

**CROSS ACCESS EASEMENT AGREEMENT**

**THIS CROSS ACCESS EASEMENT AGREEMENT ("Agreement") is made by and between FEDEX OFFICE AND PRINT SERVICES, INC. ("FedEx") and RESOURCE HOLDINGS, LLC ("Resource"), dated May 16, 2016 (the "Effective Date").**

**WHEREAS, FedEx is under lease from Resource ("FedEx Lease") for the property described on Exhibit "A", attached hereto and made a part hereof ("FedEx Parcel");**

**WHEREAS, Resource is the owner of the property described on Exhibit "B", attached hereto and made a part hereof ("Resource Parcel"), a portion of which is being leased to WHATABURGER REAL ESTATE, LLC ("WB"), which portion is described on Exhibit "C" attached hereto and made a part hereof ("WB Parcel");**


**WHEREAS, FedEx and Resource are desirous of entering into an agreement providing for vehicular and pedestrian cross access, ingress and egress by and between the FedEx Parcel and the Resource Parcel on the terms and provisions contained herein;**

**NOW THEREFORE, for \$10.00 and other good and valuable consideration, Resource and FedEx agree as follows:**

- 1. Each party hereby grants to the other party, its respective employees, customers, agents and assigns, a non-exclusive access, ingress and egress over**

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Prepared By:  
Steven A. Brickman  
Sirote & Permutt, P.C.  
2311 Highland Ave., South  
Birmingham, AL 35205


  
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and across the curb cuts, entrances, exits, driveways and common areas (collectively "Common Areas") located from time to time on, or to be located on, over and across the Resource Parcel and the FedEx Parcel. Except as may be set forth in the FedEx Lease, it is agreed and understood that this Agreement does not include parking rights on any parcel. It is further understood and agreed the Common Areas do not include any improvements that currently exist or may be constructed in the future on the Resource Parcel for WB and for any other tenant or occupant of the Resource Parcel, as said improvements are not to be considered Common Areas on any parcel covered by this Agreement.

2. Notwithstanding anything herein to the contrary, with regard to delivery trucks delivering supplies and product to WB, or its successors, during the operation of any business on the WB Parcel, or to any other tenant or occupant in the future on the Resource Parcel ("Other User"), FedEx is hereby limiting the grant of easement for access, ingress and egress by delivery trucks to the WB Property or to the Other User to the area described on Exhibit "D" attached hereto and made a part hereof ("Delivery Easement"). A portion of the trucks' path of travel on the FedEx Parcel is shown in red on the attached Exhibit "A-1".

3. FedEx shall not construct improvements over the Delivery Area (which is included within the Common Area) located on the FedEx Parcel (excluding paving), or block, or interfere with, access over and across the Delivery Area on the FedEx Parcel. During any maintenance of the Common Areas on either parcel covered herein, the Common Areas shall be kept clear so as not to unreasonably interfere with vehicular and pedestrian access, ingress and egress.

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Except as otherwise expressly set forth herein or by separate document, each party shall maintain, or arrange for its tenants to maintain, in good condition and repair, at its own cost, that portion of the Common Areas located on their respective parcels.


4. Notwithstanding anything herein to the contrary, within twelve (12) months from the Effective Date, FedEx grants to Resource and its agents and contractors a construction easement on, over and across the FedEx Parcel to repave and restripe, as needed, the Common Areas located on the FedEx Parcel. The repaving and restriping of the Common Areas will be coordinated with management of FedEx located on the FedEx Parcel and occur during times which minimize the adverse impact on the business operations of FedEx.
5. If either party removes, or relocates an exit, driveway, curb cut, or entrance affected by this Agreement, said party shall construct a replacement exit, driveway, curb cut, or entrance which provides substantially the same access to the properties and public roads as existed prior to the removal, or relocation, and which shall be subject to this Agreement.
6. The rights, privileges and easements herein granted are for the private, non-exclusive use, enjoyment and benefit of each party and any other tenant, along with its employees, tenants, subtenants, licensees, invitees, and business guests of the Resource Parcel and FedEx Parcel. The easements and the rights and privileges herein granted are covenants running with the FedEx Parcel and Resource Parcel.

