


RETURN RECORDED DOCUMENT TO:

W. Ernest Moss  
AIG Baker Shopping Center Properties, L.L.C.  
1701 Lee Branch Lane  
Birmingham, Alabama 35242

*This Instrument Prepared by:*

W. Ernest Moss, Esquire  
AIG Baker Shopping Center Properties, L.L.C.  
1701 Lee Branch Lane  
Birmingham, Alabama 35242

  
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Shelby Cnty Judge of Probate, AL  
07/01/2003 12:41:00 FILED/CERTIFIED

RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is made and entered into this 30<sup>th</sup> day of June, 2003, by and between **AIG BAKER BROOKSTONE, L.L.C.**, a Delaware limited liability company (the "AIG"), and **LEE BRANCH, LLC**, an Alabama limited liability company ("Lee").

RECITALS

- A. AIG is the owner of that certain real property situated in County of Shelby, State of Alabama, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("AIG Parcel"), upon which a shopping center to be known as "The Village at Lee Branch" is or will be constructed.
- B. AIG has contracted to sell to Compass Bank, an Alabama banking corporation ("Compass") that certain real property situated in the County of Shelby, State of Alabama, more particularly described on Exhibit "A-1" attached hereto and incorporated herein by this reference ("Compass Parcel").
- C. Lee is the owner of that certain real property situated in the County of Shelby, State of Alabama, more particularly described on Exhibit "A-2" attached hereto and incorporated herein by this reference ("Lee Parcel").
- D. Compass intends to develop the Compass Parcel for use as a bank, and Lee intends to develop the Lee Parcel for use by Walgreen (hereinafter defined).
- E. The parties hereto desire to impose certain easements upon the Parcels (hereinafter defined), and to establish certain covenants, conditions and restrictions with respect to said Parcels, for the mutual and reciprocal benefit and complement of the Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Owners (hereinafter defined) hereby covenant and agree that the Parcels (as defined herein) and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels

shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

## AGREEMENTS

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean only AIG (as to the AIG Parcel and the Compass Parcel so long as AIG owns the Compass Parcel), and Lee (as to the Lee Parcel) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on Exhibit "A", Exhibit "A-1", and Exhibit "A-2", that is, the AIG Parcel, the Compass Parcel and the Lee Parcel, respectively, and any future subdivisions thereof.

(c) The term "Permittees" shall mean the tenant(s) or occupant(s), and the respective employees, agents, contractors, customers, invitees and licensees of Compass (as to the Compass Parcel), Lee (as to the Lee Parcel), or AIG (as to the AIG Parcel). The term "Permittees" as used herein, shall refer only to the tenant(s) or occupant(s), and the respective employees, agents, contractors, customers, invitees and licensees of the specific property used in connection with the specific reference to such term.

(d) The term "Common Area" shall mean those portions of the Parcels that are outside of exterior walls of buildings or other structures from time to time located on said Parcels, and which are either unimproved, or are improved as (without limitation) parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements.

(e) The term "Walgreen" or "Walgreens" shall mean Walgreen Co., an Illinois corporation (or any of its affiliates, subsidiaries, successors or assigns). Walgreen shall be deemed a third party beneficiary to this Agreement.

(f) The term "Walgreen Lease" or "Walgreens Lease" shall mean that Lease of Lee from Lee as landlord to Walgreen as tenant, and any amendments, extensions or replacements thereof.



(g) The term "Site Plan" shall mean that site plan of the Parcels attached hereto as Exhibit "B" and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

(h) The term "Driveway" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, located on the Lee Parcel and the Compass Parcel, as shown on the Site Plan.

## 2. Easements.

2.1 Grant of Access Easement. Subject to any express conditions, limitations or reservations contained herein, Lee and AIG hereby grant, establish, covenant and agree that the Compass Parcel and the Lee Parcel, and all Owners and Permittees of each respective parcel thereof, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easement which is hereby imposed upon the Lee Parcel and the Compass Parcel and all present and future Owners and Permittees of such parcels thereof: an easement for reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed, so as to provide for the passage of motor vehicles and pedestrians to and from the Compass Parcel and the Lee Parcel and all abutting streets or rights of way furnishing access to the Common Area of the Lee Parcel and the Common Area of the Compass Parcel including, without limitation, the Driveway, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Common Area of the Lee Parcel and the Compass Parcel intended for such purposes, and to and from Doug Baker Boulevard.

2.2 Grant of Utility Easements. Subject to any express conditions, limitations or reservations contained herein, AIG hereby grants, establishes, covenants and agrees that the Lee Parcel, and all Owners and Permittees thereof, shall be benefited and burdened by the following nonexclusive, perpetual easement which is hereby imposed upon the Compass Parcel and all present and future Owners and Permittees thereof: an easement under and across those parts of the Compass Parcel shown on the Site Plan as the "Utility Area", for the use and operation of a water line and gas line; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of the Compass Parcel and the businesses conducted therein, and (ii) except in an emergency, the right of Lee to enter upon the Compass Parcel for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to Compass as to the time and manner of entry. This easement shall continue until such time as the Utility Area, which is a part of the Road (hereinafter defined), is dedicated to the appropriate governmental body as a publicly dedicated roadway.

2.3 Grant of Drainage Easement. Subject to any express conditions, limitations or reservations contained herein, AIG hereby grants, establishes, covenants and agrees that the Compass Parcel and the Lee Parcel,

and all Owners and Permittees thereof, shall be benefited and burdened by the following nonexclusive, perpetual easement which is hereby imposed upon the AIG Property and all present and future Owners and Permittees thereof: an easement upon and under the Common Areas of the AIG Property for the discharge, drainage, use, detention and retention of storm water runoff in the manner and in the location indicated on the Grading D Plan, Sheets C10 and C11, prepared by Lowe & Associates, dated 07/18/02, reduced copies of which are attached hereto as Exhibits B-1 and B-1, or as may be constructed by AIG on the AIG Parcel. The storm water detention areas, if any, indicated on the Site Plan, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, shall be hereinafter called the "Water Detention and Drainage Facilities". The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. AIG reserves the right to alter or modify the Water Detention and Drainage Facilities, provided the same does not adversely affect the discharge of storm water from the Lee Parcel or the Compass Parcel,

#### 2.4 Grant of Temporary Access Easement.

(a) Subject to any express conditions, limitations or reservations contained herein, AIG hereby grants, establishes, covenants and agrees that the Compass Parcel and the Lee Parcel, and all Owners and Permittees thereof, shall be benefited and burdened by the following nonexclusive, perpetual easement which is hereby imposed upon the AIG Parcel and all present and future Owners and Permittees thereof: a temporary easement for Compass and Lee and benefiting the Parcels for reasonable access, ingress and egress over all of that portion of the roadway, identified as Doug Baker Boulevard on the Site Plan and described on Exhibit "C" hereto (the "Road"), presently owned by AIG. This easement shall continue until such time as the Road is dedicated to the appropriate governmental body as a publicly dedicated roadway.

