

LOAN NO.: 147240
MIN: 8000101-0000005873-4

TENANT: GULF STATES RESTAURANT MANAGEMENT, LLC

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into by and among GULF STATES RESTAURANT MANAGEMENT, LLC, a Florida limited liability company ("Tenant"), whose address is 4673 Highway 280 East, Suite No. 2, Birmingham, Alabama 35243, BAILEY HIGHWAY 280 LLC, a Delaware limited liability company ("Landlord"), whose address is P. O. Box 2269, Montgomery, Alabama 36102, and MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation ("Lender"), whose address is 250 Vesey Street, 16th Floor, New York, NY 10080.

WITNESSETH:

WHEREAS, Landlord is the owner in fee simple of the real property described in Exhibit A attached hereto, together with the improvements thereon (the "Property");

WHEREAS, Landlord or its predecessor and Tenant have entered into a certain lease dated June 1, 2005, (as the same may hereafter be amended, modified, renewed, extended or replaced, the "Lease"), leasing to Tenant a portion of the Property (the "Premises");

WHEREAS, Lender has agreed to make a certain mortgage loan to Landlord (the "Loan"), pursuant to a Loan Agreement of even date herewith between Landlord and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") which will be evidenced by Landlord's Promissory Note in such amount (the "Note") and secured by, among other things, a certain Mortgage, and Security Agreement (as the same may hereafter be amended, modified, extended or recast, the "Mortgage") encumbering the Property, which Mortgage is to be recorded simultaneously herewith;

WHEREAS, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Subordination. The Lease, including all of the terms thereof, is and shall be subject and subordinate to the lien and all of the terms of the Mortgage to the full extent of all amounts secured by the Mortgage and interest thereon.

2.Attornment. Tenant agrees that it will attorn to and recognize any purchaser of the Property at a Mortgage foreclosure sale or any transferee who acquires the Property by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage (in any such case, the "New Owner") and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if exercised) of the term of said Lease upon the same terms and conditions set forth in said Lease.

3.Non-Disturbance. Provided there is no default under the Lease after any applicable grace period, such New Owner will not terminate the Lease or disturb Tenant's possession of the Premises under the Lease or the right to quiet enjoyment thereof, but the Lease shall continue in accordance with its terms as a direct lease between Tenant and New Owner.

4.Cure by Lender of Landlord Defaults. Tenant agrees to give Lender or its agent, servicer or designee (in accordance with Paragraph 7 hereof) a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease, provided that prior to such notice Tenant has been notified in writing of the address of the Lender, or its agent, servicer or designee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

5.Payments to Lender and Exculpation of Tenant. Tenant is hereby notified that the Lease and the rent and all other sums due thereunder have been assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and directs that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such direction without inquiry and pay its rent and all other sums due under the Lease in accordance with such notice. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord. Tenant is hereby instructed to disregard any notice to the contrary received from or at the behest of Landlord.

6.Limitation of Liability. If the New Owner acquires the interest of Landlord under the Lease, pursuant to a Mortgage foreclosure sale or by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage, the New Owner shall not be:

(a)liable for any act or omission of any prior landlord (including current Landlord);

(b)subject to any claims, offsets, defenses or counterclaims which Tenant might have against any prior landlord (including current Landlord);

(c)bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including current Landlord);

(d)liable for the return of any security deposit not actually received by New Owner;

(e)bound by any amendment or modification of the Lease made without the written consent of Lender;

(f)bound by any covenant to undertake or complete any improvement to or restoration of the Premises or the Property, except to the extent insurance proceeds or condemnation awards are made available to New Owner to cover the cost of the improvement.


Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

7. Notice. Any notice, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and if to Lender, with a copy to Merrill Lynch Mortgage Lending, Inc. at 250 Vesey Street, 16th Floor, New York, NY 10080, Attention: George Kok. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party can change its address or party to receive notice by giving at least fifteen (15) days prior notice to the other parties hereto in accordance with this provision. Tenant agrees to send a copy of any notice or statement under the Lease to Lender at the same time such notice or statement is sent to Landlord.

8. Miscellaneous.

(a)**Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b)**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.


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(c)Amendment. This Agreement shall be deemed to amend any provisions of the Lease which are inconsistent with the terms hereof.