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7. **Resource and FedEx, by mutual written agreement executed by authorized representatives, may terminate or modify this Agreement only by written agreement in the Probate Office in Shelby County, Alabama.**
8. **Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas or other easements granted herein to or for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed, solely for the use of the parties and their respective successors and assigns and those parties that benefit from the easements granted herein. Nothing contained in this Agreement, express or implied shall confer upon any person or entity, other than the parties hereto, their successors and assigns, any rights or remedies under or by reason of this Agreement.**
9. **Each party warrants and represents it has the right to enter into this Agreement and fulfill the terms therein without the consent or approval of any third party. Each party covenants and warrants that there are no mortgages or other liens encumbering its parcel which would prohibit, restrict or interfere with each party's use of the easements granted herein, and if there are mortgages which encumber any of the parcels, the mortgagees have subordinated their lien right to the rights of the parties under this Agreement.**
10. **Except as set forth herein, or as may be set forth in the FedEx Lease, each party will maintain the Common Area located on their respective property in good**

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condition and repair at all times. Each party will also be solely responsible to pay all ad valorem taxes which are imposed on their respective parcel.

11. Notwithstanding anything herein to the contrary, in the event a party fails to fulfill its obligations under this Agreement, the non-defaulting party reserves the right to cure any default by the defaulting party, after ten (10) business days written notice (no notice being required in an emergency) and obtain prompt reimbursement from the defaulting party of all costs and expenses the non-defaulting party incurs, plus interest from the date of the cure, until paid in full at the rate of eight percent (8%) per annum.

12. Any notices, demands, approvals and other communications provided for herein shall be in writing and shall be delivered by overnight air courier, personal delivery or registered or certified U.S. Mail with return receipt requested, postage or other charges paid, to the appropriate party at its address as follows:

If to Resource:

Resource Holdings, LLC

100 Centerview Drive, Suite 220

Birmingham, AL 35209

Attn: James Bruno



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**If to FedEx:**

**FedEx Office and Print Services, Inc.**

**7900 Legacy Drive**

**Plano, Texas 75024**

**Attn: Lease Administration**

**Addresses and contact persons for notice may be changed from time to time by written notice to all other parties. Any communication will be effective when delivered to the appropriate address.**

- 13. Unless otherwise herein provided, whenever approval is required of any party hereto such approval shall not be unreasonably withheld, conditioned or delayed. If a party shall disapprove of any action, the reasons therefor shall be stated in reasonable detail. Except with respect to a disapproval given by lapse of time, all approvals or disapprovals shall be in writing.**
- 14. In the event of default hereunder, any party which proposes to enforce its rights hereunder shall give written notice to any known mortgagee; provided that the name and address of the mortgagee has been furnished to such other party.**
- 15. It is expressly understood and agreed that upon a breach of this Agreement by any party, the nonbreaching party shall have any and all rights and remedies for such breach at law or in equity, including injunctive relief; provided**

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that such nonbreaching party shall not be entitled to bring or maintain an action to terminate this Agreement.

16. From time to time upon request in writing from either party, the other party agrees to execute, acknowledge and deliver to such requesting party a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and any other factual data relating to this Agreement reasonably requested by such party. The party receiving such request shall execute and deliver such written statement to the requesting party within twenty (20) days of its receipt of such written statement.

17. In the event any party hereto brings a suit or other legal proceedings with respect to the subject matter or to enforce any provision of this Agreement, the prevailing party (as determined by the court, agency or other authority which adjudicates such suit or proceeding) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred.


18. This Agreement shall be interpreted according to the laws of the State of Alabama. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. The waiver by either party of a breach or violation of any provisions of this Agreement shall not operate as, or be

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construed to be, a waiver of any subsequent breach of the same or other provision. In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such enforceable or invalid provision. This Agreement shall be binding and shall inure to the benefit of the parties hereto, and their respective successors and assigns. With respect to all provisions of this Agreement, time is of the essence. The captions or headings in this Agreement are made for convenience and general reference only and should not be construed to describe, define or limit the scope and intent of the provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original and taken together shall constitute one and the same document. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. The parties acknowledge that all parties hereto, and their counsel, have read and fully negotiated all of the language used in this Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous and unclear language in favor of or against any party because such party drafted this Agreement. As used in this Agreement, the word "including" means "including without limitation." References to any party in the singular shall include the plural and references to any party in the plural shall include the singular.


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19. This Agreement is executed by the parties hereto on the acknowledgement dates set forth below to be effective for all purposes.

