DECLARATION OF WATERSHED PROTECTIVE COVENANTS FOR LIBERTY PARK

PROTECTIVE COVENANTS FOR LIBERTY PARK



THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM

Document recorded in Real Volume 4037, Page 122 in the Probate Office of Jefferson County, Alabama

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STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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WITNESSETH

WHEREAS, DEVELOPER is presently the owner of a tract of land which is located in Jefferson County, Alabama and is described on Exhibit "A" attached hereto and incorporated herein by reference and,

WHEREAS, DEVELOPER has an option to acquire from Torchmark Development Corporation (hereinafter referred to as "Torchmark") an additional tract of land which is located in Jefferson County, Alabama and is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (hereinafter the "Torchmark Property"). The tracts of land described on Exhibits "A" and "B" are hereinafter

collectively referred to as the "Developer Watershed Property"); and,

WHEREAS, all of the Developer Watershed Property is located within the Lake Purdy-Cahaba River Watershed (hereinafter referred to as the "Watershed"); and,

WHEREAS, there is presently existing a <u>Covenant and Agreement</u> affecting the Torchmark Property that was executed on the 27th day of March, 1985, by Liberty National Life Insurance Company and recorded in the Probate Office of Jefferson County, Alabama in Real Book 2704, Page 569; and,

WHEREAS, DEVELOPER desires to establish and enforce certain covenants and agreements respecting the Developer Watershed Property to provide for the protection and preservation of the Watershed and the quality of the BOARD's water supply through the implementation and maintenance of that certain Erosion and Pollution Control Requirements Report dated October 30, 1989 and revised November 27, 1990 prepared by Walter Schoel Engineering Company, Inc. (which report, as the same may be amended from time to time, is hereinafter more particularly defined and referred to as the "Plan") a copy of said Plan being attached hereto as Exhibit "C" and incorporated herein by reference; and,

WHEREAS, it is the desire of both the DEVELOPER and the BOARD that this Protective Covenant (as that term is

hereinafter defined) replace and supersede that certain <u>Covenant and Agreement</u> as referenced above, previously executed by Liberty National Life Insurance Company; and

WHEREAS, as each phase of the Developer Watershed Property is developed, DEVELOPER shall prepare and submit to the BOARD a proposed clarification to the Plan which shall set forth the specific practices and procedures to be implemented on such property which clarification, when approved by the BOARD, shall become a part of the Plan; and,

WHEREAS, the Plan has been approved by DEVELOPER and the BOARD, and shall be for the benefit of DEVELOPER, its successors and assigns, all future owners of the Developer Watershed Property, or any part thereof, and the BOARD; and,

WHEREAS, DEVELOPER desires to set forth certain agreements respecting the allocation of responsibility by and among DEVELOPER, its successors and assigns, and future owners of various portions of the Developer Watershed Property, to ensure that the Developer Watershed Property is developed and maintained in compliance with the Plan; and,

WHEREAS, DEVELOPER desires to establish and enforce certain uniform standards and regulations to provide for the development and maintenance of the Developer Watershed Property in compliance with the Plan; and,

WHEREAS, the BOARD hereby enters into this Declaration for the purpose of acknowledging and consenting to the terms and provisions contained herein and for the purpose of agreeing that if DEVELOPER complies with the Plan and any amendment or classification thereto, the BOARD will supply, in accordance with the BOARD's rules and regulations, (as consistently applied to all Board customers) as may be amended from time to time, water to the Developer Watershed Property.

NOW, THEREFORE, in consideration of the premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, DEVELOPER hereby declares that the Developer Watershed Property shall be held, sold, and conveyed subject to the following covenants, easements, conditions and restrictions (hereinafter referred to as the "Protective Covenants"), which shall run with the Developer watershed Property and be binding on all parties having any right, title, or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of the BOARD, its successors and assigns, and DEVELOPER, its successors and assigns, and which Protective Covenants may be enforced by any of them as hereinafter provided.

ARTICLE 1. DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- Joint Venture, an Alabama general partnership, whose general partners are Torchmark Development Corporation and Drummond Company, Inc. or its successors or assigns, including the Developer Association (as that term is hereinafter defined) or any other such successor or assign which acquires any portion of the Developer Watershed Property from DEVELOPER as successor developer.
- 1.02 "Developer Associations" shall mean and refer to, as the context requires or permits, those certain Alabama nonprofit corporations, and their successors and assigns, which may be formed by DEVELOPER pursuant to provisions of Article IV of this Declaration for the purposes, among others, of maintaining the Site Erosion Controls (as that term is hereinafter defined) in compliance with the Plan and levying, collecting and depositing certain assessments for such maintenance.
- 1.03 "Developer Watershed Property" shall mean and refer to that certain tract of real estate located in Jefferson County, Alabama, containing approximately 2,200 acres, as

more particularly described on Exhibit "A", and "B" attached hereto and incorporated herein by reference, along with any additional real property which hereafter may be subject to this Declaration by DEVELOPER pursuant to Article II hereof addition of such real property to the Developer (the Watershed Property may require changes in the Plan or the implementation and maintenance of an additional Plan for such additional property, the purpose and rationale of which shall be substantially the same as that of the Plan). DEVELOPER acknowledges that its right to add such additional real property to the Developer Watershed Property is subject to DEVELOPER'S agreement to modification of the Plan, as necessary, in a manner which is satisfactory to the BOARD, in the BOARD'S reasonable opinion, or to DEVELOPER'S agreement to implement and maintain a new Plan which is satisfactory to the BOARD.

1.04 "Lot" shall mean and refer to the individual lots (as defined in the Subdivision Regulations of the Jefferson County Planning Commission, as amended from time to time) as reflected on Subdivision Plat(s) for the Developer Watershed Property, as recorded or to be recorded in the Office of the Judge of Probate of Jefferson County, Alabama, as the same may be amended from time to time. Any portion of the Developer Watershed Property that is not included in a Subdivision Plat shall be considered to be a Lot. For the

purposes of this Declaration, the Watershed Maintenance Areas shall not be considered as part of any Lot unless specifically included as part of a Lot as shown by a subdivision map recorded in the Office of the Judge of Probate of Jefferson County, Alabama.

- 1.05 "Other Watershed Owners" is defined in Section 4.03 of Article IV of this Declaration.
- "Owner(s)" shall mean and refer to the record owner (other than DEVELOPER), whether one or more persons or entities, of fee simple title to any lot which is a part of the Developer Watershed Property, including persons having a life estate or similar interest and other parties or entities having a leasehold interest in any portion of the Watershed Property pursuant to written ground leases having a term of greater than five (5) years. The term "Owner(s)" shall exclude parties having an interest merely as security for the payment or performance of an obligation, except that any such party shall be included if it forecloses its mortgage or other security interest and becomes the owner of a portion of the Developer Watershed Property by purchasing it at the foreclosure sale.
- 1.07 "Plan" shall mean and refer to that certain Erosion and Pollution Control Requirements Report dated October 30, 1989, and revised November 27, 1990, prepared by Walter

Schoel Engineering Co., Inc., attached hereto as Exhibit "C" and incorporated herein by this reference, as the same may be amended from time to time.

- 1.08 "Site Erosion Controls", shall include certain ponds and lakes described in the Plan, that portion of the Developer Watershed Property located immediately adjacent to, and at a distance of up to five (5) feet from the edge of said ponds and lakes, the drainage channels leading to said ponds and lakes and such other areas designated by DEVELOPER as are necessary for ensuring the maintenance of the Developer Watershed Property in compliance with the Plan.
- 1.09 "Lake" shall refer to those certain ponds and lakes described in this Plan.
- 1.10 "Watershed Assessments" is defined in Section 4.04(e) of Article IV of this Declaration.
- 1.12 "Fund" is defined in Section 4.04(b) of Article IV of this Declaration.
- 1.13 "Public Sanitary Sewer System" shall mean a sanitary sewage collection and treatment system which is operated and administered by Jefferson County, or the City of Birmingham.

1.14 "Watershed Maintenance Expense" is defined in Section 4.02 of Article IV of this Declaration.

ARTICLE II. PROPERTIES SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, AND DELETIONS THEREFROM

- PROPERTY. The real property presently owned by DEVELOPER which presently is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration (i.e., the Developer Watershed Property) is located in Jefferson County, Alabama and is described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference. TORCHMARK joins in the execution of this Declaration for the sole purpose of acknowledging that it consents to the Torchmark Property being made subject to this Declaration.
- 2.02 <u>ADDITIONAL REAL PROPERTY.</u> Additional real property which is contiguous to the Developer Watershed Property may be subject to this Declaration by DEVELOPER by filing in the Office of the Judge of Probate of Jefferson County, Alabama a Supplementary Declaration which describes such additional real property, and upon the filing of such Supplementary Declaration the operation and effect of this Declaration shall be extended to such additional real property. Notwithstanding the foregoing, a Supplementary Declaration adding any property other than the property described in the proceeding sentence may not be filed and cannot be effective

unless and until the BOARD approves the addition of such additional real property and indicates its approval in writing on such Supplementary Declaration with such approval not to be unreasonably withheld.

2.03 <u>WITHDRAWAL OF PROPERTY IS PROHIBITED.</u> No portion of the Developer Watershed Property or any additional real estate which is subject to these Protective Covenants may be withdrawn from these Protective Covenants without the prior written consent of the BOARD.

ARTICLE III. EASEMENTS

- itself, its successors and assigns (including the Developer Association, its successors and assigns), and the BOARD, its successors and assigns, a right of access to all or any portion of the Developer Watershed Property for the purpose of inspecting the Developer Watershed Property to insure the correction of any condition not in compliance with the Plan; provided, that requests for entry to a Lot are made in advance and that such entry is at a time reasonably convenient to the Owner. In the case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not.
- 3.02 <u>EASEMENT AND USES.</u> DEVELOPER and/or Developer Association, respectively, on their own behalf and on behalf of DEVELOPER and all Owners of their respective portions of

the Developer Watershed Property, who hereby appoint DEVELOPER and/or Developer Associations, respectively, as their attorney-in-fact for such limited purposes (such appointment being confirmed and ratified by each Owner's acceptance of a deed or other instrument to one or more Lots) shall have the right to grant such easements (subject to applicable restrictions) over any portion of the Developer Watershed Property as DEVELOPER and/or Developer Associations, respectively, shall necessary deem desirable, for the protection and preservation of the BOARD's water supply and the Watershed, or any portion thereof or for the purpose of carrying out any provisions of this Declaration, provided: (A) such easements will not unreasonably interfere with the use and enjoyment of the portion of the Developer Watershed Property owned by the Owner thereof; (B) the cost and expenses incurred connection with such work shall be borne by DEVELOPER and/or Developer Associations and the Owners in accordance with an allocation between such parties as referred to in Section 4.02 hereof, and after completing such work, any portion of the Developer Watershed Property which is effected shall be restored to the extent feasible to as good a condition as it in immediately before the commencement of such work; (C) such easements, in the reasonable opinion of the BOARD, will not adversely affect the Plan or the Watershed; and, (D) following the completion of such work, DEVELOPER and/or Developer Associations, as applicable, as to the Developer Watershed Property shall cause a survey to be made of the easement showing its location on the property and shall then cause the said survey to be recorded in the Office of the Judge of Probate of Jefferson County, Alabama.

- 3.03 <u>LIMITATIONS</u>. Any easements which may be created pursuant to this Article shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot, and the same shall be further subject to all provisions of this Declaration.
- 3.04 <u>ADDITIONAL DOCUMENTS</u>. DEVELOPER and/or Developer Associations, as applicable, and each Owner may be required to execute such other documents as are necessary, appropriate or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article.

ARTICLE IV. COVENANTS FOR MAINTENANCE OF WATERSHED PROPERTY IN COMPLIANCE WITH PLAN

OEVELOPER together with all Owners (now and in the future) of the Developer Watershed Property, or of any part thereof, shall develop and maintain their respective portions of the Developer Watershed Property in compliance with the Plan. Notwithstanding the foregoing, DEVELOPER acknowledges and agrees that certain portions of the Developer Watershed Property shall be designated as Site Erosion Controls to be

maintained by DEVELOPER together with all Owners in compliance with the Plan.

The Site Erosion Controls shall be owned by DEVELOPER or by Developer Association, as applicable, and none of the Site Erosion Controls may be dedicated or conveyed to Jefferson County, Alabama or to any other party or entity without the prior written consent of the BOARD. Notwithstanding the foregoing, easements and rights-of-way to be connection with the furnishing of utilities services to the Developer Watershed Property may be granted (to utility companies furnishing such services) over and across portions of the Site Erosion Controls, provided that: (1) DEVELOPER and/or Developer Associations, as applicable, retains the right to maintain the Site Erosion Controls in accordance with this Declaration; (2) such easements and rights-of-way shall not interfere with the purpose, implementation or maintenance of the Plan; and, (3) all utility facilities installed in, on or over such easements and rights-of-way shall comply with the provisions of the Alabama Highway Department Standard for the Installation of Utilities on Public Rights-of-Way and the Standards of the American Water Works Association for The Installation of Pipelines, as both sets of standards may be amended from time to time.

4.02 <u>Allocation of Watershed Maintenance Expenses.</u>

DEVELOPER and/or Developer Associations, as the case may be, shall bear the cost and expense incurred in connection with

with the Plan (hereinafter referred to as the "Watershed Maintenance Expenses").

