

AGREEMENT OF CONTIGIOUS PROPERTY OWNERS

This Agreement is made and entered this 3rd day of April, 2012, by and between the City of Calera, Alabama (hereinafter referenced as the "City"), the Industrial Development Board of The City of Calera (hereinafter referenced as the "IDB") and Davis Brothers Properties, an Alabama General Partnership (hereinafter referenced as the "Company"). References herein to the "Parties" shall be construed as references to all Parties hereinabove identified.

Whereas, the City, the IDB and the Company will enter into a real estate sales contract to purchase certain real property hereinafter described within Exhibit "A", attached hereto and fully incorporated herewith, as contiguous property owners; and

Whereas, said real property (hereinafter referenced as the "Premises") shall be equally divided into three separate parcels, with the City, the IDB and the Company (hereinafter collectively referenced as the "Parties"); each receiving the conveyance of one-third of the Premises, more or less; and

Whereas, it is intent of the Parties to purchase their respective portions of the Premises along the route of a proposed highway by-pass project which is under consideration by the Alabama Department of Transportation (hereinafter referenced as "ALDOT"); and

Whereas, in the event that ALDOT approves the proposed by-pass route through the Premises, it is the intent of each Party hereto to sell (for nominal consideration) or donate any of said Party's real property situated upon the Premises, which is located within the proposed by-pass area, to the City, for a price not to exceed \$10.00, if sold, otherwise, same shall be donated; and

Whereas, each of the Parties understand, acknowledge and agree that in the event that said by-pass is approved and implemented by ALDOT, such occurrence will significantly enhance the value of each Party's portion of the Premises; and

Whereas, each of the Parties hereto fully understand and acknowledge that it is possible that ALDOT will not approve the proposed by-pass, and each Party shall bear

its own risk in purchasing its portion of the premises and entering into this Agreement, without any form of guarantee of the development of the by-pass; and

Whereas, each of the Parties hereto understand and acknowledge that the opportunity provided for the purchase of its portion of the Premises would not be extended except for each Party's agreement to sell (for consideration not to exceed \$10.00 in total) or donate its portion of the Premises to the City that portion of the Premises which each Party owns within the by-pass area, at the time that ALDOT approves the by-pass, if ever approved;

NOW, THEREFORE, in consideration of the mutual promises, covenants, warranties and agreements contained herein, which each of the Parties deem to constitute good, valuable and sufficient consideration, the Parties do hereby agree, as follows:

1. RECITALS: The recitals set forth herein shall not be construed by the Parties as mere recitals, but shall constitute an integral part of this Agreement.

2. PARCEL IDENTIFICATION: The Parties hereby agree that the Premises shall be equally divided into three separate parcels, or as near to equal as is practicable, and the Parties shall determine, between and among themselves, the assignment of ownership interest in and to each of the three separate parcels, upon each Party's payment of the appropriate consideration therefor, which price shall be controlled by a separate Land Sales Contract.

3. RIGHT OF FIRST REFUSAL: In the event that any Party which owns a portion of the Premises should sell, transfer or convey its real property or any portion thereof, located within the Premises, said Party shall contract for same, with said contract to include a contingency which addresses and reflects the other Parties' right of first refusal. The selling Party shall present a true and correct copy of its contract with any bona fide third party purchaser to each of the other Party's, along with notice of the selling Party's intent to sell said real property. Any Party receiving such notice and information from the selling Party shall be required, within thirty (30) days of the date of receipt of such notice, to notify the selling Party of its intent to purchase said real property by matching the terms of the contract of the proposed purchaser with the selling Party. The purchasing Party shall then enter into a real estate sales contract

with the selling Party, consisting of matching terms and consideration, as stated within the selling Party's contract with the proposed third party purchaser, and such transaction shall be closed and the transfer completed within sixty (60) days of the selling Party's initial notification to the purchasing Party. In the event that no Party offers to purchase the selling Party's interest in its real property within the Premises within the time frame referenced above, after having received proper notification, as hereinabove referenced, the selling Party may freely convey its interest in the Premises to any third party bona fide purchaser. Provided, however, the aforementioned process shall be followed each time the selling Party enters into a contract for sale of its portion of the Premises.

In the event that any Party hereto shall sell, transfer or convey any of its right, title or interest in and to the Premises, or any portion thereof, said Party's successor in interest shall be fully bound by the terms of this Agreement, as though said successor in interest had been an original signatory upon this Agreement.

