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Shelby Cnty Judge of Probate, AL
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PREPARED BY, AND
WHEN RECORDED, RETURN TO:
TARGET CORPORATION
Target Property Development
1000 Nicollet Mall TPN 12H
Minneapolis, Minnesota 55403
Attn: Property Development/Real Estate Portfolio Management

(Space Above for Recorder's Use)

SECOND AMENDMENT TO
OPERATION AND EASEMENT AGREEMENT

This Second Amendment to Operation and Easement Agreement (this "Amendment") is made and entered into as of August 26, 2013, by and between TARGET CORPORATION, a Minnesota corporation ("Target"), HIGHWAY 11/31, LLC, a Delaware limited liability company ("Developer"), and HIGHWAY 11/31 II LLC, a Delaware limited liability company ("Highway").

RECITALS

A. Target and Highway 31 Alabaster, LLC and Highway 31 Alabaster Two, LLC (collectively, "Original Developer") previously entered into that certain Operation and Easement Agreement dated as of January 13, 2006, recorded as Document No. 20060117000026240 in the records of Shelby County Judge of Probate, Shelby County, Alabama, as amended by that certain First Amendment to Operation and Easement Agreement dated as of February 2, 2007, recorded as Document No. 20070220000077630 in aforesaid records (as so amended, the "OEA").

B. Target is the current fee simple owner of a portion of the Target Tract, and is the Approving Party with respect to all of the Target Tract.

C. Developer is the current fee simple owner of a portion of the Developer Tract, and Developer is the Approving Party with respect to all of the Developer Tract.

D. Part of the Shopping Center property has been re-platted pursuant to that certain Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama, to (1) relocate and dedicate a new portion of the existing Dedicated Drive, (2) vacate a portion of the existing Dedicated Drive, and (3) subdivide the Target Tract and the Developer Tract.

E. Target has conveyed part of the Target Tract to Highway (the "Highway Tract") and the parties have agreed to amend the OEA to release the Highway Tract from the terms and provisions of the OEA applicable to the Target Tract and to modify the OEA to effectuate the planned use and operation of the Highway Tract and to reflect the new configuration of the Shopping Center.

F. Pursuant to Subsection 6.8.5 of the OEA, the OEA may be amended by a written agreement signed by all of the Approving Parties; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party.

G. Highway joins in this Amendment solely for the purpose of consenting to those provisions that materially impact the obligations and rights of Highway and/or the Highway Tract.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. **Target Tract.** The legal description of the Target Fee Tract described on Exhibit A-1 of the OEA is deleted in its entirety and replaced with the legal description on Exhibit A-1 (Modified) attached hereto. From and after the date hereof, all references in the OEA to the "Target Fee Tract" or the "Target Tract" shall refer solely to the real property described on Exhibit A-1 (Modified) attached hereto. As of the date hereof, Target is the fee owner of the entire Target Tract as legally described on Exhibit A-1 (Modified).

2. **Highway Tract.** The property legally described on Exhibits H-1 and H-2 attached hereto is declared to be a new Tract under the OEA, which shall be referred to as the "Highway Tract". The Highway Tract is released from all terms, provisions, covenants, conditions, restrictions, easements and other matter in the OEA that apply solely to the Target Tract and is declared to be subject to and bound by the terms, provisions, covenants, conditions, restrictions, easements and other matters in the OEA applicable to the "Shopping Center" "Tracts", and "Lots". As of the date hereof, Highway is the fee owner of the portion of the Highway Tract legally described on Exhibit H-1 attached hereto, and Highway is the sublessee from Developer of that portion of the Authority Property legally described on Exhibit H-2 attached hereto.

3. **Shopping Center.** From and after the date hereof, the Shopping Center is comprised of the Developer Tract, the Target Tract and the Highway Tract.

4. **Site Plan.** The Site Plan attached to the OEA as Exhibit X is deleted in its entirety and replaced with Exhibit X-1 attached hereto and made a part hereof. From and after the date hereof, all references in the OEA to the Site Plan or to Exhibit X shall be deemed to refer to Exhibit X-1 attached hereto.



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5. **Approving Party.** The second sentence of Section 1.1 of the OEA is deleted in its entirety and replaced with the following:

“There shall be one (1) Approving Party collectively representing the Developer Tract and the Highway Tract and one (1) Approving Party representing the Target Tract.”

As of the date hereof, the Approving Party collectively representing the Developer Tract and the Highway Tract is Developer and the Approving Party representing the Target Tract is Target.

6. **Outparcel.** The definition of “Outparcel” in Section 1.11 of the OEA is intended to include, and does so include, the “Target Outlot”.

7. **Lot.** The Highway Tract is deemed to be a “Lot” for purposes of the OEA, notwithstanding anything to the contrary in Section 1.8B of the OEA or elsewhere.

8. **Tract.** The first sentence of Section 1.20 of the OEA is deleted in its entirety and replaced with the following:

“Tract” shall mean the Developer Tract, Target Tract, and Highway Tract, as well as each of the Lots within any such Tract (a Tract within a Tract) so that each such Lot shall be required independently to comply with all of the requirements of this OEA, except to the extent specifically provided otherwise in the OEA. ”

9. **Occupant.** The second to last paragraph of Section 1.13 is deleted in its entirety and replaced with the following:

“If a separately subdivided parcel of land within the Shopping Center is owned by more than one (1) Person, the Person or Persons holding a majority of the ownership interest in such parcel of land shall designate by recorded instrument one (1) Person to represent all owners of the parcel and such designated Person shall be deemed the Party authorized to give consents and/or approvals and receive notices pursuant to this OEA for such parcel.”

10. **Restricted Area.** Section 1.19 of the OEA is deleted in its entirety and replaced with the following:

“Restricted Area” shall collectively mean those portions of the Developer Tract and the Highway Tract which are located within the Primary Building Area, Outparcel 3, and Outparcel 4.”

