

STATE OF ALABAMA     )  
                                  :  
SHELBY COUNTY         )

**EASEMENT, JOINT USE, AND MAINTENANCE AGREEMENT**

**THIS EASEMENT, JOINT USE, AND MAINTENANCE AGREEMENT** (this "Agreement") made as of the 10<sup>th</sup> day of June, 2004, by and among **Huntley Hall Apartments, Ltd.**, an Alabama limited partnership whose address is 2967 Ross Clark Circle, Dothan, Houston County, Alabama 36301 ("Huntley"), acting by and through its general partners, Hall Housing Investments, Inc., an Alabama corporation, and Wellington Housing Investments, Inc., an Alabama corporation, and **C&A Enterprises, L.L.C.**, an Alabama limited liability company whose address is 1100 East Park Drive, Suite 400, Birmingham, Alabama 35235, **Cole Investment Realty, LLC**, an Alabama limited liability company whose address is 1100 East Park Drive, Suite 400, Birmingham, Alabama 35235, and **Awtrey Investment Realty, LLC**, an Alabama limited liability company whose address is 5330 Stadium Trace Parkway, Birmingham, AL 35244 ("collectively referred to herein as "C&A")

**WITNESSETH:**

**WHEREAS**, Huntley owns that certain parcel of property (the "Huntley Parcel") more particularly described on **Exhibit A** attached hereto and incorporated herein in its entirety by this reference;

**WHEREAS**, the Huntley Parcel does not have access to a public road (i.e., Highway 52) or to utilities except through the surrounding property currently owned by C&A (the "C&A Parcel");

**WHEREAS**, the parties have reached an agreement whereby C&A will grant to Huntley a non-exclusive easement for ingress, egress and utilities across a portion of the C&A Parcel;

**WHEREAS**, C&A and Huntley desire to set forth herein their mutual agreements regarding the foregoing matters;

**NOW, THEREFORE**, for and in consideration of \$10.00 Dollars and other good and valuable consideration, in hand paid each party hereto unto the other, the receipt and sufficiency whereof are hereby acknowledged, Huntley and C&A hereby covenant and agree, one with the other, as follows:

1.     **Grant of Access Easement.** C&A does hereby grant to Huntley, its successors and assigns, a non-exclusive easement for ingress and egress and for utilities (which must be underground) across that certain portion of the C&A Parcel described on **Exhibit B** attached hereto and incorporated herein in its entirety by this reference (the "Easement Area").

2.     **Huntley's Obligations.** Huntley will not use the Easement Area in any manner which will cause damage to any improvements situated over, across, through, under, or upon the Easement Area.



3. **Improvements to Easement Area.** The improvements to the Easement Area have been accomplished by C&A in accordance with plans permitted by the applicable governmental authority.

4. **Dedication/Joint Use.** C&A shall have the right to dedicate the Easement Area to the City of Pelham, Alabama, or such other governmental entities as C&A shall determine. By execution of this Agreement, Huntley, for itself and its successors in interest, shall be deemed to have consented to such dedication; however, Huntley, or its successors in interest, will enter into any documentation which may be required by any governmental authority in connection with any such dedication. C&A hereby reserves unto itself and its grantees, successors, and assigns the right to the use of the Easement Area jointly and in common with Huntley and its successors in interest.

5. **Maintenance.** Until the dedication of the Easement Area, C&A will be responsible for the maintenance of any roadway improvements to the Easement Area, other than any maintenance required by the misuse or abuse of the improvements by Huntley or its agents or contractors or by the occupants of the Huntley Parcel or by any contractors or other entities engaged by Huntley or its contractors in connection with the construction of improvements to the Huntley Parcel. C&A assures that the access provided by this easement will be consistent and adequate for the needs of the property to be served, until the dedication of the Easement Area.

