 COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Ben C. Hendrix, whose name as SR. V. P. of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 11th day of February, 2010.

B. Ann Moore  
 Notary Public

[NOTARY SEAL]

My commission expires 11-6-10



**JOINDER OF MORTGAGEE  
(Residential Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto (including the provisions of **Section 11**), as the mortgagee of record with respect to the real property described on **Exhibit C** attached hereto.

**COMPASS BANK**

By: [Signature]  
Name: BEN C. HENNING  
Its: SIR VICE PRESIDENT

STATE OF Alabama  
COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Ben C. Henning, whose name as SR. V. P. of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 11th day of February, 2010.

B. Ann Moore  
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10

**CONSENT OF OFFICE ASSOCIATION  
(Office Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto.

**EDENTON OFFICE CONDOMINIUM  
OWNERS' ASSOCIATION, INC.**

By: [Signature]  
Name: Jonathan Belcher  
Its: VICE PRESIDENT

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, a Notary Public in and for said County in said State, hereby certify that JONATHAN BELCHER, whose name as VICE PRESIDENT of **EDENTON OFFICE CONDOMINIUM OWNERS' ASSOCIATION, INC.**, an Alabama non-profit corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, JONATHAN BELCHER, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 18<sup>th</sup> day of February, 2010.


[NOTARY SEAL]

[Signature]  
Notary Public  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: July 5, 2010  
FORNED TERT NOTARY PUBLIC UNDERWRITERS  
My commission expires \_\_\_\_\_




**EXHIBIT A**

(Description of Office Property)

  
20100218000048660 11/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

**Exhibit "A"**

(Office Property)

  
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Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:


BEGIN at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 88°43'24" E along said North line of Section 31 a distance of 664.76 feet; thence leaving said Section line S 02°32'28" E, a distance of 164.89 feet; thence S 88°31'18" E a distance of 55.23 feet; thence S 01°11'25" W a distance of 84.00 feet; thence S 88°44'55" E a distance of 249.38 feet to a point on the Westerly right-of-way of Cahaba Beach Road; thence S 15°40'56" W along said right-of-way a distance of 169.35 feet; thence leaving said right-of-way N 88°49'35" W a distance of 268.20 feet; thence N 43°54'32" W a distance of 37.89 feet; thence N 01°15'05" E a distance of 77.65 feet; thence N 88°44'55" W a distance of 153.49 feet; thence S 01°15'05" W a distance of 203.22 feet; thence N 88°44'55" W a distance of 163.00 feet; thence N 01°15'05" E a distance of 206.80 feet to the beginning of a curve to the right, said curve having a radius of 405.00 feet, a central angle of 17°05'57", a chord length of 120.42 feet and a chord bearing of N 72°34'32" W; thence run along the arc of said curve a distance of 120.87 feet; thence S 33°15'08" W a distance of 58.56 feet; thence N 89°56'52" W a distance of 173.02 feet to a point on the West line of said Section 31; thence N 00° 03'08" E along the West line of said Section 31 a distance of 160.19 feet; thence N 00°00'00" E and along the West line of said Section 31 a distance of 165.05 feet to the POINT OF BEGINNING.

Said parcel containing 6.75 Acres, more or less.



**EXHIBIT B**

(Copy of Existing Easement)

  
20100218000048660 13/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

**This instrument prepared by:**

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P.O. Box 18668  
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20070216000072120 1/13 \$47.50  
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20100218000048660 14/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

**STATE OF ALABAMA     )**

**COUNTY OF SHELBY     )**

**DECLARATION OF  
ROADWAY AND UTILITY EASEMENT**

*Amount: \$20.00*

THIS DECLARATION OF ROADWAY AND UTILITY EASEMENT (this "Declaration") is made as of the 14 day of February, 2007, by CAHABA BEACH INVESTMENTS, LLC, an Alabama limited liability company ("CBI").

WHEREAS, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit A** attached hereto and made a part hereof, on which CBI intends to construct and develop certain buildings, roadways, parking lots and related improvements for sale and use as an office building complex (the "Office Property"); and

WHEREAS, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit B** attached hereto and made a part hereof, on which CBI intends to construct and develop certain buildings, roadways and related improvements for sale and use as a residential condominium development (the "Residential Property," collectively with the Office Property, the "Parcels," and each individually, a "Parcel"); and

WHEREAS, the Residential Property does not have existing access to a dedicated public road; and

WHEREAS, CBI intends to impose a condominium regime on the Office Property to be known as the "Edenton Office Condominium," which will be governed by the Edenton Office Condominium Owners' Association, Inc., a to-be-formed Alabama non-profit corporation (the "Office Association"); and

WHEREAS, CBI intends to impose a condominium regime on the Residential Property to be known as "Edenton, A Condominium," which will be governed by the Edenton Residential Condominium Owners' Association, Inc., a to-be-formed Alabama non-profit corporation (the "Residential Association," together with the Office Association, the "Associations"); and

WHEREAS, CBI is desirous of declaring and creating a certain access, roadway and utility easement over the Office Property for the benefit of the Residential Property to afford the



Residential Property access to a dedicated, public roadway or street and to provide other rights and benefits in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual benefit to be derived by CBI, its successors and assigns, transferees and third parties, and their respective successors and assigns, the following easements are hereby imposed on the Office Property:

1. Easements. CBI hereby declares and imposes the following easements on the Office Property for its own benefit and for the benefit of the Residential Property and each of the current and future owners, successors, assigns and mortgagees of any part or all of the Residential Property (each individual or entity hereafter acquiring or holding an ownership interest in the Parcels being hereinafter called an "Owner" or collectively, the "Owners"):

(a) Vehicular and Pedestrian Access. A perpetual, non-exclusive ingress, egress and access easement and right of use, of all access, entrance drives, roadways and sidewalks over and across that certain real property located on the Office Property as more particularly described on Exhibit C attached hereto and made a part hereof (the "Easement Area"), on which CBI intends to construct and develop a roadway, sidewalks and related improvements. These non-exclusive easements shall be for the use and benefit of all present and future Owners and users of the Residential Property, their successors and assigns.

(b) Utility Easements. Non-exclusive easements for the installation, operation, maintenance, repair, replacement and removal of: water lines and systems, telephone lines and systems, gas lines and systems, sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems, and any other utility lines or systems hereafter developed to serve the Residential Property which are or may be located in the Easement Area (the "Utility Facilities"); provided, however, that all such Utility Facilities shall be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Office Property or any improvements located thereon.

(c) Sign Easements. The exclusive right to erect and maintain an entrance monument, sign or marker where the Easement Area joins Cahaba Beach Road identifying the residential condominium development located on the Residential Property. In its development of the Parcels, CBI will install and erect the initial monument, sign or marker identifying the Residential Property. The Residential Association shall maintain or replace such monument, sign or marker in substantially the same condition as that initially erected by CBI. In no event may the Residential Association impair or impede the visibility of any monument, sign or marker identifying the Office Property.

2. Unimpeded Access. CBI, its successors and assigns, will not construct a barricade or other divider that would inhibit or impede the use and enjoyment of the easements granted herein to the Residential Property Owners. The Residential Property Owners, in their use and enjoyment of the easements granted herein, shall not interfere with, inhibit or impede the Office Property Owners or their transferees, successors or assigns' use and enjoyment of the



Office Property. Nothing contained herein shall be deemed to limit or prevent CBI, the Residential Property Owners or the Residential Association from erecting gated or controlled access to the Residential Property.

3. Maintenance Obligations.

(a) CBI intends to construct and develop the first phase of the Office Property prior to its construction and development of the first phase of the Residential Property, although some construction and development activities with respect to the properties may be simultaneously occurring. Until the organization and formation of the Residential Association, CBI or the Office Association, as applicable, shall be responsible for all maintenance associated with maintaining the landscaping, roadway and sidewalks located in the Easement Area in good order and repair.

(b) Upon the organization and formation of the Residential Association, the Office Association and Residential Association shall be equally responsible for maintaining the drives, roadways and sidewalks located in the Easement Area in good order and repair. Each Association shall be responsible for fifty-percent (50%) of all costs and expenses incurred in keeping and maintaining the Easement Area in accordance with the standards set forth in Section 3(c) hereof. The Associations may pass such costs through to their respective members as part of such Associations' assessments.

(c) Maintenance of the Easement Area shall include, without limitation: regular and timely removal and cleaning of all trash, garbage, litter or waste from the Easement Area; regular landscape maintenance (including mowing, pruning and trimming) of all landscaping within the Easement Area; watering and weed control of landscaping within the Easement Area; and keeping walks, driveways, roadways and sidewalks in the Easement Area clean and in good repair. The standard for such maintenance shall be that which would be equal in quality at least to that maintained by owners of first class facilities of the same type in the vicinity of the Parcels.

(d) In the event any maintenance to the Easement Area is necessary as a result of the installation, operation, maintenance, repair, replacement and removal of any Utility Facilities that benefit solely the Office Property or the Residential Property, the respective Association over the Property benefited shall be solely responsible for all maintenance and repair of the Easement Area to restore it to the condition existing before such work with respect to the Utility Facilities. In the event any maintenance to the Easement Area is necessary as a result of the negligence or willful misconduct of any Owner, the Association of which such Owner is a member shall be responsible for such maintenance or repair of the Easement Area; provided that nothing contained herein shall limit such Association from assessing all such costs and expenses against such Owner's unit and exercising any lien rights applicable thereto.

4. Maintenance Committee. Upon the organization of the last condominium association to be formed on either of the Parcels, there shall be established a Maintenance Committee (the "Committee"). The Committee shall be comprised of two (2) delegates from the Residential Association and one (1) delegate from the Office Association, to be appointed by the



respective Associations' board of directors. Each delegates' term shall be for a period of one (1) year. The Committee shall determine when to perform necessary maintenance in accordance with the standards set forth in **Section 3(c)** hereof.

5. **Enforcement.**

(a) Either Association or any Owner shall have the right to enforce this Declaration at all times. Enforcement of this Declaration may be by any proceeding at law or in equity against the person or persons, or entity or entities violating or attempting to violate any covenant, restriction or other term of this Declaration, either to restrain such violation or to recover damages. Failure or delay by any Association or Owner to enforce this Declaration shall in no event be deemed to waive the right to do so.

