

Prepared by, and after recording
return to:
OG Capital, LLC
2120 16th Avenue S., 3rd Floor
Birmingham, Alabama 32801
Attn: Michael P. Krombach, Esq.
Tel: 205-918-0785

ACCESS, INGRESS-EGRESS, AND UTILITY EASEMENT AGREEMENT

THIS ACCESS, INGRESS-EGRESS, AND UTILITY EASEMENT AGREEMENT (this “*Agreement*”) is made and entered into as of this 29th day of June, 2020 by and between **OG INDIANWOOD, LLC**, an Alabama limited liability company (“*Grantor*”), and **WILLIAM R. KINNEBREW, JR.**, an individual (“*Grantee*”). Grantor and Grantee may sometimes be collectively referred to herein as the “Parties” and, individually, as a “Party.”

WITNESSETH:

WHEREAS, Grantor is the owner of certain land and improved real property located in Shelby County, Alabama more particularly described on **Exhibit “A”** attached hereto and by this reference made a part hereof (the “*Grantor Property*”);

WHEREAS, Grantee is the owner of certain vacant, raw real property located in Shelby County, Alabama, generally bordered on the West, South, and Southeast sides by the Grantor Property and more particularly described on **Exhibit “B”** attached hereto and by this reference made a part hereof (the “*Grantee Property*”);

WHEREAS, Grantee intends to use a portion of the Grantor Property for access, ingress-egress, and utilities between the Grantee Property and Old Montgomery Highway, which portion of the Grantor Property is more particularly described on **Exhibit “C”** attached hereto and by this reference made a part hereof (the “*Access Easement*”);

WHEREAS, the improvements on the Grantor Property include a paved asphalt driveway, commonly known as Indianwood Drive, from Old Montgomery Highway throughout the Grantor Property, and the portion the said Indianwood Drive situated within the Access Easement shall be the Access Road (the “*Access Road*”);

WHEREAS, Grantee and Grantor contemplate the future development by of the Grantee Property necessitating the Access Easement;

WHEREAS, the date on which development breaks ground on the Grantee Property shall be the “*Grantee Groundbreaking Date*”;

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a permanent, perpetual, and exclusive access, ingress-egress and utility easement over, under, and across the Access Easement for the purpose of pedestrian and vehicular access, ingress and egress, and utility services between the Grantee Property and Old Montgomery Highway.

2. **Indemnification.** Grantee hereby indemnifies and holds Grantor harmless from and against all loss, cost, damage, claims and liability related to property damage or personal injury, not otherwise caused by Grantor, its agents, employees or representatives, resulting from the entry upon the Grantor Property, the Access Easement, or use of the Access Road by Grantee, its agents, employees, contractors or representatives, or the agents, employees, contractors or representatives of its successors or assigns, or the tenants, guests or invitees coming onto the above described Parcels to visit the Grantee Property.

3. **Maintenance of Roadways.** Prior to the Grantee Groundbreaking Date all maintenance for the Access Road shall be the responsibility of Grantor. Commencing on the Grantee Groundbreaking Date, the Parties shall share equally the maintenance and repair costs of the Access Road; provided, however, that within sixty (60) days following the substantial completion of any development on the Grantee Property, Grantee shall be required to resurface the Access Road with a two inch (2") asphalt topcoat or otherwise cause the Access Road to be repaired, restored, and improved in such a manner that the Access Road is suitable for the increased traffic generated by any planned use of the development on the Grantee Parcel. Maintenance and repair costs shall include the costs of resurfacing, repairing and maintaining the Access Road and restoring to their current status any other improvements, including but not limited to landscaping, signage, utility lines, within Access Easement. Grantor will perform the maintenance and repair as needed, and will invoice Grantee for its pro-rata share within 30 days of the work being completed. If not paid, all money due shall bear interest at the highest rate allowed by law. If Grantee fails to pay the amount due within 30 days of receipt of a written demand for payment, Grantor may file a claim of lien against Grantee's Property to secure payment of the amount due, and foreclose on the claim of lien in the same manner as a mortgage. Any claim of lien filed by Grantor shall at all times be subordinate to any mortgage held by an institutional lender, without the need for any additional instrument or agreement; provided, however, that Grantor agrees to promptly execute any reasonable documentation requested by Grantee to evidence the subordination of Grantor's lien rights to such institutional lender.