(b) Subject to any express conditions, limitations or reservations contained herein, AIG hereby grants, establishes, covenants and agrees that the Lee Parcel and the AIG Parcel, and all Owners and Permittees thereof, shall be benefited and burdened by the following nonexclusive, perpetual easement which is hereby imposed upon the Compass Parcel and all present and future Owners and Permittees thereof: a temporary easement for Lee and AIG and benefiting the Lee Parcel and the AIG Parcel for reasonable access, ingress and egress over all of that portion of the Road contained within the Compass Parcel. This easement shall continue until such time as the Road is dedicated to the appropriate governmental body as a publicly dedicated roadway.

#### 2.5 Grant of Sign Easement.

(a) Subject to any express conditions, limitations or reservations contained herein, Lee hereby grants, establishes, covenants and agrees that the AIG Parcel, and all Owners and Permittees thereof, shall be benefited and



burdened by the following nonexclusive, perpetual easement which is hereby imposed upon the Lee Parcel and all present and future Owners and Permittees thereof: an easement for the benefit of the AIG Parcel, upon a portion of the Lee Parcel in the area shown on the Site Plan as a 30' x 15' Pylon Sign Easement Area, so that AIG may construct and maintain a pylon sign for its benefit located in the Southeast corner of the Lee Parcel. The foregoing easement, in the location as shown in the Site Plan, shall include the right to access the sign for any applicable maintenance and repairs. Unless such larger signage is permitted by applicable zoning or other governmental regulations which does not reduce the amount of remaining signage allowed on the Lee Parcel, the aggregate of all tenant or occupant signage placed on any sign constructed on the Pylon Sign Easement Area shall not exceed forty-eight (48) square feet of total sign panel area. In no event shall such sign or any panel displayed or installed thereon include the word "pharmacy" or "drug store". Lee acknowledges that for AIG to construct or erect a sign within the Pylon Sign Easement Area it will be necessary for AIG to obtain a variance from Shelby County or such other governmental entity having jurisdiction over the property. AIG agrees to exercise commercially reasonable efforts to obtain such variance, but in the event it is unsuccessful, then the 30' x 15' Pylon Sign Easement Area shall become a 10' X 20' Pylon Sign Easement and shall be located within the area shown on Exhibit D attached hereto and incorporated herein by reference.

(b) Lee shall have the right to construct a free standing pylon sign in the location shown on the Site Plan. Unless such larger signage is permitted by applicable zoning or other governmental regulations which does not reduce the amount of signage AIG is allowed pursuant to Section 2.5 (a) above, the aggregate of all tenant or occupant signage placed on the Lee pylon sign shall not exceed thirty-two (32) square feet of total sign panel area.

2.6 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement (including Walgreen, in the case of the Owner of the Lee Parcel) harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

## 2.7 Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) Once commenced, any construction undertaken in reliance upon

an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner (and/or, during the continuance of the Walgreen Lease, Walgreen), and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and its Permittees from all damages, losses, liens or claims attributable to the performance of such work.

### 3. Maintenance.

3.1 General. Until such time as improvements are constructed on the Parcels, each Owner of a Parcel shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Buildings and Appurtenances Thereto. Each Owner of a Parcel covenants to keep and maintain, at its sole cost and expense, the building(s) located from time to time on its respective Parcel in good order, condition and repair. Once constructed, in the event of any damage to or destruction of a building on the Parcels, the Owner thereof shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained in subparagraph 3.2(b) shall be deemed to allow AIG, Lee or Compass to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee. The Parcels shall comply with applicable governmental parking ratio requirements without taking into account the parking provided on the other Owner's Parcel, such that each Parcel shall be self sufficient for vehicular parking.

3.3 Common Area. Each Owner of a Parcel covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained at its expense all Common Area located on its Parcel in good order, condition and repair. Following the construction of improvements thereon, maintenance of



Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe and orderly condition. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the Common Area on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild such Common Area to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement). Each Owner reserves the right to alter, modify, reconfigure, relocate and/or remove the Common Areas or building areas on its Parcel, subject to the following conditions: (i) as to the Lee Parcel, during the continuance of the Walgreen Lease, the express written consent of Walgreen shall be required; (ii) the easements between the Parcels pursuant to Section 2 shall not be closed or materially impaired; (iii) the Driveway and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Parcel Owners and Walgreen (during the continuance of the Walgreen Lease); and, (iv) the same shall not violate any of the provisions and easements granted in Section 2.

4. Construction of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on the Parcels, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements

5. Restrictions.

5.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of a Parcel shall be used, directly or indirectly, for any of the following prohibited uses or operations or that produce or are accompanied by the following characteristics: a cocktail lounge, bar, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, educational or training facility, blood bank, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use, a car wash, an assembly hall, off track betting establishment, bingo parlor,

any use involving the use, storage, disposal or handling on a Parcel of hazardous materials or underground storage tanks, or any use which creates a nuisance.

5.2 Additional Compass Parcel Restrictions. Throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of the Compass Parcel shall be used, directly or indirectly, for any one or more of the following purposes: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab or the provision of treatment services (other than as part of a medical, dental, physician, surgical, veterinary MRI facility or chiropractic office[s], which office[s] shall not be restricted by this sub-clause [ii]); (iii) the sale of so-called health and beauty aids or drug sundries; (iv) the operation of a business in which photo finishing services or photographic film are offered for sale; and, (vi) the operation of a business in which greeting cards or gift wrap are offered for sale; and (vii) the operation of a business in which prepackaged food items for off premises consumption are offered for sale (except that the incidental sales of such food items by a restaurant shall be permitted).

