

20050316000118330 1/12 \$47.50
Shelby Cnty Judge of Probate, AL
03/16/2005 01:11:02PM FILED/CERT

STATE OF ALABAMA)

COUNTY OF SHELBY)

Value \$500.⁰⁰ JFB

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("this Agreement") made this 24th day of March, 2005 between **GAIL OWEN**, an unmarried woman, of 1011 Chelsea Road, Columbiana, Alabama 35051 (hereinafter "Grantor"), and **ERNEST FALKNER, JR.** and **SARA FALKNER**, husband and wife, of P.O. Box 641, Columbiana, Alabama 35051 (hereinafter "Grantee").

RECITALS

WHEREAS, pursuant to that certain Lots or Other Unimproved Land Sales Contract dated March 20, 2000 (the "Contract"), Grantee purchased, in fee simple, certain real estate situated in Shelby County, Alabama from Frank Baker ("Baker"), such real estate hereinafter referred to as the "Property." The Property was conveyed by Baker to Grantee pursuant to a General Warranty Deed dated April 17, 2000 and recorded at Instrument Number 2000-13634 in the Office of the Judge of Probate of Shelby County, Alabama and is more particularly described on Exhibit A, attached hereto and incorporated by reference herein; and

WHEREAS, Baker simultaneously conveyed certain real property to Grantor as recorded in Instrument Number 2000-13635 in the Office of the Judge of Probate of Shelby County, Alabama ; and

WHEREAS, Grantee requested, and Grantor agreed, as a condition of the Contract, that Grantor grant to Grantee a non-exclusive easement sixty (60) feet in width over and across the

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property more particularly described on Exhibit "B" (the "Easement Parcel"), for the purpose of ingress and egress to and from the Property and for the installation and maintenance of utilities to serve the Property;

WHEREAS, through inadvertence or otherwise, an easement instrument was not executed and recorded by Grantor at the time of the aforementioned conveyances; and,

WHEREAS, Grantor has agreed to execute an easement instrument at this time, subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grantor does hereby grant, bargain, sell and convey unto Grantee, their heirs, successors and assigns, a non-exclusive easement sixty (60) feet in width as more particularly described on Exhibit B for vehicular and pedestrian ingress and egress to and from the Property over, on, upon, through and across the Easement Parcel. Such ingress and egress as granted by this non-exclusive easement is reserved unto and may be used by Grantor, her heirs, successors, and assigns, and her employees, agents, representatives, tenants, guests, invitees and licensees.

2. Grantor grants to Grantee, their heirs, successors and assigns, the right to connect, install, relocate, reinstall and maintain utilities below ground or under the Easement Parcel as are necessary or customary to provide utility service of any kind or nature to serve only the Property. Grantor grants to Grantee the right to grant permanent or temporary easements and/or rights-of-way within the Easement Parcel to any contractor, subcontractor or utility service or provider of

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utilities as may be necessary or customary to Grantee in connection with the exercise of their rights granted in this paragraph.

3. No buildings or other permanent structures shall be constructed on the Easement Parcel that will interfere with the easements and rights-of-way granted to Grantee hereunder; provided, however, that Grantor reserves the right for herself, her heirs, successors and assigns to use the Easement Parcel for ingress, egress and utilities.

4. Grantee is aware and acknowledges that on December 20, 2004, John Slaughter, Civil Engineer with the Shelby County Public Works Department, wrote a letter to Mike Hill, the title insurance company, Cahaba Title, Inc., as agent for First American Title Insurance Company, indicating that the easement being granted herein lacks sufficient site distance and alignment to Shelby County Highway 47 to be used as a means of ingress and egress to develop the Property (a copy of said letter and attached map are attached hereto and made a part hereof as Exhibit "C").

5. In the event that the Easement Parcel is developed as a means of ingress and egress, with or without the approval of the Shelby County Public Works Department, Shelby County Planning Commission and/or the Shelby County Commission, the Grantee, for themselves, their heirs, successors and assigns, guests, invitees, agents, employees contract laborers and any other persons using said ingress/egress easement, does hereby agree to hold harmless and indemnify the Grantor, her heirs, successors and assigns, from any and all claims and causes of action of arising from or out of the use of said ingress/egress easement for vehicular or pedestrian purposes, or for injury or death related to the use thereof involving

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11. All notices given in connection with this Agreement shall be deemed completed and legally sufficient ten (10) days after mailing by certified mail, return receipt requested, postage fully prepaid or upon personal delivery to the respective party for whom the same is intended at the address set forth in the preamble of this Agreement or at such other address as has been provided in accordance with this Agreement.

