

STATE OF ALABAMA)

COUNTY OF SHELBY)

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this “*Agreement*”) is executed to be effective as of the 20th 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 2A 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 “Drainage Easement Area” on the survey attached as **Exhibit B** hereto (the “*Drainage Easement Area*”), for purposes of draining and retaining surface waters and storm waters from Grantee’s Property into the detention pond, detention facilities or other storm water control facilities located in the Drainage Easement Area; 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.** Grantor does hereby grant, bargain, sell, and convey to Grantee, its successors and assigns the right and easement to purposes of draining and retaining surface waters and storm waters from Grantee's Property into the detention pond, detention facilities or other storm water control facilities located in the Drainage Easement Area (the "***Detention Pond***"), together with all rights and privileges necessary or convenient therewith.

2. **Maintenance & Repair; Damage.** Grantor shall be responsible for the maintenance and repair of the Drainage Easement Area and Detention Pond at its sole cost and expense; provided however, to the extent that any damage to the Drainage Easement Area or Detention Pond is caused by or arises out of the gross negligence or misconduct of Grantee, Grantee shall be liable for the same, and Grantee shall reimburse Grantor for all reasonable costs and expenses incurred by Grantor in repairing said damage. All such maintenance and repair work shall be performed by Grantor in a good and workmanlike manner, in accordance with sound engineering practices, free of all liens, claims and encumbrances, in full compliance with all applicable legal requirements and in full compliance with the Maintenance Agreement (as hereinafter defined). Grantor shall not relocate, improve or otherwise perform any alterations to the Detention Pond (other than repairs and maintenance as provided under this Agreement) without the prior written consent of Grantee, not to be unreasonably withheld so long as the same does not adversely affect Grantee's use of the Detention Pond or Grantee's rights hereunder.

3. **Maintenance Agreement.** Grantor shall comply in all respects with the terms, conditions, provisions and obligations of Grantor under that certain Maintenance Agreement dated November 15, 2007 by and between Grantor and the City of Pelham, recorded on December 17, 2007 as Instrument No. 20071127000539670 in the Probate Office of Shelby County, Alabama (the "***Maintenance Agreement***"), relating to the Detention Pond, including, without limitation, all repair, maintenance and certification obligations of Grantor thereunder. Grantor and Grantee hereby acknowledge and agree that, notwithstanding Grantee's acquisition of the Grantee Parcel from Grantor, and notwithstanding any provision to the contrary contained in this Agreement, the Contract, the Maintenance Agreement or any other document or agreement, Grantor shall retain all obligations, responsibilities and liabilities under the Maintenance Agreement, and shall continue to perform all of the obligations thereunder, including, without limitation, the repair and maintenance of the Detention Pond. Grantor shall indemnify, defend, and hold Grantee harmless from, against and in respect of any and all claims, liabilities, damages, losses, costs and expenses resulting from, arising out of or relating to the Maintenance Agreement, including without limitation, Grantor's failure to comply in all respects with the terms, conditions and provisions thereof, except to the extent that the same arise solely out of the gross negligence or intentional misconduct of Grantee. Grantor shall promptly provide Grantee with all notices sent or received by Grantor under the Maintenance Agreement, including, without limitation, any default notices received by Grantor from the City of Pelham, and any certifications provided by Grantor to the City of Pelham pursuant to Section 3 of the Maintenance Agreement.

4. **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 gross negligence or intentional misconduct of the Grantee in exercising the rights granted and set forth herein.

5. **Compliance with Law.** Grantor shall at all times repair and maintain the Drainage Easement Area and Detention Pond in full 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. 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.

6. **Insurance.** Grantor shall obtain and maintain, at its sole cost and expense, with respect to the Drainage Easement Area and Detention Pond, a policy of commercial general liability insurance on an "occurrence basis" against claims for personal injury including bodily injury and death and broad form property damage, operations hazards, and contractual liability in limits not less than One Million and 00/100 Dollars (\$1,000,000.00) inclusive. The policy shall name Grantee and Grantee's mortgagee as additional insureds and shall provide that it can only be amended or terminated upon thirty (30) days' prior written notice to Grantee. Grantor shall deliver to Grantee an original certificate of such insurance upon the request of Grantee and shall provide Grantee with copies of all renewals thereof at least thirty (30) days prior to the termination of the existing policy.

