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Shelby Cnty Judge of Probate, AL  
06/22/2005 10:22:52AM FILED/CERT

**RETURN TO:** *Prepared By*  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road  
Atlanta, GA 30326  
Attn: Frederick C. C. Boyd, III, Esq.

Unit:  
(Unit No. 548)  
101 Inverness Corners  
Birmingham, AL 35242

### LESSOR CONSENT

This Lessor Consent (hereinafter "Consent"), effective as of August 6, 2004, is entered into by and among BANK OF AMERICA, N.A. (hereinafter "Lender"), METROPOLITAN LIFE INSURANCE COMPANY (hereinafter "Lessor"), VALENTI SOUTHEAST REALTY, LLC (hereinafter "Lessee") and BRINKER ALABAMA, INC. which was successor to Sunstate Ventures, Inc. which was formerly known as Sunstate Alabama Restaurant Corporation (hereinafter "Original Lessee").

Whereas, Lessor's predecessor and Original Lessee's predecessors entered into that certain Lease Agreement dated August 6, 1990 (hereinafter the "Lease") pertaining to the property commonly known as 101 Inverness Corners, Birmingham, Alabama and legally described on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Premises").

Whereas, Original Lessee intends to assign its rights, title and interest in the Lease to Lessee and Lessee intends to obtain financing from Lender and will collaterally assign its rights in the Lease to Lender.

Now, therefore, the parties hereby agree as follows:

1. Lessor hereby consents to the Assignment of the Lease by Original Lessee to Lessee.
2. Lessor consents to Lessee's assignment and encumbrance of Lessee's leasehold interest by a mortgage, deed of trust, deed to secure debt, assignment of lease or other security agreement, and any and all extensions, renewals and amendments thereto (hereinafter the "Security Instrument") in favor of Lender to secure a loan or loans from Lender to Lessee.
3. Lessor and Lessee affirm that as of the date of this Consent, the Lease is in full force and effect and no default or ground for termination thereof exists.
4. (a) Without the further consent of Lessor, Lender may acquire or obtain an assignment of the interest of Lessee under the Lease by (i) judicial or non-judicial foreclosure or (ii) assignment in lieu of foreclosure.  
(b) Any subsequent assignment of the Lease, after any assignment to or acquisition by Lender as provided for in 4(a) above, to Lessee's franchisor Brinker International, Inc. ("Franchisor") may also be made without any further consent from Lessor.  
(c) Any subsequent assignment of the Lease after any assignment to or acquisition by Lender as provided for in 4(a) above to an entity other than one described in 4(b) above may be made only with the written consent of Lessor in compliance with the Lease, which consent will not be unreasonably withheld nor unreasonably delayed; provided, however, that such assignment must be made to an entity or person that would operate the Premises in compliance with the Permitted Uses and consistent with any use restrictions contained in the Lease.  
(d) Upon an assignment of the Lease by Lender as provided for in 4(b) or (c) above, Lender shall have no liability under the Lease for obligations arising after said assignment. Lessor shall retain the right to terminate the Lease within the terms thereof and hereunder if rent and other sums due under the Lease are not paid by either Lessee, Lender, or the permitted successors-in-interest of either of them.

**Return Recorded Documents To:**  
LandAmerica National Commercial Services  
450 S. Orange Avenue, Suite 170  
Orlando, FL 32801  
Attention: **Christi Pawlak** *4-356*

Lessor Consent - Inverness - final



5. Lessor may not terminate the Lease because of any default or breach thereunder on the part of Lessee without giving the Lender written notice of Lessor's intention to terminate the Lease at least twenty (20) days in advance of the proposed effective date of such termination and may not thereafter terminate the Lease if the Lender, or a receiver appointed pursuant to the Security Instrument, within twenty (20) days after service of written notice on Lender by Lessor of Lessor's intention to so terminate:

(a) Cures the default or breach if it can be cured by the payment or expenditure of money provided to be paid under the terms of the Lease, or if the default or breach is not so curable, commences, or causes a receiver appointed pursuant to the Security Instrument to commence, and thereafter to diligently pursue to completion, proceedings to foreclose on the leasehold covered by the Security Instrument; and

(b) Keeps and performs all of the covenants and conditions of the Lease requiring the payment or expenditure of money by Lessee until such time as the leasehold is sold upon foreclosure pursuant to the Security Instrument, or is released or reconveyed thereunder, or is transferred upon judicial foreclosure or by an assignment in lieu of foreclosure.

