  
20141017000328390 1/13 \$50.00  
Shelby Cnty Judge of Probate, AL  
10/17/2014 08:12:59 AM FILED/CERT

Prepared by and upon  
recording return to:

Anthony D. Greene, Esq.  
Troutman Sanders LLP  
The Chrysler Building  
405 Lexington Ave.  
New York, New York 10174

## **ACCESS EASEMENT AGREEMENT**

**THIS ACCESS EASEMENT AGREEMENT** (this "Agreement") is entered into this 10<sup>th</sup> day of October, 2014, by and among BAZAAR 280, LLC, an Alabama limited liability company ("Bazaar"), OSGILIATH, LLC, an Alabama limited liability company ("Osgiliath"), and CHICK-FIL-A, INC., a Georgia corporation ("CFA"; together with Bazaar and Osgiliath hereinafter collectively referred to as the "Parties").

### **BACKGROUND STATEMENTS:**

A. Bazaar owns that certain parcel of land located in Shelby County, Alabama, described on Exhibit A attached hereto (the "Bazaar Parcel").

B. Osgiliath owns that certain parcel of land located in Shelby County, Alabama, described on Exhibit B attached hereto (the "Osgiliath Parcel"; together with the Bazaar Parcel sometimes hereinafter collectively referred to as the "Parcels" and individually as a "Parcel").

C. CFA is the ground leasehold owner of the Osgiliath Parcel under a long term ground lease with Osgiliath as landlord. In connection with CFA's development of the Osgiliath Parcel, CFA intends to construct an accessway (the "Accessway Extension") extending from the Osgiliath Parcel and tying into the existing access road located on the Bazaar Parcel (the "Existing Access Road") as shown on the site plan attached hereto as Exhibit C (the "Site Plan") for the purpose of providing access from the Osgiliath Parcel to Highway 119.

D. In connection with CFA constructing and installing the Accessway Extension, the Parties will grant and agree to certain easements, rights and obligations with respect to the Parcels, and Bazaar will grant a temporary construction easement in favor of CFA and the Osgiliath Parcel, all as more particularly set forth in this Agreement.



NOW, THEREFORE, in consideration 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 do hereby covenant and agree as follows:

1. Access Easement. Bazaar hereby grants and conveys to Osgiliath and CFA and their respective tenants, customers, invitees, employees, agents, contractors, successors and assigns, for the benefit of and as an appurtenance to the Osgiliath Parcel, a non-exclusive, perpetual easement for the purposes of pedestrian and vehicular access, ingress and egress over, upon, across and through the "No Change Area" as shown on the Site Plan (the "No Change Area"). Furthermore, Bazaar hereby grants and conveys to Osgiliath and CFA and their respective employees, agents, contractors, successors and assigns, for the benefit of and as an appurtenance to the Osgiliath Parcel, a non-exclusive, perpetual easement for the purposes of maintenance, repair and replacement of the "No Change Area" as set forth in Section 7 of this Agreement.

2. Modification of Accessways. It is expressly understood and agreed that the access easements granted herein are non-exclusive easements upon, over, through, and across the No Change Area, as such area may exist from time to time. Bazaar shall not materially modify the location, layout, configuration, and size of the No Change Area without having first obtained prior written approval from the owner and any long term ground lessee of the Osgiliath Parcel. For the purposes of illustration only, the following changes will be considered material: relocation of any drive aisles, erection of any buildings or other structures, or elimination of any curb cuts.

3. No Parking. No parking rights are intended to be or are created by this Agreement.

4. Approval of Plans; Performance of Construction; Slope Easement. Bazaar hereby grants and conveys to Osgiliath and CFA and their employees, agents, contractors and representatives, for the benefit of and as an appurtenance to the Osgiliath Parcel, the right to construct and install the Accessway Extension tying into the Existing Access Road as shown on the Site Plan (the "Work"); provided that the Accessway Extension shall be constructed, installed, paved and completed at CFA's sole cost and expense, in a good and workmanlike manner, and in accordance with plans and specifications approved by Bazaar, such approval not to be unreasonably conditioned, delayed or denied, and in compliance with all federal, state, county and municipal governmental authorities having jurisdiction thereof. The Work shall not unreasonably obstruct or otherwise interfere with the continued passage of vehicles and pedestrians upon, across, over and through the Bazaar Parcel. Any damage to the Existing Access Road or the Bazaar Parcel resulting from the Work will be promptly repaired by CFA at CFA's sole cost and expense. CFA shall indemnify and hold Bazaar harmless from any and all loss, cost, liability or expense, including reasonable attorney's fees, incurred by Bazaar and arising out of or related to the Work.