4. **Non-Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of either the Grantor Property or the easements created herein to the general public or for any public use or purpose whatsoever, it being the intention of the Parties and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the Parties and their successors and assigns, any rights or remedies under or by reason of this Agreement.

5. **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express or United Parcel Service), sent to the person and address designated below. The Parties expressly agree that notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Grantor and Grantee shall be sent to the person and address set forth below:

If to Grantor: OG Indianwood, LLC
c/o OG Capital, LLC
2120 16th Avenue S., 3rd Floor
Birmingham, AL 35205
Attn: David R. Oakley
Email: david.oakley@og.capital

With copy to: OG Indianwood, LLC
c/o OG Capital, LLC
2120 16th Avenue S., 3rd Floor
Birmingham, AL 35205
Attn: Michael Krombach
Email: michael.krombach@og.capital

If to Grantee: William R. Kinnebrew, Jr.
2116 Old Montgomery Highway
Pelham, AL 35124
Email: billkinnebrew@me.com

5. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. The headings of the articles, sections, paragraphs, subparagraphs, subdivisions, and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and do not limit or otherwise affect any of the terms hereof. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision is ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Whenever the singular or plural number, or the masculine, feminine, or neuter gender is used herein, it legally includes the other. Neither this Agreement nor any provision hereof may be changed, waived, discharged, modified, or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, modification, or termination is sought. This Agreement does not create an association, partnership, joint venture or a principal and agency relationship between the Parties. The provisions of this Agreement shall run with the land and shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, successors, assigns, and the legal representatives of their estates and the easements,

obligations and liabilities granted herein shall be perpetual to the extent permitted by applicable law and shall be a burden upon the Grantor Property and appurtenance to the Grantee Property in accordance with the provisions hereof. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

6. **Exhibits.** The following exhibits are attached hereto and made a part hereof:

<u>Exhibit "A"</u>	Legal Description of the Grantor Property
<u>Exhibit "B"</u>	Legal Description of the Grantee Property
<u>Exhibit "C"</u>	Legal Description of the Access Easement
<u>Exhibit "D"</u>	Diagram showing location of the Access Road

[Signatures appear on the immediately following pages.]

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

OG/*Grantor*

OG INDIANWOOD, LLC

By: 

Name: David R. Oakley

Title: Member

KINNEBREW/*Grantor*

L.S.

WILLIAM R. KINNEBREW, JR.

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that DAVID R. OAKLEY whose name as Member of OG Indianwood, LLC, 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 the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

