


Loan No. 93-0903133

STATE OF ALABAMA

COUNTY OF SHELBY

This instrument was prepared by:

Brigitte Gawenda Kimichik, Esq.
Andrews Kurth LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201


20050901000453330 1/14 \$50.00
Shelby Cnty Judge of Probate, AL
09/01/2005 03:20:18PM FILED/CERT

Recording requested by
and when recorded return to:

WELLS FARGO BANK, N.A.
Commercial Mortgage Origination
5938 Priestly Drive, Suite 200
Carlsbad, California 92008

Attention: CMO Loan Admin.
Loan No.: 93-0903133
Unit No.: 22749
MERS MIN #: 8000101-0000001633-6

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT**

Dated as of August 16th, 2005

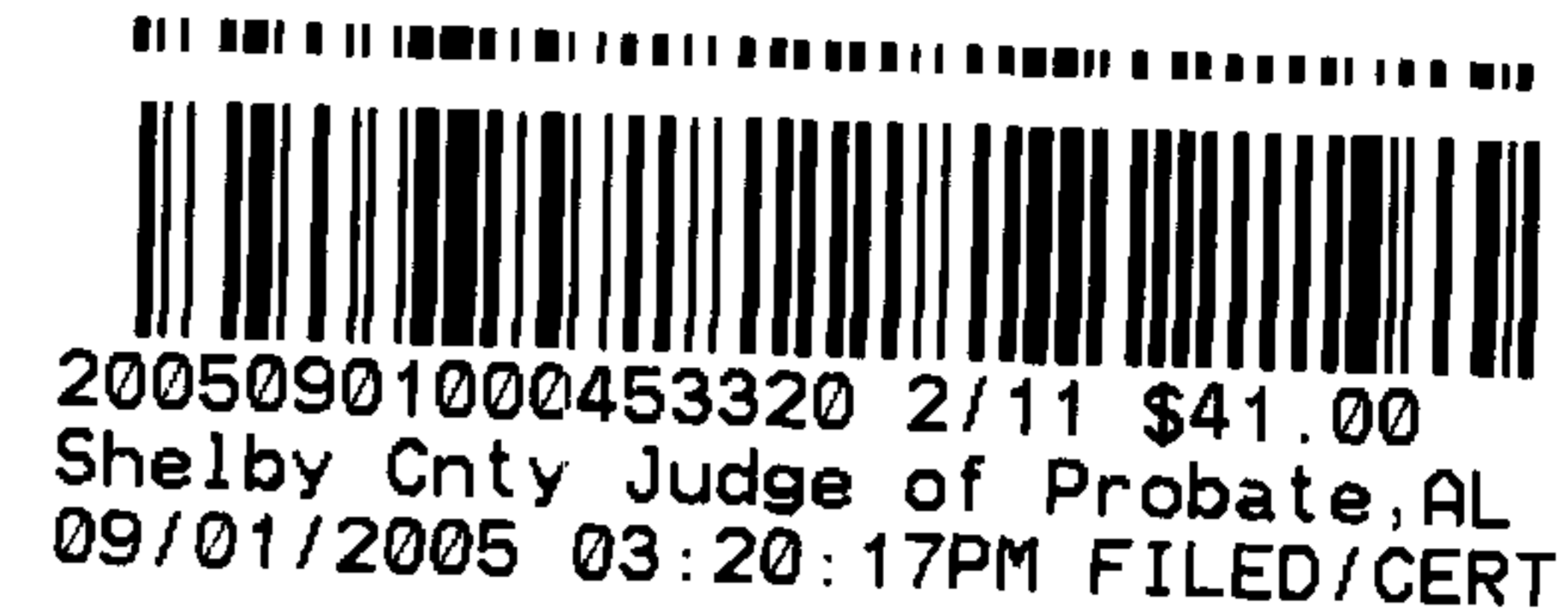
from
LDVF1H TACO LLC, a Delaware limited liability company,
as Lessor
to
TACALA, LLC, a Delaware limited liability company,
as Lessee

SUBORDINATION AGREEMENT;
ACKNOWLEDGEMENT OF LEASE ASSIGNMENT,
ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT —
ALABAMA/UNIT NO. 22749
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ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this "Addendum"), is made and entered into as of August 16th, 2005 by and between LDVF1H TACO LLC, a Delaware limited liability company ("Landlord"), and TACALA, LLC, a Delaware limited liability company ("Tenant").

