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STATE OF ALABAMA

COUNTY OF MOBILE

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Don Davis, Judge of Probate

DECLARATION OF RESTRICTIVE COVENANTS

FOR

NEWCASTLE ESTATES UNIT ONE

KNOW ALL MEN BY THESE PRESENTS, That this Declaration of Restrictive Covenants is made, adopted, published and declared this 9th day of December 2005, by Newcastle Investments, LLC for Newcastle Estates, a subdivision.

1. **Property Covered:** The real property which is and shall be held, conveyed, transferred, sold, used and occupied subject to the liens, charges, rights, limitations, conditions, covenants, reservations, easements and restrictions contained herein as described as follows:

NEWCASTLE ESTATES, according to plat thereof recorded in Map Book 109, Page 123, of the records in the Office of the Judge of Probate of Mobile County, Alabama, (Hereinafter referred to as "Property").

2. **Purpose of Declaration:** The purpose of this Declaration is to insure the best use and most desirable development and improvements of the Property for residential purposes only.

These covenants, conditions, reservations, restrictions, and easements are and each thereof is (except as otherwise limited hereafter) imposed upon such lots, all of which are to be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof.

3. **Design Review Committee, hereinafter sometimes referred to as the "DRC":** The Board of Directors of the Newcastle Estates Property Owners Association, Inc. (hereinafter referred to as "Association") may appoint other landowners from time to time until the DRC is composed of three members. No member of the DRC shall in any way be liable to any lot owner for any act, or any action by the DRC or any member thereof, in connection with these restrictions and covenants.

By unanimous votes, the Board of Directors of the Association shall, by written instrument maintained in the records of the DRC, have the power to remove or replace any member, or name a new member in the place of any member who has resigned or died. The decision of a majority of the member of the DRC shall be the decision of the DRC. In the event of death, resignation, or removal of one or

more members of the DRC, the remaining members shall have full authority to act as the DRC.

The powers and duties of said DRC shall continue until terminated by appropriate actions by the then record owners of ninety (90%) of the lots in this subdivision, evidence of the termination to be in writing and recorded in the Office of the Judge of Probate, Mobile County, Alabama. After such termination, the approval described in this covenant shall not be required.

- a. **Design Review Committee Powers and Authorities:** The DRC is hereby vested with the power of enforcing the restrictive covenants as herein set forth according to the provisions of these restrictive covenants.
 - b. **Entry and Inspection:** During reasonable hours and during construction of any improvements on any lot and in appropriate circumstances, any member of the DRC, or any authorized representative, shall have the right to enter upon and inspect, with reasonable notice to the lot owner, the lot and the exterior of the improvements thereon for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with, and such entry shall not be deemed trespass.
 - c. **Enforcement:** If any person or persons shall violate or attempt to violate any of the restrictions contained herein, it shall be lawful for any member of the DRC or any party owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restriction, either to prevent him or them from so doing or to recover damages for such violation.
4. **Architectural Control Committee, hereinafter sometimes referred to as the "ACC":** The Board of Directors of the Association may appoint other landowners from time to time until the ACC is composed of three members. No member of the ACC shall in any way be liable to any lot owner for any act, or any action by the ACC or any member thereof, in connection with these restrictions and covenants.

By unanimous vote, the Board of Directors of the Association shall, by written instrument maintained in the records of the ACC, have the power to remove or replace any member, or name a new member in the place of any member who has resigned or died. The decision of a majority of the members of the ACC shall be the decision of the ACC. In the event of death, resignation, or removal of one or more members of the ACC, the remaining members shall have full authority to act as the ACC.

The powers and duties of said ACC shall continue until terminated by appropriate action by the then record owners of ninety (90%) percent of the lots in this subdivision, evidence of the termination to be in writing and recorded in the

Office of the Judge of Probate, Mobile County, Alabama. After such termination, the approval described in this covenant shall not be required.

a. **Architectural Control Committee Powers and Authorities:** With respect to the proposed construction of any building, fence, wall private road, driveway, installed swimming pool, or other structure which shall be, at any time, erected, altered, remodeled, reconstructed, added to, placed or permitted to remain on any Lot, such construction may not be started until the following provisions are satisfied.

(i) No construction of any improvement shall be commenced on, in or within the Property until the primary contract to perform such construction shall have been approved in writing and signed off by three (3) members of the ACC, it being the intent thereof to assure quality construction by reputable and/or experienced contractors as determined by the ACC in its sole discretion. In the event that the ACC fails to approve or disapprove a written request for the approval of a primary contractor to perform such construction within sixty (60) days after written request is submitted to it, such approval will not be required and the provisions of this paragraph will be deemed to have been fully complied with.

(ii) Two (2) complete sets of final building or construction plans, specifications, and plot plans showing the location of each building, fence, wall, private road, driveway (in this case also showing the course, width of same and curb cut), pool, or other structure are submitted to and approved in writing in all respects by the ACC. Said plans shall be prepared by a qualified architect, engineer or draftsman, and such person shall be qualified to draw home plans. Plans or exhibits shall show, without limitation: a schedule of exterior material and colors, orientation, front elevation and finished ground elevation of the structure, and the habitable area square footage as defined in Paragraph 7 hereof. Approval shall be limited to outward appearance only and shall not include any responsibility or authority to review for structural soundness, interior design, compliance with building or zoning codes or standard, or any other similar or dissimilar factors.

All proposed building or construction plans, specifications, plot plans or related data drawings or requests for approval shall be submitted to the ACC in care of its agent, unless and until the ACC shall designate a different agent or depository.