11. **Utility Lines.** Section 1.21 of the OEA is deleted in its entirety and replaced with the following:



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“Utility Lines” shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water. “Common Utility Lines” shall mean those Utility Lines which are installed to provide the applicable service for the benefit of more than one (1) Party. “Separate Utility Lines” means those Utility Lines that are installed to provide the applicable service for the benefit of one (1) Party and/or which are not Common Utility Lines. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a separate Utility Line. However, notwithstanding the foregoing, all surface water collection, retention and distribution facilities will be considered a Common Utility Line as set forth in Subsection 2.2.4. Utility Lines installed pursuant to this OEA shall only provide service necessary for the development and/or operation of the Shopping Center except as provided in any recorded agreement with a public or private utility from time to time.”

12. **Relocation of Dedicated Drive.** The last sentence of the first paragraph of Subsection 2.1.4 is amended to add the words “, the Highway Tract” immediately after the words “Developer Tract”.

13. **Construction, Maintenance and Reconstruction.** Subsection 2.3.2 of the OEA is hereby amended to add the following paragraph:

“Highway hereby grants and conveys to Target, for the benefit of the Target Tract, a perpetual, exclusive, subsurface easement extending under the surface of the Highway Tract in the locations shown on Exhibit I attached hereto and identified thereon as “Column Footings”, for the maintenance of the existing Subsurface Construction Elements that support the Building on the Target Tract (the “Target Column Footings”). Buildings may be constructed on the Highway Tract above the Target Column Footings, provided that (1) any Building so constructed does not use the Target Column Footings for support, and (2) Subsurface Construction Elements benefitting Buildings on the Highway Tract are located adjacent to, and not on top of, the Target Column Footings, and (3) construction does not impact the structural or design integrity of the Target Column Footings. In the event the Building utilizing the Target Column Footings is destroyed, the easement rights in this paragraph shall not be disturbed and any replacement Building on the Target Tract may be constructed utilizing the Target Column Footings.”

14. **Common Area Lighting.** Subsections 3.2.1(C) and (D) are deleted in their entirety and replaced with the following:

“(C) 5 footcandles in the general parking areas on the Target Tract and 3 footcandles in the general parking areas on the Developer Tract and the Highway Tract.

(D) 3 footcandles at the perimeter of the parking areas on the Target Tract and 2 footcandles at the perimeter of the parking areas on the Developer Tract and the Highway Tract.”

15. **Parking Ratio.**

- (a) **Introductory Paragraph.** The first paragraph of Subsection 3.2.5 of the OEA is deleted in its entirety and replaced with the following:

“The parking area on each separate Lot comprising the Developer Tract, the Highway Tract and the Target Tract shall contain sufficient ground level parking spaces without reliance on parking spaces that may be available on another portion of the Shopping Center in order to comply with the greater of Governmental Requirements or the following minimum requirements:”

- (b) **Target Tract.** Subsection 3.2.5(B) of the OEA is amended for the sole purpose of allowing Target to maintain three and eighty-five hundredths (3.85) parking spaces for each one thousand (1,000) square feet of Floor Area on the Target Tract (but not the Target Outlot, which parking requirements shall remain unchanged) instead of 4.0 automobile parking spaces for each 1,000 square feet of Floor Area on the Target Tract. In all other respects, Subsection 3.2.5(B) shall remain unchanged.

- (c) **Highway Tract.** The following is added immediately after Subsection 3.2.5(F):

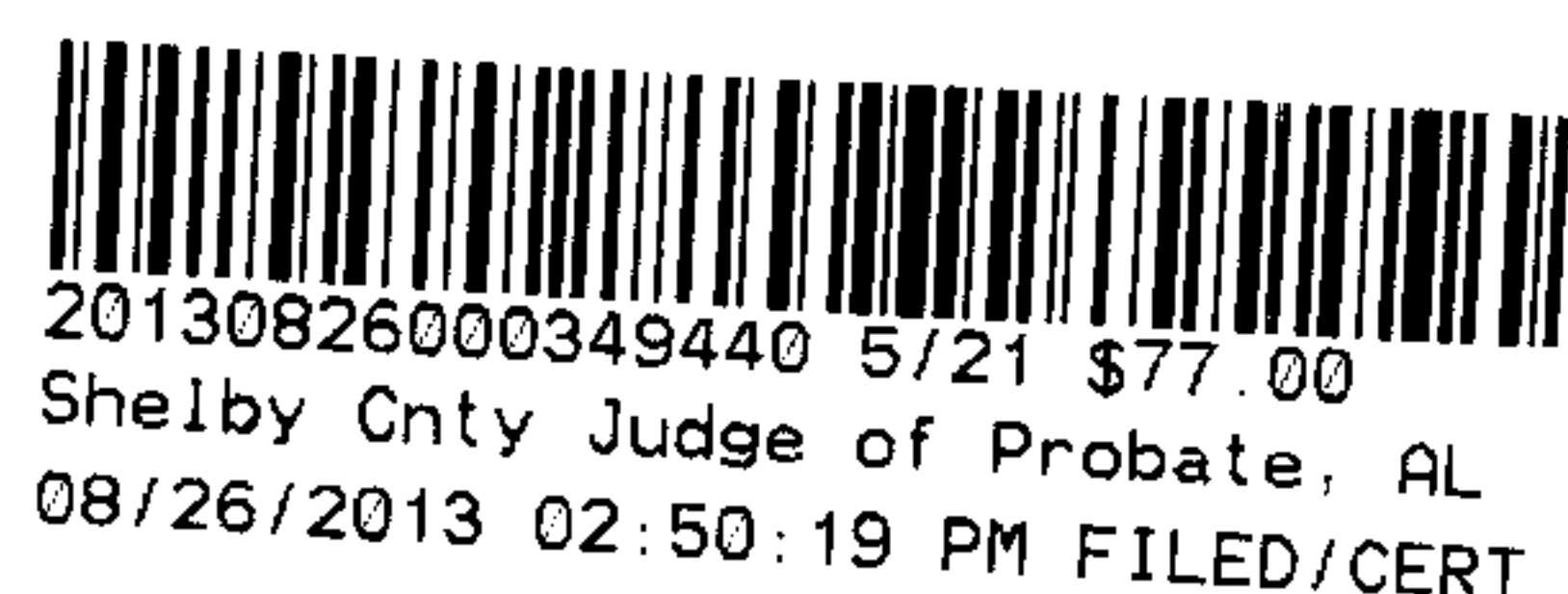
“(G) Four (4.0) parking spaces for each one thousand (1,000) square feet of Floor Area on the Highway Tract, exclusive of certain Restaurant parking requirements set forth above; provided, however, that compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, shall be located only in the areas, if any, designated on the Site Plan.”

