

**BALDWIN COUNTY COMMISSION  
AGENDA ACTION FORM**

11-25-09

Agenda Item Preparation Procedures

AGENDA ITEM NUMBER: \_\_\_\_\_

H9

Work Session Meeting Date: 11/24/2009 Commission Meeting Date: 12/01/2009

TITLE/SUBJECT: Real Estate Sublease agreement with Eastern Shore Shopping Center, LLC  
for Transit Hub Facility in Fairhope, Alabama

TO: The Honorable Members of the Baldwin County Commission

THRU: Michael L. Thompson, County Administrator

FROM: Taylor Rider, BRATS Director of Transportation

DAM 11-24-09

**STAFF RECOMMENDATION:** Approve the Real Estate Sublease, for 1.61 acres (+/-), located in the City of Fairhope, between the Baldwin County Commission and Eastern Shore Shopping Center, LLC for the development and operation of a BRATS transit hub facility. The cost associated with said lease will be \$24,000.00 per year with said funds to be paid from the Baldwin County Commission General fund, and \$24,000.00 per year will be reimbursed by the City of Fairhope per Fairhope Resolution number 1545-09. The Lease commences upon the date of full execution and extends for twenty (20) years plus three (3) five (5) year renewal options.

**PREVIOUS COMMISSION ACTION:** yes \_\_\_\_\_ no  Date: \_\_\_\_\_

**BACKGROUND:** This lease is a twenty (20) year real estate Sublease with three (3) five (5) year renewal options for 1.61 acres (+/-) between the Baldwin County Commission and Eastern Shore Shopping Center, LLC. for the development of a transit hub facility in Fairhope, Alabama. This said property is a undeveloped area is to the East, and adjacent to, Eastern Shore Shopping Center which is located on the corner of Fairhope Avenue and Greeno Road in Fairhope. The cost of the lease is \$24,000.00 per year payable in equal advanced monthly installment of Two Thousand (\$2,000.00) Dollars each with funds to be paid from the Baldwin County Commission General fund with \$24,000.00 per year to be reimbursed by the City of Fairhope per Resolution number 1545-09.

On July 13, 2009 the City of Fairhope adopted Resolution Number 1545-09, authorizing mayor Tim Kant and General Superintendent Gregg Mims to work with County officials to create an intergovernmental funding agreement for the funding of a county transit hub in Fairhope in accordance with a April 28, 2009 letter from the Eastern Shore Shopping Center, LLC. Based on this agreement the city would reimburse the County the monthly lease payment for the property in question based on the amount reflected in the twenty (20) year lease between the

County and Eastern Shore Shopping Center, LLC (Mr. Randy Delchamps ) (i.e. \$2,000.00 per month with the maximum 15% increase every five years). The City of Fairhope and its attorney have approved the attached funding agreement, and it is ready to be executed.

**FINANCIAL IMPACT:** N/A

**LEGAL IMPACT:** N/A \_\_\_\_\_


1. Are any legal documents required to be executed if this recommendation is approved?  
Yes  No \_\_\_\_\_
2. Is Legal creating \_\_\_\_\_ reviewing \_\_\_\_\_ or revising  the documents? If not, why? \_\_\_\_\_
3. Are the documents attached to this recommendation? Yes  No \_\_\_\_\_
4. Are the terms of the document properly reflected in the *Staff Recommendation*? \_\_\_\_\_
5. Department Notes: \_\_\_\_\_

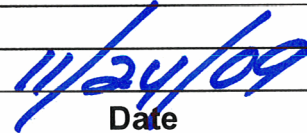
Approved as to form only: \_\_\_\_\_ / \_\_\_\_\_

Counsel

Date

Legal Notes: \_\_\_\_\_

  
Counsel

  
Date

**PROOF OF ADVERTISING:**

Advertisement Requirements in Media Publications

1. Was there or will there be an advertisement required for this recommendation?  
yes \_\_\_\_\_ no

**CONSISTENCY WITH B.C. STRATEGIC PLAN – 2006-2016:** N/A \_\_\_\_\_

2006-2016 - B.C. Strategic Plan

1. Is the recommendation consistent with goals set forth in the Strategic Plan?  
yes  no \_\_\_\_\_  
If yes, what is the strategic objective and how does the recommendation address this goal? To establish Hub Transit sites within County  
If no, what is the justification for approving the recommendation? \_\_\_\_\_