4.03 CREATION OF ASSOCIATIONS. DEVELOPER shall one or more Developer Associations to be created within 90 days of the execution of this Declaration. DEVELOPER shall have the right to assign and delegate to any such Developer Association all of its rights, obligations and duties hereunder, including the right and power to enforce the Protective Covenants and of levying, collecting depositing of certain assessments as may be necessary for the maintenance of the Site Erosion Controls in accordance with the Plan, and upon such assignment and delegation, DEVELOPER shall be relieved of further obligations respecting the Plan, with regard to such property except with respect to those portions of the Developer Watershed Property which do not constitute Site Erosion Controls and which continue to be owned by DEVELOPER. Upon the conveyance by DEVELOPER of a Lot to another party, the obligations of DEVELOPER with such Lot, respecting the maintenance regard to Developer Watershed Property shall be binding upon the grantee of such Lot, and thereafter DEVELOPER shall have no obligation with respect to such Lot, for the maintenance of the Developer Watershed Property. Such conveyance of a Lot shall not relieve DEVELOPER of its obligation for the maintenance of the Developer Watershed Property with respect

to any other Lot which it still owns. The substitution of such grantee for DEVELOPER, with respect to such Lot for the maintenance of the Developer Watershed Property shall be evidenced by the recordation in the Office of the Judge of Probate in Jefferson County, Alabama of a deed or other instrument, conveying such Lot from developer to a grantee.

4.04 <u>ASSESSMENTS FOR WATERSHED MAINTENANCE</u>.



- (a) Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or any other instrument, including, without limitation, any purchaser at a judicial sale or foreclosure sale (including the mortgagee if it purchases a Lot at the foreclosure of its mortgage) shall be obligated and hereby agrees and covenants to pay to the appropriate Developer Association any and all assessments levied by such Developer Association in connection with maintenance of the Site Erosion Controls in accordance with the Plan.
- (b) A fund shall be created and maintained by the Developer Associations to be used for the maintenance and repair of the Site Erosion Controls in the following manner and in the following amounts. Within 90 days of the commencement of any construction to any portion of the various drainage basins located within the Developer Watershed Property, DEVELOPER and/or the appropriate

Developer Associations shall contribute to said fund the sum of \$5,000.00 per drainage basin. Said fund may established by either the initial payment of \$5,000.00 per drainage basin under construction, or by accrued interest on any initial deposits previously paid by the appropriate Developer Association or by any combination of accrued interest or payment into the fund. The monies contributed to said fund shall be deposited in an interest bearing account in, or in one or more Certificates of Deposit issued by, a national bank which has its main office within the City of Birmingham, Alabama (said fund, including said initial deposit, all subsequent amounts deposited in the funds plus all interest earned on all such amounts shall be hereinafter called "Fund"). The Fund shall be kept separate from any other funds or assessments of the Developer Associations and all the provisions contained herein shall apply to such Fund. An annual written accounting of the money in the Fund shall be furnished to the BOARD as of the end of each year. accounting shall be delivered to the BOARD within ninety (90) days of the end of each calendar year.

(c) When eighty percent (80%) of each drainage basin has been developed (whether eighty percent (80%) of the drainage basin has been developed shall be reasonably determined by the BOARD) the Lakes shall be inspected, and those lake forebays and sediment ponds which exhibit significant loss of function shall be dredged or repaired if

the BOARD reasonably determines that such dredging and repairing are necessary or desirable for the protection and based preservation of the Watershed upon appropriate engineering standards. The cost of such dredging and repairing of the Lakes may be paid from the Fund. All interest earned on the money deposited in the Fund, shall remain in the Fund until the balance of the Fund becomes \$100,000.00. If the balance of the Fund shall ever become less than the total number of drainage basins construction multiplied by \$5,000.00 then within one (1) month from such date the appropriate Developer Association must contribute from its general funds or new assessments, as the case may be, such amount as is necessary to increase the balance of the Fund to an amount which is at least equal to the total number of drainage basins under construction multiplied by \$5,000.00. As long as the total balance of the Fund is less than \$100,000.00, all interest earned on the Fund shall be retained as part of the Fund. As long as the total balance of the Fund is in excess of \$100,000.00, the interest earned thereon may be paid to Developer Associations.

(d) In no event may the Fund be used for the normal, routine maintenance of the Site Erosion Controls. The cost of such normal, routine maintenance must be paid from other funds of Developer Associations. DEVELOPER and the Developer Associations, as applicable, to the extent not relieved of

responsibility pursuant to Section 4.03 hereof, shall be responsible for the implementation and maintenance of the Plan, regardless of the cost of such implementation and maintenance, and the establishment and maintenance of the Fund shall not limit or restrict in any way such obligations of DEVELOPER and the Developer Associations hereunder.

(e) In the event any assessment levied by the Developer Associations for the maintenance and repair of the Plan (including the restoration of the Fund) (hereinafter referred to as "Watershed Assessments") shall become delinquent, then such Watershed Assessments, together with interest thereon at the highest lawful rate not to exceed 15% per annum, and cost of collection thereof, including court costs and reasonable attorney's fees and attorney expenses, shall be a continuing lien on the Lot being encumbered thereby, and also a personal obligation of its Owner, and the heirs, successors and assigns of the Owner. No Owner may exempt himself from liability for any Watershed Assessment levied personal against his Lot during his ownership thereof by the conveyance or abandonment of his Lot, or any other matter. The Developer Associations shall perfect the above described liens by recording a claim of lien in the Office of the Judge of Probate of Jefferson County, Alabama, setting forth a description of the Lot being encumbered thereby, the name of its record owner, the amount due, the date when due and any other information customarily provided for the enforcement of

such liens. The claim of lien shall be signed by an officer the Developer Association. The lien on the lot may be foreclosed in the same manner as real estate mortgages under the laws of Alabama or may be foreclosed in any other manner which is permitted under the laws of Alabama. Upon the full payment of all sums secured by such claim of lien, the same shall be satisfied of record by an instrument of satisfaction which shall be signed by an officer of the Developer Association and recorded in said Probate office. Any party who acquires an interest in a Lot, including but not limited to, parties who acquire title by operation of law or at a judicial sale, shall not be entitled to possession or occupancy of the Lot or the improvements thereon until all unpaid Watershed Assessments on such Lot have been paid in full. Any party who has a contract to purchase a Lot, or who proposes to make a loan secured by a mortgage on a Lot, may, by written request, inquire of the Developer Association whether the Lot is subject to any Watershed Assessments and the due date of any such Watershed Assessments and the amount interest due on any delinquent Watershed Assessments and an authorized representative of the Developer Association shall give the requesting party a written response, providing all such information, within ten (10) days of the Developer Association's receipt of such inquiry and such response shall be binding upon the Developer Association. If the Developer Association does not make such response within said ten (10) day period, any such Watershed Assessments shall not be an

obligation of such purchaser or a lien on the Lot, but shall continue to be a personal obligation of the Owner of the Lot and shall also then become an obligation of the Developer Association.

4.05 OBLIGATIONS OF OWNERS TO MAINTAIN Notwithstanding the creation of the Developer Associations, all Owner(s) shall be responsible for developing maintaining their portions of the Developer Watershed Property in compliance with the Plan. In the event that repairs, maintenance and related work is required to the Site Erosion Controls in order to comply with the Plan as result of the failure of an Owner to ensure that its portion of the Developer Watershed Property is developed maintained in compliance with the Plan, such non-complying Owner shall be responsible for the payment in full, of expenses associated with such repair costs and maintenance to the Site Erosion Controls in order to comply In such event, the non-complying Owner, at with the Plan. its sole expense, shall terminate or correct any practices which are not in compliance with the Plan. The Developer Associations shall have the same rights and remedies with the collection of the cost and expenses incurred respect to in connection with the repair and maintenance the Site Erosion Controls resulting from the Owner's failure to maintain its portion of the Developer Watershed Property in compliance with the Plan as, or available to, Developer
Associations in connection with the enforcement and
collection of the Watershed Assessments.

- OBLIGATIONS OF OWNERS FOR COMMERCIAL-MULTI-FAMILY
 DEVELOPMENT. Notwithstanding the creation of the Developer
 Associations, each Owner of a portion of the Developer
 Watershed Property which is developed or is to be developed
 for commercial purposes or multifamily residential purposes
 shall ensure that such portions of the Developer Watershed
 Property is maintained in compliance with the Plan.
- 4.07 PROTECTION OF WATERSHED BY "OFF SITE" DEVELOPERS. For the purpose of protecting the BOARD's water supply, the BOARD covenants that, to the extent the BOARD has a right to do so under ordinance, statute, covenant or otherwise, the BOARD shall require all other owners of real property which is hereinafter developed and is situated within the Watershed, but lying outside the Developer Watershed Property (hereinafter referred to as the "Other Watershed Owners"), to adhere to sedimentation and erosion control standards of the same character and type required hereunder in connection with development and maintenance their respective the of properties, which standards are intended to protect the Watershed. If Other Watershed Owners should fail to adhere to such sedimentation and erosion control standards and such failure results in any sedimentation, contamination, or

pollution of, or other damage to, the Watershed or the Site Erosion Controls, the BOARD shall use reasonable, good faith efforts to enforce the said ordinance, statute, covenant or other device, if any, to which the property to such Other Watershed Owner is subject to require such Other Watershed Owner, at such Other Watershed Owner's expense, to cure such default and remedy such sedimentation, contamination, pollution or other damage. However, if the BOARD unsuccessful in its efforts, DEVELOPER and the Developer be relieved of any of their Associations shall not obligations under this Declaration.

4.08 REMEDIES OF THE BOARD FOR BREACH OF COVENANTS TO MAINTAIN WATERSHED MAINTENANCE AREAS IN COMPLIANCE WITH THE In the event that DEVELOPER or Developer the Associations, as applicable, fail to ensure that the Site Erosion Controls are maintained in compliance with the Plan, the BOARD shall give the DEVELOPER or the Developer Associations, as applicable, written notice of such failure if the Site Erosion Controls are not put in compliance with the Plan within thirty (30) days of receipt of written notice of noncompliance from the BOARD, or if the failure to put the Site Erosion Controls in compliance with the Plan is of the nature that it cannot with diligent efforts be cured within thirty (30) days and such act or acts as are necessary to remedy such noncompliance are not commenced within ten (10) days of receipt of written notice of noncompliance from

and are not thereafter completed within a the BOARD reasonable time, then the BOARD, its employees, agents and representatives, shall have the right to enter upon the Developer Watershed Property for the purpose of performing such work as may be necessary to bring such portions of the Site Erosion Controls into compliance with the Plan. In such DEVELOPER or the Developer Associations, event, applicable, shall reimburse the BOARD for all reasonable cost and expenses incurred by the BOARD in connection with such work. In the event the BOARD, after delivery of notice and the failure to cure within the applicable cure period as provided herein above, incur such cost and expenses in connection with performing such work as may be necessary to bring that portion of the Site Erosion Controls in compliance with the Plan, then such cost and expenses incurred by the BOARD shall constitute and be a charge and a continuing lien on the Developer Watershed Property and the BOARD shall have the same rights and remedies as provided to the Developer Associations with respect to the enforcement of the liens created for the collection for the Watershed Assessments as herein above provided; provided however, the BOARD shall release its liens as to the Developer Watershed Property from those Lots from which applicable pro-rata assessments for the payment of the applicable Watershed Maintenance Expenses have been received by the Developer Associations and paid to the BOARD.

4.09 PROHIBIT USES.

- (a) Except as provided otherwise in subparagraph (b), no portion of the Developer Watershed Property may be used as: a car wash facility; a service station; a gasoline station; a commercial car repair garage, any other business which services motor vehicles or provides gasoline or other petroleum products for motor vehicles; a commercial laundry or dry cleaning plant; a laboratory (not including, however, a laboratory associated with an on-site outpatient medical facility); or any business which uses or stores in bulk quantities on the premises products that constitute hazardous or toxic materials and/or hazardous or toxic substances, as such terms are defined by any rule, regulation, statute, or law of any state, federal or local governmental agency, the same may be amended from time to time, specifically including, but not limited to, definitions promulgated by the Environmental Protection Agency of the United States Government.
- (b) Notwithstanding the provisions of subparagraph (a), service stations, gasoline stations, a car wash and commercial car repair garages may be constructed on the Developer Watershed Property, provided that all such service stations, gasoline stations, car washes or commercial car repair garages must be located a minimum of 4,000 feet from the Cahaba River with said distance being measured along the path of flow and a minimum 2,500 feet from a distance

perpendicular to the Cahaba River. Said service stations, gasoline stations, car washes and commercial car repair garages, if not located in a drainage basin served by an outfall control device, must also have installed a pond or trap device designed to trap petroleum spills. Furthermore, the specifications for the underground storage tanks, or other storage facilities used by said service stations, gasoline stations, car washes and/or commercial car repair garages, installation thereof shall be approved in writing by the Board, said approval not to be unreasonably withheld.

Furthermore, notwithstanding the provisions of subparagraph (a), a hospital may be constructed on the Developer Watershed Property, provided that such hospital must be located a minimum of 4,000 feet from the Cahaba River with said distance being measured along the path of flow, a minimum of 2,500 feet from a distance perpendicular to the Cahaba River, and must be connected and serviced by a Public Sanitary Sewer System.

products which are on such hazardous or toxic materials and/
or hazardous or toxic substance list or lists such as gasoline, pesticides, or fertilizers, may be stored and used on the Developer Watershed Property (i) for the purpose of the normal and routine maintenance of grounds, and (ii) the normal and routine construction, repair, maintenance and operation of structures located on the Developer Watershed

Property, (including construction materials which are stored and/or used during the construction of such structures and office supplies that are customarily used in the businesses operating on such structures), provided that in the opinion of the BOARD such products or items are not stored or used in quantities or in a manner which is likely to damage or endanger the Watershed. Except as permitted by subparagraph (b), no underground tanks may be installed or used on or in the Developer Watershed Property for petroleum products or for such hazardous or toxic materials or substances as mentioned above.