16. **Building Area.** Subsection 3.3.1 is amended for the sole purpose of clarifying that Buildings may be located anywhere within an Outparcel so long as each such Building and location complies in all other respects with the terms and provisions of the OEA.

17. **SF Building Area.** The second paragraph of Subsection 3.3.1 of the OEA is amended to allocate the permitted square footage as follows: to the Target Tract, the number of square feet to accommodate 150,000 square feet of Floor Area, plus any Outdoor Sales Area, and the balance to the Developer Tract and the Highway Tract.

18. **Subsection 3.3.3.** Subsection 3.3.3 of the OEA is hereby amended to add the following paragraph:

“Along the common boundary line between the Highway Tract and the Target Tract the separation of Building walls shall be no less than one (1) inch. Target and



Highway acknowledge that the existing Building wall on the Target Tract is located two (2) inches or less from the common boundary line and Target agrees in the event of any reconstruction, to use reasonable efforts to locate any future Building wall at least one (1) inch from the common boundary line, but in no event more than two (2) inches therefrom. Highway agrees to use reasonable efforts to locate its Building wall at least one (1) inch from the common boundary line, but in no event more than two (2) inches therefrom.”

19. **Unlimited Area Building.** The first paragraph of Subsection 3.3.4 of the OEA is amended to add the word “, Highway” immediately after “Target”.

20. **CAM Allocation.** The allocations for Common Area Maintenance Costs and the Administration Fee in Subsection 4.2.4 shall be revised as follows:

(A) To the Developer Tract (the Highway Tract shall be deemed a part of the Developer Tract for purposes of this subsection):

69.24 % based upon a 24.11 acre area

The Parties with respect to the Developer Tract and the Highway Tract will be jointly and severally liable for the entire share unless and until they file a recorded declaration in accordance with Section 4.2.4 of the OEA, confirming their agreement to prorate the allocation. No other Party will have any consent or approval rights with respect to such declaration.

(B) To the Target Tract 30.76 % based upon a 10.71 acre area

21. **Uses.**

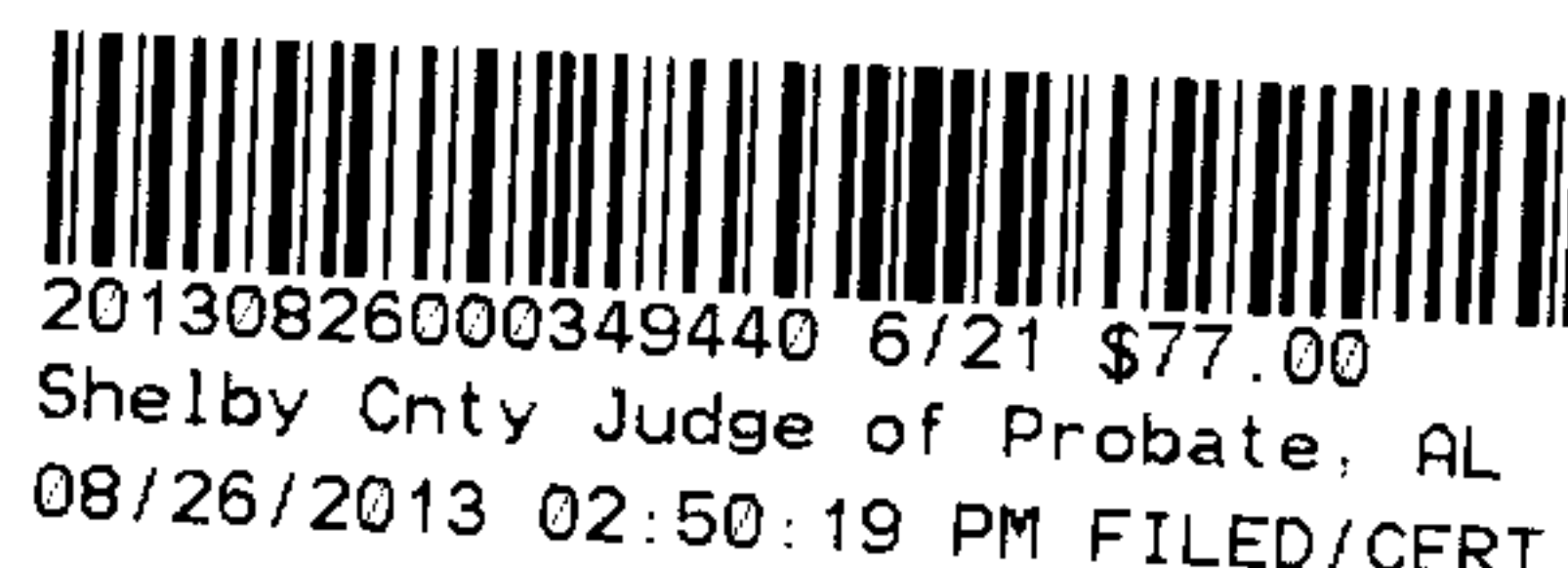
(a) **Subsection 5.1.5.** The first sentence of Subsection 5.1.5 of the OEA is deleted in its entirety and replaced with the following:

“The following use and occupancy restrictions shall be applicable to the Developer Tract and the Highway Tract [except that the Penney Area shall not be subject to clause (A) of this Subsection 5.1.5], and clause (D) below shall be applicable to the Target Tract.”

(b) **Subsection 5.1.6.** Subsection 5.1.6 is amended by adding the words “or the Highway Tract” immediately after “Developer Tract”.