5.3 Additional Lee Parcel Restrictions. Throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of the Lee Parcel shall be used, directly or indirectly, for or operated as a bank, savings and loan association, security brokerage or other financial institution, including without limitation, any operation of an automated teller machine ("ATM"). Notwithstanding the foregoing, (a) nothing herein shall prevent the operation of a stock brokerage firm, insurance company, mortgage/loan company, or check cashing and cash advance office; and (b) this restrictive covenant shall not prevent the installation or operation of an ATM on the Lee Parcel, as an adjunct to the primary business conducted thereon.

5.4 Drive-Throughs. No facility on the Compass Parcel for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank) shall be assigned, constructed, used or operated in any manner such that motor vehicles in line at such facility stop or stand onto the Lee Parcel and/or the Driveway, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Lee Parcel and/or the Driveway. The parties hereto acknowledge the building initially constructed on the Lee Parcel shall have a drive through located as shown in the area as shown on Exhibit "D".

5.5 Academy Restrictions For so long as Academy Sports, its successors or assigns is operating a retail store in its premises in The Village at Lee Branch Shopping Center selling sporting goods or sports apparel, sports footwear and related accessories, no portion of the Lee Parcel or the Compass Parcel may be sold, leased, occupied or used as a store in the business of selling sporting goods or sports apparel, sports footwear and related accessories (it being



understood and agreed that the incidental retail sale of sports footwear by a store primarily in the business of selling shoes or the incidental retail sale of sportswear by a store primarily in the business of selling apparel shall not violate this exclusive right, by example and not limitation, T. J. Maxx and Ross Stores shall not be businesses which violate this exclusive). Additionally, a family shoe store (such as Famous Footwear and Rack Room Shoes) shall be permitted to sell sports footwear, provided that [and notwithstanding the last sentence of this paragraph] such stores incidental sales of sports footwear constitute less than twenty percent (20%) of such operator's or tenant's gross sales and less than 1,250 square feet of display area inclusive of allocable aisle space. The incidental sale of such items in connection with the overall business of another operator or tenant shall not be deemed a violation of this paragraph. As used herein, "incidental sale" shall mean less than five percent (5%) of such operator's or tenant's gross sales and less than five hundred (500) square feet of such operator's or tenant's display area (inclusive of allocable aisle space).

6. Insurance. Throughout the term of this Agreement, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.6 above), death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming each other Owner and Walgreen during the continuance of the Walgreen Lease (provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof) as additional insureds. Walgreen (whether as tenant under the Walgreen Lease or in the event Walgreen becomes an Owner of a Parcel) may elect to self insure and/or carry insurance required hereunder under master or blanket policies of insurance
7. Taxes and Assessments. Each Parcel Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.
8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the AIG Parcel, Lee Parcel or Compass Parcel. No easements, except (i) those expressly set forth in Section 2, and/or (ii) an easement over the Lee Parcel and the Compass Parcel so as to enable the construction of the Driveway and other improvements required for the initial development for Walgreens by Lee, shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for parking, utilities or drainage are granted or implied.
9. Remedies and Enforcement.
  - 9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and Walgreen

shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Walgreen shall have the right, but not the obligation, to enforce this Agreement on behalf of the Owner of the Lee Parcel, and/or to cure a breach or default hereunder by the Owner of the Lee Parcel, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of the Lee Parcel.

9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by an Owner or Walgreen (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), Walgreen or any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank One (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on Parcel B, an Owner or Walgreen may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

9.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner (or to Walgreen in connection with the exercise of its rights set forth in paragraphs 9.1 and/or 9.2 above) in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Probate Office of Shelby County, Alabama; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Probate Office of Shelby County, Alabama prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.



9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, the nondefaulting Owner and Walgreen, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Shelby County Probate Office and shall remain in full force and effect for a period of seventy-five (75) years thereafter (such seventy-five [75] year period may be referred to as the "Initial Term"), subject to automatic extensions as hereinafter provided, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of the Parcels (and Walgreen during the continuance of the Walgreen Lease) in accordance with paragraph 11.2 hereof. The term of this Agreement shall be automatically extended for an additional seventy-five (75) years from and after the expiration of the initial term unless the record Owner of the AIG Property, the record Owner of the Compass Parcel, or the record Owner of the Lee Parcel files a Notice of Termination of this Agreement in the Office of the Shelby County Probate Office, Alabama, no earlier than the date that is six (6) months prior to the expiration of the Initial Term and no later than the scheduled expiration date of the Initial Term, electing to terminate this Agreement and all of its terms and provisions (it being expressly agreed that a Notice of Termination filed before or after the aforementioned applicable dates shall not be effective for any purpose, and shall not result in a termination of this Agreement, unless executed by all applicable parties as provided in paragraph 11.2 hereinafter). Upon the filing of a Notice of Termination by the then record Owner of the AIG Property, the Compass Parcel or the Lee Parcel within the applicable time frames hereinabove established in this section 10, all the easements, covenants, conditions and restrictions contained in this Agreement shall terminate as of the expiration of the Initial Term.

11. Miscellaneous.

11.1 Attorneys' Fees. In the event a party (including Walgreen) institutes any legal action or proceeding for the enforcement of any right or obligation

herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment.

(a) The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Probate Office of Shelby County, Alabama.

(b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Agreement, and no modification or amendment of this Agreement shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreen (during the continuance of the Walgreen Lease).

11.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Walgreen under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the Walgreen Lease, any consent by the Owners of the Parcels, to be effective, shall also require the consent of Walgreen, which shall not be unreasonably withheld, conditioned or delayed.