ARTICLE V. NATURE OF PROTECTIVE COVENANTS: DEFAULTS AND REMEDIES

foregoing Protective Covenants shall constitute a servitude in and upon the Developer Watershed Property and shall run with the Developer Watershed Property and inure to the benefit of, and be enforceable by, DEVELOPER, its designated successors and assigns, (including the Developer Associations and its or their successors and assigns), and the BOARD, its successors and assigns. The initial term of the Protective Covenants shall be a period of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive periods of ten (10) years each, unless an agreement, which has been signed by the BOARD, or its successors in interest, and by the Owners who own two thirds

- (2/3) or more of the then existing Lots of the Developer Watershed Property, agreeing to terminate or modify this Declaration has been recorded in the Office of Judge of Probate of Jefferson County, Alabama.
- 5.02 DEFAULT. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Any party given the right to enforce the Protective Covenants may provide written notice thereof to any Owner who has committed or suffered a default or to the DEVELOPER and/or Developer Associations, as applicable, or their designated successors and assigns. Such notice may also be given, but shall not be required to be given, to any institutional mortgagee which has requested that such notice be given to it and has provided the Developer Association an address to which such notice may be sent. In the event of a default, the DEVELOPER and/or Developer Associations, as applicable, shall, upon written request, advise the BOARD whether there is an institutional mortgagee of the Lot of the defaulting party.
- REMEDIES FOR DEFAULT. The existence of any default which has not been cured within a cure period specified in Section 4.08 hereof, shall give DEVELOPER, its successors or assigns (including the Developer Associations, and its or their successors or assigns), and/or the BOARD, its successors or assigns, in addition to all other remedies

specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them.

5.04 RATURE OF REMEDIES: WAIVER. All rights, remedies privileges granted DEVELOPER, the Developer and to Associations, and the BOARD and their respective successors and assigns, pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may available to such party at law or in equity. The failure at any time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

ARTICLE VI. AMENDMENT OF DECLARATION

otherwise set forth in Section 1.03 of Article I and Section 2.02 of Article II with respect to adjustments in the property designated as the Developer Watershed Property, this Declaration may be amended at such time and upon such conditions, in such form and for such purposes as DEVELOPER and the BOARD, with their respective successors and assigns

(including, without limitation, the Developer Associations), shall deem appropriate by preparing an amendment hereto and recording it in the Office of the Judge of Probate of Jefferson County, Alabama which amendment shall not be effective unless it contains the written approval of DEVELOPER, its successors and assigns (including, without limitation, the Developer Associations) and the BOARD, its successors or assigns.

ARTICLE VII. AGREEMENT TO SUPPLY WATER

7.01 AGREEMENT OF THE BOARD. In consideration DEVELOPER's agreement to enter into this Declaration, and of the covenants and agreements of DEVELOPER contained herein, the BOARD does hereby covenant and agree to supply to the Developer Watershed Property, subject to the BOARD's rules and regulations, (as consistently applied to all customers) as amended from time to time, fire and other water service (a true and correct copy of the Board's rules and regulations are attached hereto as Exhibit "D"; it expressly acknowledged by the BOARD and DEVELOPER that said rules and regulations may be amended from time to time). The BOARD acknowledges that the foregoing covenant and agreement was the inducement for DEVELOPER to enter into this Declaration. Should the BOARD violate or breach the foregoing agreement, DEVELOPER shall be entitled, in addition to any other remedies it may have, to proceed at law or in

equity, to compel the BOARD's compliance with the terms of this Declaration.

ARTICLE VIII. AMENDMENTS AND CLARIFICATION TO THE PLAN

RESERVATION OF RIGHT TO AMEND THE PLAN. The BOARD 8.01 and DEVELOPER recognize that the Plan recommends establishment of certain general practices and procedures that are designed to protect and preserve the Watershed and the quality of the BOARD's water supply, some of which may be more or less effective depending upon the topography, hydrological conditions and land uses of portions of the Developer Watershed Property. For this reason, the Plan may be amended from time to time by the mutual consent of both the DEVELOPER and the BOARD, with neither the DEVELOPER the BOARD unreasonably withholding their consent to said amendment, as long as said amendment takes into consideration the following matters: (1) advances in technology; (2) the topography or other unique characteristics of certain portions of the Developer Watershed Property; (3) the hydrological conditions of specific portions of the Developer Watershed Property; (4) the proposed land uses; and, (5) changes to the master land use Plan for the development. While the Plan may be amended, as hereinabove set forth, such modifications or amendments to the Plan must be consistent with the spirit of the Plan as initially approved.

- 8.02 CLARIFICATION TO THE PLAN. Prior to development of each phase of the Developer Watershed Property DEVELOPER shall prepare and submit to the BOARD a proposed clarification to the Plan which shall describe the specific practices and procedures to be implemented on the portion of the Developer Watershed Property included in such phase. The practices and procedures described in such clarification must be consistent with those described in the Plan, with such permitted modifications as may be necessary to take into consideration the topography, hydrological conditions and proposed land uses of such property. The BOARD must approve the clarification in writing, said approval be unreasonably withheld, if it complies with the requirements set forth above, whereupon it shall become a part of the The parties expressly acknowledge and agree that the BOARD may withhold approval for an extension of mains and/or permission to have a service connection for each phase subject to approval of the proposed clarification to the Plan.
- 8.03 NO CONSENT REQUIRED. The BOARD hereby acknowledges and agrees that DEVELOPER, Developer Associations or any other Owner of a portion of the Developer Watershed Property shall not be required to obtain the BOARD's prior consent to (i) the dedication of any portion of the Developer Watershed Property (other than an Erosion Control Sites) to a

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municipality (or similar entity), or (ii) the subdivision of the Developer Watershed Property.

ARTICLE IX. LIBERTY MATICAL LIFE INSURANCE COVENANT AND AGREEMENT

9.01 COYTELET AND AGREEMENT SUPERSEDED. It is the intent of both the DEVELOPER and the BOARD that the certain Covenant and Agreement executed by Liberty National Life Insurance presently in force and effecting the Developer Watershed Property recorded in the Probate Office of Jefferson County, Alabama at Real Book 2704, Page 569, be and the same is hereby replaced and superseded by this Protective Covenant.

- ARTICLE TA

any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by Registered or Certified United States Mail, return receipt requested, postage propaid, to the addresses of such Owner(s) as they appear in the records of the Developer Associations at the time of such mailing.

Such, notices shall be sent to DEVELOPER and the Developer Association at the following address:

Liberty Park Joint Venture c/o Drummond Company, Inc. P. O. Box 10246 530 Beacon Parkway West Suite 800 Birmingham, AL 35209 with copy to:

Torchmark Corporation 2001 Third Avenue North Birmingham, Alabama 35233

Attention: Legal Department

and with a copy to:

Torchmark Development Corporation 3779 River Run Drive Birmingham, Alabama 35243

Such notices shall be sent to the BOARD at the following address:

The Water Works and Sewer Board of The City of Birmingham
'P.O. Box 830110
Birmingham, Alabama 35283

Attention: General Manager

Upon request of the BOARD, the Developer Associations shall furnish to the BOARD the address of any Owner to whom the BOARD wishes to send a notice.

- 10.02 <u>SEVERABILITY.</u> Invalidation of any provision hereby by judgement or court order shall in no way affect any other provision of this Declaration, all of which shall remain in full force and effect.
- 10.03 GOVERNING LAW. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the

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same may be amended from time to time, the said dispute or litigation shall be governed by the laws of the State of Alabama.

10.04 <u>CAPTIONS</u>. The captions and titles of the various Articles and Sections of this Declaration are for convenience or reference only, and in no way define, limit or describe the scope of the intent of this Declaration.

10.05 <u>USAGE</u>. Whenever used herein the singular shall include the plural and the plural shall include the singular, and the use of the gender shall include all genders.

10.06 <u>EFFECTIVE DATE</u>. This Declaration shall become effective upon its recordation in the office of the Judge of Probate of Jefferson County, Alabama.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date first above written.

403796159

THE WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM

Horace W. Parker

ITS CHAIRMAN OF THE BOARD

ATTEST:

In consideration of the premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and for the purpose of acknowledging and consenting that the foregoing Declaration of Watershed Protective Covenants for Liberty Park being hereby made applicable to the Torchmark Property described on Exhibit "B" hereto, TORCHMARK joins in the execution of this Declaration as of the date first written above.

TORCHMARK DEVELOPMENT CORPORATION

ITS: V

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, in and for said County in said State, hereby certify that RONALD O. DURHAM, whose name as SR. VICE PRES., of Drummond Company, Inc., an Alabama corporation, whose name as Managing General Partner of Liberty Park Joint Venture, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledge before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as the Managing General Partner of said Liberty Park Joint Venture.

GIVEN under my hand and official seal on this the $3e_{\overline{D}}$ day of HAY_____, 1991.

Notary Public ()

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, in and for said County in said State, hereby certify that Horace W. Parker, whose name as Chairman of The Water Works and Sewer Board of the City of Birmingham, a public corporation, is signed to the foregoing conveyance and who is known to me, acknowledge before me on this day that, being informed of the contents of the conveyance, 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 on this the $\frac{43.44}{1991}$.

Notary Public

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a notary public in and for said county in said state, thereby certify that Mark Development whose name as VICE PRESIDENT of Torchmark Development Corporation, 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 <u>let</u> day of ______, 1991.

Notary Public

My Commission Expires: 4-3-93

This instrument prepared by:

GORHAM, WALDREP, STEWART, KENDRICK & BRYANT, P.C. 2101 6th Avenue North Suite 700 Birmingham, Alabama 35203 (parnell/bwwb/libertyprk/declara2)

EXHIBIT A

PARCEL I

A tract of land located in the NW 1 of the NW 1 of Section 8, Township 18 South, Range 1 West, Jefferson County, Alabama, more particularly described as follows:

Begin at the northwest corner of said $\frac{1}{4}-\frac{1}{4}$ section and run thence in a southerly direction along the west boundary of said $\frac{1}{4}-\frac{1}{4}$ section to the southwest corner thereof; thence turn an angle of 123°56′45" to the left and run in a northeasterly direction for a distance of 1604.82 feet to a point of intersection with the east boundary of said $\frac{1}{4}-\frac{1}{4}$ section; thence turn an angle of 56°03′15" to the left and run in a northerly direction along said east boundary for a distance of 442.25 feet to the northeast corner of said $\frac{1}{4}-\frac{1}{4}$ section; run thence in a westerly direction along the north boundary of said $\frac{1}{4}-\frac{1}{4}$ section to the point of beginning.

PARCEL II

- 1. All of the SW 1 of SW 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 2. The NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama, less and except the North 400 feet of the West 400 feet of said $\frac{1}{4}-\frac{1}{4}$ Section.
- NE 1 of SW 1 of Section 6, Township 18 South, Range 1 West, less and except the river pump tract in the NE 1 of SW 1 described as follows: From the NE corner of the NE 1 of SW 1, go west along the north line of the $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 217.30 feet; thence left at an angle of 90° for a distance of 510.9 feet to the point of beginning of the land herein described; thence right at an angle of 140°16' for a distance of 309.0 feet; thence left at an angle of 123°18' for a distance of 330.0 feet; thence right at an angle of 25°34' for a distance of 212.4 feet; thence left at an angle of 72°03' for a distance of 77.5 feet to the NE bank of the Cahaba River; thence in a northeasterly direction along the NW bank of the Cahaba River for a distance of 500 feet to the point of beginning, containing two acres, more or less. reserved from this conveyance an easement for ingress and egress to the above described river pump tract across the NW } and the NE d of SW d, all in said Section 6, on existing roads and easements are also reserved across the NW 1 and the NE 1 of SW 1, all in said Section 6, such easements being twenty feet in width with the center line of the easements being in the present location of the pipe line and of the power line running from Overton to the said river pump tract; these latter easements of twenty feet in width

- are expressly for the purpose of accommodating the pipe line and power line as they now exist and are to be terminated when the said pipe line and power lines are abandoned.
- 4. All of the SE 1 of NW 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama, less and except that part as shown on Overton #2 Subdivision, as recorded in the Office of the Judge of Probate, Jefferson County, Alabama, in Map Book 35, Page 1.
- 5. All of the SW \(\frac{1}{4}\) of the NE \(\frac{1}{4}\) of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 6. All of the NW 1 of SE 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 7. All of the NE 1 of SE 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 8. All of the SE 1 of NE 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 9. All of the NW 1 of NE 1 of Section 6, Township 18 South, Range 1 West, lying east of the northwest bank of the Cahaba River.
- 10. All of the NE 1 of NE 1 of Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama, lying south of the Northwest bank of the Cahaba River and southwest of that certain parcel of land as described in Volume 2371, Page 480, in the Office of the Judge of Probate, Jefferson County, Alabama.
- 11. All the NW 1 of NW 1 of Section 5, Township 18 South, Range 1 West, Jefferson County, Alabama, less and except that certain parcel of land as described in Volume 2371, Page 480, in the Office of the Judge of Probate, Jefferson County, Alabama.
- All of such property is also shown on the survey of Laurence D. Weygand dated December 28, 1988, and revised December 29, 1988.

PARCEL III

- 1. West thirty (30) acres of the Southwest One-quarter of the Southwest One-quarter of Section 5, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 2. Southeast One-quarter of the Southeast One-quarter (SE 1 of SE 1); Southwest One-quarter of the Southeast One-quarter (SW 1 of SE 1) and the Southeast One-quarter of the Southwest One-quarter (SE 1 of SW 1); Section 6, Township 18 South, Range 1 West, Jefferson County, Alabama.

