

STATE OF ALABAMA)
 :
SHELBY COUNTY)

DECLARATION OF UTILITY EASEMENT

THIS DECLARATION OF UTILITY EASEMENT (this "Declaration") is made as of the 10th day of June, 2004, by **C&A Enterprises, L.L.C.**, an Alabama limited liability company ("C&A"), whose address is 1100 East Park Drive, Suite 400, Birmingham, Alabama 35235, **Cole Investment Realty, LLC**, an Alabama limited liability company ("Cole"), whose address is 1100 East Park Drive, Suite 400, Birmingham, Alabama 35235, and **Awtrey Investment Realty, LLC**, an Alabama limited liability company ("Awtrey"), whose address is 5330 Stadium Trace Parkway, Birmingham, AL 35244 (collectively referred to herein as "Declarants") and **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, its grantees, successors, and assigns.

WITNESSETH:

WHEREAS, Huntley has contracted to acquire from C&A that certain parcel of property (the "Huntley Parcel") more particularly described on **Exhibit A** attached hereto;

WHEREAS, the Huntley Parcel does not have access to sanitary sewer or water except through the surrounding properties currently owned by one or more of the Declarants (collectively, the "Declarants' Parcels");

WHEREAS, the parties have reached an agreement whereby Declarants will create for the benefit of the Huntley Parcel a non-exclusive easement for sanitary sewer and water across a portion of the Declarants' Parcel;

WHEREAS, a portion of the Huntley Parcel shall be subject to a non-exclusive easement for utilities for the benefit of the Declarants' Parcels; and

WHEREAS, Declarants 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 Declarants hereby covenant and agree, one with the other, as follows:

1. **Utility Easement.** Declarants do hereby declare and establish, for the benefit of the Huntley Parcel, the Declarants' Parcels, and all lands currently or hereafter owned, controlled, or occupied by Declarants, any one or more of them, or any successor or assignee of any Declarant, a permanent, perpetual, and non-exclusive easement over, across, through, under, and upon the portion of their properties as more particularly described in **Exhibit B** attached

Land Title

hereto (the "Easement Area") for utilities to serve the Huntley Parcel, the Declarants' Parcels, and such other lands. Utility lines within the Easement Area must be underground, except such portions thereof as are necessary for the maintenance or operation thereof.

2. **Improvements to Easement Area.** Sanitary sewer and water lines have been installed within the Easement Area in accordance with plans permitted and approved by the applicable governmental authority.

3. **Dedication/Joint Use.** Declarants shall have the right to dedicate the Easement Area to the City of Pelham, Alabama, or such other governmental entities as Declarants shall determine. By execution of this Declaration, Huntley, for itself and its successors in interest, (a) shall be deemed to have consented to such dedication, and (b) hereby irrevocably designates Declarants, or any one or more of them, as attorney-in-fact, with full authority and power of attorney to act on behalf and in the name of Huntley and its successors in interest, for the purpose of executing and delivering to the City of Pelham, Alabama, or such other governmental entity as is appropriate, such documents as are necessary, appropriate, or otherwise required for the dedication of the Easement Area and the improvements situated therein to public use. The foregoing notwithstanding, Huntley, for itself and its successors in interest, hereby agrees to enter into any documentation which may be required by any governmental authority in connection with any such dedication. The provisions of this paragraph 3 shall run with and bind the lands forever. Declarants hereby reserve unto themselves and their successors and assigns the right to the use of the Easement Area jointly and in common with Huntley and its successors in interest for the benefit of the Declarants' Parcels and such other lands as may be subsequently acquired, developed, or identified by Declarants or any one or more of the entities herein defined as Declarants.

4. **Maintenance.** Until the dedication of the Easement Area, Declarants will be responsible for the maintenance of the sanitary sewer and water lines installed in 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 upon the Huntley Parcel.

5. **Indemnity.** Huntley hereby agrees to defend, indemnify, and hold harmless Declarants and their 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 Declarants, their agents, representatives, their successors, assigns, employees, contractors, or any party acting on their 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 created, (ii) the entry upon the Easement Area or any portion thereof or upon any other lands owned by Declarants, 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. Declarants shall be responsible for any damage caused by their own actions, actions of their agents and for their own negligence.

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

7. **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 Declarants: 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.

