

STATE OF ALABAMA)

COUNTY OF SHELBY)



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Shelby Cnty Judge of Probate, AL
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ACCESS AND UTILITY EASEMENT AGREEMENT

THIS ACCESS and UTILITY EASEMENT AGREEMENT (this “**Agreement**”) is executed and granted to be effective as of the 8th day of March, 2016 (the “**Effective Date**”) by and between **SAC, LLC, an Alabama limited liability company (“Grantor”), and Big Brass Properties, Inc., an Alabama corporation (“Grantee”).**

RECITALS:

WHEREAS, Grantor and Grantee entered into that certain real estate sales contract dated June 11, 2016 (as amended, the “**Contract**”) for the purchase and sale of real property situated in the City of Pelham, Shelby County, Alabama, as more particularly described on **Exhibit A** and depicted as the “**Grantee Property**” on the survey attached as **Exhibit C** hereto and by this reference made a part hereof (the “**Grantee Property**”); and

WHEREAS, Grantor is the owner in fee simple of that certain real property situated in the City of Pelham, Shelby County, Alabama, and being contiguous to the Grantee Property, as more particularly described on **Exhibit B** attached hereto and by this reference made a part hereof, and depicted as the “**Grantor Property**” on **Exhibit C** (the “**Grantor Property**”); and

WHEREAS, an access drive from Huntley Parkway (the “**Huntley Access Drive**”) currently serves Alabama CVS Pharmacy, LLC (“**CVS**”) situated on Lot 5A as shown on Exhibit C; and

WHEREAS, the Huntley Access Drive which is described on Exhibit B and Exhibit E of the Declaration (as defined below) terminates within the Grantee Property at the location shown on Exhibit C; and

WHEREAS, Grantee has agreed to extend the Huntley Access Drive across a portion of the Grantee Property along the northern boundary thereof, as said extension is more particularly described on **Exhibit D** attached hereto and by this reference made a part hereof and depicted as the “**Big Brass Road Extension**” on Exhibit C (the “**Big Brass Road Extension**”); and

WHEREAS, Grantor and Grantee intend for the Huntley Access Road and the Big Brass Extension to be and serve as an access road (the “**Access Road**”)[sometimes hereinafter referred to as the “**Easement Property**”. which is legally described on **Exhibit E** attached hereto and by this reference made a part hereof] for the Grantor Property and the Grantee Property, subject to the easement rights of CVS as set forth in the Declaration; and

Shelby County, AL 03/09/2017
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WHEREAS, Grantor and Grantee desire to grant to each other a perpetual, mutual, reciprocal and non-exclusive easement over, across, through and upon the Access Road for purposes of (i) ingress, egress and access to and from their respective properties and Huntley Parkway, and (ii) the installation, construction, maintenance, repair, replacement and use of utilities.

NOW, THEREFORE, in consideration of the recitals and of the agreements and covenants herein contained, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, delivery and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties do hereby grant and agree as follows:

1. **Grant of Access Easement.** Subject to the terms hereof, Grantor and Grantee do hereby grant, bargain, sell and convey to each other a perpetual, mutual, reciprocal and non-exclusive easement and right-of-way to, over, across, through and upon the Access Road for vehicular and pedestrian access, ingress and egress to and from the Access Road and Huntley Parkway (the “**Access Easement**”).

2. **Grant of Utility Easement.** Subject to the terms hereof, Grantor and Grantee do hereby grant, bargain, sell and convey to each other a perpetual, mutual, reciprocal and non-exclusive easement and right-of-way to, over, across, under and through the Access Road for the installation, connection, use, maintenance, repair, relocation and replacement of utilities, including electrical, gas, water, sewer, telecommunications and other utility systems and facilities (the “**Utility Easement**”).

