

20051201000622650 1/8 \$48.00
Shelby Cnty Judge of Probate, AL
12/01/2005 01:44:40PM FILED/CERT

Shelby County, AL 12/01/2005
State of Alabama

Deed Tax: \$16.00

This instrument prepared by:

Jerry L. Causey
General Attorney - Real Estate
Norfolk Southern Corporation
1200 Peachtree Street, NE - 12th Floor
Atlanta, Georgia 30309-3579

DEED OF EASEMENT

THIS INDENTURE, made and entered into this 9 day of November, 2005,
by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a corporation organized
and existing under the laws of the Commonwealth of Virginia, having its principal office in
Norfolk, Virginia, Grantor, and **CITY OF HELENA, ALABAMA**, a municipal corporation and
municipal political subdivision of the State of Alabama; and **THE UTILITIES BOARD OF**
THE CITY OF HELENA, ALABAMA, a public corporation, hereinafter together called
Grantee:

WITNESSETH: That the said Grantor, for and in consideration of the sum of FIFTEEN
THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$15,750.00), and other
valuable consideration, paid by Grantee to Grantor, the receipt whereof is hereby acknowledged,
does by these presents, GRANT unto Grantee, an easement or right of way for the construction,
operation, maintenance and removal of public water pipelines and utilities under, across and
upon the land as hereinafter described, being situated in Shelby County, Alabama, to wit:

AN EASEMENT OR RIGHT OF WAY over, upon and across a parcel of land
situate, lying and being in the Southwest Quarter of the Southeast Quarter of
Section 14, Township 20 South, Range 4 West, Shelby County, Alabama and
being more particularly described as follows:

Commence at the southwest corner of the Southwest Quarter of the Southeast
Quarter of said Section 14; thence, North 01°01'17" West along the west line of
said Quarter - Quarter Section, a distance of 208.36 feet to a point lying on the

Wallace Ellis

southerly right of way line of Norfolk Southern Railway Company (100 foot right of way), said point being the POINT OF BEGINNING; thence, continue northerly along said line, a distance of 141.83 feet to the northern line of said right of way; thence, North 43°48'50" East and along said right of way, a distance of 21.31 feet; thence, South 46°11'10" East, a distance of 100.00 feet to the southern line of said right of way; thence, South 43°48'50" West and along said right of way, a distance of 121.89 feet to the POINT OF BEGINNING; said parcel containing 0.16 of an acre, more or less.

SUBJECT, however, to such easements and restrictions as may appear of record or as may be apparent from an examination of the premises.

RESERVING, however, unto Grantor its affiliates, subsidiaries, parent corporations, successors, assigns, licensees and lessees the right to continue to maintain, repair, renew and operate a railroad and appurtenances across the easement area and to construct such additional track(s) and other railroad facilities across said easement area and to maintain, repair, renew and operate the same as in the judgment of Grantor, its affiliates, subsidiaries, parent corporations, successors, assigns, licensees and/or lessees may be requisite.

RESERVING, further, unto Grantor, its affiliates, subsidiaries, parent corporations, successors, assigns, licensees and/or lessees the right to install, construct, locate, maintain, repair and renew any fiber optic communications lines and associated structures and facilities related thereto across, under or over said easement area and to maintain, repair, renew and operate the same as in the judgment of Grantor, its affiliates, subsidiaries, parent corporations, successors, assigns, licensees and/or lessees may be requisite.

TO HAVE AND TO HOLD the above described easement unto Grantee, its successors and assigns, so long as it or they may require the same for the purposes granted; PROVIDED, however, that this conveyance is made by Grantor upon the conditions

1. Grantor shall not be required to assume any expense in connection with or incident to any construction, maintenance, use or repair of any facilities located within said easement area and shall be exempt from any and all charges, costs or assessments of any kind or

character on account of the construction, maintenance, use or repair of any facilities located within said easement area under and across the aforesaid parcel of land or adjacent property of Grantor.

2. If, at any time, the easement herein granted or any part thereof, shall no longer be used or required by Grantee, its successors or assigns, for the purposes which granted, the same shall terminate and Grantee, its successors or assigns, shall execute such instruments as now provided or as may be hereinafter provided by law to clear title to the aforesaid property.

3. Upon termination of the easement for any reason, Grantee shall remove all facilities placed within the easement area and restore the property to a condition acceptable to Grantor's chief engineering officer.

4. Grantor's Superintendent at Birmingham, Alabama, shall be given at least forty-eight (48) hours' advance notice before entry upon the property. The Superintendent is Mr. S. A. Murry, whose telephone number is (205) 951-4736.

