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AGREEMNT 1/12

This instrument prepared by:  
Chick-fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia 30349  
Attn: Elvin Sutton, Esq.  
Phone: (404) 765-8000  
Inverness FSU (#04909)

Return to:  
Von Crook  
First National Financial Title Services, LLC  
3301 Windy Ridge Parkway, Suite 300  
Atlanta, GA 30339  
770-916-4347  
File No. AL252101046V

**Cross Reference:** Memorandum of Lease recorded October 26, 2016 as Instrument Number 2016102600039350, Probate Court, Shelby County, Alabama.

**PARTIAL WAIVER OF RESTRICTION  
AND TRAFFIC RESTRICTION AGREEMENT**

THIS PARTIAL WAIVER OF RESTRICTION AND TRAFFIC RESTRICTION AGREEMENT ("**Agreement**") is executed and delivered effective as of May 18, 2022 ("**Effective Date**") by and between WHATABURGER RESTAURANTS LLC, a Texas limited liability company, successor-in-interest to WHATABURGER REAL ESTATE LLC pursuant to an Assignment of Lease dated effective as of July 30, 2019 ("**WBR**"), RESOURCE HOLDINGS, LLC, an Alabama limited liability company ("**RESOURCE HOLDINGS**"), and CHICK-FIL-A, INC., a Georgia corporation ("**CFA**").

**RECITALS:**

WHEREAS, WBR, as tenant, and RESOURCE HOLDINGS, as landlord, are parties to that certain Ground Lease Agreement dated May 25, 2016 (as amended, the "**WB Lease**") with respect to that certain property located at the southwest corner of Highway 280 and Resource Center Parkway, Birmingham, Alabama, as more particularly described in Exhibit A attached hereto and incorporated herein by reference ("**Premises**"); and

WHEREAS, pursuant to the WB Lease, RESOURCE HOLDINGS and WBR, as tenant and landlord, executed a Memorandum of Lease effective as of October 25, 2016, recorded in Instrument Number 201610206000393050 in the Probate Court, Shelby County, Alabama ("**MOL**"); and

WHEREAS, the WB Lease and MOL contain, in part, a use restriction prohibiting the use of certain other property owned by RESOURCE HOLDINGS, as described on Exhibit B attached hereto and incorporated herein by reference (the "**Restricted Property**"), said use restriction being intended to preclude the operation of a Chick-fil-A restaurant on any of the Restricted Property ("**CFA Restriction**"); and

WHEREAS, RESOURCE HOLDINGS has requested that WBR waive the CFA Restriction with respect to the proposed Chick-fil-A restaurant to be located on Lot 1A of the Restricted Property, as depicted

on Exhibit C attached hereto and incorporated herein by reference (the "**Lot 1A**"), such waiver to be granted on a one-time basis for the express purpose described herein; and

WHEREAS, in exchange for WBR granting such waiver to RESOURCE HOLDINGS, CFA, its successors and assigns, agrees to install and maintain certain vehicular traffic control restrictions on Lot 1A as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Partial Waiver of Restriction.** WBR hereby agrees to waive the CFA Restriction for the specific purpose of permitting RESOURCE HOLDINGS to lease Lot 1A of the Restricted Property to Chick-fil-A, Inc. ("**CFA**") for the operation of a Chick-fil-A restaurant only (the "**Partial Waiver**"). The Partial Waiver granted herein shall pertain to and act as a waiver of the use restriction described in Section 5(ii) of the MOL only, which precludes the use of the Restricted Property for the operation of a Chick-fil-A restaurant, and the Partial Waiver shall not be construed in any manner to provide a waiver of the use restriction described in Section 5(i) of the MOL pertaining to businesses engaged primarily in the sale of prepared hamburgers. Subject to the terms of Section 3 below, the Partial Waiver granted herein is personal to, and for the sole benefit of, RESOURCE HOLDINGS and CFA (including its franchisee operating the Chick-fil-A restaurant on the Restricted Property).