3. **Grantor’s Reserved Rights.**

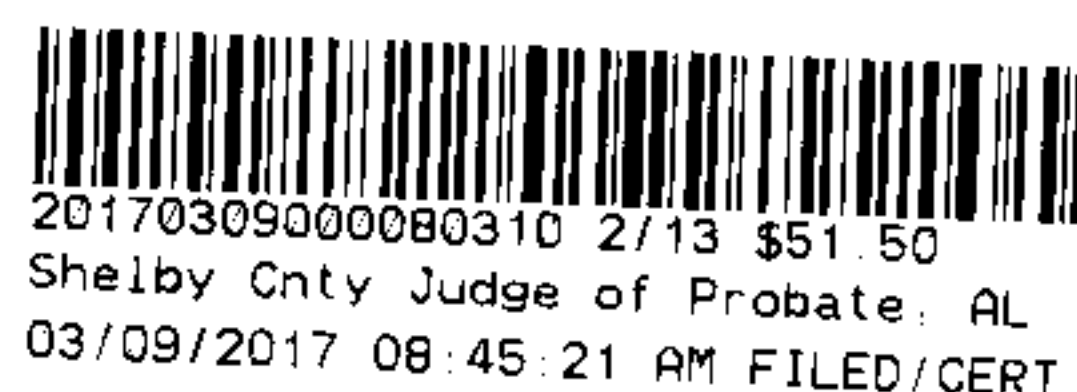
a) Grantor retains and reserves the right to grant to Authorized Parties and Purchasers (as those terms are defined in the Declaration) perpetual and non-exclusive easements to, over, across, under and through the Access Road for purposes of ingress and egress to and from Huntly Parkway and the installation, construction, maintenance, repair, replacement and use of utilities

b) Grantor retains and reserves the right, at Grantor’s sole cost and expense, to extend and make further improvements to the Access Road for the purpose of providing ingress and egress and utilities for future development of the Grantor Property or portions thereof.

4. **Nature and Effect of Easement.**

(a) The easements granted pursuant to Paragraphs 1 and 2 above (i) shall be and are appurtenant to and shall serve and benefit both the Grantor Property, the Grantee Property, (ii) shall be and are covenants running with the Easement Property and the Grantor Property and Grantee Property, (iii) shall be and are binding upon and shall inure to the benefit of Grantor and Grantee and (iv) shall be used in common by Grantor and Grantee and their agents, employees, representatives, contractors, guests, invitees, licensees and tenants (together with the agents, employees, guests, and invitees of such tenants).

(b) The creation and grant of the easements pursuant to this Agreement shall not be deemed a dedication of any portion of the Access Road to any governmental authority and does not create any rights of any kind in the general public in or to the Access Road. Grantor and Grantee



each covenant and agree that no obstructions shall be erected, placed, installed or permitted on, across or upon any portion of the Access Road; provided, however, that Grantor shall have the right, in its sole and absolute discretion, to take any action which may be reasonably necessary to prevent any portion of the Access Road from becoming publicly dedicated roadways so long as such action does not materially and adversely interfere with, interrupt or impede access to and from the Grantee Property and Huntley Parkway.

5. **Construction of Big Brass Road Extension.** Grantee, at its sole cost and expense, agrees to construct the Big Brass Road Extension, and all improvements related thereto, at the north boundary of the Grantee Property as described on Exhibits C and D and in accordance with the plans and specifications prepared by Gonzalez-Strength & Associates, Inc., 2176 Parkway Lake Drive, Hoover, Alabama, Project 16BBP01 (the “**Plans**”). The construction of the Big Brass Road Extension (the “**Work**”) shall be performed in a good and workmanlike manner and in substantial compliance with (i) the Plans, and (ii) the laws, regulations and ordinances of the City of Pelham and any other applicable governmental authority. Grantee shall use good faith commercially reasonable efforts to complete the Big Brass Road Extension within one hundred and twenty (120) days after the Effective Date (the “**Completion Date**”). Grantee represents and warrants to Grantor that it has obtained or will obtain all necessary governmental approvals and permits for the Work and will pay all costs and expenses arising out of or related to the Work, including without limitation costs and expenses for permitting, design, engineering, site work and construction (the “**Costs**”). Grantee further represents and warrants that Grantee will prevent the filing of liens against the Grantor Property and the Easement Property, including mechanic’s and materialmen’s liens and other liens; and if any such liens are filed Grantor will (i) promptly pay and discharge same within ninety (90) days or bond over said liens and (ii) indemnify and hold Grantor harmless from any such liens.

6. **Temporary License.**

(a) Subject to the terms and conditions of this Section 6, Grantor hereby grants unto Grantee a temporary, non-exclusive license (the “**License**”) solely to construct the Big Brass Road Extension pursuant to the terms of this Agreement, and for no other purpose, which License shall expire on the later to occur of the Completion Date or the last date on which any construction or the performance of any of the Work has occurred, unless otherwise extended in writing between Grantor and Grantee (the “**Termination Date**”).