The right of first refusal established herein shall terminate upon ALDOT'S approval of the by-pass and the nominal consideration sale or gifting of the portion of the Premises located within the by-pass area to the City; or upon ALDOT'S determination that the proposed by-pass project will not occur; or upon mutual written agreement of all of the Parties.

4. SEVERANCE EXPENSES: The City and the IDB shall pay any and all expenses associated with engineering (inclusive of surveying) environmental studies, expense relating to investigation of the condition of the property and other expenses which are not referenced within the separate Land Sales Contract (same of which shall control the real property conveyance and closing expenses). Provided, however, neither the City, nor the IDB shall be liable to the Company for any damages resulting to the Company as a proximate or related cause to such engineering, environmental studies or other investigative activities, and the Company specifically holds harmless and indemnifies the City and the IDB for and from same.

5. DEDICATION OF PROPERTY TO THE CITY: The IDB and the Company hereby agree that, as part of the stated consideration within the body of this agreement, upon ALDOT'S approval of the proposed by-pass project, any portion of the Premises



20120405000118080 3/11 \$42.00
Shelby Cnty Judge of Probate, AL
04/05/2012 02:39:18 PM FILED/CERT

owned by the IDB or the Company shall be sold to the City (for total consideration not to exceed \$10.00) or gifted to the City, for no additional consideration, that portion of the Premises which each of said Parties own, lying within the by-pass right of way, as approved by ALDOT. The conveyance of that portion of the Premises lying within the by-pass right of way, as approved by ALDOT shall occur within thirty days of ALDOT'S approval of the by-pass project. Upon the conveyance of said property, or within ten days thereof, the City shall provide the IDB or the Company with a donation receipt, in the event that the property is donated to the City reflecting the fair market value of the donated real property.

In the event that ALDOT delivers to either of the Parties its decision that the by-pass project has been abandoned and will not occur, the IDB and the Company shall be relieved of the obligation to donate the aforementioned real property, within the Premises, to the City. Otherwise, the Parties shall convene upon the written request of either Party, directed to each of the other Parties, at a time no earlier than thirty six (36) months from the Effective Date of this Agreement, to review this Section 5 of this Agreement relating to the sale or donation of property to the City. At such time as all Parties mutually agree, this Section 5 of the Agreement shall be terminated.

6. RAIL ACCESS: The Company, or its General Partners and their respective wives, currently own real property contiguous to the Premises, identified by the Shelby County Tax Assessor's Parcel Identification Numbers: 352040001002.000 and 352040001002.001 which has access to railroad tracks operated by Norfolk Southern Corp. and Alabama Highway No. 25. Upon written request by the City or the IDB, the Company, or its General Partners and their respective wives, will provide railway access to the City or the IDB, at no additional charge to either entity, in the event that a railway spur can be extended at or near the west or east boundary lines of said real properties. Provided, however, in the event that a railway spur is required to traverse the property of the Company, or its General Partners and their respective wives, the Party requesting same, whether the City or the IDB, shall assume and pay the expense for the development of such spur and railway access. The Company, or its General Partners and their respective wives, shall be required, under such circumstances, to grant the City or the IDB a written easement for the development of such spur and/or railway



20120405000118080 4/11 \$42.00
Shelby Cnty Judge of Probate, AL
04/05/2012 02:39:18 PM FILED/CERT

access to traverse said real property. In the event that the City or the IDB requests a railway spur and/or railway access from the Company, or its General Partners and their respective wives, and same cannot be located along the west or east boundary lines of said parcels owned by the Company, or its General Partners and their respective wives, the requesting Party, whether the City or the IDB, shall pay said property owners the fair market value of the easement located on property used to develop said spur and/or railway access. Said access shall constitute an easement for ingress, egress, utilities and drainage, and shall be no less than sixty (60) feet in width. Prior to the development of any spur or railway access route, the Company's written approval must be first obtained.

7. Highway No. 25 Access: At such time as the City and/or the IDB determine that either of said entities shall be in need of an easement for ingress, egress, utilities and drainage, the Company, or its General Partners and their respective wives shall grant an easement which is a minimum of sixty (60) feet in width, to the City and/or the IDB, at or near the eastern boundary line of property which the Company, or its General Partners and their respective wives, own adjacent to Alabama Highway No. 25, from the North right of way line of said Highway No. 25 to the South boundary line of the Premises. Said easement shall be granted for the purposes hereinabove referenced, and shall be at no additional cost or consideration from the City or the IDB.