12. All mortgages encumbering the Grantor's land (and thereby encumbering the Easement Parcel) shall be subordinate to the rights granted hereunder, which rights shall survive foreclosure of any such mortgage.

13. Grantee shall be entitled to mortgage, in connection with the financing and refinancing of any improvements on the Property, all of its rights, easement and benefits granted herein, but solely in accordance with and only to the extent of its rights as granted herein. No party shall have any greater rights or privileges with respect to access and the easements granted herein than are expressly provided for herein.

TO HAVE AND TO HOLD said rights and right of way, easement, estate and privileges over, in, under, through and to the above-described land unto the said Grantee, their heirs, successors and assigns, forever

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Grantee, their heirs, successors, assigns, guests, invitees, agents, employees, contract laborers or any other persons using said ingress/egress easement.

6. In the event the Property is ever divided or subdivided (the Division) in the future, and in conjunction with any such Division the Easement Parcel is used for ingress, egress or utilities, no parcel of land within the Property resulting from the Division shall contain less than three (3) acres of land, which land may include the bed(s) of lakes or ponds located on the Property.

7. This Agreement shall be binding on and inure to the benefit of, the parties to this Agreement and their respective heirs, personal representatives, successors and assigns. The covenants contained in this Agreement, the easement and rights granted by this Agreement, and the restrictions imposed by this Agreement, shall be covenants and restrictions benefiting and running with the Property and burdening the Property and the Easement Parcel. The easements, rights-of-way, and other rights granted hereunder shall run with the land without the necessity of being reflected in future deeds or conveyances of the benefited or burdened property.

8. This Agreement shall not be modified or amended other than by the written agreement of the parties of this Agreement.

9. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nonetheless continue in full force without being impaired or invalidated in any way.

10. This Agreement, if so desired, may be executed in multiple counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

GRANTOR:



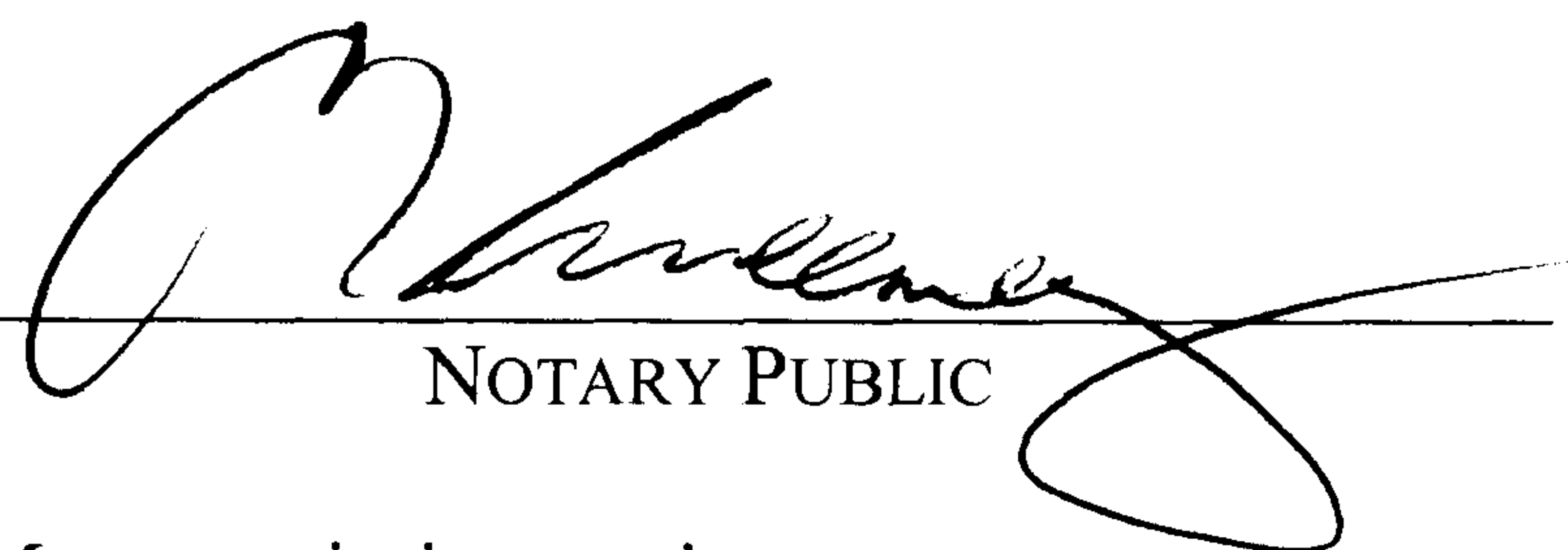
Gail Owen

STATE OF ALABAMA)
JEFFERSON COUNTY)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that Gail Owen, an unmarried woman and an individual resident of Alabama, whose name 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 the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 2nd day of March, 2005.





NOTARY PUBLIC

My commission expires:

6-5-2007



20050316000118330 7/12 \$47.50
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GRANTEE:



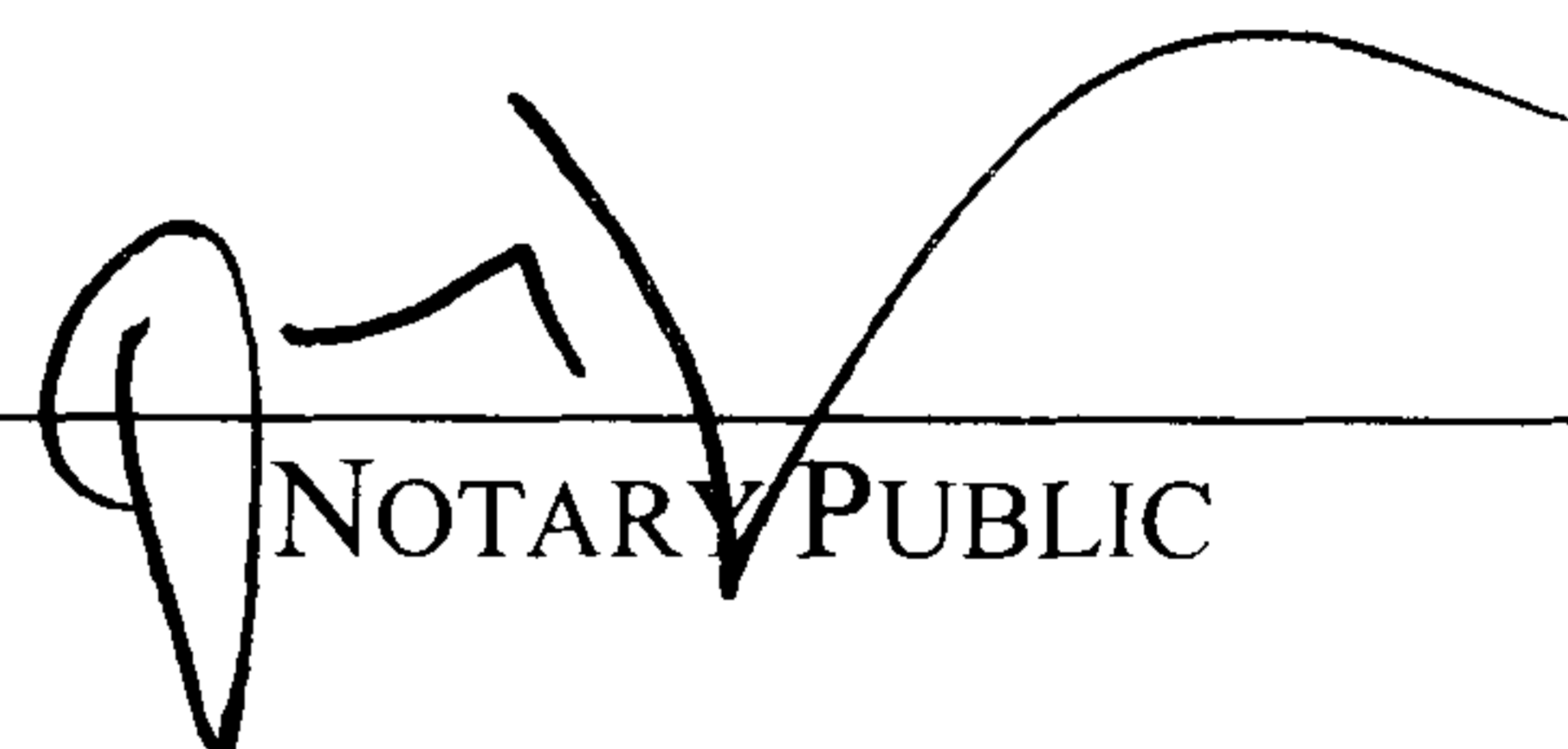
Sara Falkner

STATE OF ALABAMA)
SHELBY COUNTY)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that Sara Falkner, an individual resident of Alabama, whose name 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 the instrument, she executed the same voluntarily on the day the same bears date

Given under my hand and official seal this the 7 day of MARCH, 2005.

