

STATE OF ALABAMA)

COUNTY OF SHELBY)



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Shelby Cnty Judge of Probate: AL  
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**DRAINAGE EASEMENT AGREEMENT**

**THIS DRAINAGE EASEMENT AGREEMENT** (this “**Agreement**”) is executed and granted to be effective on this the 8th day of March, 2017 (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 (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, 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,** Alabama CVS Pharmacy, LLC (“**CVS**”) occupies Lot 5A (Pelham Town Center Resurvey as recorded in Map Book 40 Page 87) adjacent to the Grantee Property at the northern boundary upon which is situated a CVS pharmacy and other improvements associated therewith, including a storm water drainage system (the “**CVS Site**”); and

**WHEREAS,** a storm drain currently discharges storm water from the southerly portion of the CVS Site, under or upon the access drive from Huntley Parkway (the “**Huntley Access Drive**”) and onto the Grantee Property, as shown on the Survey; and

**WHEREAS,** Grantor and Grantee have agreed, in accordance with the Contract, that Grantee will construct a storm water drain (the “**Storm Water Drain**”) to discharge storm water from the existing storm drain outlet (as shown on the Survey), under the Grantee Property in the easement area more particularly described on **Exhibit D** and depicted as the “**Storm Sewer Easement**” on the plat recorded at Map Book 47 Page 57 in the Probate Office of Shelby County, Alabama (the “**Plat**”) attached as **Exhibit E** hereto and by this reference made a part hereof (the “**Storm Sewer Easement**” ), and then onto and upon that portion of the Grantor Property depicted on Exhibit C as the “**Drainage Easement Area**” (the “**Drainage Easement Area**”); and

Shelby County, AL 03/09/2017  
State of Alabama  
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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 Storm Water Easement for storm water drainage; and

**WHEREAS**, Grantor desires to grant to Grantee a perpetual and non-exclusive easement over, across, through and upon the Drainage Easement Area for storm water drainage.

**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 and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Drainage Easement.**

a) 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, under and upon the Storm Sewer Easement for storm water drainage.

b) Subject to the terms hereof, Grantor does hereby grant, bargain, sell and convey to Grantee a perpetual and non-exclusive easement for surface water and storm water drainage from the Grantee Property to, over, across, through, under and upon the Drainage Easement Area.

2. **Grantor's Reserved Rights.**

a) Grantor retains and reserves the right, at Grantor's sole cost and expense, to extend, modify and make further improvements to the storm water drainage system at the southeast corner of the Grantee Property from the point at which the drain pipe terminates and continuing onto and through the Grantor Property and any portion thereof. Grantor further retains and reserves all rights to construct a drainage system as set forth in Paragraph 5(b) of the Declaration of Easements, Covenants, Conditions and Restrictions recorded at Instrument 20080306000091940 in the Probate Office of Shelby County, Alabama (the "Declaration"). Grantee grants to Grantor a temporary easement to perform all work necessary to construct improvements, modifications and extensions to the storm water drainage system.

b) Grantor retains and reserves the right to grant drainage easements to future owners of lots or parcels in or subdivided from the Grantor Property, and Grantee agrees to execute and deliver to Grantor written consents thereto, provided that said future owners agree to pay their pro rata share of maintenance costs of the storm water drainage system.

c) Upon completion of modifications to the storm water drainage system as allowed hereunder or under the Declaration, and in accordance with applicable laws, regulations, codes and ordinances, Grantee agrees to execute and deliver to Grantor, within thirty (30) days' notice, a written consent in such form and substance reasonably satisfactory to both parties.

3. **Construction of Drainage System.** Grantee shall, at its sole cost and expense, but subject to the credit stated in this Paragraph 3, construct and install the Storm Water Drain on the Grantee Property, as such Storm Water Drain is described on the Plat (the "Work"), in a



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good and workmanlike manner and in substantial compliance with (i) the plans and specifications of Gonzalez Strength & Associates, Inc. dated December 13, 2016, Project No. 1688P01 (the "Plans") and (ii) the laws, regulations and ordinances of the City of Pelham and any other applicable governmental authorities. Grantee warrants and represents to Grantor that the pipe installed in connection with the Storm Water Drain shall be at least a 24" RCP pipe. Grantor reserves the right to approve the Plans (including without limitation the grading plans) and the contractor hired to perform the Work which said approval shall not be unreasonably withheld, denied or conditioned.

Grantor will credit Grantee the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) for the construction and installation of the Storm Water Drain at the closing of the transaction contemplated by the Contract.

