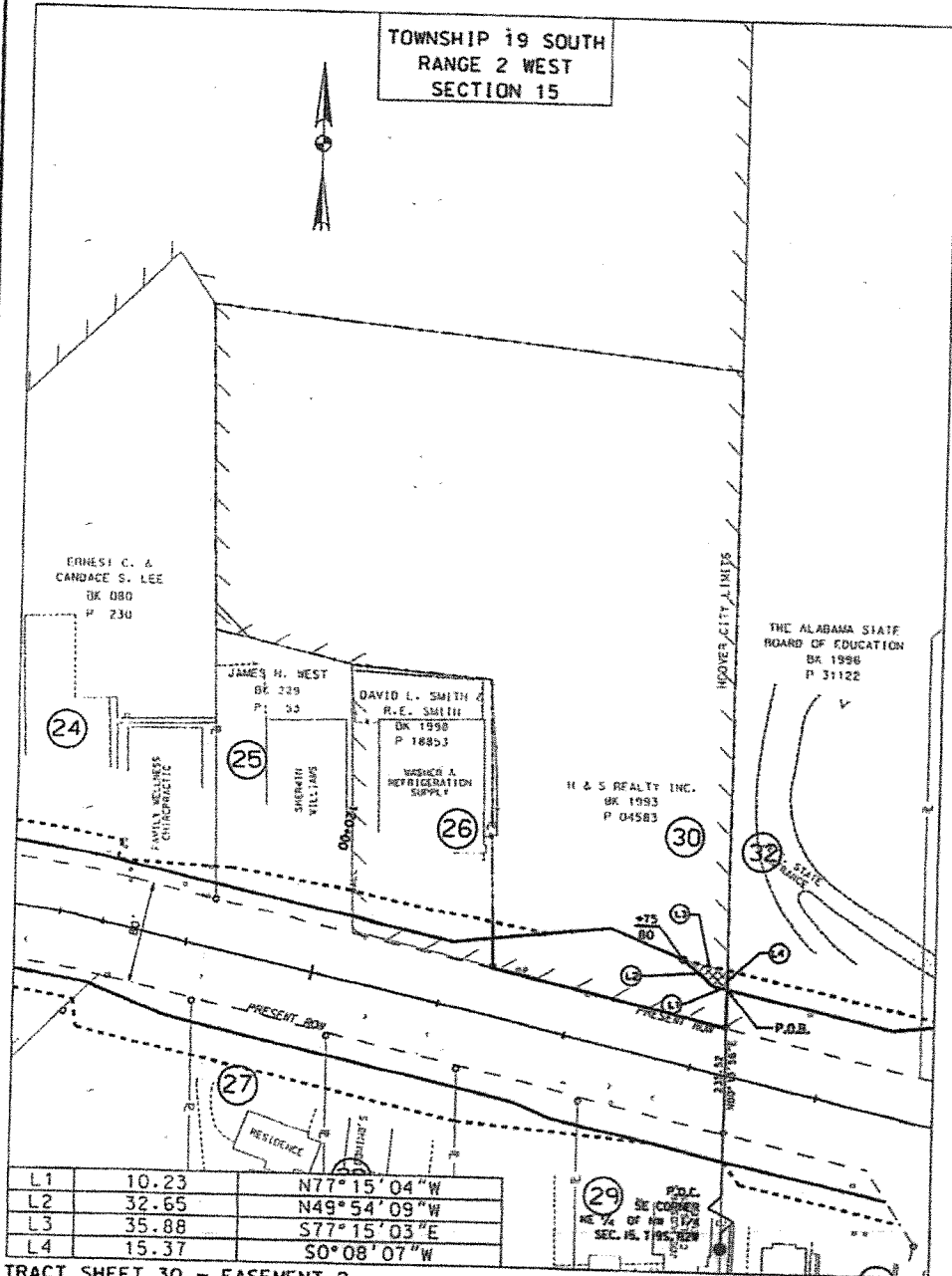


SHELBY COUNTY, ALABAMA

TOWNSHIP 19 SOUTH
RANGE 2 WEST
SECTION 15



TRACT SHEET 30 - EASEMENT 2

**THIS IS NOT A
BOUNDARY SURVEY**

VALLEYDALE ROAD FROM CALDWELL MILL ROAD TO INVERNESS CENTER DRIVE

PROJECT NO. STPBH-9802(905) SCALE: 1" = 100'
 COUNTY SHELBY TOTAL ACREAGE 3.550
 TRACT NO. 30 - EASEMENT 2 R.O.W. REQUIRED N/A
 OWNER H & S REALTY INC. REMAINDER 3.542
 PARCEL NO. 10-5-15-0-001-009.000 REQ'D. CONST. EASE. 0.008

