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09/09/2022 11:46:40 AM
AGREEMNT 1/12

After Recording send to:

Steven A. Brickman
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, AL 35205

Prepared By:

Steven A. Brickman
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, AL 35205
(205) 930-5171

MAINTENANCE AND COST REIMBURSEMENT AGREEMENT

This **MAINTENANCE AND COST REIMBURSEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of September 8, 2022 (“**Effective Date**”), between **Resource Holdings, LLC**, an Alabama limited liability company (“**Development Owner**”), and **Franz-Vista Melrose LLC**, a California limited liability company (“**Property Owner**”).

1. **Recitals.**

a. Development Owner is the owner of the real estate parcels described on Exhibit A attached hereto (the “**Development**”). Property Owner owns the Property described on Exhibit B attached hereto (the “**Property**”) which it acquired from Development Owner pursuant to that certain Purchase and Sale Agreement, dated July 20, 2022, between Development Owner as “seller” and Property Owner as “purchaser” (as amended, the “**Purchase Agreement**”). This Agreement has been recorded concurrently with Property Owner’s acquisition of the Property in accordance with the Purchase Agreement.

b. There is a detention pond located on Lot 1-B (“**Detention Pond**”), as more particularly shown the Resource Center Commercial Subdivision as recorded in Map Book 24, Page 118, Probate Office of Shelby County, which is adjacent to Lot 1-A (“**Lot 1-A**”).

c. Pursuant to that certain Detention Pond Easement, recorded as Instrument Number 1998-44671 (“**Detention Pond Easement**”), the Development Owner and Property Owner are responsible for maintaining the Detention Pond. The Detention Pond Easement states that a specific owner may be designated to be responsible for the maintenance of the Detention Pond.

d. Development Owner and Property Owner wish to enter into this Agreement to (i) designate the owner of Lot 1-A (“**Lot 1-A Owner**”) as being responsible for the maintenance obligations under the Detention Pond Easement (“**Detention Pond Obligations**”), and (ii) address reimbursement of the costs of the Detention Pond Obligations among the owners of the Development (Lot 1-A, Lot 2-A1, and Lot 2-A2) and the Property Owner. The owners of the Property, Development or any portion thereof are referred to as generally as an “**Owner**” or the “**Owners**”.

2. **Lot 1-A Owner’s Obligations.** Lot 1-A Owner shall be responsible for the Detention Pond Obligations. On a quarterly basis, the Owners shall reimburse Lot 1-A Owner for the Detention Pond Obligations based on the following pro rata shares:

Lot 1-A Owner (pro rata share): 42%

Lot 2-A1 Owner (pro rata share): 15%

Lot 2-A2 Owner (pro rata share): 28%

Property Owner (pro rata share): fifteen percent 15%

3. **Owner's Obligations.** Following and after the Effective Date, each Owner shall reimburse Lot 1-A Owner for such Owner's pro rata share of the Detention Pond Obligations within twenty (20) days after receipt of an invoice for same from Lot 1-A Owner. In the event an Owner fails to timely pay its pro rata share of the Detention Pond Obligations, the same shall bear interest at the rate of 8% per annum beginning twenty (20) days after Lot 1-A Owner delivers an invoice for said Detention Pond Obligations.

4. **Notices.** Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses set forth below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; and (c) email for all notices, other than invoices, breaches of the Agreement, or events of default, provided the transmission is completed no later than 5:00 p.m. central time on a business day and the original also is sent via overnight courier, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

If to Development Owner: Resource Holdings, LLC
100 Centerview Drive, Suite 152
Birmingham, AL 35216
Attention: Donna Bruno
Email: dnabruno@aol.com

If to Property Owner: Franz-Vista Melrose LLC
2710 Loker Avenue, Suite 100
Carlsbad, California 92011
Attention: Patrick N. O'Day
Email: pato@odayconsultants.com

Any party may change its address for purposes of this Section by giving written notice as provided in this Section. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section.

5. **Covenants Running with Land.** Every agreement, covenant, promise, undertaking, obligation, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, shall run with the title to the land and shall be binding upon and inure to the benefit of Development Owner, Property Owner, and upon all present and future Owners of any portion of the Property or the Development. Any future owner of any portion of the Property and Development, shall automatically be deemed by acceptance of title to be benefited by, bound by and subject to each and every agreement, covenant, promise, undertaking, obligation, condition, easement, right, privilege, option and restriction set forth in this Agreement.

