

STATE OF ALABAMA)
)
SHELBY COUNTY)

ROADWAY AND EASEMENTS AGREEMENT

This Roadway and Easements Agreement (this "Agreement") is made and entered into this 12TH day of DECEMBER, 2006, by **SMITH PROPERTIES, L.L.C.**, an Alabama limited liability company ("Grantor") for the benefit of **SAC, LLC**, an Alabama limited liability company ("SAC"), **C&A ENTERPRISES, L.L.C.**, an Alabama limited liability company ("C&A"), and their successors and assigns (collectively, "Grantees")

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property situated in Shelby County, Alabama, more particularly described on *Exhibit A* attached hereto (the "Grantor's Property"); and

WHEREAS, Grantees are desirous of obtaining access over, across, through, upon, and under Grantor's Property for the purpose of the construction of a roadway (the "Roadway") and the installation of utilities (the "Utilities") which will connect properties (i) which are owned by Grantees, (ii) which are owned by entities related to Grantees, or (iii) in which Grantees may subsequently acquire an interest ("Grantees' Properties") to Shelby County Road #11; and

WHEREAS, Grantor is desirous of having non-exclusive access across the Roadway for the benefit of Grantor's Property; and

WHEREAS, Grantor and Grantees are desirous of the dedication of the Roadway and the related easements established by this Agreement, for public use and maintenance;

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid to Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, and convey unto Grantees, their successors and assigns, upon the conditions and subject to the limitations hereinafter set forth, the real property and the easements hereinafter set forth.

TO HAVE AND TO HOLD said real property and said easements unto Grantees, their successors and assigns, forever.

Grantor covenants with Grantees that Grantor owns in fee the real property herein conveyed and the real property upon which the easements herein conveyed are situated and that Grantor has a good right to execute this Agreement and to convey the real property hereinafter described and to grant the easements hereinafter described.

1. **Roadway.** Grantor does hereby grant, bargain, sell, and convey unto Grantees that certain real property (the "Roadway Property") situated in Shelby County, Alabama, more particularly described on *Exhibit B* attached hereto for the purpose of the construction,

installation, and maintenance of the Roadway and the Utilities for the benefit of Grantees' Properties. Grantor reserves the right to the non-exclusive use of the road to be constructed within the Roadway Property for the benefit of Grantor's Property. The Roadway shall be constructed in accordance with such plans and specifications as are approved by the City of Pelham, Alabama (the "City").

2. ***Clearing and Grading Easement.*** Grantor does hereby grant, bargain, sell, and convey unto Grantees, for the use and benefit of Grantees and the subsequent owners and occupants of Grantees' Properties, a temporary easement (the "Clearing and Grading Easement") over, across, through, upon, and under the portion of Grantor's Property which is depicted on *Exhibit C* for the purpose of (i) transporting workers, supplies, and equipment as necessary for the performance of the work on Grantor's Property as permitted pursuant to this Agreement, (ii) permitting Grantees to clear, cut, and remove dirt and grade Grantor's Property to form slopes (the "Slopes") along the Roadway, and (iii) permitting Grantees to install the Drainage Equipment (as hereinafter defined) over, across, through, upon, and under Grantor's Property. This Clearing and Grading Easement shall cease, without further action of the parties, ninety (90) days after completion of construction and installation of the Roadway, the Slopes, the Utilities, and the Drainage Equipment.

3. ***Drainage Easement.*** Grantor does hereby grant, bargain, sell, and convey unto Grantees, for the non-exclusive use and benefit of Grantees and the subsequent owners and occupants of Grantees' Properties, a permanent, perpetual, and non-exclusive easement (the "Drainage Easement") over, across, through, upon, and under such portion of Grantor's Property as is necessary to or required by the City in connection with the construction, installation, operation, maintenance, repair, and replacement of drainage ditches, pipes, lines, headwalls, culverts, flumes, and related equipment, accessories, facilities, and appurtenances (the "Drainage Equipment") to collect and discharge surface water drainage. The portion of Grantor's Property which shall be subject to the Drainage Easement shall be limited to a strip of land twenty (20) feet wide, ten (10) feet on either side of the Drainage Equipment as initially constructed and as required by the City or other applicable governmental or regulatory entities.

4. ***Agreements Run With Land.*** Both the benefits and the burdens of all easements, restrictions, benefits, and obligations established by this Agreement shall run with and bind the lands described herein and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, licensees, invitees, employees, personal representatives, heirs, successors, and assigns, and, except as herein expressly provided to the contrary, shall be perpetual. This Agreement and all rights for its use and maintenance are assignable and may be transferred and/or assigned by Grantees to any governmental authority to whom the Roadway, the Roadway Property, the Clearing and Grading Easement, the Slopes, the Drainage Equipment, or the Drainage Easement may be dedicated.