[NOTARIAL SEAL]



NOTARY PUBLIC
My commission expires:
3.1.06

This instrument prepared by:

Clayton T. Sweeney
Attorney At Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223



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GRANTEE:

Ernest Falkner Jr
Ernest Falkner, Jr.

STATE OF ALABAMA)
SHELBY COUNTY)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that Ernest Falkner, Jr., an individual resident of Alabama, whose name 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 the instrument, he executed the same voluntarily on the day the same bears date

Given under my hand and official seal this the 7 day of MARCH, 2005.

[NOTARIAL SEAL]

[Signature]
NOTARY PUBLIC

My commission expires:

3.1.06

EXHIBIT "A"

Description of the PROPERTY

From a 3/4" rebar accepted as the S.E. Corner of the SE1/4 – SW1/4 of Section 14, T21S – R1W, being the point of beginning of herein described parcel of land, run thence North along the accepted East boundary of said SE1/4 – SW1/4 a distance of 612.30 feet to a 1/2" rebar that is 703.44 feet south of a 1.5" pipe accepted as the N.E. corner of said SE 1/4- SW1/4; thence turn 90 deg. 48 min. 36 sec. left and run 400.00 feet to a 1/2" rebar; thence turn 90 deg. 49 min. 04 sec. right and run 698.80 feet to a 1/2" rebar on the accepted south boundary of the NE1/4 – SW1/4 of said Section 14; thence turn 01 deg. 10 min. 14 sec. right and run 396.38 feet to a 1/2" rebar on an accepted property line; thence turn 92 deg. 39 min. 12 sec. left and run 1164.63 feet along an accepted property line to a fence corner; thence turn 89 deg. 14 min. 16 sec. left and run 399.14 feet along an accepted property line to a 2" solid bar; thence turn 90 deg. 14 min. 41 sec. right and run 453.89 feet along an accepted property line to a 4" X 4" concrete monument; thence turn 90 deg. 19 min. 45 sec. left and run 1328.74 feet along an accepted property line to a 4" X 4" concrete monument on the accepted South boundary of the SW1/4 – SW1/4 of said Section 14; thence turn 91 deg. 36 min. 53 sec. left and run 663.10 feet to a railroad rail accepted as the S.W. corner of the SE1/4 – SW1/4 of said Section 14; thence turn 01 deg. 02 min. 17 sec. right and run 1324.24 feet to the point of beginning of herein described parcel of land, containing 64.39 acres, situated in the SW1/4 of Section 14, T21S –R1W, Shelby County, Alabama, subject to rights-of-way and easements of record.

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20050316000118330 10/12 \$47.50
Shelby Cnty Judge of Probate:AL
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EXHIBIT "B"