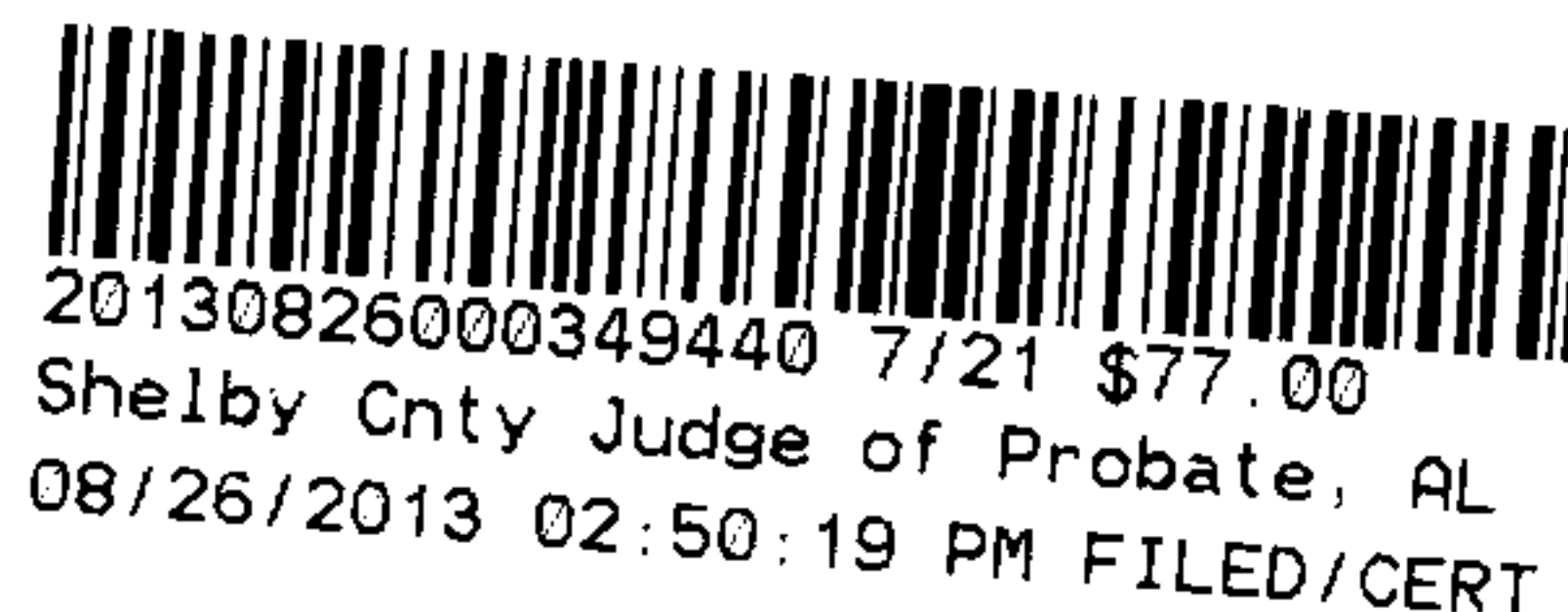
(c) **Highway Tract.** The following new Subsection 5.1.10 is added immediately after Subsection 5.1.9:

“5.1.10 The following uses shall not be permitted on the Highway Tract:



- (A) Any health club, work out facility and/or spa.
- (B) Any liquor store offering off premises sale of alcoholic beverages.
- (C) Any firearms testing or firing range, or the sale or display of any type of firearms or ammunition, except a sporting goods retailer may sell and display firearms and ammunition as an incidental part of its business.
- (D) Any "dollar" (or any increment of a dollar) store or other similar variety discount type store.
- (E) Any department store, discount department store or junior department store.
- (F) Any Membership Wholesale Club. "Membership Wholesale Club" means a general merchandise store that sells merchandise in bulk and limits sales to individuals, business, or organizations who have purchased a membership in order to shop at the store.
- (G) Any lockers, lock-boxes or other type of storage system that is used to receive or store merchandise from a catalog or online retailer.
- (H) Any store, or department within a store, operated as a fulfillment center or department or space within a business operated as a fulfillment center in connection with receiving, storing or distributing merchandise from a catalog or online retailer.
- (I) Any grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food and/or beverages, provided, however that up to 1,000 square feet of Floor Area may be used for the sale of food and/or beverages. One-half of the aisle space adjacent to any display of such products will be included in calculating Floor Area for purposes of this subsection."

22. **Building Heights.** Exhibit G attached to the OEA is deleted in its entirety and replaced with Exhibit G-1 attached hereto and made a part hereof. From and after the date hereof, all references in the OEA to Exhibit G shall be deemed to refer to Exhibit G-1 attached hereto.



23. **Notices.**

Target's current notice address under Section 6.4 of the OEA is:

Target Corporation
Target Property Development
1000 Nicollet Mall TPN 12H
Minneapolis, Minnesota 55403
Attn: Property Development/Real Estate Portfolio Management

Developer's current notice address under Section 6.4 of the OEA is:


Highway 11/31, LLC
c/o Merchants Retail Partners, LLC
2801 Highway 280 South
Suite 345
Birmingham, AL 35223
Attn: Bill Leitner

Highway's current notice address under Section 6.4 of the OEA is:

Highway 11/31 II, LLC
c/o Merchants Retail Partners, LLC
2801 Highway 280 South
Suite 345
Birmingham, AL 35223
Attn: Bill Leitner

24. **Conflicts/Ratification.** If there is any conflict between the provisions of the OEA and this Amendment, the provisions of this Amendment shall control. Except as amended and supplemented by this Amendment, the OEA is ratified by the parties and remains in full force and effect.

25. **Authority.** Each of the parties represents and warrants that it has the full capacity, right, power and authority to execute, deliver and perform this Amendment and that all required actions, consents and approvals therefor have been duly taken and obtained. Furthermore, each of the parties represents and warrants that upon full execution of this Amendment, the OEA as amended by this Amendment shall be binding on all parties with any interest in its respective Tract, including but not limited to the holder of any mortgagee's interest. Each of the parties to this Amendment, as an Approving Party, warrants and represents that the terms and provisions of this Amendment will not either impose any materially greater obligation on any Tract represented by such Approving Party, or materially impair any right of a Party owning a Tract represented by such Approving Party.