[Signatures on Following Pages]

  
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FEDEX:

FedEx Office and Print Services, Inc.

a Texas Corporation

By: [Signature] 5/13/16

Name: Ari Spitzer  
Vice President, Real Estate & Development

Title: \_\_\_\_\_

Approved  
[Signature] 5/11/16  
FXO Legal

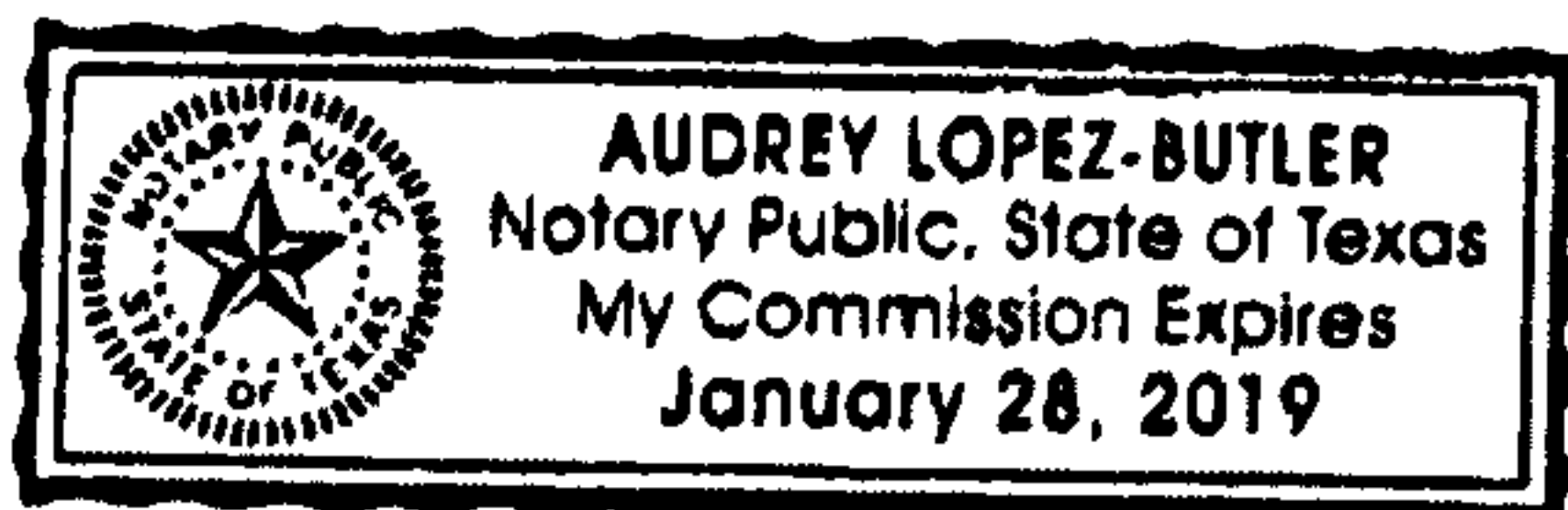
THE STATE OF TEXAS §

§

COUNTY OF Collin §

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that ARI SPITZER, whose name, as Vp, RE of **FEDEX OFFICE AND PRINT SERVICES, INC.**, a Texas Corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he/she, as such officer and with fully authority, executed the same voluntarily on the day the same bears date for and as an act of said Corporation.

GIVEN under my hand and seal, this 13 day of MAY, 2016.



Audrey Lopez-Butler

Notary Public

My Commission Expires: 1-28-19

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**RESOURCE:**

RESOURCE HOLDINGS, LLC

an Alabama limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*

JAMES A. BRUND

MANAGER

THE STATE OF ALABAMA      §

§

COUNTY OF SHELBY      §

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that JAMES A. BRUND whose name, as MANAGER of **RESOURCE HOLDINGS, LLC**, an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he/she, as such officer and with fully authority, executed the same voluntarily on the day the same bears date for and as an act of said limited liability company.

GIVEN under my hand and seal, this 16<sup>TH</sup> day of MAY, 2016.