6. **Modifications.** This Agreement may be amended or modified at any time by a written declaration, amendment, or modification executed and acknowledged by the Owners of the fee simple title to the Property and the Development.

7. **Negation of Partnership or Joint Venture.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Property Owner, Development Owner or any future Owners of any portion of the Property or the Development in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

8. **No Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Property or the Development to the general public or for any public use or purpose whatsoever.

9. **Prevailing Party.** In addition to any other remedies provided herein, upon any dispute between the parties to this Agreement which results in litigation or other proceedings, the prevailing party will be reimbursed by the non-prevailing party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees incurred by the prevailing party in connection with such litigation or other proceedings and any appeal thereof.

10. **General Provisions.** 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 any party of a breach or violation of any provisions of this Agreement shall not operate as, or be 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 unenforceable or invalid provision. 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. This Agreement shall be binding and shall inure to the benefit of the parties hereto,

and their respective heirs, personal representatives, successors, and assigns and all future Owners of any portions of the Property and the Development. With respect to all provisions of this Agreement, time is of the essence. Whenever the word “including” is used in this Agreement, it shall be deemed to mean “including without limitation.” Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Development Owner, and Property Owner have executed this Agreement as of the date first written above.

DEVELOPMENT OWNER:

Resource Holdings, LLC

By:

Name: Donna Marie Bruno

Its: Manager

By:

Name: Elizabeth B. Folsom

Its: Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Donna Marie Bruno, whose name as Manager of **Resource Holdings, LLC**, 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 said instrument, he/she, as such Manager and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Resource Holdings, LLC.

Given under my hand this 7th day of September, 2022.

Jeannette S. Walker
Notary Public My Commission Expires
My commission expires: October 22, 2023

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

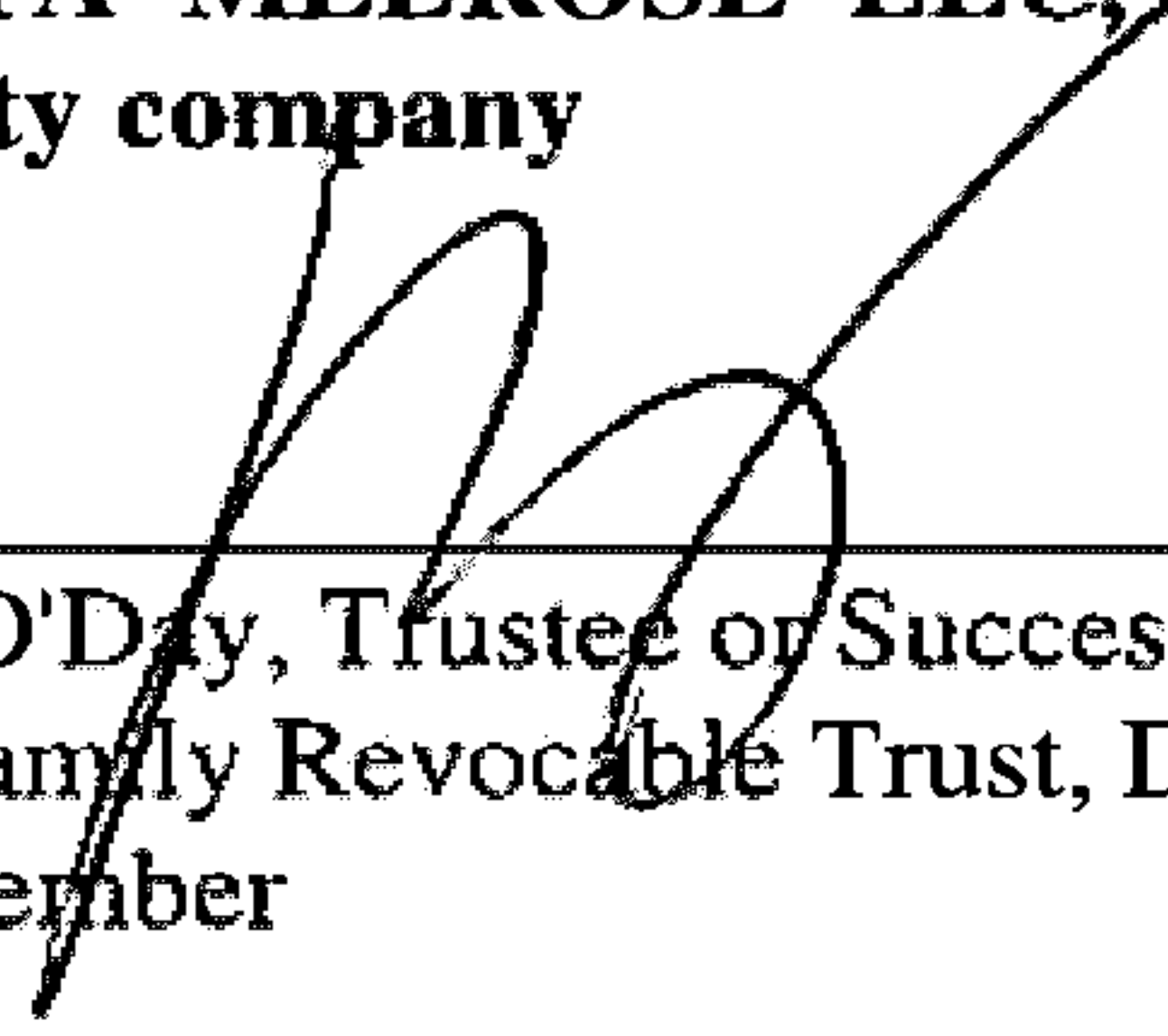
I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Elizabeth B. Folsom, whose name as Manager of **Resource Holdings, LLC**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Manager and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Resource Holdings, LLC.