7. **Notice and Cure Rights.** In the event that Grantor fails to comply with the terms and conditions of this Agreement, including, without limitation, Grantor's obligation to perform the repairs and maintenance to the Detention Pond required under Section 2 above, Grantee shall have the right, but not the obligation, upon five (5) days prior written notice to Grantor, to cure such failure by Grantor; provided however, that in the event said failure can not reasonably be cured within such 5-day period, Grantor shall have an additional reasonable period of time to cure said failure (not to exceed the lesser of (i) thirty (30) days and (ii) the time period required for the curing of said failure under the Maintenance Agreement, if any), provided Grantor commences to cure said failure within the initial 5-day period and continues to diligently cure said failure to completion. In the event Grantee cures such failure as provided above, Grantor shall reimburse Grantee upon demand for all reasonable costs and expenses incurred by Grantee in connection therewith, plus interest at a rate equal to the lesser of eighteen percent (18%) and the maximum rate allowed by law until Grantee receives such reimbursement. In the event that Grantor fails to reimburse Grantee as provided above, Grantee shall have, in addition to any other remedies available to Grantee, the right to lien the Grantor Parcel until Grantee receives the reimbursement amount due and owing to Grantee.

8. **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

9. **Amendment to Declaration; Other Agreements.** Reference is hereby made to that certain Declaration of Restrictions, Covenants and Conditions and Grant of Easements for Pelham Towne Center recorded in Instrument 20080616000243120 in the Probate Office of Shelby County, Alabama (the ("***Declaration***") which encumbers the Grantor Parcel, the Grantee Parcel and certain other outparcels delineated on the survey attached as **Exhibit B**. After the Effective Date, Grantor and Grantee agree to cooperate in good faith and to prepare an amendment to the Declaration which shall provide for, among other things, (i) the designation of the Drainage Easement Area as a "Common Area" under the Declaration, (ii) easements to all "Owners" for drainage into the Detention Pond, and (iii) a mechanism for all "Owners" to contribute a percentage share toward the repair and maintenance of the Drainage Easement Area and Detention Pond based on each Owner's respective parcel acreage relative to the total 52 acres with drainage rights (through the Declaration or otherwise) into the Detention Pond on the Drainage Easement Area (the "***Amendment***"). In addition, Grantor and Grantee agree to cooperate in good faith and to prepare such easements and reimbursement agreements, or similar agreements, which shall provide for, among other things, (i) easements to all other owners of the 52 acres served by the Detention Pond (beyond the "Owners" under the Declaration) for drainage rights into the Detention Pond, and (ii) a mechanism for all such owners to contribute a percentage share toward the repair and maintenance of the Drainage Easement Area and Detention Pond based on each owner's respective parcel acreage relative to the total 52 acres with drainage rights (through the Declaration or otherwise) into the Detention Pond on the Drainage Easement Area (collectively, the "***Other Agreements***"). Subject to the terms of the Amendment and the Other Agreements (including, without limitation, reimbursement by the other owners of the 52 acres served by the Detention Pond), and the written approval of the City of Pelham (to the extent required under the Maintenance Agreement), Encore shall agree to assume from Sharp the maintenance obligations related to the Detention Pond. Grantor and Grantee agree to enter into such Amendment and Other Agreements on terms and conditions reasonably acceptable to Grantor and Grantee, and shall use commercially reasonable efforts to procure the signatures of all other parties required to execute such Amendment and Other Agreements, including, without limitation, Publix Alabama, LLC, Superior Bank and SAC, LLC. Until such time as the Amendment and Other Agreements are executed by all parties thereto and appropriately recorded in the Probate Office of Shelby County, Alabama, Grantor shall continue to repair and maintain the Drainage Easement Area and Detention Pond, and Grantee shall reimburse Grantor, on an annual basis, for Grantee's percentage share of the reasonable ordinary maintenance costs incurred by Grantor in maintaining the Detention Pond pursuant to the terms of this Agreement, provided Grantor delivers to Grantee reasonable evidence of said costs in the form of paid invoices or other documentation acceptable to Grantee. Grantee's percentage share shall be 18.9%, calculated as follows: the Grantee Parcel is 9.86 acres, which when divided by the total 52 acres served by the Detention Pond, equals 18.9%. Upon full execution and appropriate recordation of the Amendment and the Other Agreements in the Probate Office of Shelby County, Alabama, Grantor and Grantee agree to terminate this Agreement.

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

11. **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.

12. **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.

13. **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.

14. **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.