(b) The License shall not be used for construction access to the Huntley Access Drive, and Grantee is prohibited from using the Huntley Access Drive for construction of improvements on the Grantee Property.

(c) Grantee shall procure at its expense and maintain throughout the term of this License a policy or policies of commercial general liability insurance, insuring Grantor, and any other person designated by Grantor, against any and all liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of Grantee’s construction of the Big Brass Road Extension (through its employees, agents, contractors, subcontractors, representatives or otherwise), or in any way occasioned by or arising out of the presence or activities of Grantee or any of Grantee’s employees, agents, contractors, subcontractors or representatives on the Property, the limits of such policy or policies to be in



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combined single limits for both damage to property and personal injury and in amounts not less than One Million Dollars (\$1,000,000.00) per occurrence or Two Million Dollars (\$2,000,000) in the aggregate. Such insurance shall, in addition, extend to any liability of Grantee arising out of the indemnities provided for in this Agreement. Grantee shall also carry such other types of insurance in form and amount which Grantor shall deem to be commercially reasonable for Grantee to carry, should the circumstances or conditions so merit Grantee carrying such type of insurance. All insurance policies procured and maintained by Grantee pursuant hereto shall name Grantor and any additional parties designated by Purchaser (including, without limitation, Purchaser's affiliates and agents) as additional insureds, shall be carried with companies licensed to do business in the State of Alabama having a rating from Best's Insurance Reports of not less than A/X, and shall be non-cancelable and not subject to material change except after thirty (30) days' written notice to Grantor. Such policies or duly executed certificates of insurance with respect thereto, accompanied by proof of payment of the premium therefor, shall be delivered to Grantor on or prior to the Effective Date and shall remain in place through the Termination Date.

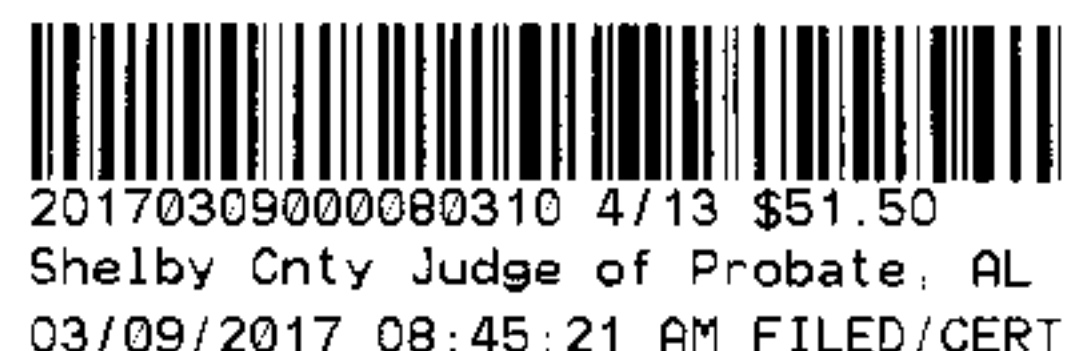
7. **Maintenance and Repair of Access Road.** Grantee shall pay within thirty (30) days of written request Grantee's pro rata share of the maintenance and repair costs of the Access Road in accordance with Paragraph 7 of the Declaration. Grantee shall not pay maintenance costs for any portion of the Access Road that is not situated on the Grantee Property. To the extent Grantee uses or enjoys any Common Utility Facilities (as such term is defined in the Declaration), Grantee agrees to pay its pro rata share thereof. Notwithstanding anything in the Declaration to the contrary, the total square footage contained in the Grantee Property shall be used to compute Grantee's pro rata share of maintenance costs.

8. **Indemnification.** Grantee shall indemnify, defend and hold Grantor harmless from and against any and all liability for personal injuries, property damage, or for loss of life or property (including litigation costs and reasonable attorneys' fees) resulting from, or in any way connected with, Grantee's construction of the Access Road (through its employees, agents, contractors, subcontractors, representatives or otherwise), or in any way occasioned by or arising out of the presence or activities of Grantee or any of Grantee's employees, agents, contractors, subcontractors or representatives on the Grantor Property, or any ingress thereto or egress therefrom, unless caused solely by the gross negligence or intentional misconduct of Grantor.