2. **Traffic Restrictions.** CFA hereby agrees to install the vehicular traffic restrictions in the southwest corner of Lot 1A, which include a detectable warning strip, traffic "turtles" and signage (collectively, the "**Traffic Restrictions**") as depicted on the site plan attached hereto at Exhibit D and incorporated herein by reference (the "**Site Plan**"), to render the access drive currently providing vehicular access, ingress and egress, between Lot 1A and Resource Center Parkway an "entrance only" drive. The Traffic Restrictions will be installed by CFA prior to CFA opening for business to the public after the initial construction of the Chick-fil-A restaurant on Lot 1A. At all times while CFA is operating a Chick-fil-A restaurant on Lot 1A, CFA, its successors and assigns, will, at its own cost and expense, maintain all of the Traffic Restrictions on Lot 1A in good condition and repair until such time as this Agreement has been terminated in accordance with the terms and conditions set forth herein. Any modification of the Traffic Restrictions shown on the Site Plan will require the prior written approval of WBR, to be granted or withheld by WBR at its sole discretion.

3. **Successors; Termination of Traffic Restrictions.** The terms and provisions of this Agreement will be binding on and will inure to the benefit of WBR, RESOURCE HOLDINGS and CFA, and their respective successors and assigns until such time as one of the following events first occurs: (i) the parties mutually agree in writing to terminate this Agreement, which termination shall be in writing and signed by all of the parties hereto, and which termination shall be placed of record in the land records where the Premises and Restricted Property are located; or (ii) the WB Lease is terminated or expires and WBR no longer has a leasehold interest in the Premises, in which event the terms and provisions of this Agreement shall automatically terminate without the need for any further action by the parties to this Agreement. The party requesting a termination pursuant to (i) above shall provide a copy of any such recorded termination agreement to the other parties hereto within fifteen (15) days of such recording.

4. **Amendment.** WBR hereby agrees that, for so long as CFA maintains a leasehold interest in Lot 1A, the Partial Waiver cannot be amended, rescinded or revoked without the prior written consent of RESOURCE HOLDINGS and CFA.

5. **Consents.** WBR, RESOURCE HOLDINGS and CFA each represent and warrant that there are no consents required from any third parties, including lenders, for this Agreement, except as attached hereto.

6. **Counterparts.** This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. The parties do not rely upon any statement, promise or representation not herein expressed.

8. **Recording.** This Agreement, once fully executed, shall be recorded by CFA within fifteen (15) days of the Effective Date hereof in the land records where the Premises and Restricted Property are located, and a copy of the recorded and fully executed Agreement shall be provided to all parties hereto within fifteen (15) days of such recording. All recording costs will be paid by CFA.

9. **Breach.** In the event of a breach of this Agreement by CFA, WBR will look solely to CFA, or its successors and assigns, and not to RESOURCE HOLDINGS to pursue any remedy or claim for such breach.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date hereof.

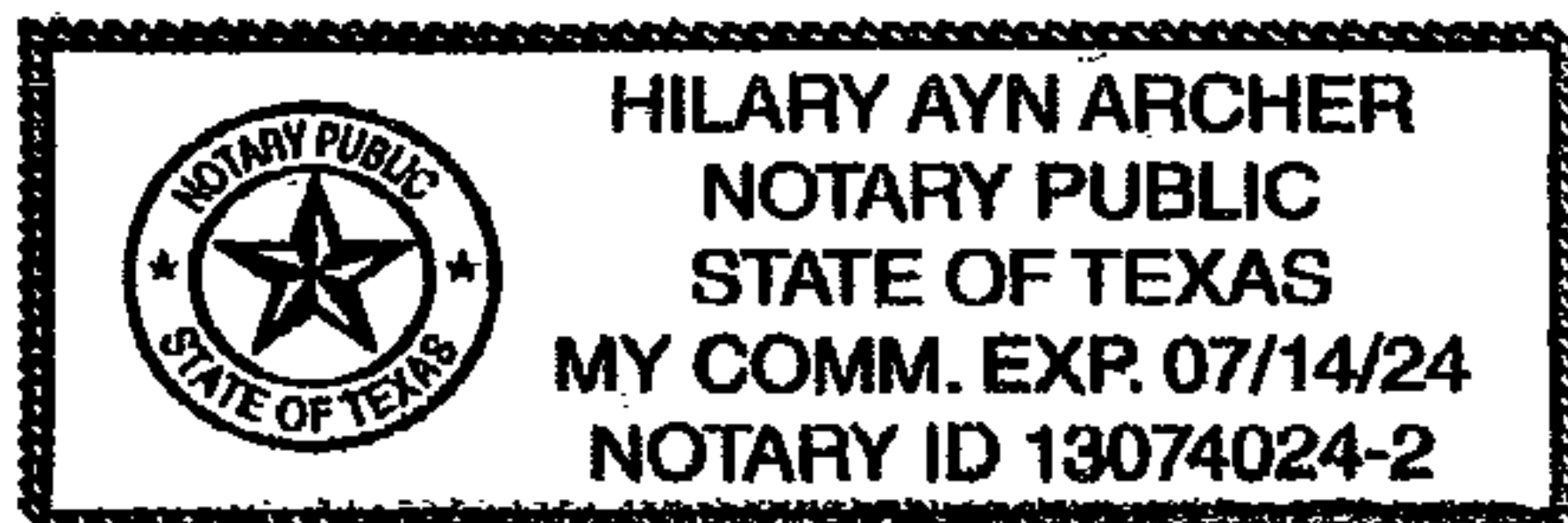
WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: James G. Turcotte  
Its: Executive Vice President and Chief Development Officer