11.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

11.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a



contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

11.8 Separability. Each provision of this Agreement and the application thereof to the AIG Parcel, Lee Parcel and Compass Parcel are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of the Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

11.9 Time of Essence. Time is of the essence of this Agreement.

11.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Walgreen (during the continuance of the Walgreen Lease). The notice addresses of the Owners and Walgreen are as follows:

Walgreen: Walgreens  
Attention: Law Department  
Mail Stop No. 2252  
200 Wilmot Road  
Deerfield, Illinois 60015  
Telephone: (847) 914-2500

AIG: AIG Baker Brookstone, L.L.C.  
c/o AIG Baker Shopping Center Properties, L.L.C.  
Attention: Legal Department  
1701 Lee Branch Lane

Birmingham, Alabama 35242  
Telephone: (205) 969-1000

Compass: Compass Bank  
15 South 20<sup>th</sup> Street  
Birmingham, Alabama 35233  
Attention: Steven L. Kirkpatrick, Vice President  
Telephone: (205) 297-5158

Lee: Lee Branch, LLC  
c/o William C. Lloyd  
100 2<sup>nd</sup> Avenue South – Suite 204N  
St. Petersburg, Florida 33701

11.12 Governing Law. The laws of the State of Alabama shall govern the interpretation, validity, performance, and enforcement of this Agreement.

11.13 Estoppel Certificates. Each Owner, within twenty (20) day of its receipt of a written request from the other Owner(s) or Walgreen, shall from time to time provide the requesting Owner or Walgreen, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

11.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"AIG:"

**AIG BAKER BROOKSTONE, L.L.C.,**  
a Delaware limited liability company

By: AIG Shopping Center Properties, L.L.C.

By:

*W. Ernest Moss*  
Alex D. Baker, President OR  
W. Ernest Moss, Executive Vice President

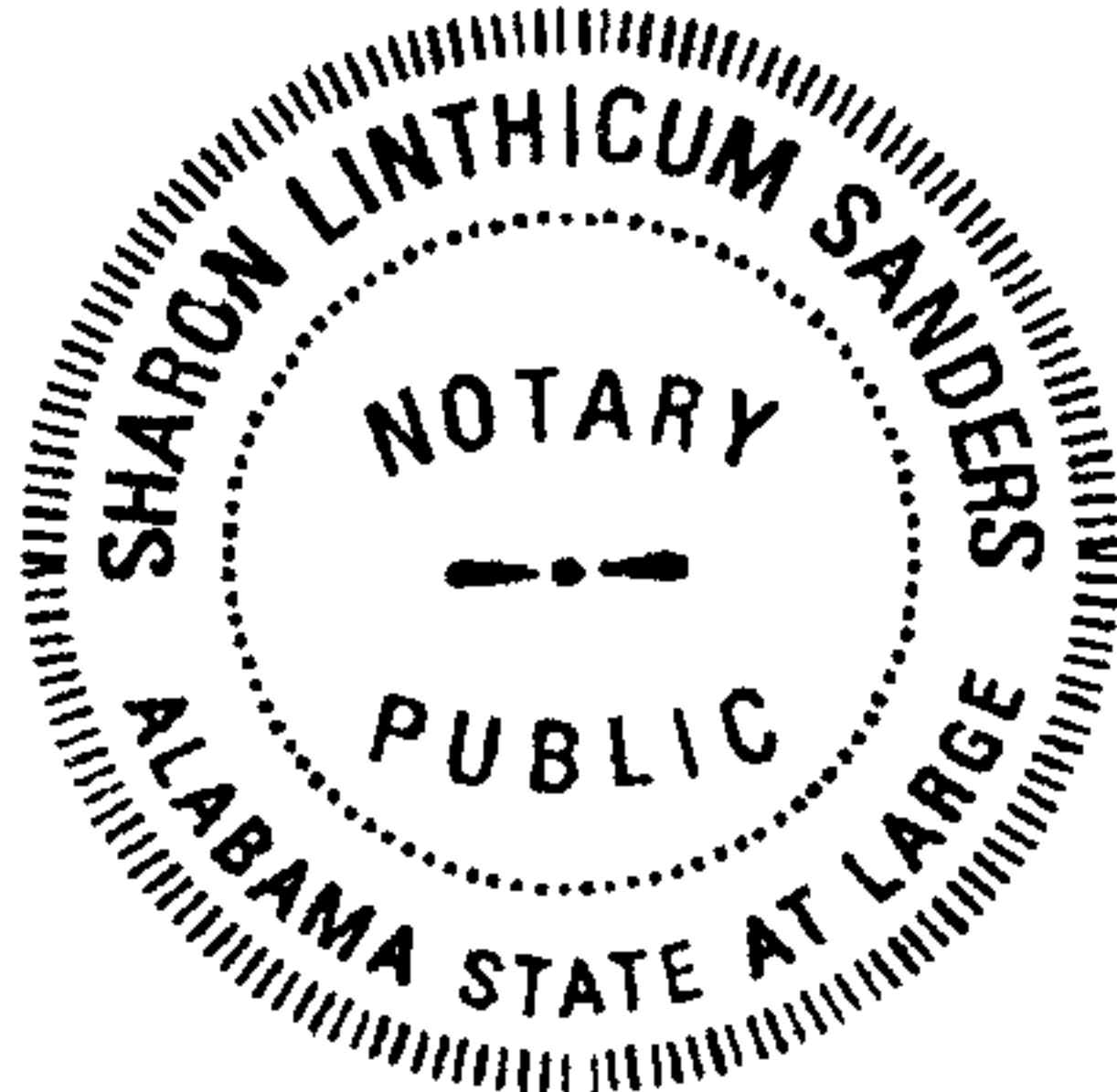
STATE OF ALABAMA     )

SHELBY COUNTY         )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that W. Ernest Moss, whose name as Executive Vice Pres. of AIG Baker Shopping Center Properties, L.L.C., sole member of AIG Baker Brookstone, L.L.C., a Delaware 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 30<sup>th</sup> day of June, 2003.

[SEAL]



*Sharon Linthicum Sanders*  
Notary Public  
My Commission Expires: 4-11-07

"Lee:"

**Lee Branch, LLC,**  
an Alabama limited liability company

By: Wm Lloyd  
Name: William Lloyd  
Title: MANAGING member

STATE OF Alabama )

Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that William C Lloyd, whose name as Managing Member of Lee Branch, 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 the said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 30<sup>th</sup> day of June, 2003.

[SEAL]

J Z Hult  
Notary Public  
My Commission Expires: 8/9/05



## CONSENT, JOINDER AND SUBORDINATION OF LENDER

The undersigned, Compass Bank ("Lender"), is the owner and holder of that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from AIG Baker Brookstone, L.L.C., a Delaware Limited Liability Company, dated November 13, 2002, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama, at Instrument Number 20021113000565880, as the same may be amended (the "Mortgage").