WHEREAS, Landlord and Tenant entered into a Master Land and Building Lease dated August 16th, 2005 (the "Lease") pertaining to the real property and improvements thereon, located at the addresses more particularly described on Exhibit A attached hereto (the properties located in Alabama herein collectively called "AL Properties," the non Alabama properties herein collectively called "Non AL Properties," and the AL Properties and Non AL Properties herein collectively called, the "Properties", and individually herein called, a "Property") allowing for operation of Taco Bell restaurants at each such locations; and

WHEREAS, Landlord and Tenant desire to incorporate the following terms into the body of the Lease;

NOW, THEREFORE, in consideration of the covenants herein and therein, the parties hereto agree as follows:

ADDENDUM TO LEASE
ALABAMA/UNIT NO. 22749
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RECITALS

- A. Pursuant to the terms and provisions of that certain Master Land and Building Lease dated the date hereof ("Lease"), Owner, as "Lessor", granted to Lessee a leasehold estate in and to certain properties, including that certain property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on such property, are defined collectively herein as the "Property").
- B. Owner has executed, or proposes to execute, certain mortgages, deeds of trust, and/or deeds to secure debt, and related absolute assignments of leases and rents (collectively, "Security Instrument") securing, among other things, a loan ("Loan") in the total amount of \$7,150,000.00, evidenced by that certain Secured Promissory Note of even date herewith, in the principal amount of Seven Million One Hundred Fifty Thousand and No/100 Dollars (\$7,150,000.00), executed by Owner to Lender (the "Note"), which Note is payable with interest and upon the terms and conditions described therein. The Security Instrument is to be recorded concurrently herewith.
- C. As a condition to making the Loan secured by the Security Instrument, Lender requires that the Security Instrument be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Security Instrument and the Lender's rights thereunder, in each case, in accordance with the terms and provisions of this Agreement.
- E. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Owner and Lessee hereby agree that:
- 1.1 **Prior Lien.** The Security Instrument securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
- 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and

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- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Security Instrument and the Lender's rights thereunder and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Security Instrument or any loan documents with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;
- 1.5 **Subordination.** Lessee intentionally and unconditionally subordinates all of Lessee's right, title and interest in and to the Property and under the Lease to the lien of the Security Instrument and the Lender's rights thereunder, in accordance with the terms and provisions of this Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT.** Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.
3. **ESTOPPEL.** Lessee acknowledges and represents that:
- 3.1 **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;

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- 3.2 **No Default.** To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
- 3.3 **Entire Agreement.** The Lease, together with the Purchase and Sale Agreement (herein so called) of even date herewith by and among, Lessee, Lessor and LDVF1F Taco LLC, constitutes the entire agreement between Lessor and Lessee with respect to the Property, and Lessee claims no rights with respect to the Property other than as set forth in the Lease or such Purchase and Sale Agreement;
- 3.4 **No Right of First Refusal or Option to Purchase:** The Lease does not grant Lessee any right of first refusal, or option to purchase, with respect to all or any portion of the Property; and
- 3.5 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: None.
4. **ADDITIONAL AGREEMENTS.** Lessee and Lessor covenant and agree that, during all such times as Lender is the beneficiary under the Security Instrument:
- 4.1 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within five (5) days with respect to a monetary default and within fifteen (15) days with respect to a non-monetary default from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if a default with respect to a non-monetary default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence and effects final cure within sixty (60) days thereafter.
- 4.2 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Security Instrument, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be

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required to determine whether Lessor is in default under the Loan and/or the Security Instrument. Lessor agrees that all such sums paid to Lender will be fully credited to Lessee's obligations under the Lease.

4.3 **Certain Actions Not Binding on Lender.** Lender shall not be bound by any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent other than a termination based on failure of Lessor and/or Lender to cure a default under the Lease as set forth herein.

5. **ATTORNMEN****T.** In the event of a foreclosure under the Security Instrument, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Security Instrument), upon the receipt by Lessee of written notice of such foreclosure, as follows:

5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease.

5.2 **Continuation of Performance.** Lessee shall be bound to Lender, and Lender shall be bound to Lessee, in accordance with all of the provisions of the Lease for the balance of the term thereof including all extension options; provided that the Lease shall be deemed not to include any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent other than a termination based on failure of Lessor and/or Lender to cure a default under the Lease as set forth herein; and Lessee hereby attorns to Lender as its landlord, and Lender hereby accepts such attornment, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee.

