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Shelby Cnty Judge of Probate, AL
02/20/2019 10:39:38 AM FILED/CERT

\$500.00 Value

TEMPORARY ACCESS and CONSTRUCTION EASEMENT

THIS TEMPORARY ACCESS and CONSTRUCTION EASEMENT (the "TACE"), dated February 12th, 2019, is made by and between L&H Property Holdings, LLC, a South Carolina Limited Liability Company, with a principal address of 1789 Gardner Boulevard, Holly Hill, SC 29509 ("Grantor") and Birmingham LD, LLC, an Alabama LLC, with an address of 1819 Fifth Avenue North, Birmingham, AL 35203 ("Grantee"). The following statements are a material part of this Agreement:

WHEREAS, Grantor is the owner of a tract of land in Calera, Shelby County, AL within Tax Parcel 28-4-20-0-000-003.002 depicted as Tract 1 on **Exhibit A**, attached and incorporated hereto; and

WHEREAS, Grantee is under contract to purchase and intends to develop a tract of land in Calera, Shelby County, AL within Tax Parcels 28-4-17-0-000-007.000 and 28-4-20-0-000-002.000, depicted as Tract 2 on **Exhibit A**, attached and incorporated hereto; and

WHEREAS, Grantee has submitted plans to the City of Calera for its intended development of Tract 2 and, as a condition of plan approval, the City of Calera requires a public sewer utility easement to City over, under, and across Grantor's Tract 1 for the installation of a public gravity sewer line as conceptually depicted on **Exhibit B** (the "Permanent Easement").

WHEREAS, Grantor wishes to grant, and Grantee wishes to receive, a temporary access and construction easement over, under and across Tract 1 solely for the purposes set forth herein (the "Temporary Easement").

THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Grantor grants to Grantee the temporary, non-exclusive Temporary Easement over and across Tract 1 for the purposes of ingress/egress and surveying the Easement area and constructing all improvements necessary to extend, operate and maintain a municipal gravity sewer line over and across Tract 1 within the Permanent Easement. Grantee, at Grantee's sole cost and expense, shall have the right to enter upon the Temporary Easement in such a manner as may be reasonably necessary for the sole purpose as above written. This TACE shall expire upon the completion of Grantee's stated purpose; provided, all Grantee's warranties, representations and indemnities

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State of Alabama
Deed Tax: \$.50

shall continue for the benefit and protection of Grantor for as long as possible under applicable law. Following termination of the Temporary Easement, Grantee shall provide Grantor written release and extinguishment, in recordable form, of all Grantee's rights in and to the Temporary Easement, and Grantor shall execute the Permanent Easement to the City in the form attached hereto as **Exhibit C**.

2. Grantee and Grantor shall cooperate to develop an agreeable legal description to finalize the Permanent Easement attached hereto as **Exhibit C**. Grantee shall first provide Grantor with a final depiction of the Permanent Easement generally conceptualized in **Exhibit B**, along with a legal description of the actual easement area, including any extra buffer footage required, to be used in the Permanent Easement. Grantor shall have ten (10) business days from receipt of any such request by Grantee to approve the legal description in writing (e-mail is acceptable), which approval shall not be unreasonably withheld.
3. As consideration for Grantor's execution of the TACE and Permanent Easement, Grantee shall pay Grantor the amount of twenty-five thousand dollars (\$25,000.00) immediately upon execution of the TACE. In addition, upon execution of the Permanent Easement, Grantee shall reimburse Grantor for actual attorney fees incurred as a result of Grantee's initial easement request, further proposals, and Grantor's review and approval of the TACE and Permanent Easement up to an amount not to exceed seven thousand dollars (\$7,000.00). Grantee shall make any reimbursement payment to Grantor within 30 days of any invoice submitted by Grantor to Grantee evidencing the amount owed.
4. Grantee agrees to use due care so as not to unreasonably disturb Grantor's use of Tract 1 or interfere with Grantor's business operations in construction of the Permanent Easement and underlying facilities. Grantee further covenants and agrees that all construction activities will be timed so as to not interfere with trucking schedules of Grantor, and that driveways, improvements and/or personal property damaged by Grantee's use of the Easement will be promptly replaced, repaired and/or returned to existing conditions at Grantee's sole cost and expense.
5. Following completion of work, if Grantee has removed or damaged any of Grantor's improvements within or reasonably near the Easement, Grantee shall at Grantee's sole cost and expense immediately restore the property injured by Grantee's activities to the same condition as existed previous to Grantee's entry upon the particular property.
6. Grantee shall indemnify, defend and hold harmless Grantor from and against any and all damages, liens, expenses and costs, incurred or suffered, in connection with any damage or liability to persons or property that might arise during Grantee's construction of the Permanent Easement or use of the TACE.
7. In exercising any rights and privileges under this TACE, Grantee agrees to comply fully with any federal, state or local laws, regulations, ordinances or other

