

This instrument prepared by:

Sarah K. Laird, Esq.
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203

20180213000046510
02/13/2018 09:57:18 AM
ESMTAROW 1/6

STATE OF ALABAMA)
 :
SHELBY COUNTY)

(\$500.00
Consideration)

DECLARATION OF EASEMENT

^{10th} This DECLARATION OF EASEMENT (the "Agreement") is made and entered into as of the day of January, 2018 (the "Effective Date") by GANN ENTERPRISES LLC, an Alabama limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of (i) certain real property known as 5101 Cyrus Circle in Birmingham, Shelby County, Alabama, being Lot 6 according to the Survey of Meadow Brook Professional and Medical Centre, 1st Sector, as recorded in Map 17, Page 21 (the "Plat") in the Office of the Judge of Probate of Shelby County, Alabama (the "Clinic Lot"), including the three (3) story office building located thereon (the "Building"); and (ii) certain real property adjacent to the Clinic Lot, being Lot 5 according to the Plat (the "Adjacent Lot," and together with the Clinic Lot, sometimes individually referred to herein as a "Lot" and sometimes collectively referred to herein as the "Lots"); and

WHEREAS, the Declarant desires to establish, for the benefit of the Clinic Lot, a permanent, perpetual, and exclusive easement over and upon that portion of the Adjacent Lot more particularly described and illustrated on Exhibit A, attached hereto and incorporated herein by this reference (the "Easement Area") for the purpose of accessing, operating, and maintaining a concrete pad and air conditioning unit that serve the Building but are located within the Easement Area on the Adjacent Lot (collectively, the "Improvements").

NOW, THEREFORE, for the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares as follows:

1. Easements. Declarant hereby declares, grants and establishes a perpetual, exclusive easement (the "Easement") on, over and across the Easement Area, for the benefit of the Clinic Lot that may be used by the then owner of the Clinic Lot (the "Clinic Lot Owner") and its agents, employees, contractors, representatives, tenants, guests, customers and invitees for the purpose of accessing, operating, maintaining, inspecting, repairing, or replacing the Improvements, provided that the Declarant shall retain its fee simple interest in the Easement Area. The Easement granted herein shall include an exclusive, perpetual access easement over, under, across and upon that portion of the Adjacent Lot as deemed reasonably necessary to access the Improvements for the purpose of carrying out the activities described in the preceding sentence.

TO HAVE AND TO HOLD the Easement, together with all rights and interests appurtenant thereto, belonging to the Clinic Lot Owner and its successors and assigns forever.

2. Maintenance and Repair. The Clinic Lot Owner shall, at its sole cost and expense, perform all maintenance, repairs and replacements required to keep the Improvements in good working order and condition. In the event the Clinic Lot Owner deems it necessary to upgrade or modify any components of the Improvements in order to serve future improvements on the Clinic Lot, the Clinic Lot Owner may do so at its sole cost and expense.

3. Indemnity. The Clinic Lot Owner shall indemnify, defend and hold harmless the then owner of the Adjacent Lot (the "Adjacent Lot Owner," and together with the Clinic Lot Owner, sometimes individually referred to herein as an "Owner" and sometimes collectively referred to herein as the "Owners") from and against any and all third party claims and resulting lawsuits, liabilities, damages, costs and expenses directly caused by the use of the Easement by the Clinic Lot Owner or any of its agents, employees, contractors, representatives, tenants, guests, customers and invitees, except to the extent the same is caused due to the affirmative acts, negligence or willful misconduct of the Adjacent Lot Owner or any of its agents, employees, contractors, representatives, tenants, guests, customers or invitees. The foregoing indemnity shall not cover settlements and agreements entered into without the written approval of the Clinic Lot Owner, which approval may not be unreasonably withheld by the Clinic Lot Owner.

4. Payment Obligations. If an Owner fails to pay any amount that it owes another Owner under this Agreement within thirty (30) days after the other Owner's written demand for the same, then such amount shall (i) bear interest at the maximum rate permitted under applicable law, and (ii) be secured by a lien on the defaulting Owner's Lot. Such lien shall have priority over all other liens encumbering the defaulting Owner's Lot, except it shall be automatically subordinated to any first in priority mortgage, deed of trust, deed to secure debt or other security interest.

5. Waiver of Jury Trial. EACH OWNER SHALL BE DEEMED TO HAVE EXPRESSLY WAIVED ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING. ANY OWNER MAY FILE AN ORIGINAL OR A COPY OF THIS SECTION WITH A COURT AS WRITTEN EVIDENCE OF THE FOREGOING WAIVER.