(b) In the event a party shall fail or refuse to comply with any term, provision or covenant of this Declaration and does not cure the failure or refusal within thirty (30) days after written notice thereof is given by another party (provided that if such default cannot be reasonably cured within said thirty (30) days, then the failing party shall have an additional reasonable period of time within which to cure such default, provided that such party has commenced to cure such default within such 30-day period and is diligently pursuing a cure), then the party sending such notice of default may pursue any and all remedies it may have provided by law, in equity or otherwise, including, without limitation, the right to enter upon the other party's property, perform the work to be done and sue the defaulting party for all costs incurred in connection therewith. The pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any damage occurring to the harmed party by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by the harmed party to enforce one or more of the remedies herein provided upon occurrence of such a default, shall not be deemed or construed to constitute a waiver of such default. The remedies provided herein are in addition to any other remedies, either legal or equitable, available under applicable law.

6. **Nature of Declaration** . This Declaration shall run with and be binding upon the Office Property and inure to the benefit of the Residential Property and each Residential Property Owner and their respective successors in interest or title, assigns, tenants, and legal representatives.

7. **Legal Effect.** Each of the easements and rights created by this Declaration are appurtenant to the Parcels to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purpose of such easements and rights, the Residential Property will constitute the dominant estate and the Office Property will constitute the servient estate. Each covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Parcel; (b) constitutes a covenant running with the land; (c) binds every Owner now having or hereafter acquiring an interest in any part of any Parcel; and (d) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Each Owner agrees that on conveyance of any part of a Parcel (including a condominium unit located thereon), the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration.



8. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of CBI that this Declaration will be strictly limited to the private use of the Owners. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an Owner a third party beneficiary hereunder or give any such person any rights whatsoever.

9. Amendment. This Declaration may be amended or terminated at anytime by the mutual agreement of all of (i) the Owners of the Residential Property and (ii) any first mortgages of any part of the Residential Property.

10. Severability. If any provision of this Declaration shall become invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Declaration shall continue to be in full force and effect and shall not be affected thereby.

11. Priority of Declaration; Subordination by Mortgagees. The covenants, conditions, restrictions, and easements shall be prior and superior to any mortgage lien or liens encumbering a property covered hereby or any portion thereof. The declarations, easements, covenants, restrictions, and rights created hereby are subject and subordinate to all other declarations, easements, covenants, and restrictions of record as of the date hereof.

12. Governing Law. This Declaration and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Alabama.

13. No Conflict. In the event of a conflict between any provision of this Declaration and any provision of the Prior Declarations, the provisions of this Declaration shall control with respect to the Property.

IN WITNESS WHEREOF, Cahaba Beach Investments, LLC has executed this Declaration as of the date first set forth above.

CAHABA BEACH INVESTMENTS, LLC

By: *Duyttale*  
Its: *Member*





20100218000048660 19/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT



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Shelby Cnty Judge of Probate, AL  
02/16/2007 09:30:47AM FILED/CERT

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, a Notary Public in and for said County in said State, hereby certify that Dwight A Sandlin, whose name as Member of CAHABA BEACH INVESTMENTS, LLC, an Alabama limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Give under my hand and official seal of office this 15<sup>th</sup> day of February, 2007.

Isabella Lynne White  
Notary Public

[NOTARY SEAL]

My commission expires \_\_\_\_\_  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Apr 13, 2010  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

20100218000048660 20/33 \$109.50  
Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

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Shelby Cnty Judge of Probate, AL  
02/16/2007 09:30:47AM FILED/CERT

**JOINDER OF MORTGAGE  
(Residential Property)**

The undersigned joins in this Declaration for the purpose of evidencing its consent thereto, as the mortgagee of record with respect to the real property described on Exhibit A attached hereto.

COMPASS BANK  
By: [Signature]  
Its: VICE President

STATE OF ALABAMA )

COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Ben Hendrix, whose name as Vice President of Compass Bank, a corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 14<sup>th</sup> day of February, 2007.

B. Ann Moore  
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10





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 Shelby Cnty Judge of Probate, AL  
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**JOINDER OF MORTGAGE  
 (Office Property)**



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 Shelby Cnty Judge of Probate, AL  
 02/16/2007 09:30:47AM FILED/CERT

The undersigned joins in this Declaration for the purpose of evidencing its consent thereto, as the mortgagee of record with respect to the real property described on Exhibit B attached hereto.

Compass Bank

By: [Signature]  
 Its: VICE PRESIDENT

STATE OF Alabama  
 COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Brian Hendrix, whose name as Vice President of Compass Bank, a corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 14<sup>th</sup> day of February, 2007.