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

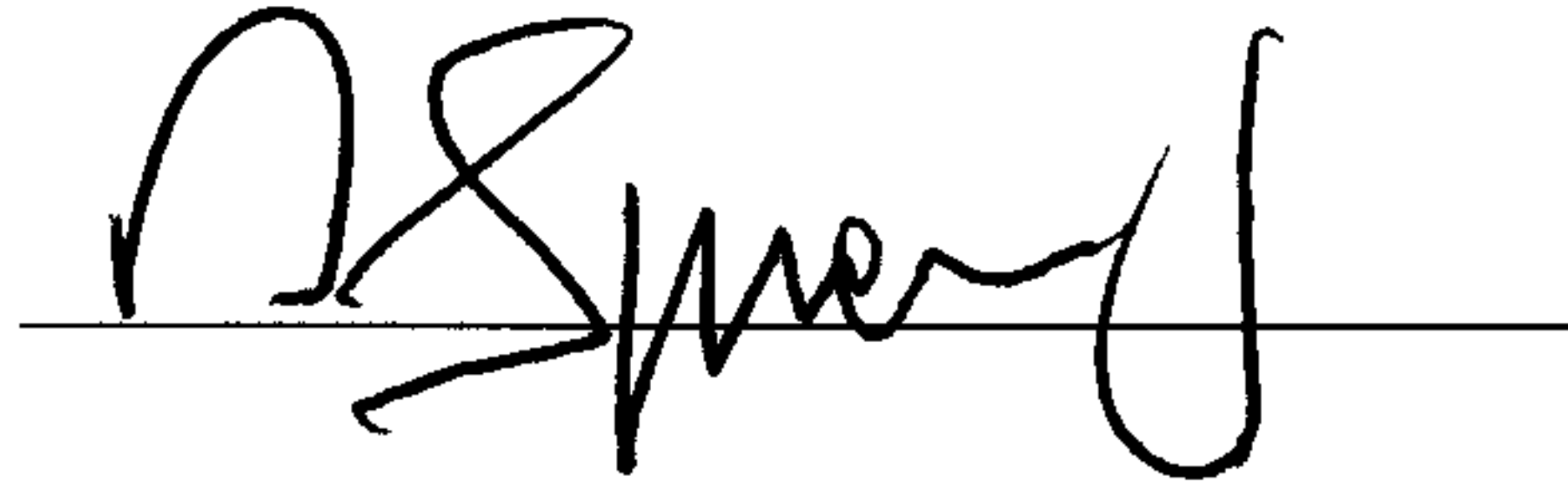
16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[Signature Pages Follow]

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

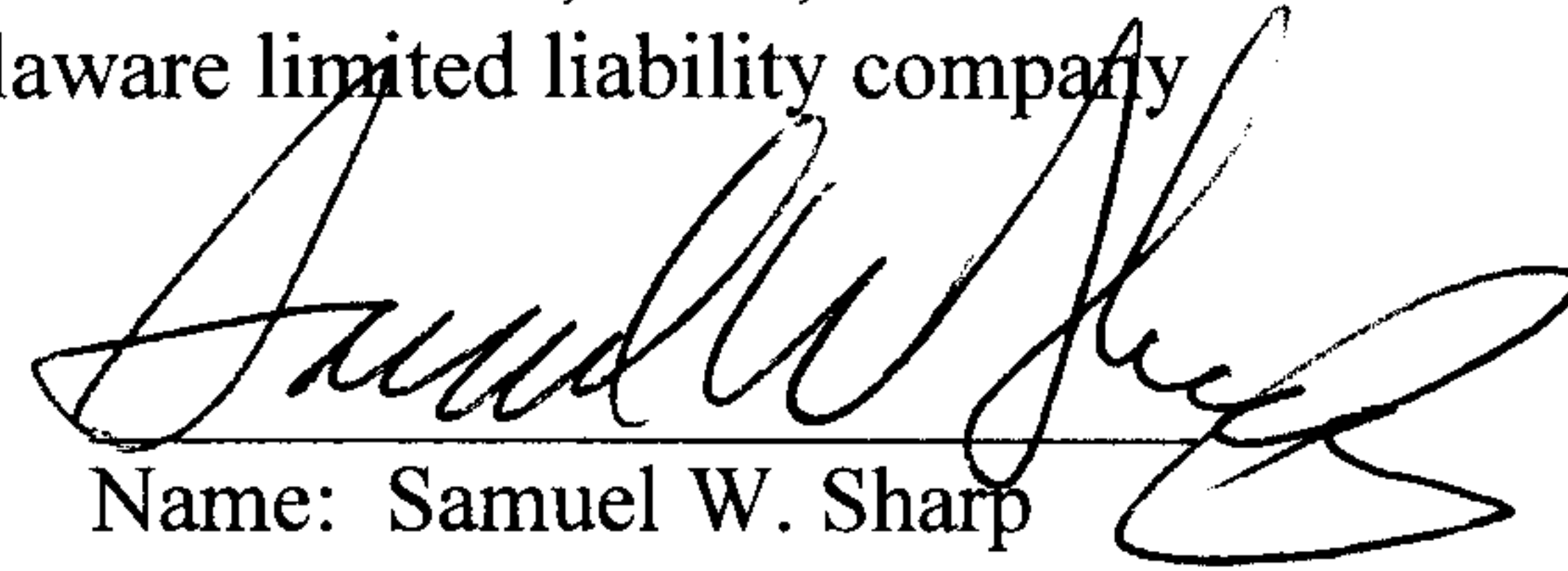
GRANTOR:

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

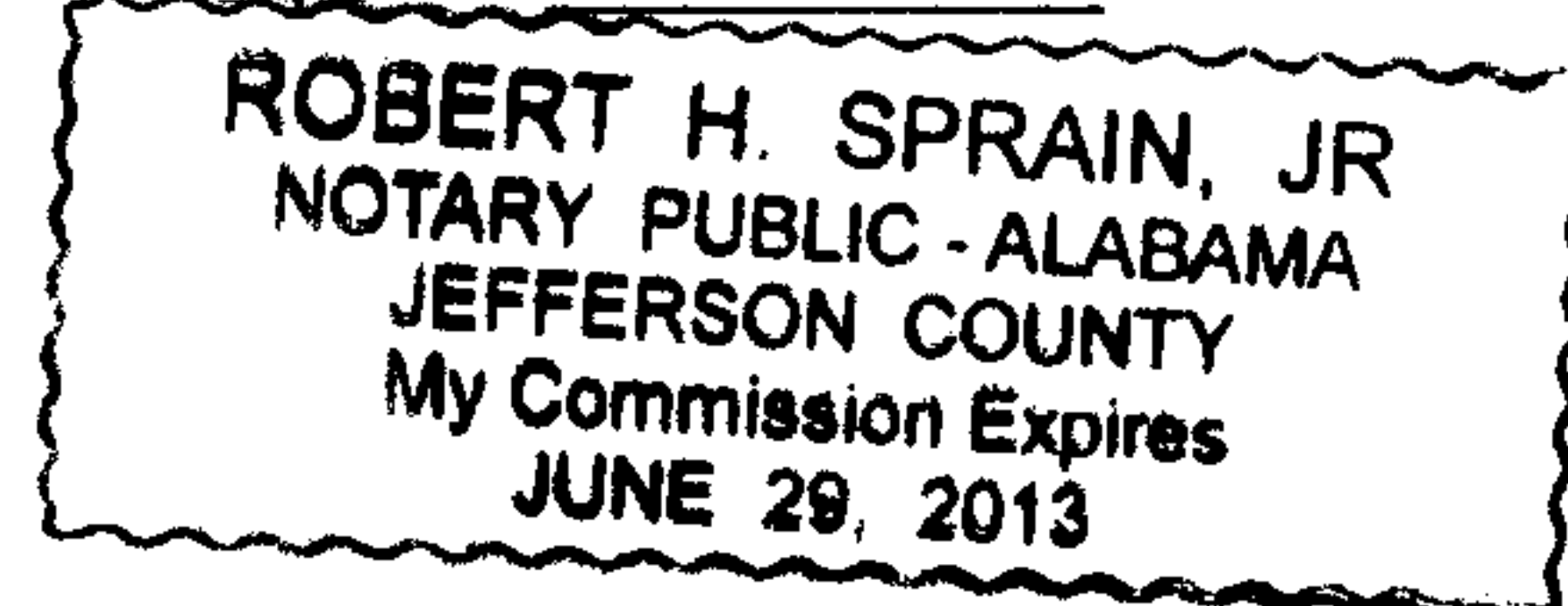
STATE OF ALABAMA)
)
COUNTY OF SHELBY)

I, Robert H. Sprain Jr., 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 20 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 of 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