(iii) ACC approval shall be required for all exterior materials and colors, including doors and windows, ceiling height, elevations,

placement of heating and air conditioning equipment, placement of power boxes, location of buildings, outbuildings and driveways, and direction the house faces the street and surrounding homes.

- (iv) Plans shall be submitted to the ACC prior to construction and one (1) copy shall become the property of the ACC without cost. Said ACC shall have indicated its approval by causing one (1) copy of the said building or construction plans, specifications and plot plan to be endorsed to such effect and signed by the Chairman of said ACC, which approved set shall be retained by the builder or homeowner.

The quality and attractiveness of every improvement must meet the standards of the ACC. The ACC is hereby granted broad discretion in judging the compatibility of proposed improvements. The ACC shall have the right to accept modify, or refuse to approve any plans or specifications or landscape plans which are not reasonably suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and landscape plans, and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effects of the building or other structures as planned, on the outlook from the adjacent or neighboring property, and Buyer, his Purchaser, successor or assigns, shall abide by the decision of the ACC on all plans whether submitted by Buyer, its Purchaser, successor or assigns, or any other person or entity.

With respect to all matters that are, by the terms of this instrument, to be decided by the ACC, the decision of the ACC shall be final and binding on all parties. No changes or deviations in or from such plans, specifications or plan, as approved, shall be made without the prior written consent of the ACC.

In the event the said ACC fails to approve or disapprove such plans, specifications and plat plan within sixty (60) days after same have been submitted to it, such approval will not be required, but such Lot shall be and remain in all other respects, subject to these covenants. If such plans and specifications are disapproved, written notice of such disapproval shall be given to the submitting Lot owner in person or by U.S. Mail, addressed to the Lot owner at the address furnished by him with the plans and

specifications. Such notice will set forth the elements disapproved and the reasons therefore but need not contain any suggestions as to corrective measures to be taken.

Upon submission of a written request for same, the ACC may, from time to time, in its sole discretion, permit owners to construct, erect or install improvements that are in variance from the covenants, restrictions or architectural standards that are provided in the Amended Declaration or the applicable restrictive covenants. In any case, however, such variances must in the ACC's sole discretion, blend effectively with the general architectural style and design of the subdivision and must not detrimentally affect the integrity of the Property, nor harmony with the natural surroundings. Written requests for variances shall be deemed to be disapproved if the ACC has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the ACC shall be liable to any owner for any claims, causes of action or damages arising out of the grant of any variance to an owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any owner shall not constitute a waiver of the ACC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other owner.

5. **Architectural Theme:** All homes constructed shall reflect an Old World or European Theme or other Architectural style which would lend in character and theme in appearance with the overall development and will create character and quality. Appropriate exterior detailing, showing proper proportions shall be required, giving each home a look of authenticity.
6. **Permitted Uses and Structures:** All Lots in the subdivision and every one thereof are hereby declared to be residential Lots and no Lots shall be used except for single-family purposes, and no duplex, apartment house or condominium may be erected thereon. No Lot may be used for ingress and/or egress for any property not in Newcastle Estates Subdivision. All buildings and structures erected on any Lot shall be of new construction, built on site, and no building or structure shall be moved from any other location onto any Lot. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than a single-family dwelling not to exceed two and one-half (2 ½) stories in heights (except that an attic or basement floor under the ground surface shall not be considered a story for this purpose) and a garage, a servants' or guests' quarters, and other appropriate structures incidental to residential use. All dwellings must contain a garage which shall not have a flat roof; said garage shall be for not more than three (3) automobiles and shall be so located that the entrance does not face any

street, except in the case of corner Lots, and/or Lots 13, 20, 22, 27, 28, and 33, then only with the written approval of the Architectural Control Committee.

7. **Type and Size of Building:**

- (i) **Minimum Dwelling Area:** The enclosed heating and cooled livable area of the main building or structure, exclusive of basements, open or screened porches and garage, shall contain: A) not less than 3,000 square feet in the case of a one-story building or structure; or B) not less than 3,250 square feet in the case of a one and one-half story building or structure; or C) not less than 3,500 square feet in case of a two story building or structure. Other combinations of stories shall be approved by the ACC, but in no event shall the total square feet of any other combinations be less than 3,500 square feet.

For the propose of the Paragraph 7, and unfinished or finished basement floor or other area beneath the ground surface and/or an attic shall not be included in computing the designated minimum square footage.

- (ii) **Enclosed Livable Area:** The “enclosed livable area” is defined as that area of the building that is completely enclosed and protected from the weather and heated and cooled. Areas not heated and cooled or enclosed by screens of any form, or any combination thereof, shall not be computed as a portion of the enclosed livable area. The square footage area of the enclosed livable area shall be measured between the outside surfaces of the enclosing surfaces of the enclosing walls.
- (iii) **Covered Porches:** None of the square footage of actual usable floor area of any screened and/or open porch, which is covered by the permanent roof of the main structure, shall be included in computing the enclosed livable area.
- (iv) **Areas not Considered:** Neither any carport, garage, deck, patio, storage area below the main floor level not unfinished or finished basement floor nor outbuilding, shall be considered in computing the required enclosed livable area.

- 8. **Building Location:** No building on any Lot shall be located nearer than the minimum set back lines as noted on the recorded plat, nor more than twenty (20)

feet greater than the minimum setback line, for the herein described Property without the written approval of the ACC. No building shall be located nearer than eight (8) feet to an interior Lot line; additionally, as to a building on any interior Lot, such building shall be located so that the sum of the distance from the building to the interior Lot line on one side plus the distance from the building to the interior Lot line on the other side shall be a minimum of twenty (20) feet. No dwelling shall be located on any Lot nearer than thirty (30) feet to the rear Lot line.