6. Lessee shall keep in force a policy or policies of fire and extended coverage insurance which shall include the amount of the full replacement value of the leasehold improvements made to the Premises by Lessee, and such insurance shall be payable to Lessor, and then to Lessee as set forth below. In the event of damage to or destruction of the leasehold improvements (a) if neither Lessor nor Lessee elects to terminate the Lease, the proceeds of the insurance shall be used for repair or rebuilding of the improvements, including Lessee's leasehold improvements, (b) if Lessor or Lessee elects to terminate the Lease, the proceeds of the insurance shall be paid first to Lessor to the extent of the amount due Lessor, then to Lender and, third to Lessee. Lessor, Lender and Lessee shall be named loss payees in the order of priority as set forth above in all fire and other hazard insurance policies covering the Premises carried by Lessee. Any cost or expense in connection therewith shall be paid solely by Lessee.

7. Upon the early termination of the Lease for any reason (including, without limitation, any termination of the Lease by Lessee or its trustee pursuant to Section 365(h) of the Federal Bankruptcy Code, 11 U.S.C. Section 101, et seq., as amended) except for the failure of Lender to exercise its rights to cure the defaults of lessee as provided herein, at Lender's request, Lessor shall enter into a new lease with Lender on the same terms and conditions set forth in the Lease.

8. The loan or loans from Lender to Lessee shall be secured by, among other things, all of Lessee's now owned or hereafter acquired machinery, equipment, furniture, fixtures and inventory (as such terms are defined in the Uniform Commercial Code) together with all accessions to, products of and proceeds thereof (collectively the "Collateral"). Any landlord's lien, right of distraint or levy, security interest or other interest which the Lessor may now or hereafter acquire in any of the Collateral, whether by virtue of a lease, landlord-tenant relationship, statute or otherwise shall be and is hereby subordinated in all respects to any security interests in the Collateral now or hereafter held by Lender.

9. All notices, requests, demands, and other communications under this agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

LESSOR: Metropolitan Life Insurance Company  
c/o Taylor & Mathis of Alabama, Inc.  
P.O. Box 43248  
Birmingham, AL 35243

LESSEE: Valenti Southeast Realty, L.L.C.  
3450 Buschwood Park Drive  
Suite 195



Tampa, Florida 33618  
Attention: Mr. Steven M. Nesbitt  
Telecopy No.: 813/932-0854

LENDER: Bank of America, N.A.  
GA1-006-13-20  
600 Peachtree Street, NE  
Atlanta, Georgia 30308-2214  
Attention: Chief Credit Officer, Franchise Financial Services  
Telecopy No.: 404/607-4075

With a copy to: Morris, Manning & Martin, L.L.P.  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, Georgia 30326  
Attention: Frederick C. C. Boyd, III, Esq.  
Telecopy No.: 404-365-9532

ORIGINAL LESSEE: Jeffrey Hoban, Esq.  
Brinker Alabama, Inc.  
6820 LBJ Freeway  
Dallas, Texas 75240  
Telecopy No.: 972-770-9465

Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

10. The terms hereof shall inure to the benefit of and be binding upon the parties, their successors and assigns.

11. To the extent that this document gives rights to Lender, such rights shall accrue only to the benefit of the Lender and its successors and assigns and only for so long as the Note and/or Security Instrument of the Lender is valid and in existence.

12. In the event that any of the provisions, terms, and conditions hereof are ambiguous or inconsistent, or conflict with any of the terms and provisions of the Lease, any amendments thereto, or any other documents executed in connection therewith, the provisions, terms, and conditions of this Consent shall control.

13. The terms of this Consent are severable. If any of the terms and conditions hereof shall, for any reason, be deemed void, voidable, or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect as though such void, voidable, or unenforceable provisions were not included.

14. The undersigned hereby certify that they are authorized to sign this Agreement and that all actions necessary to authorize the execution to this Agreement by the undersigned have been taken, including if necessary, appropriate resolutions or approvals by the board of directors, shareholders, partners, or members, as required.