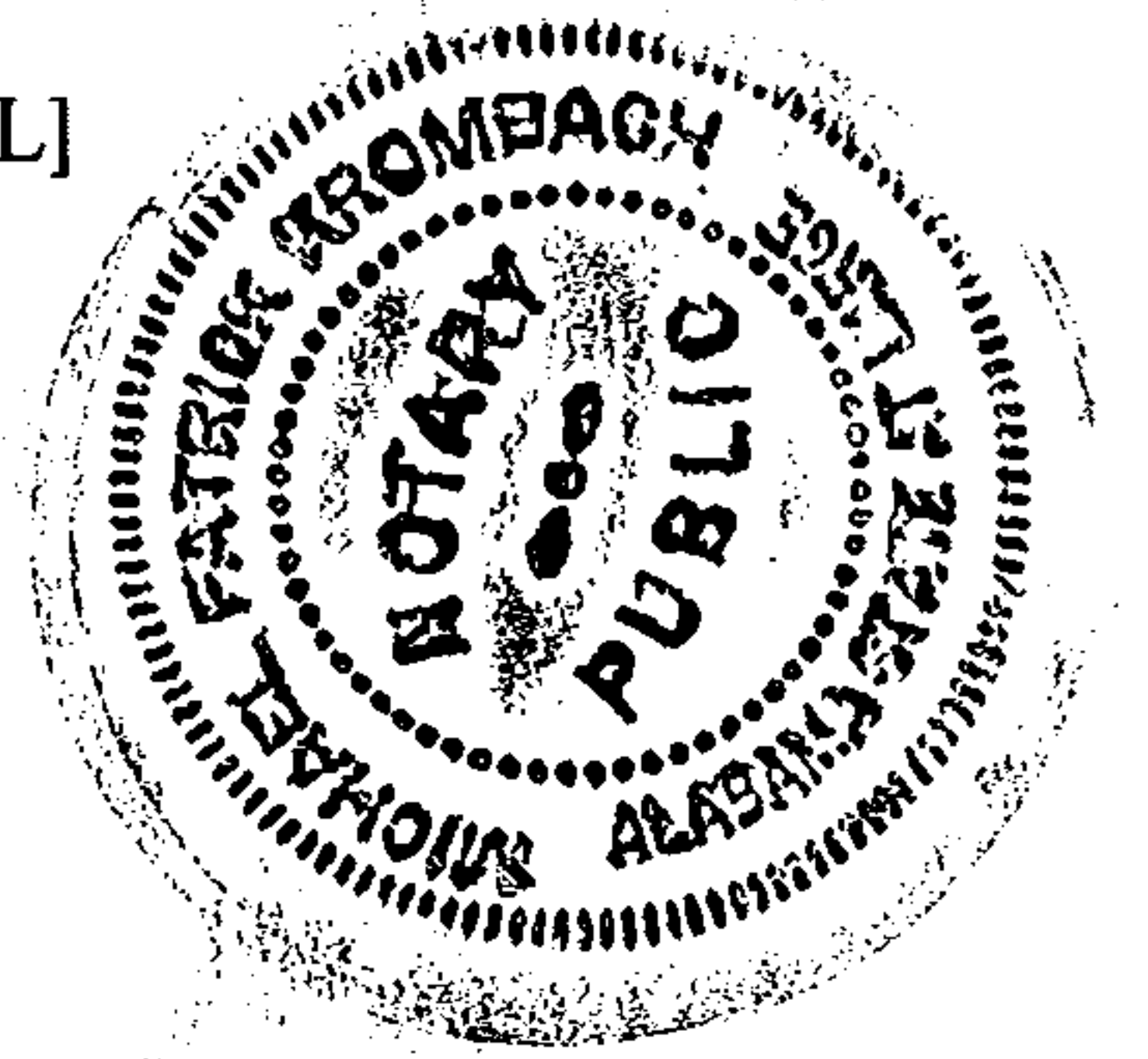
Given under my hand this the 26th day of June, 2020.



Notary Public

My Commission Expires: 5.1.22

[NOTARIAL SEAL]



STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that WILLIAM R. KINNEBREW, JR. whose name 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 the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the _____ day of June, 2020.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

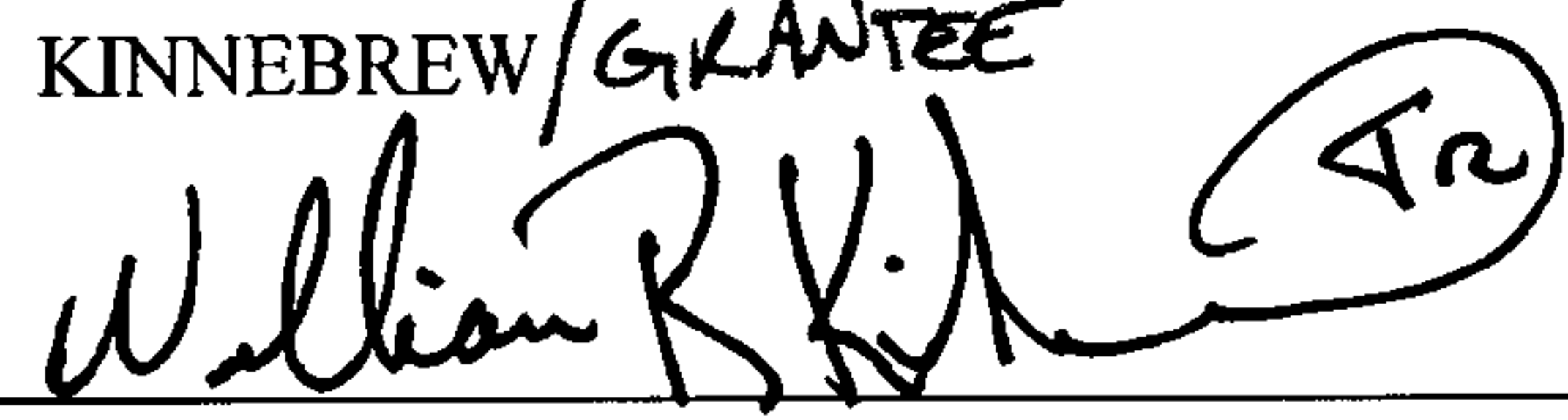
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7/13

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

OG:

OG INDIANWOOD, LLC

By: _____
Name: David R. Oakley
Title: Member

KINNEBREW/GRAVTEE


WILLIAM R. KINNEBREW, JR. L.S.

