

**OPERATION AND EASEMENT AGREEMENT**

BETWEEN

EPT DOWNREIT, INC.,  
a Missouri corporation

AND

TERRA FIRMA CORP.,  
a Mississippi corporation

For  
Chauvet Square,  
Hattiesburg, Mississippi

**OPERATION AND EASEMENT AGREEMENT  
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## OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of December 22, 2004, between EPT DOWNREIT, INC., a Missouri corporation ("EPT") and TERRA FIRMA CORP., a Mississippi corporation ("Developer").

### WITNESSETH

A. EPT is the owner of a certain 10.06 acre tract of land legally described in Exhibit A attached hereto and identified as the "Theatre Tract" on Exhibit B (the "Site Plan") attached hereto; and

B. Developer is the owner of those certain tracts of land also shown on the Site Plan and legally described and identified in Exhibit C annexed hereto (the "Developer Tracts"); and

C. Developer may acquire a certain tract of land shown on the Site Plan and legally described on Exhibit C-1 attached hereto (the "Tract A"); and

D. The Theatre Tract and the Developer Tracts (collectively, the "Retail Center") are contiguous and adjacent to each other as shown on the Site Plan; and

E. The signatories hereto intend to develop and operate their respective Tracts (as defined herein) in conjunction with each other as integral parts of a retail complex, but not a planned or common interest development/community, and in order to effectuate the common use and operation of their respective Tracts they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

### ARTICLE I - DEFINITIONS

#### 1.1 Building

"Building" shall mean any permanently enclosed structure placed, constructed or located on a Tract, which for the purpose of this OEA shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

#### 1.2 Building Area

"Building Area" shall mean the limited areas of the Retail Center within which Buildings may be constructed, placed or located pursuant to setback lines and Governmental Requirements.

### 1.3 Governmental Authorities

"Governmental Authorities" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

### 1.4 Governmental Requirements

"Governmental Requirements" shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

### 1.5 Occupant

"Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Retail Center under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

### 1.6 Owner

"Owner" or "Owners" shall mean the respective owners in fee simple of the Theatre Tract and the Developer Tracts as such ownership of the Theatre Tract and the Developer Tracts is shown in the appropriate governmental records from time to time.

### 1.7 Party

"Party" shall mean each signatory hereto and its respective successors and assigns during the period of such Person's fee ownership of any portion of the Retail Center. A Party transferring all or any portion of its fee interest in the Retail Center shall give notice to all other Parties of such transfer.

### 1.8 Permittee

"Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Retail Center. Persons engaged in civic, public, charitable or political activities within the Retail Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (i) Exhibiting any placard, sign or notice.
- (ii) Distributing any circular, handbill, placard or booklet.
- (iii) Soliciting memberships or contributions for private, civic, public charitable or political purposes.
- (iv) Parading, picketing or demonstrating.

- (v) Failing to follow regulations established by the Parties relating to the use and operation of the Retail Center.

1.9 Person

"Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.10 Restaurant

"Restaurant" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, neither a supermarket, grocery store or similar operation, a health foods store, nor a concession operation for a movie theatre shall be deemed a Restaurant.

1.11 Retail Offices

"Retail Offices" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics.

1.12 Tract

"Tract" shall mean that portion of the Retail Center owned by a Party.

1.13 Utility Lines

"Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

## ARTICLE II - EASEMENTS

2.1 Ingress and Egress

(A) Developer hereby grants to EPT and to its tenants and occupants of the Theatre Tract, and to their respective employees, agents, contractors, customers, invitees, and licensees, (collectively, "Permittees") a non-exclusive easement over, upon and across those portions of the Developer Tracts lying in the vacated portions of Doleac Drive (as shown on the Site Plan), which easement shall continue until such time as construction of the Grand Drive (as shown on the Site Plan) shall be completed by Developer, the Permanent Access Easement (defined below) shall have commenced, and the theatre shall open for business on the Theatre Tract (the "Construction Access Easement"). With respect to the Construction Access Easement, Developer agrees as follows:

- (i) Developer shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency on or related to the Construction Access Easement area.

- (ii) Developer shall not remove any paving or curbing from, block, reroute, or otherwise alter or interfere with the use of the Construction Access Easement area without providing an alternative Construction Access Easement area for use by the Permittees, unless Developer obtains the written consent of EPT to the location and improvements of the alternate route, which consent shall not be unreasonably withheld, conditioned or delayed.

(B) Developer hereby grants to the Permittees an easement (the "Permanent Access Easement") over, upon and across those portions of the Developer Tracts lying in the area designated for the Grand Drive (the "Accessway"), which Permanent Access Easement shall commence upon the completion of Grand Drive and shall continue in perpetuity, shall run with the land, and shall be an easement appurtenant to the Theatre Tract; provided, however, that if Grand Drive is dedicated to the City of Hattiesburg as a public street, this Permanent Access Easement shall terminate and be of no further force and effect upon such dedication and acceptance by the City of Hattiesburg. With respect to the Permanent Access Easement, until such time as the Accessway is dedicated to and accepted by the City of Hattiesburg, Developer covenants and agrees as follows:

- (i) Developer shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency on or related to the Accessway.
- (ii) Developer shall install and maintain paved surfaces on the Accessway in a manner necessary and proper for the uses set forth herein and consistent with other first class retail developments in the State of Mississippi, including without limitation maintaining all paved surfaces in a smooth and evenly covered condition, skin patching, resealing, crack filling, resurfacing, restriping and replacing the base of same, but in no event less than the requirements of the City of Hattiesburg for public streets.
- (iii) Developer shall install and maintain a street lighting system in all respects comparable to the lighting for public and private rights of way adjacent to first-class commercial /retail centers in the State of Mississippi, but in no event below the requirements set by the City of Hattiesburg for public streets.
- (iv) Developer shall periodically remove all papers, debris, filth, and refuse (including broom sweeping) to the extent reasonably necessary to keep the Accessway in a clean and orderly condition comparable to the condition of other first class retail developments in the State of Mississippi.
- (v) Developer shall remove ice and snow as necessary.
- (vi) Developer shall place, keep in repair, and replace any necessary or appropriate directional signs, markers, lines, and striping.

- (vii) Developer shall install, maintain and replace, as necessary, any turf or landscaping in medial areas and other non-paved portions of the Accessway.
- (viii) Developer shall not have the right to relocate or alter the Accessway without the consent of EPT, which consent may be given or withheld in EPT's sole discretion.
- (ix) Developer shall cause the Accessway to be dedicated to the City of Hattiesburg as a public street as soon as practical after Developer completes construction of the improvements on the same.

## 2.2 Utilities.

Developer hereby grants and conveys to EPT non-exclusive, perpetual easements in, to, over, under, along and across those portions of the Developer Tracts marked as "Utilities Easements" on the Site Plan and legally described on Exhibit D attached hereto and incorporated by reference herein, which are necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the Theatre Tract. All easements herein established, whether granted by EPT or Developer, shall be "Utilities Easements." The Utilities Easements shall be appurtenant to and for the benefit of the respective grantee, and shall be binding on, enforceable against and burden the respective grantor tracts. The Utilities Easements shall not be relocated without the approval of the Owner of the Theatre Tract. During the term of this OEA, the Utilities Easements shall be maintained by the Owner(s) of the Developer Tracts, and the Owner(s) of the Developer Tracts agree (i) to make no repairs or excavations, except emergency repairs or excavations, during any period between May 1 and August 15 or between November 1 and January 5 of any year and (ii) to restore the surface area of such easement to its original condition following such repairs or excavations. During and following the term of this OEA, each Utility Easement shall be maintained by the Owner(s) of the respective Developer Tracts.

All Utility Lines shall be underground except:

- (i) Ground mounted electrical transformers;
- (ii) As may be necessary during periods of construction, reconstruction, repair or temporary service;
- (iii) As may be required by Governmental Authorities;
- (iv) As may be required by the provider of such utility service; and
- (v) Fire hydrants.