requirements. In addition, Grantee is responsible to secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction and installation of the Easement.

8. Notice. All notices will be in writing and served by electronic transmission to the addresses shown below, until notification of a change of such addresses. All such notices shall be deemed delivered on the date initiated.

For Grantor:

Brian A. Lemon, CEO

Brian.Lemon@sotank.com

and

Shawna Lemon

sclemon@wardandsmith.com

For Grantee:

David C. Frye, Manager

David.frye@rauschcoleman.com


and

Don Draper, VP - Land Acquisitions

Don.Draper@rauschcoleman.com

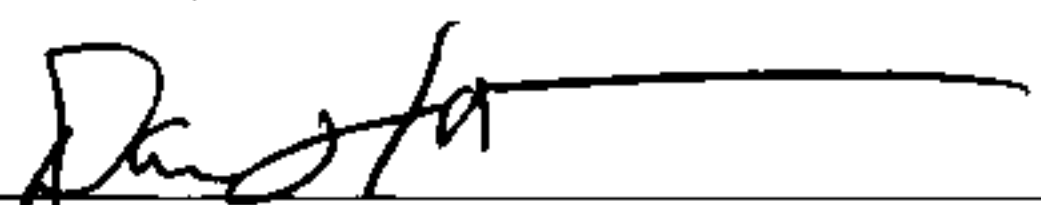
9. This Agreement may be executed in one or more counterparts, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.
10. This instrument was prepared by Josh Carson, 4058 N College Ave, Fayetteville, AR 72703.

[Signature Page Follows]


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IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first written above.

L&H Property Holdings, LLC
("Grantor")


By: 

Its: MEMBER

WITNESS:

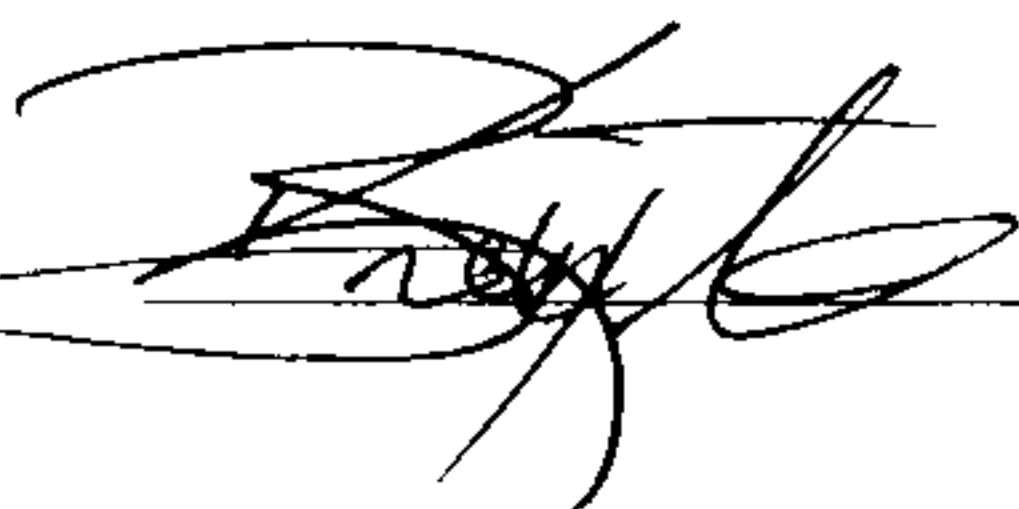



Birmingham LD, LLC
("Grantee")