5. Slope Easement. Bazaar, as the owner of the Bazaar Parcel, hereby grants for the benefit of the Osgiliath Parcel, a non-exclusive easement over, under, across and through a portion of the Bazaar Parcel necessary for the construction, replacement, repair and maintenance of a slope in accordance with the plans and specifications approved by Bazaar.



6. Temporary Construction Easements. In connection with the Work, Bazaar hereby grants to Osgiliath and CFA, for the benefit of the Osgiliath Parcel, nonexclusive temporary easements over and across the Bazaar Parcel for ingress and egress reasonably relating to such construction work, along with a temporary easement for grading in accordance with the plans and specifications approved by Bazaar, subject, however, to the following limitations:

(a) Each such easement is for the purpose of ingress to and egress from (by pedestrians and motor vehicles) the portion of the Parcel where such construction work is occurring;

(b) No such easement shall exceed the size or extend in time beyond the duration reasonably required for such purposes;

(c) No such easement may be utilized in such manner as to unreasonably or unnecessarily interfere with the conduct of business on the Bazaar Parcel;

(d) No such granting of such easement shall be interpreted to allow the placement or storage of equipment or materials on the Bazaar Parcel.

(e) The temporary construction easements granted in this Section 6 will automatically terminate without the need for additional documentation on the earlier of (i) the date that CFA completes the construction of the improvements on the Bazaar Parcel, or (ii) three (3) years after the date of this Agreement.

7. Maintenance. (a) The owner of the Osgiliath Parcel and CFA, as ground lessee, shall be solely responsible for the maintenance, repair, resurfacing and replacement of the No Change Area. The owner of the Osgiliath Parcel or CFA, as ground lessee, will maintain, repair, resurface and replace the No Change Area in good repair and in a sound and functional condition, free from refuse, rubbish and dirt, and in conformity with any and all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. The owner of the Bazaar Parcel will reimburse the owner of the Osgiliath Parcel or CFA, as ground lessee, as the case may be, for twenty percent (20%) of the reasonable and actual costs incurred in connection with the maintenance, repair, resurfacing and replacement of the No Change Area. Upon each instance of maintenance, repair, resurfacing or replacement of the No Change Area, the owner of the Osgiliath Parcel or CFA will submit a bill to the owner of the Bazaar Parcel for its share of such costs. Such billing will be accompanied by copies of paid invoices, receipts and other materials as are reasonably necessary for to determine the accuracy of the bill. The owner of the Bazaar Parcel will pay the owner of the Osgiliath Parcel or CFA, as ground lessee, as the case may be, such costs within thirty (30) days after receipt of the bill and backup information substantiating such costs.

(b) Whenever a Party performs any maintenance, repairs or replacements required or permitted hereunder, such work shall be done expeditiously and in a good and workmanlike manner. Such maintenance, repair or construction activities, once commenced,

shall be prosecuted diligently until completion thereof so as to minimize any interference with the use or enjoyment of the easements created in this Agreement by the Parties and their respective employees, customers, agents, invitees and guests and in such manner so as to cause the least amount of disruption to any business operations being conducted on the other Parcel as is reasonably practicable. The provisions of this Section 7 will be referred to in this Agreement as the "Maintenance Standards."

8. Default. If the owner of the Osgiliath Parcel or CFA fails to properly maintain the No Change Area in accordance with the Maintenance Standards, Bazaar may, upon ten (10) days' advance written notice to the owner of the Osgiliath Parcel and CFA make any necessary repairs or replacements, and thereafter invoice the owner of the Osgiliath Parcel and CFA for the reasonable costs thereby incurred by Bazaar making such repairs, whereupon the owner of the Osgiliath Parcel and CFA will reimburse Bazaar within thirty (30) days of receipt of the invoice. If the owner of the Osgiliath Parcel and CFA fails to reimburse Bazaar within said thirty (30) day period, Bazaar shall be entitled to pursue any legal remedies and alternatives to collect any outstanding reimbursements related to this Agreement.

9. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or nationally recognized overnight courier, and shall be considered given upon receipt, addressed as follows:

If to Bazaar:

Bazaar 280, LLC  
631 Second Avenue South  
Suite 300  
Nashville, TN 37210-2096  
Attention: Mike Tidwell

If to Osgiliath:

Osgiliath, LLC  
5015 Addison Circle  
Suite 279  
Addison, Texas 75001  
ATTN: J.T. McPherson

With a copy to:

Najjar Denaburg, P.C.  
2125 Morris Ave.  
Birmingham, Alabama 35203  
ATTN: Charles Denaburg, Esq.



If to CFA:

Chick-fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia 30349  
ATTN: Property Management – Real Estate Legal

With a copy to:

Chick-fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia 30349  
ATTN: Real Estate Legal Department – FSU Division

10. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Alabama. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns. Time is of the essence of this Agreement.

11. Benefited Parties/Binding Effect. The rights, privileges, easements and obligations established in this Agreement shall be for the benefit of, and shall run with the land and be binding upon, Bazaar, Osgiliath and CFA and their respective tenants, customers, invitees, employees, agents, contractors and licensees, successors and assigns.

12. Indemnity. The owner of the Osgiliath Parcel and CFA shall jointly and severally indemnify and hold Bazaar harmless from any and all loss, cost, liability or expense, including reasonable attorney's fees, incurred by Bazaar and arising out of the failure of owner of the Osgiliath Parcel or CFA to comply with the Maintenance Standards.

13. Insurance. The parties shall, at all times during the term hereof, maintain at their sole cost and expense, commercial general liability insurance covering their respective portions of the Parcels, with coverage of not less than Two Million Dollars (\$2,000,000) combined single limit. Each such policy shall name the other parties as an additional insured, as their interests may appear, and each party hereto shall deliver evidence of such insurance to the others upon request.

14. Private Easements. The easements, rights, licenses and privileges established, created and granted hereunder shall be for the benefit of, and shall be restricted solely to the parties hereto, their successors and assigns, their tenants, or subtenants and their respective customers, employees and invitees and this instrument shall in no event be construed to create any rights in or for the benefit of the general public.

15. Costs. The owner of the Osgiliath Parcel or CFA shall pay all costs of recording this Agreement, including any transfer or similar taxes.

[Signatures commence on following page]



IN WITNESS WHEREOF, the Parties have set their hands and seals as of the day, month and year first above written.

"BAZAAR"

BAZAAR 280, LLC,  
an Alabama limited liability company

By: Hunter Williams  
Name: Hunter Williams  
Title: mgr.

STATE OF ALABAMA }  
COUNTY OF JEFFERSON } SS:

This instrument was acknowledged before me on the 21<sup>st</sup> day of APRIL, 2014 by HUNTER WILLIAMS, the MANAGER of BAZAAR 280, LLC, an Alabama limited liability company, on behalf of said company.

Judith A. Lemsley  
Notary Public, State of ALABAMA  
My Commission Expires 1-19-15  
(NOTARY SEAL)

[Signatures continue on following page]



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[Signatures continued from previous page]

**"OSGILIATH"**

OSGILIATH, LLC,  
an Alabama limited liability company

By: 

Name: J.T. McPherson


Title: Sole Member / Manager

THE STATE OF Texas  
COUNTY OF Dallas

§  
§

This instrument was acknowledged before me on 2<sup>nd</sup> May, 2014, by J.T. McPherson, the Sole Member of OSGILIATH, LLC, an Alabama limited liability company, on behalf of said limited liability company.



  
Notary Public, State of Texas

Date commission expires: 10.11.2014

[Signatures continue on following page]



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[Signatures continued from previous page]

"CFA"

CHICK-FIL-A, INC., a Georgia corporation

By: S. Tammy Pearson

Name: S. Tammy Pearson

Title: Vice President and Assistant General Counsel

By: William F. Murphy

Name: William F. Murphy

Title: Vice President

(CORPORATE SEAL)

THE STATE OF GEORGIA  
COUNTY OF FULTON

§  
§

This instrument was acknowledged before me on May 1, 2014, by S. Tammy Pearson and William Murphy, the Asst Gen'l Counsel and Vice President of CHICK-FIL-A, INC., a Georgia corporation, on behalf of said corporation.