(d)Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

(e)Non-disturbance. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

TENANT:

**GULF STATES RESTAURANT
MANAGEMENT, LLC**, a Florida limited
liability company

Date: June, 2007

By: [Signature]
Chris Decker
Member

STATE OF ALABAMA
COUNTY OF Shelby


I, the undersigned, Notary Public in and for said County in said State, hereby certify that Chris Decker, whose name as owner of Gulf States Restaurant Management, LLC, 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 this the 12 day of June, 2007.

[Signature]
NOTARY PUBLIC
My Commission Expires: _____

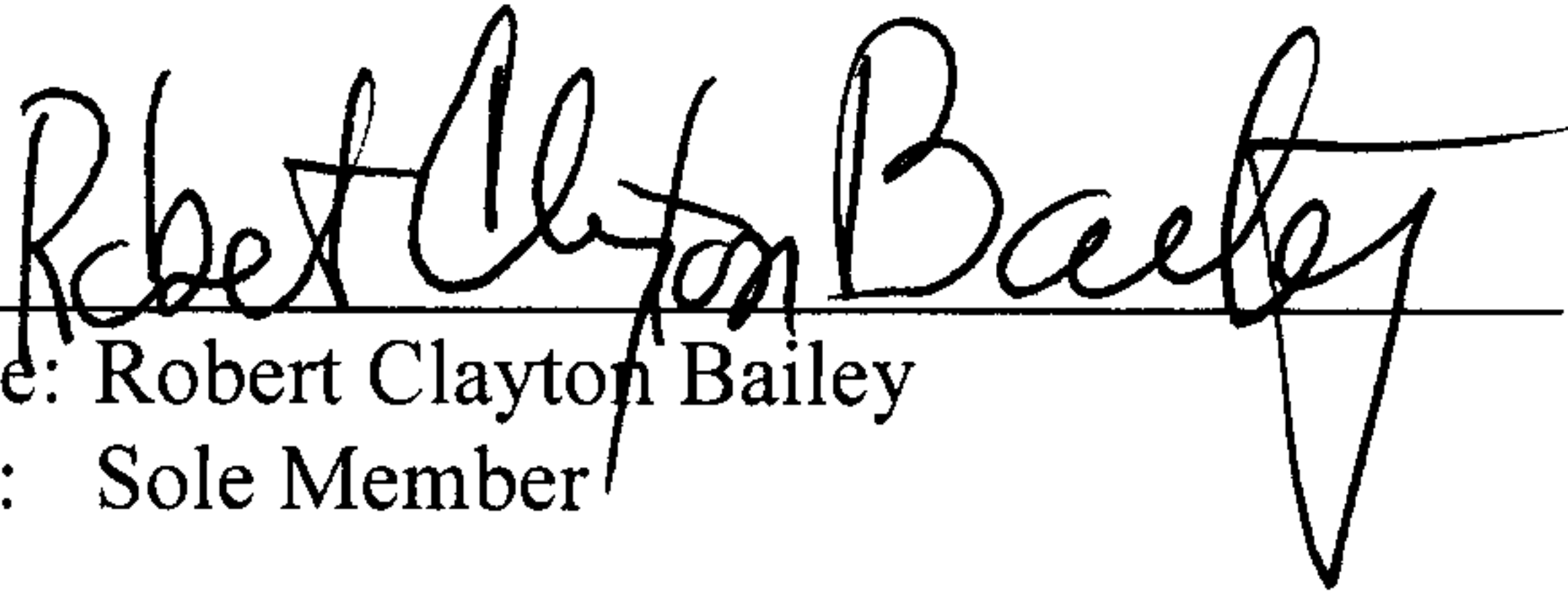
MY COMMISSION EXPIRES AUGUST 24, 2010

Dated: June 13, 2007.


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Shelby Cnty Judge of Probate, AL
07/06/2007 01:00:59PM FILED/CERT

LANDLORD:

BAILEY HIGHWAY 280 LLC, a
Delaware limited liability company

By: 
Name: Robert Clayton Bailey
Title: Sole Member

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Shelby Cnty Judge of Probate, AL
07/06/2007 01:00:59PM FILED/CERT

Date: June 26, 2007.

