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Shelby Cnty Judge of Probate, AL
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(Space Above for Recorder's Use)

**RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:**

Paul E. Foshee
J. C. Penney Properties, Inc.
6501 Legacy Drive, m/s 1104
Plano, Texas 75024-3698

CROSS-REFERENCE TO:

Instrument Number
20060316000123780

**AMENDMENT TO CONSTRUCTION, OPERATING
AND EASEMENT AGREEMENT**

THIS AMENDMENT TO CONSTRUCTION, OPERATING AND EASEMENT AGREEMENT (this "Amendment") is made and entered into as of this 11th day of July, 2013, among **HIGHWAY 11/31, LLC**, a Delaware limited liability company ("Developer") having a mailing address of 2801 Highway 280 South, Suite 345, Birmingham, Alabama 35223, and **J. C. Penney Properties, Inc.** ("Penney"), a Delaware corporation having a mailing address at c/o 6501 Legacy Drive, Plano, Texas 75024-3698.

WITNESSETH:

WHEREAS, Highway 31 Alabaster, LLC, Highway 31 Alabaster Two, LLC, and Penney entered into that certain Construction, Operating and Easement Agreement dated March 16, 2006, and recorded as Instrument Number 20060316000123780 in the Office of the Judge of Probate, Shelby County, Alabama (as supplemented and/or amended, the "COEA");

WHEREAS, Developer is the successor in interest to Highway 31 Alabaster, LLC and Highway 31 Alabaster Two, LLC with respect to the COEA; and

WHEREAS, Developer and Penney desire to amend the COEA in accordance with the provisions hereof.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Capitalized Terms.** All initially capitalized terms used but not defined or modified herein shall have the meanings ascribed thereto in the COEA.

2. **Supplement to Site Plan.** The Site Plan is hereby supplemented by the revised site plan of the Shopping Center Site attached hereto as Exhibit B-1 depicting the re-configuration of the Shopping Center due to Developer's recent acquisition of a portion of the Target Tract (such recently acquired land herein referred to as the "New Developer Tract"). Developer and Penney hereby agree that the Exhibit B-1 attached hereto shall be a supplement to the Site Plan (Exhibit B) to the COEA for the purpose of only illustrating the proposed location, size, and re-configuration of the Shopping Center due to the New Developer Tract, and not for the purpose of substituting the current Site Plan (Exhibit B) to the COEA. It is understood and agreed that Exhibit B-1 is specific to the New Developer Tract and anything other than the New Developer Tract shown on Exhibit B-1 attached hereto which is contrary to the Site Plan (Exhibit B) to the COEA shall be disregarded.

3. **Addition to Developer Tract.** The New Developer Tract (which is legally described in Exhibit 1 to this Amendment) is hereby added to, and shall be deemed a part of, the Alabaster Two Fee Land (being a part of the Developer Tract).

4. **Section 1.5(d).** For the New Developer Tract only, the two-way driveway aisles located therein shall be allowed to be twenty feet (20') wide, instead of twenty four feet (24') wide as set forth in Section 1.5(d) of the COEA, as shown on Exhibit B-1 attached hereto.

5. **Sections 2.7 and 3.1(b).** Developer shall be permitted to use (and shall only use) the area identified as "Staging Area" on Exhibit B-1 attached hereto for construction staging purposes relative to the development/construction of the New Developer Tract. Further, Developer's development/construction within the New Developer Tract shall commence on or about July 16, 2013 and shall be conclude on or about March 31, 2014.

6. **Pending Foundation Dispute.** Nothing herein (or omitted herein) shall be deemed to directly or indirectly affect, impact, or release in any manner any and all rights and remedies either party (or any other person or entity) has or may have, or act as an estoppel by any such party, person or entity, relative to the foundation issues of the Penney Building and the surrounding Common Area, such issues being the subject of various demand letters and other correspondences delivered and exchanged among Developer, Penney and Developer's predecessor in interest, as well as the civil action titled, *Colonial Properties Services, Inc. and Highway 11/31, LLC, Plaintiffs, vs. Saiia Construction, L.L.C. Defendant/Third Party Plaintiff, vs. Gonzalez-Strength & Associates, Inc., etc. al.*, Civil Action No. CV-2009-900908, filed in the Circuit Court of Shelby County, Alabama.

