

2615

STATE OF ALABAMA

COUNTY OF SHELBY

EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 31ST day of December, 1986, by and between SHERMAN HOLLAND, JR., a married man, ("Grantor") and D & T ASSOCIATES, a Georgia general partnership comprised of Duane L. Hoover and Patricia Anne Hoover ("Grantee");

W I T N E S S E T H:

WHEREAS, Grantor owns fee simple title to that certain tract or parcel of land lying and being in Shelby County, Alabama, and more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Servient Estate"), no part of which is now nor ever has been homestead property; and

WHEREAS, by virtue of that certain Warranty Deed from Grantor dated of even date herewith, Grantee owns fee simple title to that certain tract or parcel of land bordered on the north, west, and south by the Servient Estate, lying and being in Shelby County, Alabama, and being more particularly described in Exhibit "B" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Dominant Estate"); and

WHEREAS, Grantor wishes to grant to Grantee, and Grantee's successors and assigns, on the terms and conditions hereinafter set forth, certain perpetual easements over, across, and under the Servient Estate;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Ten and no hundredths Dollars (\$10.00), in hand paid by Grantee to Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Warranty of Title. Grantor hereby warrants and represents that he has good and marketable fee simple title to the Servient Estate, subject only to the matters shown on Exhibit "C" attached hereto and made a part hereof, none of which shall materially interfere with Grantee's use and enjoyment of the easements granted hereby.

2. Access Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual, nonexclusive

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Handwritten: Sherman Holland, Jr. & D & T Associates
2000, 11/11/86

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easement (the "Access Easement"), over, upon, and across that portion of the Servient Estate (the "Access Easement Area") lying within a strip of land twenty-eight and sixteen hundredths (28.16) feet in width, running the entire length of the southerly boundary of the Dominant Estate, and continuing in a westerly direction to the westerly border of the Driveway Easement (as defined herein), for purposes of vehicular and pedestrian access to and from Highway 31 South, the Servient Estate and the Dominant Estate. Grantee is hereby authorized and permitted to grade, fill, and otherwise improve the Access Easement Area (and such areas of the Servient Estate contiguous thereto as shall be reasonably necessary in connection with the improvements described in this Paragraph 2) by installing curb cuts, curbs, gutters, base and asphalt for a private street serving the Dominant Estate and the Servient Estate. Grantee covenants and agrees, for the benefit of Grantor, his successors and assigns, at Grantee's expense, to construct within the Access Easement Area a private street comprised of not less than six (6) inches of base material and two inches of asphalt or other suitable paving, and to construct such other reasonable improvements as may be required by the Alabama Highway Department to obtain a curb cut and median cut on Highway 31 South, including an extension of the turn lanes on Highway 31 South to serve the Dominant Estate. Grantee shall use good faith efforts to complete such improvements on or before April 1, 1987. After Grantee's substantial completion of the aforesaid improvements, Grantor, his successors in title and assigns, shall at all times maintain such improvements at his own expense in good and serviceable condition for the benefit of both the Servient Estate and the Dominant Estate.

3. Driveway Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual nonexclusive easement (the "Driveway Easement") over, upon, and across that portion of the Servient Estate (the "Driveway Easement Area") lying within a strip of land thirty (30) feet in width and having as its easterly boundary the westerly boundary of the Dominant Estate extended in a southerly direction to certain property (the "Wal-Mart Site") serving as a Wal-Mart facility, and in a northerly direction to the existing right of way of Keystone Street, for purposes of vehicular and pedestrian access to and from the Wal-Mart Site, the Servient Estate, the Dominant Estate, Keystone Street, and, by way of the Access Easement, Highway 31 South. Within one (1) year after the date hereof, Grantor shall develop upon the Driveway Easement area (i) a paved driveway from the southern boundary of the Access Easement Area to the existing paved parking area serving the Wal-Mart Site (subject to approval by the owner of the Wal-Mart Site), and (ii) an unpaved roadway from the northerly boundary of the Access Easement Area to the existing right of way of Keystone Street. From and after the substantial completion of the aforesaid improvements to the Driveway Easement Area, Grantor, his successors in title and assigns, shall maintain

such improvements at his own expense in good and serviceable condition for the benefit of both the Servient Estate and the Dominant Estate.

