

THIS DOCUMENT WAS PREPARED BY
AND IS TO BE RETURNED TO:

Thomas G. Amason III
BALCH & BINGHAM LLP
P. O. Box 306
Birmingham, Alabama 35201

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

MEMORANDUM OF LEASE

This Memorandum of Lease is made by and between **RESOURCE HOLDINGS, LLC**, an Alabama limited liability company (the “Lessor”) and **WHATABURGER REAL ESTATE LLC**, a Texas limited liability company (the “Lessee”), effective as of the 25th day of October, 2016, and is intended to comply with Sections 35-4-6 and 35-4-51.1, *Code of Alabama*, 1975.

RECITALS:

- A. Lessor and Lessee entered into a Lease dated May 25, 2016 (the “Lease”) with respect to property located in Birmingham, Alabama, and being more particularly described on **Exhibit A** attached hereto and made a part hereof (the “Leased Premises”);
- B. The term of the Lease commences on the earlier of (i) 150 days following the expiration of the Approvals Period (as defined in the Lease), which may be waived by Lessee, or (ii) Lessee’s completion of construction and opening for business (the “Commencement Date”);
- C. Lessor and Lessee desire to enter into this Memorandum of Lease for the purpose of giving public notice of the existence of the Lease.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, all as more particularly set forth in the Lease, the receipt, sufficiency and adequacy of which are hereby acknowledged, Lessor and Lessee, each intending to be legally bound, do hereby consent and agree as follows:

- 1. Subject in all respects to the terms and conditions contained in the Lease, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the Leased Premises for a term of fifteen (15) years from the Commencement Date.
- 2. There are three (3) options to renew the term of the Lease for an additional period of five (5) years each.

3. As more fully set forth in the Lease, the addresses of Lessor and Lessee for the purposes of notices, payments and other communications required hereunder are as follows:

Lessor at: Resource Holdings, LLC
100 Centerview Drive, Suite 220
Birmingham, Alabama 35209
Attn: James Bruno

Lessee at: WHATABURGER REAL ESTATE LLC
Attn: Real Estate Department
300 Concord Plaza Drive
San Antonio, Texas 78216

4. Nothing contained in this Memorandum of Lease shall be deemed, construed or implied to alter, modify or amend in any manner whatsoever any of the terms, provisions, covenants or agreements contained in the Lease.

5. During the Initial Term, any Option Term or any tenancy thereafter, so long as Lessee is not in default and operating the Restaurant, Lessor agrees that no portion of the Restricted Property (as hereinafter defined) shall be used for the operation of (i) any business engaged in the sale of prepared hamburgers, including, but not limited to, Wendy's, McDonald's, Burger King, Sonic, Jack-in-the-Box, Dairy Queen, Jack's, Milo's, Steak-n-Shake, A&W, Prince's, Carl's Jr., Mooyah Burgers & Fries, Five Guys Burgers & Fries, Mighty Fine and Freddy's Frozen Custard & Steakburgers, without Lessee's prior written consent (which consent may be withheld by Lessee in its sole and absolute discretion), or (ii) a Chick-fil-A restaurant, without Lessee's prior written consent (which consent may be withheld by Lessee in its sole and absolute discretion). The foregoing covenant shall run with the Restricted Property and be binding upon all successor owners and occupants thereof. This provision shall not apply to the Premises. For purposes hereof, the term "Restricted Property" shall mean all of that certain real property described on Exhibit "B" attached hereto and made a part hereof.

6. Lessor intends to build a restaurant facing U.S. Highway 280 (the "Primary Road"). Subject to the terms of the Lease, Lessor owns real property that is contiguous to the Premises that borders the Primary Road ("Landlord's Contiguous Property"), and subject to the terms of the Lease, Lessor hereby encumbers Lessor's Contiguous Property with a building line restriction that precludes the construction of any improvements on Lessor's Contiguous Property closer to the Primary Road than the restaurant on the Premises will be to the Primary Road.

7. Upon the earlier of termination or expiration of the Lease, pursuant to the terms thereof, Lessee and Lessor shall execute a release of this Memorandum of Lease (the "Release"), which shall be filed of public record. Lessor and Lessee agree to execute the Release within ten (10) days after receipt of a written request for same by either of them. If Lessee or Lessor shall fail to execute the Release within said ten (10) day period, the requesting party shall be hereby deemed the other party's attorney-in-fact for the sole purpose of executing and recording the Release on behalf of said other party.

8. This Memorandum may be executed by counterparts, each of which shall be deemed an

original, and together the counterparts, when taken together, shall comprise one instrument.

