


AFTER RECORDING RETURN TO:

COMPASS BANK
P.O. Box 10343
Birmingham, Alabama 35203

THIS INSTRUMENT PREPARED BY:

SETTLEPOU
ATTORNEYS ■ COUNSELORS
3333 Lee Parkway, Eighth Floor
Dallas, Texas 75219


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Shelby Cnty Judge of Probate, AL
06/04/2018 10:58:00 AM FILED/CERT

SUBORDINATION, NON-DISTURBANCE,
ATTORNMEN AND ESTOPPEL AGREEMENT

STATE OF ALABAMA

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COUNTY OF SHELBY

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KNOW ALL MEN BY THESE PRESENTS:

This Subordination, Non-Disturbance, Attornment and Estoppel Agreement ("Agreement") is by and between COMPASS BANK ("Mortgagee") and CARONA ALABAMA HOLDINGS, LLC, a Texas limited liability company ("Landlord"), and MCKAY MANAGEMENT CORPORATION ("Tenant") and is executed as of the last date accompanying the signature of Mortgagee, Landlord, or Tenant below.

RECITALS

A. Landlord has requested that Mortgagee make a loan (the "Loan") to Landlord in the amount of NINE HUNDRED FORTY-FOUR THOUSAND AND NO/100 DOLLARS (\$944,000.00) which Loan is to be secured by a deed of trust (the "Deed of Trust") on the property described on Exhibit "A" attached to and made a part of this Agreement for all purposes (the "Property").

B. In addition to the Deed of Trust, the Loan will be secured by certain other documents, including, without limitation, an Assignment of Leases and Rents. The Deed of Trust and such other security documents are referred to in this Agreement as the ("Security Documents").

C. Tenant and Landlord have entered into that Triple Net Office Lease Agreement dated May 11, 2018 (the "Lease"), for a portion of the Property (the "Demised Premises"). True and correct copies of the Lease and all amendments thereto and assignments and extensions thereof have been delivered to Mortgagee as of the date hereof.

D. Mortgagee and Tenant wish to clarify (i) their respective positions during the period in which the Security Documents are in effect, including, without limitation, during the period in which the Landlord is in default but the Mortgagee has not foreclosed, and (ii) the relationship of the parties after the foreclosure of the Deed of Trust.

AGREEMENTS

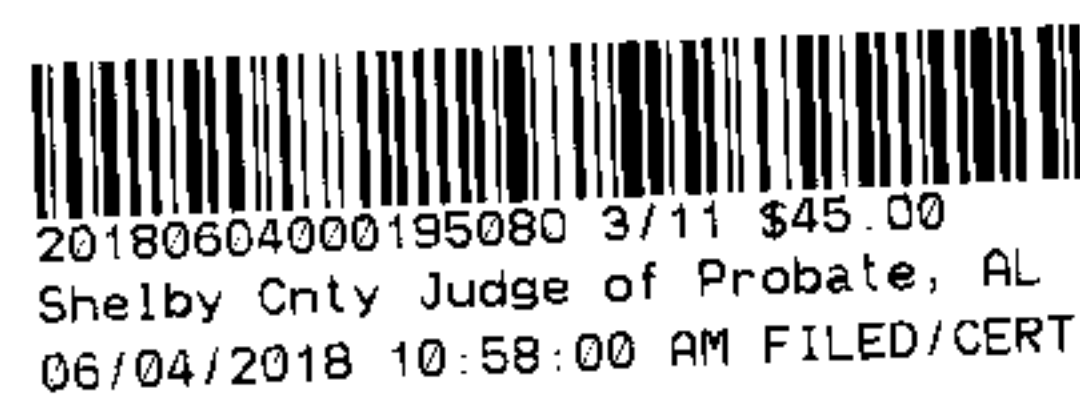
NOW THEREFORE, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee, Landlord, and Tenant hereby agree as follows:

1. Warranties and Representations Regarding the Lease.
 - a. Tenant is "tenant" or "lessee" under the Lease.
 - b. Landlord is "landlord" or lessor" under the Lease.
 - c. The Lease is in full force and effect and has not been modified, altered, amended, changed, supplemented, terminated or superseded in any manner, except as disclosed herein.
 - d. The Lease constitutes a complete statement of the agreements, covenants, terms and conditions of Tenant and Landlord with respect to the Demised Premises, and there are no other agreements or understandings between Landlord and Tenant with respect to the Demised Premises or the Lease.
 - e. As of this date, Tenant is in occupancy and paying rent on a current basis with no rental offsets or claims and there have been no prepayments of rent other than that provided for in the Lease.
 - f. Any agreements and conditions of the Lease to be performed or complied with by Landlord relating to the improvements or the use of the Demised Premises have been satisfied and the improvements were fully and timely completed and have been approved, and accepted by Tenant.
 - g. As of the date of this Agreement, there are no defenses to Landlord's enforcement of its rights under the Lease.
 - h. Tenant has no charges, liens, claims, credits or offsets against rentals under the Lease.
 - i. There are no periods of free rentals applicable to the term of the Lease, except as specified in the Lease. In the event Tenant has paid a security deposit to Landlord, Tenant will not look to Mortgagee for the return of any such security deposit.

- j. As of the date of this Agreement, no default has been declared by Landlord or Tenant and Tenant has no knowledge of any facts or circumstances which it might reasonably believe would give rise to a default by Landlord or Tenant.
- k. As of the date of this Agreement, there are no actions, voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof.
- l. There are no agreements to pay leasing commissions that are superior to the Deed of Trust, enforceable against Mortgagee, or enforceable against any party other than the party who entered into the agreement.

2. Relationship of the parties during the period in which the Security Documents are in effect:

- a. Subordination of the Lease to the Deed of Trust: Except as specifically set forth elsewhere in this Agreement, the Lease is subordinate to the Security Documents in all matters.
- b. Tenant's Obligation to Give Notice of Defaults: Any event that would give Tenant the right to terminate the Lease, abate its rent under the Lease (other than in connection with a casualty or condemnation), or perform certain activities and offset the cost of such activities against any amount due under the Lease is referred to in this Agreement as a "Landlord Lease Default". If a Landlord Lease Default occurs and the Lease requires Tenant to give Landlord notice and a certain period of time in which to cure such Landlord Lease Default (a "Cure Period"), then Tenant agrees that before it exercises any such termination, abatement, or offset right, it will deliver to Mortgagee a copy of such notice and allow Mortgagee the applicable Cure Period after Tenant delivers such notice in which to cure such Landlord Lease Default.
- c. Non-disturbance. As long as the Lease is in full force and effect, Mortgagee will not interfere with Tenant's possession of the Demised Premises in the exercise of any of its rights under the Deed of Trust, including any foreclosure or conveyance in lieu of foreclosure, and Mortgagee will not join Tenant as a party defendant for the purpose of terminating or altering Tenant's interest and estate under the Lease in any proceeding for foreclosure of the lien of the Deed of Trust.
- d. Recognition of Absolute Assignment of Rents: Tenant acknowledges that the Security Documents permit Mortgagee to require Tenant to pay the rents and other amounts due under the Lease to Mortgagee in the event Landlord defaults under the Security Documents. Accordingly, Tenant agrees, subject to the limitations set forth in this Section 2(d), that if Mortgagee notifies Tenant of a default under the Security Documents