4. Parking Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual, nonexclusive easement (the "Parking Easement") over, upon, and across that portion of the Servient Estate lying adjacent to the westerly boundary of the Driveway Easement for a uniform depth and width necessary and sufficient to accommodate ten vehicles of standard size (the "Parking Easement Area") for the use and enjoyment thereof by Grantee, its employees, customers, and invitees for vehicular parking purposes. Grantee shall have the right, but not the obligation, at any time and from time to time, to pave and maintain all or part of the Parking Easement Area, to enhance Grantee's use thereof as a parking facility benefiting the Dominant Estate.

5. Drainage Easement. Grantor hereby grants to Grantee a nonexclusive perpetual easement (the "Drainage Easement") over, upon, and across that portion of the Servient Estate lying to the south and west of the Dominant Estate (the "Drainage Easement Area") for the purpose of draining and collecting storm water runoff generated by or flowing from the Dominant Estate.

6. Definition. The Access Easement Area, the Driveway Easement Area, the Parking Easement Area, and the Drainage Easement Area are sometimes referred to herein collectively as the "Easement Areas."

7. Additional Improvements. Except as contemplated hereby, Grantor shall not construct, build, or install any structures of any kind whatsoever, on, across, or over the Easement Areas without the prior written consent of Grantee.

8. Maintenance of Easement Areas. Except as specifically herein provided, Grantee and Grantee's successors and assigns, shall have no obligation or duty to Grantor, his successors or assigns, or anyone claiming by, through, or under him, to construct, install, replace, maintain, or otherwise repair any improvements presently existing or hereafter installed on or under the Easement Areas.

9. Modification of Easement Areas. Grantor and Grantee hereby agree that only upon the mutual written agreement of both parties hereto may any Easement Area be relocated, changed, altered, or diminished.

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10. Miscellaneous.

(a) Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by Grantor or Grantee shall not release or discharge Grantor or Grantee from their respective obligations hereunder.

(b) All rights, powers, and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the covenants herein valid and enforceable. If any term, provision, covenant, or agreement contained herein, or the application thereof to any person, entity, or circumstance, shall be held to be invalid, illegal, or unenforceable, the validity of the remainder of the terms, provisions, covenants, or agreements, or the application of such term, provision, covenant, or agreement to persons, entities, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

(c) Any provision of this Easement Agreement may be modified or amended, in whole or in part, only with the prior written consent of Grantor and Grantee, or their respective successors in title and interest.

(d) Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon or given to either of the parties hereto shall be in writing and shall be deemed to have been duly served on the date of personal delivery or deposit in United States Mail, sent in registered or certified form, postage prepaid, return receipt requested, addressed to the respective parties at the following addresses:

GRANTOR: Sherman Holland, Jr.
P. O. Box 1008
Alabaster, AL 35007

GRANTEE: D & T Associates
Attention Duane L. Hoover
Building B, Suite 200
4015 Wetherburn Way
Atlanta, GA 30092

Either party may change the place for service of notice by sending to the other party a written notice in accordance herewith stating the change in such party's address. Any such change of address shall become effective ten (10) days after the giving of notice setting forth such change.

(e) In the event Grantor or Grantee shall convey, transfer, assign, or otherwise dispose of all of their respective rights, title, and interest in the Dominant Estate or the Servient Estate, as the case may be, they shall thereupon be released and discharged from any and all further liabilities and obligations for the breach of any covenant or agreement (except those covenants and agreements or the performance thereof accruing prior to such conveyance, transfer, assignment, or other disposition), and, except as herein expressly provided, such liabilities and obligations thereafter accruing shall be binding upon the successor in title to Grantor or Grantee, as the case may be.

