


SV # 1010302  
Parcel # 70257002

  
20140807000246180 1/5 \$26.00  
Shelby Cnty Judge of Probate, AL  
08/07/2014 02:35:07 PM FILED/CERT

TAW - Parking

**SUBJECT:**

1107A0 Bessemer - Cheney Lime & Cement 46KV TL  
1207A0 Bessemer - Calera 115KV TL

**This Instrument Prepared By:**

Nickie VanPelt  
Alabama Power Company  
Post Office Box 2641  
Birmingham, AL 35291

STATE OF ALABAMA )  
:  
COUNTY OF SHELBY )

**THIS AGREEMENT**, made and entered into between **ALABAMA POWER COMPANY**, a corporation, (hereinafter referred to as "**Licensor**"), and **HIGHWAY 11/31 II, LLC**, (hereinafter referred to as "**Licensee**").

**WITNESSETH:**

**WHEREAS**, Licensor has acquired and is the owner of an easement or right of way which embraces, among other rights, the right to construct, operate and maintain electric transmission lines and all communication lines, towers, poles and appliances necessary or convenient in connection therewith upon, under, over and across a strip of land 100 feet in width, which is a part of a tract of land situated in the Northwest Quarter of the Northeast Quarter of Section 12, Township21 South, Range 3 West, Shelby County, Alabama, and is particularly described in that certain instrument executed by Highway 31 Alabaster Two, LLC; J.C. Penney Properties, Inc.; Target Corporation; the Commercial Development authority of the City of Alabaster, Alabama dated April 17, 2006 recorded in APCo. Parcel No. 70170077; Deed Book 2006, Page 190010 in the Office of the Judge of Probate, Shelby County, Alabama. Reference is hereby expressly made to such record for a particular description of such easement or right of way; and

**WHEREAS**, Licensee recognizes that Licensor has heretofore constructed and is presently operating and maintaining electric transmission lines, towers, poles, appliances and fixtures on such easement and has the right and authority under that certain deed referred to above to construct, operate and maintain electric transmission lines and all communication lines, towers, poles and appliances necessary or convenient in connection therewith; and

**WHEREAS**, Licensee is the owner of, or the owner of an interest in, the servient estate of the strip of land embraced in such easement and desires to use portions of said easement as a parking area on the right of way as shown on Drawing A-428177, marked Exhibit "A", attached hereto and made a part hereof, such area being hereinafter sometimes called the "**Encroachment**"; and

**WHEREAS**, the continued maintenance of such Encroachment does and will benefit Licensee in the use of the tract of land of which such strip of land is a part and will inconvenience, burden and interfere with Licensor in the exercise of its rights in and to such easement and will increase the risks imposed upon it in connection with the exercise of such rights in and to such easement;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, and in further consideration of the sum of One Dollar (\$1.00) in hand paid by the Licensee to the Licensor, the receipt whereof is hereby acknowledged, it is hereby agreed and covenanted between the parties hereto as follows:

1. Licensor hereby expressly consents to Licensee's maintenance of such Encroachment upon said strip of land, subject to the terms of this agreement.
2. Licensee will secure and maintain at its expense, a policy of public liability insurance in a form acceptable to Licensor and in a corporation which is qualified to do business in the State of Alabama and which is acceptable to Licensor, which policy shall insure Licensor against and hold it harmless from any and all liability which Licensor may incur as the result of any personal injuries, death to persons or damage to or destruction of property, whenever occurring, suffered or allegedly suffered by Licensee, its employees, tenants, invitees, licensees, or any other persons whomsoever, based upon or growing out of the ownership, use or occupancy of said strip



of land or the construction, operation or maintenance of such electrical facilities on said strip of land by Licensor, caused, occasioned, or contributed to by the negligence of Licensee, its agents, servants, employees, tenants, invitees, licensees, or any other persons whomsoever, and even though caused, occasioned or contributed to by the negligence, sole or concurrent, of the Licensor, its agents, servants or employees so long as such claim or loss involves in any way the construction, operation, maintenance or presence of the Encroachment. Such policy shall provide coverage to Licensor by naming Alabama Power Company as an additional assured against risk of such liability in the amount of Two Million Dollars (\$2,000,000) for each occurrence, personal injury or injuries, death to persons and/or damage to or destruction of property or properties, and shall contain a provision that such policy will not be terminated as to Licensor until Licensor shall have been given at least ninety (90) days notice in writing of the date on which such policy will be terminated. Licensee will furnish Licensor with either a certified copy of such policy or other sufficient evidence thereof within thirty (30) days after the execution of this agreement and on each subsequent renewal date of such policy. The minimum amount of assured liability is subject to review for adjustment by Licensor after five (5) years from the date of this agreement and subsequent adjustments are subject to review after five (5) years from the date of such adjustments.