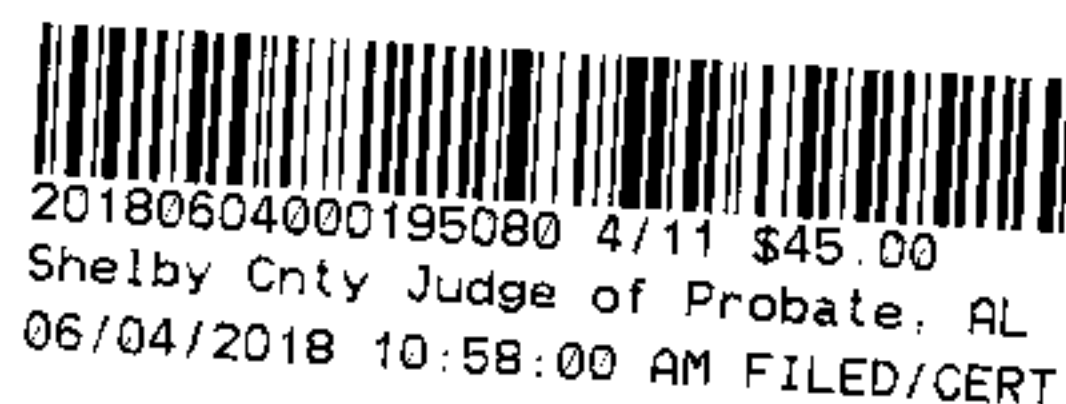


and demands that Tenant pay its rent and other sums due under the Lease directly to Mortgagee, Tenant will honor such demand.

3. Relationship of the parties after foreclosure of the Deed of Trust lien.

Mortgagee and Tenant agree that upon the foreclosure of the lien of the Deed of Trust or conveyance in lieu of foreclosure of the lien of the Deed of Trust, the Lease continues in full force and effect, the Mortgagee succeeds to and assumes all the rights and obligations of the Landlord under the Lease, and Tenant continues to have all the rights and obligations of the Tenant under the Lease, including the obligation to attorn to Mortgagee in such event. The only exceptions to such arrangement are as follows:

- a. Effect of Prepayment by the Tenant under the Lease: Mortgagee is not bound to recognize Tenant's payment to Landlord of any amounts under the Lease if such amounts were paid more than one (1) payment period in advance of when they were due and the period in which they were due falls after the foreclosure or conveyance in lieu of foreclosure. For example, if rent were due in monthly installments, Tenant paid Landlord six (6) months in advance, and the last four (4) months of such six (6) month period were after the date of the foreclosure or conveyance in lieu of foreclosure, then Mortgagee would be entitled to require that Tenant pay such four (4) months of rent to Mortgagee as and when such rent was due.
- b. Recognition of Amendments to the Lease: Mortgagee is not bound to recognize any amendment to the Lease to which Mortgagee did not consent and which (i) decreases the rent, (ii) alters the term of the Lease, (iii) increases the amount or expands the scope of the liability of Landlord under the Lease, (iv) limits any obligation of Tenant to comply with any legal requirement or environmental law, (v) limits the obligation of Tenant to be open and operating in the Demised Premises, (vi) grants to Tenant any additional termination or abatement rights other than those presently set forth in the Lease, (vii) modifies the terms of the Lease pertaining to use, or (viii) grants additional assignment or subletting right to Tenant.
- c. Effect of Existing Defaults: Mortgagee is not liable in damages for any default by Landlord under the Lease. If an event of default occurs, Tenant from and after the date hereof shall send a copy of any notice or statement of default under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested to Mortgagee at the address shown below at the same time such notice or statement is sent to Landlord (if such notice or such notice or statement is from Tenant to Landlord), or upon Tenant's receipt of such notice or statement from Landlord (if such notice or statement is from Landlord to Tenant), as the case may be. Tenant further agrees that, in the event of any act or omission by Landlord



which would give Tenant right to terminate the Lease or to claim a partial or total eviction (either actual or constructive), or to abate the rent payable thereunder (there being no implication that Tenant has the right to terminate the Lease, claim a partial or total eviction, actual or constructive, or abate the rent payable thereunder), or in the event of any other breach or default by Landlord under the terms of the Lease, immediately thereupon, Tenant shall so notify Mortgagee by certified mail, return receipt requested at the address shown in Section 4(b) hereof. Mortgagee shall have the option, within a reasonable time, but not less than sixty (60) days following receipt by Mortgagee of notice as provided above, to cure any such act, omission, breach, or default of a Landlord, including if necessary, the commencement and prosecution of foreclosure proceedings, and Tenant agrees to accept the performance of Mortgagee in lieu of the performance of Landlord and that the Lease shall thereby remain in full force and effect, provided however, said sixty (60) day period shall be extended (i) so long as within said sixty (60) day period Mortgagee has commenced to cure or is pursuing with due diligence to cure said defaults; or (ii) so long as Mortgagee is proceeding with foreclosure of or exercise of power of sale under the Deed of Trust and will commence to cure and will proceed with due diligence to cure said defaults upon the resolution of such proceedings. Tenant shall not exercise any such right to terminate or claim eviction or any other rights or remedies available at law or in equity for breach of the Lease or act or omission by Landlord in connection with Lease, unless and until Tenant has notified Mortgagee as provided above and until the time for Mortgagee to commence to cure and pursue the cure of such act or omission has lapsed.