8. CROSS-EASEMENT PROVISIONS: In the event that either of the Parties hereto deem it necessary or desirable to develop an easement across any portion of the Premises owned by either of the other Parties hereto, all Parties do hereby agree that such easement shall reasonably be granted to the requesting Party (not to exceed sixty (60) feet in width) for ingress, egress, utilities and drainage. Provided, however, any such requested easement must be designed so that the easement will cross that portion of the Premises owned by the subservient tenant so as not to cause significant encumbrance or significant loss of value or use to the subservient tenant's portion of the Premises.

The request for any such easement, by either Party hereto, must be made in writing a minimum of thirty (30) days prior to the proposed establishment of any such easement. In the event that any such easement will cause a significant encumbrance to

the Premises owned by the subservient tenant, the requesting Party (dominant tenant) shall pay the subservient tenant the fair market value of the property used for such easement, and the granting of any such easement which is necessary to the dominant tenant shall not be unreasonably withheld.

9. Fill Dirt: The Parties understand and acknowledge that the topography of the Premises varies significantly from certain sites upon the premises to other sites thereon. The Parties further acknowledge and understand that, for future development purposes, it may be necessary to remove fill dirt from the higher elevations upon the Premises to apply to and fill in lower lying areas upon the Premises. Consequently, each Party does hereby agree that any Party who owns the lower lying areas upon the Premises shall have the unequivocal right to remove fill dirt from the higher elevations upon the Premises to apply to and fill in the lower lying property situated upon its portion of the Premises, after having provided any other affected property owner with a minimum of thirty (30) days advance written notice of the need to remove fill dirt to apply to its lower lying areas of property situated upon the Premises. The Party which is in need of fill dirt shall be responsible for the expense of removing same from the higher elevation property upon the Premises, and shall not commit damage or destruction to the Party which owns said portion of the Premises, except for the actual removal of fill dirt therefrom.

10. Cost Sharing: At any time during the term of this Agreement, if it becomes necessary or desirable for either of the Parties to implement improvements to its portion of the Premises, and such improvements materially benefit the property owned by another Party or other Parties, the Parties whose portion of the Premises are benefited, agree to reasonably and equitably share in the payment of the expense of said improvements.

11. Agreement Review: In the event that ALDOT does not approve the bypass project within a reasonable time frame, as mutually agreed by the Parties in writing (but in no event, a period of less than thirty six (36) months from the Effective Date of this Agreement), the Parties agree to review the terms of this Agreement, in order to determine whether modification of certain terms of this Agreement are necessary or

desirable to the Parties for the purpose of promoting the highest and best usage of each Party's portion of the Premises.

12. Accommodation Agreement: The subservient parcels of real property referenced in Section 6 of this Agreement (identified by two separate tax assessment parcel numbers) are owned as follows: the westernmost parcel is owned by the General Partners of the Company, and the easternmost parcel is owned by the General Partners of the Company and their respective wives, namely; Gail E. Davis and Kathy Davis. Consequently the Parties agree that Davis shall execute a separate Accommodation Agreement, to supplement and accommodate the provisions of Sections 6 and 7 of this Agreement.

13. Notices: Any Notices to be given hereunder by either Party to the other shall be affected, in writing, by personal delivery or certified mail, postage prepaid, with return receipt requested. Mail notices shall be addressed to the Parties, and unless the Parties are notified in writing of the new address of any Party hereto, notices shall be mailed to the following address:

To the City: City of Calera
ATTN: Mayor Jon Graham
9758 Hwy 25
Calera AL 35040


With copy to: Frank C. Ellis, Jr., Esq.
P.O. Box 587
Columbiana AL 35051

To the IDB: The Industrial Development Board
of The City of Calera
P O Box 180
Calera AL 35040

With copy to: Mitchell A. Spears, Esq.
P O Box 119
Montevallo AL 35115

To the Company: Davis Brothers Properties
ATTN: Mike Davis
ATTN: Jeff Davis
8809 Hwy 25
Calera AL 35040

14. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the issues and terms addressed within the body of this Agreement, and same contains all of the promises, covenants and agreements between the Parties.