6. No Third Party Beneficiary. This Agreement is made solely and specifically for the benefit of the Owners and parties claiming by, through or under the Owners, including, but not limited to, their respective agents, employees, contractors, representatives, tenants, guests, customers, invitees, successors and assigns. No other person or entity shall have any rights, interests, claims or benefits under or on account of this Agreement as a third party beneficiary.

7. Attorneys' Fees. In the event a lawsuit or other similar legal proceeding is brought to enforce or construe any of the terms of this Agreement, the prevailing party in such lawsuit or legal proceeding shall be entitled to recover its reasonable attorneys' fees, litigation expenses and court costs from the non-prevailing party.

8. No Waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged with making such waiver. No delay or omission in the exercise of any right or remedy accruing upon a breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach, and the waiver of any breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

9. Exhibits. All exhibits referenced herein are attached to this Agreement and incorporated herein by reference.

10. Covenants Run With Land. The terms of this Agreement shall run with the land and shall be binding upon Declarant and its successors and assigns. Notwithstanding anything to the contrary contained herein, each of the Owners shall be obligated under this Agreement only to the extent the terms of this Agreement relate to the periods during which it owns its Lot. Upon the conveyance of all of its right, title and interest in a Lot, the transferor of such Lot shall be released from obligations and liabilities with respect to such Lot first arising under this Agreement following such conveyance, except obligations and liabilities arising as a result of any matter that occurred during the period when it owned such Lot, and the transferee shall automatically be bound hereby.

11. Notices. All notices, demands and other communications required under or related to this Agreement (collectively, "Notices") must be in writing to be effective and must be sent by hand delivery, United States Certified Mail - Return Receipt Requested and Postage Prepaid, or reputable overnight delivery service (such as Federal Express or United Parcel Service). Unless an Owner directs otherwise to the other Owners by written notice sent in accordance with the provisions of this section, all Notices to be sent to an Owner shall be: (i) delivered to the address of its Lot and to the address that real property tax bills for its Lot are sent by the applicable taxing authority; and (ii) addressed to the attention of the Owner if it is an individual and to the attention of the "President" or "Manager" if the Owner is an entity. Any Notice shall be deemed given and received upon actual delivery or upon refusal to accept delivery or rejection of an attempted delivery due to an address that is not correct or up-to-date.

12. Warranty of Ownership. Declarant warrants and represents that: (i) Declarant has all power and authority necessary for it to execute and deliver this Agreement and perform its obligations hereunder; and (ii) Declarant has not granted any liens, mortgages, deeds of trust or other security interests that currently encumber the Adjacent Property.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Alabama.

14. Construction. No inference shall be drawn from the addition, deletion or modification of any language contained in any prior draft of this Agreement. This Agreement (i) constitutes the entire agreement with respect to the Easement, and (ii) may be amended only by a written instrument executed by all of the Owners. In the event any provision hereof shall be prohibited by or invalidated under applicable laws, the remaining provisions of this Agreement shall remain fully effective.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned has executed this Agreement to be effective as of the day and year first written above.

GANN ENTERPRISES LLC
an Alabama limited liability company

By: [Signature]
Name: Kevin Gann
Title: Managing Member

STATE OF Alabama)
COUNTY OF Jefferson)

Before me, Gilmer T. Simmons, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Kevin Gann, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the Managing Member of GANN ENTERPRISES LLC, an Alabama limited liability company, the within named bargainor, and that he/she as such Managing Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as such Managing Member.

WITNESS my hand and seal at office this the 10th day of January, 2018.