4. Miscellaneous:

- a. Consent and Waiver of Landlord: By its execution below, Landlord agrees that Tenant is authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of the notice described in Section 2(d) above and that Tenant is not obligated to inquire as to whether a default actually exists under the Security Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with the terms of this Agreement.
- b. Notices: All notices, requests, consents, demands, and other communications required or which any party desires to give with respect to any matter set forth in this Agreement must be in writing and will be deemed delivered and received upon actual receipt or, if earlier and regardless of whether actually received or not, three (3) days after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the addresses set forth below:

MORTGAGEE: COMPASS BANK
8333 Douglas Avenue, Second Floor
Dallas, Texas 75225
Attn.: Ray LaDieu

with a copy to: SETTLEPOU
3333 Lee Parkway, Eighth Floor
Dallas, TX 75219
Attn.: John D. Settle, Jr.

LANDLORD: CARONA ALABAMA HOLDINGS, LLC
5401 North Central Expressway, Suite 300
Dallas, Texas 75205
Attn.: John J. Carona

with a copy to: _____

Attn.: _____

TENANT: MCKAY MANAGEMENT CORPORATION
5401 North Central Expressway, Suite 360
Dallas, Texas 75205
Attn.: Corporate Real Estate Department

with a copy to: _____

Attn.: _____

Any party may designate another addressee (as long as the total number of addressees designated for such Party does not exceed five) Or address by written notice to the other Parties, which notice will be effective thirty (30) days after it is delivered.

- c. Consent: Mortgagee, Landlord, and Tenant hereby agree that whenever provision is made under this Agreement for any one of them to obtain the consent or approval of any one of the others, the person or entity from whom consent or approval is requested will not unreasonably withhold or delay its consent and, further, agree that such person or entity's consent will be deemed given if not expressly withheld in accordance with the terms of this Agreement and in writing within twenty (20) days after the requesting party delivers the request for such consent or approval.
- d. Binding Effect: This Agreement inures to the benefit of and is binding upon Mortgagee, Landlord, and Tenant and their respective heirs, devisees, personal representatives, successors, and assigns. Specifically,

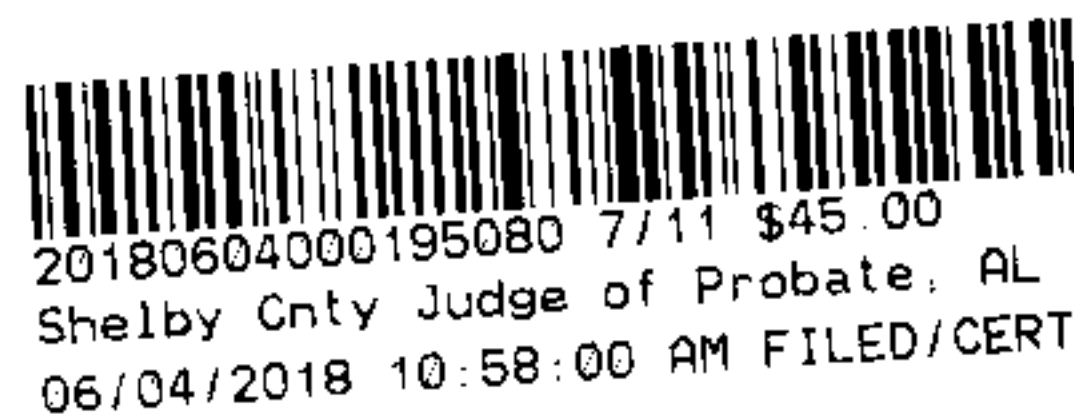
but not in limitation, any person or entity succeeding to Mortgagee's interest as lienholder will be bound by the terms of this Agreement as they relate to Mortgagee and any person or entity purchasing all or any portion of the Property at a foreclosure sale or in connection with a conveyance in lieu of foreclosure will be bound by the terms of this Agreement as they relate to Mortgagee.