8. **Run with Land/Termination.** The easement herein created and the terms and provisions hereof shall run with the land forever; however, the easement herein created shall terminate and become null and void with respect to any portion thereof which is dedicated to any one or more governmental entities for public use and maintenance, effective upon any such dedications having been made.

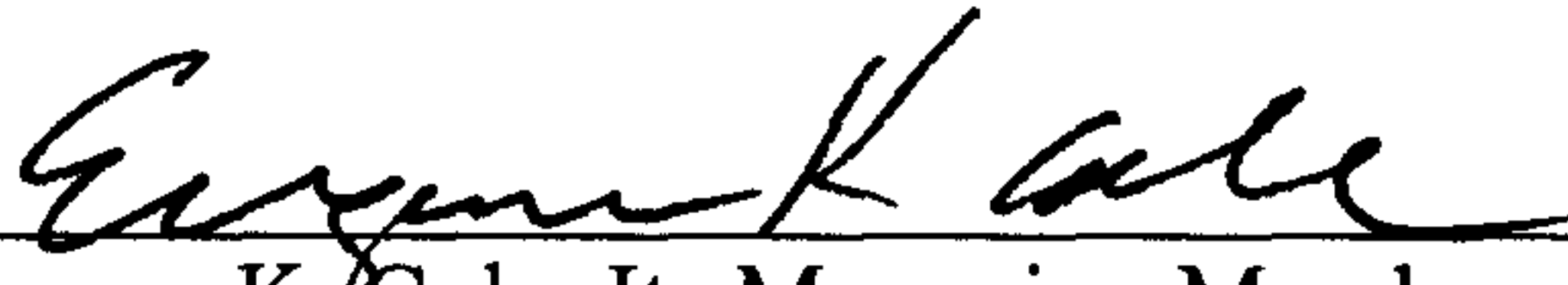
9. **Binding Effect.** This Declaration shall be binding upon and shall inure to the benefit of Declarants and Huntley and their respective successors and assigns.

END OF TEXT; SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, each of the parties hereto have set their hands and seals hereto as of the date first above written.

DECLARANTS:

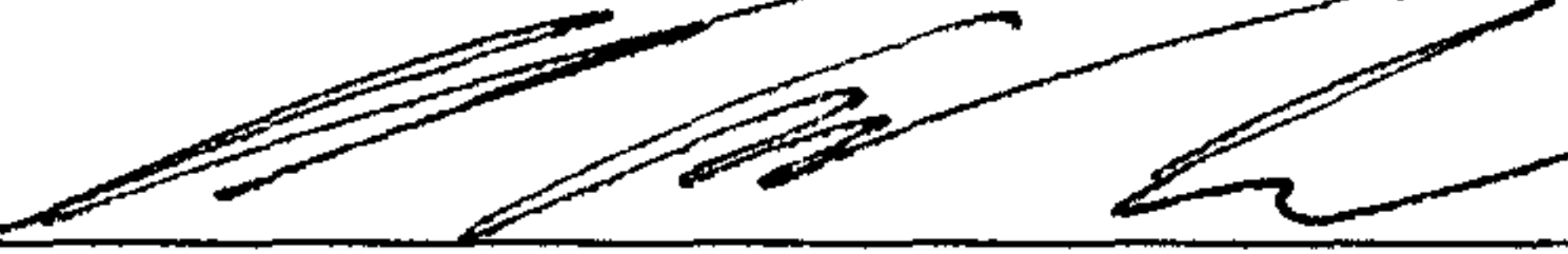
C&A ENTERPRISES, L.L.C.

By: 
Eugene K. Cole, Its Managing Member

COLE INVESTMENT REALTY, L.L.C.