20120405000118080 7/11 \$42.00
Shelby Cnty Judge of Probate, AL
04/05/2012 02:39:18 PM FILED/CERT

15. Law Governing Agreement: This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

16. Default and Expenses: If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reimbursement of reasonable attorney's fees, costs from any defaulting Party and any other relief to which the prevailing Party may be entitled.

17. Construction: The terms of this Agreement shall not be more strictly construed against the Party whose counsel drafted the Agreement, than same is construed against any other Party hereto.

18. Severance of Terms: In the event that any term or provision of this Agreement is unenforceable, such term or provision shall be construed to be a nullity, and the balance of the terms and provisions of this Agreement shall be enforceable.

19. Binding Affect: The terms and provisions of this Agreement shall be binding upon each Party, as well as their respective heirs, agents, members, managers, directors, officers, shareholders, owners, partners, successors or assigns.

20. Authority: Each Party to this Agreement hereby represents, acknowledges and confirms, by and through its authorized signatory, that said Party has the appropriate lawful authority to enter into this Agreement, and has fulfilled any and all lawful requirements and any and all organizational or internal requirements necessary to authorize said Party's execution of this Agreement.

21. Recordation of Agreement: As it is the case that this Agreement regulates and reflects upon certain rights and obligations which each of the Parties have in relation to the Premises, the original of this Agreement shall be recorded in the Probate Office, Shelby County, Alabama.

22. Effective Date: The Effective Date of this Agreement shall be the day upon which same is executed by the last Party to execute same.

In witness whereof, the Parties have set their hands and seals this 3rd day of April, 2012.



20120405000118080 8/11 \$42.00
Shelby Cnty Judge of Probate, AL
04/05/2012 02:39:18 PM FILED/CERT

City of Calera

Mullen R Gentry
Witness

Jon S Graham
By: Jon Graham
Its: Mayor

Witness

The Industrial Development Board
of The City of Calera

Mullen R Gentry
Witness

W. M. Schroeder
By: William M. Schroeder
Its: Chairman

Witness

Davis Brothers Properties
An Alabama General Partnership

Mullen R Gentry
Witness

G. M. Davis
By: G. M. Davis
Its: General Partner

Mullen R Gentry
Witness

J. L. Davis
By: J. L. Davis
Its: General Partner

This Instrument Prepared By:
Mitchell A. Spears
P.O. Box 119
Montevallo, AL 35115
205-665-5076



20120405000118080 9/11 \$42.00
Shelby Cnty Judge of Probate, AL
04/05/2012 02:39:18 PM FILED/CERT

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

PARCEL A:

A parcel of land situated in Section 19, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a railroad rail at the NE corner of Section 19, Township 22 South, Range 2 West, Shelby County, Alabama; thence South 00 degrees 17 minutes 07 seconds West along the East line of said section a distance of 326.06 feet to a 2.5" axle on the southwesterly right of way of Shelby County Highway 16, said point also being the POINT OF BEGINNING; thence South 00 degrees 17 minutes 16 seconds West a distance of 993.93 feet to a 2" capped pipe; thence South 00 degrees 20 minutes 02 seconds West a distance of 263.99 feet to a 2" steel bar; thence South 00 degrees 18 minutes 45 seconds West a distance of 1055.99 feet to a rebar capped Weimort 23008; thence South 00 degrees 08 minutes 46 seconds West a distance of 480.00 feet to a 2" steel rod; thence South 00 degrees 15 minutes 52 seconds West a distance of 229.98 feet to a 3/8" rebar; thence South 00 degrees 20 minutes 57 seconds West a distance of 1010.66 feet to a rebar capped Weimort 23008; thence South 44 degrees 46 minutes 51 seconds West leaving said East section line a distance of 285.60 feet to a 1/2" rebar on the South line of said Section 19; thence South 89 degrees 10 minutes 00 seconds West along the South line of said Section 19 a distance of 427.32 feet to a rebar capped EDG; thence North 02 degrees 00 minutes 46 seconds West leaving said South section line a distance of 202.53 feet to a rebar capped EDG; thence North 17 degrees 15 minutes 32 seconds West a distance of 2341.00 feet to a rebar capped EDG on the northwesterly line of a proposed right of way for the City of Calera; thence North 72 degrees 52 minutes 52 seconds East along said right of way a distance of 612.39 feet to a rebar capped EDG; thence North 44 degrees 56 minutes 08 seconds East along said right of way a distance of 466.79 feet to a rebar capped EDG; thence North 16 degrees 38 minutes 54 seconds East along said right of way a distance of 328.04 feet to a rebar capped EDG; thence South 87 degrees 42 minutes 34 seconds East and leaving said right of way a distance of 8.44 feet to a rebar capped EDG; thence North 00 degrees 22 minutes 04 seconds East a distance of 1259.19 feet to a rebar on the southwesterly right of way of Shelby County Highway 16 and a point on a curve to the left having a central angle of 10 degrees 32 minutes 13 seconds and a radius of 2331.86 feet, said curve subtended by a chord bearing South 49 degrees 27 minutes 05 seconds East and a chord distance of 428.24 feet; thence along the arc of said curve and along said right of way a distance of 428.84 feet to the Point of Beginning.