7. **Miscellaneous.**

(a) If any provision of this Amendment, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Amendment, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Amendment. Each provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law.

(b) This Amendment shall be construed in accordance with the laws of the State of Alabama.

(c) The article headings in this Amendment are for convenience only, shall in no way define or limit the scope or content of this Amendment, and shall not be considered in any construction or interpretation of this Amendment or any part hereof.

(d) Nothing in this Amendment shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

(e) This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.


(f) This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same Amendment. This Amendment contains the entire understanding and agreement of the parties as it relates to the New Developer Tract, supersedes all other written or oral exchanges, agreements, or negotiations between them or their representatives relating to the New Developer Tract, and cannot be amended orally, but only by instrument in writing signed by all parties.

(g) Except as specifically set forth herein, the COEA remains in full force and effect.

(Signatures Commence on Next Page)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed under seal as of the day and year first above written.

[Remainder of page intentionally left blank. Signatures commence on the following page]


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Signed, sealed and delivered
in the presence of:

Jamie Adams
Unofficial Witness

DEVELOPER:

HIGHWAY 11/31, LLC, a Delaware limited
liability company

By: [Signature]
Name: William L. Turner
Title: Manager

STATE OF Alabama)
COUNTY OF Jefferson) SS.:

On this the 30th day of July, 2013, before me, a Notary Public duly
authorized in and for the such County in the State aforesaid to take acknowledgments, personally
appeared William L. Turner, to me known and known to me to be a manager
of *, a LLC, in its capacity as Manager of Highway 11/31, LLC, a
LLC, and acknowledged that as such Manager, being authorized so to do, s/he executed the
foregoing instrument on behalf of such entity by subscribing the name of such entity by
her/himself as such member and caused the seal of such entity to be affixed thereto, as her/his
free and voluntary act, and as the free and voluntary act of such entity, for the uses and purposes
therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

10-01-2014

[Signature]
Notary Public, State of Alabama

[Signatures continued on next page]

* Highway 11/31, LLC
** a Delaware limited liability company



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Signed, sealed and delivered
in the presence of:

Paul [Signature]
Unofficial Witness

PENNEY:

J.C. PENNEY PROPERTIES, INC., a
Delaware corporation



By: [Signature]
Name: BRADLEY SWANSON
Title: PRESIDENT



STATE OF TEXAS)
)SS.:
COUNTY OF COLLIN)

On this the 11th day of July, 2013, before me, a Notary Public duly
authorized in and for the such County in the State aforesaid to take acknowledgments, personally
appeared BRADLEY SWANSON, to me known and known to me to be a PRESIDENT
of J.C. Penney Properties, Inc., a Delaware corporation, and acknowledged that as such officer,
being authorized so to do, s/he executed the foregoing instrument on behalf of such corporation
by subscribing the name of such corporation by her/himself as such officer and caused the seal of
such corporation to be affixed thereto, as her/his free and voluntary act, and as the free and
voluntary act of such corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