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- 3. East 10 acres of SW ½ of SW ½; NW ½ of SW ½; SW ½ of NW ½; NE ½ of NW ½; SE ½ of NW ½ and the North 8.5 acres of NE ½ of SW ½; all in Section 5, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 4. In Section 5, Township 18 South, Range 1 West, Jefferson County, Alabama, the NW 1 NE 1; SE 1 NE 1; SW 1 NE 1; NE 1 SE 1; NW 1 SE 1; SE 1 SE 1; SW 2 SE 1; SE 2 SW 1; and South 31.5 acres of NE 1 SW 1.
- 5. Entire Section 7, Township 18 South, Range 1 West, Jefferson County, Alabama.
- 6. In Section 12, Township 18 South, Range 2 West, Jefferson County, Alabama, the NE 1 SE 1; SE 1 SE 1 and SW 1 SE 1.

EXHIBIT B

A parcel of land situated in Sections 1, 12, and 13, all in Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the SW 1 of the NE 1 of Section 12, Township 18 South, Range 2 West; thence Northerly along the West line of said 1-1 section a distance of 105.30 feet to the point of beginning; thence turn 45°02'15" to the right in a Northeasterly direction a distance of 290.33 feet to a point; 74°28'34" to the left in a Northwesterly direction a thence turn distance of 1007.84 feet to a point; thence continue in last described direction for a distance of 96.5 feet, more or less, to the center line of the Cahaba River; thence along the center line of the Cahaba River in a Northeasterly, then Easterly, then Southeasterly direction a distance of 2568 feet, more or less, to a point on the East line of the NW 1 of the NE 1 of said Section 12; thence South along said East line a distance of 940 feet, more less, to the Southeast corner of said {-{ section; thence turn 87°18'15" (angle from T.C.I. records) to the left in an Easterly direction along the North line of the SE 1 of the NE 1 of said Section 12 for a distance of 1312.25 feet (distance from T.C.I. records) to the Northeast corner of said 1-1 section; thence turn 87°40'04" to the right in a Southerly direction along the East line of said 1-1 section a distance of 1330.13 feet to the Southeast corner of said 1-1 section; thence turn 92°12'19" to the right in a Westerly direction along the South line of said 1-1 section a distance of 1312.43 feet to the Southwest corner of said 1-1 section; thence turn 92°12'09" to the left in a Southerly direction along the East line of the NW 1 of the SE 1 of said Section 12 a distance of 1331.29 feet to the Southeast corner of said 1-1 section; thence turn 92°09'20" to the right in a Westerly direction along the South line of said 1-1 section a distance of 1312.68 feet to the Southwest corner of said \ -\ \ section; thence turn 92°08'08" to the left in a Southerly direction along the East line of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 12 a distance of 1332.46 feet to the Southeast corner of said $\frac{1}{4}-\frac{1}{4}$ section; thence turn 92°03'28" to the right in a Westerly direction along the South line of said 1-1 section a distance of 1312.65 feet to the Northeast corner of the NW } of the NW } of Section 13, Township 18 South, Range 2 West; thence turn 91°37'43" to the left in a Southerly direction along the East line of said 1-1 section a distance of 1331.97 feet to the Southeast corner of said \{-\} section; thence turn 91°12'20" to the right in a Westerly direction along the South line of said 1-1 section a distance of 187.40 feet to a point on the Easterly right-of-way line of Interstate Highway #I-459; thence turn 107°25'40" to the right in a Northeasterly direction along said right-of-way line a distance of 173.98 feet to a point; thence turn 14°22'21" to the left in a

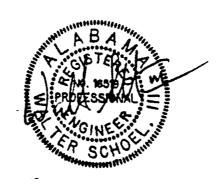
Northeasterly direction along said right-of-way line a distance of 1214.99 feet to a point; thence turn 17°23'25" to the left in a Northwesterly direction along said right-of-way line a distance of 1392.57 feet to a point; thence turn 6°53'30" to the left in a Northwesterly direction along said right-of-way line a distance of 188.76 feet to a point; thence turn 90°00' to the right and run Northeasterly a distance of 568.82 feet to a point; thence turn 125°32′53" to the left and run Northwesterly a distance of 155.07 feet to a point; thence turn 103°35'31" to the right and run Northeasterly a distance of 403.92 feet to a point; thence turn 105°41'15" to the left and run Northwesterly a distance of 55.07 feet to the P.C. (point of curve) of a curve to the left having a radius of 821.17 feet and a central angle of 21°10'18"; thence Northwesterly along the arc of said curve a distance of 303.44 feet to the P.R.C. (point of reverse curve) of a curve to the right having a radius of 592.35 feet and a central angle of 57°18'15"; thence Northwesterly along the arc of said curve a distance of 592.44 feet to the P.T. (point of tangent) of said curve; thence Northwesterly tangent to said curve a distance of 96.88 feet to a point; thence turn 90°00' to the right and run Northeasterly a distance of 100.00 feet to a point; thence turn 90°00' to the right and run Southeasterly a distance of 96.88 feet to the P.C. (point of curve) of a curve to the left having a radius of 515.51 feet and a central angle of 59°52'; thence run Southeasterly and along the arc of said curve a distance of 538.64 feet to the P.T. (point of tangent); thence run Southeasterly tangent to said curve a distance of 103.92 feet to the P.C. (point of curve) of a curve to the right, having a radius of 718.04 feet a central angle of 19°09'; thence Southeasterly along the arc of curve a distance of 239.99 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Southeasterly direction a distance of 360.43 feet to a point; thence 73°08'39" to the left in a Northeasterly direction a distance of 891.82 feet to the point of beginning.

EXHIBIT C

LIBERTY PARK

A DRUMMOND/TORCHMARK JOINT VENTURE

EROSION AND POLLUTION CONTROL REQUIREMENTS



prepared by

WALTER SCHOEL ENGINEERING CO., INC.

October 30, 1989

Revised November 27, 1990

LIBERTY PARK - EROSION AND POLLUTION CONTROL REQUIREMENTS

Introduction

The proposed Liberty Park Development is a 2200 (approx.) acre mixed use development that will contain residential, commercial, retail, recreational, and other uses. The majority of the development is planned as single-family residential. Certain areas of the site will contain primarily commercial development.

The entire Liberty Park development is located in the drainage area of the Cahaba River, with the drainage area taken at the dam at U.S. 280. This basin is the source of the water supply of the Birmingham Water Works and Sewer Board. Due to this, erosion control concerns and water quality concerns are of the utmost importance to the planning, engineering and construction of the development.

The site, at the present, is primarily wooded, with slopes ranging from 10% to 30%. The site contains significant areas that have been strip mined. These areas show prominently on the USGS Quad sheet. The bulk of the site has been timbered in the past, and thus a typical soil cover would be small, second growth trees with a relatively dense growth of underbrush.

In that the Cahaba River is the primary source of water supply for the City of Birmingham, possesses natural scenic beauty and is an amenity to the development, the developers of the site have agreed to adopt certain restrictions, both in the planning of the development and in the engineering design and construction of the development, in order to protect this valuable resource.

These restrictions, in the form of planning, engineering, and construction criteria, are proposed for this development in order to safeguard the water quality and scenic beauty of the Cahaba River.

The erosion control and pollution control scheme for the Liberty Park Development is keyed to the Erosion and Pollution Control Conceptual Master Plan. This master plan is a preliminary exhibit, that illustrates the currently planned erosion control devices. This plan may change during the course of the 20 year development cycle of the Liberty Park Development. The erosion control and pollution control performance of the system will be maintained through adherence to the methodology and requirements herein presented.

Erosion Control and Water Quality Restrictions

The following areas are addressed:

- 1) Allowable Land Uses
- 2) Development Restrictions within Cahaba River Flood Plain
- 3) Development Adjacent to Tributaries
- 4) Protection of Lakes Within Development
- 5) Storm Drainage Permanent Controls
- 6) Construction Site Erosion Control Requirements
- 7) Sanitary Waste Disposal Requirements
- 8) Plans Required
- 9) Maintenance of Ponds and Lakes

1) Allowable and Prohibited Land Uses

Only uses allowed by the approved zoning will be permitted within the development.

Other uses may be excluded via covenant.

2) Development Restrictions Within Cahaba River Ploodplain

No development (including site disturbance, construction, and other uses which would change the land elevation or remove or destroy plant life) is allowed within the 100 year flood plain of the Cahaba River as indicated on exhibit 1. This flood plain is based on the 100 year flood elevations as given in the Jefferson County Flood Insurance Study. Certain areas adjacent to contributing streams are excluded from this area as they are technically not in the flood plain of the Cahaba River. These prohibitions have the following exceptions.

Construction of lakes, ponds and other water quality and flood control measures is allowable within this margin. Such construction shall however obey all applicable portions of the Construction Site Erosions Controls (see item 6 below).

- 2) Recreational Uses such as walking/jogging trails, golf courses and other similar uses that do not require extensive grading are allowable. All drainage of areas in this margin shall be in the form of overland or sheet flow or by using grassed (or other natural vegetative material) swales.
- 3) Construction of roadways and utilities is allowable. The impervious areas placed in the floodplain shall in no cases exceed 10% of the overall floodplain area. Such construction shall obey all applicable portions of the Construction Site Erosions Controls (see item 6 below).
- 4) Construction of sewage pumping stations and treatment plants is allowed in this area. Such facilities will be constructed to the standards of and approved by the Jefferson County Realth Department.

3) Development Adjacent to Tributaries

There are only two stream reaches that are of second order or higher within the development. However, due to the topography of the site, the access roadway to the Golf Clubhouse must run adjacent to one of these reaches for a portion of its length. Also, several golf holes are designed to lie adjacent to one of these reaches. Due to this, these special requirements for this area are put forward:

The "stream channel shall be disturbed as little as possible. To accomplish this, the roadway will be either divided and straddle the stream, or shifted to one side for much of its length.

Crossings of the stream channel will be minimized.

Areas of the stream bed that have to be relocated will use as much of the existing rock and boulders of the original channel as possible. The relocated channel will be re-established as much as possible in the configuration of the existing channel.

The roadway elevations shall be above the 100 year flood elevation of the stream.

Construction Requirements

These requirements are applicable to that period when construction on the roadway adjacent to the tributary is in progress.

Selected areas along the stream channel will have installed rip rap and brush sediment checks, that will create areas of ponding to trap construction sediment.

Silt fences or straw bales shall be placed at the toe of slope of all roadway embankments.

Drain inlets shall be protected by straw bales or other suitable BMP.

A temporary sediment pond shall be installed as shown on Exhibit One.

4) Protection of Lakes Within Development

While construction is in progress within the drainage basin of a lake, a fore-bay, or small sediment trapping area, shall be constructed at the upper end of the Lake, if topographic conditions allow. These forebays shall be inspected at the end of the construction within its individual basin and cleaned out if required. Upon completion of construction within the basin, the forebay may be removed.

No major impervious areas such as rooftops, parking, or storage areas may be located within 50 feet of a lake.

5) Storm Drainage - Permanent Controls

Basins Without Outfall Controls

(An outfall control device is defined as a device such as a pond or lake that is located at the outfall of a drainage basin or sub-basin. These devices typically treat runoff by physical processes such as sedimentation or filtration.)

Commercial Developments or Multi-Family Residential Developments

Requirements for Parking or Storage Areas

All medium sized paved parking or storage areas (e.g., surface areas totaling 5,000 to 500,000 square feet) and exposed to rain shall employ one or more of the following BMPs:

Grassed swale drainage ways

Catch basins in lieu of typical inlets (if approvable by Engineering Department having jurisdiction)

Wet detention ponds

These control measures shall be constructed in accordance with accepted design procedures.

All large sized parking or storage areas (e.g., surface areas totaling over 500,000 square feet) and exposed to rain shall discharge into one or more wet detention basins. The wet detentions basin (or system of basins) shall be designed in accordance with accepted design specifications. Outflow velocities and outflow structures shall be designed to limit erosion below such facilities.

Rooftops shall discharge onto pervious surfaces or into natural drainage courses if practical. Grassed swale drainage ways and other infiltration promoting BMPs shall be used as site conditions warrant.

Single Family Residential

General

Due to the severe topography of the site, either valley gutters or curb and gutter will be installed on the majority of the roads within the development. The following EMPs address general drainage guidelines to reduce pollution from residential areas.

The layout of the lots and streets shall stress using the existing natural drainage system to the extent possible.

Existing drainage swales should be located along back lot lines where possible. Additional drainage swales that may be required should be grassed to promote infiltration and eliminate erosion.

The underground drainage system of residential streets shall be discharged into existing natural swales at the earliest possible point. The pipe outfalls should be designed to prevent erosion at these locations.

If a drainage way must be improved in order to function without eroding, stabilization with grass or other vegetative cover is recommended to promote infiltration and filtration.

Individual Residential Lots

Individual residential lots shall be required to employ certain water quality control BMPs. These are:

Roof drains shall discharge onto pervious surfaces where practical.

Drives and walks shall drain onto pervious surfaces to the extent possible. This typically entails crowning the drive such that it will drain onto adjacent grassed areas.

Septic system field lines, where used, shall be located in areas that drain away from the street, if such a configuration is possible.

Basins With Outfall Controls

Commercial and Multi-Family Residential

Rooftops shall discharge onto pervious surfaces or into natural drainage courses if practical, and if so doing will not create an erosion hazard.

The use of grassed swale drainage ways in lieu of pipe is encouraged as a BMP for controlling pollution. Such swales should not be used if the 10 year hydraulic design storm event would lead to erosive velocities in the swales.

Single Family Residential

The same practices are required as given in section above on single family residential.

6) Construction Site Erosion Control Requirements

Commercial and Multi-Pamily Developments

These construction site erosion control requirements shall be made part of the technical specifications for each phase of the commercial or multi-family development.

General

The following requirements shall apply to each individual phase of commercial or multi-family residential development. The requirements shall be enforced during the site-work construction period of each phase of such development.