By: 
Eugene K. Cole, Its Sole Member

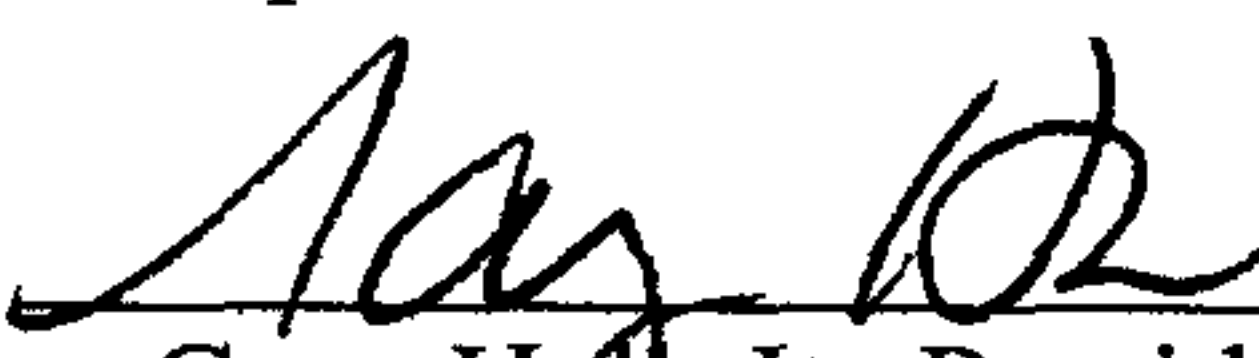
AWTREY INVESTMENT REALTY, L.L.C.

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 9th day of June, 2004.

Edna Canova
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 9th day of June, 2004.

Edna Canova
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 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 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 9th day of June, 2004.

Eam Carroll
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 10th day of June, 2004.

Scott H. Gannett
Notary Public

[NOTARIAL SEAL]

My commission expires: _____

MY COMMISSION EXPIRES OCTOBER 8, 2005

*This instrument prepared by:
Charles A. J. Beavers, Jr.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104*

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 89° 26' 05" east a distance of 566.35 feet to the point of beginning; thence south 89° 26' 05" east a distance of 20.15 feet; thence with a curve turning to the left with an arc length of 364.74 feet, with a radius of 780.00 feet, with a chord bearing of south 05° 40' 02" east, with a chord length of 361.42 feet thence south 00° 26' 48" west a distance of 54.87 feet; thence with a curve turning to the right with an arc length of 423.33 feet, with a radius of 800.00 feet, with a chord bearing of north 07° 36' 38" west, with a chord length of 418.41 feet, which is the point of beginning.

ALSO the following described parcel:

Commence at the northwest corner of Section 30, Township 20 South, Range 2 West, and thence south 89° 26' 05" east a distance of 566.35 feet to the point of beginning; thence with a curve turning to the right with an arc length of 350.54 feet, with a radius of 800.00 feet, with a chord bearing of north 20° 06' 07" east, with a chord length of 347.75 feet; thence with a curve turning to the left with an arc length of 142.09 feet, with a radius of 250.00 feet, with a chord bearing of north 16° 22' 20" east, with a chord length of 140.19 feet; thence north 00° 05' 23" east a distance of 622.22 feet; thence with a curve turning to the left with an arc length of 194.28 feet, with a radius of 250.00 feet, with a chord bearing of north 22° 10' 25" west, with a chord length of 189.43 feet; thence with a curve turning to the right with an arc length of 486.54 feet, with a radius of 350.00 feet, with a chord bearing of north 04° 36' 47" west, with a chord length of 448.30 feet; thence north 60° 03' 21" west a distance of 243.63 feet; thence north 13° 16' 13" east a distance of 41.76 feet; thence south 60° 03' 21" east a distance of 258.00 feet; thence with a curve turning to the right with an arc length of 34.12 feet, with a radius of 20.00 feet, with a chord bearing of south 11° 10' 51" east, with a chord length of 30.13 feet; thence south 37° 41' 38" west a distance of 4.97 feet; thence with a curve turning to the left with an arc length of 473.04 feet, with a radius of 330.00 feet, with a chord bearing of south 03° 22' 18" east, with a chord length of 433.57 feet; thence with a curve turning to the right with an arc length of 209.83 feet, with a radius of 270.00 feet, with a chord bearing of south 22° 10' 25" east, with a chord length of 204.59 feet; thence south 00° 05' 23" west a distance of 622.22 feet; thence with a curve turning to the right with an arc length of 153.46 feet, with a radius of 270.00 feet, with a chord bearing of south 16° 22' 20" west, with a chord length of 151.40 feet; thence with a curve turning to the left with an arc length of 339.33 feet, with a radius of 780.00 feet, with a chord bearing of south 20° 11' 30" west, with a chord length of 336.66 feet; thence north 89° 26' 05" west a distance of 20.15 feet, which is the point of beginning.


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 Declaration of Utility Easement.

Dated as of the 10th day of June, 2004.

COMPASS BANK

By 
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 9th day of June, 2004.


Notary Public

[NOTARIAL SEAL]

My commission expires: 11-25-06