[Signature]
Notary Public

My Commission Expires: 12/20/2021

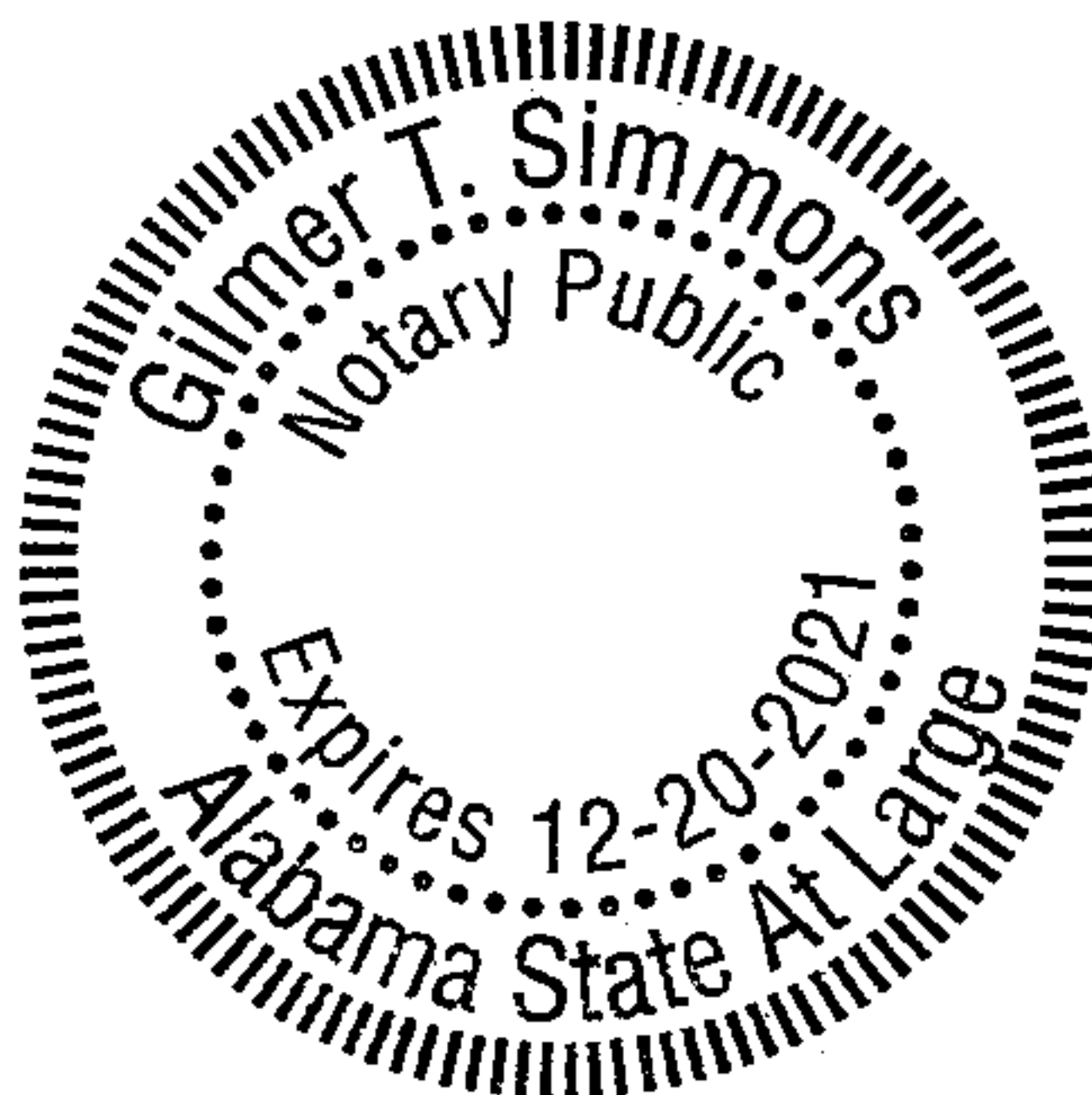


EXHIBIT A

[Description and Illustration of Easement Area]

Legal Description of Easement Area:

An easement over and across a parcel of land located in the Southeast one quarter of the Northwest one quarter of Section 11, Township 19 South, Range 2 West Shelby County, Alabama and being over a portion of Lot 5 Meadow Brook Professional and Medical Center as recorded in Map Book 17 Page 21 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 GSA marking the Southern most corner of Lot 6 of the afore mentioned subdivision; thence run North 53 Degrees 37 Minutes 47 Seconds West along the common line of said lots 5 and 6 for a distance of 39.85 feet to a point, said point marking the POINT OF BEGINNING of the easement herein described; thence leaving said common line run South 36 Degrees 22 Minutes 13 Seconds West for a distance of 8.77 feet to a point; thence run North 53 Degrees 37 Minutes 47 Seconds West for a distance of 30.91 feet to a point; thence run North 36 Degrees 22 Minutes 13 Seconds East for a distance of 8.77 feet to a point, said point lying on the afore mentioned common line of lots 5 and 6; thence run South 53 Degrees 37 Minutes 47 Seconds East for a distance of 30.91 feet to the POINT OF BEGINNING. Said easement contains 271 square feet or 0.01 acres more or less.