Given under my hand this 7th day of September, 2022.

Jeannette S. Walker
Notary Public My Commission Expires
My commission expires: October 22, 2023

PROPERTY OWNER:

**FRANZ-VISTA MELROSE LLC, a California
limited liability company**

By 
Patrick N. O'Day, Trustee or Successor Trustee of
the Franz Family Revocable Trust, Dated June 26,
1996, its Member

ACKNOWLEDGEMENT

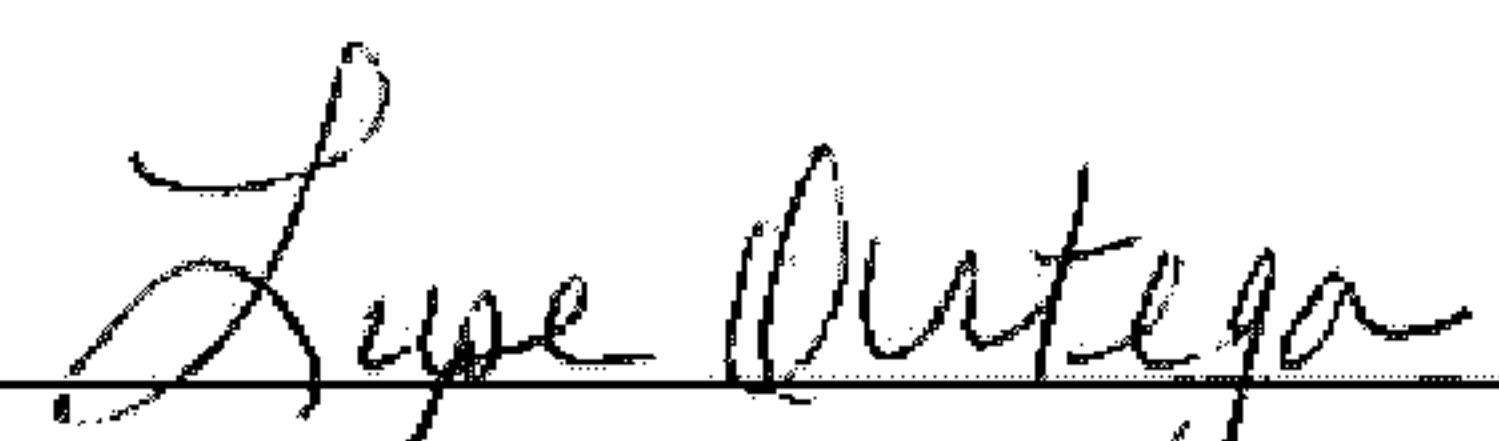
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