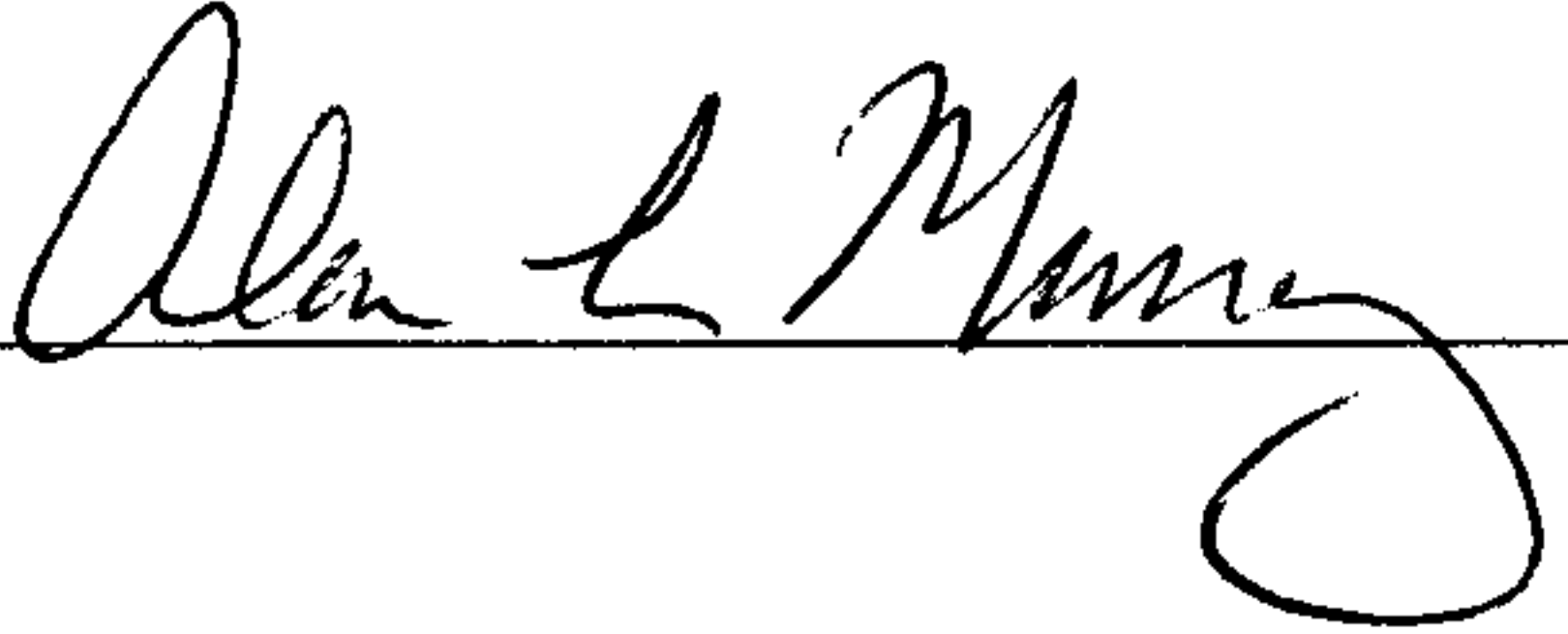
By: _____

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: 
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 of 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 17th day of June, 2011.

[NOTARIAL SEAL]