15. This consent may only be modified by a written document signed by all of the parties hereto.

LESSOR:

METROPOLITAN LIFE INSURANCE COMPANY

By: Victor W. Turner  
Name: VICTOR W. TURNER  
Title: VICE PRESIDENT

KA

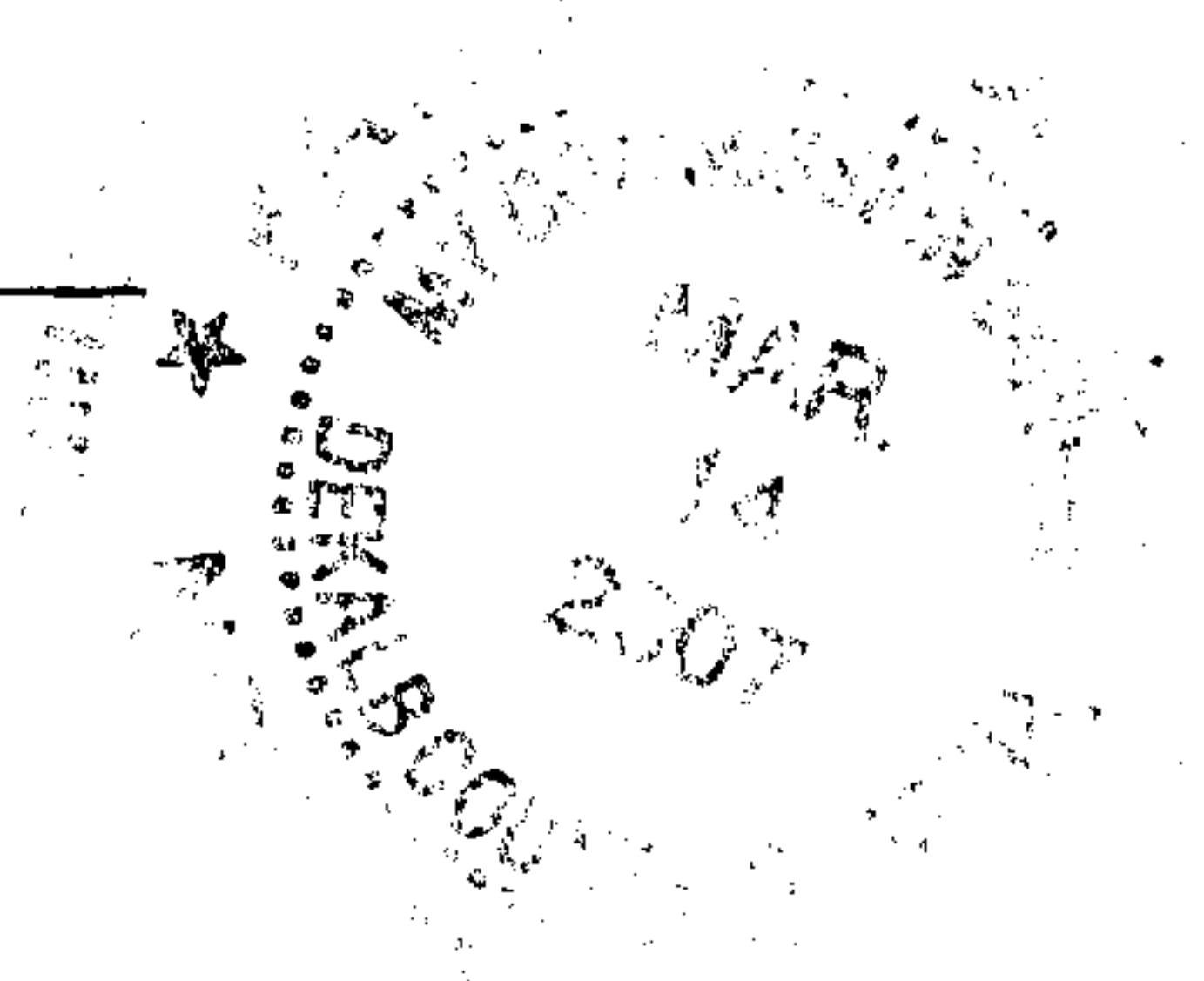
STATE OF Georgia )  
COUNTY OF Fulton ) ss.