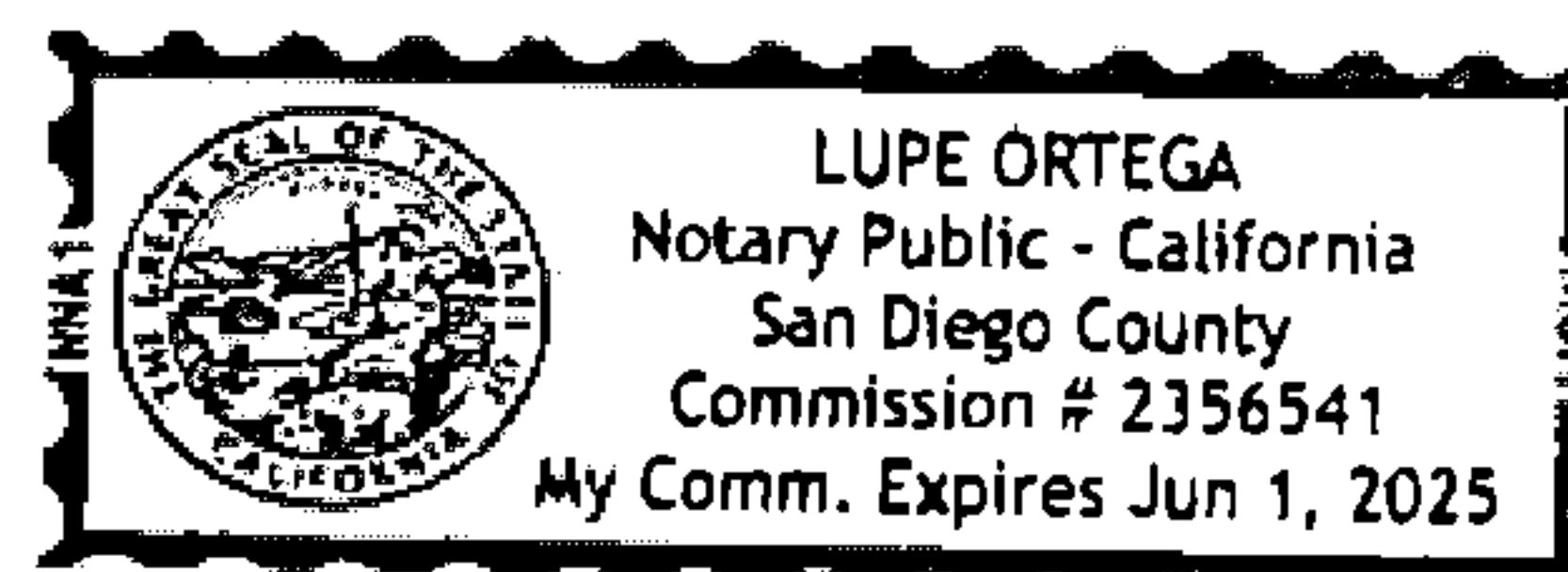
On September 6, 2022, before me Lupe Ortega, Notary Public personally appeared Patrick N. O'Day, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature 

(Seal)



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 Maintenance and Cost Reimbursement Agreement ("**Agreement**").

OAKWORTH CAPITAL BANK,
an Alabama banking corporation

By: _____

Name: Craig Campbell

Title: Managing Director

(SEAL)

STATE OF ALABAMA)
)
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Craig Campbell, whose name as Managing Director 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 15th day of September, 2022.

[NOTARIAL SEAL]

Katherine Stewart

Notary Public

My Commission Expires: 6/24/2026



ACKNOWLEDGMENT AND CONSENT

The undersigned is the holder of that certain (i) Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from FRANZ-VISTA MELROSE LLC, a California limited liability company ("**Owner**") to CapStar Bank ("**Lender**") dated September 8, 2022, recorded September 8, 2022 as Instrument No. 20220908000350780 in the Probate Records (the "**Records**") of Shelby County, Alabama, and conveying or encumbering the property known as Lot 2C, as recorded in Map Book 24, Page 118, aforesaid Records (collectively, the "**Property**"); (ii) Assignment of Leases and Rents from Owner to Lender dated September 8, 2022, recorded September 8, 2022, as Instrument No. 20220908000350790, in the foregoing Records; and (iii) UCC fixture filing recorded September 8, 2022, as Instrument No. 20220908000350800, in the foregoing Records naming Owner as debtor and Lender as Secured Party (all as may be from time to time renewed, extended, amended or supplemented, collectively, the "**Security Documents**") affecting the Property. The undersigned executes this Acknowledgment and Consent to acknowledge its consent to the Maintenance and Cost Reimbursement Agreement ("**Agreement**").