[Signature]  
 Notary Public

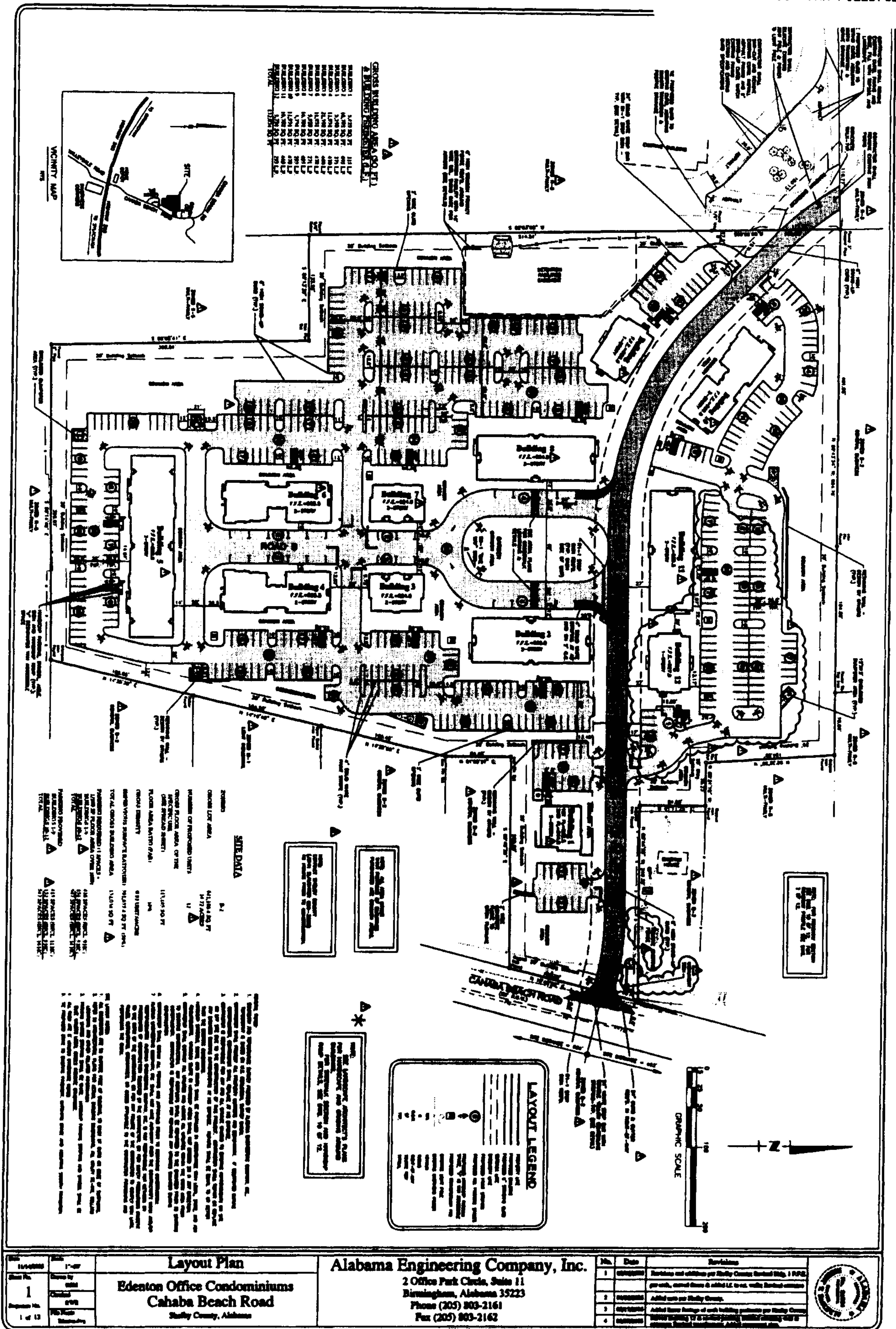
[NOTARY SEAL]

My commission expires 11-1-10



# Exhibit A

20070216000072120 9/13 \$47.50  
Shelby Cnty Judge of Probate, AL  
02/16/2007 09:30:47AM FILED/CERT