4. **Maintenance and Repair of Drainage System.** Grantee shall pay within thirty (30) days of written request its pro rata share of the maintenance and repair costs of the Common Storm Water Drainage System (as defined in the Declaration) in accordance with the pro rata share calculation defined in Paragraph 7 of the Declaration. 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 gross square footage contained in the Grantee Property (56,840) shall be used to compute Grantee's pro rata share of maintenance costs.

5. **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 Storm Water Drain (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.

6. **Covenants and Restrictions.** This Agreement is subject to the terms, conditions and provisions set forth in the Declaration. 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.

7. **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.

8. **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.



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Shelby Cnty Judge of Probate, AL  
03/09/2017 08:45:22 AM FILED/CERT



9. **Mortgage Subordination.** Any mortgage or deed of trust affecting any portion of the Drainage Easement Area and the Storm Sewer Easement 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.

10. **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.

11. **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](mailto: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](mailto:rsprain@friedman-lawyers.com)

If to Grantee:

Big Brass Properties, Inc.  
100 Canyon Park Circle  
Suite C  
Birmingham, Alabama 35124  
Attention: Christopher B. Smiley  
Phone: 205-531-0943  
Email: [christophsmiley@att.net](mailto:christophsmiley@att.net)

With a copy to:

Mark W. Macoy, LLC  
300 Vestavia Parkway, #2300  
Birmingham, Alabama 35216  
Phone: 205-795-2080  
Email: [mark@macoylaw.com](mailto:mark@macoylaw.com)

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

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



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14. **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.

15. **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.

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

17. **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.

18. **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.

19. **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.

20. **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  
FOLLOWING PAGE]**



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03/09/2017 08:45:22 AM FILED/CERT



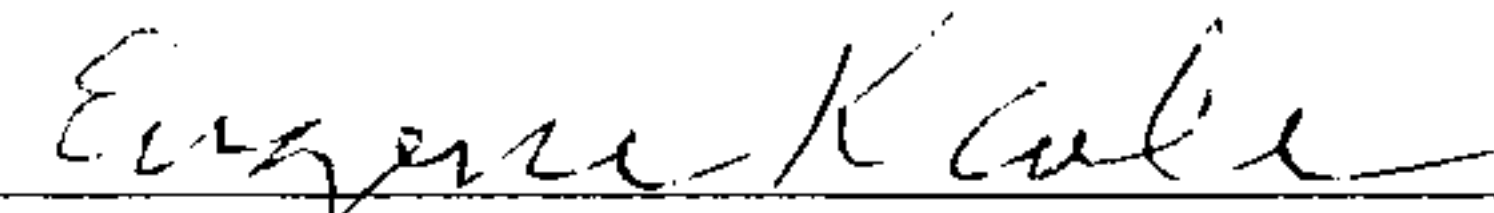
IN WITNESS WHEREOF, the Grantor and Grantee by and through their authorized representatives have executed this Agreement as of the day and year first above written.

**GRANTOR:**

Witness or Attest:

**SAC, LLC, an Alabama limited liability company**

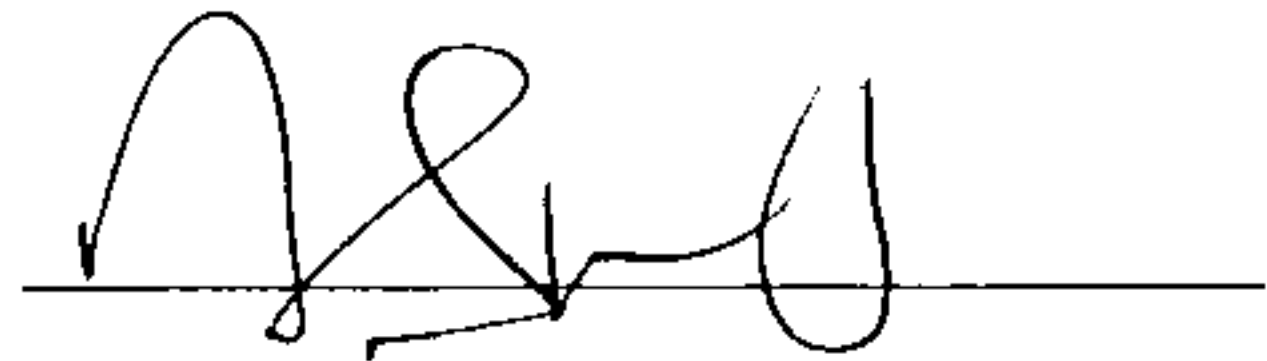


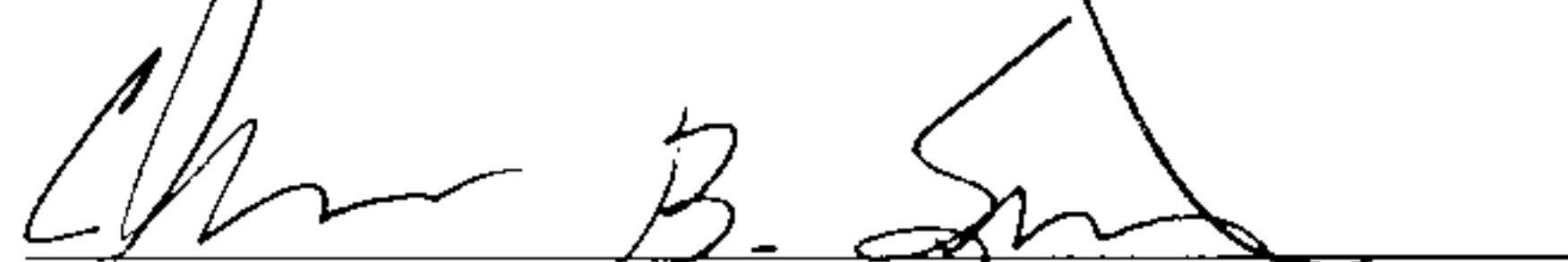
  
By: Eugene K. Cole  
Its: Manager

**GRANTEE:**

Witness or Attest:

**BIG BRASS PROPERTIES, INC., an Alabama corporation**



  
By: Christopher B. 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 Drainage 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

  
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Shelby Cnty Judge of Probate: AL  
03/09/2017 08:45:22 AM FILED/CERT



STATE OF ALABAMA)  
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County and said State, hereby certify that Christopher B. Smiley, whose name as President of Big Brass Properties, Inc., an Alabama corporation, is signed to the foregoing Drainage 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 8<sup>th</sup> day of March, 2017.

Stacy R. Aycock  
Notary Public

Name: Stacy R. Aycock

My commission expires: 03/27/19



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Shelby Cnty Judge of Probate. AL  
03/09/2017 08:45:22 AM FILED/CERT



**EXHIBIT A**

**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**

**EXHIBIT B**

**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**



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03/09/2017 08:45:22 AM FILED/CERT







## EXHIBIT D

### Legal Description for Storm Sewer Easement

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 68.36 feet to a point, said point marking the POINT OF BEGINNING a 20.00 foot storm sewer easement lying 10 feet on each side of, parallel to and abutting the following described centerline; thence run South 19 Degrees 40 Minutes 41 Seconds East for a distance of 248.91 feet to a point, said point marking the end of said easement. said easement contains 4,978 square feet or 0.11 acres more or less.

