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Shelby Cnty Judge of Probate, AL
06/23/2011 03:24:39 PM FILED/CERT

Shelby County, AL 06/23/2011
State of Alabama
Deed Tax: \$.50

STATE OF ALABAMA)

COUNTY OF SHELBY)

SIGN EASEMENT AGREEMENT

THIS SIGN EASEMENT AGREEMENT (this "*Agreement*") is executed to be effective as of the 20 day of June, 2011 by and between the SHARP PELHAM, L.L.C., an Alabama limited liability company ("*Grantor*"), and ENCORE RETAIL BPTC, LLC, a Delaware limited liability company ("*Grantee*"), each being referred to herein as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Grantor and Grantee (as successor-in-interest to Encore Retail, LLC) entered into that certain Purchase and Sale Agreement dated May 6, 2011 (as amended, the "*Contract*"), for the purchase and sale of certain real property lying and being in the City of Pelham, Shelby County, Alabama, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof, and depicted as Lot 1A on the survey attached as Exhibit B hereto and by this reference made a part hereof (the "*Grantee Parcel*"), pursuant to which Grantor sold the Grantee Parcel to Grantee;

WHEREAS, Grantor owns certain real property situated in the City of Pelham, Shelby County, Alabama, adjacent and contiguous to the Grantee Property, including, without limitation, that certain parcel more particularly described on Exhibit A and depicted as Lot 6-B on the survey attached as Exhibit B hereto (the "*Grantor Parcel*");

WHEREAS, Grantor desires to grant to Grantee an easement over, across, through, and upon that portion of the Grantor Parcel more particularly described on Exhibit A and depicted as the "Sign Easement Area" on the survey attached as Exhibit B hereto (the "*Sign Easement Area*"), for purposes of installing and maintaining a monument sign identifying the shopping center and/or any tenants or other occupants of the Grantee Parcel; and

WHEREAS, the easement created in this Agreement is intended to, and shall burden the Grantor Parcel and shall be binding upon, and enforceable against, Grantor and its successors and assigns, and shall inure to the benefit of the Grantee Parcel and be enforceable by Grantee and its successors and assigns.

NOW, THEREFORE, Grantor and Grantee, for good and valuable consideration, the receipt, delivery and sufficiency of which are hereby acknowledged, and intending to be legally bound, do grant and agree as follows:

1. Grant of Easement by Grantor. Subject to the conditions provided herein, Grantor does hereby grant, bargain, sell, and convey to Grantee, its successors and

assigns the right and easement to construct, install, maintain, repair and replace in, over, across and upon the Sign Easement Area a monument style sign together with lighting facilities (the "**Monument Sign**"), together with all rights and privileges necessary or convenient therewith, including, without limitation, non-exclusive easements for ingress and egress and a non-exclusive easement over and across the Sign Easement Area for electrical service from the power lines lying within public right of way and/or Grantee's Parcel to the Monument Sign in order to light the Monument Sign. Notwithstanding the foregoing, the Monument Sign shall not unreasonably obstruct the use of, or the view of any building located on, or ingress and egress to and from, the Grantor Parcel, once the Grantor Parcel is developed by Grantor.

2. **Responsibility for Damages.** Grantee hereby agrees to keep the Sign Easement Area and the Monument Sign thereon in good repair and in compliance with all governmental laws, regulations, codes and ordinances at Grantee's sole cost and expense; provided however, to the extent that any damage to the Monument Sign or Sign Easement Area is caused by or arises out of the actions or negligence of Grantor or Grantor's employees, agents, contractors, representatives or invitees, Grantor shall be liable for the same, and Grantor shall reimburse Grantee for any and all reasonable costs and expenses incurred by Grantee in repairing said damage.

3. **Indemnification.** Grantee hereby agrees to indemnify, defend, and hold Grantor harmless from, against and in respect of any and all liabilities, damages, losses, costs and expenses resulting from any personal injury or property damage caused by or arising out of the failure of Grantee to comply with its obligations hereunder or the negligence or intentional misconduct of the Grantee, its employees, agents or contractors in exercising the rights granted and set forth herein.