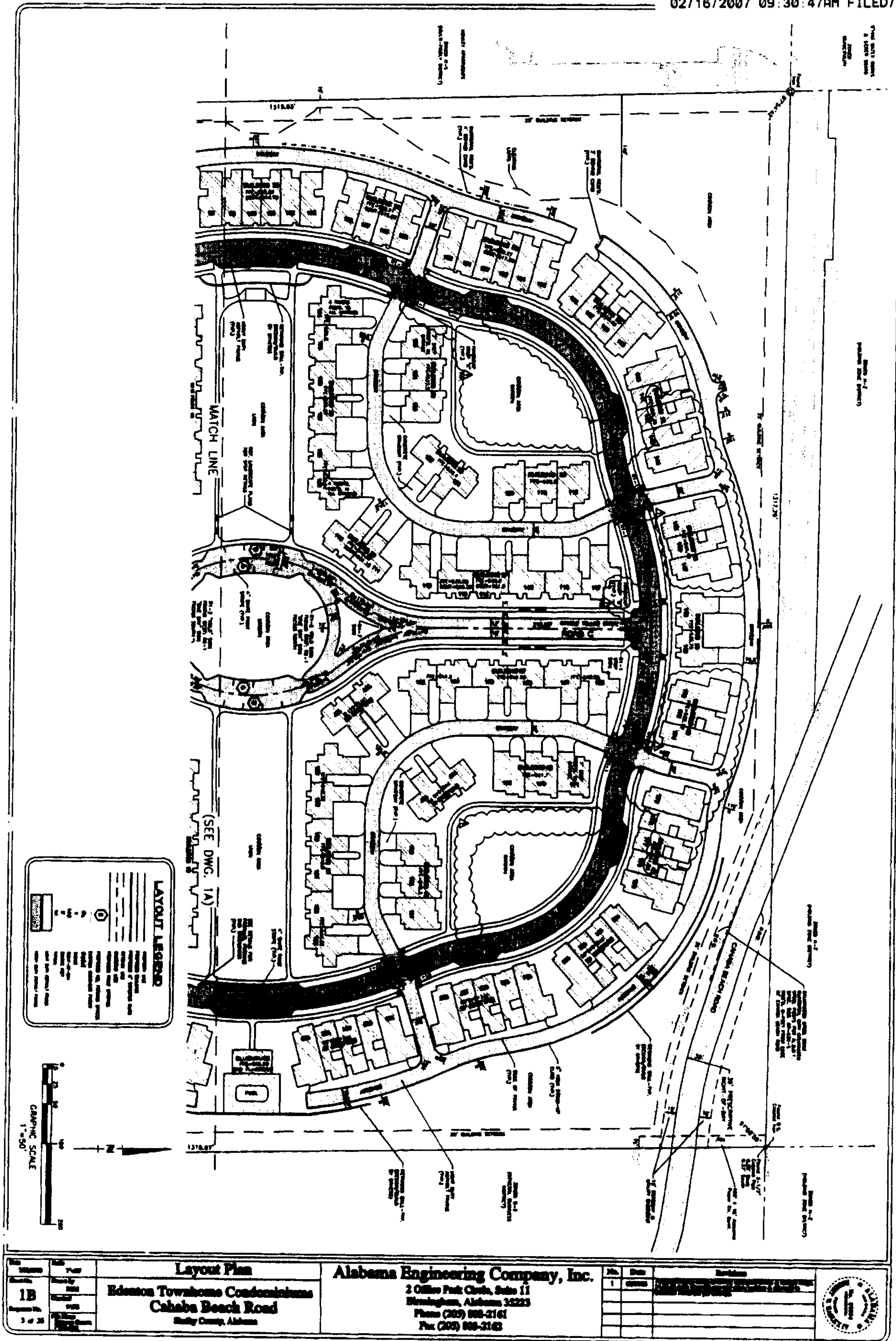


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Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT



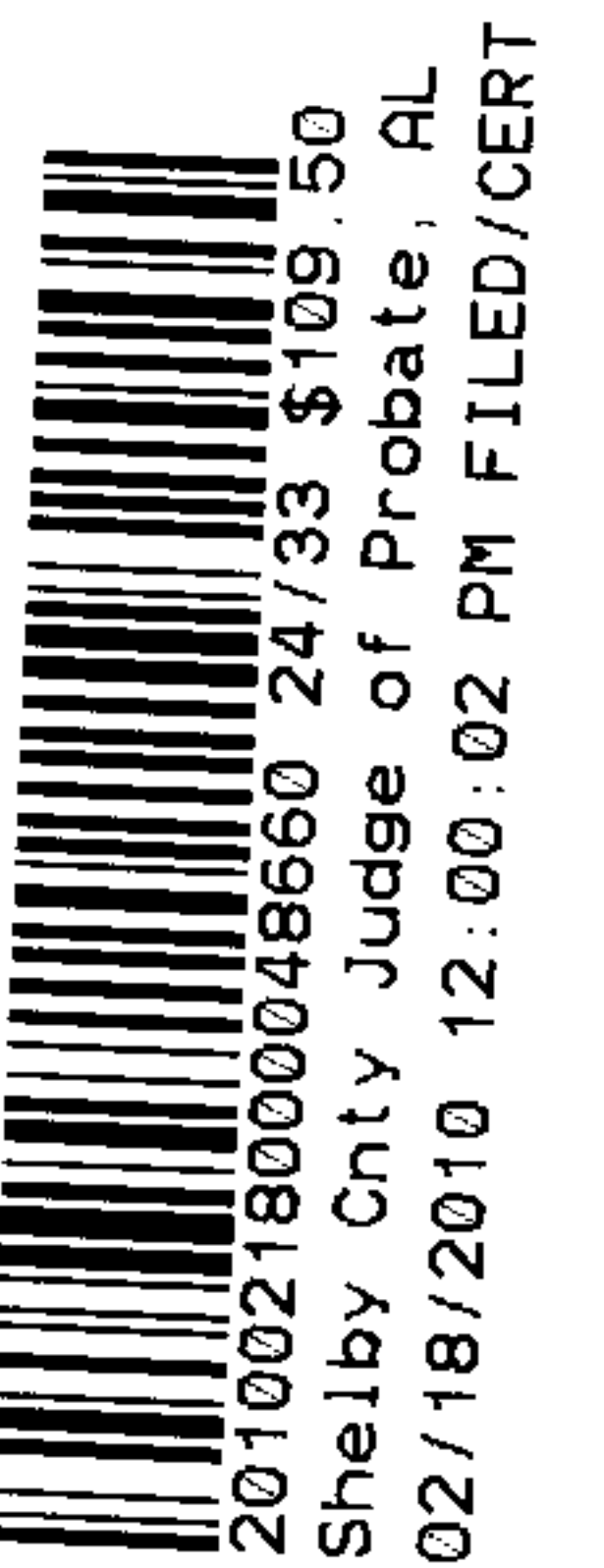
# Exhibit B

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Shelby Cnty Judge of Probate, AL  
02/16/2007 09:30:47AM FILED/CERT





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Shelby Cnty Judge of Probate, AL  
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# Exhibit C