LENDER:

**MERRILL LYNCH MORTGAGE
LENDING, INC.**, a Delaware corporation

By: 

Name: Nicolette Sinatra


Title: Vice President

WHEN RECORDED, RETURN TO:

Cassin Cassin & Joseph LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attn: Dennis W. Mensi, Esq.

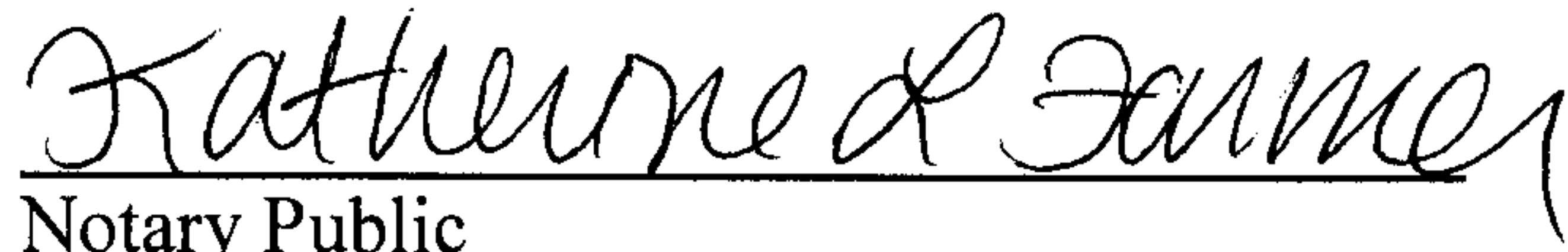
STATE OF ALABAMA)

COUNTY OF *Montgomery*)


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I, the undersigned Notary Public in and for said County, in said State, hereby certify that **ROBERT CLAYTON BAILEY**, whose name as **SOLE MEMBER** of **BAILEY HIGHWAY 280 LLC**, a Delaware limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such **SOLE MEMBER** and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as **SOLE MEMBER** of the limited liability company of aforesaid, on the day the same date bears.

Given under my hand and official seal, this *13th* day of June, 2007.



Notary Public

My Commission Expires: **My Commission Expires 02-27-2010**



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07/06/2007 01:00:59PM FILED/CERT


STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

On the 26th day of June, in the year 2007, before me, the undersigned personally appeared **NICOLETTE SINATRA**, personally known to me to be the **VICE PRESIDENT** of **MERRILL LYNCH MORTGAGE LENDING, INC.**, a Delaware corporation, and on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that her executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

THOMAS M. SWEENEY JR.
Notary Public, State of New York
No. 02W5068346
Qualified in New York County
Commission Expires October 28, 2008

EXHIBIT "A"
LEGAL DESCRIPTION


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Shelby Cnty Judge of Probate, AL
07/06/2007 01:00:59PM FILED/CERT


PARCEL I:

Lot 2, according to the Survey of Lots 1, 2 and 3 of Colonial Properties Subdivision, as recorded in Map Book 8, Page 138, in the Probate Office of Shelby County, Alabama, being bounded and described as follows:

PART OF THE SE $\frac{1}{4}$ OF NW $\frac{1}{4}$ AND SW $\frac{1}{4}$ OF NW $\frac{1}{4}$ OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEASTERN MOST CORNER OF LOT 2 ACCORDING TO THE SURVEY OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 8, PAGE 138 IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA, SAID CORNER ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND NORTHWESTERN MOST CORNER OF LOT 3A ACCORDING TO THE RESURVEY OF LOT 3 OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 10, PAGE 8, IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTHEASTERLY ALONG THE LINE OF SAID LOT 2 AND LOT 3A FOR 120.24 FEET TO A POINT; THENCE TURN $88^{\circ}42'00''$ TO THE RIGHT AND RUN SOUTHWESTERLY FOR 252.70 FEET ALONG SAID LOT 2 AND LOT 3A TO A POINT; THENCE TURN $90^{\circ}00'00''$ TO THE LEFT AND SOUTHEASTERLY ALONG LOT 2 AND LOT 3A FOR 44.97 FEET TO A POINT; THENCE TURN $90^{\circ}00'00''$ TO THE RIGHT AND RUN SOUTHWESTERLY ALONG LOT 2, LOT 3A AND LOT 3B FOR 180.00 FEET TO A POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280, SAID POINT BEING ON A CURVE TO THE RIGHT SUBTENDING A CENTRAL ANGLE OF $1^{\circ}34'50''$ AND HAVING A RADIUS OF 5,639.88 FEET; THENCE TURN $91^{\circ}03'48''$ TO THE CHORD OF SAID CURVE AND RUN ALONG THE ARC OF SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280 AND SOUTH LINE OF LOT 2 FOR 155.57 FEET TO A POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280 AND THE SOUTHEASTERLY CORNER OF LOT 1 ACCORDING TO SAID SURVEY OF LOTS 1, 2 AND 3 AND THE SOUTHEASTERN CORNER OF LOT 2; THENCE TURN $87^{\circ}31'43''$ TO THE CHORD OF SAID CURVE AND RUN NORTHEASTERLY ALONG LINE OF LOT 1 AND LOT 2 FOR 128.76 FEET TO A POINT, SAID POINT BEING THE CORNER OF SAID LOT 1 AND LOT 2; THENCE TURN $86^{\circ}08'13''$ TO THE RIGHT AND RUN NORTHWESTERLY ALONG LOT 1 AND LOT 2 FOR 93.11 FEET TO A POINT, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF INVERNESS PARKWAY, SAID POINT ALSO BEING ON A CURVE TO THE RIGHT SUBTENDING A CENTRAL ANGLE OF $28^{\circ}41'03''$ AND HAVING A RADIUS OF 280.93 FEET; THENCE TURN $114^{\circ}29'12''$ TO THE RIGHT TO THE CHORD OF SAID CURVE AND RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 140.64 FEET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND LOT 2 TO THE END OF SAID CURVE, SAID POINT ALSO BEING ON A CURVE TO THE LEFT SUBTENDING A CENTRAL

**EXHIBIT "A" CONTINUED
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07/06/2007 01:00:59PM FILED/CERT

ANGLE OF 16°40'00" AND HAVING A RADIUS OF 542.02 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE AND RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND LOT 2 FOR 157.68 FEET TO THE END OF SAID CURVE; THENCE AT TANGENT TO SAID CURVE CONTINUE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND LOT 2 FOR 18.57 FEET TO THE POINT OF BEGINNING. PARCEL I CONTAINS 64,587 SF OR 1.48 ACRES.

PARCEL II:

Lots 3A and 3B, according to a Resurvey of Lot 3 of Lots 1, 2 and 3 of Colonial Properties Subdivision as recorded in Map Book 10, Page 8 in the Probate Office of Shelby County, Alabama, being bounded and described as follows:

PART OF THE SE ¼ OF NW ¼ AND SW ¼ OF NW ¼ OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEASTERN MOST CORNER OF LOT 2 ACCORDING TO THE SURVEY OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 8, PAGE 138 IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA, SAID CORNER ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND NORTHWESTERN MOST CORNER OF LOT 3A ACCORDING TO THE RESURVEY OF LOT 3 OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 10, PAGE 8, IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTHEASTERLY ALONG THE LINE OF SAID LOT 2 AND LOT 3A FOR 120.24 FEET TO A POINT; THENCE TURN 88°42'00" TO THE RIGHT AND RUN SOUTHWESTERLY FOR 252.70 FEET ALONG SAID LOT 2 AND LOT 3A TO A POINT; THENCE TURN 90°00'00" TO THE LEFT AND SOUTHEASTERLY ALONG LOT 2 AND LOT 3A FOR 44.97 FEET TO A POINT; THENCE TURN 90°00'00" TO THE RIGHT AND RUN SOUTHWESTERLY ALONG LOT 2, LOT 3A AND LOT 3B FOR 180.00 FEET TO A POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280, SAID POINT BEING ON A CURVE TO THE LEFT SUBTENDING A CENTRAL ANGLE OF 1°29'38" AND HAVING A RADIUS OF 5,639.88 FEET; THENCE TURN 90°28'34" TO THE CHORD OF SAID CURVE AND RUN ALONG THE ARC OF SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280 AND SOUTH LINE OF LOT 3B FOR 147.05 FEET TO A POINT; THENCE TURN 76°31'26" TO THE LEFT TO THE CHORD OF SAID CURVE AND RUN NORTHEASTERLY FOR 215.00 FEET ALONG THE SOUTHERLY LINES OF LOTS 3A AND 3B TO A POINT; THENCE TURN 75°07'00" TO THE RIGHT AND RUN SOUTHEASTERLY FOR 215.00 FEET ALONG THE LINE OF LOT 3A TO A POINT; THENCE TURN 75°05'00" TO THE LEFT AND RUN NORTHEASTERLY ALONG SAID LOT 3A FOR 241.00 FEET TO A POINT; THENCE TURN 101°52'00" TO THE LEFT AND RUN NORTHWESTERLY FOR 831.03 FEET ALONG THE NORTHERLY LINE OF LOT