On this 6<sup>th</sup> day of August, 2004, before me personally appeared Victor W. Turner known to be the VICE PRESIDENT of Metropolitan Life Insurance Company the corporation/partnership/limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation/partnership/limited liability company, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature Lathleen O Brady  
Notary Public in and for said County and State

My Commission Expires: 3-14-07



(Signatures continued on following page)





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**LESSEE:**

VALENTI SOUTHEAST REALTY, LLC

By: \_\_\_\_\_

Name: Steven M. Nesbitt  
Title: Chief Financial Officer

STATE OF ~~ILLINOIS~~ FLORIDA )  
 ) ss.  
COUNTY OF ~~CHAMPAIGN~~ HUSBURGH

On this \_\_\_\_ day of August, 2004, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steven M. Nesbitt, the Chief Financial Officer of VALENTI SOUTHEAST REALTY, LLC, a Florida limited liability company, and thereupon he acknowledged under oath to my satisfaction that he is the person who executed the within instrument, that he was authorized to execute the within instrument on behalf of said limited liability company and that he executed said instrument as the voluntary act of the said limited liability company.

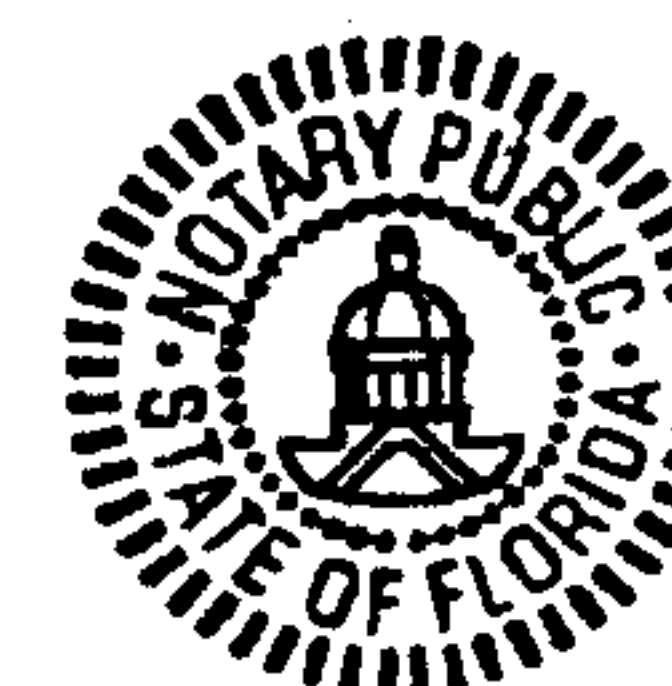
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature \_\_\_\_\_

Notary Public in and for said County and State

My Commission Expires: \_\_\_\_\_

Supt. 5, 2004



Shandi L. Lancaster  
Commission # CC 965449  
Expires Sep. 5, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.


(Signatures continued on following page)



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**LENDER:**


BANK OF AMERICA, N.A.

By:   
Name: John M. Huss  
Title: Vice President

STATE OF Georgia )  
 ) ss.  
COUNTY OF DEKALB )

On this 4th day of August, 2004, before me personally appeared John M. Huss to me known to be a Vice President of Bank of America, N.A., the national banking association that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature   
Notary Public in and for said County and State  
Notary Public, DeKalb County, Georgia  
My Commission Expires: My Commission Expires July 11, 2007

**ORIGINAL LESSEE:**

BRINKER ALABAMA, INC.

By: \_\_\_\_\_

Name: Jay L. Tobin

Title: Vice President and Assistant Secretary

STATE OF TEXAS

)

) ss.

COUNTY OF DALLAS

)