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Shelby Cnty Judge of Probate, AL  
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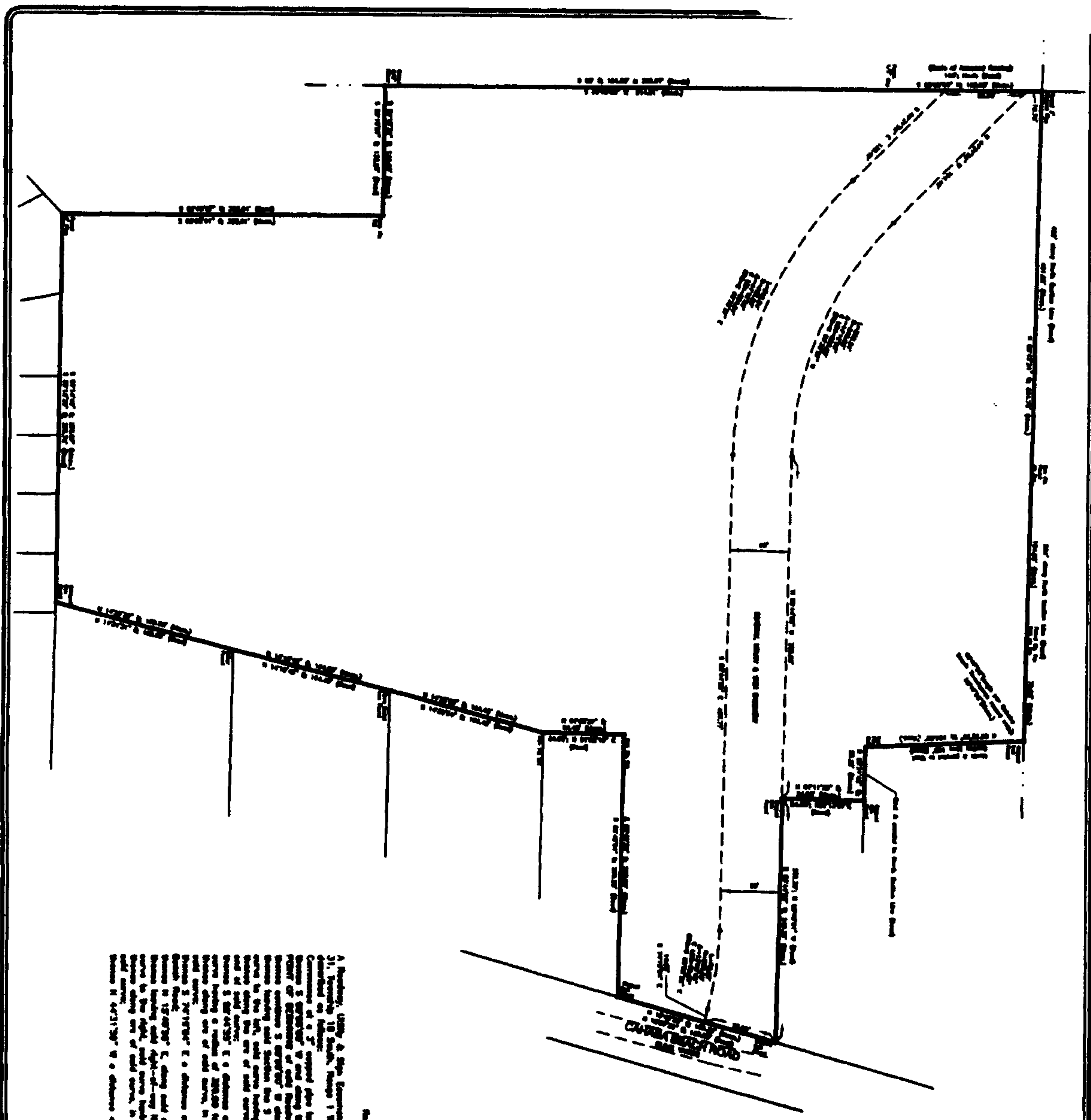
## Roadway, Utility & Sign Easement

A Roadway, Utility & Sign Easement located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