9. **Covenants and Restrictions.**

a) This Agreement is subject to the terms, conditions and provisions set forth in the Declaration of Easements, Covenants, Conditions and Restrictions ("**Declaration**") dated February 19, 2008 and recorded at Instrument No. 20080306000091940 in the Probate Office of Shelby County, Alabama. Without in any way limiting the generality of the foregoing, nothing in this Agreement amends, modifies or changes the rights, easements and privileges granted to CVS in the Declaration.

b) Upon termination of the License described in Paragraph 6 above, Grantor and Grantee covenant to each other that the Access Road shall not be used for construction of improvements on the Adjacent Property as such property is described in the Declaration.



c) Grantor and Grantee covenant and agree not to unreasonably obstruct or interfere with the other's use and enjoyment of the Access Road and acknowledge and agree that they shall not obstruct or interfere with the right of CVS to use and enjoy said Access Road; provided however that the performance of necessary repairs and maintenance and of rights exercised in accordance with Paragraph 4 b) above shall not constitute obstructions and interference with the easement rights granted herein.

10. **Default.** In the event of any violation or threatened violations of any of the provisions of this Agreement, the non-defaulting party shall be entitled forthwith to full and adequate relief by injunction and/or any other available legal and equitable remedies; and the damages and costs of any such violation and all costs and expenses of any suit or proceeding (including reasonable attorneys' fees) shall be paid by the defaulting party.

11. **Public Rights.** This instrument is not intended to and does not dedicate any portion of the easement to the general public or create any rights in favor of the general public.

12. **Mortgage Subordination.** Any mortgage or deed of trust affecting any portion of the Easement Property shall at all times be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Agreement.

13. **Estoppel Certificates.** Each party shall upon written request of any other party issue within twenty (20) days to the requesting party, or to any prospective mortgagee, tenant, other purchaser of such party's parcel or portion thereof, an estoppel certificate stating: (i) whether the party to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof, (ii) whether to its knowledge this Agreement has been modified or amended (and if it has, then stating the nature thereof) and (iii) whether to the party's knowledge this Agreement as of that date is in full force and effect.

14. **Notice.** Any and all notices required or contemplated hereunder shall be provided by hand delivery, or by overnight mail through a nationally recognized courier service or by certified United States Mail, return receipt requested and postage prepaid to the following addresses:

If to Grantor:

SAC, LLC
1100 East Park Drive, Suite 400
Birmingham, Alabama 35235
Attention: Eugene K. Cole
Phone: 205-836-8683
Email: gene@bham.rr.com

With a copy to:

Robert H. Sprain, Esq.
Friedman, Dazzio, Zulanas & Bowling P.C.
3800 Corporate Woods Drive
Birmingham, Alabama 35242
Phone: 205-278-7016
Email: rsprain@friedman-lawyers.com

If to Grantee:

With a copy to:



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Big Brass Properties, Inc.
100 Canyon Park Circle, Suite C
Birmingham, Alabama 35124
Attention: Christopher Smiley
Phone:
Email:

Mark W. Macoy, LLC
300 Vestavia Parkway, #2300
Birmingham, Alabama 35216
Email:

15. **Governing Law.** This Agreement shall be governed by the laws of the State of Alabama, without regard to its conflict of law provisions.

16. **Severance.** The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

17. **Binding Effect.** 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.

18. **Captions.** The paragraph captions used throughout this Agreement are for the purpose of reference only and are not to be considered in the construction of this Agreement or in the interpretation of the rights or obligations of the parties.

19. **Time.** Time is of the essence to this Agreement.

20. **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.

21. **Counterparts.** This Agreement may be executed in multiple counterparts (no one of which need contain the signatures of more than one party hereto so long as each party hereto executes at least one such counterpart), each of which shall be deemed an original and all of which, when taken together, shall constitute and be one and the same instrument.

22. **Attorney's Fees.** Should either party employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Agreement, or to specifically enforce this Agreement, the party prevailing shall be entitled to recover from the other party all reasonable costs, charges and expenses, including attorneys' fees, expended in connection therewith, including expenses incurred on appeal.