20120514000168580 1/11 \$67.00
Shelby Cnty Judge of Probate, AL
05/14/2012 11:32:22 AM FILED/CERT

STATE OF ALABAMA)
:
SHELBY COUNTY)

EASEMENT AGREEMENT WITH CONTINGENCY

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this 20th day of January, 2012, (the "Effective Date") by and between **DAVID L. SMITH** and **HELEN T. SMITH** as executor for the **ESTATE OF R.E. SMITH, JR.,** deceased (hereinafter, "Seller"), **H&S REALTY, INC.** (hereinafter "H&S") (Collectively, Seller and H&S shall be referred to herein as the "Declarants") and **D & D CARR, LLC, its successors and assigns** (hereinafter "Carr");

Handwritten notes:
2/14/12
Valleydale
2012

WHEREAS, Seller is the owner of that certain real property located at 4532 Valleydale Rd, Hoover, Shelby County, Alabama, which is legally described as Lot 1 Phase 1, Valleydale Commercial Park as recorded in Map Book 14, Page 78 in the Office of the Judge of Probate of Shelby County, Alabama, and referred to herein as the "Smith Lot;" and

WHEREAS, H&S is the owner of that certain real property located at on Valleydale Rd, Hoover, Shelby County, Alabama, which is located adjacent to the Smith Lot and is legally described as Lot 2 Phase 1, Valleydale Commercial Park as recorded in Map Book 14, Page 78 in the Office of the Judge of Probate of Shelby County, Alabama, and referred to herein as the "Realty Lot;" and

WHEREAS, the Smith Lot is located adjacent to and is contiguous with the Realty Lot, and both lots front that certain public right of way known as Valleydale Road ("Valleydale Road"); and

WHEREAS, Seller is an affiliate of H&S, and simultaneously herewith, Seller is conveying the Smith Lot to Carr; and

WHEREAS, the Smith Lot is presently accessed by way of an existing curb cut on Valleydale Road located on the Smith Lot, but the access area on the Smith Lot, in the judgment of Carr, is not sufficient to serve the existing improvements constructed on the Smith Lot; and

WHEREAS, Therefore, in conjunction with such conveyance by Seller to Carr, the Declarants have determined, that subject to the Termination Events defined herein, it is necessary and appropriate to create, grant and reserve an access easement over and across the Realty Lot for the use and benefit of (i) the owners of Smith Lot and the Realty Lot, their respective successors and assigns (all of which persons shall be referred to herein as "Owners" or individually as "Owner"); and (ii) their agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors and tenants (all of which shall be referred to herein as the "Permittees"); and

WHEREAS, for all purposes herein, the Owners or Owner of either the Smith Lot or Realty Lot respectively shall mean the then Owner of record of such lot, and shall not, unless

specified otherwise herein, mean the predecessor in interest of such Owner which rights herein shall terminate upon conveyance of such lot; and

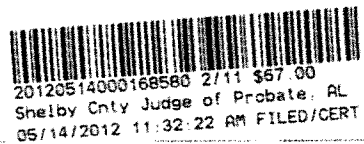
NOW THEREFORE, in consideration of the premises and other good and valuable consideration, Declarants and Carr hereby agree as follows:

1. Grant of Access Easement. Subject to the Termination Events defined herein, Declarants hereby reserve and impose on the Realty Lot for use by the Owners and Permittees of the Realty Lot, and do further hereby grant, bargain, and sell to Carr for use by the Owners and Permittees of the Smith Lot, a non exclusive perpetual easement for ingress and egress for both vehicular and pedestrian traffic (the "Access Easement") over and across that certain area located on the Realty Lot referred to herein as the "Easement Area" legally described in the attached Exhibit "A" incorporated herein by reference..