**POLICY IMPACT:** N/A

**PERSONNEL IMPACT:** N/A

**IMPLEMENTATION:**

1. Department and individual responsible for follow up activities on recommendation: Sandra Emmons, Legal Department / Monica Taylor, Administration Office
2. Specific action/actions required as follow up: Monica Taylor to obtain Chairman's signature // Sandra Emmons to forward final document to Eastern Shore Shopping Center
3. Are other Departments/Individuals necessary to complete the follow up activities? If so, specify: Accounting – Collection of said funds

**ALTERNATIVES:**

1. Deny Request

**ATTACHMENTS:**

1. City of Fairhope Resolution # 1545-09
2. Intergovernmental Funding Agreement between City of Fairhope and the Baldwin County Commission
3. Fairhope Hub Site Plan
4. Sub-lease Agreement with Eastern Shore Shopping Center, LLC

**FORM REVISION DATE:** August 07, 2009 – lgr, **VERSION #**13

bmcommission/forms/archives.2009/AGENDA ACTION FORM

**RESOLUTION NO. 1545-09**

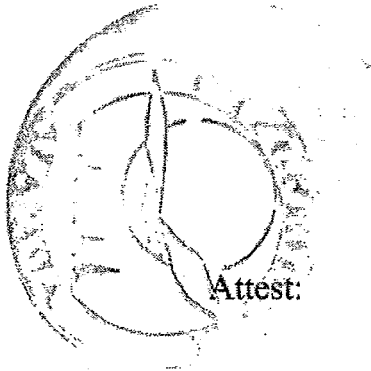
**WHEREAS**, The Governing Body of the City of Fairhope adopted on June 22, 2009, Resolution No. 1539-09, authorizing Mayor Tim Kant and General Superintendent Gregg Mims to work with County officials to create an intergovernmental funding agreement for the funding of a County transit hub in Fairhope in accordance with the April 28, 2009 letter from Eastern Shore Shopping Center, LLC regarding the proposed ground lease for 1.61 +/- acres Fairhope Avenue; and

**WHEREAS**, The basic terms of the agreement were listed in said Resolution and Item Number one should have read:


1. The City would reimburse the County the monthly lease payment for the property in question based on the amount reflected in the 20-year lease between the County and Mr. Randy Delchamps (i.e. \$2,000.00 per month with a maximum 15% increase every five years). The funding would begin following the execution of the County's lease.

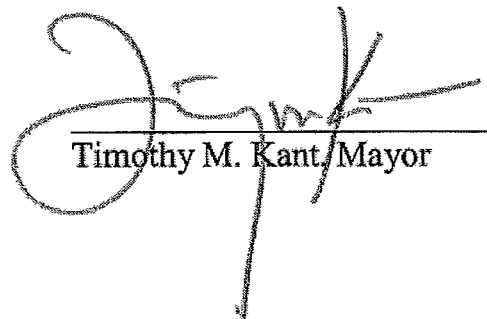
**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that the City of Fairhope hereby authorizes the change in the basic terms of the agreement to be in accordance with the April 28, 2009 letter from Eastern Shore Shopping Center, LLC.

Adopted on this 13th day of July, 2009



Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

  
\_\_\_\_\_  
Timothy M. Kant, Mayor



# COUNTY COMMISSION

BALDWIN COUNTY  
312 COURTHOUSE SQUARE, SUITE 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
FAX (251) 580-2500

*MEMBERS*  
*DIST* 1. FRANK BURT, JR.  
2. DAVID E. BISHOP  
3. WAYNE A. GRUENLOH  
4. CHARLES F. GRUBER  
  
MICHAEL L. THOMPSON  
COUNTY ADMINISTRATOR

December 15, 2009

Mr. Greg Mims  
City of Fairhope  
Post Office Drawer 429  
Fairhope, Alabama 36533