STATE OF TEXAS            )  
                                      )  
COUNTY OF BEXAR )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James G. Turcotte, whose name as Executive Vice President and Chief Development Officer of Whataburger Restaurants LLC, a Texas limited liability company, is signed to the foregoing Partial Waiver of Restriction and Traffic Restriction Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said document, s(he), as such officer of the limited liability company and with full authority, executed the same voluntarily on the day same bears date for and as the act of said limited liability company.

GIVEN under my hand and seal, this 21<sup>st</sup> day of March, 2022.



[SEAL]

\_\_\_\_\_  
Notary Public  
My Commission Expires: 7/14/24

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

RESOURCE HOLDINGS, LLC,  
an Alabama limited liability company

By: Donna Bruno  
Name: DONNA BRUNO  
Its: MANAGING PARTNER

STATE OF ALABAMA       )  
                                      )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DONNA BRUNO, whose name as MANAGING PARTNER of RESOURCE HOLDINGS, LLC, an Alabama limited liability company, is signed to the foregoing Partial Waiver of Restriction and Traffic Restriction Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said document, s(he), as such officer of the limited liability company and with full authority, executed the same voluntarily on the day same bears date for and as the act of said limited liability company.

GIVEN under my hand and seal, this 14<sup>th</sup> day of MARCH, 2022.

Jeanette A. Walker  
Notary Public

My Commission Expires  
October 22, 2023

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

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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

By: [Signature]  
Name: Vance Burgess  
Its: Executive Director

STATE OF GEORGIA )  
COUNTY OF Fulton

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Vance Burgess, whose name as Executive Director of CHICK-FIL-A, INC., a Georgia corporation, is signed to the foregoing Partial Waiver of Restriction and Traffic Restriction Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said document, s(he), as such officer of the limited corporation and with full authority, executed the same voluntarily on the day same bears date for and as the act of said limited liability company.