## 2.3 Storm Water Detention.

Developer hereby grants and conveys to EPT for its use in common with the other Parties a non-exclusive, perpetual easement for the detention/retention of surface water upon, over and

across those portions of the Developer Tracts designated on the Site Plan as detention or water treatment and disposal areas (the "Stormwater Drainage Areas"), which Stormwater Drainage Areas are more specifically described in Exhibit E attached hereto and incorporated by reference herein. The easement herein established shall be appurtenant to and for the benefit of the Theatre Tract, and shall be binding on, enforceable against and burden the Developer Tracts. The Stormwater Drainage Areas shall not be relocated without the approval of the Owner of the Theatre Tract. During and following the term of this OEA, each of the Stormwater Drainage Areas shall be maintained by the Owner(s) of the respective Developer Tracts.

#### 2.4 Sign Easement.

(A) Developer does hereby establish, grant and create for the benefit of the Theatre Tract and its respective Owner and Occupants, a perpetual and non-exclusive easement in, to, over, under and across that portion of Developer Tracts designated on the Site Plan, as the Entrance Pylon Sign Area for the construction, reconstruction, replacement, maintenance and operation of a sign structure (the "Entrance Pylon Sign") within the Entrance Pylon Sign Area, together with reasonable access over, under, upon, through and across Developer Tracts to install, replace, maintain, repair and operate a Utility Line pursuant to the terms and provisions set forth in Section 2.1 above in order to provide such Entrance Pylon Sign structure and the panels thereon with power. The design of the Entrance Pylon Sign structure shall be as determined by EPT and EPT shall pay all costs associated with (i) the initial erection of the Entrance Pylon Sign, and (ii) the cost of general sign installation, maintenance, and electricity used by the Entrance Pylon Sign. Except as set forth below, no Owner or Occupant of the Developer Tracts shall have any right to use the Entrance Pylon Sign without EPT's written consent, which consent may be given or withheld at EPT's sole discretion.

(B) Notwithstanding the foregoing Developer shall have the right to place up to two panels below EPT's panels on the Entrance Pylon Sign according to design specifications approved by EPT in advance, provided that (i) prior to EPT's entering into a contract for fabrication and installation for the Entrance Pylon Sign, Developer notifies EPT in writing of its desire to place such panels on the sign; (ii) Developer pays to EPT or the sign vendor, prior to EPT's entering into the sign fabrication contract, its pro rata share (based on sign panel area) of the cost of fabricating and installing the sign structure, (iii) Developer pays the full cost of designing, fabricating, installing, maintaining and replacing Developer's panels; (iv) Developer does not interfere with EPT's use and enjoyment of EPT's panels during the installation and operation of Developer's panels, and (v) Developer pays, on a monthly or quarterly basis, within 30 days of submission of invoices by EPT or its designee, Developer's pro rata share (based on sign panel area) of operating and maintaining the sign structure.

(C) If Developer installs monument signs or other signs benefiting the Retail Area or other occupants thereof at the intersection of 40th Avenue and Hardy Street, the intersection of 40th Avenue and Montague Boulevard, or elsewhere on or in the vicinity of the Retail Center, EPT shall have the right, but not the obligation, to place a panel on such sign. In the event EPT exercises that right, (i) prior to Developer's entering into a contract for fabrication and installation for such sign, EPT notifies Developer in writing of its desire to place such panels on the sign; (ii) EPT pays to Developer or to the sign vendor, prior to Developer's entering into the sign fabrication contract, its pro rata share (based on sign panel area) of the cost of fabricating

and installing the sign structure, (iii) EPT pays the full cost of designing, fabricating, installing, maintaining and replacing EPT's panels; (iv) EPT does not interfere with Developer's use and enjoyment of Developer's panels during the installation and operation of EPT's panels, and (v) EPT pays, on a monthly or quarterly basis, within 30 days of submission of invoices by Developer, EPT's pro rata share (based on sign panel area) of operating and maintaining the sign structure.

## 2.5 Restrictions.

No Party shall grant any easement for the benefit of any property not within the Retail Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to Governmental Authorities, as may be required by law, and to public utility companies, as may be required by law.

## ARTICLE III - CONSTRUCTION

### 3.1 General Requirements

(A) Each Party agrees that all construction activities performed or authorized by it within the Retail Center shall be performed in compliance with all Governmental Requirements. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

(B) Each Party further agrees that any construction activities performed or authorized by it shall not:

- (i) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract.
- (ii) Unreasonably interfere with construction work being performed on any other part of the Retail Center.
- (iii) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Retail Center by any other Party or its Permittees.
- (iv) Cause any Building located on another Tract to be in violation of any Governmental Requirements.

(C) The parking area on the Theatre Tract and on each separate Tract comprising the Developer Tracts shall contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another Tract, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

- (i) Five (5.0) parking spaces for each one thousand (1,000) square feet of floor area, exclusive of Restaurant parking requirements set forth below.
- (ii) If a business use contains a permitted drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be

created space for stacking not less than five (5) automobiles for each drive-up unit.

- (iii) For each single Restaurant, ten (10) parking spaces for each one thousand (1,000) square feet of floor area devoted to such use.

In the event of a condemnation of part of a Tract or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Tract below that which is required herein, the Party whose Tract is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of floor area located on its Tract. If such floor area is thereafter reduced other than by casualty, then the floor area on such Tract may not subsequently be increased unless the parking requirements set forth above are satisfied.

### 3.2 Building Improvements

(A) Building(s) shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Tract, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time.

(B) No Building shall exceed one (1) story, nor the following height restrictions:

- (i) On the Theatre Tract: sixty (60) feet
- (ii) On the Developer Tracts: thirty-five (35) feet
- (iii) On Tract A: fifty (50) feet, subject to the additional conditions and limitations below.

The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, signage, architectural features, towers, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Tract which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the Building to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable for sending and transmitting communications and data to the business being operated on the Tract, but it shall not include cellular telephone towers, telecommunications relay facilities or other equipment used primarily for providing communications and data to persons outside the Retail Center.

### 3.3 Liens

In the event any mechanic's lien is recorded against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so recorded agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Party permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Party permitting or causing such lien agrees to defend, protect, indemnify and hold harmless the other Party and its Tract from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

## ARTICLE IV - MAINTENANCE AND REPAIR

### 4.1 General

Each Party shall maintain, or cause to be maintained, at its sole cost and expense, its Tract, and any Buildings located on its Tract, in a sightly, safe condition and state of repair in conformance with the standards of other first class retail and entertainment centers in the Southeastern United States. Such operation, maintenance and repair obligation shall include but not be limited to the following:

- (i) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including sweeping, repairing, restriping and resurfacing such surfaces and curbs.
- (ii) Debris and Refuse. Removing papers, debris, filth, refuse, ice and snow to the extent necessary to keep the Tract and Buildings in a first-class, clean and orderly condition.
- (iii) Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.
- (iv) Lighting. Maintaining, cleaning and replacing lighting facilities, including the prompt replacement of burned-out lamps and repair of damaged or non-functioning lighting standards, ballasts and other components.

- (v) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition.
- (vi) Obstructions. Keeping the Tract and Buildings free from any obstructions, including those caused by the sale or display of merchandise.
- (v) Sidewalks. Maintaining, cleaning and replacing sidewalks, including those adjacent and contiguous to Buildings located within the Retail Center.
- (vi) Stormwater System. Maintaining, cleaning, and replacing stormwater inlets, grates, swales and detention areas in good and sightly condition and repair.

Notwithstanding anything contained herein to the contrary, each Party shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Tract: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and any refuse, compactor or dumpster area.

#### 4.2 Casualty

In the event any of the Buildings in the Retail Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this OEA, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this OEA, or (iii) demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one (1) of such alternatives.