4. **Compliance with Law.** Notwithstanding any provision to the contrary contained herein, Grantee's right to install and maintain the Monument Sign pursuant to the terms of this Agreement shall be subject to approval of the Monument Sign by the City of Pelham, Alabama, and Grantee may not exercise its rights hereunder to install and maintain the Monument Sign until such approval is received by Grantee. Grantee shall at all times exercise its rights hereunder in compliance with all applicable federal, state and local statutes, regulations, ordinances, rules, judicial decisions, governmental permits and approvals and other laws now or hereafter in effect.

5. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if (a) delivered by hand at the address of the intended recipient (against a receipt), or (b) if sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service) with delivery charges paid by or billed to the sender, or (c) if deposited in the U.S. Mail, postage prepaid, registered or certified, return receipt requested, or (d) sent by facsimile or electronic (e-mail) transmission (provided that a notice given by one of the methods prescribed in (a), (b) or (c) above shall be delivered within three (3) days following such facsimile or e-mail), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Section. Any such notice, request or demand so given shall be deemed given on the first to occur of the day it is (i) received by the recipient, or the recipient

refuses delivery thereof, (ii) one day after delivered to Federal Express (or comparable guaranteed overnight delivery service); or (iii) upon evidence of a receipt transmission report (if delivered by facsimile or e-mail).

Grantor: Sharp Pelham, LLC
400 Union Hill Drive, Suite 300
Birmingham, Alabama 35209
Attn: Samuel Sharp
Facsimile: _____
Email: ssharp@sharprealty.com

With a copy to: Sprain Law Firm, PC
1707 29th Court South
Birmingham, AL 35209
Attn: Robert H. Sprain, Jr., Esq.
Facsimile: (205) 802-7083
Email: rhs@sprainlaw.com

Grantee: Encore Retail BPTC, LLC
c/o Encore Retail, LLC
5005 LBJ Freeway, Suite 1200
Dallas, Texas 75244
Attn: Nicholas K. Barber
Facsimile: (214) 259-7001
Email: nbarber@encore.bz

With a copies to: Encore Retail BPTC, LLC
c/o Encore Retail, LLC
5005 LBJ Freeway, Suite 1200
Dallas, Texas 75244
Attn: Alan L. Murray
Facsimile: (214) 259-7001
Email: amurray@encore.bz

and

Balch & Bingham LLP
1310 Twenty Fifth Ave.
Gulfport, Mississippi 39501
Attn: Charles A. Oimage, Esq.
Facsimile: (866) 258-8967
Email: comage@balch.com

6. **Amendment.** This Agreement may be amended or modified only by an instrument in writing and in recordable form which is executed by both Parties.

7. **Benefits.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their successors and assigns and the rights and obligations and benefits and burdens granted and imposed hereby shall be covenants which run with the land.

8. **Construction.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. No failure of a Party to exercise any right or remedy under this Agreement in any one or more instances shall evidence in any way any waiver or limitation on the future exercise of such right or remedy.

9. **Attorney's Fees.** In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover all reasonable costs and expenses, including reasonable attorney's fees.

10. **Entire Agreement.** This Agreement evidences the entire agreement between the Parties and no representation, understanding or agreement had between the Parties, except as set forth herein, shall be binding on the Parties hereto.

11. **Governing Law.** This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Alabama.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[Signature Pages Follow]