Wendy Leacock Shaw  
Notary Public, State of GEORGIA

(SEAL)

Date commission expires: \_\_\_\_\_



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## **EXHIBIT "A"**


### **Bazaar Parcel**

**Lot 1, according to the Survey of Aultmans Addition to 280, as recorded in Map Book 29, Page 1, in the Probate Office of Shelby County, Alabama.**

**LESS AND EXCEPT that portion of the above property that was conveyed to the State of Alabama Department of Transportation in Instrument 20130801000350660 being more particularly described as follows:**

**A part of the NW ¼ of SW ¼ Section 32, Township 18-S, Range 1-W, identified as Tract No. 15 on Project No NHF-0038(531) in Shelby County, Alabama and being more fully described as follows:**

**Commencing at a found capped rebar located at the northwest corner of the property referenced on Instrument Number 20060622000298960 in the Probate Office of Shelby County; thence S 64°34'46" E and along the grantor's south property line a distance of 274 feet, more or less, to a point on the acquired R/W line (said line offset 80' LT and parallel with centerline of project), which is the point of BEGINNING; thence N 22°2'4" E and along the acquired R/W line a distance of 65.05 feet to a point on the grantor's north property line; thence S 64°29'3" E and along the grantor's said property line a distance of 22.78 feet to a point on the west present R/W line of SR-119; thence S 20°52'57" W and along the said present R/W line a distance of 65.10 feet to a point on the grantor's south property line; thence N 64°34'46" W and along the grantor's said property line a distance of 24.08 feet; to the point and place of BEGINNING.**

  
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**EXHIBIT "B"**

Osgiliath Parcel

All that tract or parcel of land lying and being in Section 32 Township 18 South, Range 1 West Shelby County, Alabama and being more particularly described as follows;

Beginning at the intersection of the Northern right-of-way of US Hwy 280 and the western right-of-way of Cahaba Valley Rd. (Variable R/W); thence with said right-of-way of Cahaba Valley Rd.; thence N 22°00'33" E a distance of 98.95' to a point; thence leaving said right-of-way N 64°36'32" W a distance of 274.22' to a 1/2" rebar w/ cap found; thence S 21°17'19" W a distance of 216.44' to a 1/2" rebar w/ cap found along Northern right-of-way of US Hwy 280; thence with said right-of-way S 59°43'46" E a distance of 80.52' to a point; thence S 80°33'59" E a distance of 125.81' to a 1/2" rebar w/cap found; thence N 60°44'12" E a distance of 109.56' to The Point of Beginning.

Said Parcel having an area of 52920.66 square feet/1.21 acres.




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**EXHIBIT "C"**



Site Plan

[See attached.]

  
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LEGEND

-  EXISTING ACCESS ROAD
-  NO CHANGE AREA

BAZAAR  
PARCEL

EXISTING  
ACCESS  
ROAD

NO  
CHANGE  
AREA

OSGILIATH  
PARCEL

ACCESS  
WAY  
EXTENSION

*Chapel*  
S08E-V8 BUILDING  
4,559 S.F. (FOOTPRINT)  
106 SEATS (INSIDE) - 23 SEATS (OUTDOORS)  
47 PARKS

CAHABA VALLEY RD.  
(VARIABLE PAV.)

US HWY 280  
(VARIABLE PAV.)

4' SHLD



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**GREYDEN**  
ENGINEERING

EXHIBIT "C"

PROJECT : GREYSTONE-B'HAM, AL

PROJECT #: 13-014 CFA#3378

DATE : 3/13/14

SCALE 1" =60'



CONSENT AND JOINDER

THIS CONSENT AND JOINDER is entered into by Renasant Bank ("Renasant"), as the holder of a Mortgage dated June 26, 2014, from Bazaar 280, LLC, recorded in Instrument 20140627000196400, in the Probate Office of Shelby County, Alabama (the "Mortgage") encumbering the property described as the "Bazaar Parcel" in the Access Easement Agreement (the "Easement Agreement") to which this Consent is attached. Renasant hereby consents to the execution and delivery of the Easement Agreement and joins in the granting of the rights and easements granted over the Bazaar Parcel.

20<sup>th</sup> Renasant has executed this Consent under seal by its duly authorized representative as of the day of August, 2014.

Signed, sealed and delivered  
in the presence of:

RENASANT BANK,

[Signature]  
Witness  
[Signature]  
Notary Public

By: [Signature]  
Name: Fred R. Elliott  
Title: Sr. Vice President

(SEAL)

My Commission expires: 1/6/2017

(NOTARIAL SEAL)