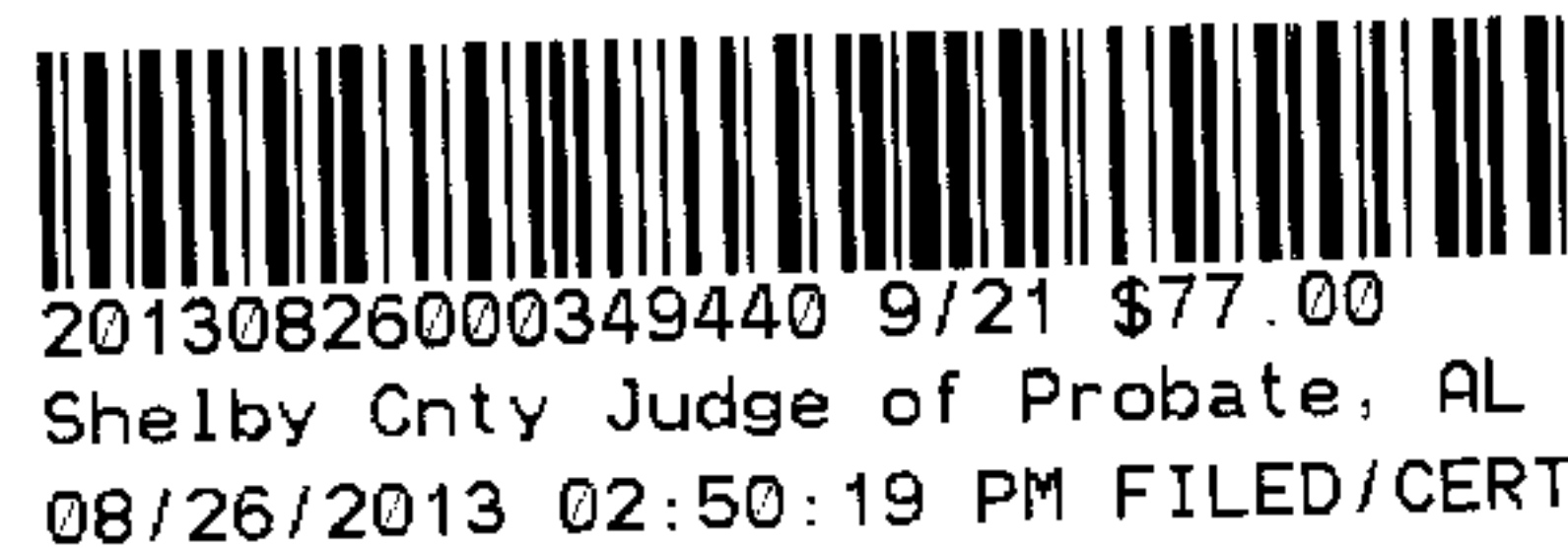

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26. **Entire Agreement.** This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral agreements pertaining thereto.

27. **Captions; Capitalized Terms.** Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall bear the same meanings assigned thereto in the OEA. The captions set forth herein are for convenience only and are not a part of this Amendment.

28. **Counterparts.** This Amendment may be executed in counterparts or with counterpart signature pages, which upon execution by all parties shall constitute one integrated agreement.

[Rest of page intentionally left blank; signature pages follow.]



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

HIGHWAY 11/31 LLC,
a Delaware limited liability company

By: _____

Printed Name: William A. Lester III

Its: Manager

STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William A. Lester III whose name as Manager of **Highway 11/31, 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 said instrument, he/she, in his/her capacity as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the 20 day of August, 2013.

Notary Public

My Commission Expires: 6-23-15

[NOTARIAL SEAL]



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JOINDER

The undersigned join in the execution of the foregoing Second Amendment to Operation and Easement Agreement for the sole purpose of acknowledging and agreeing to the terms and conditions set forth therein.

HIGHWAY 11/31 II LLC,
an Alabama limited liability company

By: [Signature]
Printed Name: William Leitner
Its: [Signature]

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William A. Leitner whose name as Manager of **Highway 11/31 II, 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 said instrument, he she, in his her capacity as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the 20 day of August, 2013.

[Signature]
Notary Public

My Commission Expires: 6-23-15

[NOTARIAL SEAL]