By: 
David C. Frye

Its: Manager

WITNESS:




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ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA

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COUNTY OF ORANGEBURG

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On this 12th day of February, 2019, before me, the undersigned notary public in and for said County and State, personally appeared before me DAN HORTON, to me personally known/presented identification, who, being by me duly sworn, did say that he/she is A member of L&H Property Holdings, LLC, a South Carolina LLC, and that the seal affixed to the foregoing instrument is the seal of said entity, and said DAN HORTON acknowledged said instrument to be the free act and deed of said entity.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the 12th day of February, 2019.

Stephan M. D'Ordo
NOTARY PUBLIC

My Commission Expires:

May 2, 2022

ACKNOWLEDGEMENT

STATE OF ARKANSAS

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COUNTY OF ~~BENTON~~ Washington;

On this 7th day of February, 2019, before me, the undersigned notary public in and for said County and State, personally appeared before me David Frye, to me personally known/presented identification, who, being by me duly sworn, did say that he/~~she~~ is Manager of Birmingham LD, LLC, an Alabama LLC, and that the seal affixed to the foregoing instrument is the seal of said entity, and said he acknowledged said instrument to be the free act and deed of said entity.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the 7th day of February, 2019.

NOTARY PUBLIC

My Commission Expires:

Kristy Payne
Notary Public
Washington County, Arkansas
Comm. No. 12390934
Comm. Exp. 11-17-22



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EXHIBIT A
[Depiction of Tract 1, Tract 2 and Permanent Easement]



Tract 1 Metes and Bounds Legal Description

COM NE COR NW1/4 E182.06 TO POB; CONT E584.23 S566.08 W594.51 ALG N ROW CO RD #16 N580(S) TO POB.