3. Licensee agrees and covenants that neither by the occupancy of such portions of said strip of land with such Encroachment, nor in any other way, has it claimed or is it claiming: (1) adversely to Licensor in its ownership of such easement, or (2) the right to maintain such Encroachment on such strip of land, but that the maintenance of such Encroachment by Licensee on said strip of land is with the recognition of the superior easement of Licensor, including the right to Licensor to place additional facilities hereafter on such strip of land.

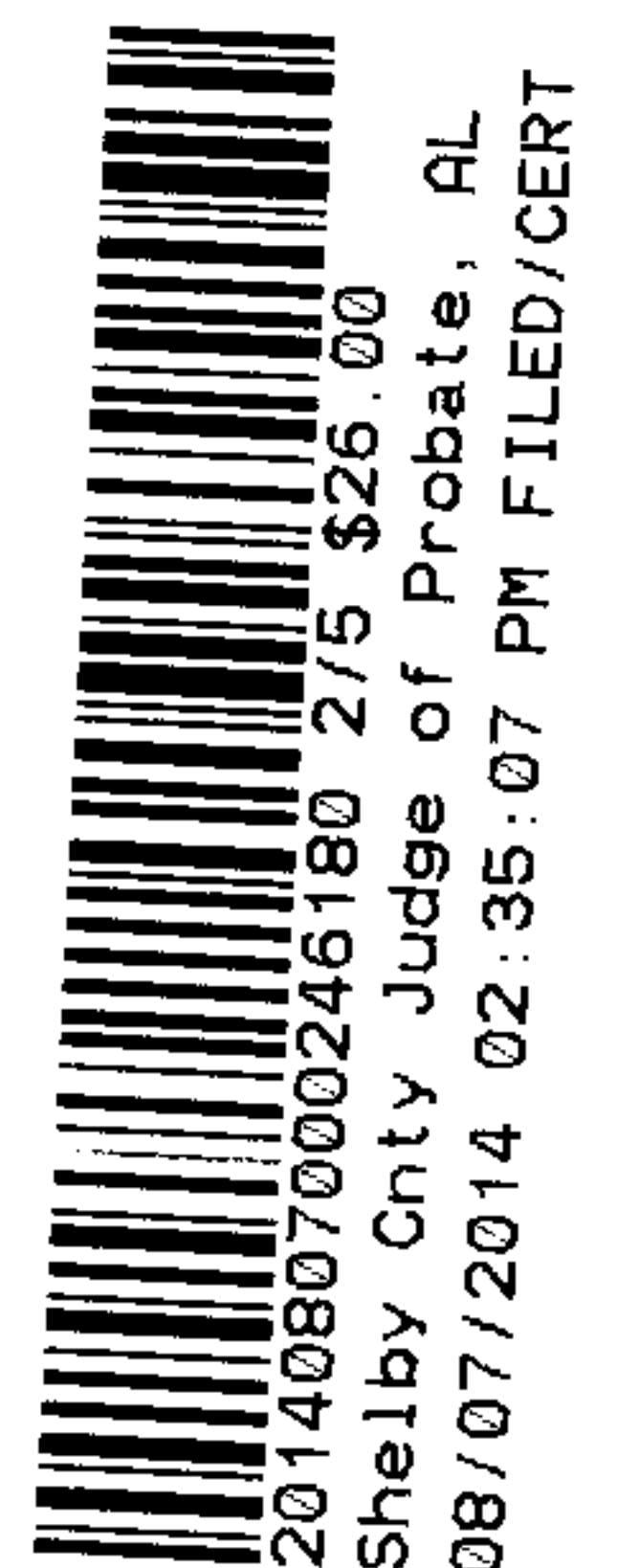
4. Licensee agrees that in the use of said easement as designated herein or in any other manner, it will not in any way cause the transmission lines, communication lines, or any other structures or electrical equipment of Licensor now or hereafter located on such strip of land to become or remain in violation of the requirements of the National Electrical Safety Code as to clearances between electrical conductors and ways accessible to pedestrians and vehicles. The said National Electrical Safety Code herein referred to is more specifically described in "Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines" published currently by the Institute of Electrical and Electronics Engineers.

Licensee also agrees to meet the standards and requirements of OSHA pertaining to or associated with Licensor's facilities.

5. Licensee agrees that in the event Licensor notifies it in writing that said Licensee's facilities, or any parts thereof, on said Licensor's easement must be removed from said easement to permit Licensor's existing or proposed construction, operation or maintenance of electric transmission lines, communication lines, or other structures and facilities on such Licensor's easement, Licensee, in such event, will immediately cause said all said Encroachment, or designated parts thereof, on such strip of land to be removed therefrom for a period of time requested by Licensor in order to enable Licensor to perform construction or maintenance work on such easement.