### ARTICLE V - OPERATION OF THE RETAIL CENTER

#### 5.1 Uses

(A) The Retail Center shall be used only for a theatre, retail sales, Retail Offices, Restaurants or other permitted commercial purposes.

(B) No use shall be permitted in the Retail Center which is inconsistent with the operation of a first-class retail center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Retail Center. The foregoing limitation shall not apply to customary cooking odors unintentionally emitted from restaurants operating in the ordinary course of business, but shall apply to any non-customary cooking odors or any odors intentionally projected or released other than in the ordinary course of business.
- (ii) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (iii) Any "second hand" store, "surplus" store, or pawn shop.
- (iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (v) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (vii) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail centers in the metropolitan area where the Retail Center is located.
- (viii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display, service center or body shop repair operation.
- (ix) Any bowling alley or skating rink, except that a bowling alley or skating rink may be operated as an ancillary use in a first class family entertainment center.
- (x) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (xi) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the foregoing exception, any veterinary or boarding

services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.

- (x) Any mortuary or funeral home.
- (xi) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff and/or any massage parlors or similar establishments.
- (xii) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent (50%) of the gross revenues of such business.
- (xiii) Any health spa, fitness center or workout facility, provided that a "day spa" in connection with retail sale of cosmetics or other similar goods in a space of less than 5000 square feet of floor area is permitted.
- (xiv) Any flea market, car wash or dance hall.
- (xvii) Any bulk candy store.
- (xviii) Any pool hall or billiard hall; provided however, that the operation of pool tables or billiards tables ancillary to a permitted use and comprising less than ten percent (10%) of the building floor area operated by a single occupant shall be permitted.
- (xix) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Retail Center.
- (xx) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(xix) Any establishment engaged in the sale of petroleum products.

(C) At such time as Developer or any person or entity owning or controlling, owned by or controlled by, or under common ownership and control with Developer (collectively, an "Affiliate") acquires Tract A, the Developer shall cause Tract A to become subject to the terms and provisions of this Agreement, which terms and provisions shall be binding upon and shall run with the land. Developer shall give written notice to EPT of its intended acquisition of Tract A at least ten (10) days prior to such acquisition, and EPT, Developer, and their successors in interest shall execute and record a memorandum of or amendment to this Agreement for the purpose of confirming that Tract A is subject to and benefits from the terms and provisions of this Agreement, and shall for all purposes related to this Agreement be deemed a part of the Developer Tracts.

Notwithstanding anything to the contrary in this Agreement:

- (i) Developer, Affiliates or their successors and assigns shall have the right to construct and operate a single hotel on Tract A, provided such hotel (a) is operated under the brand name of a nationally recognized hotel system in a category equal to or higher than "Midscale" or better (with or without food and beverage) according the Smith Travel Research of Hendersonville, Tennessee, or the successor thereto that is recognized as the industry leader in Hospitality data collection.
- (ii) Provided that no portion of the hotel building is located more than one hundred (100) feet from the east line of Thornhill Drive, such building may be constructed to a height of fifty (50) feet.
- (iii) Developer, its Affiliate and its successors and assigns covenant and agree that the hotel shall be constructed and operated in accordance with all applicable laws and otherwise in compliance with the terms and conditions of this Agreement.

(D) No Party shall use, or permit the use of, Hazardous Materials on, about, under or in its Tract, or the balance of the Retail Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this Section 5.1(C), the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental

Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

- (i) In addition to the restrictions for the Retail Center set forth in Section 5.1 (B) above, the following use and occupancy restrictions shall also be applicable to the Developer Tracts:
- (ii) In the event that a building of any size is constructed in the Retail Center within one hundred fifty (150) feet of the Building Area located on the Theatre Tract; Developer shall be required to construct a solid wall or fence of a design and with materials approved by EPT along the common boundary of the parcel containing such building and the Theatre Tract
- (iii) No movie theatre or live performance theatre shall be permitted.
- (iv) No video or amusement arcade, provided however, that the operation video or amusement machines ancillary to a permitted use and comprising less than ten percent (10%) of the building floor area operated by a single occupant shall be permitted.
- (v) Notwithstanding anything herein to the contrary, no Restaurants or sandwich shops, other than sit-down, table service restaurants using non-disposable utensils and tableware, shall be operated on any Developer Tract which has direct vehicular access to Accessway, Doleac Drive, Montague Boulevard, or any part of North 40th Avenue lying north of the north line of Lundy Road, as now established; provided, however, that the foregoing restriction shall not prohibit any Restaurant not meeting the foregoing criteria so long as such Restaurant is located south of the extended south line of Montague Boulevard, as now established, and has direct vehicular access only via Lundy Road.
- (vi) Notwithstanding anything herein to the contrary, no drive-through or drive-up service windows shall be operated on any Developer Tract which has direct vehicular access to the Accessway, Doleac Drive, or Montague Boulevard. The foregoing shall not prohibit an Owner or Occupant from providing walk-up "take-out" service in connection with a Restaurant located on such Tract.

(E) Each Party shall use its reasonable efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.

(F) This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Retail Center or on any Tract.

## 5.2 Lighting

After completion of the lighting system on any Tract, each Party owning such Tract hereby covenants and agrees to keep its Tract fully illuminated from dusk to at least 10:30 p.m. unless the Owners agree upon a different time. Until such time as (i) the Accessway is dedicated and accepted by the City of Hattiesburg, and (ii) the City of Hattiesburg assumes the lighting obligations for the Accessway, Developer covenants and agrees to keep the lighting along Accessway illuminated from dusk until at least 1:00 a.m. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

## 5.3 Insurance

(A) Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages set forth below:

- (i) Commercial General Liability Insurance with a combined single limit of liability (whether through primary policies or excess/umbrella coverage) of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence.
- (ii) Workers' compensation and employer's liability insurance:
  - (a) Worker's compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Subject to the waiver of subrogation provisions set forth in Section 5.4 below, each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall

reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

(B) Prior to commencing any construction activities within the Retail Center, each Party shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (i) Workers' compensation and employer's liability insurance:
  - (a) Worker's compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (ii) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (1) Premises and Operations.
    - (2) Products and Completed Operations.
    - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
    - (4) Broad Form Property Damage (including Completed Operations).
    - (5) Explosion, Collapse and Underground Hazards.
    - (6) Personal Injury Liability.
  - (b) Minimum limits of liability:
    - (1) \$2,000,000 each occurrence (for bodily injury and property damage).
    - (2) \$2,000,000 for Personal Injury Liability.

- (3) \$2,000,000 aggregate for Products and Completed Operations.
  - (4) \$2,000,000 general aggregate applying separately to this project.
- (iii) Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
  - (iv) The contractor may satisfy the Commercial General Liability portion of these insurance requirements through a combination of primary policies and excess/umbrella coverage.

#### 5.4 Release

Each Party ("Releasing Party") hereby releases and waives for itself, and each person claiming by, through or under it each other Party ("Released Party") from any loss or damage to all property of such Releasing Party located on the Releasing Party's Site, which loss or damage is of the type covered by the insurance requirement to be maintained under this OEA, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Party agrees to cause, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release herein above given.

#### 5.5 Taxes and Assessments

Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Retail Center, provided that if such taxes or assessments or any part thereof may be paid in installments, each Party may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Party from contesting at its cost and expense any taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

## ARTICLE VI - MISCELLANEOUS

### 6.1 Default

(A) The failure to observe or perform any of the covenants, conditions or obligations of this OEA within thirty (30) days after the issuance of a notice by another Party (the "Non-Defaulting Party") specifying the nature of the default claimed shall constitute a material default and breach of this OEA by the non-performing Party (the "Defaulting Party"):

(B) Any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest as provided herein, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

(C) Costs, expenses and interest accruing and/or assessed pursuant to Section 6.1(B) above, including all reasonable costs and expenses of collecting and enforcing the remedies provided herein shall constitute a lien against the Defaulting Party's Tract. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Retail Center is located by the Party making such claim. The claim of lien shall include the following:

- (i) The name of the lien claimant.
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.
- (iii) An identification of the Owner or reputed Owner of the Tract or interest therein against which the lien is claimed.
- (iv) A description of the Tract against which the lien is claimed.
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.