5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease with respect to the period preceding the effectiveness of the attornment provided for herein, nor for the return of any sums which Lessee may have paid to Lessor under the Lease (a) as and for security deposits, rentals paid more than one (1) month before the time when they became due under the Lease, or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral

SUBORDINATION AGREEMENT;
ACKNOWLEDGEMENT OF LEASE ASSIGNMENT,
ATTORNMEN

therefor); and, for purposes of determining the rentals due under the Lease, any amount paid in respect of rentals paid more than one (1) month before the time such amount became due under the Lease and not delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral therefor) shall be treated as if they had not been paid; or (b) any payment made by Lessee to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent. Notwithstanding the foregoing, the interest of Lender or any other party who succeeds to the interest of Lessor in and to the Property by foreclosure, deed in lieu of foreclosure or otherwise (a "Successor Landlord"), shall at all times be and remain subject to any right, remedy, offset or defense available to Lessee under the Lease with respect to any default in the Lessor's obligations under the Lease occurring prior to the date upon which such Successor Landlord acquired its interest in the Property and with respect to which Lender was properly notified pursuant to Section 4.1 hereof, but failed to cure.

5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.

6. **NON-DISTURBANCE.** In the event of a foreclosure under the Security Instrument, so long as there shall then exist no "Event of Default" on the part of Lessee under (and as defined in) the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect in accordance with the terms thereof except as modified or limited by this Agreement (including, without limitation, the provisions of Sections 4.3 and 5.2 hereof), and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified or limited by this Agreement.

7. **MISCELLANEOUS.**

7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and

7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after

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deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

“Owner”:

LDVF1H TACO LLC
c/o Drawbridge Long Dated Value GP LLC
1251 Avenue of the Americas, 16th Floor
New York, New York 10020
Attention: John C. King, Treasurer/CFO

with a copy to:

Wilensky & Jones, LLP
Attorneys at Law
3109 Carlisle St., Suite 100
Dallas, Texas 75204
Attention: Richard S. Wilensky, Esq.

“Lessee”:

Tacala, LLC
4268 Cahaba Heights Court
Birmingham, AL 35243
Attention: Jerre O. Pierson, III, CFO

with a copy to:

Burr & Forman LLP
3100 South Trust Tower
420 North 20th Street
Birmingham, Alabama 35202
Attention: Jeffrey T. Baker, Esq.

“Lender”:

Wells Fargo Bank, National Association
5938 Priestly Drive, Suite 200
Carlsbad, California 90071
Attn: Commercial Loan Administration
Loan No.: 93-0903133

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provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

- 7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and
- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 7.6 **Lender's Consent.** If the Lease is being entered into by Owner after the making of the Loan, Lender hereby consents to Owner's entry into the Lease.
- 7.7 **Owner's Consent.** By its execution and delivery of this Agreement, Owner consents to, and authorizes Lessee to comply with, each of the provisions hereof.
- 7.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.
8. **INCORPORATION.** Exhibit A is attached hereto and incorporated herein by this reference.

[Signature Pages to Follow]

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

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

“OWNER”

LDVF1H TACO LLC,
a Delaware limited liability company

By: David Pettijohn
David Pettijohn
Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, the undersigned Notary Public in and for said County, in said State, hereby certify that David Pettijohn, whose name as Vice President of LDVF1H TACO LLC, a Delaware 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 instrument, he, 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 and official seal, this 12th day of August, 2005.

S. J. Smith
NOTARY PUBLIC

My Commission Expires:

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"LENDER"