Lender, as the owner and holder of the Mortgage, hereby joins in, consents to and subordinates the Mortgage to, the foregoing Reciprocal Easement With Covenants, Conditions and Restrictions (the "REA") to which this Consent, Joinder and Subordination is attached, and Lender agrees that all of its right, title and interest in and to the real property described therein existing by virtue of the Security Deed shall be bound by, subject to and subordinate to the easements and other terms and provisions of the foregoing REA, and the REA shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Mortgage.

**Lender:**

COMPASS BANK  
an Alabama banking corporation


By:   
Name : R. Scott Pulliam  
Title : SVP

EXHIBIT "A"

LEGAL DESCRIPTION OF AIG PARCEL

Lot 4 of "THE VILLAGE AT LEE BRANCH" Sector 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 31, Page 17.

AND

Lot 1-A of "THE VILLAGE AT LEE BRANCH" Sector 1-Revision 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 31, Page 43A & 43B.



EXHIBIT "A-1"

LEGAL DESCRIPTIONS OF COMPASS PARCEL

Lot 3 of "THE VILLAGE AT LEE BRANCH" Sector 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 31, Page 17 being the same property as Lot 3 of "THE VILLAGE AT LEE BRANCH" Sector 1-Revision 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 31, Page 43A & 43B.

EXHIBIT "A-2"

LEGAL DESCRIPTIONS OF LEE PROPERTY

Lot 2 of "THE VILLAGE AT LEE BRANCH" Sector 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 31, Page 17, being the same property as Lot 2 of "THE VILLAGE AT LEE BRANCH" Sector 1-Revision 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 31, Page 43A & 43B.

Together with

A parcel of land situated in the Northwest quarter of the Southeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

Commence at an iron pin found at the Northwest corner of said Southeast quarter of Section 5, said iron pin also being the **POINT OF BEGINNING**; thence proceed S00°25'08"E along the West line of said Southeast quarter for 26.48 feet to a point; thence leaving the West line of said Southeast quarter, proceed N82°32'28"E for 206.41 feet to a point on the Westerly right of way margin of U.S. Highway 280; thence proceed N07°19'16"W along said Westerly right of way margin of U.S. Highway 280 for 3.93 feet to a point at the Southeast corner of Lot-2 of "THE VILLAGE AT LEE BRANCH" as recorded in Map Book 31, Page 17, in the Office of the Judge of Probate, Shelby County, Alabama, said point also lying on the North line of said Southeast quarter of section 5; thence leaving said Westerly right of way margin of U.S. Highway 280, proceed S88°49'06"W along the South line of said Lot-2 and along said North line of said Southeast quarter for 204.40 feet to the **POINT OF BEGINNING**.

Said parcel contains 0.071 Acres, more or less.

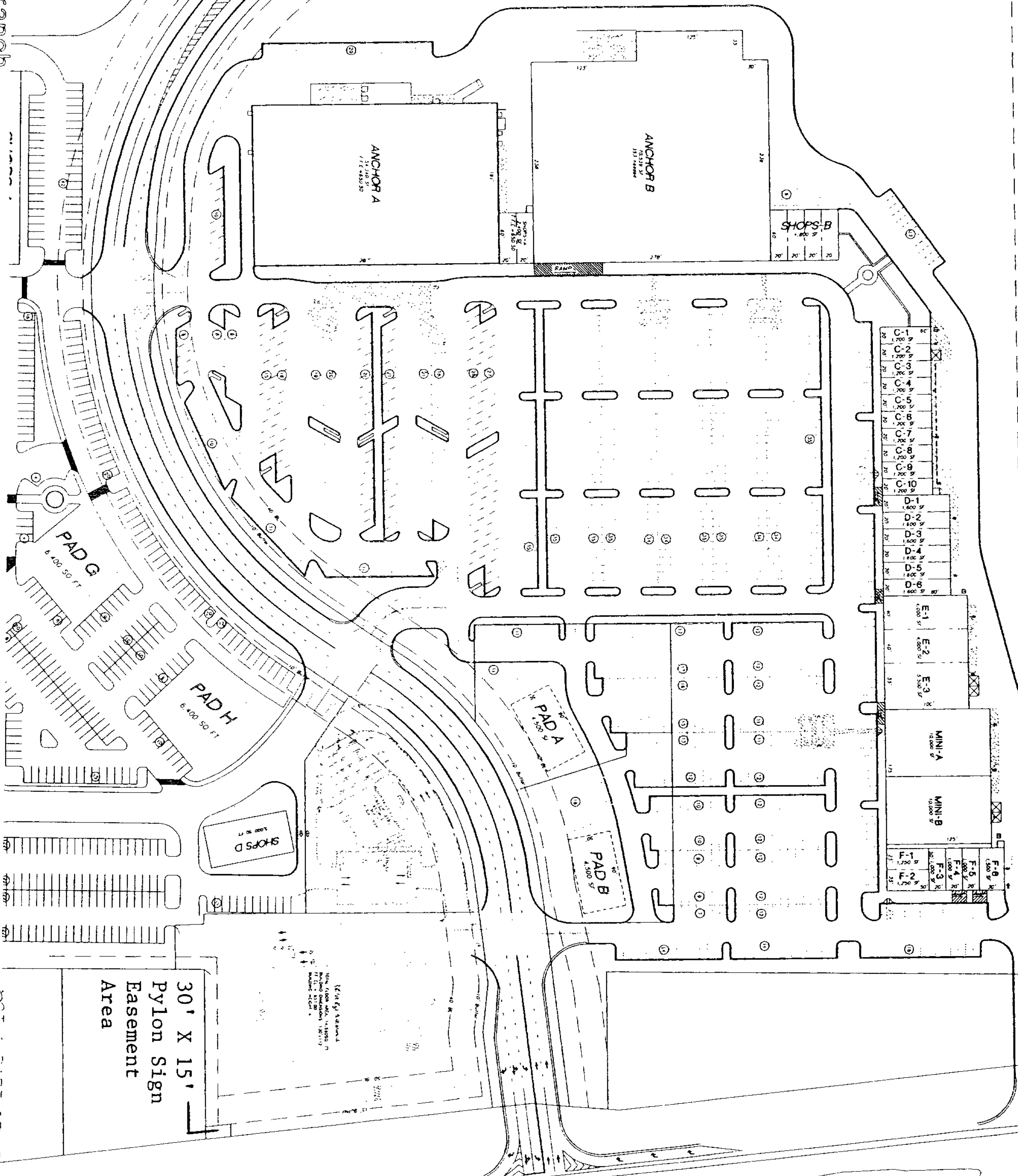


EXHIBIT "B"