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EXHIBIT X -1

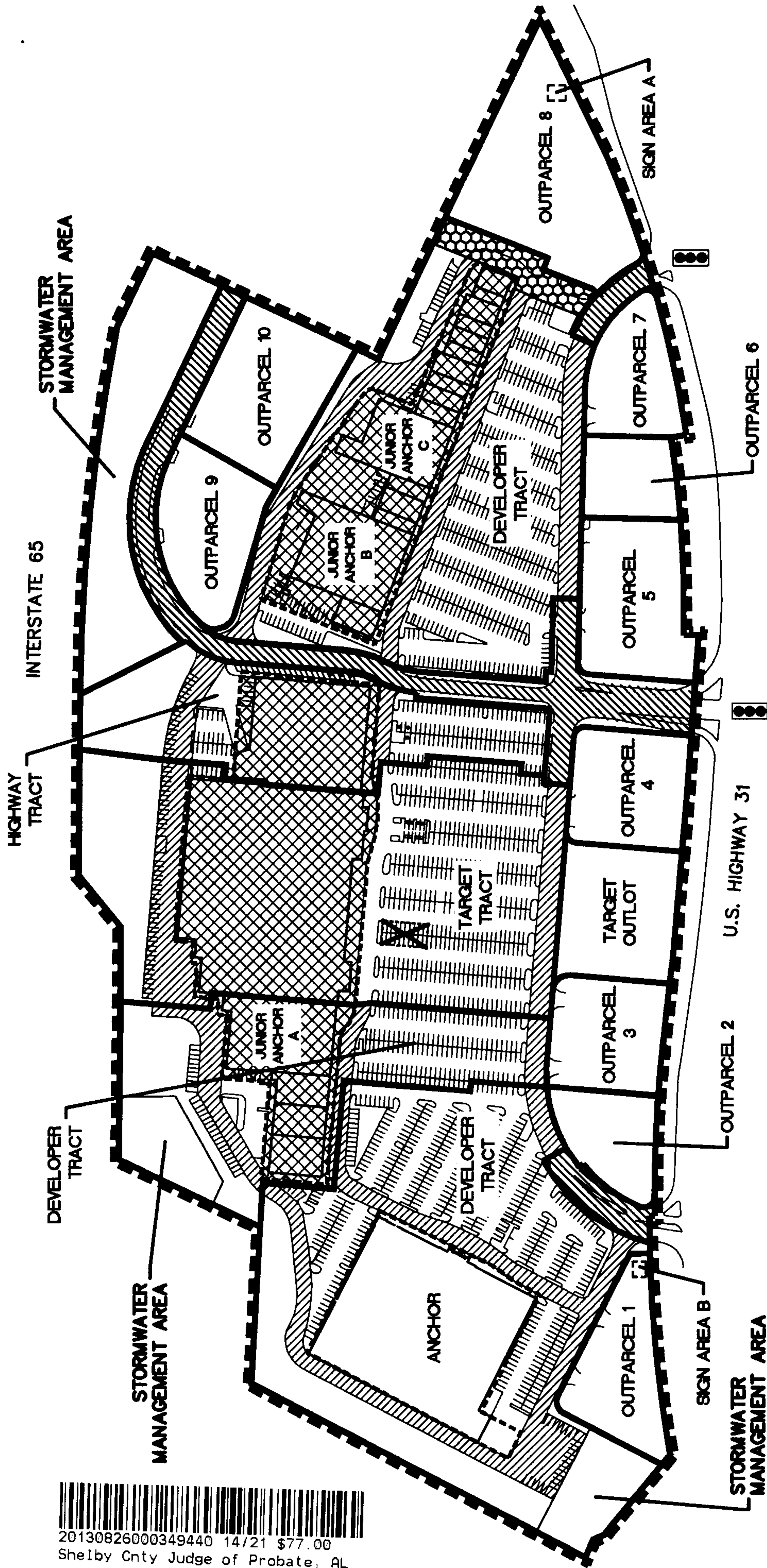
Site Plan

(see attached)



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- Shopping Center boundary
- Tract boundary
- Building Area
- Primary Building Area
- Outside Sales Area
- Permanent Drive
- Dedicated Drive
- Shared Access Drive
- Traffic Signal



Where Shopping Center, Tract, and/or Lot boundary lines overlap, only a Shopping Center boundary is shown over a Tract and Lot boundary, and only a Tract boundary is shown over a Lot boundary.

T-2276 Alabaster, AL

Exhibit X-1 Site Plan

EXHIBIT A -1 (MODIFIED)

Legal Description Target Tract

Lot 3-A, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 42, Page 104, in the Probate Office of Shelby County, Alabama;

Plus the following parcel of land:

Lot 7, according to the Survey of Colonial Promenade Alabaster South, recorded in Map Book 38, pages 119A and 119B, in the Probate Office of Shelby County, Alabama.



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EXHIBIT G-1

Building Heights

No building shall exceed one (1) story, nor the following height restrictions from the finished floor elevation without prior written consent of the approving parties.

	<u>Building Height</u>	<u>Feature</u>
Target Tract	31 feet	36 feet
Anchor (JCP)	29 feet	34 feet
Highway Tract	27 feet 4 inches	32 feet
Developer Tract:		
Shops	25 feet	25 feet
(3) Tower Features		41 feet
Jr. Anchor		
A	26 feet	31 feet
B	30 feet	35 feet
C	34 feet	39 feet
Outparcels	27 feet	32 feet
Target Outlot	27 feet	32 feet

There are no height restrictions for Outparcels 9 and 10 for a hotel use.

The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening or penthouse.

The height of any Feature shall be measured perpendicular from the finished floor elevation to the top of any parapet or entry/signage features.



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EXHIBIT H-1

Legal Description Highway Tract—Fee Portion

Lot 3-B, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama.



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EXHIBIT H-2

Legal Description Highway Tract—Sublease Portion

Lot 15-A, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 10A, in the Probate Office of Shelby County, Alabama.