(D) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover

damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## 6.2 Estoppel Certificate

Each Party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue within thirty (30) days after receipt of such request to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

- (i) Whether it knows of any default under this OEA by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.
- (ii) Whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.
- (iii) Whether this OEA is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary.

## 6.3 Notices

All notices, demands and requests (collectively, the "notice") required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. The initial addresses of the Parties shall be:

EPT: EPT DownREIT, Inc.  
30 West Pershing Road, Suite 201  
Kansas City, Missouri 64108  
Attn: Gregory K. Silvers

With a copy to: Stinson Morrison Hecker LLP  
1201 Walnut Street, Suite 2600  
Kansas City, Missouri 64108  
Attn: Catherine M. Hauber or Robert J. Drumm

Developer: Terra Firma Corp.  
74 Canebrake  
Hattiesburg, Mississippi 39402  
Attn: Nick Welch

With a copy to: Tom Anderson  
4401 Bayview Drive  
Hattiesburg, Mississippi 39402

And a copy to: Ray Richard, Esq.  
132 Westover Drive  
Hattiesburg, Mississippi 39402

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

#### 6.4 Condemnation

In the event any portion of the Retail Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the Tract or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the Tract or the improvement taken, then the Owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking.

#### 6.5 Binding Effect; Duration of Obligations; Limitation of Liability

(A) The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the Tracts described herein and inure to the benefit of and be binding upon each Party, their respective successors and assigns. This OEA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

(B) Each Party shall be liable for the performance of all covenants, obligations and undertakings applicable to the Tract or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to any portion of the Tract transferred by such Party until the notice of transfer set forth above is given. Once the notice of transfer is given, the transferring Party shall be released from all obligations pertaining to the portion of the Tract transferred arising subsequent to the notice of transfer.

## 6.6 Construction and Interpretation

(A) This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and the Exhibits attached hereto. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(B) Whenever required by the context of this OEA, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

(C) The captions preceding the text of each article and section of this OEA are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

(D) Invalidity of any of the provisions contained in this OEA, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

(E) This OEA may be amended by, and only by, a written agreement signed by all of the then current Owners and shall be effective only when recorded in the county and state where the Retail Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party. No agreement to any amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may

consider any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

(F) This OEA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this OEA may be executed and notarized on separate pages, and when attached to this OEA shall constitute one (1) complete document.

#### 6.7 Negation of Partnership

None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate Owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

#### 6.8 Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Retail Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

#### 6.9 Excusable Delays

Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Party from the prompt payment of any monies required by this OEA.

#### 6.10 Mitigation of Damages

In all situations arising out of this OEA, each Party shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this OEA.

#### 6.11 OEA Shall Continue Notwithstanding Breach

It is expressly agreed that no breach of this OEA shall (i) entitle any Party to cancel, rescind, or otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Retail Center. However, such

limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

#### 6.12 Time

Time is of the essence of this OEA.

#### 6.13 No Waiver

The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA. The failure of a Party to provide a Reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Party's right to collect such amount upon the later issuance of the required reconciliation or statement.

#### 6.14 Choice of Law

This Agreement shall be governed by the laws of the State of Mississippi.

### ARTICLE VII - TERM

#### 7.1 Term of this OEA

This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2054. Upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as relates to the easements and provisions mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

**"DEVELOPER"**

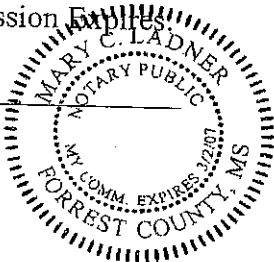
TERRA FIRMA CORP.,  
a Mississippi corporation

By: *Nick Welch*  
Nick Welch, President

STATE OF MISSISSIPPI    )  
  ) SS.  
COUNTY OF Lamar    )

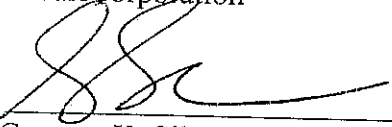
Personally appeared before me, the undersigned authority in and for said County and State, on this the 3rd day of January, 2005, within my jurisdiction, the within named Nick Welch, President of TERRA FIRMA CORP., a Mississippi corporation, and acknowledged that for and on behalf of the said corporation, and as its act and deed, he signed, executed and delivered the above foregoing instrument for the purposes mentioned on the day and year therein mentioned after having been duly authorized by said corporation so to do.

*Mary C. Ladner*  
Notary Public

My Commission Expires \_\_\_\_\_  


"EPT"

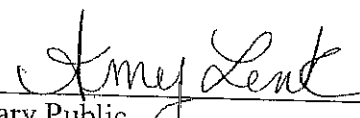
EPT DOWNREIT, INC.,  
a Missouri corporation

By:   
Gregory K. Silvers, Vice President

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF JACKSON        )

Personally appeared before me, the undersigned authority in and for said County and State, on this the 14<sup>th</sup> day of December 2004, within my jurisdiction, the within named Gregory K. Silvers, Vice President of EPT DOWNREIT, INC., a Missouri corporation, and acknowledged that for and on behalf of the said limited liability company, and as its act and deed, he signed, executed and delivered the above foregoing instrument for the purposes mentioned on the day and year therein mentioned after having been duly authorized by said limited liability company so to do.

My Commission Expires:  
July 23, 2007

  
Notary Public

AMY LENK  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Jackson County  
My Commission Expires: July 23, 2007

## INDEX OF EXHIBITS

<b>EXHIBIT A</b>	Legal Description of Theatre Tract
<b>EXHIBIT B</b>	Site Plan
<b>EXHIBIT C</b>	Legal Descriptions Developer Tracts
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<b>EXHIBIT D</b>	Utility Easements
<b>EXHIBIT E</b>	Stormwater Drainage

**EXHIBIT A**  
**Legal Description of Theatre Tract**

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND RUN NORTH ZERO (00) DEGREES, THIRTY-SIX (36) MINUTES, SEVEN (07) SECONDS WEST FOR 435.74 FEET;

THENCE RUN NORTH ZERO (00) DEGREES, FOUR (04) MINUTES, THIRTY-FOUR (34) SECONDS WEST FOR 879.12 FEET TO THE NORTH BOUNDARY OF SAID SECTION 12;

THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 442.26 FEET TO THE POINT OF BEGINNING;

THENCE RUN DUE SOUTH FOR 680.75 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY BOUNDARY OF DOLEAC DRIVE, SAID POINT BEING ON THE ARC OF A CURVE HAVING A RADIUS OF 256.00 FEET;

THENCE RUN SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY BOUNDARY AND ALONG THE ARC OF SAID CURVE TO THE RIGHT FOR 59.15 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH FIFTY (50) DEGREES, SIX (06) MINUTES, THIRTY-THREE (33) SECONDS EAST FOR 59.02 FEET TO A POINT OF TANGENCY;

THENCE RUN SOUTH FORTY-THREE (43) DEGREES, TWENTY-NINE (29) MINUTES, TWENTY-FOUR (24) SECONDS EAST AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 53.51 FEET TO A POINT OF CURVATURE, WITH A CURVE HAVING A RADIUS OF 501.00 FEET;

THENCE RUN SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY BOUNDARY AND ALONG THE ARC OF SAID CURVE TO THE RIGHT FOR 260.66 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH TWENTY-EIGHT (28) DEGREES, THIRTY-FIVE (35) MINUTES, SEVEN (07) SECONDS EAST FOR 257.73 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE HAVING A RADIUS OF 30.00 FEET;

THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT FOR 54.29 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH THIRTY-EIGHT (38) DEGREES, NINE (09) MINUTES, THIRTY-FIVE (35) SECONDS WEST FOR 47.18 FEET TO A POINT OF TANGENCY;