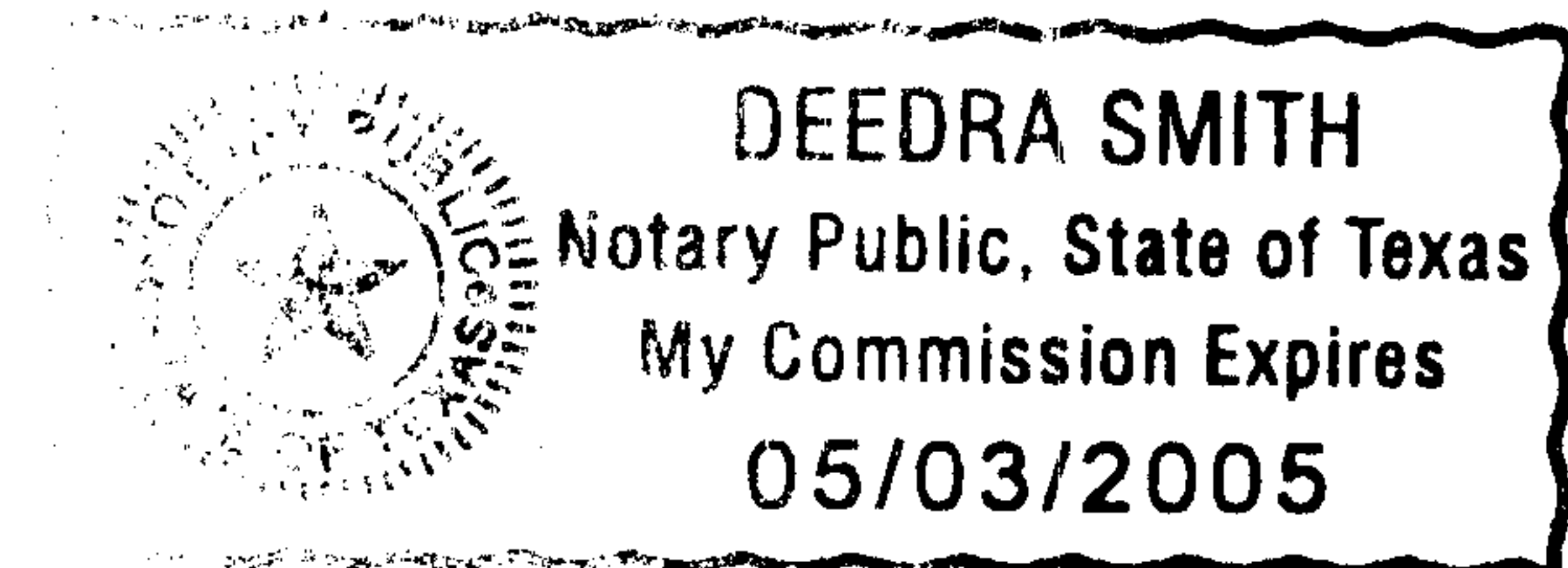
On this 4<sup>th</sup> day of August, 2004, before me personally appeared Jay L. Tobin to me known to be the Vice President and Assistant Secretary of Brinker Alabama, Inc., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature \_\_\_\_\_

Notary Public in and for said County and State

My Commission Expires: \_\_\_\_\_



(Signatures continued on following page)





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Exhibit A  
04-000356

Part of the Southeast quarter of the Southeast quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of said Southeast quarter of Southeast quarter and run North along the East line of same 1086.16 feet to a point on a curve on the Southwesterly right of way of U.S. Highway No. 280 said curve having a radius of 3474.05 feet and a central angle of  $5^{\circ} 31' 42''$ ; thence left  $66^{\circ} 13' 41''$  to the tangent of said point on curve and run Northwesterly along said right of way and arc of said curve 335.20 feet to the point of tangent; thence continue tangent of right of way in a Northwesterly direction 455.55 feet to the point of beginning of herein described Out Parcel A; thence left  $90^{\circ} 00'$  and run Southwesterly 226.00 feet; thence right  $45^{\circ} 00'$  and run Southwesterly 21.21 feet; thence right  $45^{\circ} 00'$  and run Northwesterly 227.27 feet to a point on curve on the Southeasterly right of way of Shelby County Highway No. 17 (Valleydale Road) said curve having a radius of 1487.42 feet and a central angle of  $1^{\circ} 25' 21''$ ; thence right  $91^{\circ} 22' 26''$  to the tangent of said point on curve and run Northeasterly along said right of way and arc of said curve 36.93 feet to the point of tangent; thence continue Northeasterly along said tangent of right of way 200.21 feet to a point on the Southwesterly right of way of said U.S. Highway No. 280; thence right  $86^{\circ} 52' 20''$  and run Southeasterly along said right of way 69.95 feet to an angle point of said right of way; thence right  $3^{\circ} 10' 15''$  and continue Southeasterly along said right of way 172.15 feet to the point of beginning.