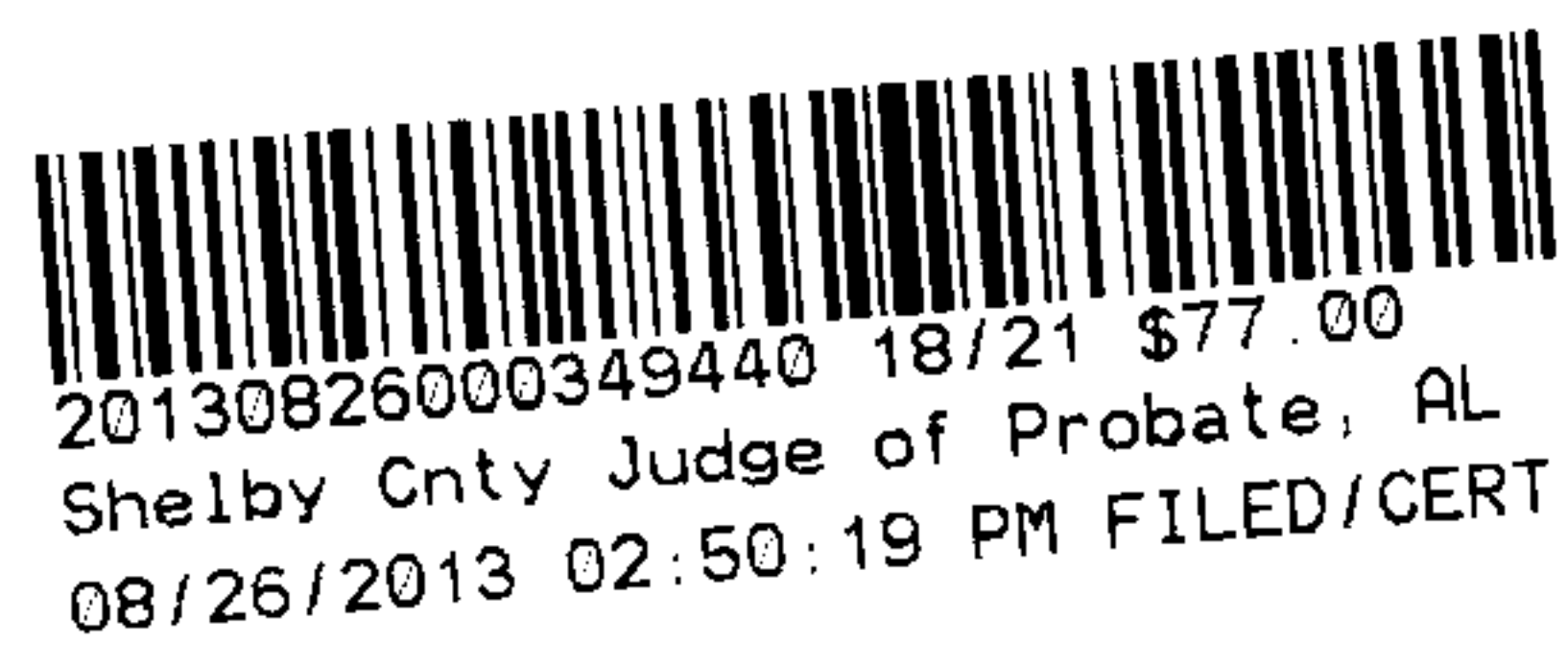
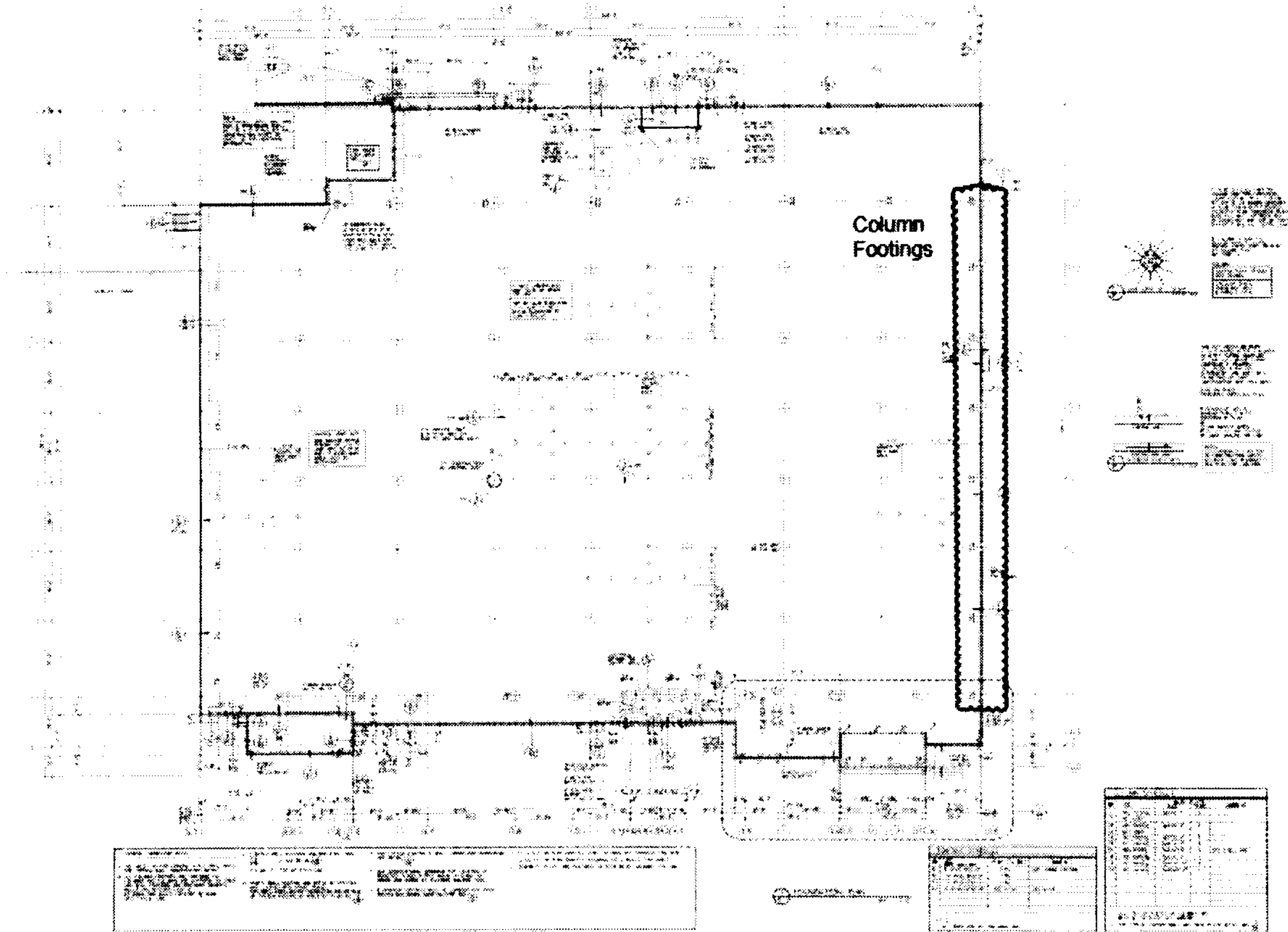


EXHIBIT I

Target Column Footings Locations



**REGIONS BANK
CONSENT AND SUBORDINATION TO
SECOND AMENDMENT TO OPERATION
AND EASEMENT AGREEMENT**

The undersigned, as the holder of that certain mortgage lien ("Mortgage Lien") pursuant to a Mortgage dated December 14, 2007 and recorded December 18, 2007 as Instrument No. 20071218000569450 in the Office of the County Recorder in and for Shelby County, Alabama (the "Mortgage"), which Mortgage is subordinate to the OEA (as that term is defined in the instrument to which this Consent and Subordination is attached), hereby consents to the attached Amendment to Operation and Easement Agreement (the "Second Amendment") and agrees to be bound by it and accordingly agrees that the Mortgage Lien is and shall be subordinate to the OEA as amended by the Amendment.