9. The Following Are Allowed or Required:

- a. **Windows:** No mill finish aluminum windows shall be allowed.
- b. **Ceiling Height:** Minimum of nine (9) feet required on all floors; ten (10) and twelve (12) feet encouraged.
- c. **Foundation:** Concrete or concrete block shall not be exposed as a result of a slab or prior foundation. They must be faced or covered to Grade or below Grade with Brick, Stucco, or other exterior material acceptable to the ACC. All pier type foundations must be totally enclosed so as no pier is visible from any angle.
- d. **Elevation:** First floor elevation at the front of the house must be a minimum of 24" off rough grade unless otherwise approved by the ACC. No pads for monolithic slabs allowed.
- e. **Doors:** Storm doors are not allowed on the front of the house.
- f. **Chimneys:** Externally exposed chimneys shall either be constructed of or faced with brick or other approved materials and properly capped as approved by the ACC.
- g. **Sidewalk:** All sidewalks must be broom finished concrete. Any walkways from front door or otherwise that extend to the sidewalk must extend to the street curb and must be broom finished concrete from the sidewalk to the street curb. See attached "Driveway and Sidewalk Detail" Exhibit included herein.
- h. **Driveways:** All driveways shall be surfaced with concrete, brick, paving stone, or other similar hard surfaced material. No asphalt driveway will be permitted. All driveways must be a minimum ten (10) feet wide and have a minimum width at the street entrance of sixteen (16) feet. All driveways must be standard finished concrete from the sidewalk intersection to the street. See attached "Driveway and Sidewalk Detail" Exhibit included herein.

- i. **Roofs:** Flat roofs are not allowed except as approved by the ACC, Roof must blend with and reflect the same quality as the main structure. The ACC shall have final approval of roof materials and colors. Minimum roof pitch is 9 ½ (9 foot vertical rise for every 12 horizontal feet) unless specifically approved by the ACC.

No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

- j. **Mailboxes:** Every Lot owner shall use a standardized mailbox to be constructed at the Lot owner's expense. ACC to provide Lot owner with approved cast iron design for said mailbox, which shall be exclusively used by Lot owner.

- 10. **Fences:** Fences or hedges shall not be placed nearer to the street than ten (10) feet back from the front of the dwelling. In the case of a corner Lot, no fencing can be located nearer to a side street than the building set back line as shown on the recorded plat. Type and location of fencing or walls must be approved by the ACC prior to placement upon any portion of any Lot and must be in conformity with the main structure and the subdivision. Chain link fencing will not be allowed. Each lot owner shall be responsible for maintaining all privacy fences located on said Lot owner's property. Lots 19 and 20 must receive special approval for fencing from the ACC and DRC.

- 11. **Concealment of Equipment:** No air conditioning or heating unit, blower, tower, condenser, water well, garbage can, wood pile, storage pile or other equipment or apparatus shall be erected, placed, constructed, operated or permitted to remain on any Lot unless concealed from view from any adjacent Lot or street by a hedge planting or other enclosure in conformity with the general architecture or the main structure and approved by the ACC and cannot be located nearer than twelve (12) feet from the front of the dwelling.

Garbage containers shall be kept in a clean and sanitary condition. In no event shall any clothesline be erected or permitted on any Lot.

All outside radio and TV antennas shall be installed in such a way as not to be offensive from any street. Antennas shall be placed on the backside of the chimney where possible; otherwise they shall be placed on the backside of the roof. Any satellite dish must not be any larger than twenty (20) inches in diameter and concealed such that the satellite dish will not be visible from any street, and said satellite dish shall not be located in a front yard.

- 12. **Outdoor Lighting:** No mercury vapor lights or other outside lights shall be permitted on any Lot without the prior written approval of the ACC. ACC

approval of outside lighting can later be withdrawn if it creates a nuisance to neighbors.

13. **Swimming Pools:** No swimming pool shall be constructed, placed, altered or maintained upon any Lot without the prior written approval of the ACC of the type, design and locations thereof. Any such swimming pool must also be constructed, equipped and maintained in accordance with the regulations, standards and recommendations of the appropriate city, county and state authorities. Swimming pools shall be fenced and the location thereof approved by the ACC. Swimming pools shall be constructed and located in a manner that does not allow the overflow to drain onto or across adjacent property or ponds. No above ground pools are allowed.
14. **Storage Sheds:** No storage sheds, metal buildings, carports, or detached structures shall be permitted upon any Lot except with the prior written approval of the ACC. Exterior design of said structures must be in harmony with the main structure and the subdivision. Said structures must be located in the rear portion of the yard. Said location to be approved by the ACC.
15. **Construction of Pond Lots:** All waterfront properties shall maintain sufficient erosion fencing during construction periods as to prevent erosion and/or mud drainage into ponds.
16. **Construction Period:** Construction equipment access to the Lot shall be limited to the permanent driveway location. Construction on any Lot shall be completed within one year from date of the actual commencement of construction. In the event the construction period extends beyond one year (365 calendar days), the Lot owner will be fined \$100.00 per day until construction is complete. The fine will be paid in advance at the beginning of each month beyond the one year; with a partial refund in the month construction is completed. The Lot owner can, in writing, petition the Newcastle Estates Homeowners Association's Board of Directors to extend the construction period a maximum of two (2) calendar months and waive the fine for that period. A maximum of three (3) such petition can be made by a Lot owner, thereby extending the construction period to a maximum of eighteen months (18). The granting of such extension or extensions and the waiver of any fine or fines are solely at the discretion of the Newcastle Estates Homeowners Association's Board of Directors. Each builder is required to meet all Alabama Department of Environmental Management rules and regulations and to obtain all necessary permits and to provide to the ACC copies of all permits obtained.
17. **Landscaping:** The ACC shall have the right to require and approve appropriate landscaping for all areas between the front of any residence and the street. Builders must submit a landscaping plan to the ACC for approval along with the building plans. Planting or fences shall not define side Lot boundaries in front of

a residence. Lots 19 and 20 must receive special approval for landscaping from the ACC and DRC.