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

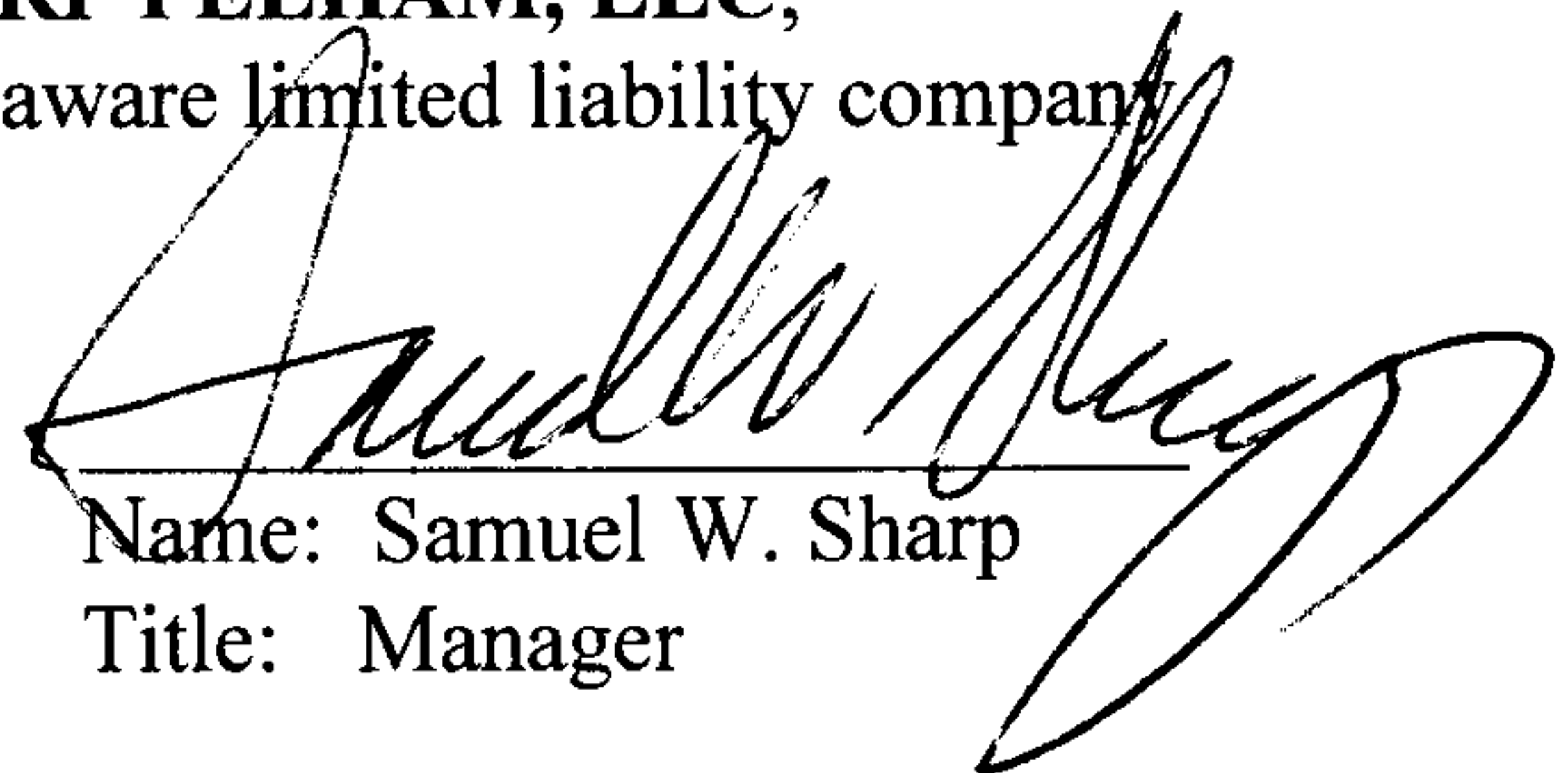
GRANTOR:

Witness or Attest:



SHARP PELHAM, LLC,
a Delaware limited liability company

By:


Name: Samuel W. Sharp
Title: Manager

GRANTEE:

Witness or Attest:

ENCORE RETAIL BPTC, LLC,
a Delaware limited liability company

By: ER Management BPTC, LLC,
a Delaware limited liability company
its Managing Member

By: Encore Retail, LLC,
a Delaware limited liability company,
its Sole Member

By: _____
Name: Nicholas K. Barber
Title: President

Grantor's Address:

400 Union Hill Drive
Suite 300
Birmingham, Alabama 35209
Attention: Samuel W. Sharp
Tel: (205) 879-1995

Grantee's Address:

c/o Encore Retail, LLC
5005 LBJ Freeway, Suite 1200
Dallas, Texas 75244
Attention: Nicholas K. Barber
Tel: (214) 259-7002

Instrument Prepared by:

Balch & Bingham LLP
1310 25th Avenue
Gulfport, MS 39501
Attention: Charles A. Oimage, Esq.
(228) 864-9900

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

I, Robert H Sprain T, the undersigned Notary Public in and for said County in said State, hereby certify that Samuel W. Sharp, whose name as Managing Member of Sharp Pelham, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