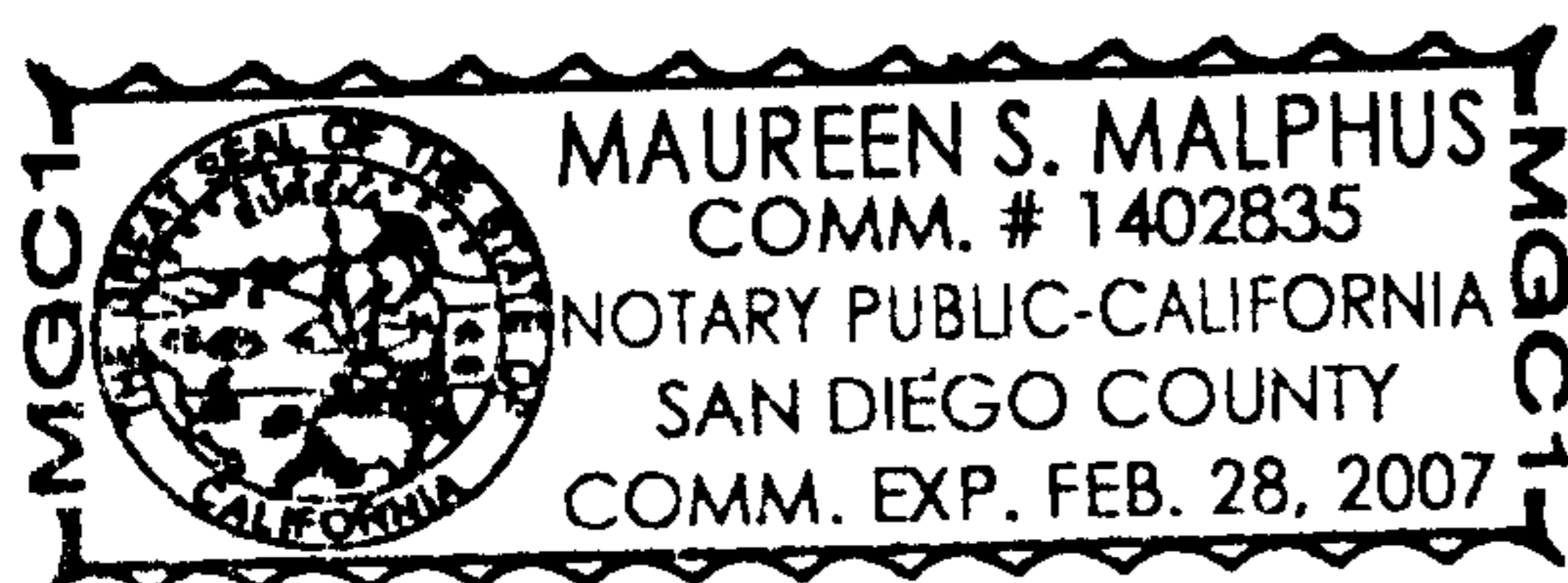
WELLS FARGO BANK, NATIONAL
ASSOCIATION

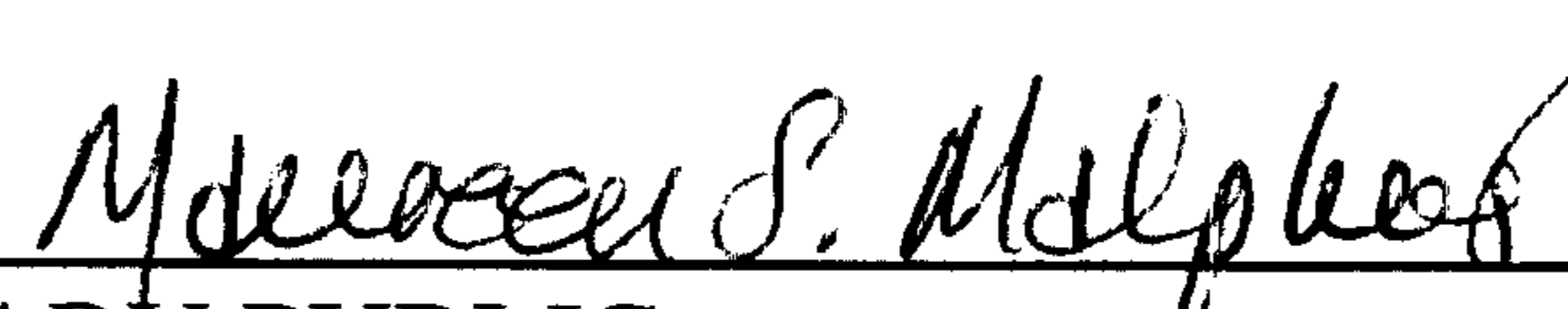
By: 
Name: Brian J. Roach
Title: Managing Director

STATE OF CALIFORNIA §
 §
COUNTY OF SAN DIEGO §

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Brian J. Roach, whose name as Managing Director of WELLS FARGO BANK, NATIONAL ASSOCIATION, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of WELLS FARGO BANK NATIONAL ASSOCIATION.

Given under my hand and official seal, this 12th day of August, 2005.