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that DAVID R. OAKLEY whose name as Member of OG Indianwood, LLC, 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 the conveyance, he/she, 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, 2020.

Notary Public

My Commission Expires: _____


[NOTARIAL SEAL]

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that WILLIAM R. KINNEBREW, JR. whose name 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 the conveyance, he/she, has with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand this the 26th day of June, 2020.



Notary Public

My Commission Expires: 11/1/2021

[NOTARIAL SEAL]

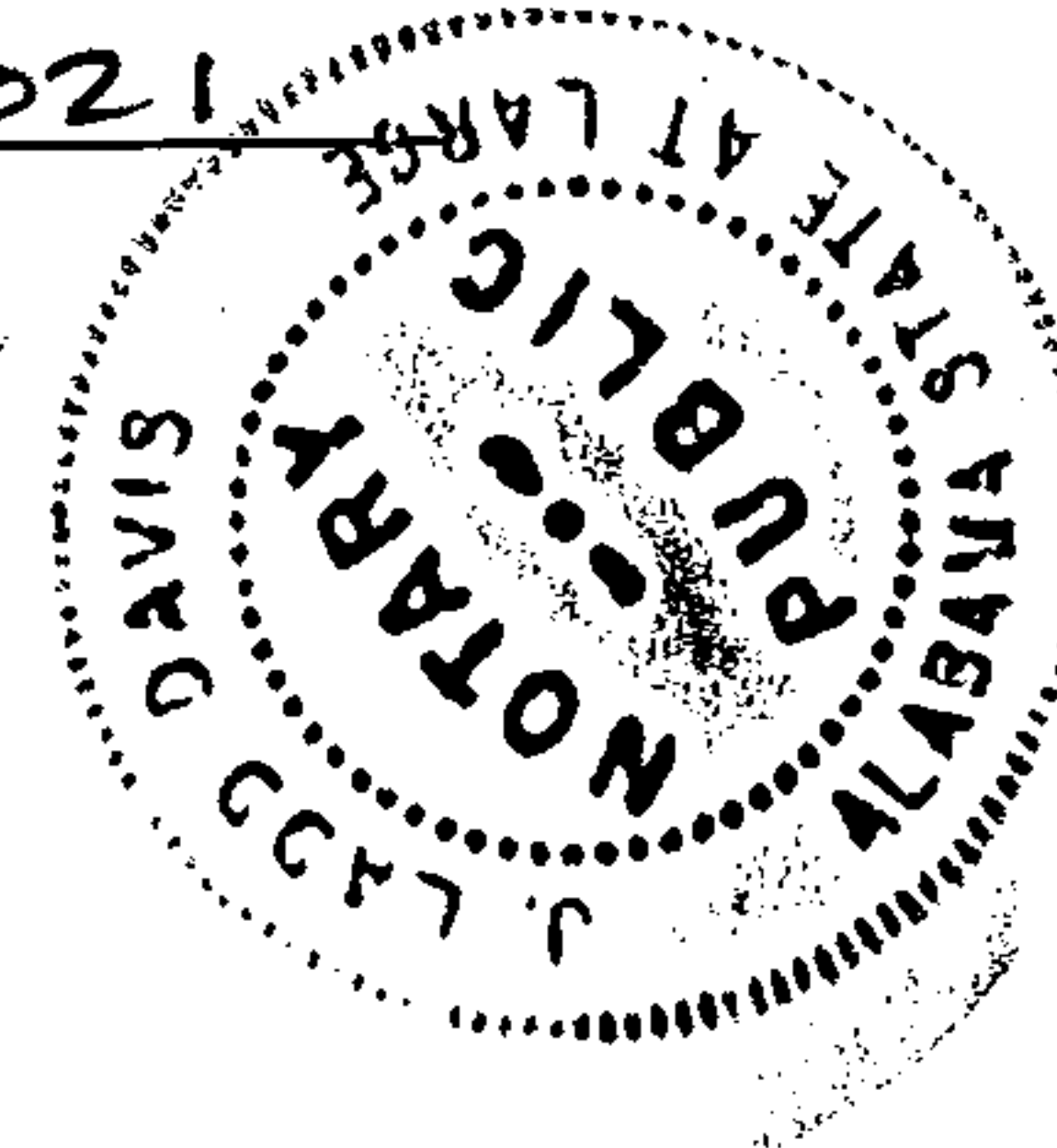


Exhibit "A"