9. Lessor and Lessee acknowledge that the information contained herein is true and correct and that they intend to place this Memorandum of Lease of record for the purpose of giving public notice of the Lease in accordance with Sections 35-4-6 and 35-4-51.1, *Code of Alabama*, 1975.

The Remainder of this Page
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IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Lease to be executed as of the day and year first above written.

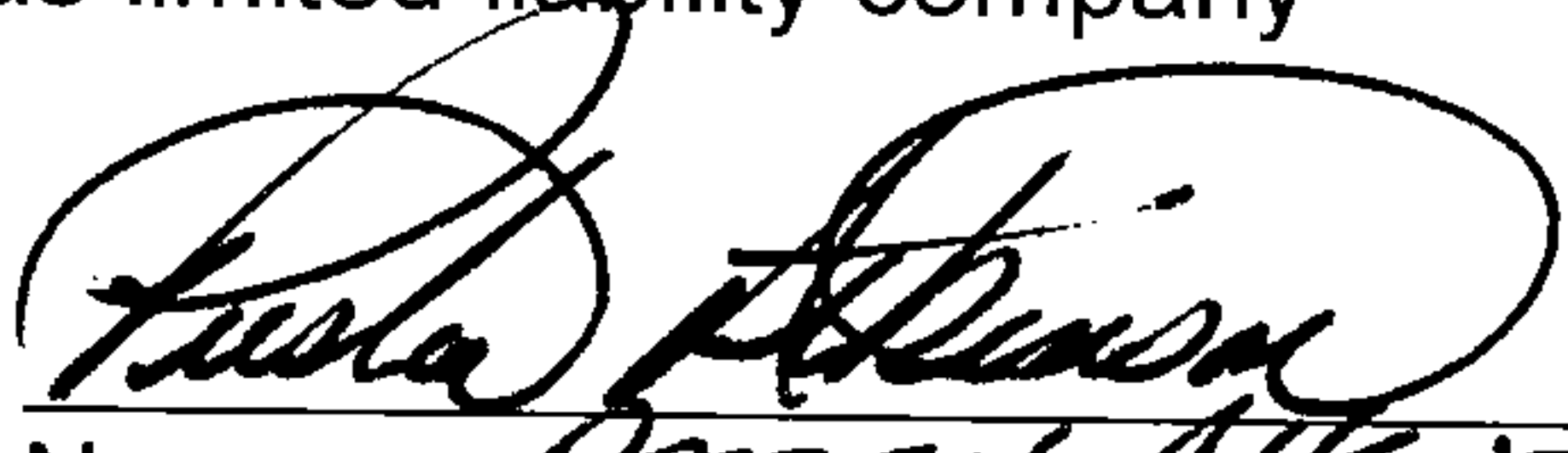
LESSOR:

RESOURCE HOLDINGS, LLC,
an Alabama limited liability company

By: _____
Its: _____

LESSEE:

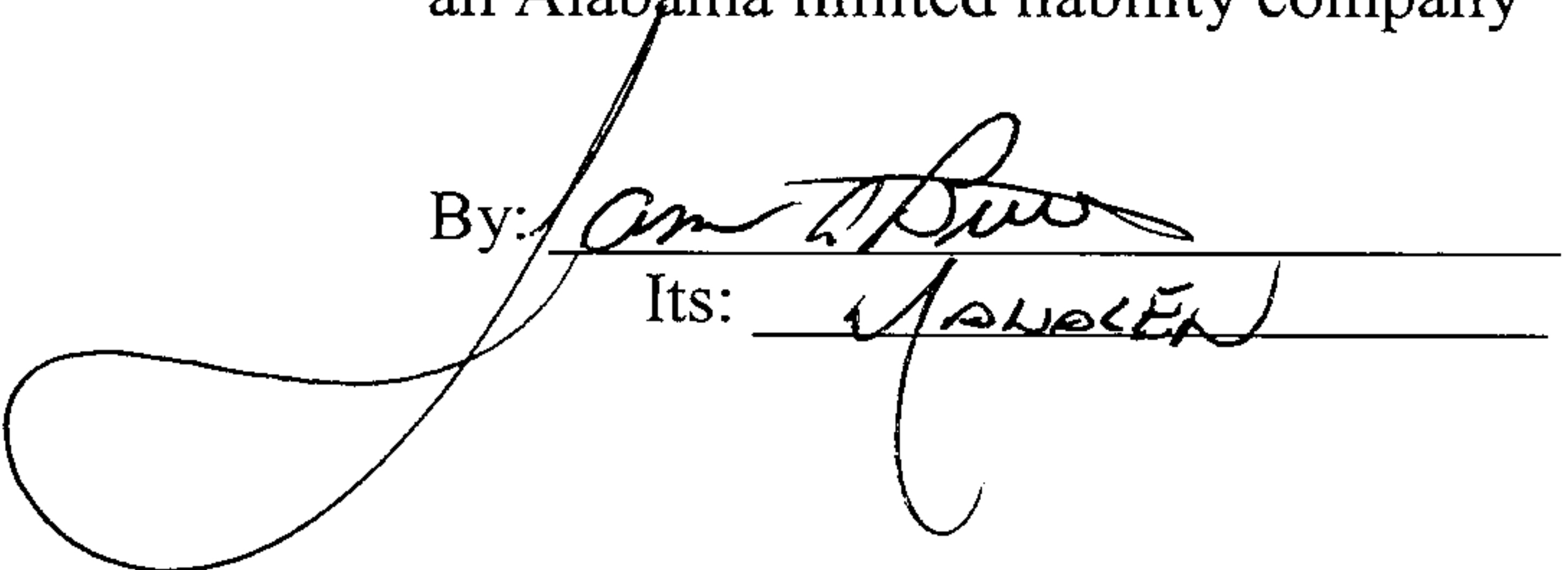
WHATABURGER REAL ESTATE LLC,
a Texas limited liability company