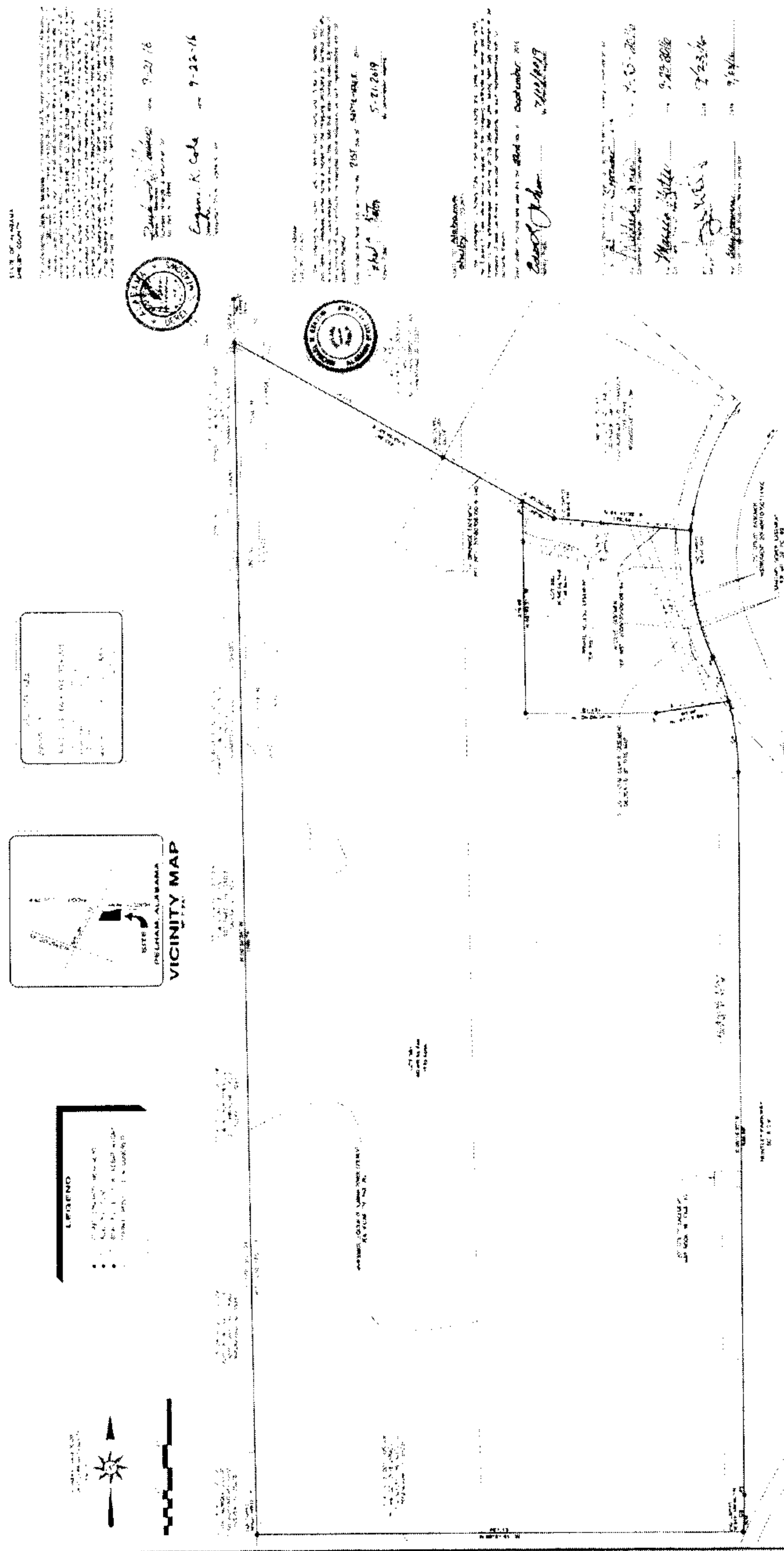


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Shelby Cnty Judge of Probate, AL  
03/09/2017 08:45:22 AM FILED/CERT



Exhibit E

Map Book 47 Page 57



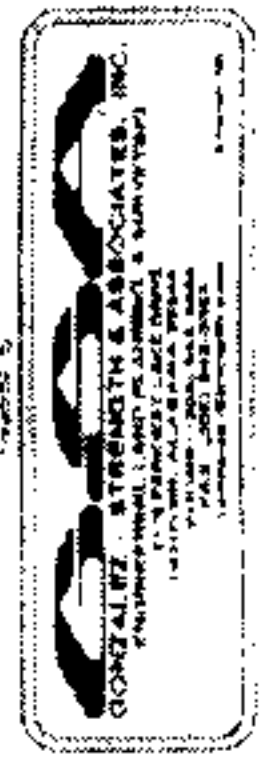
FINAL PLAT  
RESURVEY OF LOT 3B  
PELHAM TOWN CENTER

NOTES

1. ALL EASEMENTS SHOWN ON THIS PLAT ARE THE PROPERTY OF THE STATE OF ALABAMA. THE STATE OF ALABAMA IS THE OWNER OF ALL EASEMENTS SHOWN ON THIS PLAT.

2. THE STATE OF ALABAMA IS THE OWNER OF ALL EASEMENTS SHOWN ON THIS PLAT. THE STATE OF ALABAMA IS THE OWNER OF ALL EASEMENTS SHOWN ON THIS PLAT.

3. THE STATE OF ALABAMA IS THE OWNER OF ALL EASEMENTS SHOWN ON THIS PLAT. THE STATE OF ALABAMA IS THE OWNER OF ALL EASEMENTS SHOWN ON THIS PLAT.



CURVE TABLE

THIS PLAT OF THE RESURVEY OF LOT 3B, PELHAM TOWN CENTER, WAS PREPARED BY THE SURVEYOR GENERAL OF THE STATE OF ALABAMA, AND IS HEREBY CERTIFIED TO BE TRUE AND CORRECT.

20170309000080320 11/11 \$45.50  
Shelby Cnty Judge of Probate, AL  
03/09/2017 08:45:22 AM FILED/CERT