5. All reasonable care shall be exercised and such precautions taken as said Superintendent, or his authorized representative, may deem necessary to protect Grantor's facilities and operations. Grantor reserves the right to place watchmen, flagmen, inspectors and supervisors for protection purposes during the operations hereunder and the expense thereof, including the expense of any material furnished, shall be promptly paid by Grantee upon receipt of Grantor's bill therefor. In addition to direct wage and material cost, such expense shall include, but shall not be limited to, cost of supervision, traveling expenses, Federal Railroad Retirement and Unemployment Taxes, vacation allowances and all other expense incidental thereto.

6. Grantee shall at its expense obtain and maintain during the period of any construction within the easement area, in a form and with companies satisfactory to Grantor, the following insurance coverages:

- (a) Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Agreement. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. In addition, said policy or policies shall be endorsed to name Licensor as an additional insured and shall include a severability of interests provision;

In the event Grantee's Commercial General Liability Insurance Policy does not provide contractual liability coverage for operations conducted within 50 feet of a railroad hazard, Grantee shall provide Railroad Protective Liability Insurance. Said policy shall have limits of not less than a combined single limit of \$2,000,000 each occurrence and

\$6,000,000 in the aggregate. In addition, said policy shall name Grantor as the named insured and shall be underwritten on Insurance Services Office (ISO) Form Number CG 00 35 10 01 or an equivalent form satisfactory to Grantor.

- (b) Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence. Said policy shall be endorsed to name Licensor as an additional insured and shall include a severability of interests provision;

Evidence of such insurance (certificate of insurance for the General Liability and Automobile Liability Insurance and the original policy of Railroad Protective Liability Insurance) shall be furnished to and approved by Grantor's Director Risk Management, Three Commercial Place, Norfolk, Virginia 23510-2191, prior to occupancy of Grantor's property or commencement of construction on Grantor's premises. Said certificate of insurance shall state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or limits without (30) days advance written notice to Grantor.

7. No drainage conditions shall be created or allowed to exist which would be adverse to Grantor's property.

8. A minimum clearance of fifteen (15) feet from the centerline of the nearest track shall be maintained at all times for any material, equipment or vehicles of Grantee occupying Grantor's property unless authorized in writing by Grantor or Grantor's Superintendent.

9. Grantee will construct and maintain the pipelines, at its expense, in such a manner as will not interfere with the operations of Grantor or endanger persons or property of Grantor, and in accordance with (a) plans and specifications prescribed by Grantor, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railway Engineering Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.

10. Grantor shall make any changes, alterations in or additions to the line, grade, tracks, structures, roadbed, installations or works of Grantor at or near the pipelines, Grantee shall, at its own cost and expense, upon thirty (30) days' notice in writing from Grantor, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Grantor, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Grantor.

11. Grantee will notify Grantor prior to the installation and placing in service of cathodic protection in order that tests may be conducted on Grantor's signal, communications and other electronic systems for possible interference. If the pipelines cause degradation of the signal, communications or other electronic facilities of Grantor, Grantee, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Grantor so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed

necessary by Grantor. This provision applies to the existing signal, communications and electronic equipment of Grantor and to any signal, communications or electronic equipment which Grantor may install in the future.

12. If Grantee fails to take any corrective measures requested by Grantor in a timely manner or if an emergency situation is presented which, in the Grantor's judgment, requires immediate repairs to the facilities, Grantor, at Grantee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

13. It is further agreed between the parties that the premises shall be used by Grantee only for the pipelines and for no other purpose without the written permission of the chief engineering office of Grantor.

IN WITNESS WHEREOF, the parties have caused these presents to be signed the day and year first above written.

ATTEST:

Yvonne O. Lewis
Assistant Corporate Secretary

NORFOLK SOUTHERN RAILWAY COMPANY

By

C.V. B...
Assistant Vice President - Real Estate

ATTEST:

Peggy C. Dunaway
Title: City Clerk

CITY OF HELENA, ALABAMA

By

Charles W. Parker
Title: Mayor

ATTEST:

Duke Lewis
Title: Utility Clerk

THE UTILITIES BOARD OF THE CITY OF
HELENA, ALABAMA

By

Charles W. Parker
Title: Chairman

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STATE OF GEORGIA

COUNTY OF FULTON

I, Suzanne L. Congdon, a Notary Public in and for the above State and County, hereby certify that C. V. Baker, whose name as Assistant Vice President - Real Estate of Norfolk Southern Railway Company, a corporation, 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, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal this 21st day of November, 2005.