THENCE RUN WEST FOR 315.43 FEET TO A POINT OF CURVATURE WITH A CURVE HAVING A RADIUS OF 120.00 FEET;

THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT FOR 104.34 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH SIXTY-FIVE (65) DEGREES, FIVE (05) MINUTES, THIRTY (30) SECONDS WEST FOR 101.08 FEET TO A POINT OF TANGENCY;

THENCE RUN NORTH FORTY (40) DEGREES, ELEVEN (11) MINUTES, ZERO (00) SECONDS WEST FOR 105.71 FEET TO A POINT OF CURVATURE WITH A CURVE HAVING A RADIUS OF 120.00 FEET;

THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT FOR 85.20 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH NINETEEN (19) DEGREES, FIFTY (50) MINUTES, THIRTY-NINE (39) SECONDS WEST FOR 83.42 FEET TO A POINT OF TANGENCY;

THENCE RUN NORTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS EAST FOR 142.01 FEET TO A POINT OF CURVATURE WITH A CURVE HAVING A RADIUS OF 80.00 FEET;

THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT FOR 124.60 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH FORTY-FOUR (44) DEGREES, SEVEN (07) MINUTES, TWENTY-ONE (21) SECONDS WEST FOR 112.38 FEET TO A POINT OF TANGENCY;

THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 79.32 FEET;

THENCE RUN NORTH FOR 514.13 FEET;

THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS EAST FOR 238.82 FEET TO A POINT OF CURVATURE WITH A CURVE HAVING A RADIUS OF 153.00 FEET;

THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT FOR 152.60 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH SIXTY (60) DEGREES, ELEVEN (11) MINUTES, ELEVEN (11) SECONDS EAST FOR 146.36 FEET;

THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS EAST FOR 117.95 FEET BACK TO THE POINT OF BEGINNING;

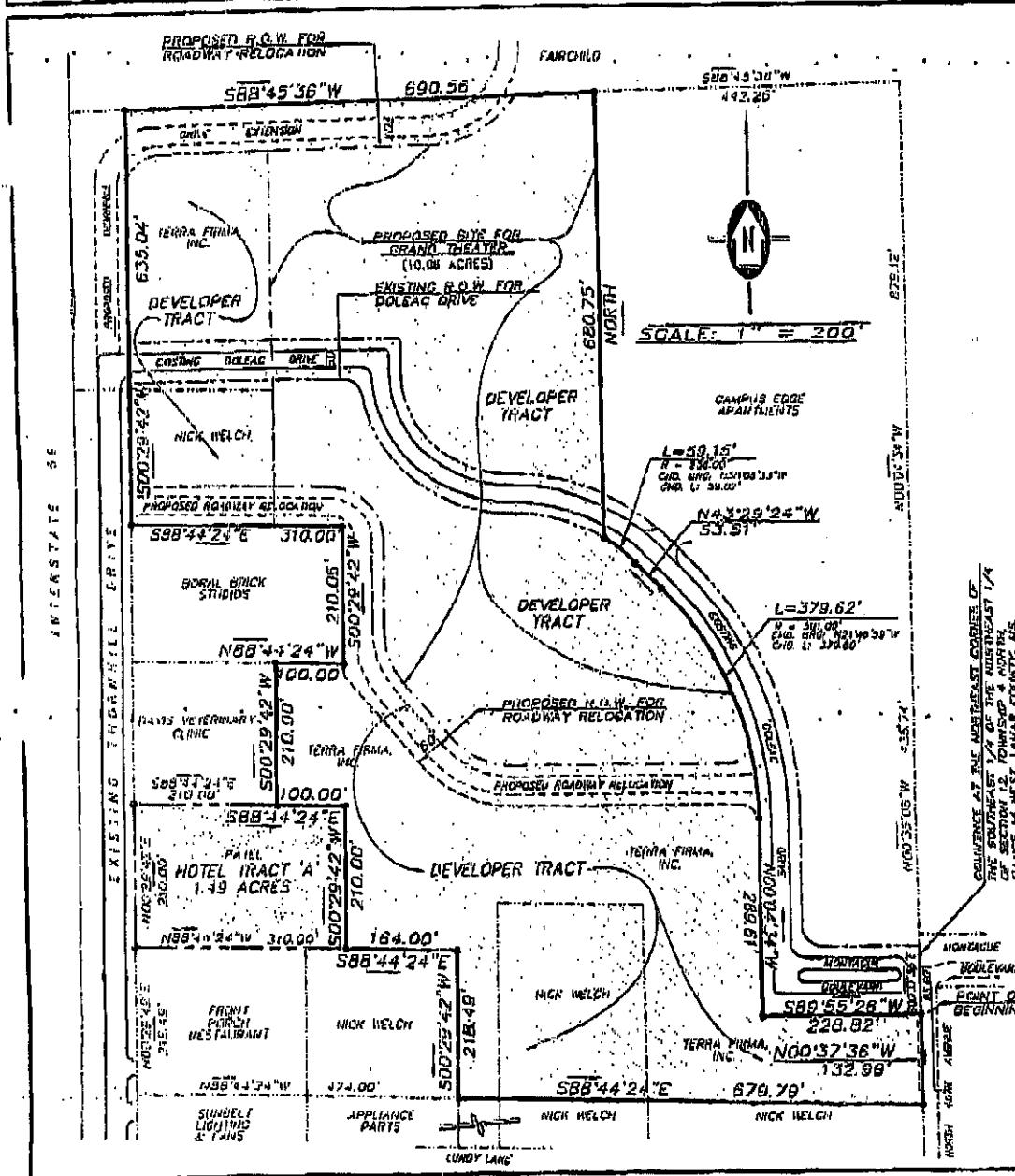
THE ABOVE DESCRIBED PARCEL LIES ENTIRELY WITHIN AND IS A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND CONTAINS 10.06 ACRES.



**EXHIBIT C**  
**Legal Descriptions Developer Tracts**

771

PLAT OF SURVEY OF  
**DEVELOPER TRACT AND PROPOSED HOTEL TRACT ADJACENT TO  
PROPOSED SITE FOR GRAND THEATER CINEMA-PLEX SITE @ CHAUVET SQUARE**  
A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12,  
TOWNSHIP 4-NORTH, RANGE 14-WEST, LAMAR COUNTY, HATTIESBURG, MISSISSIPPI



**TIMOTHY R. BURGE, P.A.**  
CONSULTING ENGINEERS III SURVEYORS  
802 W. PINE STREET, HATTIESBURG, MISSISSIPPI 39401 601-544-0078

**CLIENT**  
**TERRA FIRMA, INC.**  
HATTIESBURG, MISS



**CERTIFICATE OF SURVEY**  
I, TIMOTHY R. BURGE, MISSISSIPPI REGISTERED LAND SURVEYOR NO. LS-02472, CERTIFY THAT I AM RESPONSIBLE FOR THE FIELD SURVEY OF THE PROPERTY PLATTED HEREON AND THAT THIS PLAT IS A TRUE AND CORRECT RECORD OF SAID SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
**SOURCES OF INFORMATION**

<p> <input checked="" type="checkbox"/> - dBB  <input checked="" type="checkbox"/> - EP  <input type="checkbox"/> - SF  <input type="checkbox"/> -                 </p>	<p> <b>SURVEY CLASS:</b> A  <b>PROJECT NO:</b> 98-94/TFC  <b>DRAWN BY:</b> RB  <b>CHECKED BY:</b> TRB  <b>DATE:</b> OCTOBER 25, 2004  <b>FILE NAME:</b> 9894GT02.DWG  <b>DRAWING NO:</b> 9894.L3874                 </p>
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772

LEGAL DESCRIPTION

PROJID: 9894/TFC CLIENT: TERRA FIRMA CORPORATION

DATE: OCTOBER 25, 2004 DRAWING FILE: 9894GT02.DWG

REMARKS: DEVELOPER TRACT AT CHAUVET SQUARE FOR OEA AGREEMENT WITH SOUTHERN THEATERS, I.I.C.