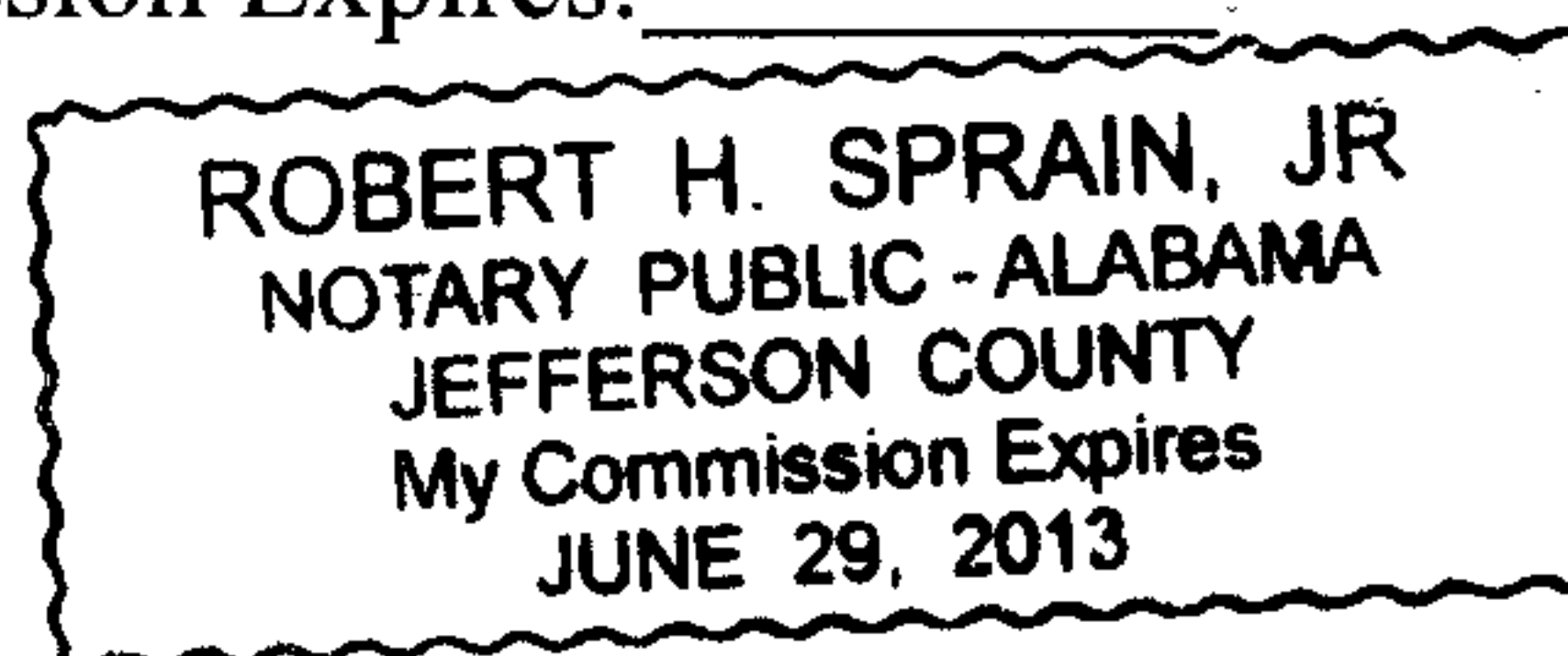
Given under my hand this the 17th day of June, 2011.

[Signature]

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]



STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, _____, the undersigned Notary Public in and for said County in said State, hereby certify that Nicholas K. Barber, whose name as President Encore Retail, LLC, the Sole Member of ER Management BPTC, LLC, the Managing Member of Encore Retail BPTC, LLC, 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 such 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 this the _____ day of June, 2011.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

expires: _____

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

GRANTOR:

Witness or Attest:

SHARP PELHAM, LLC,
a Delaware limited liability company

By: _____

Name: Samuel W. Sharp

Title: Manager

GRANTEE:

Witness or Attest:

ENCORE RETAIL BPTC, LLC,
a Delaware limited liability company

By: ER Management BPTC, LLC,
a Delaware limited liability company
its Managing Member

By: Encore Retail, LLC,
a Delaware limited liability company,
its Sole Member

By: Nicholas K. Barber
Name: Nicholas K. Barber
Title: President

Grantor's Address:

400 Union Hill Drive
Suite 300
Birmingham, Alabama 35209
Attention: Samuel W. Sharp
Tel: (205) 879-1995

Grantee's Address:

c/o Encore Retail, LLC
5005 LBJ Freeway, Suite 1200
Dallas, Texas 75244
Attention: Nicholas K. Barber
Tel: (214) 259-7002

Instrument Prepared by:

Balch & Bingham LLP
1310 25th Avenue
Gulfport, MS 39501
Attention: Charles A. Oimage, Esq.
(228) 864-9900

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STATE OF ALABAMA)
)
COUNTY OF SHELBY)

I, _____, the undersigned Notary Public in and for said County in said State, hereby certify that Samuel W. Sharp, whose name as Managing Member of Sharp Pelham, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the _____ day of June, 2011.