- e. Court Costs, Attorneys' Fees and Governing Law, and Venue. In the event that at any time any party to this Agreement institutes any action or proceeding against any other party to this Agreement relating to the provisions of this Agreement, then the prevailing party in such action or proceeding is entitled to recover from the other party its reasonable and necessary costs, expenses, and attorneys' fees in connection with such action or proceeding. This Agreement must be construed in accordance with the laws of the State of Texas.
- f. Headings. The headings appearing in this Agreement are for the purpose of easy reference only and cannot be considered a part of this Agreement nor do they in any way modify, amend, limit, or affect the provisions this Agreement.
- g. Modifications. Any modification of this Agreement must be in writing and duly signed by Mortgagee, Landlord, and Tenant.
- h. Severability. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Agreement will not be affected thereby, and each term and provision of this Agreement is valid and enforceable to the fullest extent permitted by law.

In no event shall Mortgagee be personally liable as Landlord under the Lease either by virtue of any assignment of the Lease, the exercise of any right thereunder or hereunder, the foreclosure of its lien on the Property, the acquisition of the Property or the collection of any rent under the Lease as or mortgagee under the Deed of Trust and Tenant shall look solely to the real estate that is the subject of the Lease and to no other asset of Mortgagee for satisfaction of any liability in respect of the Lease.

The Tenant recognizes that Mortgagee is relying upon this Agreement in consummating the Loan transaction with Landlord.

This Agreement may be signed in multiple counterparts, each of which is an original but all of which comprise one agreement.

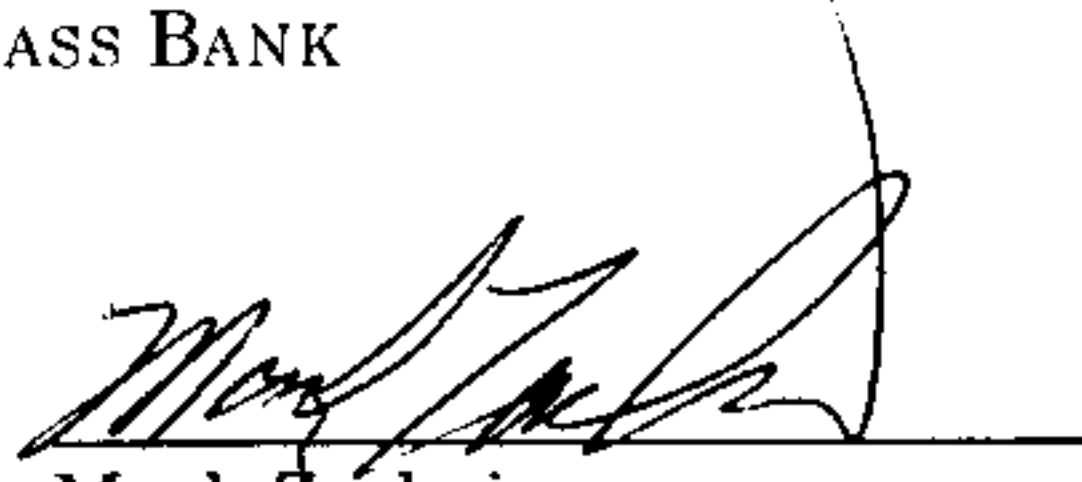


MORTGAGEE:

COMPASS BANK

Date: May 31, 2018

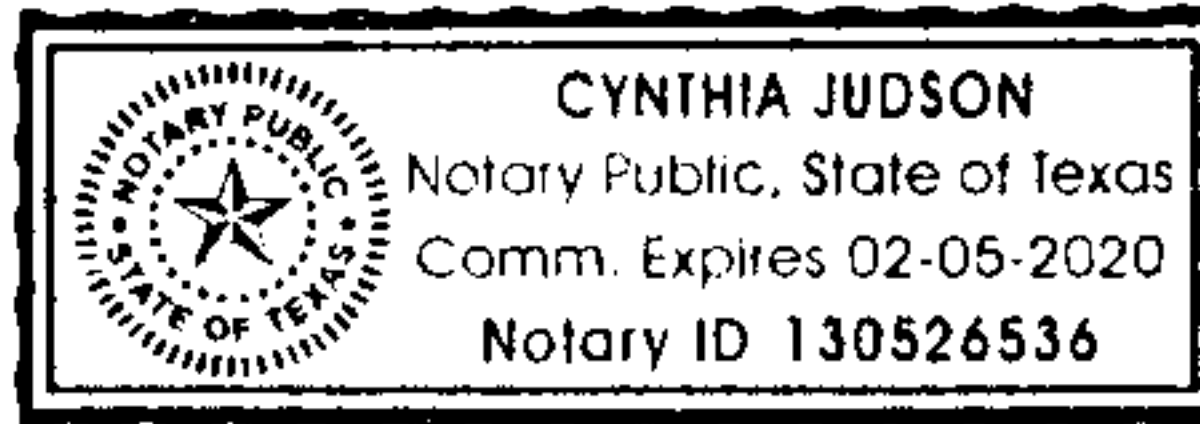
By:


Mark Zacheis
Market Executive
DFW/Global Wealth

STATE OF TEXAS

COUNTY OF Dallas


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BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Mark Zacheis, Market Executive DFW/Global Wealth of COMPASS BANK, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of May, 2018.


NOTARY PUBLIC, State of Texas


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Shelby Cnty Judge of Probate: AL
06/04/2018 10:58:00 AM FILED/CERT

LANDLORD:

CARONA ALABAMA HOLDINGS, LLC
a Texas limited liability company

By: JJC HOLDINGS, LLC
a Texas limited liability
Member

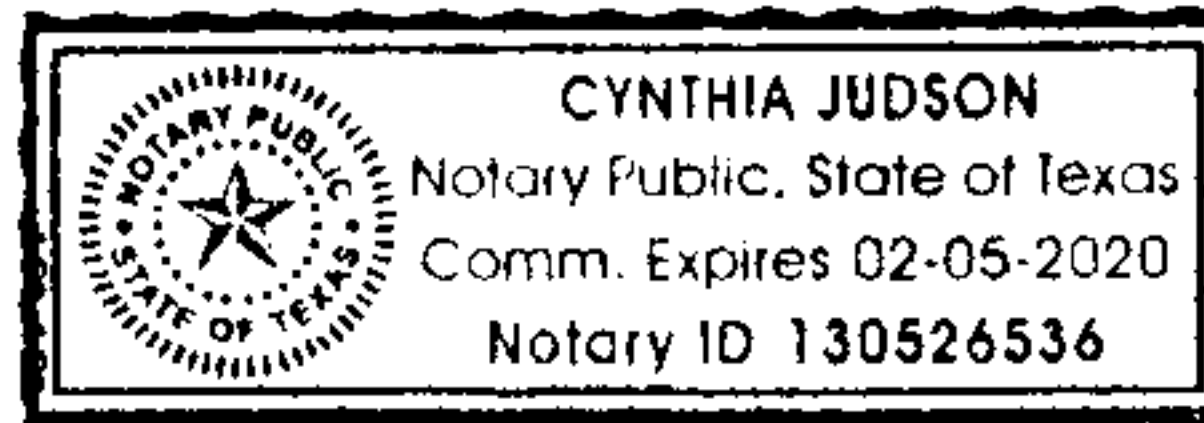
Date: May 31, 2018

By:


John J. Carona
Manager


STATE OF TEXAS

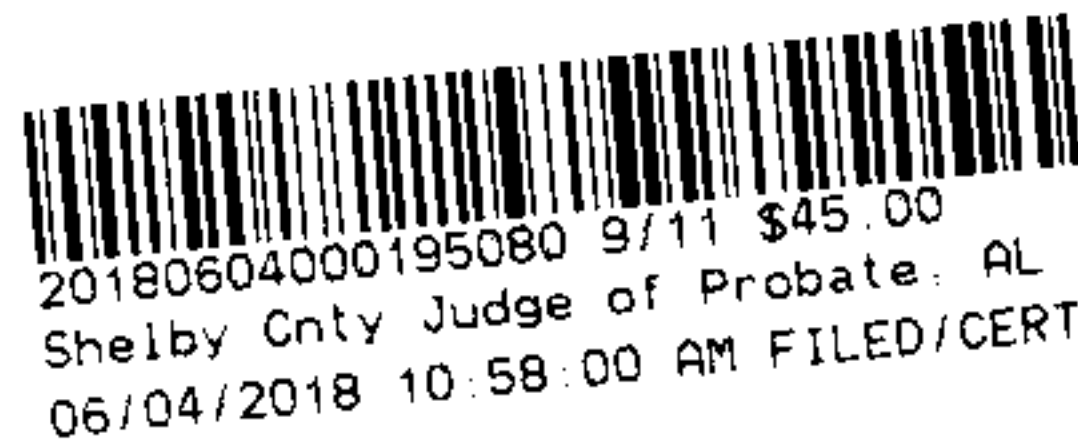
COUNTY OF DALLAS



BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared John J. Carona, individually and as Manager of JJC HOLDINGS, LLC, a Texas limited liability, Member of CARONA ALABAMA HOLDINGS, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he, being informed of the contents of such instrument, executed the same voluntarily in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of May, 2018.


NOTARY PUBLIC, State of Texas



TENANT:

MCKAY MANAGEMENT CORPORATION

a _____

Date: 5/30/18

By:

Name: CLINT WALLIS

Title: SR DIRECTOR OF CORPORATE REAL ESTATE

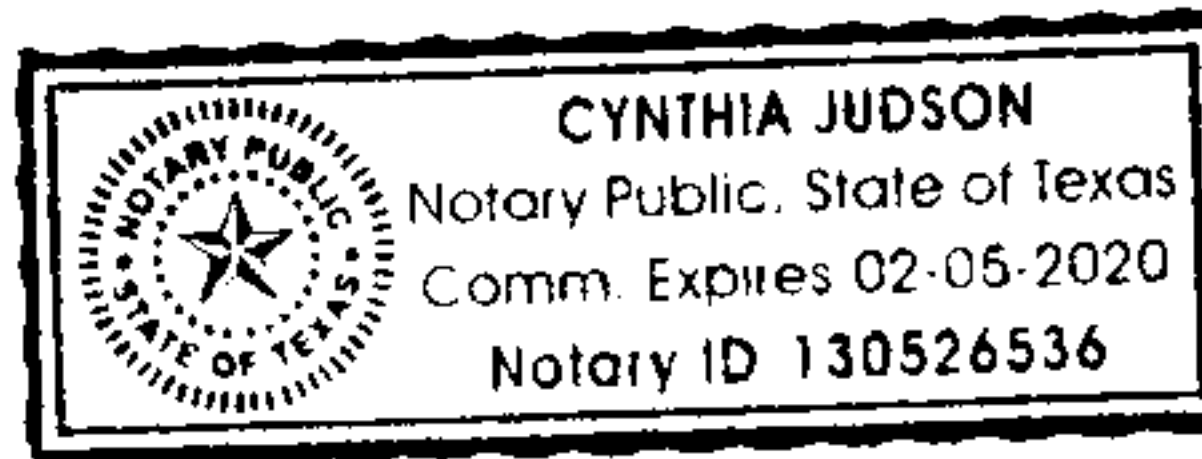
STATE OF TEXAS

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COUNTY OF DALLAS

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BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Clint Wallis, _____, of MCKAY MANAGEMENT CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30 day of May, 2018.

Cynthia Judson
NOTARY PUBLIC, State of Texas



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Shelby Cnty Judge of Probate, AL
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EXHIBIT "A"

Lot 5, according to the Survey of Resurvey of Southwood Office Park, as recorded in Map Book 25, Page 27 and also recorded in Map Book 25, Page 28, in the Probate Office of Shelby County, Alabama.