DESCRIPTION: A PART OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, HATTIESBURG, LAMAR COUNTY, MISSISSIPPI

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(SOUTH PARCEL)

- 1) COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND RUN SOUTH ZERO (00) DEGREES, THIRTY-SEVEN (37) MINUTES, THIRTY-SIX (36) SECONDS EAST FOR 86.60 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY BOUNDARY OF MONTAGUE BOULEVARD FOR THE POINT OF BEGINNING;
- 2) THENCE RUN SOUTH EIGHTY-NINE (89) DEGREES, FIFTY-FIVE (55) MINUTES, TWENTY-SIX (26) SECONDS WEST AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 228.82 FEET TO A POINT ON THE WEST RIGHT-OF-WAY BOUNDARY OF DOLEAC DRIVE;
- 3) THENCE RUN NORTH ZERO (00) DEGREES, FOUR (04) MINUTES, THIRTY-FOUR (34) SECONDS WEST AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 280.38 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 501.00 FEET;
- 4) THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 379.62 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH TWENTY-ONE (21) DEGREES, FORTY-SIX (46) MINUTES, FIFTY-NINE (59) SECONDS WEST FOR 370.60 FEET, TO A POINT OF TANGENCY;
- 5) THENCE RUN NORTH FORTY-THREE (43) DEGREES, TWENTY-NINE (29) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 53.51 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 266.00 FEET;
- 6) THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 59.15 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH FIFTY (50) DEGREES, SIX (06) MINUTES, THIRTY-THREE (33) SECONDS WEST FOR 59.02 FEET;
- 7) THENCE RUN NORTH FOR 680.75 FEET;
- 8) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 690.56 FEET;
- 9) THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 635.04 FEET;
- 10) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES,

- TWENTY-FOUR (24) SECONDS EAST FOR 310.00 FEET;
- 11) THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 210.08 FEET;
  - 12) THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 100.00 FEET;
  - 13) THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 210.00 FEET;
  - 14) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 100.00 FEET;
  - 15) THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 210.00 FEET;
  - 16) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 164.00 FEET;
  - 17) THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 218.49 FEET;
  - 18) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 679.79 FEET;
  - 19) THENCE RUN NORTH ZERO (00) DEGREES, THIRTY-SEVEN (37) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 132.99 FEET BACK TO THE POINT OF BEGINNING;
  - 20) THE ABOVE DESCRIBED PARCEL LIES ENTIRELY WITHIN AND IS A PART OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND CONTAINS 27.86 ACRES.

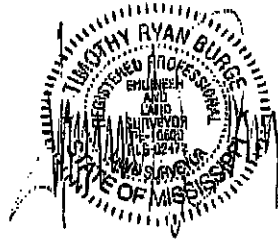
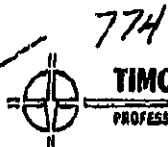


EXHIBIT C-1  
Legal Description of Tract A



TIMOTHY R. BURGE  
PROFESSIONAL ASSOCIATES, INC.

CONSULTING ENGINEERS - LAND SURVEYORS

602 SOUTH 20TH AVENUE, NATALISBURG, MISSISSIPPI 39402 601-261-9300 (FAX) 601-261-9173

LEGAL DESCRIPTION

PROJID: 9385/JTJ CLIENT: TERRA FIRMA CORPORATION

DATE: SEPTEMBER 13, 1995 DRAWING NO: 9385.11825

REVISED: SEPTEMBER 19, 1995: REVISED COMMENCEMENT CALL TO MATCH SURVEY PLAT,

CORRECTED DISTANCE FROM 420.00 FEET TO 310.00 FEET AT 2ND CALL.

REMARKS: PARCEL NO. 4 AS SHOWN ON REFERENCED DRAWING (PLAT ATTACHED)

DESCRIPTION: A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12,

TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI AND RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 339.51 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE CONTINUE NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 310.00 FEET;

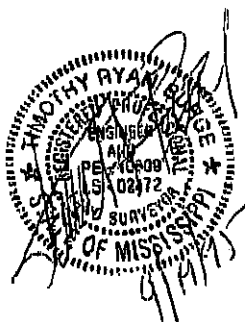
THENCE RUN NORTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS EAST FOR 210.00 FEET;

THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 310.00 FEET;

THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 210.00 FEET BACK TO THE POINT OF BEGINNING;

THE ABOVE DESCRIBED PARCEL LIES ENTIRELY WITHIN THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND CONTAINS 1.50 ACRES.

SAID PARCEL ALSO TO BE SUBJECT TO A 20' WIDE DRAINAGE & UTILITY EASEMENT ALONG THE ENTIRE NORTH BOUNDARY, AND A 30' WIDE SANITARY SEWER EASEMENT ACROSS A PART OF THE EASTERLY HALF OF SAID PARCEL.



PROJID: 9385/JTJ

PLAT OF SURVEY OF

A PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 12,  
TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI

FLOOD ZONE CERTIFICATION

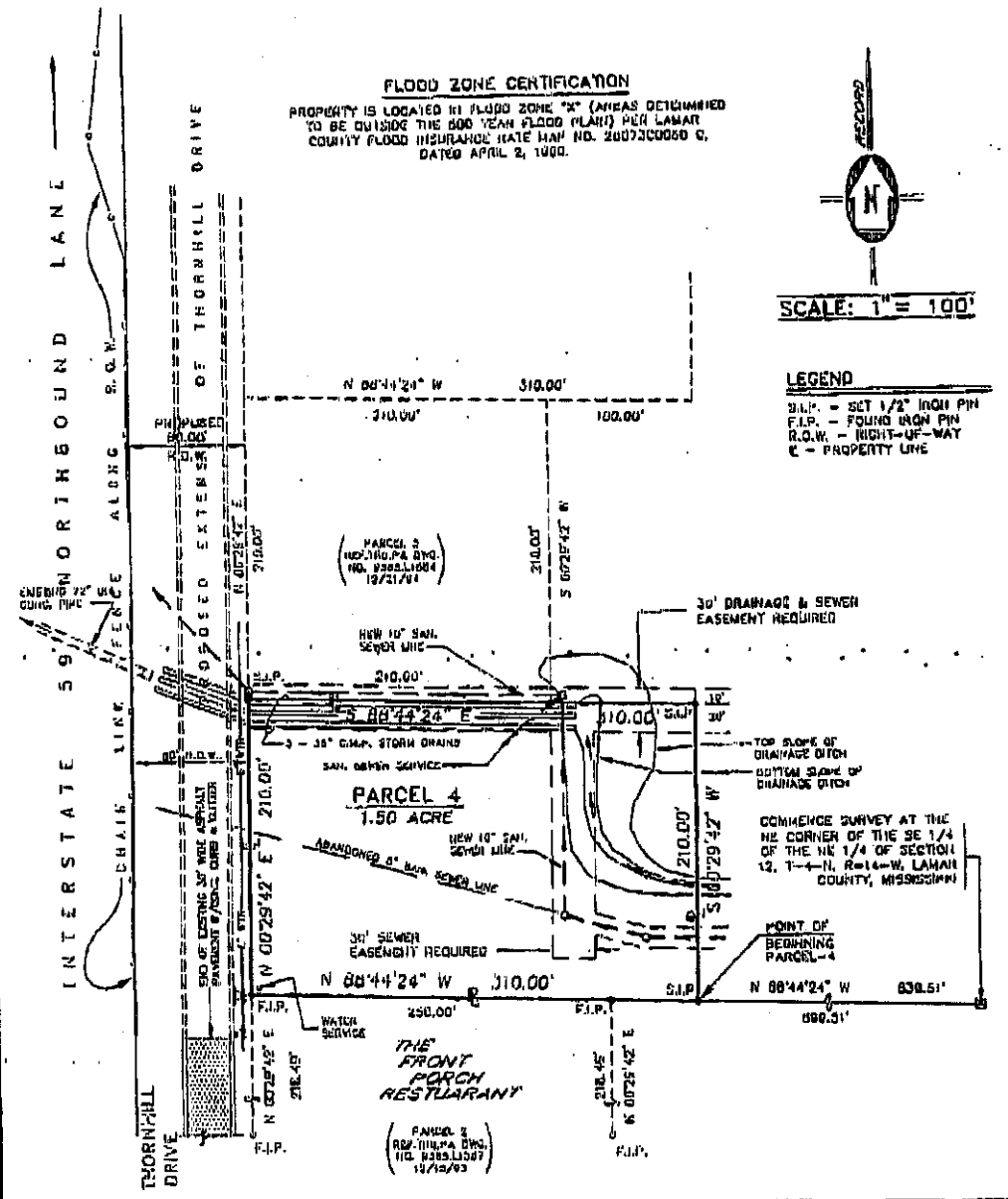
PROPERTY IS LOCATED IN FLOOD ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 100 YEAR FLOOD PLAIN) PER LAMAR COUNTY FLOOD INSURANCE RATE MAP NO. 20072C0060 G, DATED APRIL 2, 1990.