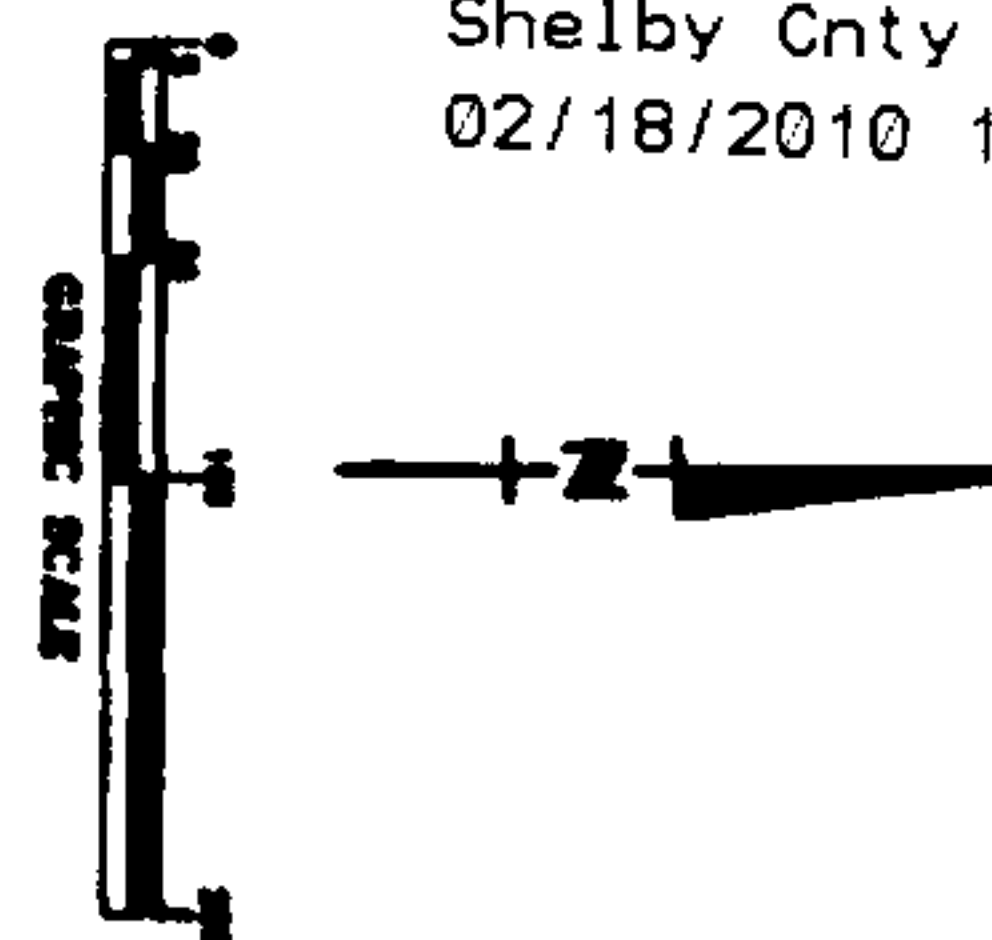
Commence at a 3" capped pipe locally accepted as the the N.W. corner of said Section 31;  
thence S 00°00'00" W and along the West line of said Section 31 a distance of 15.70 feet to the POINT OF BEGINNING of said Roadway, Utility & Sign Easement;  
thence continue S 00°00'00" W along the West line of said Section 31 a distance of 85.55 feet;  
thence leaving said Section line S 44°31'59" E, a distance of 133.49 feet to the beginning of a curve to the left, said curve having a radius of 405.00 feet and a central angle of 44°12'56";  
thence along the arc of said curve, in a Southeasterly direction, a distance of 312.54 feet to the end of said curve;  
thence S 88°44'55" E a distance of 487.77 feet to the beginning of a curve to the right, said curve having a radius of 320.00 feet and a central angle of 13°06'45";  
thence along arc of said curve, in a Southeasterly direction, a distance of 73.23 feet to end of said curve;  
thence S 74°19'04" E a distance of 14.03 feet to a point on the Westerly right-of-way of Cahaba Beach Road;  
thence N 15°40'56" E, along said right-of-way, a distance of 75.99 feet;  
thence leaving said right-of-way N 88°44'55" W a distance of 600.04 feet to the beginning of a curve to the right, said curve having a radius of 345.00 feet and a central angle of 44°12'56";  
thence along arc of said curve, in a Northwesterly direction, a distance of 266.24 feet to end of said curve;  
thence N 44°31'59" W a distance of 194.48 feet to the POINT OF BEGINNING.

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[illegible]

### Industry, Utility & Sign Expenditure



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02/18/2010 12:00:02 PM FILED/CERT

Shelby County, AL 02/16/2007  
State of Alabama

**Deed Tax: \$.50**

<b>Company</b>	<b>Name</b>	<b>Roadway, Utility &amp; Sign Easement</b>	<b>Alabama Engineering Company, Inc.</b>	<b>No.</b>	<b>Date</b>	<b>Description</b>
<b>1</b>	<b>NSH Corp.</b>	<b>Edenton Office Condominiums NSH Corp. Shufly County, Alabama</b>	<b>2 Office Park Circle, Suite 11 Birmingham, Alabama 35223 Phone (205) 809-2161 Fax (205) 809-2162</b>			



**EXHIBIT C**

(Description of Residential Property)



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02/18/2010 12:00:02 PM FILED/CERT

**Exhibit C**  
**Legal Description of Residential Property**

(Residential Property)

STATE OF ALABAMA  
SHELBY COUNTY

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commence at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 00°00'00" W and along the West line of said Section 31 a distance of 165.05 feet; thence S 00° 03'08" W along the West line of said Section 31 a distance of 160.19 feet to the POINT OF BEGINNING; thence continuing along the last described course for a distance of 354.32 feet; thence leaving said Section line S 89°13'30" E a distance of 133.56 feet; thence S 00°05'41" E a distance of 328.01 feet; thence S 89°14'40" E a distance of 396.07 feet; thence N 14°35'30" E a distance of 189.66 feet; thence N 14°16'46" E a distance of 164.58 feet; thence N 14°28'55" E a distance of 164.45 feet; thence N 01°05'27" E a distance of 84.40 feet; thence N 43°54'32" W a distance of 37.89 feet; thence N 01°15'05" E a distance of 77.65 feet; thence N 88°44'55" W a distance of 153.49 feet; thence S 01°15'05" W a distance of 203.22 feet; thence N 88°44'55" W a distance of 163.00 feet; thence N 01°15'05" E a distance of 206.80 feet to the beginning of a curve to the right, said curve having a radius of 405.00 feet, a central angle of 17°05'57", a chord length of 120.42 feet and a chord bearing of N 72°34'32" W; thence run along the arc of said curve a distance of 120.87 feet; thence S 33°15'08" W a distance of 58.56 feet; thence N 89°56'52" W a distance of 173.02 feet to the POINT OF BEGINNING.