18. **Storage of Vehicles and Temporary Dwellings:** No trailer, mobile home, barn tent, garage or any other outbuildings shall not at any time be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence. No trailers, mobile homes, habitable motor vehicles, campers and/or trailers or boats of any nature shall be kept or stored on any part of a Lot except within a fully enclosed garage or behind fencing or shrubbery not visible from any street or lot, including Johnson and McFarland Roads, in a manner approved by the ACC. No tractor, motor vehicle, habitable motor vehicles or boat shall be parked, stored or allowed to stand upon any street in the Property or in the front yard of any residence.
19. **Signs:** No sign or signboard of any kind, including, but not limited to, commercial "For Sale", rent, or similar signs shall be displayed on any Lot except one (1) professional sign not more than four (4) square feet in size, except during construction period, one (1) additional sign may be erected by the builder and a security service sign shall also be allowed when applicable. No political sign or signboard of any kind shall be displayed to the public view on any Lot.
20. **Permitted Animals:** No animals, livestock or poultry of any kind shall be raised, bred, harbored or kept on any Lot except that the owner may keep three (3) domesticated household pets. No such pets shall be kept for commercial purpose, and any such pets may be kept only so long as they or any of them do not become an annoyance or nuisance to the neighborhood. All pets shall be kept under the close supervision of their owners, kept behind fence when not on a leash, and in compliance with all applicable laws, rules, regulations and ordinances, including, but limited to, health, safety and leash laws. All pet pens or enclosures shall be concealed from view from the street and any adjoining lots by approved lot fencing material.
21. **Offensive Activities, etc.:** No trade or business activity of any kind, nor noxious, offensive or dangerous activity of any kind whatsoever shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, nuisance, health hazard or safety hazard to the neighborhood. No open burning shall be allowed. No firearms or fireworks may be discharged and /or ignited. The speed limit within the Newcastle Estates is a maximum of twenty (20) miles per hour.
22. **Care of Lots:** All Lots shall be maintained in a neat, attractive, and presentable condition at all times, even when structures are under construction. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any part of the property, and no rubbish, debris, or unsightly objects shall be allowed to be placed or permitted to accumulate anywhere thereon. No household

garbage, lot debris, nor recycled material may be placed on the curb more than twenty-four (24) hours before scheduled pickup.

23. **Property Owners Association:** The Association holds title to the Common Areas, the roads, and entrance and certain easements. Among the purposes of such organization shall be the establishment of rules and policies with respect to the use and maintenance of all Common Areas.

The Association's responsibilities shall include maintenance and repair of all roadways, and landscaping in front of fencing and/or wall along Johnson and McFarland Roads, maintenance of decorative lights, improvements and landscaping located at the entrance, and maintaining all Common Areas as shown on the recorded plat and, to pay all costs (including utility charges) incurred in the maintenance and landscaping of said Common Areas. All Lot owners of the Newcastle Estates shall be members of the Association. Each owner of any Lot, and its heirs, successors, transferees and assign, by acceptance of a deed to such Lot, whether or not it shall be expressed in such deed, is deemed to covenant and agree to abide by and be governed by the Articles of Incorporation of the Association and its By-Laws and to pay the Association the following:

- a. Annual General Assessments as herein described: and
- b. Special Assessments for capital improvements, repairs or other expenses which exceed the Annual General Assessment as described; and, all such assessments, together with interest thereon and the costs of collection thereof, including a reasonable attorney's fee as hereinafter provided, shall be the personal obligation of such Lot owner and shall be a charge and a lien on each Lot and improvements against which each such assessments is made.

Beginning November 2005, the general assessment shall be \$500.00 per annum, payable annually, and due January 1 of each year. Each Lot shall represent one vote in all Association matters. Any lot sold during the year will pay a prorated amount for year one and the total due for the subsequent year at closing.

The activities and affairs of the Association shall be managed by the Board of Directors, provided, however, that the Board shall not exercise any power or authority conferred herein or by the Act or Articles of Incorporation upon the Members.

The Board of Directors may not act on behalf of the Association to amend this Declaration or to elect directors or to determine the qualifications, powers and duties, or terms of office of the members of the Board of Directors, but, except as provided below, the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

The initial members of the Board of Directors named in the Articles of

Incorporation shall hold office until the first annual meeting of the Members. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the Bylaws; provided, however, that the Developer may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after all of the Lots in the Subdivision (including all planned additional phases of the Subdivision) have been conveyed to Persons other than Developer, or (ii) five (5) years after the first conveyance of a Lot to a Person other than Developer; provided that the Developer may, at its option, voluntarily terminate its control of the Association at an earlier date.

Until the termination of the period of Developer control of the Association, the members of the Board of Directors appointed by the Developer may, but need not be, Owners.

Upon the termination of the period of Developer control of the Association, the Owners shall elect a Board of Directors of a least three members, all of who shall be Owners.