**RE: Intergovernmental Funding Agreement**

Dear Mr. Mims:

The Baldwin County Commission, during its regularly scheduled meeting held on December 15, 2009, approved the *Intergovernmental Funding Agreement* between the City of Fairhope and the Baldwin County Commission for the purpose of the construction and the operation of a Baldwin Rural Area Transportation System (BRATS) transit hub facility on 1.61 acres (+/-), of which the County leased, located in the City of Fairhope and is owned by Eastern Shore Shopping Center, LLC. The amount associated with said *Agreement* will be \$24,000.00 per year with said funds to be reimbursed by the City of Fairhope per Fairhope Resolution #1545-09. The *Agreement* commences upon the date of full execution and extends for twenty (20) years plus three (3) five (5) year renewal options and is contingent upon the City of Fairhope's approval.

Enclosed is a **fully executed original** *Intergovernmental Funding Agreement*, for your file.

If you have any questions or need further assistance, please do not hesitate to contact me or Taylor Rider, BRATS Director, at (251) 972-8576.

Sincerely,

CHARLES F. GRUBER, Chairman  
Baldwin County Commission

CFG/met Item H3

cc: Taylor Rider (Letter Only)  
Chandra Middleton (Letter Only)  
Scott Barnett (Letter Only)  
Erich Bergdolt (Letter Only)  
Kim Creech (Letter Only)  
Kyle Baggett (Letter Only)

ENCLOSURE

## INTERGOVERNMENTAL FUNDING AGREEMENT

Between the City of Fairhope and the Baldwin County Commission  
(Re: County Property Lease for a Transit Hub in Fairhope)

This **Intergovernmental Funding Agreement** ("Agreement") is entered into by and between the Baldwin County Commission (a.k.a. "County") and the City of Fairhope, Alabama (a.k.a. "City"), as follows:

### RECITALS

**Whereas**, the County is the duly formed governing body in and for Baldwin County, Alabama, and the City is an incorporated municipality of the State of Alabama; and

**Whereas**, the County currently operates the Baldwin Rural Area Transit System (a.k.a. "BRATS") throughout Baldwin County; and

**Whereas**, the County currently has no permanent location, within the City of Fairhope, to locate and operate a transit hub for the benefit of citizens in the area; and

**Whereas**, the City wishes to ensure that the citizens in the area have a permanent and adequate location in order to take advantage of available public transportation; and

**Whereas**, the Eastern Shore Shopping Center, LLC, which is the owner of certain real property located in the Municipality, has agreed to lease to the County approximately 1.61± acres, which is identified on *Exhibit A* hereto, for a term of the purposes of constructing and locating a BRATS transit hub station (the "Lease"); and

**Whereas**, the County and the City now deem it to be in the best interest of, and for the benefit of, the general public for the County and the City to enter into a joint contract to provide for adequate funding, lease of the subject property, and the construction and placement of a transit hub station within the City limits.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, the County and the City do hereby agree as follows:

1. **Recitals.** The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Purpose.** The parties acknowledge and agree that the purpose of this Agreement is to supply the mechanism which will ensure that the City will provide the funding to

the County during the twenty (20) year (plus any renewal options) ground lease, which will be executed by and between the County and Eastern Shore Shopping Center, LLC, for the purposes of the County constructing and operating a transit hub station for the BRATS services at the subject property.

3. **Term.** The term of this Agreement shall begin immediately following the execution of the Lease, and the term of this Agreement shall be coexistent with, and subject to, the effectiveness and the duration of the Lease to include any allowable renewal periods.
4. **Payments.** The City shall timely remit advance payment on a monthly basis, on the first (1<sup>st</sup>) day of every month, in an amount of Two Thousand Dollars (\$2000.00) per month with a maximum of fifteen percent (15%) every five (5) years, with the first payment due following the date of full execution of the Lease. In the event that the Lease amount is increased according to the terms herein, then the County shall provide proper notice to the City of the subject increase, and the City shall remit the new payment accordingly upon such notice.
5. **Termination.** This Agreement shall be coexistent with the Lease. The Lease shall terminate only upon the termination and/or expiration of the Lease and remain in effect in all respects until such time.
6. **Notices.** All notices provided for herein shall be sent as follows:  