23. **Entire Agreement.** This Agreement evidences the entire agreement between the parties as to the matters herein contained and the Agreement shall not be modified in any respect except by an amendment in writing and in recordable form signed by all parties hereto.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURES ON NEXT PAGE]



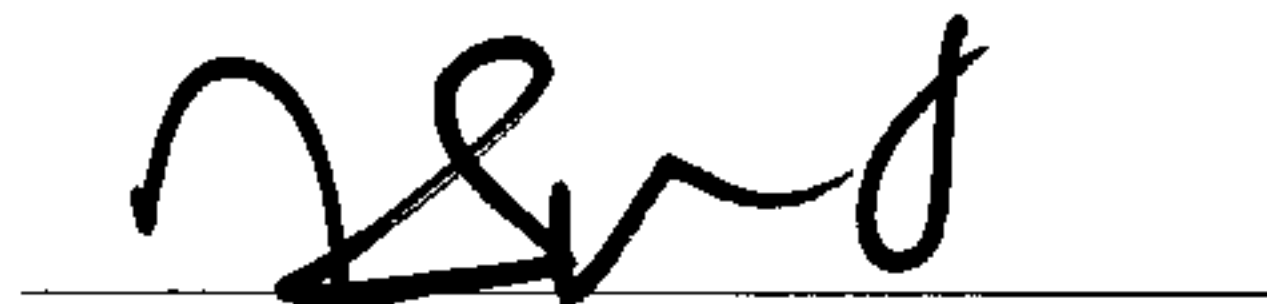
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IN WITNESS WHEREOF, the Grantor and Grantee by and through their authorized representatives have executed this Agreement as of the day and year first above written.

GRANTOR:

Witness or Attest:

SAC, LLC, an Alabama limited liability company



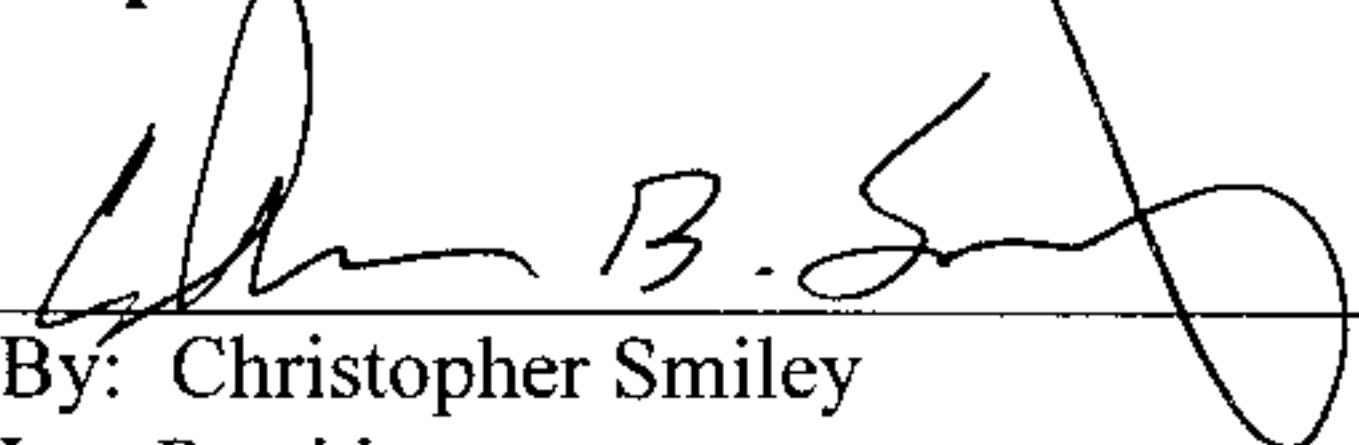

By: Eugene K. Cole
Its: Manager

GRANTEE:

Witness or Attest:

BIG BRASS PROPERTIES, INC., an Alabama corporation




By: Christopher Smiley
Its: President

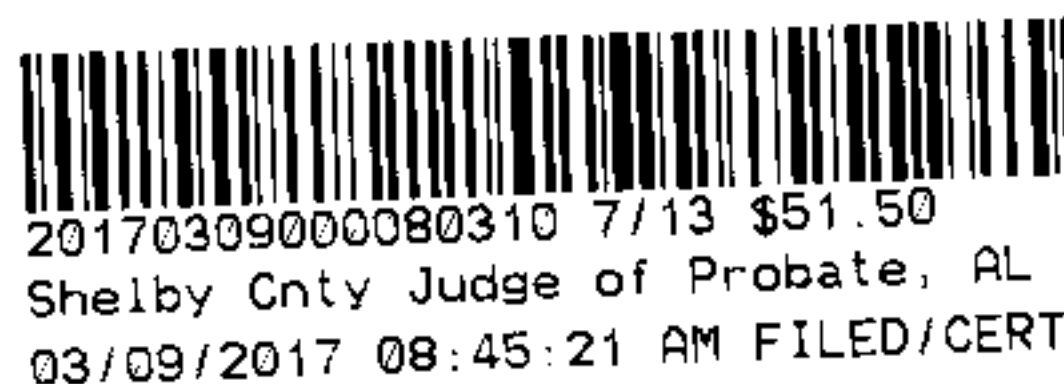
STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County and said State, hereby certify that Eugene K. Cole, whose name as Manager of SAC, LLC, an Alabama limited liability company, is signed to the foregoing Access and Utility Easement Agreement and who is known to me acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such manager for said company, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 8th day of March, 2017.