SCALE: 1" = 100'

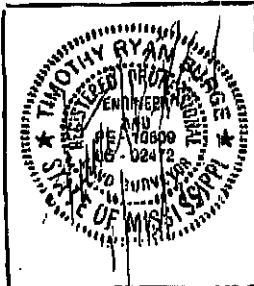
LEGEND

- S.I.P. - SET 1/2" IRON PIN
- F.I.P. - FOUND IRON PIN
- R.O.W. - RIGHT-OF-WAY
- C - PROPERTY LINE



**TIMOTHY R. BURGE, P.A.**  
 CONSULTING ENGINEERS // SURVEYORS  
 802 S. 28th AVENUE, HATTIESBURG, MISSISSIPPI 39402 • 601-261-0195

**JOSEPH F. TATUM, JR.**  
 TERRA FIRMA CORP.  
 P.O. BOX 1089  
 HATTIESBURG, MISSISSIPPI



**CERTIFICATE OF SURVEY**  
 I, TIMOTHY R. BURGE, MISSISSIPPI REGISTERED LAND SURVEYOR NO. LS-02472, CERTIFY THAT I AM RESPONSIBLE FOR THE FIELD SURVEY OF THE PROPERTY PLATTED HEREON AND THAT THIS PLAT IS A TRUE AND CORRECT RECORD OF SAID SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

**SOURCES OF INFORMATION**  
 RECORD PLAT ON FILE IN:  
 PLAT BOOK 2, PAGE 38  
 SLIDE A-101

SCL -  - SCL |  - HS  
 W -  - SCL |  -  
**SURVEY CLASS:** B  
**PROJECT NO:** 9385/JTU  
**DRAWN BY:** TRB  
**CHECKED BY:** TRB  
**DATE:** SEPTEMBER 14, 1995  
**FILE NAME:** 9385PRO4.DWG  
**DRAWING NO:** 9385.L1825

400 776

**EXHIBIT D**  
**Utility Easements**

STATE OF MISSISSIPPI  
COUNTY OF LAMAR  
CITY OF HATTIESBURG

FILED

2003 OCT 22 PM 3 33

**UTILITY EASEMENT**

WAYNE SMITH  
CHANCERY CLERK

For and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, including the benefits to be derived herefrom, Terra Firma Corporation, do hereby grant and convey unto the City of Hattiesburg, Mississippi, a municipal corporation, an easement over, across and upon a parcel of real property, for the construction and maintenance of Utilities over and across the following described real property located in the City of Hattiesburg, Lamar County, Mississippi:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND RUN NORTH ZERO (00) DEGREES, THIRTY-SIX (36) MINUTES, SEVEN (07) SECONDS WEST FOR 436.74 FEET; THENCE RUN NORTH ZERO (00) DEGREES, FOUR (04) MINUTES, THIRTY-FOUR (34) SECONDS WEST FOR 414.87 FEET; THENCE RUN WEST FOR 705.06 FEET TO A POINT ON THE ARC OF A CURVE ON THE PROPOSED WESTERLY RIGHT-OF-WAY BOUNDARY OF DOLEAC DRIVE, SAID CURVE BEING CONCAVED NORTHEASTERLY AND HAVING A RADIUS OF 30.00 FEET, SAID POINT BEING THE POINT OF BEGINNING; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 42.41 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH FORTY-NINE (49) DEGREES, THIRTY (30) MINUTES, FIVE (05) SECONDS WEST FOR 30.07 FEET, TO A POINT OF TANGENCY; THENCE RUN WEST AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 127.00 FEET; THENCE LEAVING SAID RIGHT-OF-WAY BOUNDARY, RUN SOUTH EIGHTY (80) DEGREES, FIFTY-ONE (51) MINUTES, FORTY-FOUR (44) SECONDS EAST FOR 159.35 FEET BACK TO THE POINT OF BEGINNING; THE ABOVE DESCRIBED UTILITY EASEMENT LIES ENTIRELY WITHIN AND IS A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI.

The Grantee herein is given the right to do whatever may be necessary and proper for the enjoyment of the rights herein granted, including the right of ingress and egress and the right to clear said right-of-way as selected of such shrubs, trees and other vegetation as may be necessary.

I/we fully understand that we have the right to receive just compensation for the real property herein described based in an appraisal of said property. I/we hereby waive our right to just compensation and donate the real property herein described to the City of Hattiesburg. I/we further understand that we have the right to request that a fair market value of appraisal of the property be made and I/we hereby waive that right.



WITNESS OUR SIGNATURES on this, the 29<sup>th</sup> day of Sept, A.D., 48 2003

**CERTIFICATE OF FILING AND RECORDING**  
MISSISSIPPI - LAMAR COUNTY

WAYNE SMITH, CHANCERY CLERK

BOOK 16-0 PAGE 706

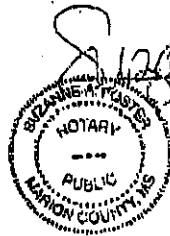
INDEXED  RECORDED  ABSTRACTED   
ROAD PLATS D.C.

This day there came and appeared before me, the undersigned authority in and for said County and State, the within named, **TERRA FIRMA CORPORATION**, who acknowledged before me that he/she signed, executed and delivered the above and foregoing easement on the day and year therein, mentioned as their own free and voluntary act and deed.

Given under my hand and official seal of this office on this, the 29<sup>th</sup> day of September, A.D.,

2003

*Wayne Smith*  
*[Signature]*



NOTARY PUBLIC

My Commission Expires:

11-26-2005

My Commission Expires November 26, 2005

404

FILED

2003 OCT 22 PM 3 31

777

STATE OF MISSISSIPPI  
COUNTY OF LAMAR  
CITY OF HATTIESBURG

WAYNE SMITH  
CHANCERY CLERK

UTILITY EASEMENT

For and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, including the benefits to be derived herefrom, Terra Firma Corporation, do hereby grant and convey unto the City of Hattiesburg, Mississippi, a municipal corporation, an easement over, across and upon a parcel of real property, for the construction and maintenance of Utilities over and across the following described real property located in the City of Hattiesburg, Lamar County, Mississippi:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND RUN NORTH ZERO (00) DEGREES, THIRTY-SIX (36) MINUTES, SEVEN (07) SECONDS WEST FOR 207.05 FEET; THENCE RUN WEST FOR 220.67 FEET TO A POINT ON THE PROPOSED WESTERLY RIGHT-OF-WAY BOUNDARY OF DOLEAC DRIVE, SAID POINT BEING THE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT-OF-WAY BOUNDARY, RUN SOUTH EIGHTY-NINE (89) DEGREES, FIFTY-NINE (59) MINUTES, FIFTY-EIGHT (58) SECONDS WEST FOR 363.80 FEET; THENCE RUN NORTH THIRTY-FOUR (34) DEGREES, THIRTY-EIGHT (38) MINUTES, THIRTY-NINE (39) SECONDS WEST FOR 223.80 FEET; THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 112.17 FEET; THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 16.00 FEET; THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS WEST FOR 8.70 FEET; THENCE RUN SOUTH FOUR (04) DEGREES, TWENTY-TWO (22) MINUTES, TWO (02) SECONDS WEST FOR 210.29 FEET; THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 22.90 FEET; THENCE RUN NORTH SIXTY-SEVEN (67) DEGREES, SEVENTEEN (17) MINUTES, FIFTY-TWO (52) SECONDS EAST FOR 8.01 FEET; THENCE RUN NORTH FOUR (04) DEGREES, TWENTY-TWO (22) MINUTES, TWO (02) SECONDS EAST FOR 182.04 FEET; THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-NINE (49) MINUTES, FORTY-TWO (42) SECONDS EAST FOR 76.14 FEET; THENCE RUN SOUTH THIRTY-FOUR (34) DEGREES, THIRTY-EIGHT (38) MINUTES, THIRTY-NINE (39) SECONDS EAST FOR 185.91 FEET; THENCE RUN SOUTH SEVENTY-NINE (79) DEGREES, THIRTY-THREE (33) MINUTES, TWENTY-NINE (29) SECONDS WEST FOR 175.24 FEET; THENCE RUN NORTH EIGHTY-FOUR (84) DEGREES, THIRTEEN (13) MINUTES, FIFTY-SIX (56) SECONDS WEST FOR 20.82 FEET; THENCE RUN SOUTH SIXTY-SEVEN (67) DEGREES, SEVENTEEN (17) MINUTES, FIFTY-TWO (52) SECONDS WEST FOR 8.01 FEET; THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 20.29 FEET; THENCE RUN SOUTH EIGHTY-FOUR (84) DEGREES, THIRTEEN (13) MINUTES, FIFTY-SIX (56) SECONDS EAST FOR 38.82 FEET; THENCE RUN NORTH SEVENTY-NINE (79) DEGREES, THIRTY-THREE (33) MINUTES, TWENTY-NINE (29) SECONDS EAST FOR 166.58 FEET; THENCE RUN SOUTH ELEVEN (11) DEGREES, THIRTY-SEVEN (37) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 217.89 FEET; THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 9.86 FEET; THENCE RUN SOUTH ZERO (00) DEGREES, TWENTY-NINE (29) MINUTES, FORTY-TWO (42) SECONDS WEST FOR 135.76 FEET; THENCE RUN NORTH ELEVEN (11) DEGREES, THIRTY-SEVEN (37) MINUTES, THIRTY-SIX (36) SECONDS EAST FOR 272.58 FEET; THENCE RUN SOUTH FOR 03.67 FEET; THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FOUR (44) MINUTES, TWENTY-FOUR (24) SECONDS EAST FOR 30.01 FEET; THENCE RUN NORTH FOR 155.26 FEET; THENCE RUN NORTH EIGHTY-NINE (89) DEGREES, FIFTY-NINE (59) MINUTES, FIFTY-EIGHT (58) SECONDS EAST FOR 382.17 FEET TO A POINT ON THE ARC OF A CURVE ON THE PROPOSED WESTERLY RIGHT-OF-WAY BOUNDARY OF DOLEAC DRIVE, SAID CURVE BEING CONCAVED EASTERLY AND HAVING A RADIUS OF 601.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT-OF-WAY BOUNDARY FOR 30.16 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH FIVE (05) DEGREES, THIRTY-SIX (36) MINUTES, FORTY-EIGHT (48) SECONDS WEST FOR 30.14 FEET, BACK TO THE POINT OF BEGINNING; THE ABOVE DESCRIBED UTILITY EASEMENT LIES ENTIRELY WITHIN AND IS A PART OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI.

The Grantee herein is given the right to do whatever may be necessary and proper for the enjoyment of the rights herein granted, including the right of ingress and egress and the right to clear said right-of-way so selected of such shrubs, trees and other vegetation as may be necessary.

I/we fully understand that we have the right to receive just compensation for the real property herein described based in an appraisal of said property. I/we hereby waive our right to just compensation and donate the real property herein described to the City of Hattiesburg. I/we further understand that we have the right to request that a fair market value of appraisal of the property be made and I/we hereby waive that right.

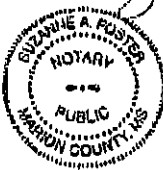
WITNESS OUR SIGNATURES on this, the 29th day of Sept, A.D., ~~19~~ 2003

[Signature]  
[Signature] / Sec Treasurer

This day there came and appeared before me, the undersigned authority in and for said County and State, the within named, **TERRA FIRMA CORPORATION**, who acknowledged before me that he/she signed, executed and delivered the above and foregoing easement on the day and year therein, mentioned as their own free and voluntary act and deed.

Given under my hand and official seal of this office on this, the 29th day of Sept, A.D., ~~19~~ 2003

[Signature]  
NOTARY PUBLIC



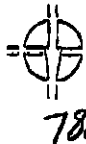
My Commission Expires: 11-26-2005

My Commission Expires November 26, 2005



CERTIFICATE OF FILING AND RECORDING  
STATE OF MISSISSIPPI - LAMAR COUNTY  
29 WAYNE SMITH, CHARTERY CLERK  
BOOK 160-0 PAGE 704  
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780

**LEGAL DESCRIPTION**

PROJID: 9894/TFC CLIENT: TERRA FIRMA CORPORATION

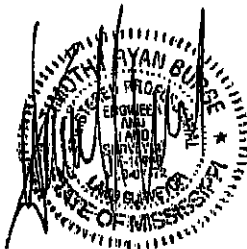
DATE: DECEMBER 7, 2004 DRAWING FILE: 9894C2 ALTA.DWG

REMARKS: 20' WIDE UTILITY EASEMENT ALONG EAST AND NORTH BOUNDARIES OF GRAND THEATRE SITE AT CHAUVET SQUARE.

DESCRIPTION: A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, HATTIESBURG, LAMAR COUNTY, MISSISSIPPI

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

- 1) COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND RUN NORTH ZERO (00) DEGREES, THIRTY-SIX (36) MINUTES, SEVEN (07) SECONDS WEST FOR 435.74 FEET;
- 2) THENCE RUN NORTH ZERO (00) DEGREES, FOUR (04) MINUTES, THIRTY-FOUR (34) SECONDS WEST FOR 879.12 FEET TO THE NORTH BOUNDARY OF SAID SECTION 12;
- 3) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 442.26 FEET;
- 4) THENCE RUN DUE SOUTH FOR 70.02 FEET TO THE POINT OF BEGINNING;
- 5) THENCE CONTINUE DUE SOUTH FOR 551.69 FEET;
- 6) THENCE RUN WEST FOR 20.00 FEET;
- 7) THENCE RUN NORTH FOR 531.25 FEET;
- 8) THENCE RUN SOUTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS WEST FOR 483.78 FEET;
- 9) THENCE RUN NORTH FOR 20.00 FEET;
- 10) THENCE RUN NORTH EIGHTY-EIGHT (88) DEGREES, FORTY-FIVE (45) MINUTES, THIRTY-SIX (36) SECONDS EAST FOR 438.76 FEET BACK TO THE POINT OF BEGINNING;
- 11) THE ABOVE DESCRIBED PARCEL LIES ENTIRELY WITHIN AND IS A PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 14 WEST, LAMAR COUNTY, MISSISSIPPI, AND CONTAINS 0.47 ACRES.



CERTIFICATE OF FILING AND RECORDING  
 STATE OF MISSISSIPPI - LAMAR COUNTY  
 WAYNE SHITH - CHANCERY CLERK  
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*Sharon*