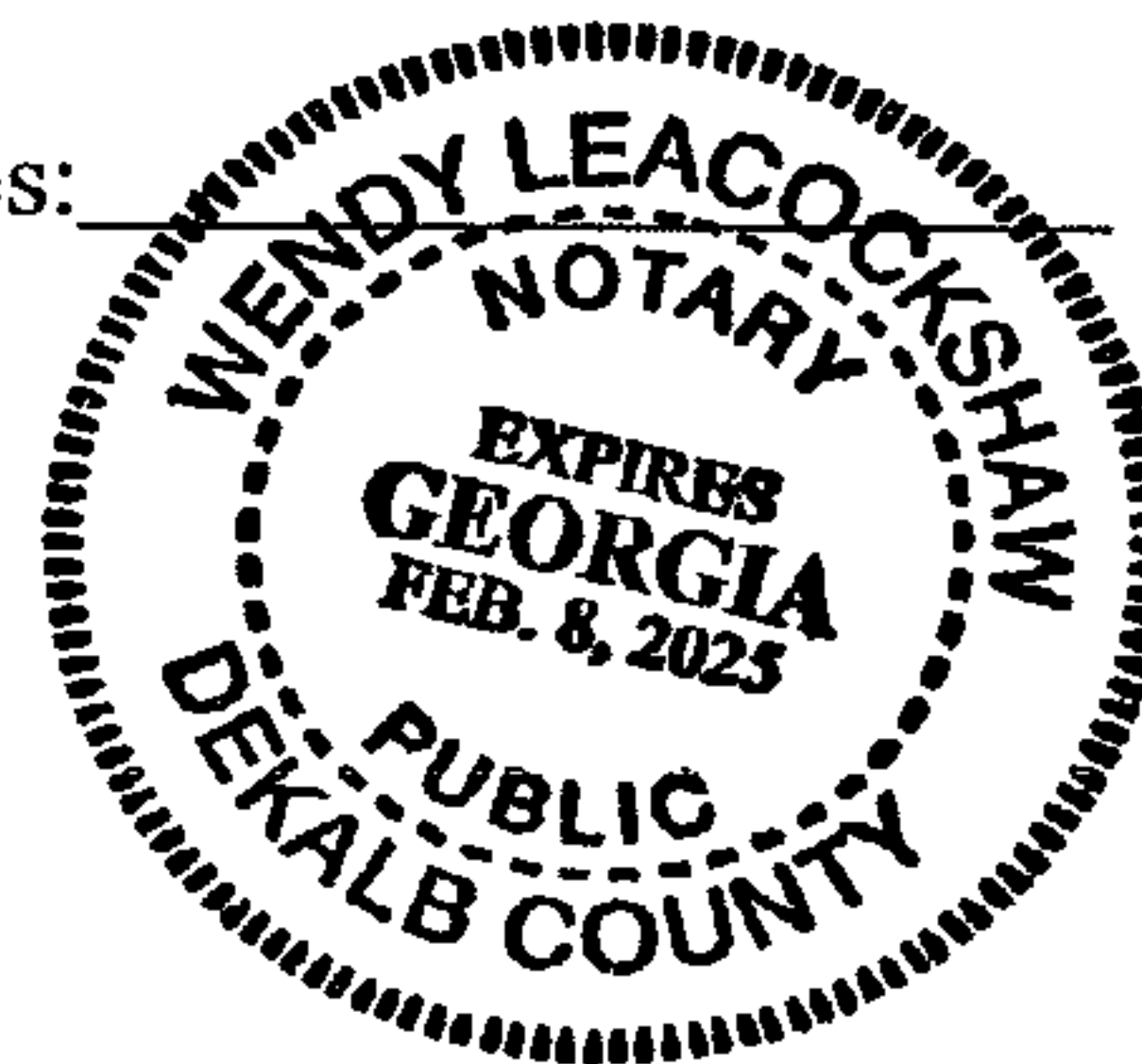
GIVEN under my hand and seal, this 18<sup>th</sup> day of March, 2022.

Wendy Leacock Shaw  
Notary Public

My Commission Expires:

[SEAL]

[LENDER CONSENT ON FOLLOWING PAGE]