[See following page for Illustration of Easement Area]

EXHIBIT MAP EASEMENT

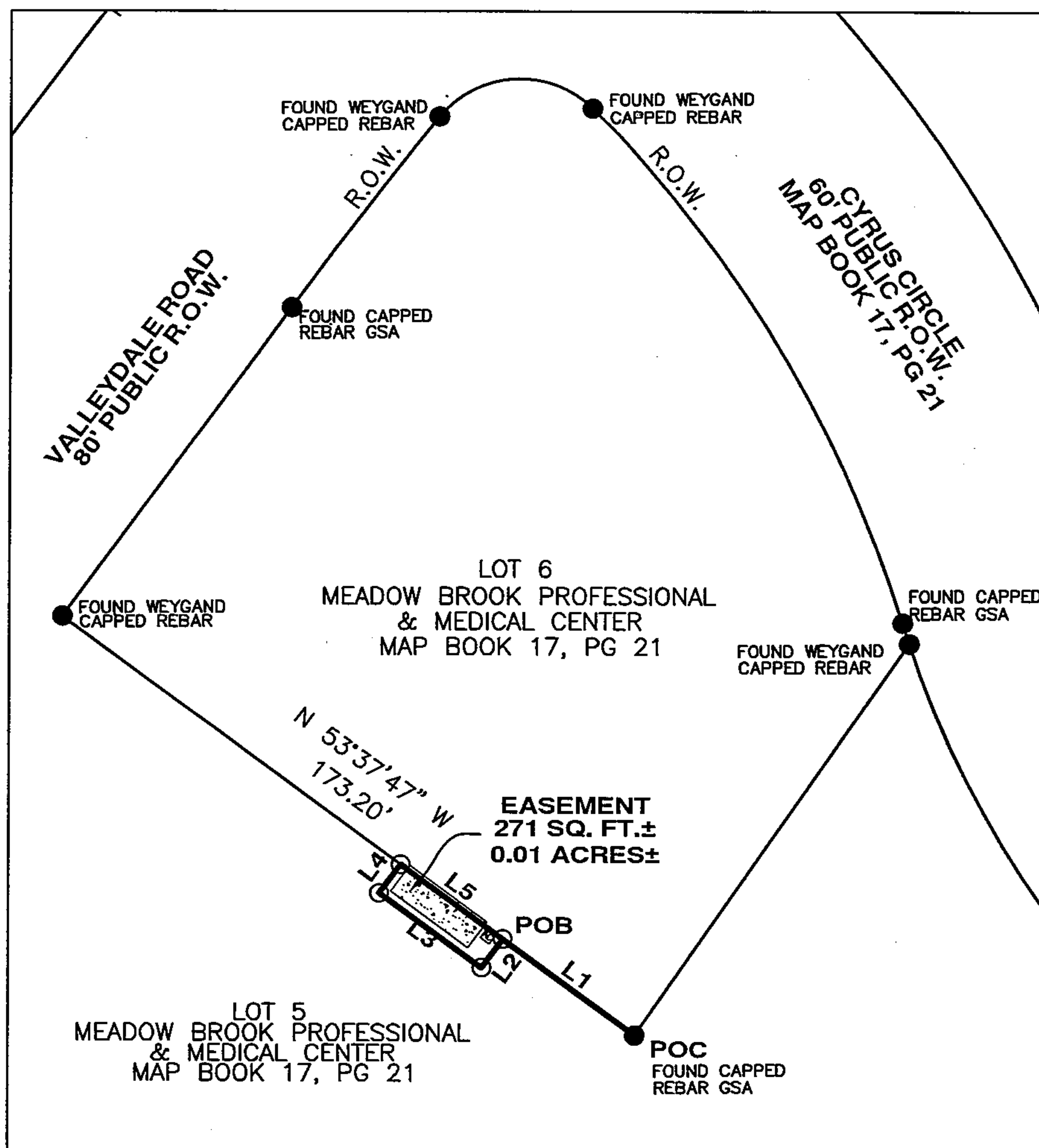
DRAWING: #29939

SE 1/4 OF THE NW 1/4 OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 2 WEST
SHELBY COUNTY, ALABAMA



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



LINE TABLE

LINE	BEARING	DISTANCE
L1	N 53°37'47" W	39.85'
L2	S 36°22'13" W	8.77'
L3	N 53°37'47" W	30.91'
L4	N 36°22'13" E	8.77'
L5	S 53°37'47" E	30.91'



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
02/13/2018 09:57:18 AM
S30.50 CHERRY
20180213000046510


GONZALEZ - STRENGTH & ASSOCIATES, INC.
ENGINEERING, LAND PLANNING, & SURVEYING