2. Temporary Construction Easement. Declarants hereby reserve, grant, bargain, sell and impose on the Realty Lot for the benefit of the Smith Lot a non-exclusive temporary easement on the Realty Lot for the construction and installation of the Access Drive (defined hereunder) to be constructed in the Easement Area; provided, however, the obligation to construct and install the Access Drive, as further described herein, shall be solely the obligation of Carr or the successor Owner of the Smith Lot subject to the provisions of Paragraph 6, and this Agreement shall in no way be construed to require Seller or H&S to construct the Access Drive (defined hereunder).

3. Required Specifications of the Access Drive and Valleydale Curb Cut. (a) Carr, or the Owner of the Smith Lot shall construct an access drive (the "Access Drive") located in the Easement Area which shall subject to the provisions of Paragraph 6, be completed and installed at the sole cost and expense of Carr or the Owner of the Smith Lot: i) in compliance with all applicable laws and in a good and workmanlike manner; ii) in accordance with all minimum standards applicable to the Access Drive as required by the City of Hoover; and iii) within twelve (12) months from the Effective Date ("Construction Completion Date"). Generally, the Access Drive shall meet the requirements set forth in the attached Exhibit "B" and shall run continuously from the north boundary line of the Easement Area to the south boundary line of the Easement Area to the Valleydale Road right of way, but shall not include an additional curb cut on Valleydale ("Valleydale Curb Cut"). Declarants shall have reasonable prior approval over the construction plan, location and size of the Access Drive within the parameters defined in this Paragraph 3, which approval shall not be unreasonably withheld or delayed.

(b) The Owner of the Realty Lot may elect to construct and install the Valleydale Curb Cut to provide access to the Realty Lot and for utilization of the Access Drive at any time in the future; provided, however, such construction shall be 1) in compliance with all applicable laws and in a good and workmanlike manner; 2) in accordance with all minimum standards applicable to the Valleydale Curb Cut as required by the City of Hoover; and 3) completed within a reasonable amount of time typical for projects of similar size and nature in the Shelby County, Alabama and shall not interfere with the use of the Access Drive by other Owners. The Owner of the Smith Lot shall have reasonable prior approval over the construction plan, location and size of the Valleydale Curb Cut within the parameters defined in this Paragraph 3;

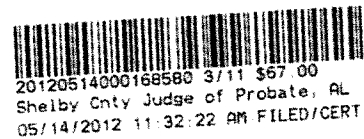


provided, however, the Owner of the Smith Lot cannot withhold its consent in instances where the City of Hoover, Shelby County or State of Alabama requires through the permitting process, that the Valleydale Curb Cut be placed or constructed in a certain location or to a certain size or specification. In the event the Owner of the Realty Lot elects to construct the Valleydale Curb Cut, the Owner of the Smith Lot and the Owner of the Realty Lot shall bear the cost of construction, permitting, applications, and installation of such Valleydale Curb Cut equally. Upon such election by the Owner of the Realty Lot, the Owner of the Realty Lot shall provide notice and monthly invoicing and updating for the charges, costs and expenses directly attributable to the Valleydale Curb Cut which shall be promptly paid by the Owner of the Smith Lot within thirty (30) days from receipt therefrom. Notwithstanding anything stated herein, the obligations of the Owner of the Smith Lot to contribute to the costs of the construction of the Valleydale Curb Cut shall be limited to one half of the amount of the second highest of qualifying bids selected by the Owner of the Realty Lot for the construction of the Valleydale Curb Cut from at least three independent qualified and reputable contractors, in the reasonable discretion of the Owner of the Realty Lot.

4. Use of Easement Area. Subject to reasonable rules and regulations adopted for use of the Easement Area by the mutual agreement of the Owners of the Smith Lot and the Realty Lot, the use of the Access Easement created by this Agreement will be non-exclusive and for the reasonable use and benefit only of the such Owners and Permittees. Nothing herein shall be interpreted to require the permission of the Smith Lot Owner or prohibit the Owner of the Realty Lot to grant easements for the benefit of the Realty Lot for the future development thereof, or to further subdivide the Realty Lot, in which case the individual Owners of such Realty Lot shall be considered an Owner herein with the same rights as Owner to utilize the Access Easement along with such Owner's Permittees; provided, however, no further easements for access may be granted to owners of properties other than the Owners of the Smith and Realty Lots without permission of both the then Owners of the Smith Lot and Realty Lot.