6. **Indemnity.** Huntley hereby agrees to defend, indemnify, and hold harmless C&A and its agents, contractors, directors, employees, and representatives from any damage, claim, loss, or injury, except that which is caused by, or through any action, failure to act, or negligence of C&A, its agents, representatives, its successors, assigns, employees, contractors, or any party acting on its behalf, whether suffered by or asserted against any one or more of them, from or by any party whatsoever, arising from (i) the exercise by Huntley (or any agent, representative, contractor or employee of Huntley or any party acting on behalf of Huntley or involved in the construction of improvements to the Huntley Parcel) of the easement herein granted, (ii) the entry upon the Easement Area or any portion thereof or upon any other lands owned by C&A, whether or not permitted by this instrument, by Huntley or any agent, representative, contractor, or employee of Huntley, or any other party acting on behalf of Huntley or involved in the construction of improvements to the Huntley Parcel, or (iii) any use or restoration of the Easement Area, by Huntley, its successors, assigns, employees, contractors, or agents, or any other party acting on behalf of Huntley, including personal injury, loss of life, loss of or damage to real or personal property, and attorney fees and other costs of defense or litigation. C&A shall be responsible for any damage caused by its own actions, actions of its agents and for its own negligence.

7. **Insurance.** The general partners of Huntley hereby agree to maintain during the entire term of any easement granted herein, at their cost, public liability insurance with respect to the C&A Parcel (including the Easement Area) and the Huntley Parcel, in which C&A is a named insured, in the amount of at least \$5,000,000, by a company and in form and substance acceptable to C&A. This insurance must be in place and C&A must have received a copy of the policy or such other evidence of the issuance of the policy as C&A shall require, prior to the exercise of this easement by Huntley or anyone acting on behalf of Huntley.



8. **Notices.** All notices required or permitted hereunder shall be in writing and delivered personally or by Federal Express or UPS, and addressed as follows:

If to C&A:

C & A Enterprises, L.L.C.  
1100 East Park Drive, Suite 400  
Birmingham, AL 35235  
Telephone: (205) 836-8683  
Facsimile: (205) 836-8695  
Attention: Eugene K. Cole

Cole Investment Realty, LLC  
1100 East Park Drive, Suite 400  
Birmingham, AL 35235  
Telephone: (205) 836-8683  
Facsimile: (205) 836-8695  
Attention: Eugene K. Cole

Awtrey Investment Realty, LLC  
5330 Stadium Trace Parkway  
Birmingham, AL 35244  
Telephone: (205) 987-4060  
Facsimile: (205) 987-0927  
Attention: H. Albert Awtrey

If to Huntley:

Huntley Hall Apartments, Ltd.  
c/o Hall Housing Investments, Inc.  
2967 Ross Clark Circle  
Dothan, Alabama 36301  
Telephone: (334) 794-2678  
Facsimile: (334) 702-1360  
Attention: Gary Hall

Each such notice shall be deemed to have been given to, or served upon, the party to which addressed on the day after the same is deposited with Federal Express or UPS, for next day delivery, with all fees prepaid, properly addressed in the manner above provided. Each such delivered notice or communication shall be deemed to have been given to or served upon the party to whom delivered, upon the delivery thereof in the manner above provided. Any party hereto may change its address for the service of notice hereunder by delivering written notice of said change to the other parties hereunder, in the manner above specified, ten (10) days prior to the effective date of said change.

9. **Run with Land/Termination.** The easement herein granted shall run with the land for the benefit of the Huntley Parcel; however, the easement herein granted shall terminate and become null and void upon the dedication of the easement or of the Easement Area to any one or more governmental entities for public use and maintenance.

10. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of C&A and Huntley and their respective successors and assigns.

**END OF TEXT; SIGNATURES BEGIN ON NEXT PAGE**

**IN WITNESS WHEREOF**, each of the parties hereto has set its hand and seal, and each of C&A and Huntley have caused these presents to be executed by their respective duly authorized managers or managing members, as the case may be, under seal, in each instance as of the date first above written.