PARCEL B:

A parcel of land situated in Section 19, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a rebar capped Weimort 23008 at the SE corner of Section 19, Township 22 South, Range 2 West, Shelby County, Alabama; thence South 89

degrees 10 minutes 00 seconds West along the South line of said Section 19 a distance of 200.04 feet to a ½" rebar; thence continue along the last described course a distance of 427.32 feet to a rebar capped EDG at the POINT OF BEGINNING; thence continue along last described course a distance of 1331.07 feet to a 3" capped pipe; thence North 00 degrees 29 minutes 18 seconds East leaving said South section line a distance of 1125.86 feet to a rebar capped EDG; thence North 48 degrees 03 minutes 27 seconds West a distance of 990.80 feet to a rebar capped EDG on the northwesterly line of a proposed right of way for the City of Calera; thence North 47 degrees 33 minutes 03 seconds East along said right of way a distance of 561.70 feet to a rebar capped EDG; thence North 72 degrees 52 minutes 52 seconds East along said right of way a distance of 525.05 feet to a rebar capped EDG; thence North 27 degrees 52 minutes 52 seconds East along said right of way a distance of 35.36 feet to a rebar capped EDG; thence North 72 degrees 52 minutes 52 seconds East along said right of way a distance of 410.80 feet to a rebar capped EDG; thence South 62 degrees 07 minutes 08 seconds East along said right of way a distance of 35.36 feet to a rebar capped EDG; thence South 17 degrees 15 minutes 32 seconds East and leaving said right of way a distance of 2341.00 feet to a rebar capped EDG; thence South 02 degrees 00 minutes 46 seconds East a distance of 202.53 feet to the POINT OF BEGINNING.

PARCEL C:

A parcel of land situated in Section 19, Township 22 South, Range 2 West and Section 4, Township 24 North, Range 13 East, Shelby County, Alabama, being more particularly described as follows:

Commence at a 3" capped pipe at the NW corner of the NE ¼ of the NE ¼ of Section 5, Township 24 North, Range 13 East; thence North 89 degrees 17 minutes 05 seconds East along the North line of said Section 5 a distance of 957.17 feet to a rebar capped F&W at the POINT OF BEGINNING; thence North 89 degrees 10 minutes 41 seconds East along the North line of said Section 5 and Section 4 a distance of 773.09 feet to a 3" capped pipe; thence South 03 degrees 51 minutes 39 seconds East and leaving the North line of Section 4 a distance of 811.31 feet to a rebar capped JPS; thence North 87 degrees 17 minutes 38 seconds East a distance of 1002.95 feet to a 2" open pipe; thence North 04 degrees 02 minutes 46 minutes West a distance of 776.08 feet to a 3" capped pipe; thence North 00 degrees 29 minutes 18 seconds East a distance of 1125.86 feet to a rebar capped EDG; thence North 48 degrees 03 minutes 27 seconds West a distance of 990.80 feet to a rebar capped EDG on the northerly line of a proposed right of way for the City of Calera; thence South 47 degrees 33 minutes 03 seconds West along said right of way a distance of 265.06 feet to a rebar capped EDG; thence South 29 degrees 25 minutes 31 seconds West along said right of way a distance of 845.54 feet to a rebar capped EDG; thence North 74 degrees 17 minutes 16 seconds West and leaving said right of way a distance of 35.88 feet to a rebar capped F&W; thence South 23 degrees 55 minutes 40 seconds West a distance of 990.67 feet to the POINT OF BEGINNING.