The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

Each year the Board of Directors of the Association shall estimate the cost of the maintenance of the Common Areas and such other expenses as it deems necessary for its operations. Such estimate shall be deemed the Annual General Assessment. The Annual General Assessment levied by the Association shall be used exclusively for the repair and maintenance of roadways and the maintenance, repair, replacement, beautification, landscaping, property taxes and costs of operations of the Common Areas, other property owned by the Association, insurance (as determined by the Board of Directors for the Association), and, if any: irrigation systems, property signage and lighting (not maintained by public utility companies), and such other expenses related thereto as deemed necessary, such as, for example, the expense of clerical assistance incurred in maintaining the records and operations of the Association.

From time to time, the Association may determine the cost of necessary capital improvements, major repairs and necessary expenses not provided for in the Annual General Assessment. Such costs shall be deemed a Special Assessment.

Each Lot of the said subdivision, whether improved or unimproved, shall be assessed its pro rata share of the Annual General Assessment and any Special Assessment in accordance with the formula set forth in the Articles of Incorporation of the Association.

A vote of two-thirds of the Board of Directors of the Association shall fix the Annual General Assessment and any Special Assessment upon the basis provided

above. The Board shall set the date each such assessment shall become due and may provide for the collection of the assessments in monthly, quarterly or annual installments, provided, however, that upon default in the payment of any one or more installments, the entire balance of said assessment may, at the option of the Board, in its sole discretion, be accelerated and declared to be due and payable in full.

The lien for unpaid assessments shall be effective from and after the time of recording in the Records of the Office of the Judge of Probate, Mobile County, Alabama, a claim of lien stating the Lot number, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums that are due and payable when the claim of lien is recorded and shall be signed and certified by an officer of the Association.

Upon full payment of all sums secured by the lien, the party making payments shall be entitled to a recorded satisfaction of lien. All Association liens shall be subordinate to any lien for taxes, the lien of any mortgage of record and other lien recorded prior to the time of recording of the claim of lien filed by the Association.

Upon any voluntary conveyance of a Lot, the grantor and grantee of such Lot shall be jointly and severally liable to the Association for all unpaid assessments accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any such amounts.

Any Lot owner, prospective purchaser of a Lot, or holder of a mortgage or other lien on any Lot may, at any time, obtain from the Association a certificate showing the amount of unpaid assessments pertaining to such Lot. The Association shall provide such certificate within ten (10) days after request therefore. Any person, other than the Lot owner, at the time of issuance of any such certificate, may rely upon such certificate, and his liability for unpaid assessments shall be limited to the amount sets forth in such certificate.

Any entity, its successors and assigns, obtaining title to a Lot as a result of foreclosure of a first mortgage or vendor's lien shall not be liable for assessments which became due prior to the foreclosure. Such unpaid share of assessments shall be deemed to be an expense of the Association to be collected as part of a future Annual General Assessment.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a percentage rate established by resolution of the Board of Directors with notice of such rate to be given to each Lot owner in a manner to be designated by said Board.

The Association may bring an action at law against the owner personally or may foreclose the lien created by the terms hereof in accordance with the statutes and

laws of the State of Alabama then in effect for the foreclosure of real estate mortgages and shall have the right to sell said property at public outcry at the front door of the Courthouse of Mobile County, for cash to the highest bidder, giving notice of the time, place and terms of said sale, together with a description of said property to be sold, by an advertisement published once a week for three (3) consecutive weeks in a newspaper published in said county; to make proper conveyance to the purchaser in the name of the Lot owner; and the proceeds of said sale to apply first to the payment of the costs of said sale, including a reasonable attorney's fee; second, to the payment of the amount of said assessment with the unpaid interest thereon to the date of sale, any amount that may be due the Association by virtue of the special liens herein declared; and third, the balance, if any, to pay over to the said Lot owner. At any sale under the powers herein stated, the Association may bid for and purchase said property like a stranger thereto, and in the event the Association should become the purchaser at said sale, either the auctioneer conducting the sale or the Association may execute a deed to the Association in the name of the Lot owner.

Proceeding against the owner personally shall not be deemed a waiver of the right to foreclose the lien. No owner may escape liability for assessments provided for herein by the abandonment or transfer of such owner's Lot.

The Association shall have the authority to periodically inspect the exterior of any dwelling unit, outbuilding, fence, retaining wall or structure of any kind or description situated at any location upon the Property, and if the same are determined by said Association to be unsafe, in need of repair, or in such condition that the adjoining property may be adversely affected thereby, then said Association may cause the Owner of said property to correct any such condition and/or said Association shall have the authority to enter upon said property and correct same at the owner's expense, which expense will be added to said owner's Lot assessment. For the purposes of this paragraph, an easement in, on, over and across all Lots is hereby reserved in favor of said Association, its agents or employees, and no such entry, nor any action taken pursuant to this covenant, shall be deemed a trespass or other wrong to such property or its owner.