6. Licensee further agrees and covenants that it will construct and maintain at its own expense and in a manner satisfactory to and approved by Licensor, a concrete curb, barricade, fender or other adequate protective structure around each tower, poles, guy wire, or other work now existing on said easement within or enclosed by the present boundaries of the property owned by Licensee and each tower, pole or other work which Licensor may construct in the future on such strip of land within said boundaries in order to protect the same against damage from vehicles driven or parked thereon.

7. Licensee further agrees and covenants that it will, within ninety (90) days from the date of Licensor's written notice to it, permanently remove such encroachments, or designated parts thereof, from such strip of land. In the event such written notice requests permanent removal of all such Encroachment, this agreement shall be considered canceled and terminated when said removal is properly completed within said ninety (90) day period. In the event Licensee shall fail within ninety (90) days after such notice is so mailed, to remove such Encroachment, or designated parts thereof, Licensor is hereby given the express privileges, power and authority to remove the same or any part thereof, to the property of Licensee outside Licensor's easement or right of way without incurring any liability to Licensee on account of any





loss thereby sustained, including any liability for failure to maintain lateral support or liability for damage to the remainder of Licensee's property resulting from such removal even though Licensor is deemed negligent in such removal. Licensee agrees and covenants that it will in such event promptly reimburse Licensor for the reasonable expense incurred in said removal.

8. Licensee agrees and covenants upon Licensor's request to give to Licensor, its agents, servants or employees, a full and complete release, satisfaction and discharge of all claims which it may have against Licensor, its agents, servants or employees arising out of or resulting from any use by Licensor of that portion of its easement over and across said lands of Licensee, or any damage to Licensee's property, real and/or personal, caused during the removal authorized above in Paragraph 7, and to pay or cause to be paid all costs and expenses incurred by Licensor, its agents, servants or employees, in the repair of its facilities and expenses and attorney's fees incurred in defending any action which may be brought against Licensor, its agents, servants or employees, by reason of the matters contained herein.

9. Licensee agrees and covenants that: (1) in the use of said easement or right of way of Licensor, no flammable material, liquid or solid, will be stored or used on said easement or right of way; (2) any use of Licensor's easement or right of way not expressly agreed to herein is prohibited; (3) it will reimburse Licensor for the cost of any relocations or revisions of electrical facilities necessitated by the Encroachment; (4) no building of metal construction or otherwise, will be situated or maintained on any part of Licensor's easement or right of way; (5) no vehicles permitted to be parked on Licensor's easement or right of way will be over thirteen and one-half feet (13 1/2') in height. No lighting standards will be installed on Licensor's easement or right of way.

10. Notice herein referred to shall be deemed to be given by Licensor if the same is in writing at 2801 Highway 280 South, Suite 345, Birmingham, Alabama and posted in the United States mail with postage prepaid.

11. It is understood and agreed between the parties hereto that all the undertakings and covenants herein are to be construed and intended as covenants which run with the land and are to be binding upon, enforceable against, and inure to the benefit of the parties hereto, their executors, administrators, successors and assigns.

12. Wherever in this agreement the term Licensor or Licensee is used, such term shall be deemed to include their respective executors, administrators, successors or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this instrument and affixed their seals on this the 26<sup>th</sup> day of September, 20 13

ALABAMA POWER COMPANY

By: 

Name: John Chiswood

Title: Encroachment Supervisor


Highway 11/31 II LLC  
Name of Corporation/Partnership/LLC

By: 

Name: William A. Leitner

Title: Manager

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STATE OF ALBAMA )  
:  
COUNTY )

I, Nicole Van Pelt, a Notary Public in and for said County in said State, hereby certify that John Chitwood, whose name as Encroachment Supervisor of Alabama Power Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, has, with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 26<sup>th</sup> day of September, 2013.

My Commission Expires: 03-20-2017

Nicole Van Pelt  
Notary Public - State at Large

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STATE OF Alabama  
COUNTY OF Jefferson

I, Dorey C. Clarke, a Notary Public in and for said County in said State, hereby certify that William A. Jeter whose name as Manager of Highway 11/31 II LLC a Delaware LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he, with full authority, executed the same voluntarily for and as the act of said limited liability co.