8/2/16

[Signature]
Notary Public, State of Texas

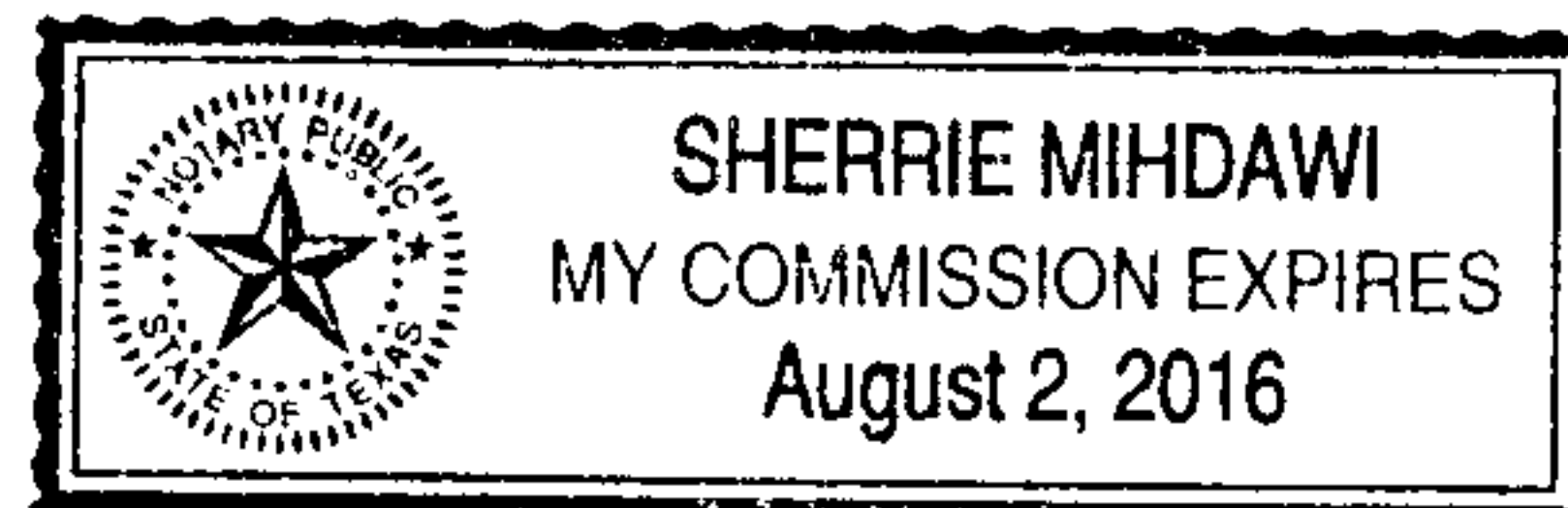

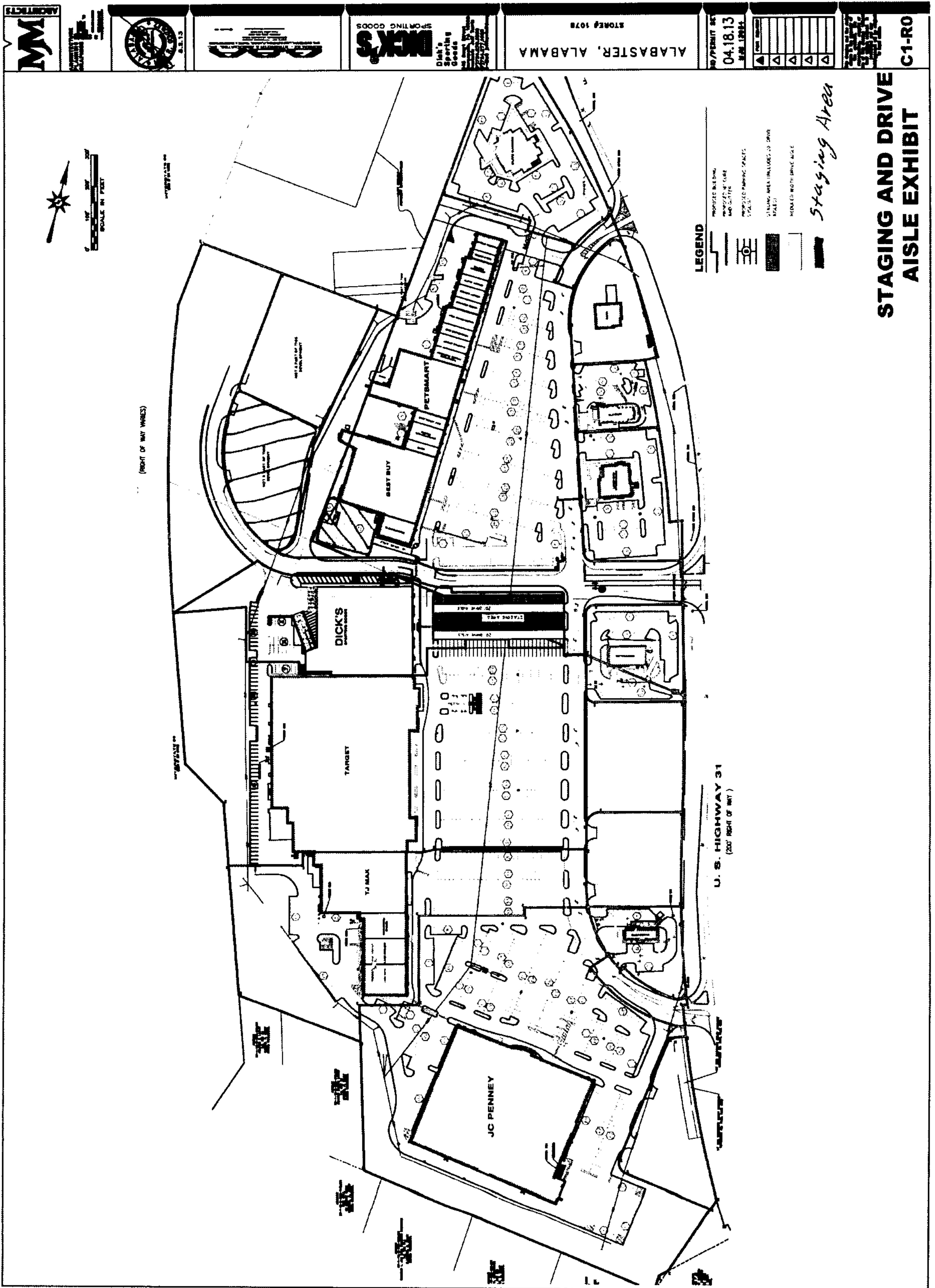


EXHIBIT B-1

Supplement to Site Plan