[NOTARIAL SEAL]

Notary Public
My Commission Expires:_____

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, Terri Smith, the undersigned Notary Public in and for said County in said State, hereby certify that Nicholas K. Barber, whose name as President Encore Retail, LLC, the Sole Member of ER Management BPTC, LLC, the Managing Member of Encore Retail BPTC, LLC, 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 such 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 this the 15 day of June, 2011.

[NOTARIAL SEAL]

Terri Smith

Notary Public
My Commission Expires:_____

expires: _____

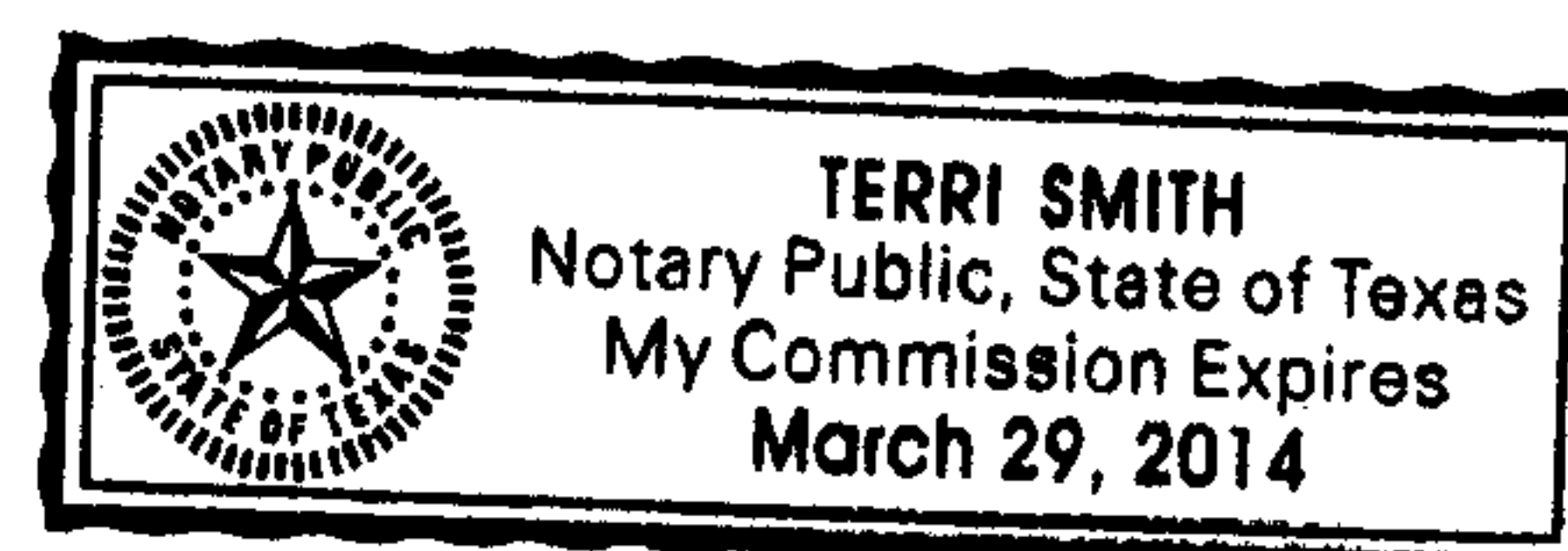



Exhibit A


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Description of Grantor Parcel

Lot 1A, Resurvey of Lots 1, 2, 3, 4, 5, 7 and 8, Pelham Town Center, as recorded in Map Book 40, Page 87, in the Office of the Judge of Probate, Shelby County, Alabama

Description of Grantee Parcel

Lot 6-B, Resurvey of Lots 1, 2, 3, 4, 5, 7 and 8, Pelham Town Center, as recorded in Map Book 40, Page 87, in the Office of the Judge of Probate, Shelby County, Alabama