Notary Public

Name: Stacy R. Aycock
My commission expires: 03/27/19



STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County and said State, hereby certify that Christopher Smiley, whose name as President of Big Brass Properties, Inc., an Alabama corporation, is signed to the foregoing Access and Utility Easement Agreement and who is known to me acknowledged before me on this day that, being informed of the contents of the said Agreement, he, as such officer for said company, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 8th day of March, 2017.

Stacy R. Aycock
Notary Public

Name: Stacy R. Aycock

My commission expires: 03/27/19

Instrument Prepared by:

Robert H. Sprain, Jr.
Friedman, Dazzio Zulanas & Bowling PC
3800 Corporate Woods Drive
Birmingham, Al. 35242



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Exhibit A

Description of Grantor Property

Lot 3B1, according to the Final Plat Resurvey of Lot 3B, Pelham Town Center, as recorded in Map Book 47 page 57, in the Probate Office of Shelby County, Alabama

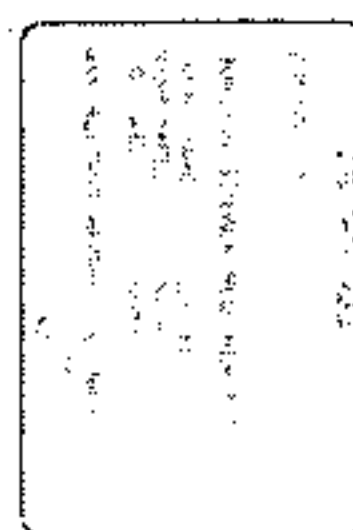
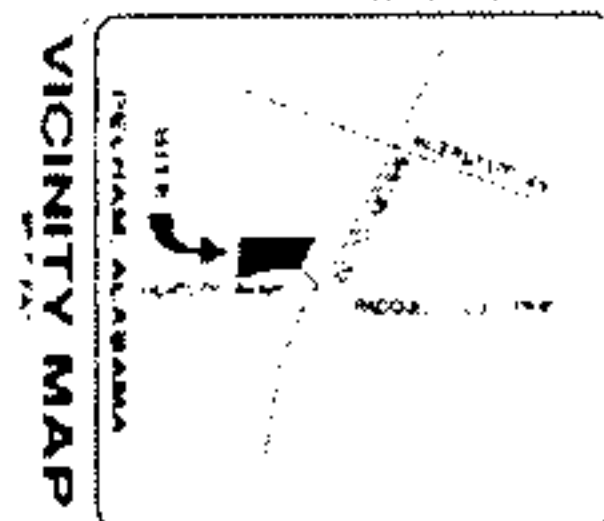
Exhibit B

Description of Grantee Property

Lot 3B2, according to the Final Plat Resurvey of Lot 3B, Pelham Town Center, as recorded in Map Book 47 page 57, in the Probate Office of Shelby County, Alabama



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RECORD CONTRACT NO. 144-6000000000 WITH THIS
CONTRACT AND DRAWING NO. 144-6000000000
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CONVERSION TABLE

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Brass Rod Extension
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NOTES