See Attached


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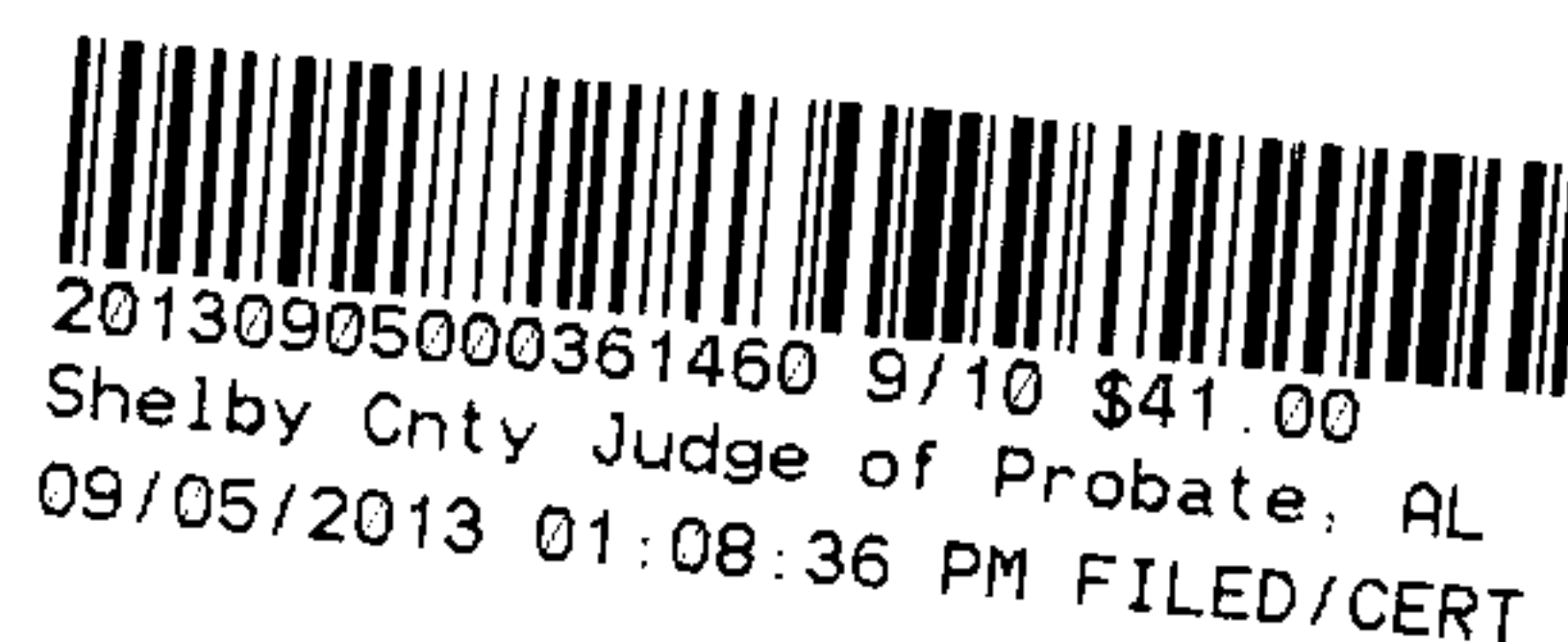
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EXHIBIT 1