Legal Description of the Grantor Property

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of said Section 36, being a found one inch crimp; thence run North 02 degrees, 12 minutes, 28 seconds East along the West line of said 1/4 - 1/4 for a distance of 300.37 feet to an iron pin set with a SSI cap; thence run North 54 degrees, 04 minutes, 19 seconds East for a distance of 128.77 feet to an iron pin set with a SSI cap; thence run North 63 degrees, 57 minutes, 29 seconds East for a distance of 86.12 feet to an iron pin set with a SSI cap; thence run South 87 degrees, 42 minutes, 57 seconds East for a distance of 106.17 feet to an iron pin set with a SSI cap; thence run South 79 degrees, 51 minutes, 19 seconds East for a distance of 43.61 feet to a found three quarter inch rebar; thence run North 83 degrees, 25 minutes, 54 seconds East for a distance of 30.98 feet to a found three quarter inch rebar; thence run South 71 degrees, 49 minutes, 24 seconds East for a distance of 96.50 feet to an iron pin found with a LDW cap; thence run South 56 degrees, 32 minutes, 35 seconds East for a distance of 71.57 feet to an iron pin set with a SSI cap; thence run South 33 degrees, 36 minutes, 18 seconds East for a distance of 284.37 feet to an iron pin set with a SSI cap; thence run North 62 degrees, 47 minutes, 38 seconds East for a distance of 48.49 feet to a PK nail set; thence run North 29 degrees, 24 minutes, 44 seconds East for a distance of 183.39 feet to an iron pin set with a SSI cap on the Southwesterly right-of-way line of Old Montgomery Highway, also being on a curve to the left having a central angle of 05 degrees, 59 minutes, 34 seconds and a radius of 869.02 feet, with a chord bearing of South 56 degrees, 27 minutes, 15 seconds East, with a chord distance of 90.85 feet; thence run Southeasterly direction along said right-of-way line and along the arc of said curve for a distance of 90.90 feet to a found half inch rebar; thence run South 29 degrees, 25 minutes, 43 seconds West for a distance of 304.00 feet to an iron pin found with a Arrington cap on the South line of said 1/4 - 1/4; thence run North 87 degrees, 20 minutes, 57 seconds West along the South line of said 1/4 - 1/4 for a distance of 742.13 feet to the point of beginning.

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Exhibit "B"