**ACKNOWLEDGMENT AND CONSENT**

The undersigned is the holder of that certain (i) Accommodation Mortgage, Assignment of Rents and Leases and Security Agreement from RESOURCE HOLDINGS, LLC, an Alabama limited liability company to Lender dated November 7, 2019, recorded November 8, 2019 as Instrument No. 20191108000415210 in the Probate Records (the "**Records**") of Shelby County, Alabama, and conveying or encumbering the property known as Lot 1A, according to the map of Resource Center, as recorded in Map Book 24, Page 118, aforesaid records, and known as Lots 2A-1 and 2A-2, according to the map of Resource Center Resurvey No. 1, as recorded in Map Book 46, Page 89, aforesaid Records (collectively, the "**Property**"); (ii) Assignment of Leases and Rents from Landlord to Lender dated November 7, 2019, recorded November 8, 2019 as Instrument No. 20191108000415220, in the foregoing Records; and (iii) UCC Financing Statement recorded November 12, 2019 as Instrument No. 20191112000418470, in the foregoing Records (all as may be from time to time renewed, extended, amended or supplemented, collectively, the "**Security Documents**") affecting the Property owned by RESOURCE HOLDINGS, LLC, an Alabama limited liability company. The undersigned executes this Acknowledgment and Consent to acknowledge its consent to the subordination of the lien of the Security Documents to the foregoing Partial Waiver of Restriction and Traffic Restriction Agreement ("**Agreement**"). The Security Documents shall at all times be subject and subordinate to the terms of the Agreement, as amended. The covenants and agreements set forth in the Agreement, as amended, shall not be affected by any foreclosure or deed in lieu of foreclosure, and any person or entity, including but not limited to a mortgagee or beneficiary of a deed of trust, which hereafter acquires title to any portion of the Property by, through or under the rights set forth in the Security Documents shall be subject to the terms and provisions of the Agreement, as amended.

OAKWORTH CAPITAL BANK,  
an Alabama banking corporation

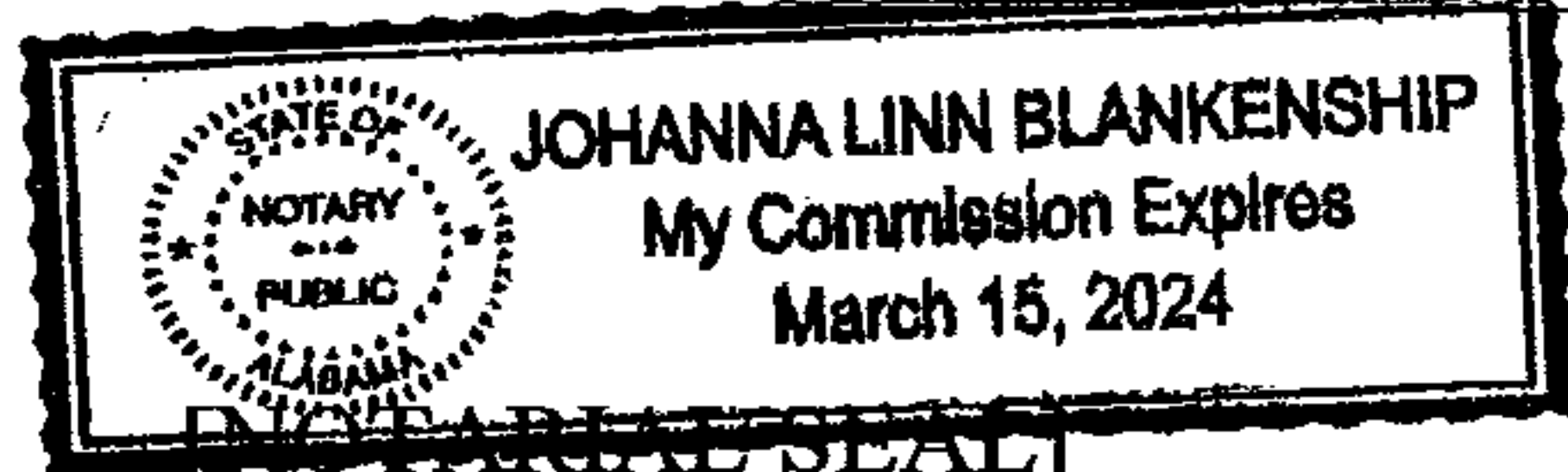
By: [Signature]  
Name: Edward Elliott  
Title: Client Advisor

(SEAL)

STATE OF ALABAMA     )  
                                      )  
SHELBY COUNTY        )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Edward Elliott, whose name as Client Advisor of OAKWORTH CAPITAL BANK, an Alabama banking corporation, is signed to the foregoing Acknowledgement and Consent and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation on the day the same bears date.

Given under my hand this 22nd day of March, 2022.