During Construction, the contractor shall employ erosion control Best Management Practices (BMPs) as required by the the City of Birmingham Soil Erosion and Sediment Control Code or the Jefferson County Erosion Control Ordinance, whichever, is applicable. Erosion control BMPs shall include silt fences, rip rap and vegetative filter berms, hay bales, on-site sediment ponds, mulching of disturbed areas, and other measures. Additional BMPs shall be employed as given in Best Management Practices for Controlling Sediment and Erosion from Construction Activities, (BRPC, 1980), or other appropriate reference. Plans submitted must also meet any further requirements as set forth in the applicable code and any additional requirements as detailed in this document.

In all phases of development, the erosion control plan as provided by the Engineer shall be considered a minimum level of protection. Additional measures shall be employed as construction progresses and as site conditions warrant.

Waste and Material Storage

All waste and unused building materials shall be transported and disposed of in a licensed solid waste or waste water facility. No wastes or unused building materials shall be disposed of or buried on-site, or discharged into receiving waters or into the storm sewer system.

All soil piles to be left in place for more than 14 days shall be protected by placing straw bales or filter fencing around them. Such piles shall be located as far as possible from storm drainage inlets or impervious areas.

Tracking

Each site shall have graveled access drives and parking areas such as to prevent the tracking of dirt or sediment onto public or private roadways. All unpaved or unsurfaced roadways serving more than 25 vehicles per day shall likewise be graveled.

Drain Inlet Protection

All storm sewer inlets in disturbed areas or in other areas subject to potential inflow of sediment shall be protected with hay bales, rip rap, or other suitable means of inlet protection. An exception to this requirement is inlets along traveled roadways where inlet protection may create hazardous conditions.

On-site Erosion Control Measures

Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, where practical. Likewise, sheet flow drainage shall be diverted around disturbed areas where practical.

All construction activities on the site shall be scheduled in a logical sequence to minimize the amount of disturbed area at any one given time.

All disturbed ground left inactive for more than 14 days shall be stabilized by seeding, mulching, or other BMP.

Additional Measures for Basins Without an Outfall Control Device

At sites with more than 10 acres disturbed at one time, one or more wet detention basins shall be constructed to receive runoff from disturbed areas of the site. These ponds shall be designed in accordance with accepted design specifications. The outlet structures of these ponds shall be constructed to minimize erosion at the discharge point.

At sites with less than 10 acres disturbed, filter fences, straw bales, or other equivalent BMP shall be placed along all sideslope and downslope areas below disturbed areas. Channels, ditches or other area of concentrated flow shall have installed ditch checks, vegetative filters, or other acceptable BMP, to trap sediment in this runoff. Such channels shall be protected from sheet flow from disturbed areas by silt fencing, straw bales, or other equivalent measure.

Single Family Residential Subdivisions

General

Construction shall be planned and executed in such a manner as to minimize the amount of area disturbed at any one time. Disturbed areas left inactive for more than 21 days shall be stabilized by grassing or mulching. Soil piles shall be placed as far away from impervious areas as possible, and stabilized by covering or seeding if to be left in place for more than 21 days.

Construction site BMPs shall be employed during the construction of the roads within residential developments. Where construction is adjacent to lakes or streams within the development, additional measures shall be employed as required to limit sheetflow from disturbed areas into the lake or stream.

Drain Inlets within or adjacent to disturbed areas or construction shall be protected with hay bales or other BMP, if doing so will not create a hazard to motorists.

Silt fences and other erosion control devices shall be inspected at least monthly, and after all severe rains, and replaced or repaired if necessary.

Individual Residential Lots

As the residential areas of the Development are included in an overall, comprehensive plan for erosion and sediment control, individual residential lots are excluded from the specific requirements of the construction site erosion control requirements. However, Individual residential lots shall be required to install certain erosion control measures. These include:

- 1) All off-site water shall be routed around areas to be disturbed or graded.
- 2) Silt fences and/or hay bales are required on the downstream side of all disturbed or graded areas.
- 3) All disturbed areas shall be stabilized by mulching, seeding, or sodding as soon as practicable.
- 4) Soil piles shall be located as far as practicable from stormwater inlets. Such piles shall be stabilized or covered if to be left in place for more than 14 days.
- 5) Other Best Management Practices as put forth in Best Management Practices for Controlling Erosion from Construction Activities as adopted by the Birmingham Regional Planning Commission, August, 1980, shall be employed as site conditions warrant.
- 6) The main construction access drive to each residential lot shall be graveled to reduce tracking.

Golf Course Areas

While construction is in progress on the Golf Course, erosion control EMP's shall be employed as put forth in Best Management Practices for Controlling Erosion from Construction Activities as adopted by the Birmingham Regional Planning Commission, August, 1980. Activities shall also meet the requirements of the City of Birmingham Soil Erosion and Sediment Control Code or the Jefferson County Erosion Control Ordinance, whichever is applicable. Construction shall be planned and executed in such a manner as to minimize the amount of area disturbed at any one time.

Due to the small amount of impervious area and lack of underground storm drains that is typical of golf courses, no further erosion control requirements are put forth for these areas.

7) Sanitary Waste Disposal Requirements

Preface

This development is a planned development that will evolve over a span of at least ten, and possibly as long as twenty years. There is not presently available a sanitary sewer to serve the development. The current assumption is that a Jefferson County sanitary sewer will be available to serve the site by the end of 1994. Therefore, the first five years of development's sanitary waste must be disposed of within the site. Toward this end, a sanitary waste collection, treatment, and on-site disposal system will be installed to treat the bulk of the sanitary waste produced by the development.

Requirements

All sanitary sewage facilities in the Development, including treatment plants, mains, collection systems, and disposal systems must meet all applicable requirements of the Jefferson County Health Department and/or the Jefferson County Department of Environmental Services, and are subject to their approval.

All subdivisions, or phases of commercial or multi-family residential within the development will be served with sanitary sewers (whether live or capped). Exceptions to this requirement must be approved by the BWWSB. These sewers must meet the standards of the Jefferson County Department of Health. These sewers will be designed for ultimate tie-in to the planned Jefferson County Cahaba trunk sewer. All commercial or multi-family residential must tie onto the sanitary sewer system.

In the interim period when the trunk sewer is not available, the sewage will be collected and treated at one or more treatment plants located within the site. This sewage will then be pumped up into the development and disposed of via underground infiltration, or other approved non-point source discharge method.

The disposal area (or areas) shall be approved by the Jefferson County Department of Health, and shall be located a minimum of 1000 feet from the Cahaba River.

At the time that the Jefferson County trunk sewer becomes available to the development, the existing sanitary sewer system will be tied onto this main, and the on-site treatment and disposal facilities will be abandoned.

Septic Systems

Single family residential lots will be allowed to use septic systems, provided these are approved by the Jefferson County Health Department. Residential subdivisions (with approved exceptions as above) shall be served with capped sanitary sewers, with a stub-out provided for each lot, if a tie to the infrastructure sewer system is feasible.

The owner shall covenant to maintain its septic system in such proper working order as to prevent pollution. This covenant shall be binding on subsequent powers.



No field lines for septic systems may be located within the 100 year flood plain of the Cahaba River as shown on Exhibit One,

8) Plans Required

Construction plans for each phase of development, or for each commercial, retail, or other similar development within the Liberty Park site shall include a drainage plan and erosion control plan. These plans shall meet the minimum standards of either the City of Birmingham Soil Erosion and Sediment Control Code or the Jefferson County Erosion Control Ordinance, whichever is applicable. In addition, the plans must meet the additional requirements as detailed in this document.

Owners must demonstrate compliance with applicable County or Municipal storm sewer requirements (including payment of fees), and adequate provision for solid waste disposal.

9) Maintenance of Lakes and Ponds

While significant construction is in progress within a basin that is served by an outfall control device such as a lake or pond, the pond or lake forebay that is subject to sedimentation will be inspected on a monthly basis. Should the Lake or Pond evidence loss of functionality due to loss of sediment storage, the sediment should be promptly removed.

The pond or lake forebay should receive a final inspection upon completion of the construction within the basin, and should be cleaned out if required.

All lakes and permanent ponds within the development shall be inspected on a yearly basis to ascertain the condition of the spillways, etc., and to evaluate sediment build-up. Should this inspection find a lake or pond in need of repair, these repairs will be made promptly.

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The Water Works Board of the City of Birmingham 3600 First Avenue North Birmingham, Alabama 35222 251-3261

RULES AND REGULATIONS

of

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM

BIRMINGHAM, ALABAMA

GOVERNING SERVICE TO CUSTOMERS



Adopted by The Board of Directors
February 27, 1984
To Be Effective
May 1, 1984

SECTION 1. GENERAL INFORMATION:

The Water Works Board of the City of Birmingham (the "Board") was created by the Commission of the City of Birmingham, Alabama on November 21, 1950, as a public corporation for the purpose of operating a water works plant and system as authorized by Section 394 of Title 37 of the Code of Alabama (1940), as amended by Act No. 686, approved September 19, 1949.

By specific authority the Board, out of the proceeds of sale of Water Supply Revenue Bonds, purchased as of the beginning of business July 9, 1951, the water works system owned by The Birmingham Water Works Company, by acquiring all of the common capital stock of that company and paying and discharging all of that company's outstanding bonds and other indebtedness. The Birmingham Water Works Company was dissolved immediately thereafter.

Title to the water works system so acquired and all subsequent additions thereto vest in the Board until all indebtedness against the properties and cost of construction have been fully paid, at which time the entire system and all other assets of the Board become vested in the City of Birmingham, and The Water Works Board of the City of Birmingham automatically dissolves.

The Certificate of Incorporation constituting the Board's charter gives the Board full power to acquire, purchase, construct, operate, maintain, enlarge, extend and improve a water works plant and distribution system, together with all appurtenances thereto and all property used in connection therewith.

The Board has full and complete management and control of the water works system operation wholly separate and apart from any control by the City of Birmingham, except insofar as certain moneys that may be accumulated in the Surplus Fund.

The Council of the City of Birmingham pursuant to the Mayor Council Act of 1955 (Act 452 adopted in the 1955 session of the Legislature of Alabama) appoints the Board members for six-year terms.

SECTION 2. DEFINITIONS:

As used in these Rules and Regulations, the following words and terms shall be defined as follows:

- (a) Board The Water Works Board of the City of Birmingham, including its duly authorized members, agents and employees.
- (b) Customer Any party who receives water service from the Board or who is legally or equitably responsible under either an express or implied contract requiring such party to pay the Board for water service.
- (c) Depositor Any party who enters into an agreement with the Board for the installation of water mains, service connections or for any service rendered by the Board for which a deposit may be required.
- (d) Single Premises
 - (1) A single lot or tract of land with one or more buildings and their appurtenances on it; or
 - (2) Two or more lots or tracts of land with a single building or multi-buildings situated on them if the buildings are interconnected by means of interior doorways or passage ways.
- (e) Service Connection The attachment to the water main of the Board of a service line to supply a single premises only; a service connection shall include all pipe, fittings and accessories necessary for that purpose.
- (f) Service Line All pipe and accessories extending

- from the service connection at the main to and including the meter located within the road way right-of-way line in which the said water main is located.
- (g) Service Pipe A pipe used to conduct water from the meter to a point of use within a premises.
- (h) Fire Service A service pipe extending from the water main of the Board into a premises for the extinguishment of fires only.

SECTION 3. GENERAL RULES GOVERNING SERVICE:

- (a) These rules and regulations in their entirety, as herein set forth or as they may hereafter be altered or amended by the Board, shall govern the rendering of water service, including the extension of mains and the making of connections thereto. Every customer, upon the signing of an application for water service or upon the taking of water service, shall be bound hereby.
- (b) All determinations, decisions, estimates or matters of judgement of any sort referred to herein shall be made by the Board, in its sole discretion, and shall be binding upon every customer.
- (c) The Board does not guarantee a uniform pressure or an uninterrupted supply of water. In instances where an uninterrupted supply of water is necessary, customers must make arrangements to store a sufficient amount of water. The Board shall not be liable for any damage caused by interruption in service, inconsistent pressure, varying quality of water or for any other cause whatsoever.
- (d) The Board endeavors to supply clean, wholesome water to its customers at all times. Due to circumstances beyond the Board's control, however, dis-

- colored water may occasionally enter the system. The Board will use every reasonable effort to clear up the discolored water as soon as reasonably possible. The Board shall not be liable for damage to any customer's plumbing or other property, including staining of clothing caused by discolored water.
- (e) The Board reserves the right to temporarily discontinue water service from any of its distribution mains without notice when necessary or desirable for the purpose of making repairs, extensions or connections, or for any other purpose whatsoever. The Board shall incur no liability for damage to any customer's plumbing or other property resulting from the interruption of service, or from the resumption of service without notice after such interruption.
- (f) The Board shall have the right, without notice, to discontinue immediately service to any customer for violation of any of these Rules and Regulations.
- (g) The Board, in its sole discretion, may from time to time waive its right to enforce any of these regulations in a particular circumstance, but such action shall not constitute a waiver of the right to enforce the regulation in question as to any other circumstance then or thereafter existing.
- (h) The Board reserves the right at any time to alter, amend, delete from or add to these Rules and Regulations or to substitute other Rules and Regulations in lieu hereof. Such action will be binding upon every customer from the effective date of such action.