NOTARY PUBLIC

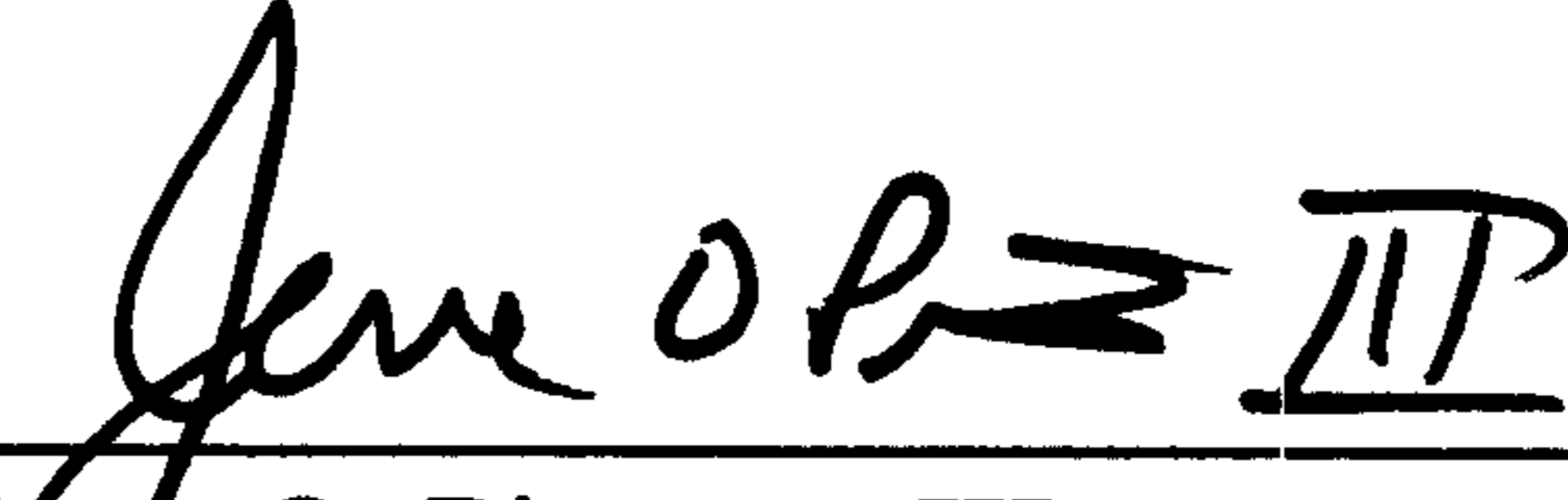
My Commission Expires:

2/28/07

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"LESSEE"

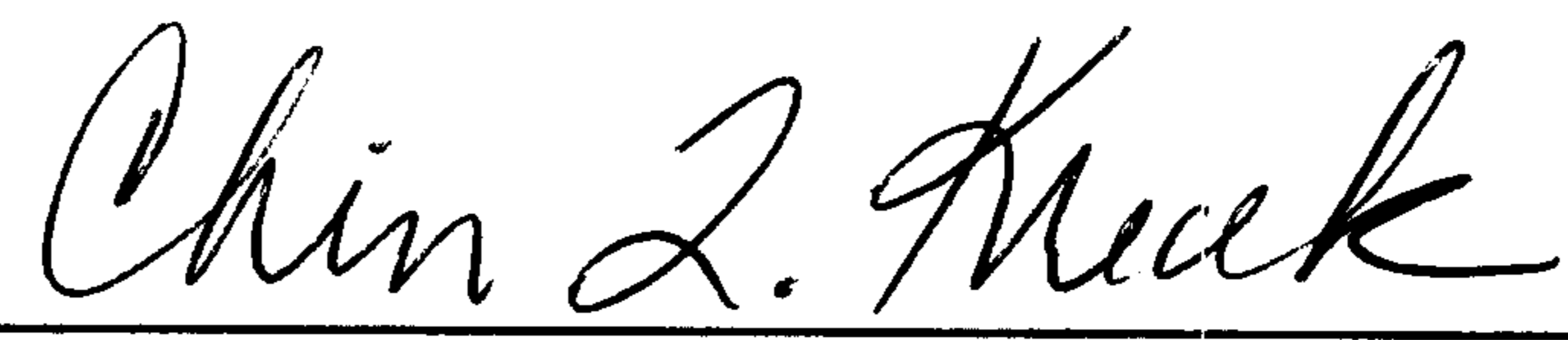
TACALA, LLC,
a Delaware limited liability company