5. ***Annexation and Dedication.*** At the election of Grantees, Grantees, or any one or more of them, shall have the right, without any additional consent from Grantor, to petition for and secure the annexation of the Roadway Property and property within the Clearing and Grading Easement and the Drainage Easement into the City and the dedication of the Roadway, the Roadway Property, the Clearing and Grading Easement, the Slopes, the Drainage Equipment, and the Drainage Easement to the City or such other public entity as Grantees shall deem

appropriate, for public use and maintenance. Grantor hereby consents to such annexation and dedication and agrees to cooperate with and give such further consents to any such petitions as shall be required by the City or requested by Grantees.

6. **Amendments.** No amendments or modifications of this Agreement shall be effective without the prior written consent of Grantor and Grantees or their respective successors and assigns.

7. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to other persons or circumstances, other than those as to which it would become invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. **Headings.** Headings are for convenience or reference only and shall not affect meanings or interpretations of the contents of this Agreement.

9. **Binding.** This Agreement shall be binding upon, enforceable by and against, and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

10. **Waiver.** No delay or omission by any party in the exercise of any right accruing upon any default of any other party shall impair such right or be construed to be a waiver thereof, unless expressly waived in writing by the non-defaulting party. A waiver by any party hereto of a breach of, or a default in, any of the terms and conditions of this Agreement by any other party hereto shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Exercise by a party hereto, or the beginning of the exercise by a party hereto, of any one or more of the rights or remedies provided for in this Agreement, now or hereafter existing at law or in equity, shall not be considered as an election of remedies so as to preclude the simultaneous or subsequent exercise by such party of any other right or remedy for such breach.

11. **Notices.** Any notices or submittals required or permitted to be given hereunder shall be deemed to be given when hand-delivered or upon receipt of prepaid (or refusal to accept) delivery by a recognized commercial overnight courier service or the United States mail, sent certified, return receipt requested, in either case addressed to the parties as follows:

If to Grantor:

Smith Properties, L.L.C.

BY: Philip J. Smith 100 Pardue Road
MEMBER Pelham AL 35124

Attention: Philip J. Smith

Telephone: 205-620-4455

Facsimile: 205-620-0975

If to SAC: SAC, LLC
1100 East Park Drive, Suite 400
Birmingham, AL 35235
Attention: Eugene K. Cole
Telephone: 205-836-8683
Facsimile: 205-836-8695

If to C&A: C&A Enterprises, LLC
1100 East Park Drive, Suite 400
Birmingham, AL 35235
Attention: Eugene K. Cole
Telephone: 205-836-8683
Facsimile: 205-836-8695

With a copy to: Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
Attention: Charles A. J. Beavers, Jr.
Telephone: 205-521-8620
Facsimile: 205-488-6300


IN WITNESS WHEREOF, Grantor has executed this Agreement as of the day and year first above written.

SMITH PROPERTIES, L.L.C.

By *Philip J. Smith*
Its MANAGING MEMBER

Shelby County, AL 12/15/2006
State of Alabama

Deed Tax: \$2.00


20061215000610560 4/8 \$34.00
Shelby Cnty Judge of Probate, AL
12/15/2006 07:27:56AM FILED/CERT

STATE OF Alabama)
COUNTY OF Shelby)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Philip G. Smith, whose name as Managing Member of Smith Properties, 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 the instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal the 12th day of December, 2006.

Frances Seale

Notary Public

[NOTARIAL SEAL]

My commission expires: **FRANCES SEALE**
Notary Public, Alabama, State at Large
My Commission Expires May 31, 2009

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

20061215000610560 5/8 \$34.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT A

Grantor's Property

A tract of land located in Section 30, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the northwest corner of Section 30, Township 20 South, Range 2 West; thence run southerly along the west section line of Section 30 1309.15 feet; thence left $89^{\circ}41'02''$ easterly 659.86 feet; thence an interior angle left of $90^{\circ}16'47''$ southerly 350.62 feet; thence right $90^{\circ}21'43''$ westerly 200.01 feet; thence left $90^{\circ}20'25''$ southerly 100.00 feet to the point of beginning; thence southerly 294.15 feet; thence left $89^{\circ}39'35''$ easterly 517.99 feet; thence left $89^{\circ}09'03''$ northerly 294.17 feet; thence left $90^{\circ}50'57''$ westerly 524.10 feet to the point of beginning.