SECTION 4. APPLICATION FOR WATER SERVICE:

(a) All persons, or their authorized agents, desiring water service through an existing service line shall

- make application in writing at the office of the Board on forms supplied by the Board. Applications by letter and/or telephone may be accepted at the option of the Board.
- (b) Application for transfer of service from one premises to another may be made by telephone, and when so made by telephone, is subject to all the Rules and Regulations of the Board just as if the customer had signed a regular Application for Service.
- (c) Information furnished to the Board by the applicant or his authorized agent will be kept on file by the Board; if any information provided by the applicant in the application is found to be inaccurate or if the applicant is found not to be in compliance with the conditions set forth on the "service authorization form" signed when the application is approved, service to the premises may be immediately discontinued by the Board.
- (d) Any change in the indentity of the contracting customer at any given premises requires a new application. The Board may, after reasonable notice, discontinue water service until such new application has been duly made and accepted. Should the new customer fail to make application at the office of the Board within seventy-two (72) hours after beginning the use of water, he shall be liable for all water charges accrued since the last reading of the meter prior to the date of his beginning the use of water.
- (e) Whenever an application is made for service to a premises, and the Board is aware of a dispute as to the ownership or the right of occupancy of the premises, the Board reserves the right to adopt either of the following courses:
 - (1) To treat the applicant in actual possession

- of said premises as being entitled to such service; or
- (2) To withhold service pending a judicial determination or other settlement of the right of occupancy of the various claimants.

SECTION 5. APPLICATION FOR SERVICE CONNECTION:

- (a) Application for a connection to the mains of the Board must be made at the office of the Board by the owner of the premises to be served, or by his duly authorized agent.
- (b) The applicant, or his authorized agent, shall identify the property to be served to the satisfaction of the Board before an authorization for a connection to the Board's main will be issued.
- (c) The applicant, or his authorized agent, shall state the purpose for which water is to be used and shall furnish information regarding water-using fixtures to be used sufficiently to enable the Board to determine the minimum diameter of the service connection and the size of the water meter to be installed.
- (d) Each authorization shall be accompanied by payment to the Board of the following fees (Amounts of such fees are stated in the current Supplement to Rules and Regulations of The Water Works Board of the City of Birmingham.):
 - (1) A "Connection Fee" for all service connections;
 - (2) A "Main Fee" for service connections on mains installed at the expense of the Board or any governmental agency after May 6, 1966, where the premises to be served did not previously have water available.

- (e) Upon approval of the appliant's request for a connection and payment of the Connection Fee (and Main Fee when required), the Board may, in its discretion, issue to the applicant, or to his agent, a meter loop or curb cock for installation in the service line, as hereinafter described in Sections 6 and 7 hereof, so long as the connection is two inches (2") or less in diameter. Ownership of the meter loop or curb cock shall remain vested in the Board. A meter loop or curb cock will not be issued to the applicant for a connection larger than two inches (2") in diameter.
- (f) Receipt by the Board of an application for a connection shall not obligate the Board to make such connection. If the service applied for cannot be supplied in accordance with the Board's Rules and Regulations or the applicable regulations or ordinances of other public authorities, or because of physical limitations of the Board's water distribution system, no connection shall be made. In the event no connection is made, the liability of the Board shall be limited to the return of any Connection Fee (and Main Fee, if collected) paid to the Board by the applicant after fittings issued by the Board have been returned.

SECTION 6. SERVICE CONNECTIONS:

- (a) All connections made to the mains of the Board shall be made only by Board personnel, or by authorized agents of the Board.
- (b) The Board may specify the size, kind and quality of all materials to be used in the service connection and service line. Installation of the service line by the customer, or his agent, must be carried out to conform with the applicable regulations or ordi-

- nances of the municipality or political subdivision having jurisdiction.
- (c) When the provisions for an authorization of a connection up to two inches (2") in diameter to a main of the Board have been complied with, and when the customer, or his agent, has installed the service line and meter loop or curb stop, whichever is specified, the Board will then connect the customer's service line to the main and turn water into said service line.
- (d) For connections of two inches (2") in diameter or smaller in size, the customer shall pay for all costs and expenses incurred for making connections, installing service lines and meter settings, except as stated below:
 - (1) The Board will furnish and install all material necessary to attach the customer's service line to the Board's main.
 - (2) The Board will furnish meter loops up to and including one-inch (1") in diameter to be installed by the customer, or his agent. The Board will furnish materials and construct facilities to hold or contain meters larger than one-inch (1") in diameter in the customer's service line at the location specified for that purpose.
 - (3) The Board will furnish and install all meters on domestic service lines.
 - (4) The Board will furnish meter boxes on domestic service settings up to and including one-inch (1") in diameter, and these boxes will be installed by the customer, or his agent, within a reasonable length of time after the connection has been made.

The Board will install meter boxes or meter vaults for settings larger than one-inch (1") in diameter after the customer, or his agent, has installed a minimum of twenty feet (20") of pipe away from the setting and backfilled the excavation so that a meter box can be set.

- (e) All connections larger than two inches (2") in diameter, and the necessary service line therefrom to and including the meter setting (or to the property line for fire services), will be installed by the Board. The applicant shall reimburse the Board for actual expenses incurred in making the installation, plus a sum equal to the Board's current overhead rate at the time of installation.
- (f) Not more than one service connection shall be installed to supply a single premises, except that a private fire service connection may also serve a premises having a regular domestic service connection. Where fire service and domestic service connections are installed to supply the same premises, the two systems shall be kept separate with no physical connection of any kind whatsoever between the two systems.
 - (1) A customer who desires a new or larger service connection must expose the main at the point of the old service connection so that it can be disconnected at the time a new connection is made.
 - (2) Where a single premises can be considered to lie on both sides of a public road, street or alley, a separate service connection and meter shall be installed for the property on each side of such road, street or alley.

- (3) If two or more premises are combined or consolidated into one, all service connections except one will be disconnected by the Board. The Board may at its discretion leave any service connection and service line between the Board's water main and previous meter location so that it can be reactivated.
- (4) In the event a property owner acquires several adjacent premises with individual service connections and razes all existing structures on the property with the intent of erecting one new structure on the acquired property, all individual service connections serving the original multiple premises shall be disconnected at the Board's main at the property owner's expense. The Board shall be notified by the property owner in advance so the disconnection can be approved, salvageable property owned by the Board removed, and the Board's records corrected.
- (g) Service connections shall be installed and meters shall be set in front of the premises to be served unless the premises to be served is located on a corner lot with an adequate water main on the side street. In this case, permission may be granted to make the connection directly into the premises from the side street.
- (h) Service connections will be authorized and meters set for "landlocked" premises at the sole discretion of the Board. A "landlocked" premises is one which does not abut any public roadway, street or highway. The Board may require, prior to authoriza-

- tion of such service connection, that the owner furnish any legal documents, properly recorded in the Office of the Probate Judge of the county where the property is located, describing the location of the premises. The Board may, in its sole discretion, require a visual inspection of the premises prior to authorizing the service connection. The Board reserves the right to specify the location of the service connection and meter for a "landlocked" premises.
- (i) The Board will maintain at its expense the service connection at the main (owned by the Board) and the customer's service line (installed and owned by the customer) between the main and the Board's meter setting (except private fire service connections), provided the meter is located within the right-of-way in which the water main to which the service line is attached is located.
- (j) In the event a service line is inactive and unused, the Board specifically reserves the right to disconnect said service line at the Board's main in lieu of repairing leaks in said service line.
- (k) When, as determined by the Board's inspectors, an insufficient flow of water is received within a premises, and there is less than 18 gallons-per minute available through the meter, and the Board determines that this is due to the condition of the service line and not to increased demand in the system, the Board will, at its expense, replace the service line between the main and the meter, if the meter is located at the curb line or within the right-of-way in which the water main to which the service line is attached is located, provided the customer has replaced the service pipe beyond the meter or curb line as recommended by the Board. Replacement of

- service lines by the Board will be limited to those which supply single-family residences. Service connections which supply commercial enterprises, apartment complexes, or any premises other than a single-family residence will not be replaced by the Board.
- (l) Whenever, in the Board's discretion, installation of a meter in the usual manner or location would leave it unprotected from motor traffic or other damaging equipment, protection to the meter shall be furnished by and at the expense of the applicant or his authorized agent. The Board will notify the applicant or his authorized agent to provide such protection or to relocate the service line to another location where the protection can be provided. Protection devices must be approved by the Board. The Board may discontinue service to a premises in the event a protection device requested by the Board is not provided within thirty (30) days of notification.

SECTION 7. SERVICE LINES AND FIXTURES:

- (a) Service lines are owned by the customer and shall be installed by or at the expense of the customer from the water main in the street or roadway to the point of use.
- (b) Only one domestic service line shall be installed into a single premises. The service line shall be installed perpendicularly to the Board's main in the street or roadway on which the customer's premises abut, unless physical obstructions prohibit perpendicular installation. In the event obstructions prohibit the service to be installed perpendicularly to the Board's main, specific approval must be obtained from the Board for each installation.
- (c) All service lines one-inch (1") or smaller in diameter

- must be Type "K" copper pipe.
- (d) A maximum of four (4) service lines, each of which shall not exceed one-inch (1") in diameter, may be installed in a parallel manner in a single trench between the water main and the meter location with sufficient distance between the individual service lines to allow maintenance. Additional service lines at the same location shall be in separate trenches. Service lines larger than one-inch (1") in diameter shall be installed in a separate trench for each service line. All service lines must have not less than thirty inches (30") of cover, as measured from the top of the service line to the street or roadway grade, for the entire length of the service line.
- (e) When the customer installs a service pipe of a material other than copper between the meter location and the premises, a minimum of three feet (3') of Type "K" copper pipe of the same diameter as installed between the water main and meter, shall be installed on the outlet (premises side) of the meter loop (coppersetter) before the transition is made to any other type of material. The copper pipe on the outlet side of the meter must be installed by the customer or customer's agent prior to the Board making the service connection and setting the meter.
- (f) The customer shall not install, and the Board will not accept, "sweat" joints on copper service lines between the water main and a point three feet (3') beyond the discharge side (premises side) of the meter loop. Flare connections shall be the only connection acceptable to the Board. Joints between the main and the meter are permitted only upon

- the express approval of the Board.
- (g) On service pipe larger than two inches (2") in diameter, the customer shall furnish and install a metal cross(metal) tee with the specific prior approval of the Board, and a minimum of ten feet (10°) of metal pipe on the discharge side (premises side) of the meter before the Board will install the service connection and/or set the meter(s) and vault.
- (h) Water will not be supplied through any service line, fixtures or appurtenances which the Board may, in its sole discretion, consider detrimental to its water system or which might unnecessarily waste water.
- i) The Board reserves the right to require the customer to install at his expense any device necessary to protect the potable water in the Board's mains. Such devices may include backflow preventors, check valves or any other device approved by the Board and acceptable to the health authority and the plumbing authority having jurisdiction over the premises in question.
- (j) No person except an employee of the Board or a person specifically authorized by the Board is permitted to turn the water on or off at the meter. In the event it becomes necessary for the Board to turn off water due to plumbing problems on the customer's side of the meter, a fee shall be charged in accordance with the Supplement to Rules and Regulations.
- (k) The Board shall not be liable for any damages to the customer's service line, plumbing, fixtures or property alleged to be caused by high pressure, by low pressure, or by fluctuation of pressure. It is the responsibility of the customer to provide at his

- expense any regulating devices or appurtenances required to adjust the pressure carried in the main serving his premises to a pressure suitable for his requirements.
- (l) The Board shall have the right, but shall not be so obligated, to inspect any service line installation or plumbing system before water service is furnished. The Board reserves the right to refuse to initiate or to continue service to any service line, plumbing or other installation not installed, operated or maintained in accordance with these Rules and Regulations or other requirements of the Board.
- (m) Any failure to inspect, accept or reject a customer's service line installation or plumbing system shall not render the Board liable or responsible for any loss or damage which might have been avoided had such inspection, acceptance or rejection been made.
- (n) Each service pipe must, at the expense of the owner, be provided with a shut-off valve to be placed between the meter and the first outlet in the service pipe and be under the control of the customer, such shut-off valve to be used in the case of breakage of the service pipe or fixtures or for making repairs or to shut off water to prevent freezing.

SECTION 8. METERS:

- (a) The Board shall determine the type and size of meter to be installed. All meters (except meters or detector devices installed on private fire service lines by and at the expense of customers) shall be furnished, installed and removed only by the Board, and shall remain its property except as herein provided.
- (b) Meters will be maintained by the Board at its

expense insofar as ordinary wear is concerned, but damage due to hot water or any external causes arising out of or caused by the negligence, carelessness or willful misconduct of the customer shall be paid for by the customer.

- (c) After being installed, no meter shall be tampered with or removed without the consent of the Board.
- (d) Neither the customer, nor the customer's agent or plumber shall install a pressure regulator or any other device inside the meter box or meter vault.
- (e) Meters will be set in meter boxes or vaults placed as nearly as possible opposite the connection to the main, except where the Board has given special permission for meters to be installed in a location other than at the curb line or within the roadway right-of-way in which the water main to which the service line is attached is located.
- (f) No meter will be placed in service or kept in service if, upon testing, the flow does not fall within the tolerances specified by the American Water Works Association.
- (g) The Board will, at its own expense, make routine tests of meters when it considers such tests desirable.
- (h) The Board, at its expense, will make additional tests of its meters at the request of the customer, but not more than once every twenty four (24) months. More frequent tests will be made at the request of the customer only upon the payment of the charges set forth in the Supplement to Rules and Regulations. However, if any such test shows a meter not to be accurate within the limits referred to in Section 8(f) above, such payment will be refunded.
- (i) The customer shall promptly notify the Board of any defect in or damage to the meter or its connections.

- (j) Where water is furnished through a meter, the quantity recorded by it shall be taken to be the amount passing through the meter, except where the meter has been found to be registering inaccurately or has ceased to register. In such cases, the quantity may be determined by the average registration of the meter when in order, or by such other method to be determined by the Board to be fair and reasonable.
- (k) Each premises shall have a separate meter with the exception that duplex houses, apartment houses, office buildings or business blocks may, in the Board's sole discretion, be served through a single meter, in which case one party must assume resposibility for the payment of the bills for water service for all premises so supplied. (See Section 10 "Multiple Premises".)
- (1) Meters shall not be located in driveways or parking areas. When driveways or parking areas shall be established in the area where a meter or group of meters is located, such meter or meters shall be moved from the driveway or parking area at the expense of the property owner. The Board may refuse to render service through said meter or meters, after proper notice, until this rule has been complied with.