Legal Description of New Developer Tract

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter and in part of the Southeast one-quarter of the Northwest one-quarter of Section 12, Township 21 North, Range 3 West, Shelby County, Alabama being more particularly described as follows:

Commencing at the Northwest corner of the Southwest one-quarter of the Northeast one-quarter of said Section thence run South 87 degrees 31 minutes 35 seconds East for a distance of 419.55 feet to a set 5/8 inch capped rebar stamped CA-560LS being the POINT OF BEGINNING lying on a curve turning to the right with a radius of 155.00 feet, with a delta angle of 19 degrees 59 minutes 53 seconds, with a chord bearing of North 83 degrees 35 minutes 29 seconds East, and with a chord length of 53.83 feet; thence run along the arc of said curve along the Southerly right of way of South Colonial Parkway(right of way varies) for a distance of 54.10 feet to a set 5/8 inch capped rebar stamped CA-560LS lying on a reverse curve turning to the left with a radius of 195.00 feet, with a delta angle of 23 degrees 47 minutes 59 seconds, with a chord bearing of North 81 degrees 41 minutes 26 seconds East, and with a chord length of 80.42 feet; thence run along the arc of said curve along said Southerly right of way for a distance of 81.00 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 20 degrees 12 minutes 33 seconds East along said Southerly right of way for a distance of 10.00 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 69 degrees 47 minutes 27 seconds East along said Southerly right of way for a distance of 252.33 feet to a set 5/8 inch capped rebar stamped CA-560LS ; thence run South 65 degrees 13 minutes 04 seconds East along said Southerly right of way for a distance of 5.34 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 20 degrees 13 minutes 35 seconds East along said Southerly right of way for a distance of 122.50 feet to a set 5/8 inch capped rebar stamped CA-560LS ; thence leaving said Southerly right of way run South 69 degrees 41 minutes 53 seconds West for a distance of 126.19 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 20 degrees 18 minutes 07 seconds West for a distance of 20.00 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 69 degrees 41 minutes 53 seconds West for a distance of 98.98 feet to a set 5/8 inch capped rebar stamped CA-560LS ; thence run South 20 degrees 18 minutes 07 seconds East for a distance of 20.00 feet to a set 5/8 inch capped rebar stamped CA-560LS ; thence run South 69 degrees 41 minutes 53 seconds West for a distance of 88.05 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 19 degrees 50 minutes 02 seconds East for a distance of 60.81 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 69 degrees 44 minutes 44 seconds West for a distance of 218.27 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 19 degrees 51 minutes 13 seconds West for a distance of 4.88 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 69 degrees 44 minutes 33 seconds West for a distance of 72.43 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 23 degrees 26 minutes 14 seconds West for a distance of 26.03 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 69 degrees 45 minutes 54 seconds West for a distance of 119.61 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 20 degrees 14 minutes 06 seconds West for a distance of 124.88 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run South 65 degrees 24 minutes 29 seconds



West for a distance of 166.87 feet to a found concrete monument; thence run North 38 degrees 23 minutes 35 seconds East for a distance of 226.51 feet to a set 5/8 inch capped rebar stamped CA-560LS lying on the Southerly right of way of said South Colonial Parkway point also lying on a non-tangent curve turning to the left with a radius of 160.43 feet, with a delta angle of 37 degrees 35 minutes 46 seconds, with a chord bearing of North 88 degrees 35 minutes 20 seconds East, and with a chord length of 103.39 feet; thence run along the arc of said curve along said Southerly right of way for a distance of 105.27 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence run North 69 degrees 48 minutes 06 seconds East along said Southerly right of way for a distance of 203.22 feet to a set 5/8 inch capped rebar stamped CA-560LS lying on a curve turning to the right with a radius of 155.00 feet, with a delta angle of 03 degrees 47 minutes 26 seconds, with a chord bearing of North 71 degrees 41 minutes 50 seconds East, and with a chord length of 10.25 feet; thence run along the arc of said curve along said Southerly right of way for a distance of 10.25 feet to the POINT OF BEGINNING. Said parcel contains 136,525 square feet or 3.13 acres more or less.



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