Legal Description of the Grantee Property

Exhibit B



- Grantee Property benefitted by Access Easement

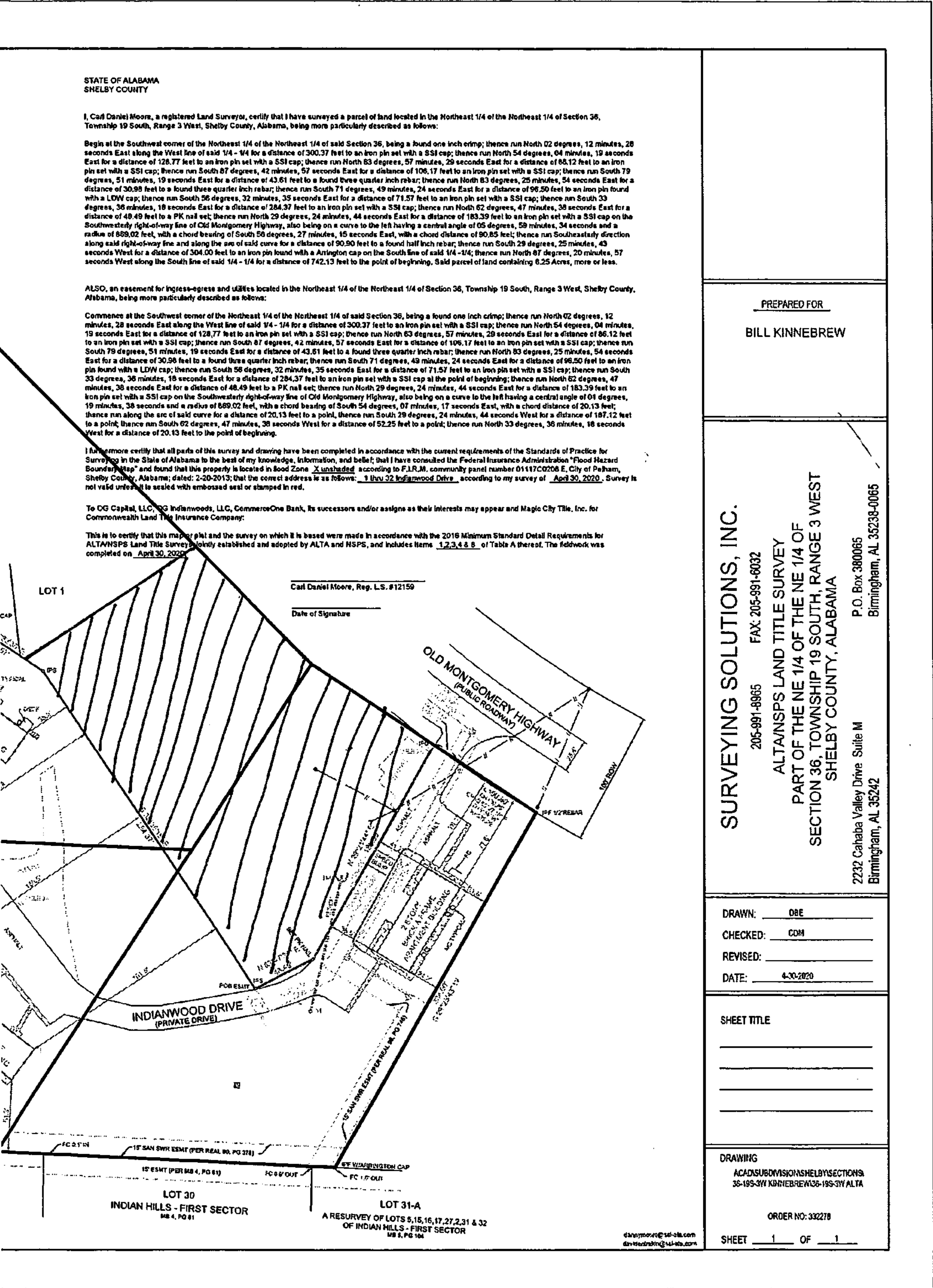


Exhibit "C"