Terri Smith
Notary Public
My Commission Expires: _____

expires: _____

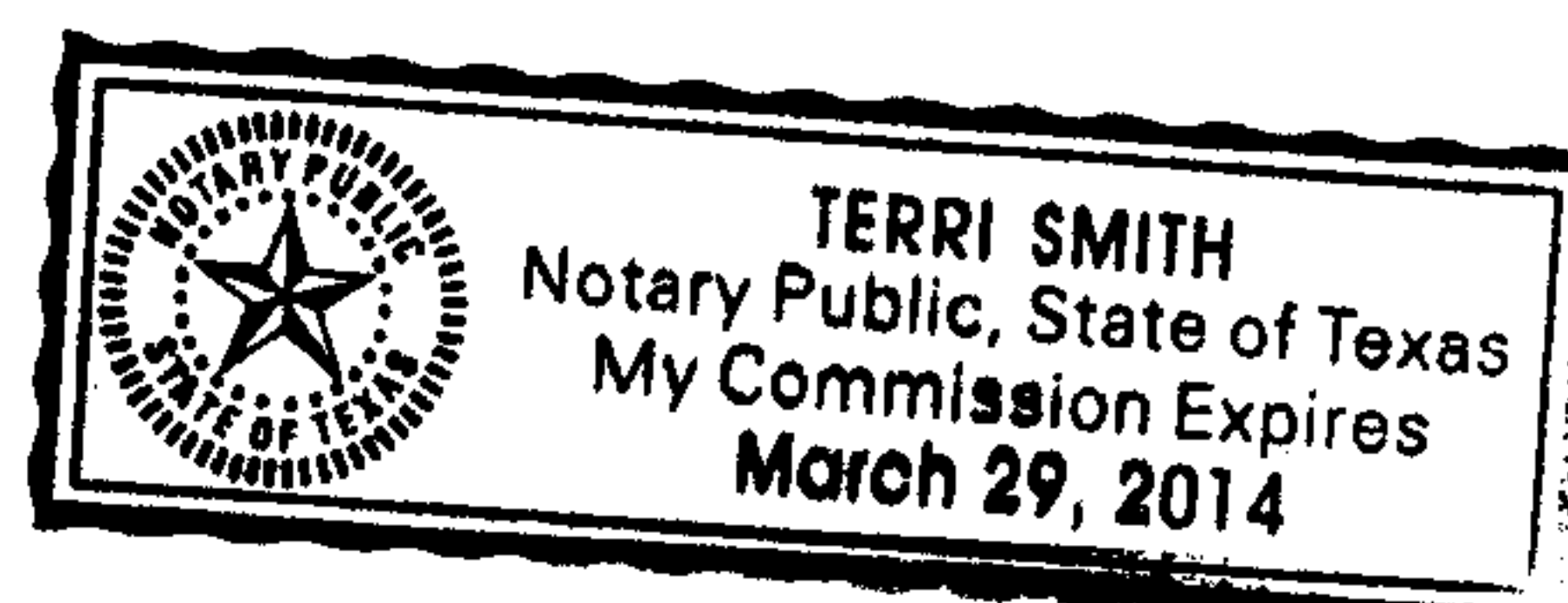
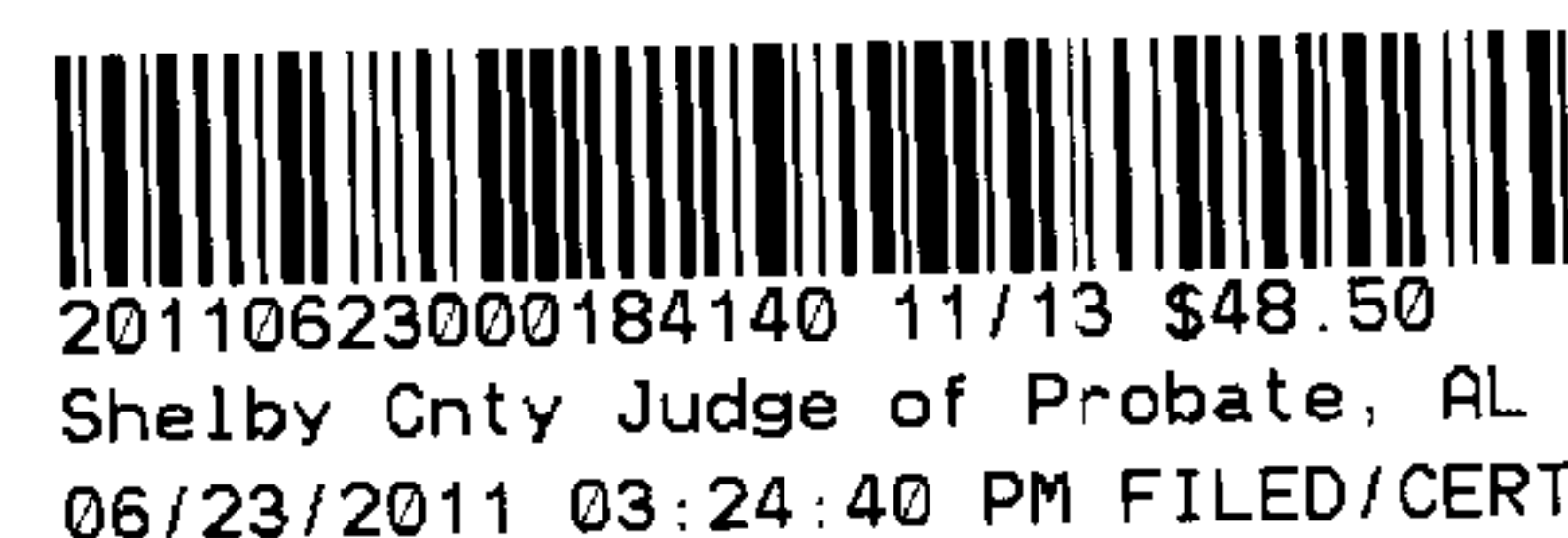