Suzanne L. Congdon
Notary Public

My commission expires:

April 25, 2006

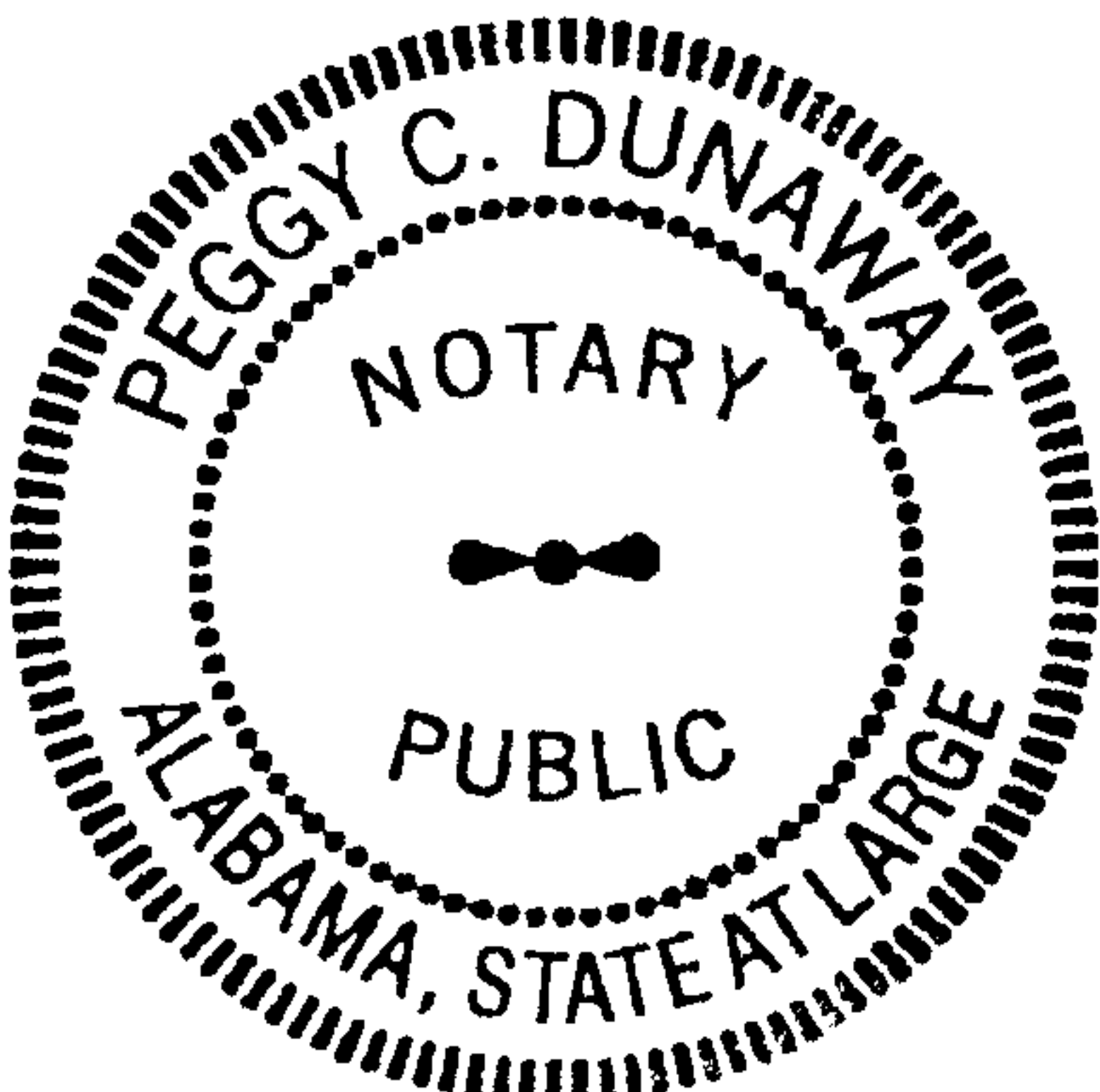
STATE OF ALABAMA

COUNTY OF Shelby

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I, Peggy C. Dunaway, a Notary Public in and for the above State and County, hereby certify that Charles W. Penhale whose name as Mayor of the City of Helena, Alabama, 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, as such officer, and with full authority, executed the same voluntarily for and as the act of said City.

GIVEN under my hand and official seal this 9th day of November, 2005.