5. Maintenance of the Access Drive. Except to the extent that any portion of the Easement Area and Access Drive are granted to or maintained by public authorities, Declarants and Carr agree that the Easement Area and the Access Drive shall be maintained in a clean and aesthetically pleasing manner with the maintenance charges to be borne solely by the Owner of the Smith Lot until such time as improvements on the Realty Lot are constructed, at which time, such maintenance charges shall be divided between the then Owner of the Smith Lot and the Owner of the Realty Lot equally; unless and until such time as either the Smith Lot or the Realty Lot is further subdivided, at which time, the maintenance charges shall be equally divided among the owners of each lot based sum of the total number of lots. For illustration purposes, once improvements are constructed on the Realty Lot, if the Realty Lot remains one lot, then the maintenance charges will be divided equally between the Owner of the Smith Lot and the Owner of the Realty Lot; however, in the event the Realty Lot is further subdivided into three lots (for example), then the maintenance charges shall be divided equally among the owners of the four total lots being 25% each.

6. Termination of the Access Easement and Termination Events. Upon the occurrence of either of the following, the Access Easement described herein shall terminate and become of no further force and effect: 1) the dedication and acceptance of the Access Drive by the City of

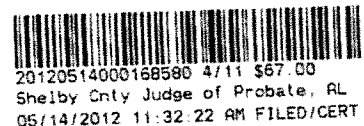


Hoover, Alabama or Shelby County, Alabama as a public road; or 2) in the event that the Access Drive is not fully completed by the Construction Completion Date in which case the Declarants and Owner of the Realty Lot may file an affidavit stating such incompleteness to be recorded in the Office of the Judge of Probate of Shelby County, Alabama, which shall cause the immediate termination of the Access Easement and neither Carr nor the Owner of the Smith Lot nor its Permittees shall have any further rights to the Easement Area nor any further liability or obligation to any Owner or other party to this Agreement with the exception of any liabilities incurred or accrued prior to the date of such termination relating to (i) any mechanics or materialmen's liens related to the construction of the Access Drive or (ii) pursuant to paragraph 7 herein .

7. Mutual Indemnifications. Carr, or any successor or assign who is the then current Owner of any part of the Smith Lot ("Smith Lot Owner"), shall indemnify and hold H&S, its successors and assigns who is the then current Owner of the Realty Lot ("Realty Lot Owner"), harmless from and against any and all costs, damages, liabilities and expenses, including a reasonable attorney's fee incurred by the Realty Lot Owner, as a result of any negligent or intentional acts or omissions of the Smith Lot Owner or its Permittees arising out of or related to this Agreement or use of the Easement Area by the Smith Lot Owner or its Permittees. The Realty Lot Owner shall indemnify and hold harmless the Smith Lot Owner from and against any and all costs, damages, liabilities and expenses, including a reasonable attorney's fee incurred by the Smith Lot Owner as a result of any negligent or intentional acts or omissions of the Realty Lot Owner or its Permittees arising out of or related to this Agreement or use of the Easement Area of the Realty Lot Owner or its Permittees.

8. Insurance. (a) Public Liability Insurance. Unless or until the Easement Area and Access Drive are granted to or maintained by public authorities, Each Owner shall maintain at all times, at its own cost and expense public liability insurance coverage under the terms of which each party shall be insured against liability for bodily injury, property damage, and death occurring on, in or about the Easement Areas. Such insurance shall be maintained in the minimum amount of One Million Dollars (\$1,000,000.00) aggregate coverage, and each party will provide to the other evidence of such insurance prior to commencement of any construction or upon the written request of the other party.