**EXHIBIT "A" CONTINUED
LEGAL DESCRIPTION**

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07/06/2007 01:00:59PM FILED/CERT

3A TO A POINT, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY; THENCE TURN 93°24'14" TO THE LEFT AND RUN SOUTHWESTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND THE LINE OF LOT 3A FOR 30.05 FEET TO THE POINT OF BEGINNING. PARCEL II CONTAINS 160,599 SF OR 3.69 ACRES MORE OR LESS.

LESS AND EXCEPT FROM THE ABOVE THE FOLLOWING:

PART OF THE SE ¼ OF NW ¼ AND SW ¼ OF NW ¼ OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEASTERN MOST CORNER OF LOT 2 ACCORDING TO THE SURVEY OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 8, PAGE 138 IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA, SAID CORNER ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST INVERNESS PARKWAY AND NORTHWESTERN MOST CORNER OF LOT 3A ACCORDING TO THE RESURVEY OF LOT 3 OF LOTS 1, 2, & 3 OF COLONIAL PROPERTIES SUBDIVISION AS RECORDED IN MAP BOOK 10, PAGE 8, IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTHEASTERLY ALONG THE LINE OF SAID LOT 2 AND LOT 3A FOR 120.24 FEET TO A POINT; THENCE TURN 88°42'00" TO THE RIGHT AND RUN SOUTHWESTERLY FOR 252.70 FEET ALONG SAID LOT 2 AND LOT 3A TO A POINT; THENCE TURN 90°00'00" TO THE LEFT AND SOUTHEASTERLY ALONG LOT 2 AND LOT 3A FOR 44.97 FEET TO A POINT; THENCE TURN 90°00'00" TO THE RIGHT AND RUN SOUTHWESTERLY ALONG LOT 2, LOT 3A AND LOT 3B FOR 180.00 FEET TO A POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280, SAID POINT BEING ON A CURVE TO THE LEFT SUBTENDING A CENTRAL ANGLE OF 1°29'38" AND HAVING A RADIUS OF 5,639.88 FEET; THENCE TURN 90°28'34" TO THE CHORD OF SAID CURVE AND RUN ALONG THE ARC OF SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 280 AND SOUTH LINE OF LOT 3B FOR 147.05 FEET TO A POINT; THENCE TURN 76°31'26" TO THE LEFT TO THE CHORD OF SAID CURVE AND RUN NORTHEASTERLY FOR 215.00 FEET ALONG THE SOUTHERLY LINES OF LOTS 3A AND 3B TO A POINT; THENCE TURN 75°07'00" TO THE RIGHT AND RUN SOUTHEASTERLY FOR 98.23 FEET ALONG THE LINE OF LOT 3A TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUE ALONG SAME COURSE FOR 116.77 FEET TO A POINT; THENCE TURN 75°05'00" TO THE LEFT AND RUN NORTHEASTERLY ALONG SAID LOT 3A FOR 241.00 FEET TO A POINT; THENCE TURN 101°52'00" TO THE LEFT AND RUN NORTHWESTERLY FOR 177.44 FEET ALONG THE NORTHERLY LINE OF LOT 3A TO A POINT; THENCE TURN 91°29'10" TO THE LEFT AND RUN SOUTHEASTERLY FOR 242.06 FEET TO THE POINT OF BEGINNING. SAID PARCEL TO BE EXCLUDED CONTAINS 34,463 SF OR 0.79 ACRES MORE OR LESS.