24. **Liability:** Neither the DRC, nor the ACC, its employees, agents or assigns, shall be liable to any Lot owner(s) in "Newcastle Estates" for (i) the manner in which is exercised or for its failure to exercise any right or authority herein granted to it, whether discretionary or not; (ii) for the failure or refusal of any Lot owner to comply with any of the provisions hereof, or, (iii) the failure or refusal of the DRC or the ACC to enforce any of the provisions hereof against any Lot owner, his builder, agent or assigns.
25. **Mineral Operations Prohibited:** No oil drilling, oil development operations, oil refining, quarrying, boring for natural gas or mining operations of any kind shall be permitted upon the surface of any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within 500 feet beneath the

surface of any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

26. **Subdividing:** No Lot shall be divided or re-subdivided.
27. **Duration of Restrictions:** The covenants, terms, conditions, restrictions and limitations herein contained are to run with the land and shall be binding upon all parties and all persons claiming under them and shall insure to the benefit of, and shall be binding upon, each Lot owner, and upon each of their heirs, personal representatives, executors, administrators, grantees, successors and assigns for a period of twenty (20) years from the date hereto (the "Primary Period"), at which time said covenants, terms, conditions, restrictions and limitations herein, unless otherwise herein specified, shall automatically be extended for additional periods of ten (10) years (the "Extension Periods").
28. **Covenants to Run With Land:** No Lot shall be conveyed, devised, leased or demised at any time hereafter, except as being subject to the covenants, terms, conditions, restrictions, and limitations herein contained, and the obligations to observe and perform the same; and whether or not it be so expressed in the deeds or other instrument or conveyances of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions, and limitations herein contained which shall run with and be appurtenant to the lands and every part thereof, as fully as if expressly contained in property and obligatory covenants or conditions, in each and every contract, deed, or transfer and conveyance instruments thereof.

Notwithstanding anything to the contrary contained, it shall be the responsibility of the Association to maintain and repair the Common Areas, and no amendment to this Amended Declaration shall remove the responsibility of the Association and/or Members thereof the maintenance and repair of the Common Areas (as herein defined) in accordance with the requirements of this Amended Declaration and, also the requirements of the County/City or Mobile. Any such attempted amendment shall be void and to no effect.

29. **Easements:** All easements shown on the recorded plat of the Property are hereby adopted as a part of these restrictions, and all Lots in the subdivision shall be subject to such easements.

South Alabama Utilities and/or its designated contractor, successor, agent, servant, assignee, and its and their employees, has a utility easement for the installation, operation, and maintenance of water, sewer, and natural gas services as noted on the recorded subdivision plat, and also an easement, right, and full permission to come onto any lot in the subdivision for any reason related to the installation, operation, and maintenance of the sewer collection system located on and provided for the benefit of the lot. No object, structure, or thing may be constructed on or placed over, on top of, or near the utility easement, or the sewer

collection system, consisting of the septic tank, septic tank pump, and septic tank lines, in such a way as to impede installation, operation, or maintenance efforts. Any object, structure, or thing so constructed or placed may be modified or removed by South Alabama Utilities and the cost of said modification or removal shall become a lien on the lot until paid by the owner. The lot owner is prohibited from installing a garbage disposal and from discharging grease into the sewer collection system. The sewer collection system is excepted from the property description and shall remain the property of South Alabama Utilities. This covenant is a running covenant, benefiting the lot, the other lots in the subdivision, the lot owners, and all successors, grantees, and assigns.

30. **Amendment or Modification of Restrictions:** By vote of not less than ninety percent (90%) of the then owners of the Lots, one (1) vote being allowed for each Lot, these covenants may be terminated or changed in whole or in part, but no change shall impose a burden or restriction on any Lot whose then owner does not join in such restriction. Execution of any instrument to such effect shall become effective when recorded in the Office of the Judge of Probate of Mobile County, Alabama. Nothing in this paragraph shall be deemed to limit the duration of, or permit the modification of, the easement herein described.
31. **Partial Invalidity:** Neither the invalidation of any one of these covenants, terms, conditions, restrictions and/or limitations, or any part thereof, by judgment or court order, nor the abandonment or waiver thereof, shall in any wise affect any of the other provisions that shall remain in full force and effect.
32. **ADEM:** Developer has obtained an Alabama Department of Environmental Management ("ADEM") National Pollutant Discharge Elimination System Permit ("the Permit"), which relates to certain activities that affect storm water discharges from construction, excavation, land clearing, and other land-disturbance activity. The owner of each lot shall, with respect to construction or other land-disturbance activity on such lot, be responsible for taking such measures as are required by the Permit and applicable laws and regulations related to preventing sediment or other pollutants and storm water run-off from leaving the construction site or associated areas. Immediate measures to control sedimentation include use of silt fences, staked hay bale rows, netting or mesh, rock filter check dams, etc. If necessary, small catch basins should be constructed to control sediment run-off. Immediate measures to control erosion include applying hay mulch, seeding with temporary grass mix, hydro-seeding, reducing slopes, netting or mesh, cover with gravel or rock, etc. Long-term measures such as proper grading and permanent re-vegetation should be done as soon as possible. Each owner shall indemnify and hold Developer harmless from such owner's failure to take such measures. Each Owner agrees that they will obtain a separate NPDES Permit for their respective lot after lot closing. Each owner acknowledges that Developer is not responsible or liable for any drainage, storm water discharge, etc., whether within or outside the confines of any easement areas, streets, or lots or anywhere else.

The Newcastle Estates Property Owners Association shall be responsible for promulgating rules for the use of the Common Area(s).

Each property owner acknowledges that Mobile County is subject to approximately 60 inches of rain per year, and hence this subdivision and each lot and other area therein is subject to heavy rainfall and the flow of surface water. As a result of such rainfall each owner or future owner of any lot acknowledges that the Developer has complied with the subdivision requirements of Mobile County including but not limited to streets, drainage, retention and utility requirements as evidenced by the acceptance of this subdivision by Mobile County.

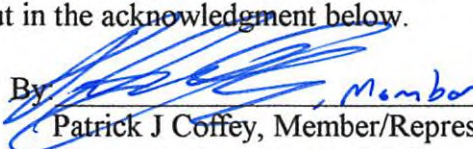
The County of Mobile requires an INDEMNIFY AND HOLD HARMLESS AGREEMENT regarding development of drainage on and across the property from the Developer. Each lot owner agrees to indemnify and hold harmless both the Developer and the County of Mobile for all loss, cost, expense, damage or liability which may accrue, be threatened or occur out of the existence, operation or maintenance of said drainage system and/or concrete paved ditches; and further agrees to maintain the cleanliness of the drainage system. The concrete street gutters must be left in their natural state; no built-up driveway entrances allowed.