By: 
Jerre O. Pierson, III
Chief Financial Officer

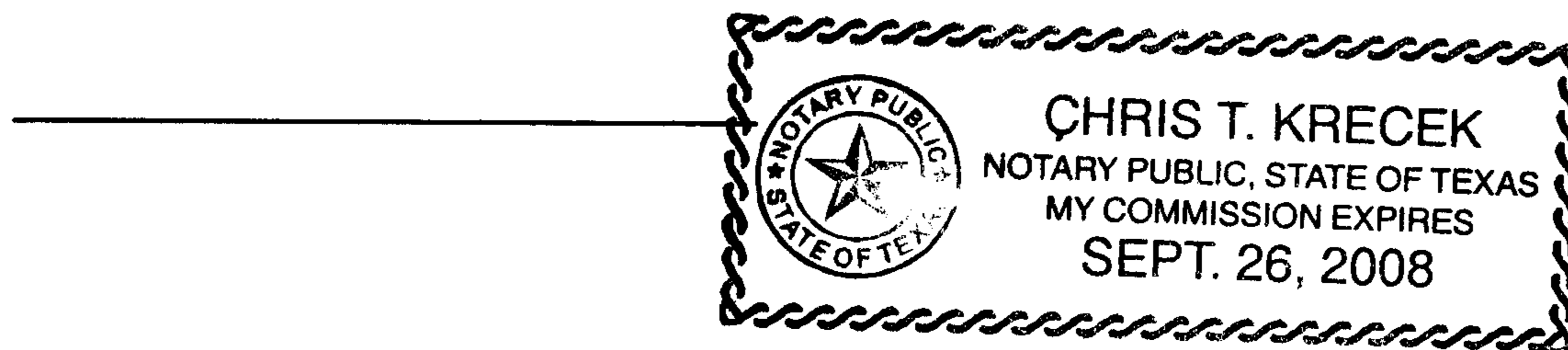
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Jerre O. Pierson, III, whose name as Chief Financial Officer of TACALA, LLC, a Delaware 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 instrument, he, 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 and official seal, this 12th day of August, 2005.


NOTARY PUBLIC

My Commission Expires:



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EXHIBIT A

Store #: 22749

Address: 4623 Highway 280, Birmingham, Alabama
County: Shelby

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, AND RUN SOUTH ALONG THE WEST LINE OF SAID SECTION A DISTANCE OF 277.41 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280; THENCE 53 DEGREES 01 MINUTE 13 SECONDS TO THE LEFT IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280 A DISTANCE OF 254.49 FEET TO A POINT; THENCE 0 DEGREES 32 MINUTES 45 SECONDS TO THE RIGHT IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF U. S. HIGHWAY 280 A DISTANCE OF 190.23 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE LAST STATED COURSE A DISTANCE OF 135.00 FEET TO A POINT; THENCE 92 DEGREES 30 MINUTES TO THE LEFT IN A NORTHEASTERLY DIRECTION OF 275.00 FEET TO A POINT; THENCE 87 DEGREES 30 MINUTES TO THE LEFT IN A NORTHWESTERLY DIRECTION A DISTANCE OF 135.00 FEET TO A POINT; THENCE 92 DEGREES 30 MINUTES TO THE LEFT IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 275.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH Reciprocal Easement Agreement dated 7th August 1985 and recorded in Real Volume 038, Page 59, in the Probate office of Shelby County, Alabama.

Being the same property as set forth on that certain survey dated July 5, 2005, prepared by Derek L. Harvel of Harvel & Associates, Inc. and described as follows:

SURVEYOR'S LEGAL DESCRIPTION


Lot 2, Cahaba South Park as recorded by map or plat of said subdivision on file and of record in the Office of the Judge of Probate of Shelby County, Alabama, said tract situated, lying and being a part of the County of Shelby, State of Alabama, and being more particularly described as follows:

Beginning at a pk nail on the Northeast right-of-way margin of U.S. Highway 280 East, said point being the Southwest Corner of said Lot 2, Cahaba Park South, said point also being the TRUE POINT OF BEGINNING; thence run North 35°00'48" East along the west boundary of said Lot 2 for a distance of 275.00 feet to an iron pin on the Northwest

Corner of said Lot 2; thence run South 52°41'12" East along the North boundary of said Lot 2 for a distance of 135.00 feet to an iron pin on the Northeast Corner of said Lot 2; thence run South 35°00'48" West along the east boundary line of said Lot 2 for a distance of 275.00 feet to an iron pin on the Southeast Corner of said Lot and the Northeast right-of-way margin of U.S. Highway 280 East; thence run North 52°41'12" West along the south boundary of said Lot 2 and said right-of-way margin for a distance of 135.00 feet to a point and back to the TRUE POINT OF BEGINNING.

Land containing 37,095.09 sq. ft. and 0.85 acres.

Parcel #02-73-60-0-010-08-004.


20050901000453330 14/14 \$50.00
Shelby Cnty Judge of Probate, AL
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