By:  _____
Name: Preston Atkinson
Title: Manager

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

LESSOR:

RESOURCE HOLDINGS, LLC,
an Alabama limited liability company

By: 

Its: MANAGER

LESSEE:

WHATABURGER REAL ESTATE LLC,
a Texas limited liability company

By: _____

Name: _____

Title: Manager

STATE OF _____)

_____ COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____ whose name as _____ of RESOURCE HOLDINGS, LLC, an Alabama 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 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 and official seal this the _____ day of _____, 2016.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

STATE OF TEXAS)

BEXAR COUNTY)

I, CARLA FREISE, a Notary Public in and for said County in said State, hereby certify that PRESTON ATKINSON whose name as MANAGER of WHATABURGER REAL ESTATE LLC, a Texas 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

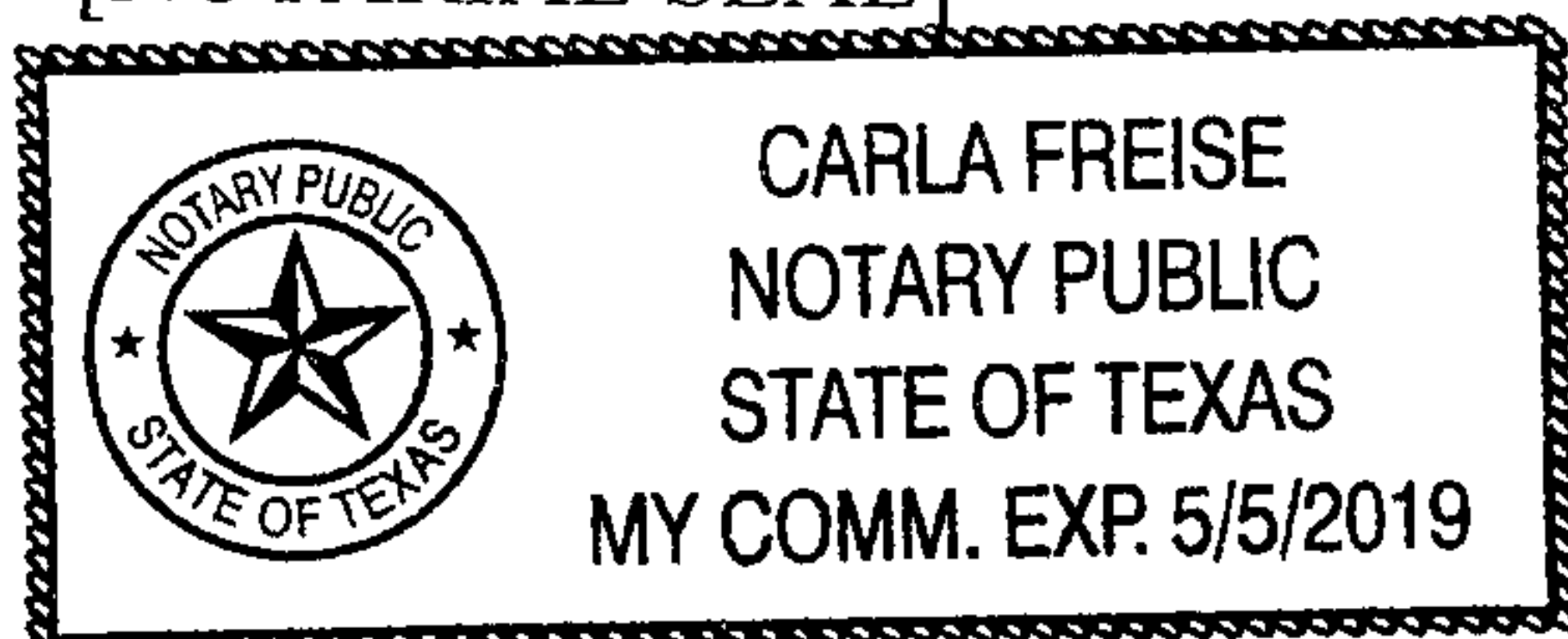
Given under my hand and official seal this the 21st day of OCTOBER, 2016.