33. **Drainage Ditches, Easements, and Detention Pond.** Each Property Owner agrees to indemnify and hold harmless both the Developer and Mobile County for all loss, costs, expense, damage, or liability which may accrue, be threatened, or occur out of existence, operation, or maintenance of said open surface drainage ditches and ponds: and further agrees to maintain the cleanliness of the ditches, drainage easements and/or ponds and no cuttings, trash, or debris will be disposed of in the ditches, ponds, or easements that would block drainage and be an eyesore. Notices and/or fines may be levied if necessary. The NEWCASTLE ESTATES PROPERTY OWNERS ASSOCIATION" is responsible for the perpetual maintenance of the detention pond, all drainage ditches and all easements (i.e.-mowing grass, removing trash, debris, and silt deposits from the pond, repairing erosion). Annual maintenance of the affected areas is estimated to be \$2500.00 per year.
34. **Additions and Amendments.** Developer reserves the right but shall have no obligation to add additional real estate to the Subdivision, which, if added, shall be subject to the rights, covenants, restrictions, affirmative obligations and conditions set forth in this Declaration, and all amendments thereto, unless different rights, covenants, restrictions, affirmative obligations or conditions applicable to any such additional real estate are adopted by the Developer and recorded in the Office of the Judge of Probate of Mobile County, Alabama at such time. Until the time when control of the Subdivision is transferred to all Owners as provided above, Developer may, by written instrument duly recorded, at any time amend this Declaration, and any amendments thereto, by filing the same of

record in the Office of the Judge of Probate of Mobile County, Alabama, provided, however, that no such amendment shall permit the improvement, use or occupancy of any Lot for other than single-family residential purposes. After control of the Subdivision is transferred to all Owners as provided in Section 23, the Owners (including Developer if it is still an Owner) of a majority of the total Lots in, or planned for, the Subdivision (including all planned additional phases) may, by written instrument duly recorded, as aforesaid, exercise the foregoing right of amendment subject to the foregoing restrictions; provided, however, that if Developer voluntarily relinquishes control of the Association in writing, no such amendment shall restrict any of the rights of Developer reserved in this Declaration, other than the right of control of the Association, as long as Developer owns any Lot in, or planned for, the Subdivision (including all planned additional phases).

The provisions of this Declaration shall not be altered, changed, amended, repealed or circumvented by any provisions of any of the other Governing Documents. In the event of any conflict between the provisions of this Declaration and any of the other Governing Documents, the provisions of this Declaration shall govern.

IN WITNESS WHEREOF, Newcastle Investments, LLC has caused this instrument to be executed in its name and on its behalf by the undersigned Member thereunto duly authorized, on the date set out in the acknowledgment below.

By  Member
Patrick J Coffey, Member/Representative
Newcastle Investments, LLC

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned a Notary Public in and for said State and County, hereby certify that Patrick J. Coffey whose name as Member/Representative, of Newcastle Investments, LLC 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 Member/Representative, and with full authority, executed the same voluntarily for and as the act of said LLC on the day the same bears date.

Given under my hand and seal this 9th day of December 2005.