FINAL PLAT
RESURVEY OF LOT 3B
PELHAM TOWN CENTER

GONALEY, STRENGTH & ASSOCIATES, INC.
President: J. J. Gonaley, Jr., 10000 West
1st Avenue, Suite 100, Denver, CO 80202
Phone: (303) 751-1100
Fax: (303) 751-1101
E-mail: gonaley@gonaley.com

active: 1 8706-4-2

The first of these is the *Journal of the American Medical Association*, which is the largest and most influential of the medical journals. It is published weekly and contains a wide range of articles on medical topics. The second is the *New England Journal of Medicine*, which is also published weekly and is known for its high-quality research and clinical studies. The third is the *Lancet*, which is published weekly and is known for its focus on global health and public health issues. The fourth is the *British Medical Journal*, which is published weekly and is known for its focus on clinical medicine and public health. The fifth is the *Journal of the Royal Society of Medicine*, which is published weekly and is known for its focus on clinical medicine and public health. The sixth is the *Journal of the American Society of Nephrology*, which is published weekly and is known for its focus on kidney disease and related topics. The seventh is the *Journal of the American Society of Hypertension*, which is published weekly and is known for its focus on hypertension and related topics. The eighth is the *Journal of the American Society of Endocrinology*, which is published weekly and is known for its focus on endocrine disorders and related topics. The ninth is the *Journal of the American Society of Geriatrics*, which is published weekly and is known for its focus on aging and related topics. The tenth is the *Journal of the American Society of Internal Medicine*, which is published weekly and is known for its focus on internal medicine and related topics.

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Exhibit D

Description of Big Brass Road Extension

An easement over and across a parcel of land situated in Southwest one quarter Section 19, Township 20 South, Range 2 West Shelby County, Alabama, said parcel being Lot 3B of a Resurvey of Lot 3A Pelham Town Center as recorded in Map Book 42 Page 86 in the Office of Judge of Probate Shelby County, Alabama, said easement being more particularly described as follows:

Commence at a found capped rebar stamped Sain, said point marking the Southeast corner of lot 5A Pelham Town Center Resurvey as recorded in Map Book 40 Page 87 in the Office of Judge of Probate Shelby County Alabama and the Northeast corner of the above mentioned Lot 3B; thence run North 84 Degrees 41 Minutes 33 Seconds West along the South line of said lot 5A and the North line of Lot 3B for a distance of 114.31 feet to a point, said point marking the POINT OF BEGINNING of the easement herein described; thence leaving said South and North lines run South 00 Degrees 05 Minutes 22 Seconds West for a distance of 48.56 feet to a point; thence run North 76 Degrees 30 Minutes 32 Seconds West for a distance 104.47 feet to a point; thence run North 00 Degrees 39 Minutes 31 Seconds West for a distance of 52.65 feet to a set 5/8 inch capped rebar stamped CA-560-LA, said point lying on the afore mention South line of lot 5A and the North line of said Lot 3B; thence run South 60 Degrees 38 Minutes 53 Seconds East along said South and North lines for a distance of 46.34 feet to a found capped rebar stamped Sain; thence run South 84 Degrees 41 Minutes 33 Seconds East along said South and North lines for a distance of 62.14 feet to the POINT OF BEGINNIG. Said easement contains 4,564 square feet or 0.10 acres more or less.

EXHIBIT MAP PRIVATE ACCESS EASEMENT

SW 1/4 SECTION 19, TOWNSHIP 20 SOUTH, RANGE 2 WEST
SHELBY COUNTY, ALABAMA



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ABBREVIATION	
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING

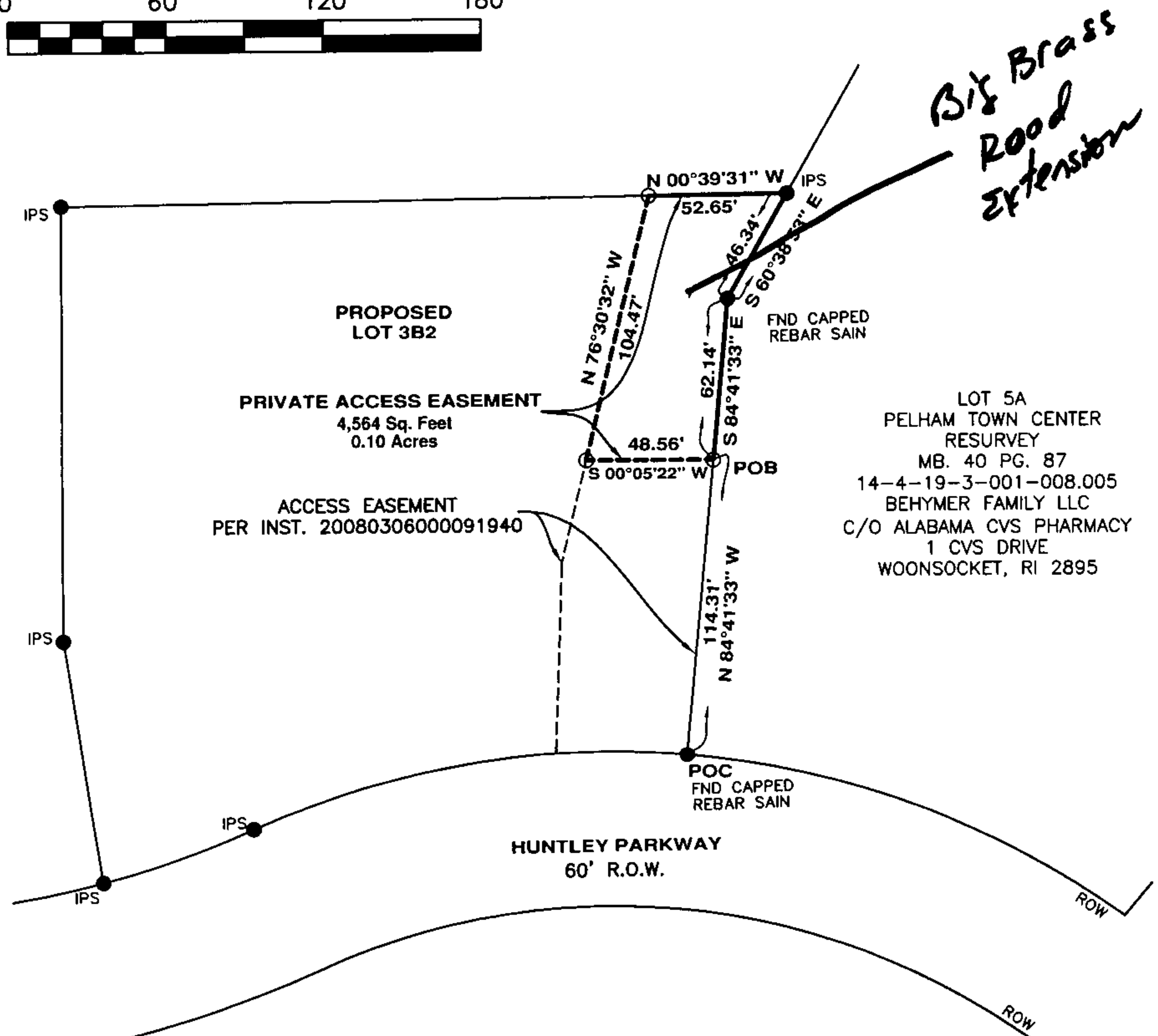


Exhibit E

Access Road/Easement Property

An easement over and across a parcel of land situated in Southwest one quarter Section 19, Township 20 South, Range 2 West Shelby County, Alabama, said parcel being Lot 3B of a Resurvey of Lot 3A Pelham Town Center as recorded in Map Book 42 Page 86 in the Office of Judge of Probate Shelby County, Alabama, said easement being more particularly described as follows:

Begin at a found capped rebar stamped Sain, said point marking the Southeast corner of lot 5A Pelham Town Center Resurvey as recorded in Map Book 40 Page 87 in the Office of Judge of Probate Shelby County Alabama and the Northeast corner of the above mentioned Lot 3B, said point lying on a curve turning to the left having a radius of 330.00 feet, a central angle of 08 Degrees 41 Minutes 51 Seconds, a chord bearing of South 00 Degrees 49 Minutes 52 Seconds West and a chord distance of 50.05 feet; thence run along the arc of said curve and along the East line of said lot 3B for a distance of 50.09 feet to a point; thence leaving said East line run North 87 Degrees 58 Minutes 56 Seconds West for a distance of 73.75 feet to a point; thence run North 76 Degrees 30 Minutes 32 Seconds West for a distance 145.04 feet to a point; thence run North 00 Degrees 39 Minutes 31 Seconds West for a distance of 52.65 feet to a set 5/8 inch capped rebar stamped CA-560-LA, said point lying on the afore mention South line of lot 5A and the North line of said Lot 3B; thence run South 60 Degrees 38 Minutes 53 Seconds East along said South and North lines for a distance of 46.34 feet to a found capped rebar stamped Sain; thence run South 84 Degrees 41 Minutes 33 Seconds East along said South and North lines for a distance of 176.45 feet to the POINT OF BEGINNIG. Said easement contains 10,430 square feet or 0.24 acres more or less.



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