Description of Sign Easement Area

A sign easement, being approximately 20' x 10' in dimension, located at the Southwest corner of Lot 6-B, Resurvey of Lots 1, 2, 3, 4, 5, 7 and 8, Pelham Town Center, as recorded in Map Book 40, Page 87, in the Office of the Judge of Probate, Shelby County, Alabama



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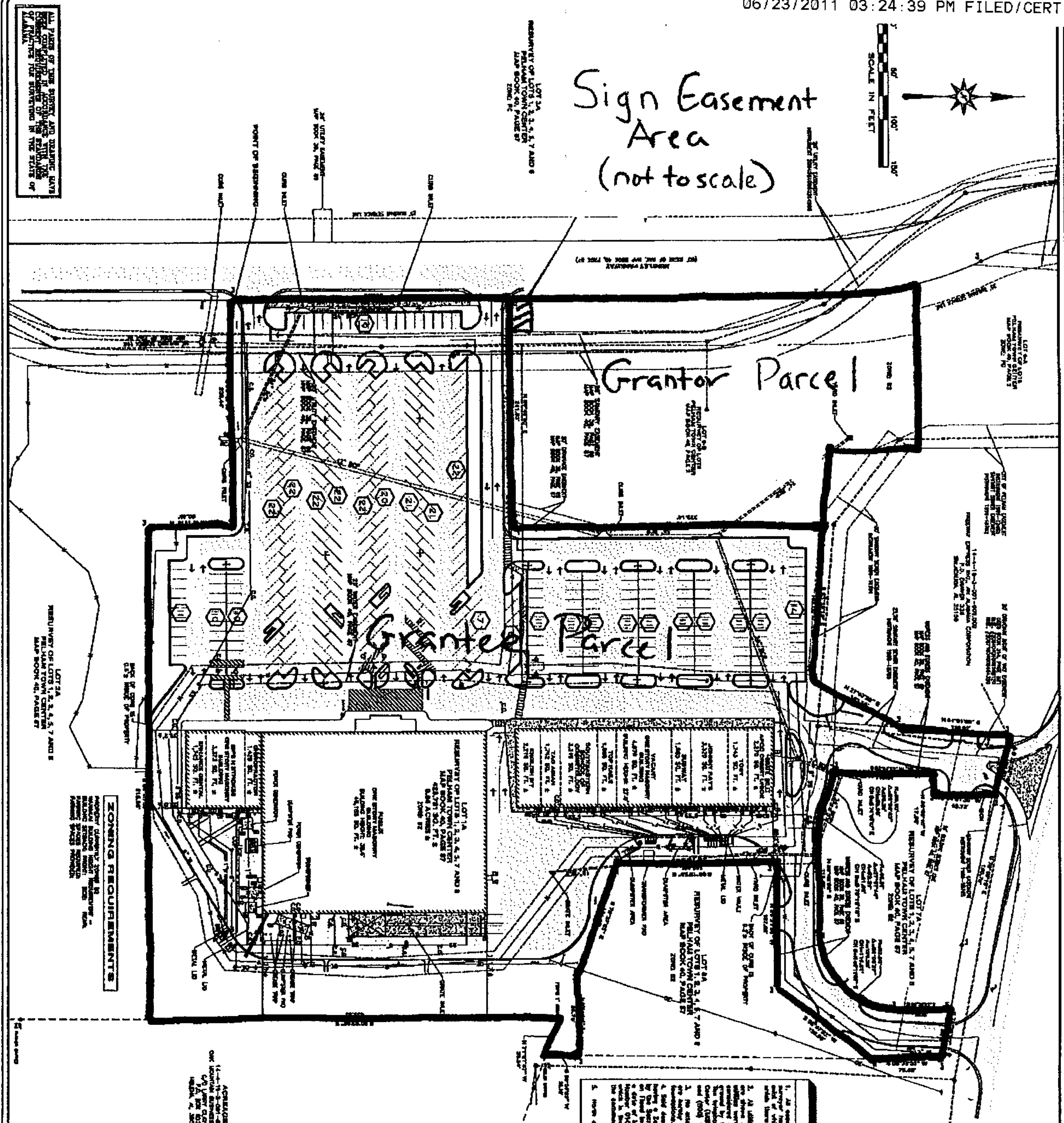
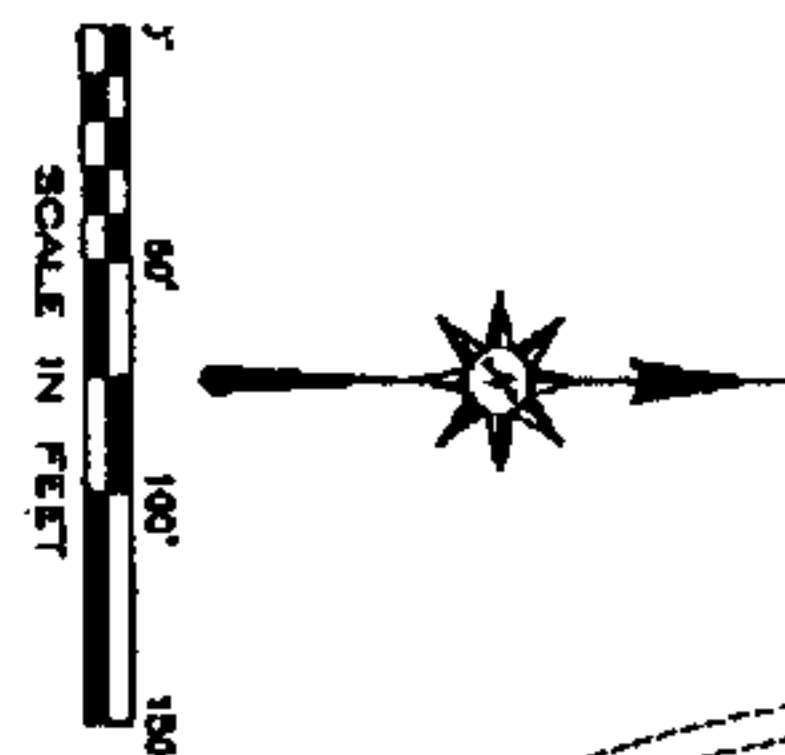
Exhibit B