*[Signature]*

Notary Public

My Commission Expires  
October 13, 2019

My Commission Expires: \_\_\_\_\_

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**Exhibit "A"**

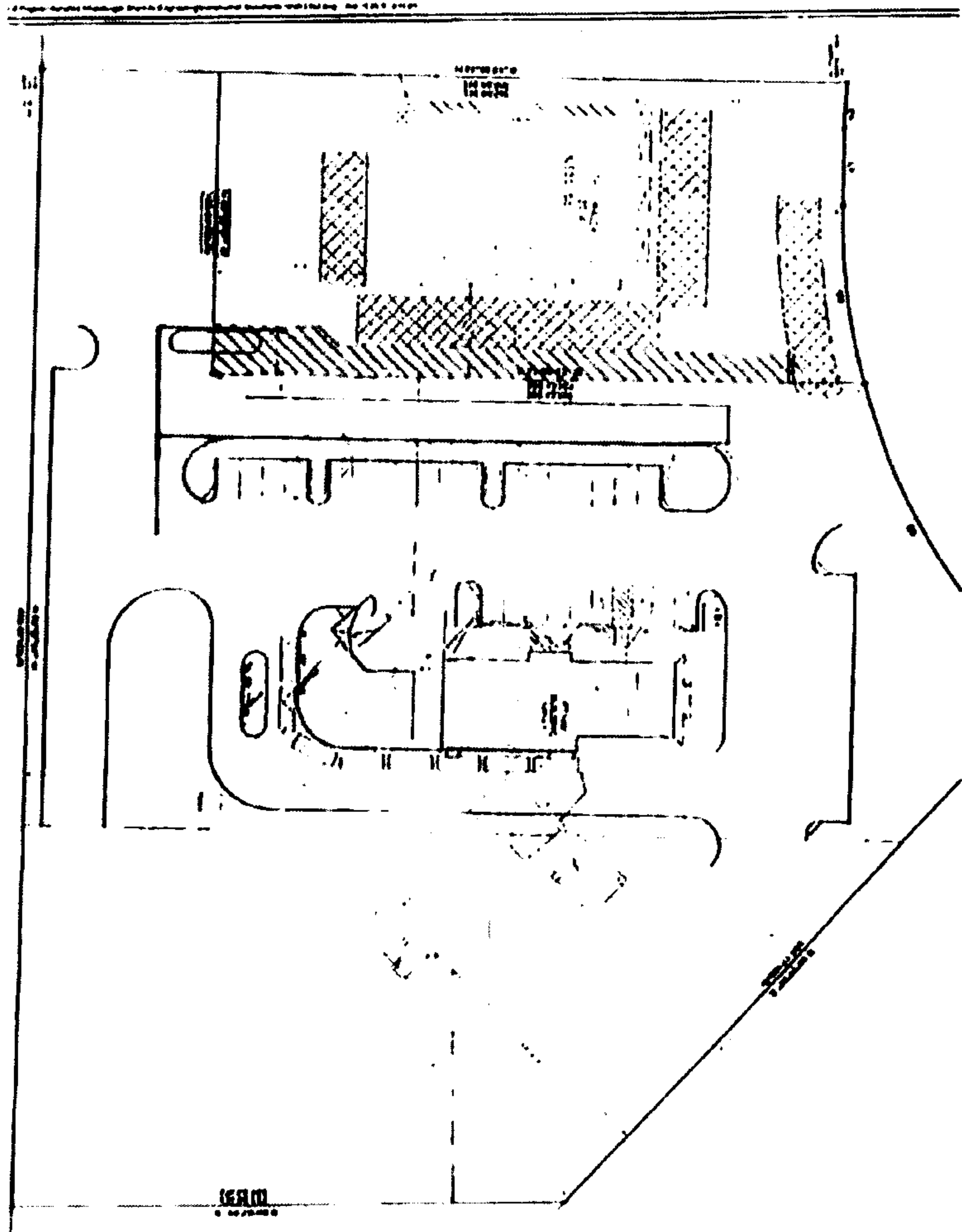
**FedEx Parcel**

**Lot 2A of Resource Center Commercial Subdivision as recorded in Map Book 24, Page 118, Probate Office of Shelby County, Alabama ("Plat").**

  
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Exhibit "A-1"



 <b>CONGALIZ, STINSON &amp; ASSOCIATES, INC.</b> Civil, Mechanical, Land Development, Planning, Survey & Transportation 11111 Highway 111, Suite 111 Tomball, TX 77375 713-281-1747	<b>SITE LAYOUT PLAN</b> <b>WHATABURGER RESTAURANT</b> Developed by: <b>QA DEVELOPMENT LLC</b> 11111 Highway 111, Suite 111 Tomball, TX 77375 713-281-1747
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**Exhibit "B"**

**Resource Parcel**

**Lot 2C of Resource Center Commercial Subdivision as recorded in Map Book 24, Page 118, Probate Office of Shelby County, Alabama ("Plat").**