(b) Insurance During Construction or Work. Unless or until the Easement Area and Access Drive are granted to or maintained by public authorities, Each Owner shall require and insure that any contractor, builder or subcontractor performing any work or construction on or about the Easement Area maintain at all times (i) commercial general liability insurance coverage under the terms of which each party shall be insured against liability for bodily injury, property damage, and death occurring on, in or about the Easement Area in the minimum amount of One Million Dollars (\$1,000,000.00) aggregate coverage, and (ii) workers compensation coverage in amounts required by statute. Each Owner will provide to the other evidence of such insurance upon the written request of the other and prior to commencement of any construction in the Easement Area. The Owner of the Smith Lot shall insure that no mechanics or materialmen's liens related to any construction of the Access Road shall burden the Easement Area or the Realty Lot and the Owner of the Smith Lot shall, within thirty (30) days from notice of any such lien, discharge such lien or secure proper bonding therefor. The Owner of the Realty



Lot shall insure that no mechanics or materialmen's liens related to any construction of the Valleydale Curb Cut shall burden the Easement Area and the Owner of the Realty Lot shall, within thirty (30) days from notice of any such lien, discharge such lien or secure proper bonding therefor.

9. Legal Effect. Subject to the Termination Events defined herein, the Access Easement and Temporary Construction Easement and rights created by this Agreement shall run with the land and shall be appurtenant to the Smith Lot and the Realty Lot to which they relate and shall not be transferred, assigned or encumbered except as an appurtenance to such parcel. Each covenant contained in this Agreement (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in either parcel, and such Owner's successors and assigns, and (iii) will inure to the benefit of each Owner and each Owner's successors and assigns. Upon conveyance of all or any part of either the Smith Lot or Realty Lot, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Agreement.

10. No Dedication. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any part of any Smith Lot or Realty Lot to the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Agreement will be strictly limited to the private use of the Owners and their respective Permittees. This Agreement is intended to benefit the Owners and their respective successors and assigns.

11. No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by any Owner and thereafter waived or otherwise not enforced by another Owner, such waiver or acquiescence shall be limited to that particular breach and shall not be deemed to waive any other breach hereunder or the exercise of any remedy with respect thereto.

12. Amendment. This Agreement may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

13. Effect of Breach. Unless specifically provided for otherwise herein and not including the Termination Events, breach of any of the covenants contained in this Agreement shall not defeat or render invalid title to either the Smith Lot or Realty Lot or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of either parcel, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure or otherwise.

14. Miscellaneous. The provisions of this Agreement are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof. All notices, statements, demands, approvals or other communications to be given under or pursuant to this Agreement shall be in

writing and shall be delivered in person, by nationally recognized overnight courier service or by certified or registered mail, postage prepaid. If delivered by hand or by overnight courier, notice shall be deemed to have been given upon delivery. If mailed, notice will be deemed to have been given three days after the date of mailing. The address of each Owner for purposes of this Section 14 is the address for tax notices for the Owner of the Smith Lot and the Owner of the Realty Lot as of the date notice is given.



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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, Seller, H&S and Carr have caused this Easement Agreement to be executed as of the Effective Date.

SELLER:

David L. Smith
David L. Smith

Helen T. Smith
Helen T. Smith as Executor of the Estate of R.E. Smith, deceased

H&S Realty:

By: David L. Smith
Its: H&S

D&D Carr, LLC

By: Donna Hudson Carr
Its: Member

Donna Hudson Carr,
Its member

This instrument was prepared by:
Lisa Hudson Dorrough, Esquire
Dominick, Feld, Hyde
2121 Highland Ave South
Birmingham, Alabama 35205



STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **DAVID L. SMITH**, individually and as **Executor of the Estate of Helen T. Smith, deceased**, 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, individually and as in his capacity as Executor with full authority, executed the same voluntarily for himself and as the act of said Estate.

Given under my hand and official seal this the 20 day of January, 2012.
[Signature]
Notary Public, My commission expires: 12/14/2012

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **DAVID L. SMITH**, whose name as President of H&S Realty, an Alabama corporation 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 corporation.