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EXHIBIT B

Roadway Property

A tract of land situated in the northwest 1/4 of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

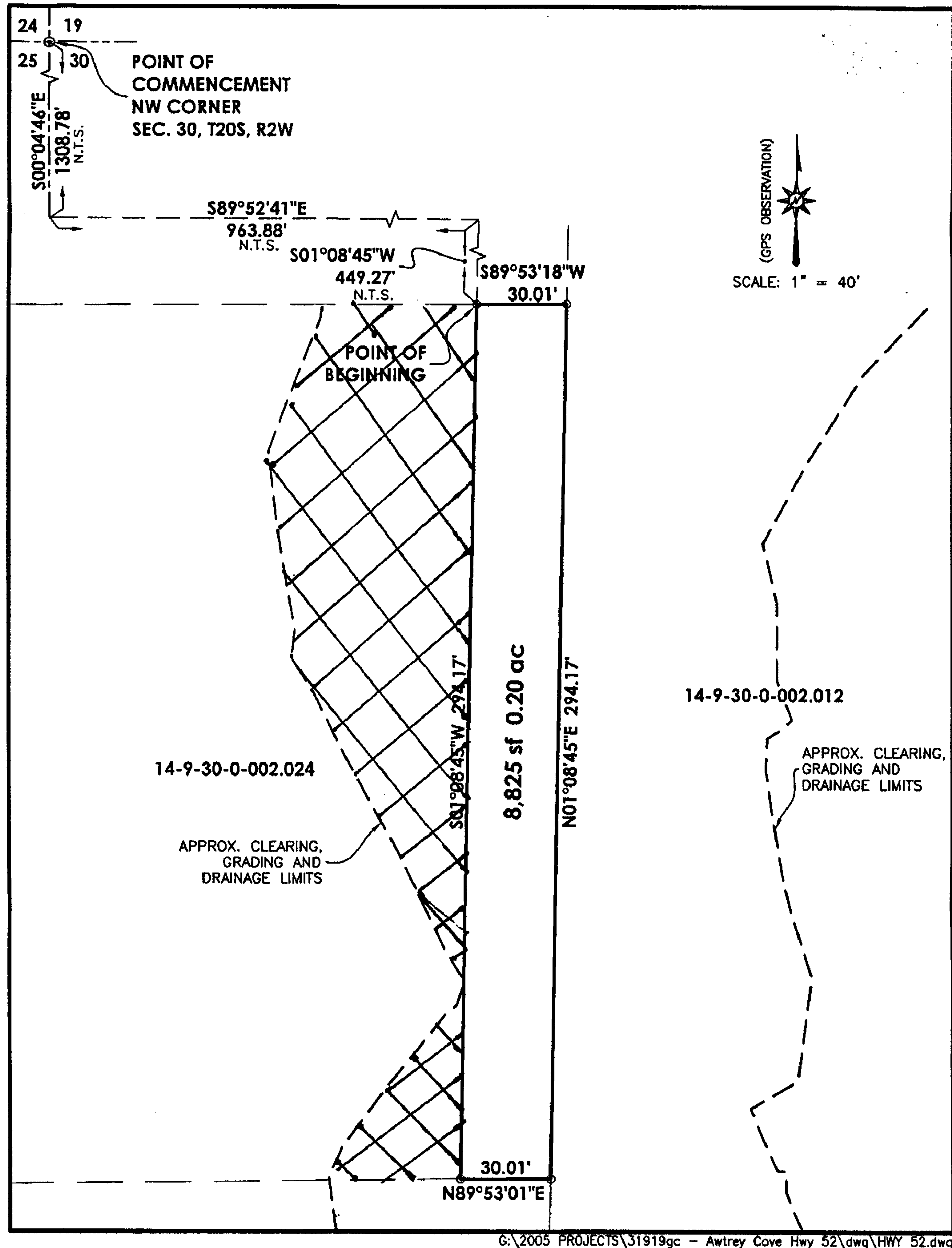
Commence at the northwest corner of said Section 30 and thence run south 00°04'46" east along the west line of said section for 1,308.78 feet; thence run south 89°52'41" east for 963.88 feet; thence run south 01°08'45" west for 449.27 feet to the point of beginning of the tract of land herein described; thence continue south 01°08'45" west for 294.17 feet; thence run north 89°53'01" east for 30.01 feet; thence run north 01°08'45" east for 294.17 feet; thence run south 89°53'18" west for 30.01 feet to the point of beginning.



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EXHIBIT C

General Location of Clearing and Grading Easement, Slope Easement, and Drainage Easement



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