CFreise

Notary Public

[NOTARIAL SEAL]

My commission expires: 5/5/19



STATE OF ALABAMA)

Jefferson COUNTY)

I, Steven A. Brickman, a Notary Public in and for said County in said State,
hereby certify that James A. Bruno whose name as
Manager of RESOURCE HOLDINGS, LLC, an Alabama 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 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 and official seal this the 24th day of October, 2016.

[Signature]
Notary Public

[NOTARIAL SEAL]

My commission expires: _____

MY COMMISSION EXPIRES 05/17/2018

STATE OF _____)

_____ COUNTY)

I, _____, a Notary Public in and for said County in said State,
hereby certify that _____ whose name as
_____ of WHATABURGER REAL ESTATE LLC, a Texas 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 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 and official seal this the _____ day of _____, 2016.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

EXHIBIT A

PARCEL I:

A portion of Lot 2A, according to the map of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Office of Shelby County, Alabama.

BEING FURTHER DESCRIBED AS:

A parcel of land situated in the Northwest one quarter of Section 36, Township 18 South, Range 2 West, Jefferson County, Alabama, and being a portion of Lot 2A Resource Center as recorded in Map Book 24, Page 118, in the Office of Judge of Probate Jefferson County, Alabama, being more particularly described as follows:

Begin at a found 5/8 inch capped rebar stamped Arrington, said point marking the Southwest corner of said Lot 2A; thence run North 01 Degrees 30 Minutes 53 Seconds East along the West line of said Lot 2A for a distance of 72.40 feet to a found 5/8 inch capped rebar stamped CA-560-LS; thence run South 88 Degrees 29 Minutes 07 Seconds East along said West line for a distance of 122.00 feet to a found nail in asphalt; thence run North 01 Degrees 30 Minutes 53 Seconds East along the said West line for a distance of 265.73 feet to a found 5/8 inch rebar stamped CA-560-LS, said point lying on the South right of way of Resource Center Parkway a 50.00 foot right of way, said point being on the North line of said Lot 2A, said point also lying on a curve turning to the left having a radius of 260.28 feet, a central angle of 27 Degrees 04 Minutes 02 Seconds, a chord bearing of North 61 Degrees 45 Minutes 12 Seconds East and a chord distance of 121.82 feet; thence leaving said West line run along the arc of said curve, along said right of way and along said North line for a distance of 122.96 feet to a found cross in the curb and gutter, said point marking the beginning of a curve turning to the right having a radius of 25.00 feet, a central angle of 85 Degrees 27 Minutes 44 Seconds, a chord bearing of South 89 Degrees 02 Minutes 50 Seconds East and a chord distance of 33.93 feet; thence run along the arc of said curve, along said right of way and along said North line for a distance of 37.29 feet to a found 5/8 inch capped rebar stamped CA-560-LS, said point lying on the Southeast right of way of US Highway 280; thence leaving said South right of way of Resource Center Parkway run South 46 Degrees 18 Minutes 58 Seconds East along said Highway 280 right of way and along said North line for a distance of 59.74 feet to a set 5/8 inch capped rebar stamped CA-560-LS; thence leaving said North Lot line and said Highway 280 right of way run South 01 Degrees 31 Minutes 18 Seconds West for a distance of 358.93 feet to a set 5/8 inch capped rebar stamped CA-560-LS, said point lying on the South Lot line of said Lot 2A; thence run North 88 Degrees 27 Minutes 55 Seconds West along said South Lot line for a distance of 305.90 feet to the POINT OF BEGINNING of the parcel herein described.

PARCEL II:

Together with beneficial easements under the Cross Access Easement Agreement by and between FedEx Office and Print Services, Inc. and Resource Holdings, LLC dated May 16, 2016, filed August 11, 2016 in Inst. #20160811000286940, corrected in 2016101800382820

EXHIBIT B

Lot 1A, Lot 2C and the portion of Lot 2A not described above on Exhibit A owned by Lessor in the Resource Center subdivision referenced on Exhibit A.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
10/26/2016 08:37:00 AM
\$1142.00 CHERRY
20161026000393050

A handwritten signature in black ink, appearing to read "James W. Fuhrmeister", is written over the printed name of the County Clerk.