CAPSTAR BANK,
a Tennessee banking corporation

By: Joyce M. Crowder
Name: Joyce M. Crowder
Title: Closing Officer

(SEAL)

STATE OF INDIANA)
)
Hamilton COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joyce M. Crowder, whose name as Closing Officer of CAPSTAR BANK, a Tennessee 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 6th day of September, 2022.

[NOTARIAL SEAL]

Andorra M. Pescio
Notary Public
My Commission Expires: 6/19/2026

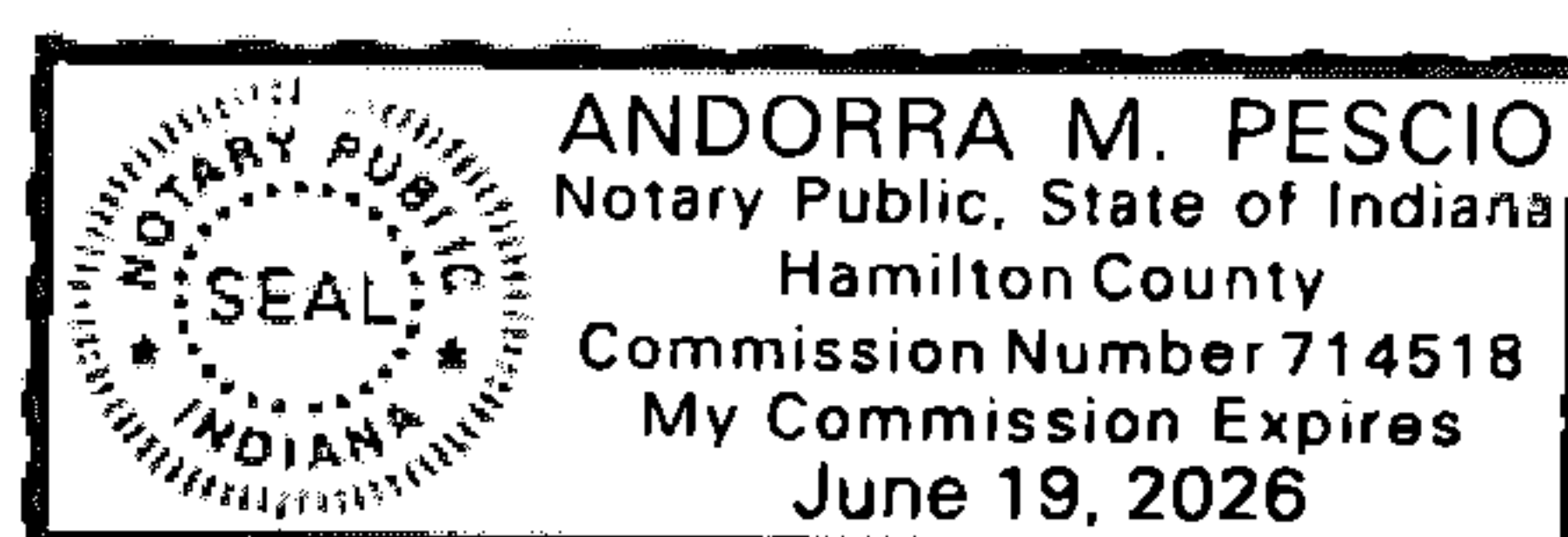


EXHIBIT A

DESCRIPTION OF THE DEVELOPMENT

Lots 1A, 2A-1 and 2A-2 of the Resource Center Commercial Subdivision as recorded in Map Book 24, Page 118, Probate Office of Shelby County, Alabama.

EXHIBIT B

DESCRIPTION OF THE PROPERTY

Lot 2C of the Resource Center Commercial Subdivision as recorded in Map Book 24, Page 118,
Probate Office of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
09/09/2022 11:46:40 AM
\$55.00 JOANN
20220909000351640

Allen S. Bayl