NOTARY PUBLIC

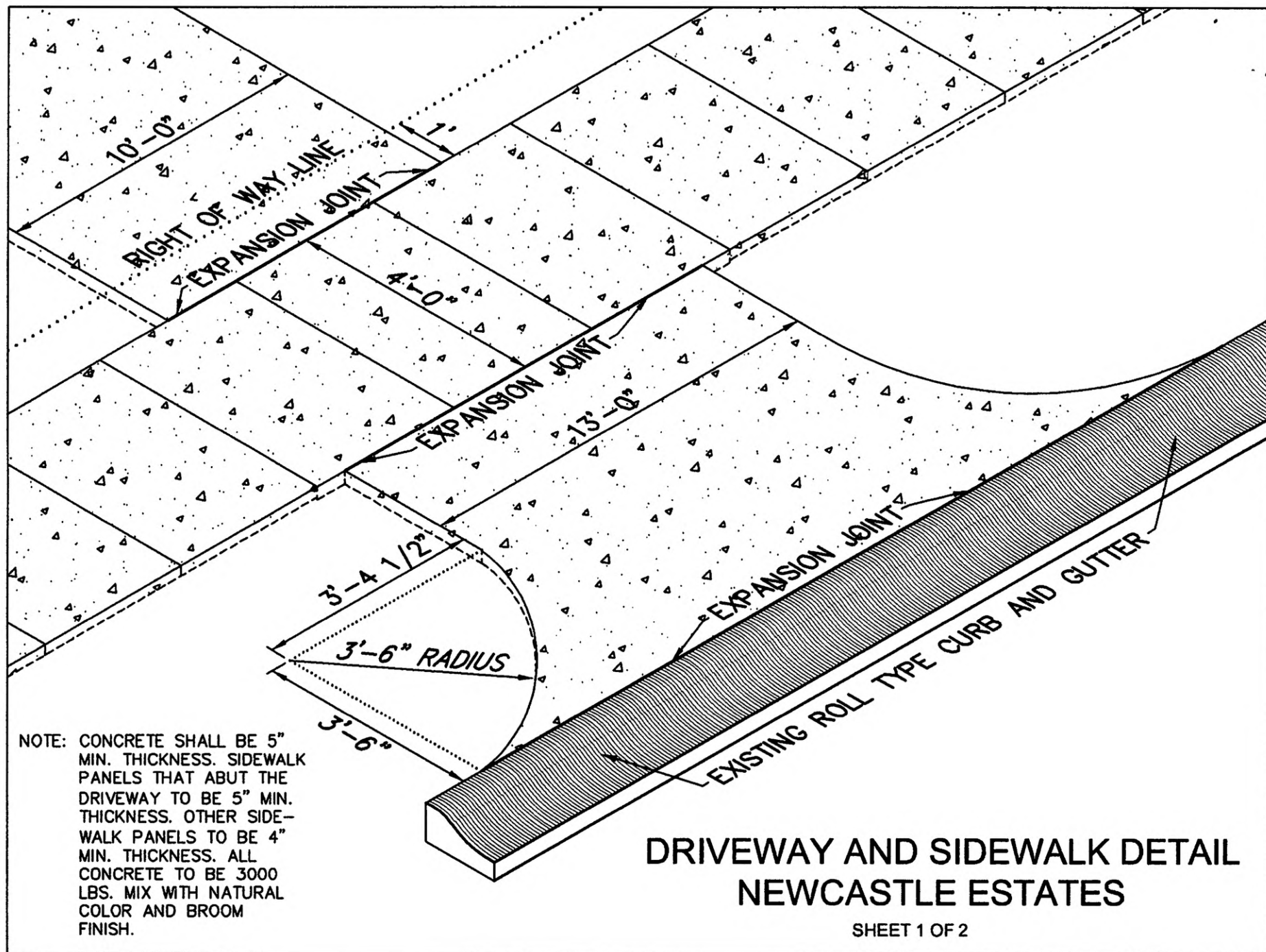


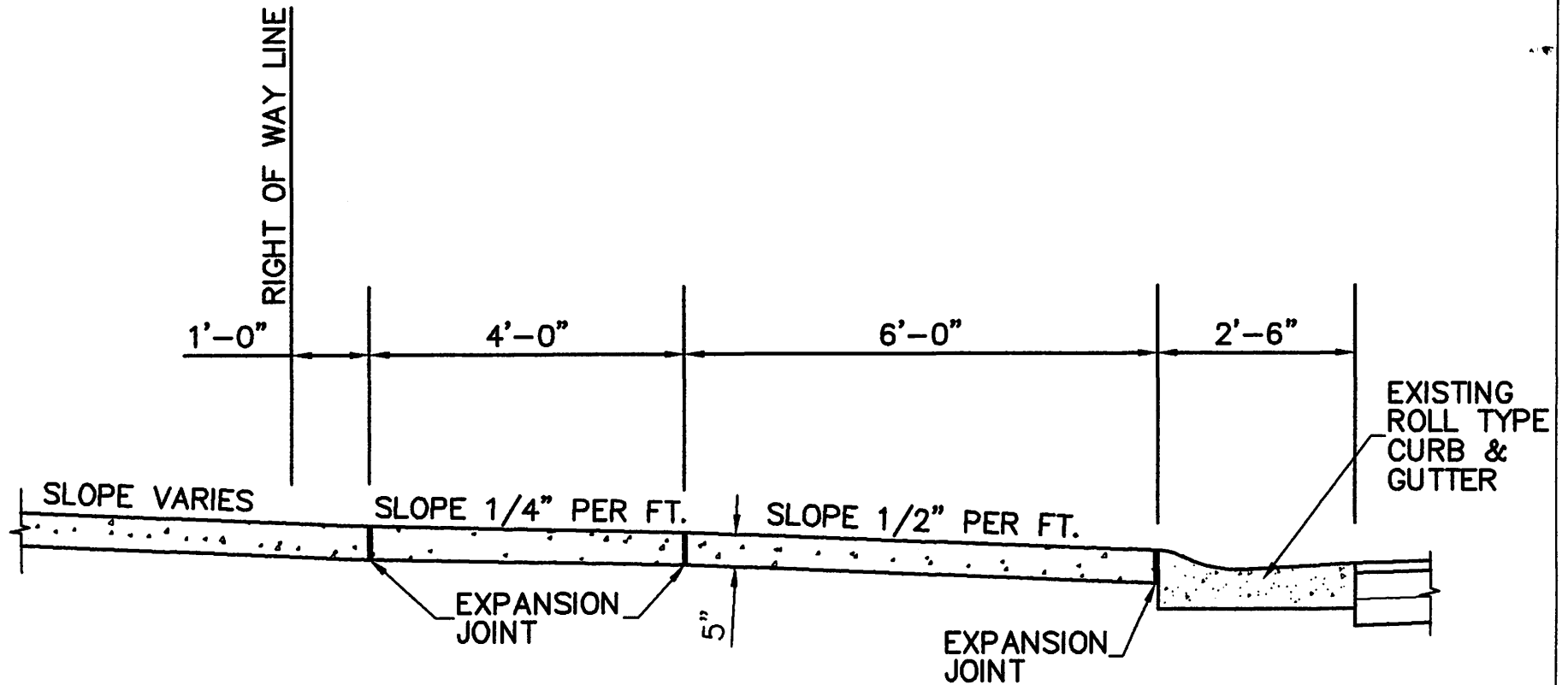
THIS INSTRUMENT PREPARED BY:

Patrick J. Coffey
P.O. Box 91264
Mobile, AL 36691

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 7, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS







DRIVEWAY AND SIDEWALK DETAIL
NEWCASTLE ESTATES

SHEET 2 OF 2