To Town:	City of Fairhope  Fairhope, Alabama 36580
To County:	Baldwin County Commission 312 Courthouse Square, Suite 12 Bay Minette, Alabama 36507
7. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the County and the City and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.
8. **Both Parties Contributed Equally to the Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the County and the City have contributed substantially and materially to the preparation of this Agreement.
9. **Failure to Strictly Enforce Performance:** The failure of either party to insist

upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

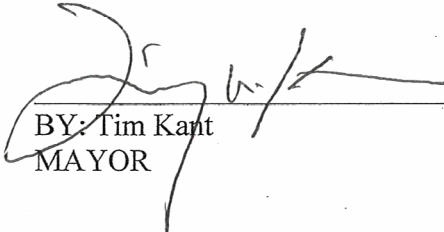
10. **Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered without a prior written agreement providing for such assignment, transfer, or other encumbrance, signed by the parties.

11. **Choice of Law:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the laws of the state of Alabama, including without limitation all issues relating to capacity, formation, interpretation, and available remedies, without regard to Alabama conflict of law principles.

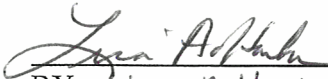
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of full execution below.

**CITY:**

THE CITY OF FAIRHOPE


  
BY: Tim Kant /Date  
MAYOR

ATTEST:

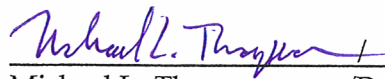
  
BY: Lisa A. Hanks /Date  
CITY CLERK

**COUNTY:**

BALDWIN COUNTY

BY:  /Date  
Charles F. Gruber  
Chairman

ATTEST:

  
Michael L. Thompson /Date  
Administrator

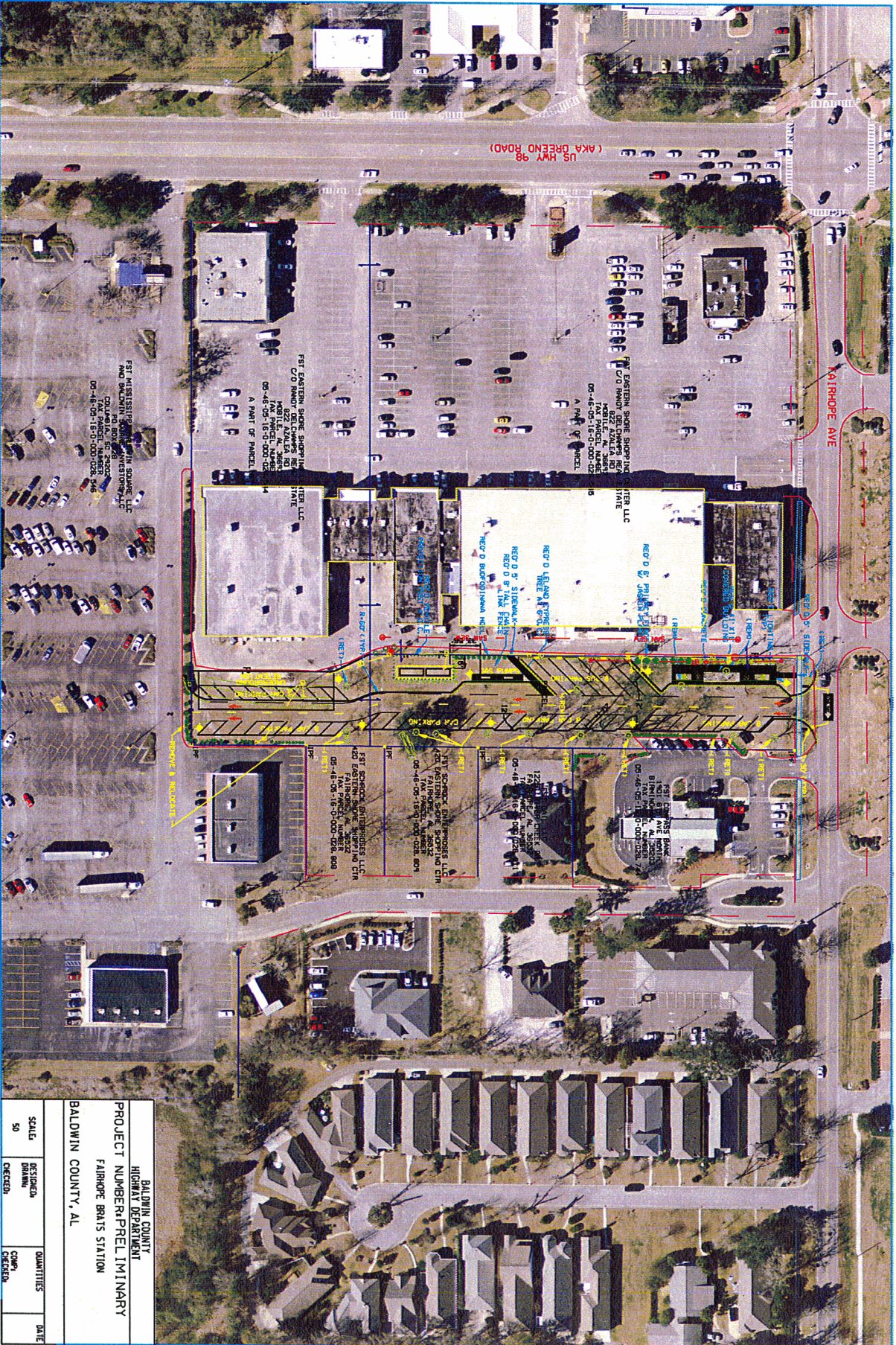


# EXHIBIT "A"

SHEET NO.



BALDWIN COUNTY HIGHWAY DEPARTMENT			
PROJECT NUMBER: PRELIMINARY			
FAIRHOPE BRATS STATION			
BALDWIN COUNTY, AL			
SCALE:	DESIGNED BY:	QUANTITIES CHECKED:	DATE:
50	CHICKEN	COMPY	
	CHECKED:	CHECKED:	



SHEET NO.

BALDWIN COUNTY HIGHWAY DEPARTMENT			
PROJECT NUMBER: PREL IM1NARY			
FAIRHOPE BRAIS STATION			
BALDWIN COUNTY, AL			
SCALE	DESIGNED BY	QUANTITIES	DATE
50	BRUNN	COMP	
	CHECKED	CHECKED	



## COUNTY COMMISSION

BALDWIN COUNTY

312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

(251) 580-2564

(251) 580-2500 Fax

www.co.baldwin.al.us

December 11, 2009

LORI G. RUFFIN  
Records Manager

Mr. Randy Delchamps  
Member and Manager  
Eastern Shore Shopping Center, LLC  
822 Azalea Road  
Mobile, Alabama 36693

**RE: Real Estate Sublease Agreement with Eastern Shore Shopping Center, LLC for  
Transit Hub Facility in Fairhope, Alabama**

Dear Mr. Delchamps:

Enclosed, for your file, are two (2) **original** *Real Estate Subleases* approved during the December 1, 2009, between the Baldwin County Commission and Eastern Shore Shopping Center, LLC, for 1.61 acres (+/-), located in the City of Fairhope, for the development and operation of a Baldwin Rural Area Transportation System (BRATS) transit hub facility. The cost associated with said *Lease* will be \$24,000.00 per year with said funds to be paid from the Baldwin County Commission General Fund, and \$24,000.00 per year will be reimbursed by the City of Fairhope per Fairhope Resolution Number 1545-09. The *Lease* commences upon the date of full execution and extends for twenty (20) years plus three (3) five (5) year renewal options.

If you have any questions or need further assistance, please do not hesitate to contact Taylor Rider, BRATS Director, at (251) 972-8576.