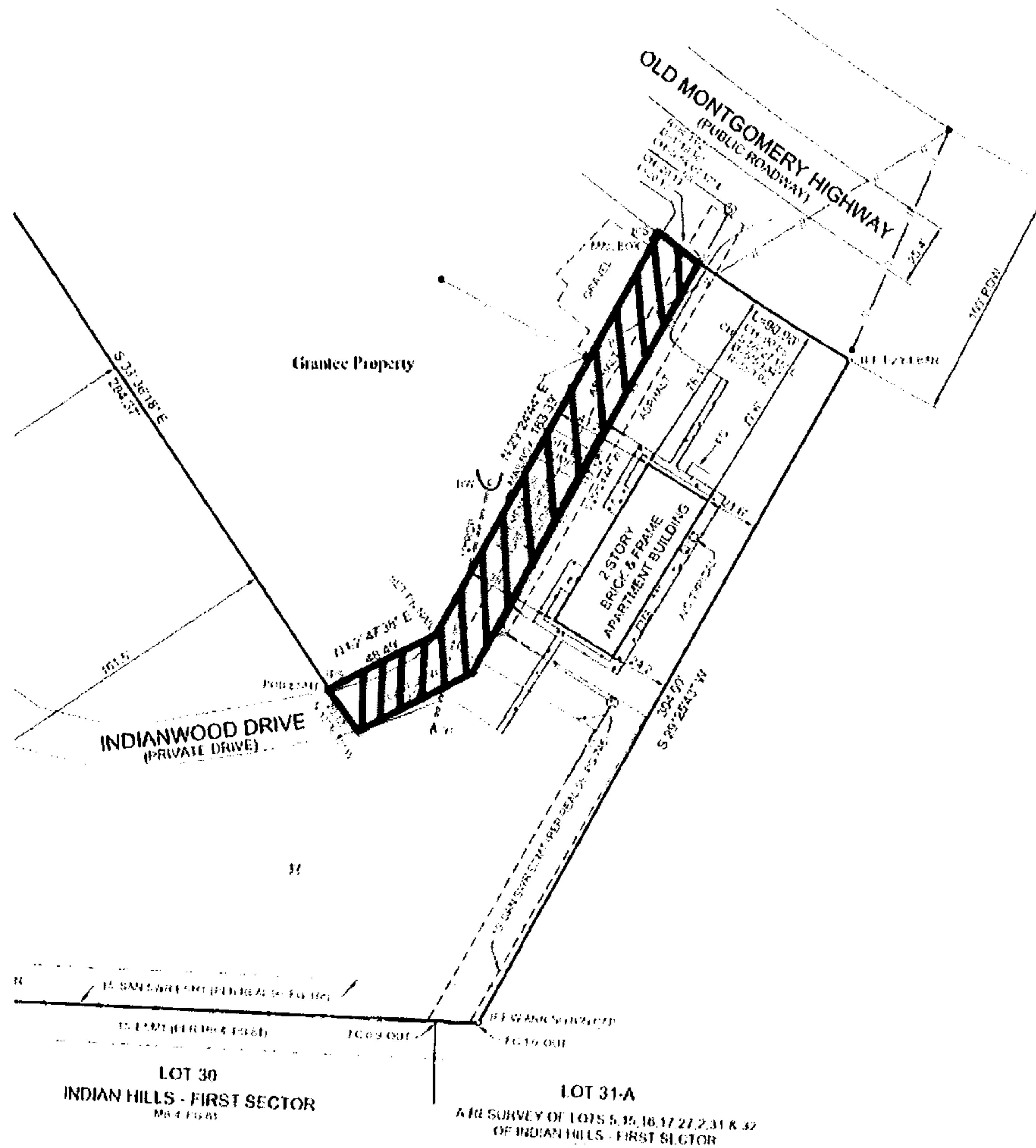
Legal Description of the Access Easement

an easement for ingress-egress and utilities located in the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of said Section 36, being a found one inch crimp; thence run North 02 degrees, 12 minutes, 28 seconds East along the West line of said 1/4 - 1/4 for a distance of 300.37 feet to an iron pin set with a SSI cap; thence run North 54 degrees, 04 minutes, 19 seconds East for a distance of 128.77 feet to an iron pin set with a SSI cap; thence run North 63 degrees, 57 minutes, 29 seconds East for a distance of 86.12 feet to an iron pin set with a SSI cap; thence run South 87 degrees, 42 minutes, 57 seconds East for a distance of 106.17 feet to an iron pin set with a SSI cap; thence run South 79 degrees, 51 minutes, 19 seconds East for a distance of 43.61 feet to a found three quarter inch rebar; thence run North 83 degrees, 25 minutes, 54 seconds East for a distance of 30.98 feet to a found three quarter inch rebar; thence run South 71 degrees, 49 minutes, 24 seconds East for a distance of 96.50 feet to an iron pin found with a LDW cap; thence run South 56 degrees, 32 minutes, 35 seconds East for a distance of 71.57 feet to an iron pin set with a SSI cap; thence run South 33 degrees, 36 minutes, 18 seconds East for a distance of 284.37 feet to an iron pin set with a SSI cap at the point of beginning; thence run North 62 degrees, 47 minutes, 38 seconds East for a distance of 48.49 feet to a PK nail set; thence run North 29 degrees, 24 minutes, 44 seconds East for a distance of 183.39 feet to an iron pin set with a SSI cap on the Southwesterly right-of-way line of Old Montgomery Highway, also being on a curve to the left having a central angle of 01 degrees, 19 minutes, 38 seconds and a radius of 869.02 feet, with a chord bearing of South 54 degrees, 07 minutes, 17 seconds East, with a chord distance of 20.13 feet; thence run along the arc of said curve for a distance of 20.13 feet to a point, thence run South 29 degrees, 24 minutes, 44 seconds West for a distance of 187.12 feet to a point; thence run South 62 degrees, 47 minutes, 38 seconds West for a distance of 52.25 feet to a point; thence run North 33 degrees, 36 minutes, 18 seconds West for a distance of 20.13 feet to the point of beginning

Exhibit "D"

Diagram showing location of the Access Road



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
06/30/2020 12:57:00 PM
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Allen S. Bayl