Description of the EASEMENT PARCEL

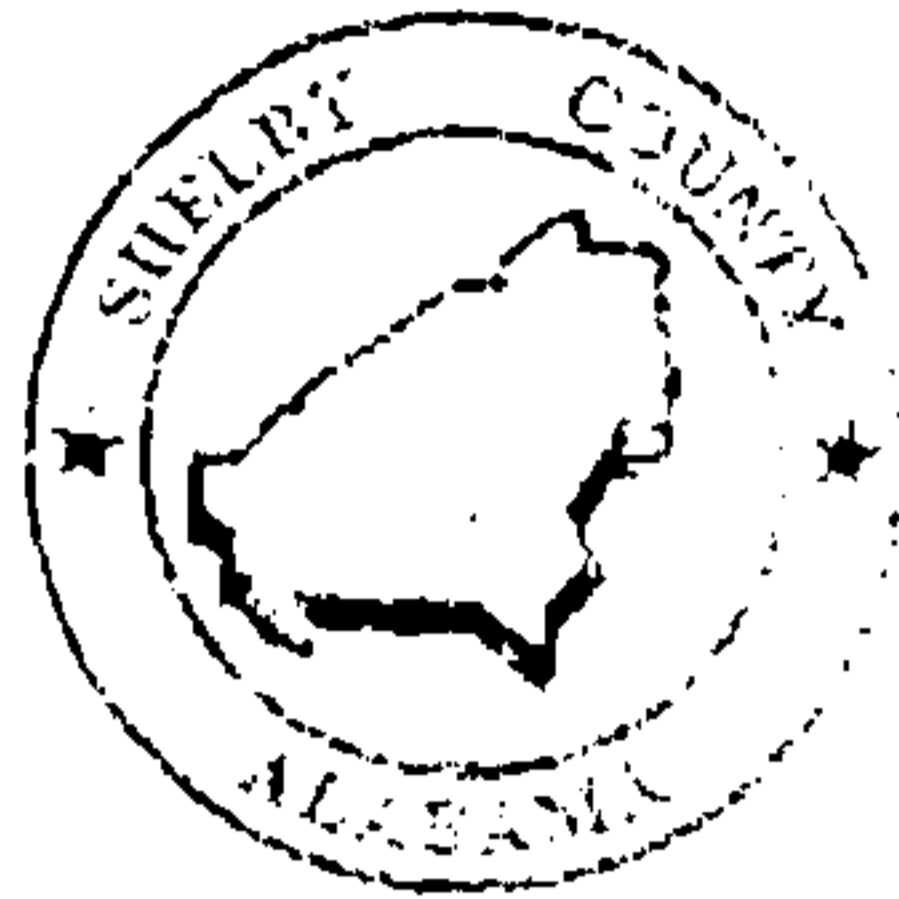
A 60 foot non-exclusive easement for ingress, egress and utilities more particularly described as follows:

From a 3/4" rebar accepted as the S.E. corner of the SE1/4 – SW1/4 of Section 14, T21S –R1W; run thence North along the accepted East boundary of said SE1/4 – SW1/4 a distance of 612.30 feet thence turn 90 deg. 48 min. 36 sec. left and run 400.00 feet to a 1/2" rebar; thence turn 90 deg. 49 min. 04 sec. right and run 698.80 feet to a 1/2" rebar on the accepted South boundary of the NE1/4 – SW1/4 of said Section 14; thence turn 01 deg. 10 min. 14 sec. right and run 336.32 feet to a 1/2" rebar, being the point of beginning of herein described 60 foot easement; thence continue along said course a distance of 60.06 feet to a 1/2" rebar; thence turn 87 deg. 20 min. 48 sec. right and run 400.00 feet along an accepted property line to a 1/2" rebar on the accepted East boundary of the NE1/4 – SW1/4 of said Section 14; thence turn 87 deg. 20 min. 48 sec. left and run 107.32 feet to a 1/2" rebar on the Westerly boundary of Shelby County Highway #47 (80' R.O.W.), said point being 853.13 feet South of a yellow painted rock accepted as the N.E. corner of said NE1/4 – SW1/4, and being on a curve concave right, having a Delta angle of 30 deg. 29 min. 48 sec. and tangents of 289.10 feet; thence turn 139 deg. 57 min. 34 sec. right and run a chord distance of 93.26 feet to a 1/2 " rebar on said curve; thence turn 40 deg. 02 min. 26 sec. right and run 93.19 feet to a 1/2 " rebar; thence turn 87 deg. 20 min. 48 sec. right and run 460.06 to the point of beginning of herein described 60' easement for ingress, egress and utilities, situated in the NE1/4 – SW1/4 and the NW/14 – SE1/4 of Section 14, T21S – R1W, Shelby County, Alabama.

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20050316000118330 11/12 \$47.50
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EXHIBIT "C"



**SHELBY COUNTY
PUBLIC WORKS DEPARTMENT
COUNTY ENGINEER'S OFFICE
506 Highway 70
COLUMBIANA, ALABAMA 35051**

KENNETH R. COLE, P.E.
COUNTY ENGINEER

TELEPHONE
205-669-3880

December 20, 2004

Mr. Mike Hill
Cahaba Title
1900 Indian Lake Drive
Birmingham, AL 35244

Clay -
This is the map he sent
~~me~~ this letter.
MA

Dear Mr. Hill:

Please refer to the attached map of the subject property. I have spent some time in the field trying to locate a place for an acceptable land development access. I began at the southern most point of the cross hatched easement (easement crossing Gale Owens Property). I checked numerous points going north in an attempt to find a suitable location for a development access. The first location found which provides suitable site distance is located approximately 150' north of the existing gravel drive. No permit could be issued between the southern most point of the easement and the location 150' north of gravel drive.