(f) This Easement Agreement and the rights and liabilities conferred or undertaken hereby shall run with the Dominant Estate and the Servient Estate and shall be binding upon, and shall inure to the benefit of the parties hereto, and their respective legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be duly executed under seal and delivered by their respective authorized representatives on the day and year first above written.

GRANTOR:

Sherman Holland, Jr.
SHERMAN HOLLAND, JR.

GRANTEE:

D & T ASSOCIATES

BY:

Duane L. Hoover
DUANE L. HOOVER
General Partner

This Instrument was prepared by:
Thomas E. Jones, Jr.
Johnson & Montgomery
2900 Chamblee-Tucker Road
Building Nine
Atlanta, Georgia 30314

STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Sherman Holland, Jr., a married man, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 31st day of December A.D., 1986.

John Rudette Bates
Notary Public

STATE OF GEORGIA
DEKALB COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Duane L. Hoover, whose name is signed to the foregoing conveyance, and who is known to me as a general partner of D & T Associates, a Georgia general partnership, acknowledged before me on this day, that, being informed of the contents of the conveyance he executed the same voluntarily on behalf of D & T Associates, a Georgia general partnership, on the day the same bears date.

Given under my hand and official seal this 29th day of December A.D., 1986.

Lerna Rudenberg
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Oct. 9, 1988

EXHIBIT "A"

A parcel of land situated in the Southwest Quarter of the Northwest Quarter of Section 25, Township 20 South, Range 3 West, being more particularly described as follows: Begin at the point of intersection of the South line of said Quarter-Quarter section and the Westerly right-of-way of Highway 31 and run Northeasterly 161.16 feet along said right-of-way; thence left 97° 00' and run Westerly 194.00 feet; thence right 83° 59' 25" and run Northerly 203.94 feet; thence right 90° and run Easterly 52.14 feet; thence left 90° and run Northerly 32.0 feet; thence right 90° and run Easterly 3.75 feet; thence left 91° 49' and run Northerly 377.17 feet to the Southerly right-of-way of Keystone Street; thence left 88° 23' and run Westerly along said right-of-way 534.69 feet to the Easterly right-of-way of the Louisville and Nashville Railroad; thence left 93° 26' and run Southerly along said right-of-way 270.36 feet to the point of a curve to the right having a central angle of 7° 18' 12" and a radius of 2900.0 feet; thence continue along arc of said curve 369.65 feet; thence turn an angle to the left of 87° 15' 43" and run Easterly 485.89 feet; thence right 89° 11' 07" and run Southerly 80.95 feet; thence left 89° 35' and run Easterly 155.91 feet to a point on said Westerly right-of-way of Highway 31; thence left 83° and run Northeasterly 2.0 feet to the point of beginning.

EXHIBIT "B"

A parcel of land situated in the SW 1/4 of the NW 1/4 of Section 25, Township 20 South, Range 3 West, being more particularly described as follows: Commence at the point of intersection of the South line of said 1/4-1/4 Section and the Westerly right-of-way of Highway 31; thence run Northeasterly 161.16 feet along said right-of-way to the point of beginning; thence continue along the last described course 138.0 feet; thence left 103° 00' 35" and run Westerly 171.86 feet; thence right 90° and run Northerly 89.79 feet; thence left 90° and run Westerly 52.14 feet; thence left 90° and run Southerly 203.94 feet; thence left 83° 59' 25" and run Easterly 194.00 feet to the point of beginning.

EXHIBIT "C"

1. The lien for 1987 ad valorem taxes not due and payable until October 1, 1987.

2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities related thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Book 119, page 83 and Deed Book 303, page 226, Shelby County, Alabama records.

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 DEC 31 AM 2:51

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

Rec 22.50
Ind 1.00
23.50