Sincerely,

LORI G. RUFFIN, Records Manager  
Baldwin County Commission

LGR/met Item H9

cc: Taylor Rider  
Scott Barnett  
Erich Bergdolt  
Kim Creech  
Kyle Baggett

ENCLOSURE

STATE OF ALABAMA §  
COUNTY OF MOBILE §

### GROUND SUBLEASE

This **GROUND SUBLEASE** (this "Lease"), effective as of the Commencement Date [defined in Section 2(a) herein], is made by and between **EASTERN SHORE SHOPPING CENTER LLC**, ("Landlord") and the **BALDWIN COUNTY COMMISSION** ("Tenant"), collectively referred to as the "Parties."

In consideration of the sum of Ten Dollars (\$10.00) other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

#### **Section 1. Premises.**

(a) Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all that certain parcel of land, situated in Fairhope, Alabama, as shown on site plan attached hereto as Exhibit "A" and made part hereof together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto (all the foregoing hereinafter sometimes referred to as the "Demised Premises" or the "Premises"). A legal description of the Premises is set forth on Exhibit "B" attached hereto and made a part hereof. The Demised Premises are subject to those certain encumbrances described as follows (the "Permitted Encumbrances"):

(i) Lease dated September 9, 1998 by and between the Fairhope Single Tax Corporation as lessor and Landlord as lessee (the "Prime Lease"); and

(ii) Real Estate Mortgage dated October 21, 2008, made by Landlord in favor of Woodlands Bank.

(b) The Parties agree that in the event Tenant's survey of the Premises should conflict with the drawing on Exhibit "A" or the legal description on Exhibit "B", the Parties will execute an amendment to this Lease which will make the appropriate substitution for such exhibit(s).

(c) Landlord also grants to Tenant a non-exclusive easement (the "Access Easement") over and across the parking area of Landlord's adjacent shopping center (the "Center"), as shown on the site plan attached as Exhibit "A", subject to the following terms and conditions:

(i) The Access Easement shall be used only for access from the Premises to U.S. Highway 98 (Greeno Road), and the route shall commence at the southeastern corner of the Premises, thence along the drive between the southern-most building in the Center and the southern boundary of the Center, and thence along and over the driveways in the parking area of the Center.

(ii) Landlord reserves the right to construct buildings and other improvements in the parking area and to rearrange the driveways and parking splines

thereon, provided however that access from the Premises to U.S. Highway 98 shall not be denied by reason of such rearrangements.

(iii) In the event that Tenant obtains the right to use the adjacent drive for access to U.S. Highway 98, Landlord and Tenant shall amend this Lease to provide that the Access Easement is terminated and that all references to same in the Lease are deemed deleted. The "adjacent drive" is that driveway which is located on adjacent property south of the Center and running along the southern boundary of the Premises and the Center, as shown on Exhibit "A".

(iv) Notwithstanding the provisions of subsection (b) of this Section 1, the site plan attached hereto as Exhibit "A" shall remain a part of this Lease until such time as the Access Easement may be terminated.

## **Section 2. Term.**

(a) The initial term of this Lease shall commence on the Commencement Date and shall expire on the twentieth (20<sup>th</sup>) anniversary of the Rent Commencement Date (defined in Section 3), unless sooner terminated as provided herein (the "Initial Term"). The term "Commencement Date" shall be the date on which this Lease is fully executed by the Parties as evidenced by the dates below their respective signatures to this Lease.

(b) Provided Tenant is not then in default hereunder, Tenant shall have the right to extend the Lease term for three (3) extended terms of five (5) years each (each an "Extended Term"), commencing at the expiration of the then current term, by providing written notice to Landlord not less than six (6) months prior to expiration of said current term. Any reference in this Lease to the "term" shall mean the then applicable term, whether it is the Initial Term or any Extended Term, provided Tenant shall have elected to exercise its option for any such Extended Term.