SITE PLAN

The Village at Lee Branch

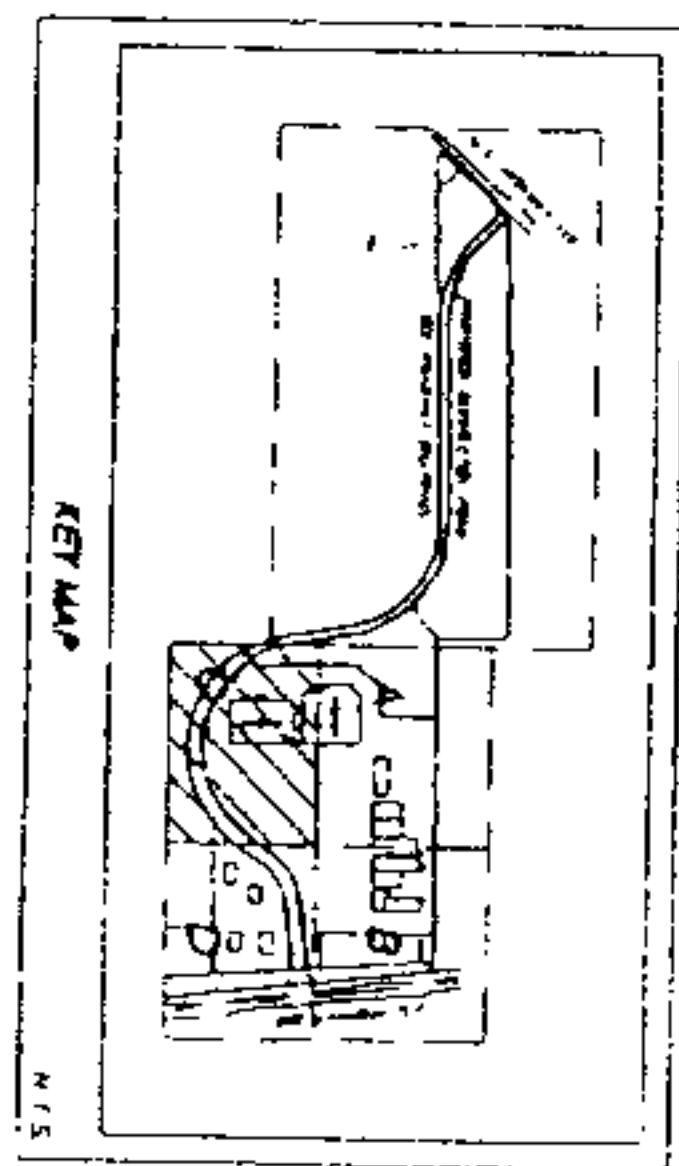
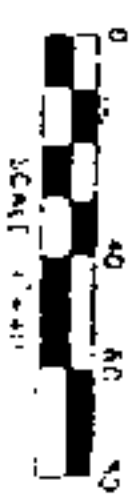
AIG BAKER REAL ESTATE, LLC 1701 LEE BRANCH LANE BIRMINGHAM, AL 35242 PHONE: (205) 888-1000 FAX: (205) 888-1017



Conceptual Site Plan



MATCHLINE (SEE SHEET 'D')

[illegible]

GRADING SHEET 'C'



 **LOWE & ASSOCIATES, INC.**  
CIVIL & TRANSPORTATION ENGINEERS  
1701 LEE BRANCH LANE  
PHONE 205-437-3285 BIRMINGHAM ALABAMA 35242  
FAX 205-437-9447

THE VILLAGE AT LEE BRANCH  
HIGHWAY 280  
PREPARED FOR  
AIG BAKER, LLC

SECTION 3+6 TOWNSHIP 13 SOUTH, RANGE 1 WEST

HOOPER, SHELBY COUNTY ALABAMA

DATE: 07/10/02

20

# GRADING PLAN

JOB NO BCT005  
OWNR NAME PRODU 2

JOB NO BCT005  
OWN NAME PROV



## EXHIBIT "C"

### LEGAL DESCRIPTION DOUG BAKER BOULEVARD

A parcel of land situated in the South 1/2 of the Northwest 1/4, the Northeast 1/4 of the Southwest 1/4 and the Southwest 1/4 of the Northeast 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama and in the East 1/2 of the Northeast 1/4 of Section 6, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