Survey Depicting Grantor Parcel, Grantee Parcel and Sign Easement Area

(See Attached)

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Sign Easement
Area
(not to scale)



ALL PARTS OF THE SURVEY AND DEARNE HATH
BEEN COMPLETED IN ACCORDANCE WITH THE
CONTRACT BETWEEN THE STATE OF ALABAMA
AND THE SURVEYORS IN THE STATE OF
ALABAMA

ZONING REQUIREMENTS

NOTES


1. All documents and reports of any of which the original is not in the possession of the Government are to be marked "Not in Government Possession" and the following note is to be attached thereto: "Not in Government Possession."
2. All affidavits in which the government has knowledge of the facts stated, including of unexplained wealth, unexplained income, unexplained expenditures, and should be marked as follows: "Not in Government Possession" and the following note is to be attached thereto: "Not in Government Possession."
3. All affidavits in which the government has knowledge of the facts stated, including of unexplained wealth, unexplained income, unexplained expenditures, and should be marked as follows: "Not in Government Possession" and the following note is to be attached thereto: "Not in Government Possession."
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5. All affidavits in which the government has knowledge of the facts stated, including of unexplained wealth, unexplained income, unexplained expenditures, and should be marked as follows: "Not in Government Possession" and the following note is to be attached thereto: "Not in Government Possession."

NOTE: If the original is not in the possession of the Government, the following note is to be attached thereto: "Not in Government Possession."

[illegible][illegible][illegible][illegible]

LEGAL DESCRIPTION

ABBREVIATIONS

	GONZALEZ - STRENGTH & ASSOCIATES, INC. CIVIL ENGINEERING, LAND SURVEYING, PLANNING, TRAFFIC & TRANSPORTATION 5175 PARKWAY LAKE DRIVE HOOVER, ALABAMA 36044 PHONE: (205) 945-3448 FAX: (205) 945-3823 www.GonzalesStrength.com	ALTA/ACSM Land Title Survey LOT 1A, RESURVEY OF LOTS 1, 2, 3, 4, 5, 7 AND 8 PELHAM TOWN CENTER PELHAM, ALABAMA SHARP PELHAM, L.L.C.	REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>ADD/DELETION LETTER FROM ATTORNEY</td> <td>8-24-11</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DESCRIPTION	DATE	1	ADD/DELETION LETTER FROM ATTORNEY	8-24-11									
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QUARTER - SECTION SOUTHWEST QUARTER		SECTION 1A TOWNSHIP 24 NORTH RANGE 2 WEST																

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