## **Section 3. Rent.**

(a) Tenant shall pay rent to Landlord, at Landlord's address for notices (or to such other persons or at such other addresses as Landlord may, from time to time, by written notice direct), the sum of Twenty-Four Thousand and No/100 Dollars (\$24,000.00) per annum, commencing on the Rent Commencement Date and continuing on the same day of each year thereafter. The term "Rent Commencement Date" is the earlier of (i) that date on which Tenant receives the first installment of payments from the City of Fairhope providing financial assistance for the operation of the Permitted Use, or (ii) the expiration of the Inspection Period (defined in Section 5), unless Tenant shall have terminated this Lease as provided in said Section 5.

(b) Commencing on the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date and on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the annual rent shall be increased by an amount equal to fifteen (15%) of the annual installment of rent payable for the immediately preceding year.

**Section 4. Use of Premises.** The Premises shall be used only for development and operation of a HUB Center transit facility and for other uses and

activities reasonably related to providing transit and transportation services (the "Permitted Use").

**Section 5. Inspection Period.**

(a) Tenant shall have a period of the earlier of (i) the date of the Rent Commencement Date or (ii) five (5) months following the Commencement Date (in either case, the "Inspection Period") to (i) determine whether the Premises are suitable for the Permitted Use, and arrange for and secure financing for development of the Premises and construction of the Improvements (collectively, the "Conditions"), and (ii) obtain all authorizations, permits and licenses, including, but not limited to, building permits, signage permits (including but not limited to permits for pylon signage), zoning and subdivision interpretations and confirmations, permits and approvals and all variances, utility permits, authorizations and easements necessary for the Permitted Use and construction of the Improvements (collectively, "Approvals"). If the Conditions are not satisfied or if Tenant has not received or is denied or refused any such Approvals necessary to assure that the Permitted Use and construction of the Improvements will not be physically or financially impaired, all as determined in Tenant's sole discretion, prior to the expiration of the Inspection Period, or if the necessary Approvals are granted subject to any conditions that Tenant deems will physically or financially impair Tenant's intended use and development of the Premises prior to such expiration date, then Tenant may terminate this Lease by furnishing written notice to Landlord of election to terminate prior to the expiration of the Inspection Period. Landlord agrees upon request of Tenant to execute or join in the execution of any application for permits and licenses which may be necessary in connection with the Permitted Use or construction of the Improvements. Failure of Tenant to exercise its right to terminate this Lease in accordance with the terms of this Section 5 shall constitute a waiver of such right.

(b) In the event Tenant elects to terminate this Lease as provided in this Section 5, Tenant shall repair any damage to the Premises and shall restore same to the condition existing as of the Commencement Date.

**Section 6. Taxes and Utility Expenses.** Tenant shall pay or cause to be paid before delinquent all ad valorem taxes, general and special assessments and other public charges, if any (collectively, "Taxes"), levied upon or assessed against the Improvements to be constructed by Tenant on the Demised Premises. In the event that Tenant is exempt from payment of any Taxes, Tenant shall take such steps as may be appropriate to claim or establish such exemption, to the end that Landlord shall not be liable for any such Taxes. Tenant shall also pay or cause to be paid all charges for gas, electricity, water, sewer, and other public utility services supplied to the Demised Premises and used by Tenant during the term of this Lease. This provision does not require Tenant to pay any taxes on Landlord's property.

**Section 7. Improvements, Repairs, Additions and Replacements.**

(a) Tenant shall have the right, at its own cost and expense, to construct on any part or all of the Demised Premises, at any time and from time to time, any improvements that are consistent with the Permitted Use (the "Improvements"); provided,

that the same shall be in compliance with all then applicable building codes and ordinances.

(b) Tenant shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition, all Improvements at any time erected on the Demised Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

(c) Tenant may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Demised Premises, and Improvements thereon, as it may deem desirable, including the demolition of any Improvement(s) that now or hereafter may be situated or erected on the Demised Premises.

(d) Prior to commencement of construction of any Improvements or of any material alterations thereto, Tenant shall prepare and submit to Landlord for its approval plans and specifications for same, which approval shall not be unreasonably withheld or delayed.