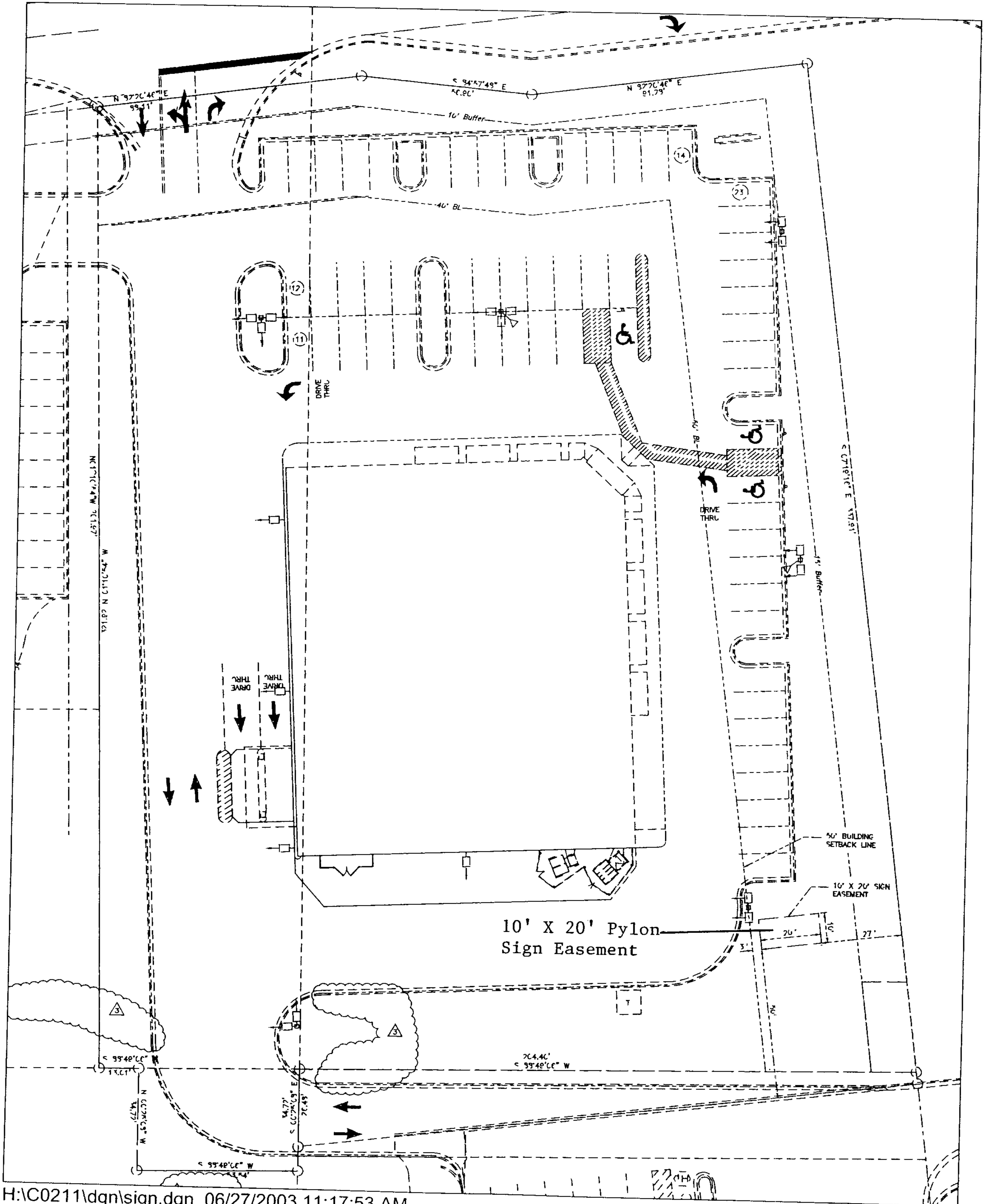
Commence at an iron pin found at the Southwest corner of the Southwest 1/4 of the Northeast 1/4 of said Section 5; thence proceed N 88°49'06" E along the South line of said Southwest 1/4 of Northeast 1/4 for 204.40 feet to a point on the Westerly right of way margin of U.S. Highway 280; thence leaving said South line of said Southwest 1/4 of Northeast 1/4 proceed N 07°19'16" W along said Westerly right of way margin for 337.91 feet to the **POINT OF BEGINNING** of the herein described parcel of land; thence continue N 07°19'16" W along said Westerly right of way margin for 44.84 feet to a concrete monument found; thence proceed N 3°59'20" E along said Westerly right of way margin for 44.06 feet to a point; thence leaving said Westerly right of way margin of U.S. Highway 280, proceed S 82°20'46" W for 145.66 feet to a point; thence proceed S 82°06'07" W for 117.33 feet to a point; thence proceed S 82°20'46" W for 19.86 feet to a point at the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 48°47'29", a radius of 362.50 feet and a chord which bears S 57°57'01" W for 299.45 feet; thence proceed Southwesterly along the arc of said curve for 308.69 feet to the end of said curve; thence proceed S 33°33'18" W and tangent to the last described curve for 110.93 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 45°30'10", a radius of 462.50 feet and a chord which bears S 56°18'22" W for 357.73 feet; thence proceed Southwesterly along the arc of said curve for 367.30 feet to the end of said curve; thence proceed S 82°47'09" W along a line that is non-tangent to the last described curve for 118.95 feet to a point at the beginning of a curve to the right, said curve being non-tangent to the last described course and having a central angle of 76°12'26", a radius of 470.00 feet and a chord which bears N 48°12'39" W for 580.06 feet; thence proceed Northwesterly along the arc of said curve for 625.13 feet to the end of said curve; thence proceed N 10°06'25" W and tangent to the last described curve for 194.85 feet to a point at the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 76°12'04", a radius of 605.00 feet and a chord which bears N 48°12'27" W for 746.62 feet; thence proceed Northwesterly along the arc of said curve for 804.63 feet to the end of said curve; thence proceed S 03°41'31" W and radial to the last described curve for 5.00 feet to a point at the beginning of a curve to the left, said curve being radial to the last described course and having a central angle of 4°55'47", a radius of 600.00 feet and a chord which bears N 88°46'22" W for 51.61 feet; thence proceed Westerly along the arc of said curve for 51.62 feet to the end of said curve; thence proceed S 88°45'44" W and tangent to the last described curve for 791.53 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 16°12'33", a radius of 550.00 feet and a chord which bears N 83°08'00" W for 155.08 feet; thence proceed Northwesterly along the arc of said curve for 155.60 feet to a point at the beginning of a