Exhibit A



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 2A, 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 Drainage Easement Area

An easement over and across a parcel of land situated in the Southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, said parcel being Lot 2A according to the 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, said easement being more particularly described as follows:

Commence at the Northwestern most corner of said Lot 2A, said point also being a point on the Eastern-most right of way line of Huntley Parkway (60' right of way); thence run North 89 degrees 45 minutes 50 seconds East along the North line of said Lot 2A for a distance of 66.13 feet to the POINT OF BEGINNING of the easement herein described; thence continue North 89 degrees 45 minutes 50 seconds East along the North line of said Lot 2A for a distance of 173.31 feet; thence run South 00 degrees 14 minutes 10 seconds East along said North line for a distance of 90.46 feet; thence run North 89 degrees 45 minutes 50 seconds East along said North line for a distance of 253.71 feet; thence leaving said North line South 00 degrees 09 minutes 30 seconds West for a distance of 64.26 feet; thence run South 63 degrees 46 minutes 40 seconds West for a distance of 51.17 feet; thence run North 63 degrees 38 minutes 57 seconds West for a distance of 31.59 feet; thence run North 79 degrees 51 minutes 56 seconds West for a distance of 100.30 feet; thence run South 72 degrees 06 minutes 57 seconds West for a distance of 35.75 feet; thence run South 41 degrees 19 minutes 29 seconds West for a distance of 115.43 feet; thence run North 82 degrees 02 minutes 58 seconds West for a distance of 36.33 feet; thence run North 53 degrees 54 minutes 51 seconds West for a distance of 29.31 feet; thence run South 89 degrees 14 minutes 43 seconds West for a distance of 82.77 feet; thence run North 00 degrees 24 minutes 59 seconds West for a distance of 220.38 feet to the point of beginning. Said easement contains 57,381 square feet, or 1.32 acres more or less.

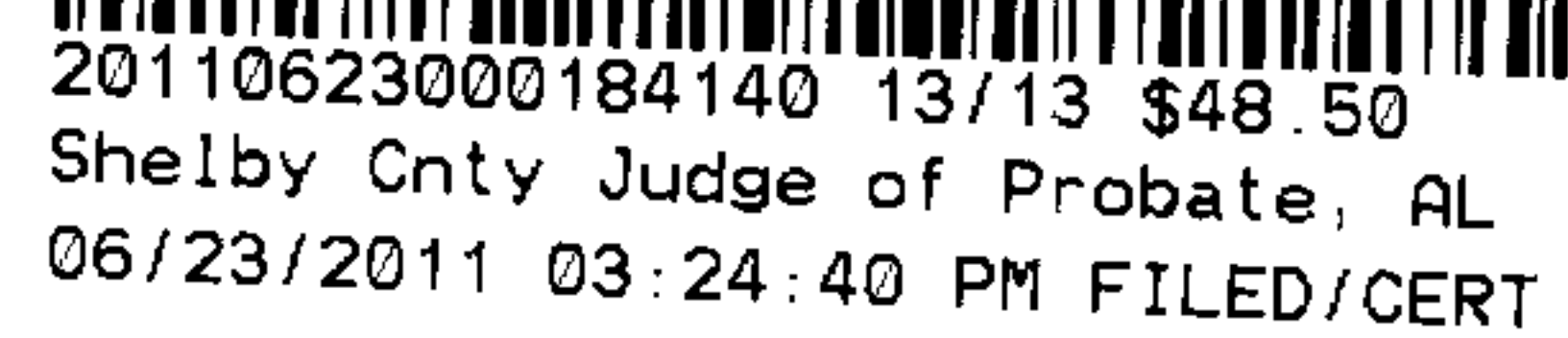


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Shelby Cnty Judge of Probate, AL
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Exhibit B

Survey Depicting Grantor Parcel, Grantee Parcel and Drainage Easement Area

(See Attached)

[illegible]