Peggy C. Dunaway
Notary Public

My commission expires: January 11, 2007

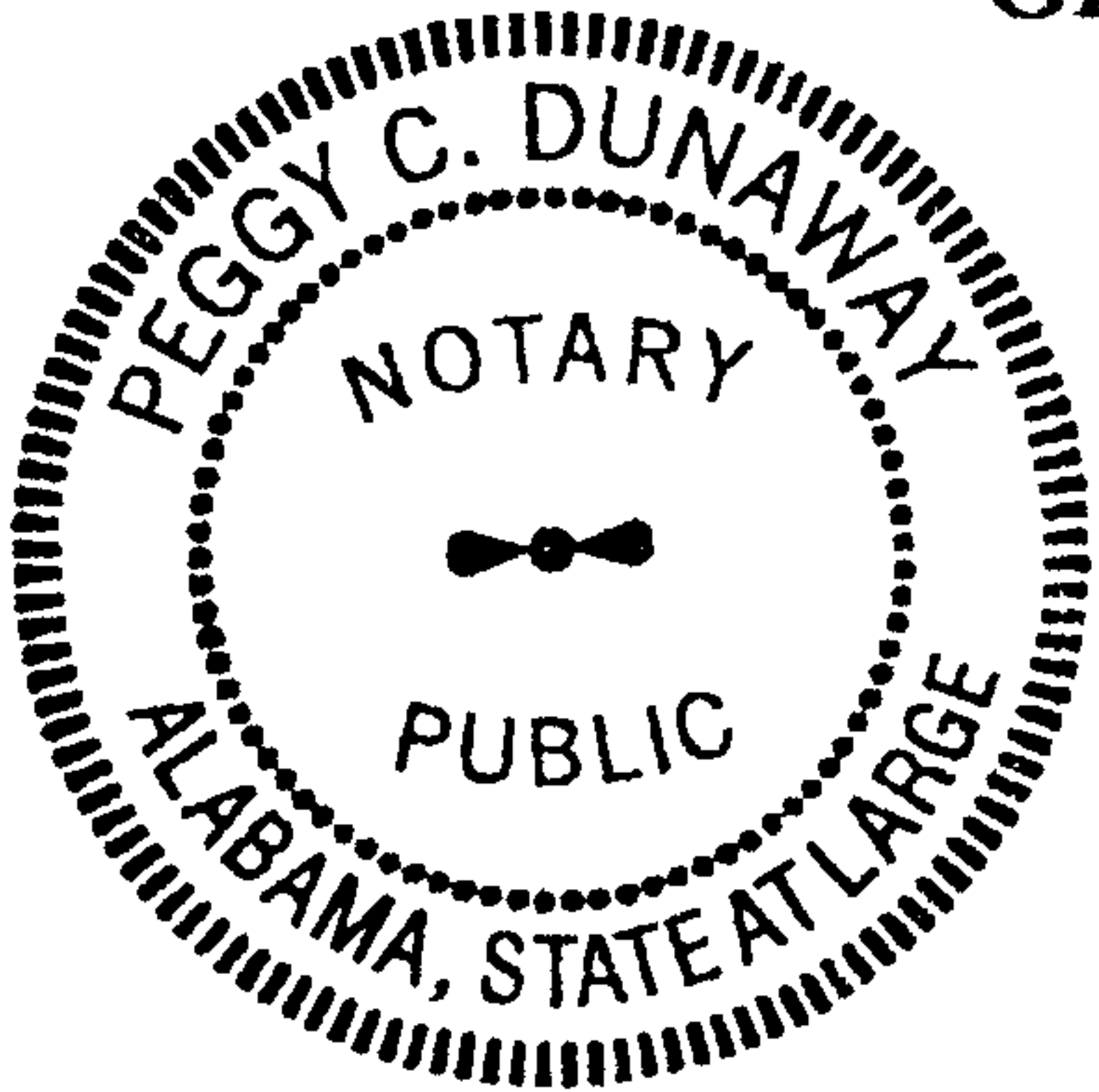
STATE OF ALABAMA

COUNTY OF Shelby

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I, Peggy C. Dunaway, a Notary Public in and for the above State and County, hereby certify that Charles W. Penhale, whose name as Chairman of The Utilities Board of the City of Helena, Alabama, 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, as such officer, and with full authority, executed the same voluntarily for and as the act of said Board.

GIVEN under my hand and official seal this 9th day of November, 2005.



Peggy C. Dunaway
Notary Public

My commission expires: January 11, 2007

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