Tract 2 Metes and Bounds Legal Description

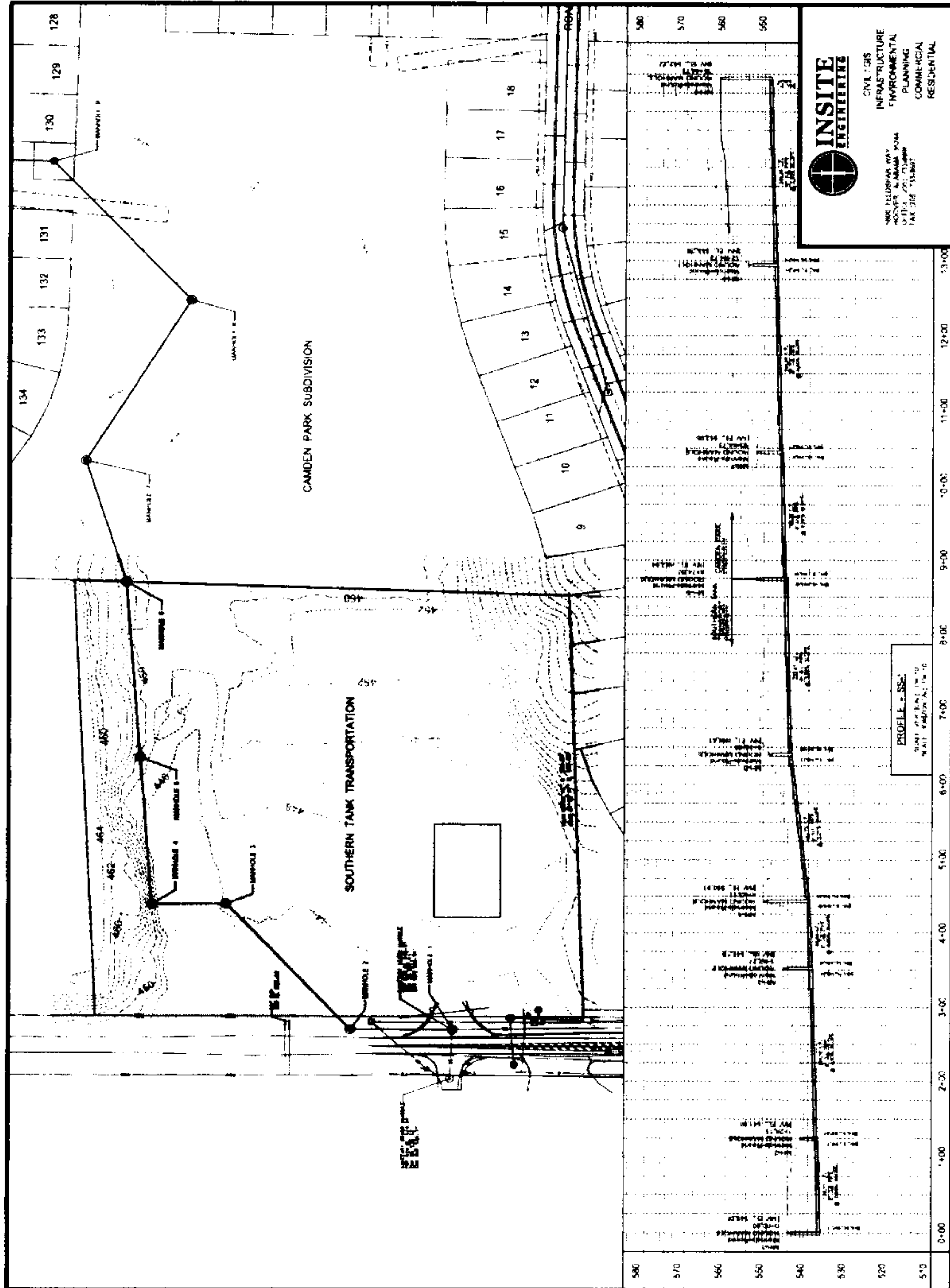
Parcel 1: SW1/4 OF SE1/4 & E1/2 SW1/4.

Parcel 2: BEG NW COR NE1/4 NE1/4; S549.37 TO N ROW CO RD #16 W562.50 N566.08 E566.06 TO POB.



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EXHIBIT B - DRAFT EXHIBIT
[Permanent Easement Depiction; To be updated after survey.]



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EXHIBIT C
[Permanent Easement Form]

AN EASEMENT
FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE
OF A SANITARY SEWER MAIN BY THE CITY OF CALERA

This EASEMENT, executed this _____ day of _____, 20____, for the construction, operation , and maintenance of a sanitary sewer main with appurtenances, by the City of Calera, hereinafter called the OWNER across the property of the LANDOWNER, L&H Property Holdings, LLC, Trustee as shown on the sketch attached and incorporated as Exhibit A, is granted by the LANDOWNER to the OWNER for valuable considerations, the receipt and sufficiency of which are acknowledged by the LANDOWNER, for himself, and his heirs, executors, successors, and assigns.

One permanent easement, to go with the land to allow the OWNER, its employees and agents to construct, operate, repair, and maintain the OWNER'S sanitary sewer main including the right of access by the OWNER, its employees and agents, or officials, and necessary related equipment. Included is the right to uncover the sanitary sewer main, with the obligation to leave the LANDOWNER'S property in good repair after completion of any repair to the sanitary sewer main.

The easement is described as follows:

To be determined via survey, attached as Exhibit A.

Executed the date shown above in four copies.

LANDOWNER:

WITNESS:

By: _____

By: _____

For The City of Calera

WITNESS:

By: _____

By: _____

Recorded the _____ day of _____, 20____ in Deed Book
_____ Page _____, of public records of Shelby County, Alabama.