**C&A:**

**C&A ENTERPRISES, L.L.C.**

By:   
Eugene K. Cole, Its Managing Member

**COLE INVESTMENT REALTY, L.L.C.**

By:   
Eugene K. Cole, Its Sole Member

**AWTREY INVESTMENT REALTY, L.L.C.**

By:   
H. Albert Awtrey, Its Sole Member


**HUNTLEY:**

**HUNTLEY HALL APARTMENTS, LTD.**

By: **Hall Housing Investments, Inc.,  
a general partner**

By:   
Gary Hall, Its President

By: **Wellington Housing Investments, Inc.,  
a general partner**

By:   
Gary Hall, Its President

STATE OF ALABAMA     )  
                                  :  
JEFFERSON COUNTY     )

I, the undersigned, a notary public in and for said county and state, hereby certify that Eugene K. Cole, whose name as Managing Member of C & A Enterprises, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Managing Member, and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this 9<sup>th</sup> day of June, 2004.



Notary Public

[NOTARIAL SEAL]

My commission expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
~~MY COMMISSION EXPIRES: May 16, 2006~~  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS**

STATE OF ALABAMA     )  
                                  :  
JEFFERSON COUNTY     )

I, the undersigned, a notary public in and for said county and state, hereby certify that Eugene K. Cole, whose name as Sole Member of Cole Investment Realty, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Sole Member, and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this 9<sup>th</sup> day of June, 2004.



Notary Public

[NOTARIAL SEAL]


My commission expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
~~MY COMMISSION EXPIRES: May 16, 2006~~  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS**



STATE OF ALABAMA     )  
                                     :  
JEFFERSON COUNTY     )

I, the undersigned, a notary public in and for said county and state, hereby certify that H. Albert Awtrey, whose name as Sole Member of Awtrey Investment Realty, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Sole Member, and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this 9<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public

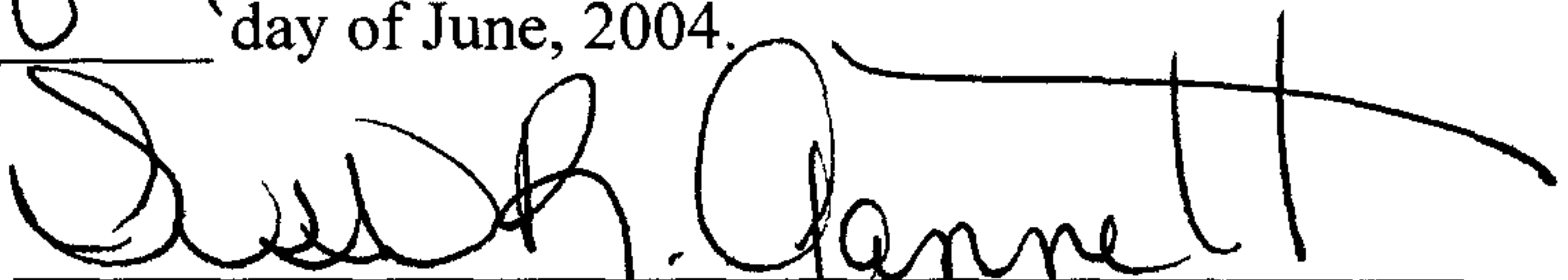
[NOTARIAL SEAL]

My commission expires: ~~NOTARY PUBLIC STATE OF ALABAMA AT LARGE~~  
~~MY COMMISSION EXPIRES: May 16, 2006~~  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA     )  
                                     :  
JEFFERSON COUNTY     )

I, the undersigned, a notary public in and for said county and state, hereby certify that Gary Hall, whose name as President of each of (i) Hall Housing Investments, Inc., an Alabama corporation, in its capacity as a general partner of Huntley Hall Apartments, Ltd., an Alabama limited partnership, and (ii) Wellington Housing Investments, Inc., an Alabama corporation, in its capacity as a general partner of Huntley Hall Apartments, Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents thereof, he, with full authority and as such officer of such corporation acting in its capacity as such general partners of such limited partnership, executed the same as the act and deed of such corporations in its capacity as such general partners of such limited partnership voluntarily on the day that the same bears date