Said parcel containing 7.97 Acres, more or less.



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**EXHIBIT D**

(Description of Access/Utility Easement Area)




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Shelby Cnty Judge of Probate, AL  
02/18/2010 12:00:02 PM FILED/CERT

**EXHIBIT D**  
**Page 1 of 2**  
**Edenton Street Non-Exclusive Roadway and**  
**Utility Easement for the Lofts at Edenton**

**A 60-Foot Wide Non-Exclusive Roadway and Utility Easement situated in the NW ¼ of the NW ¼ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said easement being more particularly described as follows:**

**Commence at a 3" capped pipe locally accepted as the Northwest corner of said Section 31; thence S 00°00'00" W, along the West line of said Section 31, a distance of 57.13 feet to the beginning of a curve to the left, said curve having a radius of 375.00 feet, a central angle of 04°04'15", a chord of 26.64 feet and a chord bearing of S 42°29'51" E; thence 40°27'44" left to tangent of said curve; thence along arc of said curve, in a Southeasterly direction, a distance of 26.64 feet to end of said curve; thence S 44°31'59" E a distance of 138.32 feet to the beginning of a curve to the left, said curve having a radius of 375.00 feet, a central angle of 44°12'56", a chord of 282.26 feet and a chord bearing of S 66°38'27" E; thence along arc of said curve, in a Southeasterly direction, a distance of 235.48 feet the POINT OF BEGINNING of a 60-Foot Wide Non-Exclusive Roadway and Utility Easement, said easement lying 30 feet each side of, parallel to and abutting the following described centerline, thence continue along the last described curve for a distance of 53.91 feet to end of said curve; thence S88°44'55" E a distance of 487.77 feet to the beginning of a curve to the right, said curve having a radius of 350.00 feet, a central angle of 14°25'51", a chord of 87.92 feet and a chord bearing of S 81°31'59" E; thence along arc of said curve, in a Southeasterly direction, a distance of 88.15 feet to end of said curve; thence S 74°19'04" E, a distance of 14.03 feet to a point on the Westerly right-of-way line of Cahaba Beach Road and the END of said Easement. Said 60-Foot Wide Easement extends from the Westerly boundary of Barristers Court to the Westerly right-of-way line of Cahaba Beach Road.**

**Said parcel containing 0.89 Acres, more or less.**

  
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**EXHIBIT D**  
**Page 2 of 2**  
**Barrister's Court Non-Exclusive Roadway and**  
**Utility Easement for the Lofts at Edenton**

**STATE OF ALABAMA**  
**SHELBY COUNTY**

**A Non-Exclusive Roadway and Utility Easement situated in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:**


**Commence at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 00°00'00" W and along the West line of said Section 31 a distance of 165.05 feet; thence S 00° 03'08" W along the West line of said Section 31 a distance of 160.19 feet to the Northwest corner of the Lofts at Edenton Condominium parcel; thence continuing along the last described course for a distance of 354.32 feet; thence leaving said Section line S 89°13'30" E a distance of 133.56 feet; thence S 00°05'41" E a distance of 328.01 feet; thence S 89°14'40" E a distance of 396.07 feet; thence N 14°35'30" E a distance of 189.66 feet; thence N 14°16'46" E a distance of 164.58 feet; thence N 14°28'55" E a distance of 164.45 feet; thence N 01°05'27" E a distance of 84.40 feet; thence N 43°54'32" W a distance of 37.89 feet; thence N 01°15'05" E a distance of 77.65 feet; thence N 88°44'55" W a distance of 153.49 feet to the POINT OF BEGINNING; thence S 01°15'05" W a distance of 203.22 feet; thence N 88°44'55" W a distance of 163.00 feet; thence N 01°15'05" E a distance of 206.80 feet to the beginning of a curve to the left, said curve having a radius of 405.00 feet, a central angle of 7°34'24", a chord length of 53.85 feet and a chord bearing of S 84°56'13" E; thence run along the arc of said curve a distance of 53.89 feet; thence S 88°44'55" E a distance of 109.27 feet to the POINT OF BEGINNING.**

**Said parcel containing 0.76 Acres, more or less.**

  
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**EXHIBIT E**

(Description of Waterline Easement Area)

  
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02/18/2010 12:00:02 PM FILED/CERT



## EXHIBIT E

Legal Description for Lofts water line easement across the Edenton Office Condo property

STATE OF ALABAMA  
SHELBY COUNTY

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commence at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 00°00'00" W and along the West line of said Section 31 a distance of 112.19 feet; thence N 90° 00'00" E a distance of 10.00 feet to the POINT OF BEGINNING of a 20 foot wide water line easement lying 10 feet each side of, parallel to and abutting the following described line, thence S 00°00'00" E a distance of 50.85 feet; thence S 00°24'26" E a distance of 93.40 feet; thence S 79°39'52" E a distance of 25.00 feet; thence S 49°32'37" E a distance of 99.25 feet to southern boundary of the Grantor's property and the END of said 20 foot wide water line easement.



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