In addition to the insufficient site distance, the hatched easement could not be used for a development access due to problems with alignment and the fact that the developer would have to own the property (it could not be an easement).

If you have any questions please do not hesitate to call.

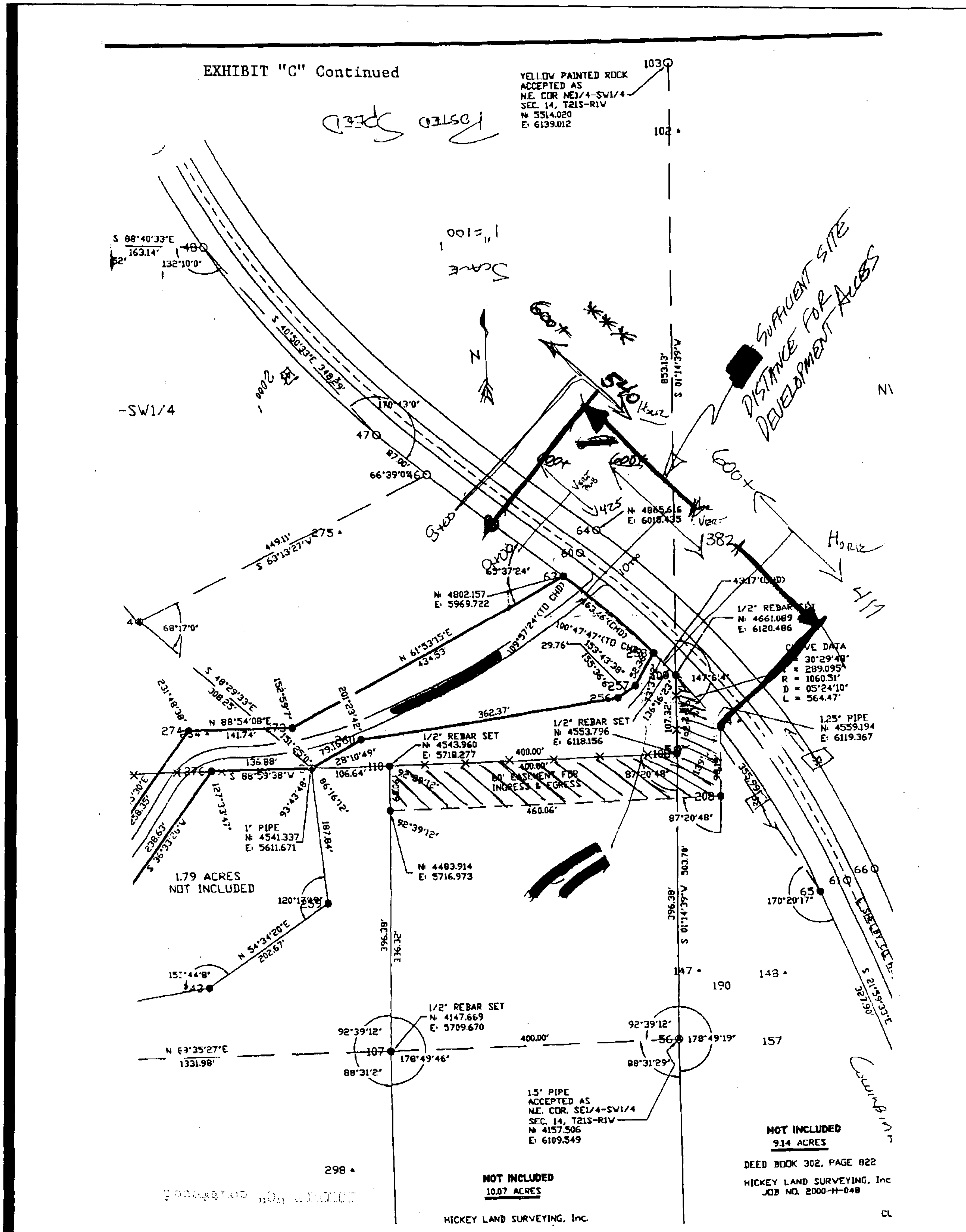
Sincerely,

John Slaughter
John Slaughter
Civil Engineer

CC: File

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J.F.

EXHIBIT "C" (con't)



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 J.F.