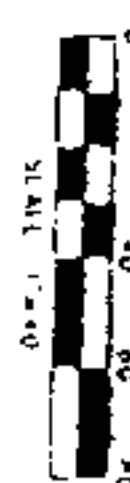
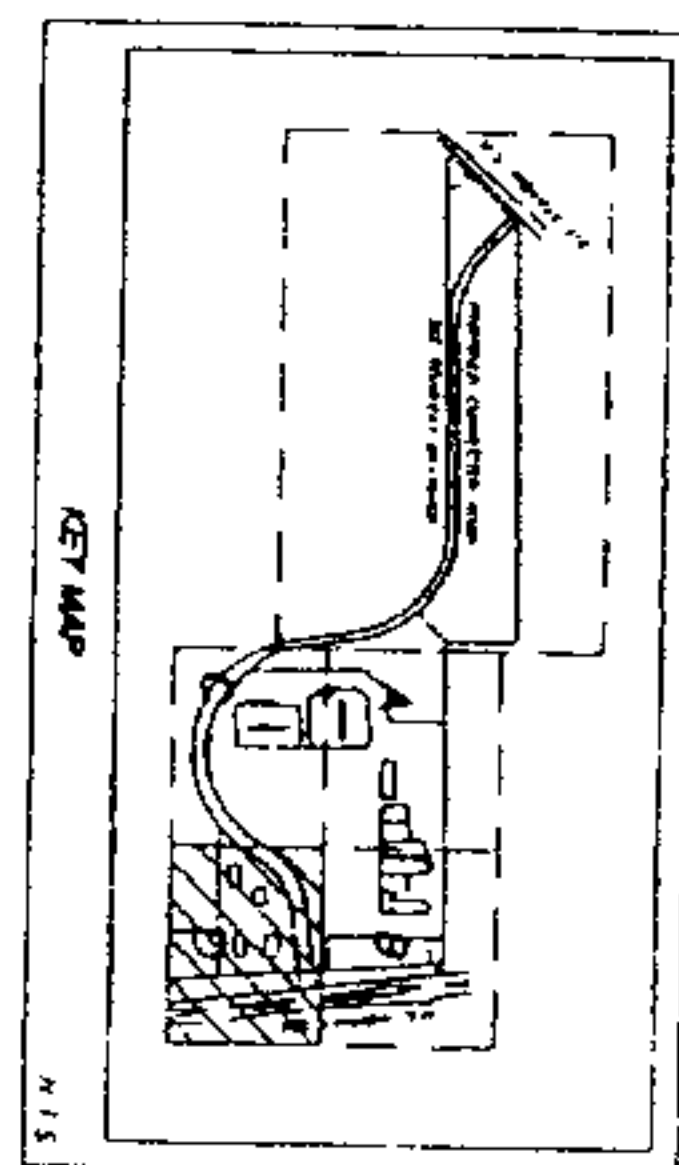
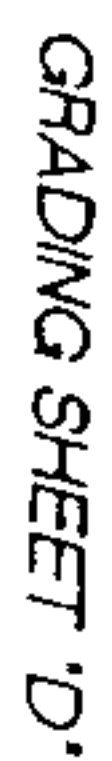
curve to the right; said curve being non-tangent to the last described curve and having a central angle of 19°58'00", a radius of 543.97 feet and a chord which bears N 61°28'22" W for 188.61 feet; thence proceed Northwesterly along the arc of said curve for 189.56 feet to a point at the beginning of a curve to the right, said curve being non-tangent to the last described curve and having a central angle of 8°32'46", a radius of 538.00 feet and a chord which bears N 50°49'47" W for 80.17 feet; thence proceed Northwesterly along the arc of said curve for 80.25 feet to the end of said curve; thence proceed N 46°33'25" W and tangent to the last described curve for 132.70 feet to a point; thence proceed N 5°24'50" W for 51.96 feet to a point on the Southeasterly right of way margin of Alabama Highway 119; thence proceed S 45°09'43" W along said Southeasterly right of way margin for 141.63 feet to a point; thence leaving said Southeasterly right of way margin of Alabama Highway 119 proceed S 87°40'18" E for 69.01 feet to a point; thence proceed S 46°33'25" E for 124.09 feet to a point at the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 34°00'30", a radius of 600.00 feet and a chord which bears S 63°33'39" E for 350.93 feet; thence proceed Southeasterly along the arc of said curve for 356.13 feet to the end of said curve; thence proceed S 1°05'43" E along a line that is non-tangent to the last described course for 10.00 feet to a point; thence proceed N 88°54'17" E for 152.66 feet to a point on the East line of the Southeast ¼ of the Northeast ¼ of Section 6, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed N 88°45'44" E for 750.01 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 4°55'47", a radius of 550.00 feet, and a chord which bears S 88°46'22" E for 47.31 feet; thence proceed Southeasterly along the arc of said curve for 47.32 feet to the end of said curve; thence proceed S 3°41'31" W and radial to the last described curve for 5.00 feet to a point at the beginning of a curve to the right, said curve being radial to the last described course and having a central angle of 76°12'04", a radius of 545.00 feet and a chord which bears S 48°12'27" E for 672.58 feet; thence proceed Southeasterly along the arc of said curve for 724.83 feet to the end of said curve; thence proceed S 10°06'25" E and tangent to the last described curve for 194.85 feet to a point at the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 27°52'10", a radius of 530.00 feet and a chord which bears S 24°02'30" E for 255.27 feet; thence proceed Southeasterly along the arc of said curve for 257.80 feet to the end of said curve; thence proceed S 52°01'25" W and radial to the last described curve for 7.50 feet to a point at the beginning of a curve to the left, said curve being radial to the last described course and having a central angle of 108°28'09", a radius of 537.50 feet and a chord which bears N 87°47'21" E for 872.27 feet; thence proceed Easterly along the arc of said curve for 1017.56 feet to the end of said curve; thence proceed N 33°33'18" E and tangent to the previously described curve for 110.93 feet to a point at the beginning of a curve to the right, said curve being tangent to the previously described course and having a central angle of 48°47'28", a radius of 287.50 feet and a chord which bears N 57°57'02" E for 237.49 feet; thence proceed Northeasterly along the arc of said curve for 244.83 feet to the end of said curve; thence proceed N 82°20'46" E and tangent to the previously described curve for 126.91 feet to a point; thence proceed S 84°57'48" E for 56.90 feet to a point; thence proceed N 82°20'46" E for 91.28 feet to the **POINT OF BEGINNING** of the herein described parcel.



Said parcel contains 6.222 acres more or less.

# Exhibit D





[illegible]

DATE: 07/10/02 CITY: Birmingham	SHEET <b>C11</b>	JOB NO. 000000 CIVIL NAME: N/A GRADING D PLAN		 <b>LOWE &amp; ASSOCIATES, INC.</b> CIVIL & TRANSPORTATION ENGINEERS BIRMINGHAM, ALABAMA 35242 FAX 205-437-5447	1703 LEE BRANCH LANE PHONE 205-437-3285	<b>THE VILLAGE AT LEE BRANCH</b> HIGHWAY 280 PREPARED FOR <b>AIG BAKER, L.L.C.</b>	SECTION 5 + 6 TOWNSHIP 8 SOUTH RANGE 1 WEST MOORE, SHELBY COUNTY, ALABAMA	DRAWN BY: J. B. BAKER CHECKED BY: J. B. BAKER DATE: 07/10/02 SCALE: AS SHOWN
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