SECTION 9. TEMPORARY SERVICE:

(a) Customers requiring temporary service shall be required to pay all costs as determined by the Board for connection and disconnection incidental to supplying and removing service, in addition to the regular charge for water used. This rule applies to circuses, carnivals, fairs, shows, temporary con-

- struction and all other temporary requirements.
- (b) The Board may require such advance payment or deposit as it deems sufficient.
- Any person, firm or organization desiring temporary service from a public or municipal fire hydrant must first secure written permission from the fire chief of the municipality involved or from the chief of any legal fire district involved or from any individual, firm or organization which sponsors a fire hydrant under an agreement with the Board, and which is located outside of any municipality or fire district. Said written permission shall be presented to the Board and, if acceptable, approval for temporary service will be granted by the Board upon advance payment or written assurance of later payment for water to be drawn from the fire hydrant.
- (d) Authorization for the temporary service will be conditioned upon the applicant or his authorized agent providing for adequate protection for the temporary meter. Whatever protection is required by the Board will be installed by and at the expense of the applicant or his authorized agent. The applicant will be held liable for any damage to the meter, meter box or any other Board equipment.

SECTION 10. MULTIPLE PREMISES:

(a) In case two or more premises are supplied through one service pipe, one party must assume responsibility for the full payment of the water bill for all premises so supplied. Should said party fail to pay the charges for water when due, or should the owner or occupant of any one premises violate any regulations of the Board, the Board may discon-

- tinue service to all premises so supplied.
- (b) Shopping centers, office complexes, mobile home parks, motels, hotels, apartment complexes and other such developments located on a single premises will, if the Board approves, be supplied through one service line and the minimum charge will be that established by the Board for the meter in the service line.

SECTION 11. BILLING:

- a) Water bills may be rendered monthly, bimonthly or quarterly, at the option of the Board, in accordance with the Rate Schedule in effect at the time of billing. The Rate Schedule may be modified or amended at any time by the Board, with or without advance notice to the customer. The current Rate Schedule is available upon request.
- (b) Water bills are due and payable when rendered and shall be delinquent if not paid within ten (10) days of the due date on those bills rendered monthly. The Board may, without notice, at any time discontinue service to a customer whose payment is delinquent.
- (c) In the event the customer fails to pay the delinquent bill and the Board sends an employee to the customer's premises for the purpose of collecting the bill or disconnecting the service, a collection fee shall be added to and then becomes a part of the delinquent account. See the Supplement to Rules and Regulations for the amount of the collection fee.
- (d) Whenever service is discontinued for nonpayment, a reconnection fee shall be paid by the customer to the Board before service is restored by the Board in the normal course of business. If it becomes necessary to discontinue service at the main for non-

payment of a bill or infraction of the Rules and Regulations, the customer will be required to pay all costs incurred, plus an applicable charge for overhead expense, for discontinuing and restoring service. See the Supplement to Rules and Regulations for amount of reconnection fee.

- (e) The Board may, in its discretion, decline to render a periodic statement if the total debit or credit reflected thereon is less than One Dollar (\$1.00). In the event a statement is not rendered, the appropriate debit or credit for the billing period in question shall be added to the next regular statement to the customer.
- (f) All payments due the Board are payable only at the office of the Board or to its duly authorized collectors or collection agencies.
- (g) Bills and notices of the Board will be mailed to the customer's last address as shown on the records of the Board, and as recorded on the application of the customer for water service. Failure to receive any bill or notice shall not relieve the customer of any responsibility under these Rules and Regulations, and shall not act to extend the time of payment of any bill due.
- (h) For each bad check returned to the Board by the customer's bank for insufficient funds or because the bank account is no longer operative, a returned check charge, in the amount specified in the Supplement to Rules and Regulations, shall be added to the customer's next statement.

SECTION 12. GUARANTEE DEPOSITS:

(a) Any customer, when called upon by the Board, shall deposit such reasonable sums of money as

- may be required by the Board as a guarantee for payment of water service charges at his premises. The minimum amount of deposit, when one is required, is set forth in the Supplement to Rules and Regulations.
- (b) The Board reserves the right to discontinue water service to the premises of the customer and to apply the deposit described in Section 12(a) to payment of accrued service charges upon failure of the customer to pay the charges for services rendered. The deposit shall not be considered as a payment on account during the time the customer is receiving regular water service.
- (c) Upon discontinuance of use of water at any premises and settlement of all charges, any unused portion of such deposit amounting to One Dollar (\$1.00) or more shall be refunded by mail to the customer. Any deposit of less than One Dollar (\$1.00) will be refunded to the customer upon application at the office of the Board. When a customer moves from one premises to another, any charges, deposits or credits applicable to the old premises may be transferred, at the option of the Board, to the account at the customer's new premises, and the Board may discontinue service at the new premises for nonpayment of any indebtedness for water service that was incurred at the former premises.
- (d) No deposit shall be transferable or assignable by the customer unless sufficient evidence is presented showing ownership of the deposit, and the Board, in its sole discretion, approves such transfer or assignment.

SECTION 13. PRIVATE FIRE SERVICE CONNECTIONS:

- (a) Application for fire service connections to be attached to the Board's mains for the extinguishment of fires shall be made only by the owner of the premises to be served, or by his duly authorized agent.
- (b) Fire service connections will not be authorized or installed by the Board until the applicant has furnished to the Board approved detailed drawings of the premises, all appurtenances and the proposed fire service system which the connections will serve, along with the proper authorization to invoice the owner or his agent for all expenses incurred for the installation of the service connection. The applicant shall also furnish to the Board on request all information regarding the installation, alterations and operation of the fire service system.
- (c) The owner of the premises must sign a "Special Connection Agreement" with the Board prior to the installation of the fire service connection. The agreement shall govern the operation and billing of the fire service system. Service charges shall be as set forth in the Rate Schedule.
- (d) Activation of the fire service will not be authorized by the Board unless requested by the owner of the premises, or his authorized agent.
- (e) Not more than one fire service connection to the Board's mains shall be made to a single premises unless specifically authorized by the Board. If more than one fire service connection should be authorized, the Board reserves the right to specify the design of the connections and protective devices to be installed, at the customer's expense, on all pro-

- posed or existing services attached to the Board's mains.
- (f) No water shall be taken through such private fire service connections except for the extinguishment of fire or for testing purposes. A customer must notify the Board in advance of conducting tests.
- (g) The Board reserves the right to require the customer to install on proposed or existing private fire services, at the customer's expense, a detector device or devices of a design specifically approved by the Board to prevent backflow, or to monitor the leakage or unauthorized use of water through the private fire service connection. Detector devices will be required by the Board on all fire service systems in which the following conditions exist:
 - (1) Systems in which the overall footage of underground piping beginning at the property line of the premises exceed 200 feet in length.
 - (2) Systems in which one or more private fire hydrants are connected to the service, except for fire services, where authorized by the Board, that terminate directly into a private fire hydrant. The fire hydrant must be located on private property and shall be adjacent to or within six feet (6') of the right-of-way in which the water main to which the service pipe is attached is located. The service pipe shall not be extended beyond the point of connection to the private fire hydrant or any connections or fixtures attached thereto.
 - (3) Where hose connections are attached to a wet system and are not monitored by a flow alarm valve.

(4) Systems in which, in the Board's sole discretion, such detector devices are deemed necessary due to existing or potentially existing conditions within the premises.

The Board reserves the right to make routine tests, at its own expense, of meters owned by the customer, which are attached to detector devices and if the Board considers such test desirable. Backflow prevention devices shall be installed on fire service systems when the Board deems such devices necessary to protect the potable water in its mains as stated in Section 15(h).

- Whenever leakage or unauthorized use of water occurs in a private fire service, the customer will be notified by the Board to have the leakage repaired and stopped, or to discontinue the unauthorized use of water. Unauthorized use shall be discontinued immediately: the customer will be given a reasonable period of time, not to exceed thirty (30) days from the date of notification, to repair a leak. If unauthorized use continues or if leakage continues beyond the date specified to the customer, the street valve will be closed and service will be discontinued. After a leak has been repaired and written assurance has been furnished to the Board by the customer that the conditions of Section 13(f) will be complied with, service will be restored provided that service charges are current.
- (i) The owner shall install a valve on the fire service line in addition to the street valve at the service connection to the Board's main; said valve shall be located at or as close to the property line as practicable. The owner or his representative shall operate and maintain the fire service system from the

valve at the property line, and not by the street valve over which the Board has sole control of operation.

SECTION 14. UNAUTHORIZED USE AND CONNECTIONS:

- (a) No person shall turn on or turn off any of the Board's street valves, corporation cocks, curb cocks, or other street connections, or disconnect or remove any meter without permission of the Board.
- (b) No person shall make any connection to any main of the Board or to any pipes between the main and the meter without the express permission of the Board. If such an unauthorized connection is discovered, water service may be immediately discontinued at the option of the Board. Service may thereafter be restored at the option of the Board, provided that
 - (1) payment of all charges for water used (based on meter measurements or reasonable estimate) is made to the Board, and
 - (2) all materials previously installed are of the same type as those required by the Board for connections installed by the Board. If the previously installed service connection does not have the same type materials as those required by the Board, all cost of replacement with standard materials must be paid to the Board before service will be reinstated.

SECTION 15. CROSS CONNECTIONS AND SIPHONAGE:

- (a) A cross connection is defined as
 - (1) any physical connection whereby the Board's water supply is in any way connected with any other water system, whether public or private, or
 - (2) any arrangement whereby water introduced through a customer's service to a premises can be back-siphoned or reintroduced into the Board's mains.
- (b) No cross connection of any kind shall be permitted between the water supply from the Board's main and the water supply from any other source.
- (c) No two (2) or more customer service pipes used for domestic service, fire service or for any other purpose shall be physically connected together in any manner whatsoever, unless specifically approved by the Board, and then only with approved backflow prevention devices on each service pipe.
- (d) No connection shall be made, nor facilities installed, whereby it would be possible for water once delivered to a customer's premises to be reintroduced into the Board's system.
- (e) Steam boilers shall not take a supply of water directly from the customer's service pipe and depend upon hydrostatic pressure in the said service pipe to furnish the supply to the boiler under working pressure. Boiler feed pumps, injectors or any other such device shall not be connected directly to the customer's service pipe. They shall be supplied through a connection to an intervening tank which shall receive water from the custo-

- mer's service pipe so situated as to provide an air gap of not less than six inches (6") between the customer's service pipe and the overflow of the tank.
- (f) Fountains, swimming pools, aquariums and all similar facilities shall be so constructed that there shall be a six-inch (6") gap between the customer's service pipe which delivers water to them and the overflow of each such facility.
- facilities, clinics, chemical and testing laboratories, plating plants, chemical companies, packing houses and rendering plants, car washes, photograph processing plants, commercial laundries, sewage treatment plants, and any other facilities designated by the Board, including premises supplied with industrial or auxiliary water, shall have an acceptable backflow preventer installed in the customer's service pipe between the meter and the first water outlet on the premises.
- (h) An approved backflow prevention device shall be installed on each service to a customer's water system where, in the judgement of the Board, an existing or potential health hazard to the water system exists in accordance with Section 3-1205, Regulations Governing Public Water Supplies, Alabama State Board of Health (adopted May 17, 1978).

In order to protect the potable water in the Board's mains which will be delivered to the general public, the Board reserves the right to require any customer to install and maintain by and at his expense a backflow preventer device, or any other such device approved for that purpose by the health authority

- which has jurisdiction over the area in which the premises is located.
- (i) The Board shall deny or discontinue the water service to a customer if a required backflow prevention device is not installed or properly maintained when required by the Board. Water service shall not be restored to such premises until the deficiencies have been corrected or eliminated to the satisfaction of the Board in accordance with Section 3-1209, Regulations Governing Public Water Supplies, Alabama State Board of Health (adopted May 17, 1978).

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Backflow preventers, when required, will be installed on the customer's service pipe as close to the meter setting as possible. Reduced pressure backflow preventers shall be installed above ground, except as otherwise specifically authorized by the Board. Vaults shall be constructed to provide drain outlets to the outside of the vault at grade level. The backflow preventer shall be positioned in the vault so the relief or vent opening is twelve inches (12") above grade level outside the vault. The drain outlet in the vault shall be a minimum of four (4) times the area of the relief or vent opening on the backflow preventer, or at least four (4) such openings shall be provided, each having an area equal to the area of the relief or vent outlet. Sufficient clearance from the backflow preventer shall be provided on all sides to permit testing and maintenance without removal from the service pipe. All vaults shall have drain openings with positive drainage at ground level a minimum of twelve inches (12") below the relief or vent opening on the backflow preventer which will prevent

the relief or vent opening from being submerged. In the event the piping inside the vault is wrapped or insulated to prevent freezing, care must be exercised to keep the relief or vent opening from being blocked or obstructed in any manner. All backflow preventers which are designed for field testing after installation in the service pipe shall be equipped with gate valves on both the inlet and the outlet side of the backflow preventer, and the gate valve or valves shall be equipped with test cocks when required by the applicable standard under which the backflow preventer is approved.