Given under my hand and seal this 10<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

MY COMMISSION EXPIRES OCTOBER 8, 2005

**Prepared By:**

**R. Eugene Clenney, Jr., Esq.  
Johnston, Hinesley, Flowers & Clenney, P.C.  
291 North Oates Street  
Dothan, Alabama 36303**



## **EXHIBIT A**

### **Huntley Parcel**

A parcel of land situated in the northwest quarter of the northwest quarter of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the northwest corner of said Section 30, said point being the point of beginning; thence south  $89^{\circ} 26' 05''$  east along north line of said 1/4-1/4 section a distance of 625.00 feet; thence south  $00^{\circ} 26' 48''$  west a distance of 1310.02 feet; thence north  $89^{\circ} 22' 20''$  west a distance of 625.00 feet; thence north  $00^{\circ} 26' 48''$  east a distance of 1309.34 feet to the point of beginning.

LESS AND EXCEPT the following:

Commence at the northwest corner of Section 30, Township 20 South, Range 2 West, and thence south  $89^{\circ} 26' 05''$  east a distance of 586.51 feet to the point of beginning; thence south  $89^{\circ} 26' 05''$  east a distance of 38.49 feet; thence south  $00^{\circ} 26' 48''$  west a distance of 359.29 feet; thence with a curve turning to the right with an arc length of 364.74 feet, with a radius of 780.00 feet, with a chord bearing of north  $05^{\circ} 40' 02''$  west with a chord length of 361.42 feet, which is the point of beginning.

## **EXHIBIT B**

### **Easement Area**

Commence at the northwest corner of Section 30, Township 20 South, Range 2 West, and thence south  $00^{\circ} 26' 48''$  west a distance of 350.56 feet; thence south  $89^{\circ} 33' 12''$  east a distance of 653.28 feet to the point of beginning of a 60 feet wide ingress, egress, and utility easement lying 30 feet either side of the following described center line; thence with a curve turning to the right with an arc length of 676.99 feet, with a radius of 750.00 feet, with a chord bearing of north  $06^{\circ} 47' 45''$  east, with a chord length of 654.24 feet; thence with a curve turning to the left with an arc length of 170.51 feet, with a radius of 300.00 feet, with a chord bearing of north  $16^{\circ} 22' 20''$  east, with a chord length of 168.22 feet; thence north  $00^{\circ} 05' 23''$  east a distance of 622.22 feet; thence with a curve turning to the left with an arc length of 233.14 feet, with a radius of 300.00 feet, with a chord bearing of north  $22^{\circ} 10' 25''$  west, with a chord length of 227.32 feet; thence with a curve turning to the right with an arc length of 430.04 feet, with a radius of 300.00 feet, with a chord bearing of north  $03^{\circ} 22' 18''$  west, with a chord length of 394.15 feet; thence north  $37^{\circ} 41' 38''$  east a distance of 31.96 feet to the point of termination of said easement.

LESS AND EXCEPT any property lying in the Shelby County Highway right-of-way as recorded in Instrument #200404080001834000 in the Probate Office of Shelby County, Alabama

**CONSENT**

The undersigned, as the holder of a mortgage on the subject properties, hereby evidences its consent to the foregoing Easement, Joint Use, and Maintenance Agreement.

Dated as of the 10<sup>th</sup> day of June, 2004.

COMPASS BANK

By John McQueen  
John McQueen  
Senior Vice President

STATE OF ALABAMA     )  
                                     :  
JEFFERSON COUNTY     )

I, the undersigned, a notary public in and for said county in said state, hereby certify that John McQueen, whose name as Senior Vice President of Compass Bank is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said bank.

Given under my hand and official seal the 9<sup>th</sup> day of June, 2004.

Barbara B. Moore  
Notary Public

[NOTARIAL SEAL]

My commission expires: 11-25-06