The undersigned represents and warrants that it has the full capacity, right, power and authority to execute and deliver this Consent and Subordination, and all required actions, consents and approvals therefor have been duly taken and obtained.

REGIONS BANK,
an Alabama Corporation

By: [Signature]

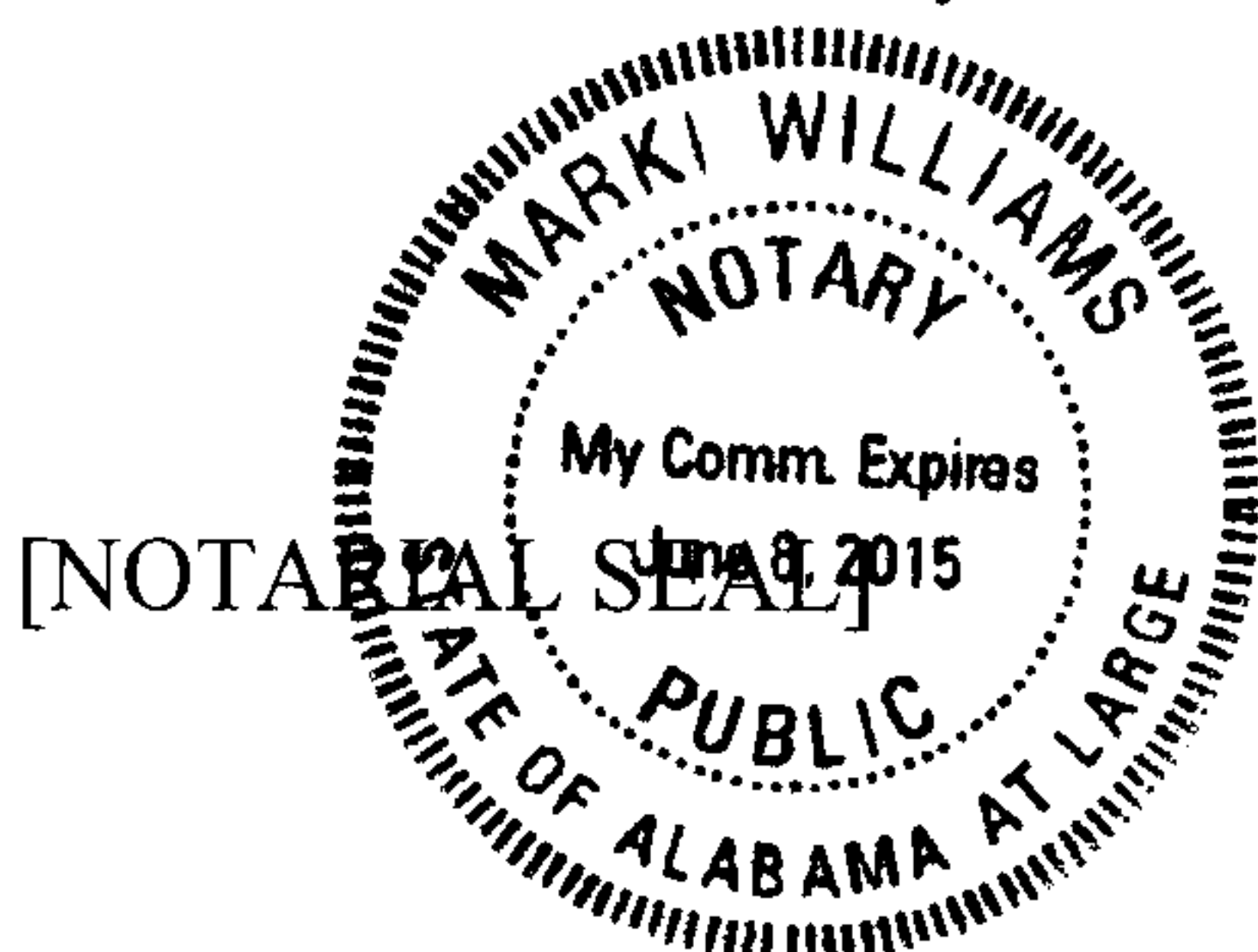
Its: VP

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Todd Harris whose name as VP of **Regions Bank, an Alabama Corporation** 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 said instrument, he/she, in his/her capacity as such VP and with full authority, executed the same voluntarily for and as the act of said Corporation, on the day the same bears date.

Given under my hand and seal this the 12th day of July, 20 13.



[Signature]
Notary Public

My Commission Expires: June 8, 2015

**MIDSOUTH BANK
CONSENT AND SUBORDINATION TO
SECOND AMENDMENT TO OPERATION
AND EASEMENT AGREEMENT**

The undersigned, as the holder of that certain mortgage lien ("Mortgage Lien") pursuant to a Mortgage dated August 26, 2013 and recorded 8-26-13 as Instrument No. 20130826000-349410 in the Office of the County Recorder in and for Shelby County, Alabama (the "Mortgage"), which Mortgage is subordinate to the OEA (as that term is defined in the instrument to which this Consent and Subordination is attached), hereby consents to the attached Amendment to Operation and Easement Agreement (the "Second Amendment") and agrees to be bound by it and accordingly agrees that the Mortgage Lien is and shall be subordinate to the OEA as amended by the Amendment.

The undersigned represents and warrants that it has the full capacity, right, power and authority to execute and deliver this Consent and Subordination, and all required actions, consents and approvals therefor have been duly taken and obtained.

MIDSOUTH BANK,
National Association

By: Andy Hart

Its: EVP/CLO

STATE OF ALABAMA)

COUNTY OF HOUSTON)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Andy Hart whose name as EVP/CLO of **MidSouth 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 said instrument, he/she, in his/her capacity as such EVP/CLO and with full authority, executed the same voluntarily for and as the act of said national association, on the day the same bears date.

Given under my hand and seal this the 20th day of August, 2013.

Marilyn C. Chancey
Notary Public

MARILYN C. CHANCEY
Notary Public, State of Alabama
Alabama State at Large
My Commission Expires
January 18, 2016

[NOTARIAL SEAL]

My Commission Expires: _____