SECTION 16. FIRE HYDRANTS:

Fire hydrants will be furnished and installed by the Board on the Board's mains under the following conditions:

- (a) Within public street or roadway rights-of-way inside a municipality at reasonable locations, upon receipt of a resolution adopted by the governing body in formal session, and approved by the Mayor or City Manager specifying the location of the fire hydrant and agreeing to pay an installation fee and fire hydrant service charge, as set forth in the Supplement to Rules and Regulations and in the Rate Schedule.
- (b) Within public street or roadway rights-of way outside all municipal limits, at reasonable locations, if the existing main is six inches (6") or larger in diameter with an adequate supply of water, and the customer executes a "Special Connection Agreement" contract with the Board on forms prescribed by the Board. In the event the main is smaller than six inches (6") in diameter or has inadequate supply of water, the customer shall pay

- all cost incurred in replacing, upgrading or extending the necessary main(s) including the cost of installing pumping stations, pressure reducing stations, storage tanks, etc., as necessary, and as determined by and at the sole discretion of the Board, which costs shall not be refundable.
- (c) In private streets, roadways or rights-of-way, at reasonable locations, where the water main is six inches (6") or larger in diameter with an adequate supply of water, and the customer excutes a "Special Connection Agreement" contract with the Board on forms prescribed by the Board, and the property owner grants permission and excutes a right-of-way agreement acceptable to the Board.
- (d) Scheduling construction and priority of installation of all fire hydrants shall be at the sole discretion of the Board.
- (e) Ownership of public fire hydrants installed by the Board shall remain vested in the Board. Hydrants will be maintained in good repair by and at the expense of the Board except that the expense of repairing damages resulting from unauthorized use, misuse or negligence shall be borne by the party causing the damage.
- (f) All public fire hydrants installed and/or owned by the Board shall be subject to an installation fee to be paid prior to installation, and an annual service charge to be billed to and paid by the municipality or customer on a monthly, quarterly or annual basis at the option of the Board. The fees shall be in accordance with the Rate Schedule and the Supplement to Rules and Regulations in effect at the time of installation, or which may be adopted at any subsequent time by the Board with or without advance notice to the customer.

SECTION 17. EXTENSION OF MAINS:

The Board will make main extensions of reasonable length from existing mains where adequate pressure and quantity of water are available as follows:

- (a) Along existing dedicated public streets, roadways or highways where finished grades have been established.
- (b) Along streets or roadways proposed for dedication to the use of the general public where grades have been established and constructed, but no customer service is to be attached thereto until after the dedication of the proposed streets or roadways have been approved and accepted by the municipality or political subdivision having jurisdiction.
- At the discretion of the Board, along private streets, roadways or rights-of-ways where grades have been established and constructed subject to and conditioned upon the prior execution of a specific right-of-way document giving the Board specific rights of access for construction, operation, maintenance etc. However, no main shall be extended along private streets, roadways or rights-of-way to serve property which directly abuts a public roadway used by the general public, or to serve a single residence orpremises. Mains will be extended along such private roadways only where there are two or more residences or premises served by the same private roadway, with the roadway being maintained by the property owners as their only means of ingress and egress.
- (d) Extensions of mains may be made pursuant to one of the following applicable agreements:

TYPE I AGREEMENT

- (I-1) Depositor shall deposit with the Board an amount equal to the estimated linear feet of pipe required between the end of the existing main and the center of the premises to be served, multiplied by a unit cost per foot of main, as such unit cost may be fixed from time to time by the Board. (See Section 17(d)(I-7).
- (I-2) Depositor shall also deposit an amount covering estimated additional costs due to rock excavation, extra depth, paving replacement, using sand or other incompressible backfill, boring or tunneling with or without encasement pipe, or any other additional expenses which are likely to be incurred by the Board during construction or which are required by the regulations or ordinances of the municipality or county having jurisdiction. This estimated cost shall be adjusted to actual cost when the project is completed.
- (I-3) Where the Board determines that a pressure reducing station, booster pumping station or other specific equipment or installation is necessary, the deposit shall include these items on the basis of estimated costs which shall be adjusted to actual cost when it is ascertained.
- (1-4) Upon completion of the extension or as soon thereafter as practicable, the Board will furnish the depositor a statement of actual costs incurred in the installation of said extension. Said statement of costs

- shall include the actual costs of all applicable items in Section 17(d)(I-2) and (I-3) above in the installation of the extension. plus the unit cost, Section 17(d)(I-7) multiplied by the length in feet of the extension actually installed, as specified in Section 17(d)(I-1), the combined total of which shall be the depositor's actual cost. In the event depositor's actual cost is less than the amount deposited with the Board, the Board will refund to the depositor the difference between the deposit and depositor's actual cost. In the event depositor's actual cost exceeds the amount previously deposited with the Board, the depositor will be required forthwith to make an addition deposit with the Board in the amount of the difference. The rights given the Board hereunder are not exclusive, and the Board shall have the right to pursue any and all legal remedies to collect any amount due the Board under the terms of this provision.
- (I-5) Contracts for Extension of Mains must be made on forms prescribed by the Board.
- (I-6) The Board shall determine the size and type of pipe to be installed and the point or points of connections to existing mains for all main extensions.
- (I-7) The unit cost per foot of main is set forth in the Supplement to Rules and Regulations. The Board reserves the right to change said unit cost at any time without notice.
- (I-8) Extensions made under this regulation

will remain the property of the Board, and the Board may further extend its distribution mains beyond the terminus of any water main extension made under this regulation.

(I-9) No interest will be paid by the Board on the deposit.

TYPE II AGREEMENT

Where extension of the Board's water mains is necessary to furnish service to a single residential premises, the owner of the premises may have the water main extended under the following conditions:

- (II-1) The water main will be extended along public roadways between the end of the existing main and the center of the premises to be served. This main extension agreement shall be used only if the premises to be served is separated from the existing water main by one or more existing premises with existing connections to the Board's mains. In the event the proposed water main will pass in front of or adjacent to vacant lots or property without existing water available, the regular extension of mains agreement described under Section 17, Type I Agreement, shall be used.
- (II-2) The owner of the single premises to be served will deposit with the Board an amount determined by multiplying the unit cost by the estimated footage of water main to be installed. The unit cost is set forth in the Supplement to Rules and Regulations of the Board. The Board reserves

the right to change said unit cost at any time without notice. The diameter of the proposed water main shall be determined by the Board without any change in cost to the owner.

(II-3) As soon as practicable after the water main has been installed and placed in service, the owner's cost shall be adjusted to actual cost by multiplying the actual footage of pipe installed by the unit cost. In the event the actual cost is less than the amount deposited with the Board, the Board will return to the owner the difference between the deposit and the actual cost. In the event the actual cost exceeds the amount previously deposited with the Board, the owner will make an additional deposit in the amount of the difference with the Board.

The rights given the Board hereunder are not exclusive, and the Board shall have the right to pursue any and all legal remedies to collect any amount due the Board under the terms of this provision.

SECTION 18. EFFECTIVE DATE:

These Rules and Regulations replace and supersede all previous editions of "Rules and Regulations Governing Service to the Customers of the Water Works Board of the City of Birmingham." These Rules and Regulations shall become effective May 1, 1984.

Adopted this 27th Day of February, 1984, by the Directors of the Water Works Board of the City of Birmingham.

SUPPLEMENT TO

RULES AND

REGULATIONS

OF

THE WATER WORKS AND SEWER BOARD

OF THE CITY OF BIRMINGHAM

BIRMINGHAM, ALABAMA

GOVERNING SERVICE

TO

CUSTOMERS

APPROVED BY THE BOARD OF DIRECTORS APRIL 10, 1989
TO BECOME EFFECTIVE MAY 1, 1989

MUNICIPAL AND PUBLIC FIRE HYDRANTS SECTION AMENDED MAY 23, 1989

MUNICIPAL AND PUBLIC FIRE HYDRANTS SECTION AMENDED DECEMBER 17, 1990

MAIN FEES SECTION AMENDED AUGUST 28, 1989

EXTENSION OF MAINS SECTION AMENDED FEBRUARY 11, 1991

CONNECTION FEE AND MAIN FEE

See Section 5 - "Application for Service Connection" Paragraph (d) in "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham" for conditions which will determine "Total Fee" (Connection fee plus main fee -- where required) to be charged for each service connection subject to amounts set forth below:

- (A) The "Connection Fee" for service connection 3/4" and 1" in diameter shall be \$145.00.
- (B) The "Connection Fee" for service connections 2" in diameter shall be \$600.00.
- (C) The "Connection Fee" for service connections larger than 2" in diameter shall be all expenses incurred for labor and materials plus overhead.
- (D) The "Main Fee" for service connections, regardless of diameter, shall be calculated at the following rates:
 - 1) Where mains are installed under an Agreement entered into with Jefferson County, the rate shall be \$2.65 per linear foot of the property to be serviced which abuts the roadway in which the water main is located. The maximum amount of "Main Fee" shall be \$250.00 for each connection.
 - *2) Where mains are installed at the total expense of the Board or with the limited assistance of the government of the United States of America, the rate shall be \$5.96 per linear foot of the property to be served which abuts the roadway in which the water main is located. The maximum amount of "Main Fee" shall

^{4/10/89}

^{*} This section amended 5/30/89

be \$5,960.00 for each single family residential dwelling. Any other single family residential dwellings desiring water service at a later date on the same piece of property will be required to pay a "Main Fee" as outlined above until all property to be served which abuts the roadway in which the water main is located has been paid for at the rate of \$5.96 per foot. There shall be no maximum amount of the "Main Fee" on any connections other than single family residential dwellings.

(E) The "Main Fee" for "Landlocked" premises shall be \$596.00 for each service connection.

METER TESTING CHARGES

See Section 8 - "Meters," Paragraph (h) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham" for testing procedures and conditions.

Meter Testing charges shall be the actual cost of making such test.

COLLECTION FEE

See Section 11 - "Billing," Paragraph (c) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham" for conditions which determine the application of this fee.

The "Collection Fee" shall be \$4.00 for each trip to the customer's premises.

RECONNECTION FEE

See Section 11 - "Billing," Paragraph (d) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham" for conditions which determine the fee to be collected.

Minimum reconnection fee shall be \$12.00 for each discontinuation of service performed during working hours. The charge will be \$22.00 if 4/10/89 performed after normal working hours.

Maximum reconnection fee shall be all costs incurred plus overhead charges (including but not limited to labor, transportation, paving, backfill material) to discontinue service at the main and to restore service at the main.

GUARANTEE DEPOSITS

See Section 12 - "Guarantee Deposits," Paragraph (a) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham" for conditions which require deposits for guarantee of payment of water service charges.

Minimum deposit shall be \$45.00 for those customers who are on the Jefferson County Sewer Service System and \$30.00 for those who are not on the Sewer System.

Maximum deposit shall be at the sole discretion of the Board and shall be based on the service records of the new account, type of premises to be served, diameter of water meter on service connection and/or the Board's estimate of usage.

MUNICIPAL AND PUBLIC FIRE HYDRANTS

See Section 16 - "Fire Hydrants," Paragraph (f) in the "Rules and Regulations of the Water Works and Sewer Board of the City of Birmingham" for conditions which require an installation fee.

- The annual rental fee per fire hydrant per year will be \$99.00 effective October 1, 1989.
- 2. The annual rental fee per fire hydrant per year will tentatively be \$105.00 effective October 1, 1991.
 - 3. The installation fee for short side fire hydrants is \$750.00 effective June 1, 1989.
 - 4. The fee charged for the installation of a long side fire hydrant will be the difference between the actual cost of a long side installation and the average cost of a short side installation (\$1,600.00), plus the fee charged in No. 2 above.

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- 4. The cost of extending a water main for the installation of a fire hydrant where there is no main available, will be the cost set for Extension of Mains under the Board's current Rules and Regulations, Type I agreement.
- 5. The cost of extending a main for the installation of a fire hydrant where mains are available for domestic water, but insufficient for fire protection, will be 100% of the cost of installation (effective June 1, 1989).
- 6. Reinforcing distribution system to improve fire flows for existing fire hydrants will be at Board expense (effective June 1, 1989).

EXTENSION OF MAINS

See Section 17 - "Extension of Mains," Type I Agreement, Paragraph (d) (I-7), and Type II Agreement, Paragraph (d) (II-2), of the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham." The Board reserves the right to change said unit cost at any time without notice.

Type I Extension of Mains Agreement, Paragraph (d) (I-7), is presently set at \$12.73 per foot of main.

Type II Extension of Mains Agreement, Paragraph (d) (II-2) and is presently set at \$7.26 per foot of main.

A non-refundable Extension of Main Preparation Fee of \$200.00 will be charged at the initiation of any field investigation regardless of whether an Extension of Main Agreement is executed. The Preparation Fee will be applied toward any advance deposit requirements related to the subsequent Extension of Main Agreement, executed within ninety days of the date of receipt of the Extension of Main Preparation Fee.

2/11/91

BAD ORDER PLUMBING

See Section 7 - "Service Lines and Fixtures," Paragraph (j) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham." When a customer requests the water to be turned off because of plumbing problems on his side of the meter, the fee shall be \$12.00 during normal working hours (8:00 A.M. - 4:30 P.M. Monday through Friday,) and \$22.00 after normal working hours.

RETURN CHECK CHARGE

See Section 11 - "Billing," Paragraph (h) in the "Rules and Regulations of The Water Works and Sewer Board of the City of Birmingham." For each bad check returned to the Board by the bank for reason of "Insufficient Funds" or "Account Closed," a return check charge in the amount of \$10.00 shall be added and then becomes a part of the customer's account.

RATE SCHEDULES

Rate schedules are available, upon request, at the business office of the Board at 3600 First Avenue, North, Birmingham, Alabama, for the following:

Domestic Water Rates
Fire Service Connections
Municipal and Public Fire Hydrants

4/10/89 (ngl)

Filed for record on June 4, 1991, at 9:00 A.M. and recorded in Real Volume 4037, Page 122, in the Probate Office of Jefferson County, Alabama

Also see related map recorded in Map Book 168, Page 38, in said Probate Office

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