Given under my hand and official seal this the 20 day of January, 2012.
[Signature]
Notary Public, My commission expires: 12/14/2012

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, Donna Hudson Carr a Notary Public in and for said County in said State, hereby certify that Dayl Carr &, whose name as Members of D&D Carr, 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 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 the 20 day of January, 2012.
[Signature]
Notary Public, My commission expires: 12/14/2012



EXHIBIT "A"

LEGAL DESCRIPTION (26' INGRESS & EGRESS EASEMENT)

A TRACT OF LAND SITUATED IN THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 15, TOWNSHIP 19 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF VALLEYDALE ROAD AND THE SOUTHWEST CORNER OF LOT 2, ACCORDING TO THE SURVEY OF VALLEYDALE COMMERCIAL PARK, AS RECORDED IN MAP BOOK 14, PAGE 70, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 01°39'00" WEST ALONG THE WEST LINE OF SAID LOT 2 FOR 225.82 FEET; THENCE RUN SOUTH 85°06'13" EAST FOR 26.17 FEET; THENCE RUN SOUTH 01°39'00" EAST FOR 229.65 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF VALLEYDALE ROAD; THENCE RUN NORTH 76°58'34" WEST ALONG SAID ROAD RIGHT-OF-WAY FOR 26.88 FEET TO THE POINT OF BEGINNING.

ALL BEING SITUATED IN SHELBY COUNTY, ALABAMA.

SUBJECT TO: i) taxes and assessments for the year 2012, a lien but not yet payable; ii) title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Volume 42, Page 246 and Deed Volume 4, Page 472; iii) Right of way granted to Alabama Power Company as set out in instrument(s) recorded in Deed Volume 129, Page 559; Real Volume 224, Page 225; and Real Volume 148, Page 913; and iv) coal, oil, gas and mineral and mining rights which are not owned by Grantor/Mortgagor.

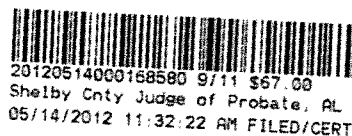
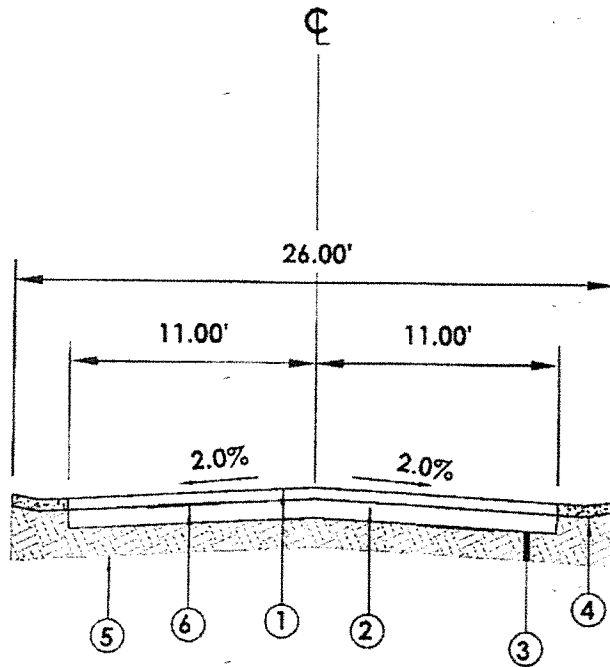


EXHIBIT "B"

Standards for the Access Drive





ACCESS ROAD SPECIFICATIONS

④ 30" CONC. VALLEY GUTTER.
BACK OF GUTTER 4" ABOVE VALLE
INSIDE EDGE 1" ABOVE VALLEY,

N.T.S.

LEGEND	LEGEND AND REQUIRED MATERIAL
①	1" IMPROVED-BITUMINOUS CONCRETE WEARING SURFACE LAYER, 1/2" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE D.
②	2" IMPROVED BITUMINOUS CONCRETE BINDER LAYER, 1" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE D.
③	6" AGGREGATE BASE COURSE COMPACTED TO 100% OF MAXIMUM DRY DENSITY IN ACCORDANCE WITH MODIFIED AASHTO COMPACTION TEST T-180.
④	24" VALLEY GUTTER (SEE DETAIL).
⑤	COMPACTED SUBGRADE TO 100% STANDARD PROCTOR, AHD 221-71 OR 221-72
⑥	TACK COAT

The contractor is responsible for providing the owner with a copy of the approved asphalt mix design from an ALDOT certified plant. A copy of the delivery tickets shall be provided to the owner



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Shelby Cnty Judge of Probate, AL
05/14/2012 11:32:22 AM FILED/CERT

Shelby County, AL 05/14/2012
State of Alabama
Deed Tax: \$25.00