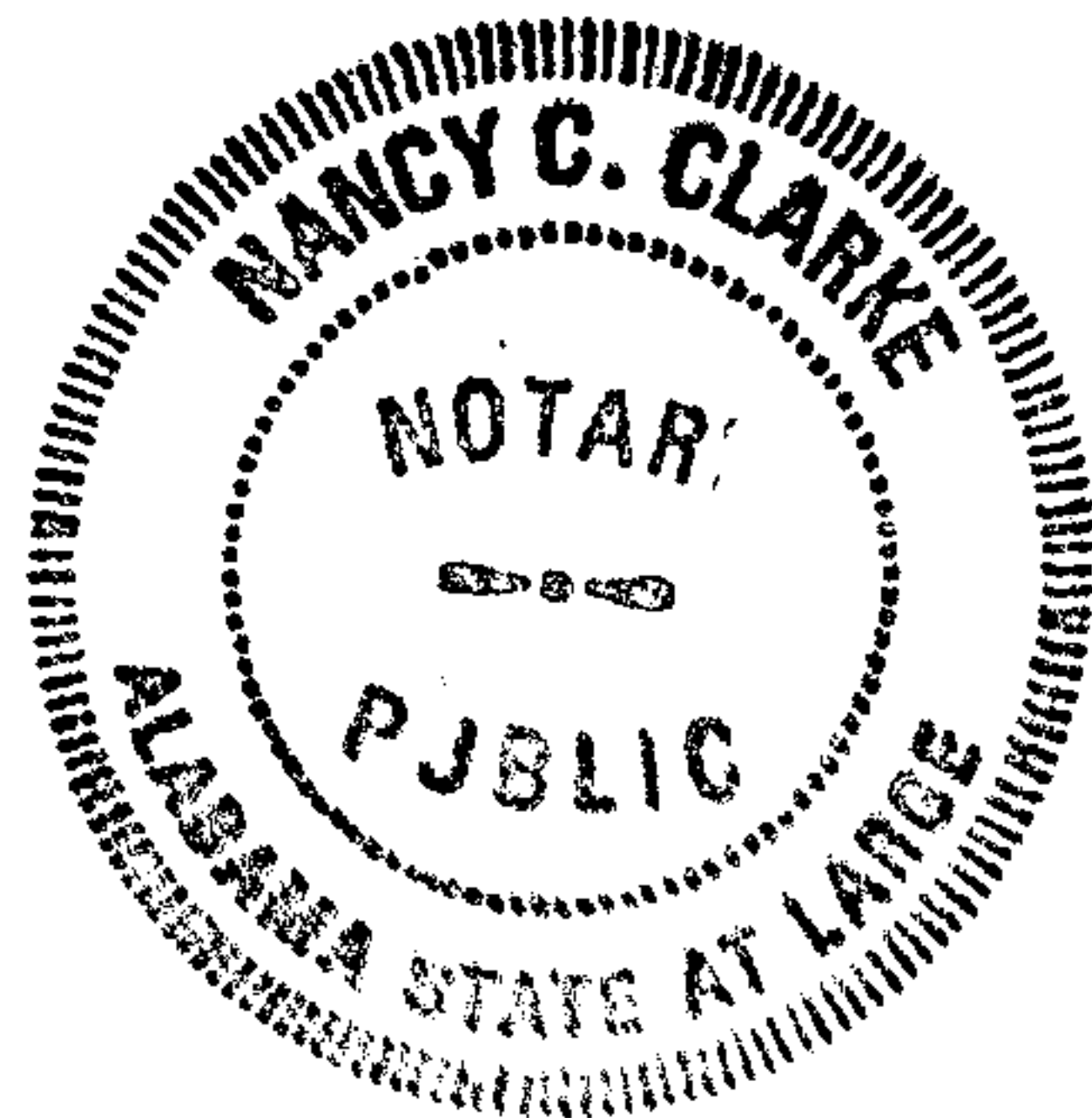
Given under my hand and official seal, this the 23<sup>rd</sup> day of Sept, 2013.

My Commission Expires: 10-01-2014

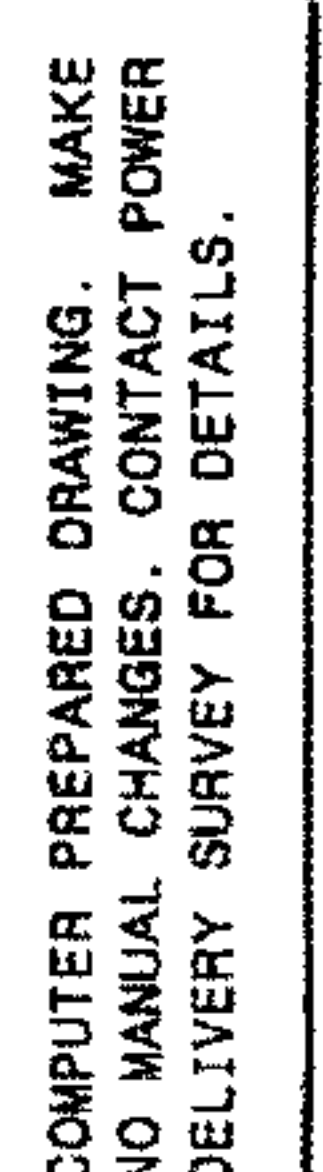
Dorey C. Clarke  
Notary Public - State at Large

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 1, 2014  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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DATE: 09/13/13

**A SOUTHERN COMPANY**

SCALE: NTS

**A-428177**

EXHIBIT "A"