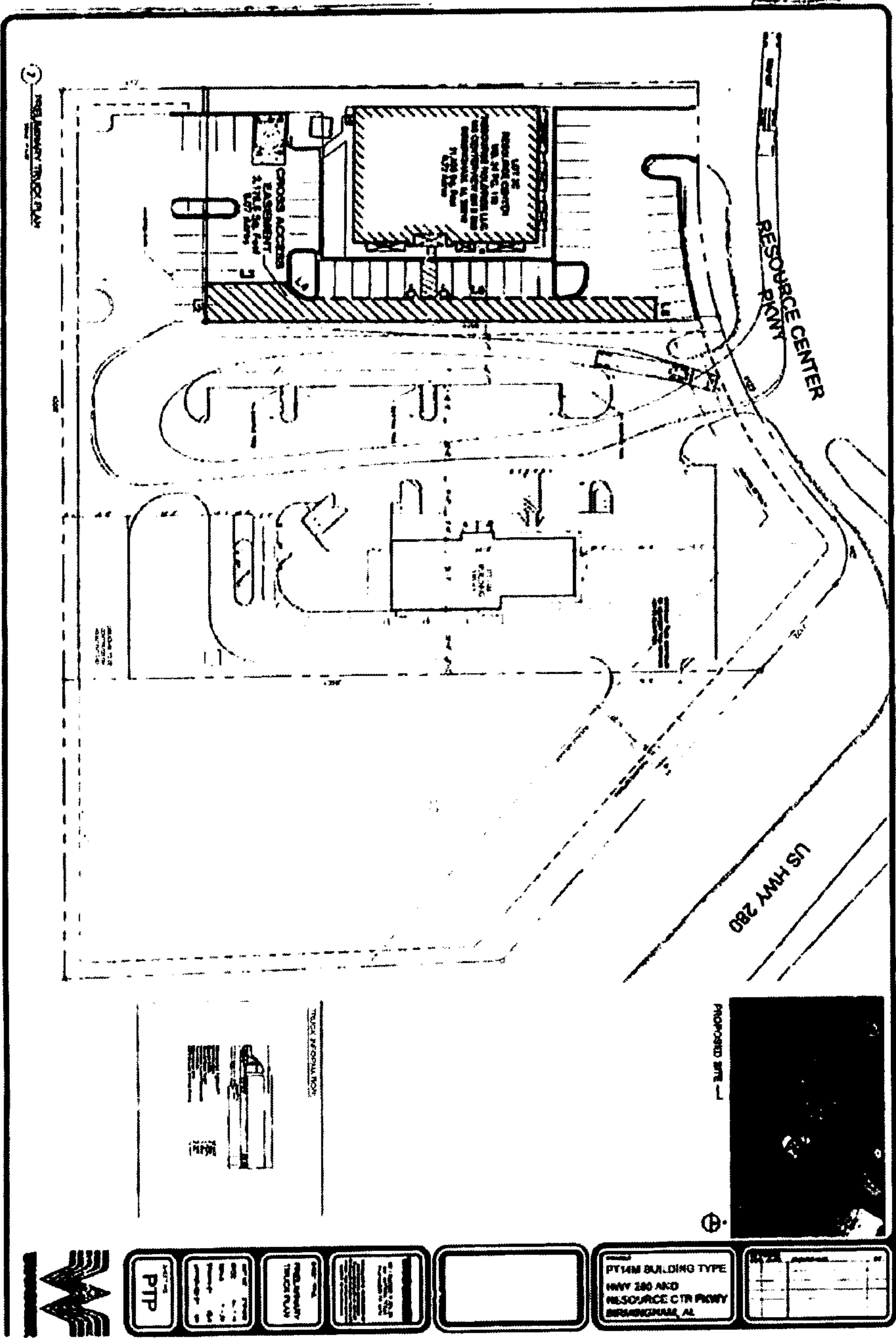
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Exhibit "C"

WB Parcel



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## Exhibit "D"

### Delivery Easement

An easement situated in the Northwest one quarter of Section 36, Township 18 South, Range 2 West Shelby County, Alabama. Being more particularly described as follows:

Begin at a set 5/8 inch rebar stamped LS-560-LS marking the Southeast corner of lot 2C Resource Center as recorded in Map Book 24 Page 118 in the Office of Judge of Probate Shelby County, Alabama; thence run North 88 Degrees 29 Minutes 07 Seconds West along the south line of said Lot 2C for a distance of 20.00 feet to a point; thence leaving said Lot line run North 01 Degrees 30 Minutes 53 Seconds East for a distance of 41.95 feet to a point; thence run North 44 Degrees 36 Minutes 55 Seconds East for a distance of 11.71 feet to a point thence run North 01 Degrees 30 Minutes 53 Seconds East for a distance of 183.40 feet to a point; thence run South 88 Degrees 29 Minutes 07 Seconds East for a distance of 12.00 feet to a point; thence run South 01 Degrees 30 Minutes 53 Seconds West for a distance of 233.90 feet to the Point of Beginning. Said Easement contains 3,176.6 square feet or 0.07 acres more or less.