[Signature]  
Notary Public  
My Commission Expires: March 15, 2024



EXHIBIT A

PREMISES

**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 2016101800562820



EXHIBIT B

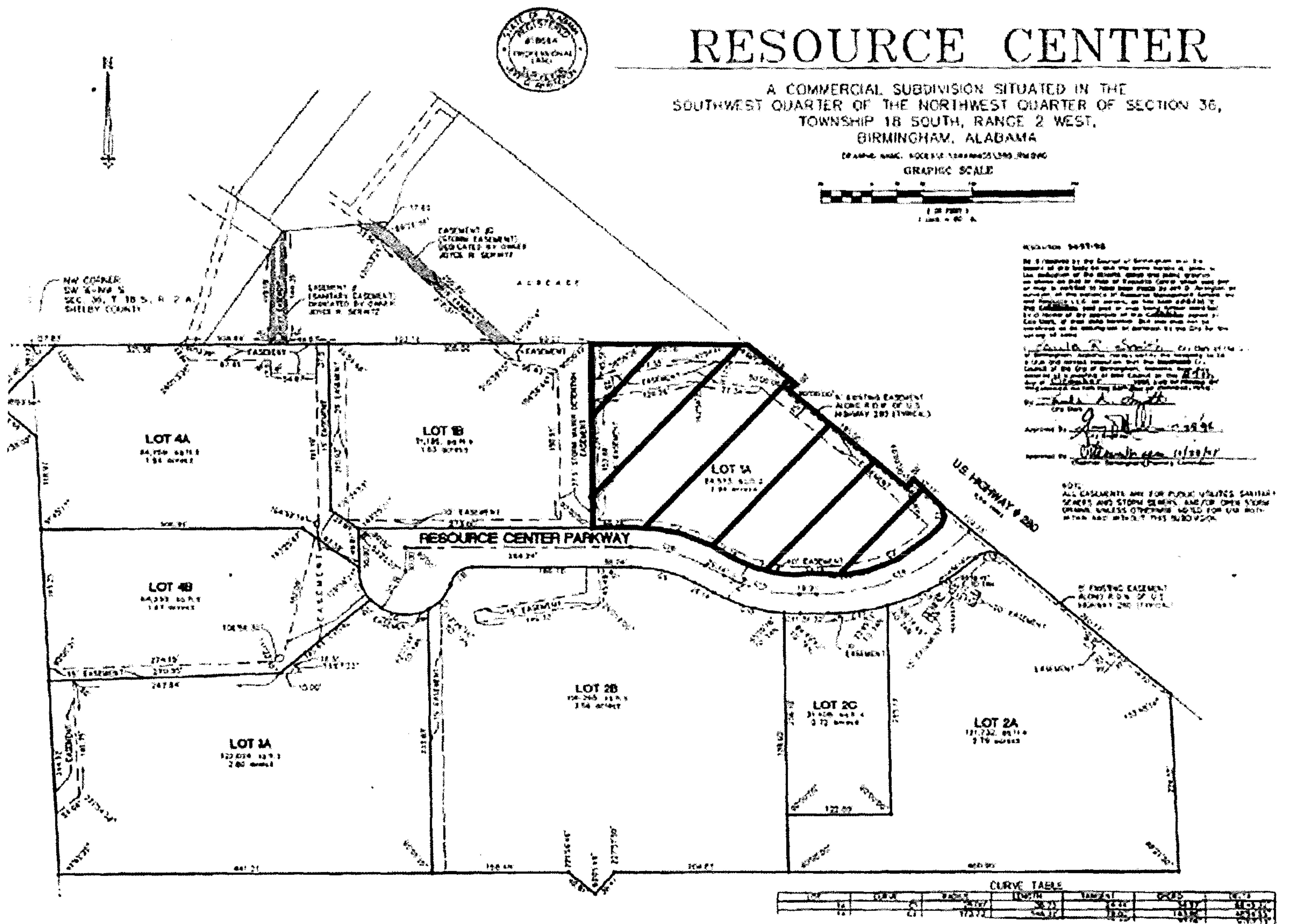
RESTRICTED PROPERTY

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

EXHIBIT C

DEPICTION OF LOT 1A

(CROSS HATCH)









Allin S. Beryl