(e) At all times during the term of this Lease title to the Improvements and all property affixed thereto or located therein or on the Premises, and all alterations, changes, additions and accessions thereto, shall be and remain vested in the Tenant. Upon the expiration or earlier termination of the term of this Lease, Tenant shall quit and surrender the Demised Premises and, unless Landlord requires that the Improvements be removed, title to the Improvements and such property, alterations, changes, additions and accessions shall, subject to the last sentence in this Section 7, automatically and without further act on the part of the Tenant or the Landlord, vest in the Landlord. In the event that Landlord requires removal of the Improvements, the term of this Lease shall be extended for such time as is reasonably necessary for Tenant to accomplish such removal but in no event to exceed a period of six (6) months. Such extension shall be on the same terms as set forth herein, except that no rent shall be due or payable by Tenant. Notwithstanding the foregoing, Tenant shall have the right, at its election, to remove that portion of the Improvements which constitute personal property and fixtures, as well as structures, fuel storage tanks and related equipment;

**Section 8. Assignment and Subletting.** Tenant may assign its interest in this Lease or sublet the Premises in whole or in part, provided (i) no such assignment or subletting shall relieve Tenant of its obligations hereunder, and (ii) Landlord first approves any such assignment or sublease, which approval shall not be unreasonably withheld or delayed.

**Section 9. Condition of Premises; Zoning and Permits.** Tenant acknowledges that Tenant will have access to the Premises to conduct such tests and studies as Tenant deems appropriate and that the Premises are hereby leased to Tenant "as is" and "with all faults" and without any representation or warranty being expressed or implied, including, but not limited to, any representation or warranty regarding environmental matters. Landlord shall not be responsible or liable for any injury, loss or damage to any persons or property caused by any defect, whether patent, latent or otherwise, existing in, on or under the Premises or any improvement located thereon, or from rain, wind, soil conditions or any other cause whatsoever. Nothing contained herein

shall be construed as a warranty that the Premises are suitable for the use and purpose for which they are leased.

**Section 10. Inspection.** Landlord shall have access to the Demised Premises and the right to inspect the Demised Premises at reasonable times. Provided that Tenant is in compliance with the terms and conditions of this Lease, Landlord, in inspecting the Demised Premises, shall not in any manner interfere with Tenant's use of the Demised Premises.

**Section 11. Insurance Required.**

(a) Tenant shall at all times maintain, with insurance companies authorized to do business in the State of Alabama, such coverage with respect to the Premises which shall cover risks of bodily injury and property damage arising out of the condition, maintenance, use or operation of the Premises and the Access Easement, including at least the aggregate amounts of insurance coverages as follows:

(i) general liability insurance providing coverage against claims for bodily injury and property damage, in a minimum amount of \$1,000,000 coverage per occurrence with respect to personal injury or death to anyone or more persons or damage to property; and

(ii) business vehicle liability insurance against claims for bodily injury, death or property damage arising out of the use of all owned, non-owned and hired vehicles, such insurance to be in the amount of at least \$1,000,000 coverage per occurrence with respect to bodily injury or death to one or more persons or damage to property; and

(iii) general annual aggregate limit in an amount not less than \$5,000,000.00 for all occurrences.

(b) All such policies shall name Landlord as an additional covered person and Tenant shall provide evidence of such coverage at Landlord's request.

**Section 12. Condemnation.** In the event of a taking of any portion of the Premises by eminent domain or any transfer in lieu thereof or by any other governmental action, which taking renders the Premises unsuitable in any material respect for Tenant's operations, Tenant may terminate this Lease as of the date of such taking by written notice to Landlord given within two (2) months after the taking deprives Tenant of possession of any such portion of, or access to the Premises.

**Section 13. Tenant's Indemnification.** Tenant shall protect, defend, indemnify and hold harmless Landlord and its officers, members, employees and agents against and from any loss, cost (including reasonable attorneys' fees), damage or other liability arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Landlord or Tenant, resulting from, arising out of, or in any way connected with (i) the performance of Tenant's obligations under this Lease, (ii) the construction, maintenance, repair, expansion, or operation of the Improvements, (iii) Tenant's possession of the Demised Premises, and (iv) Tenant's use of the Access Easement; provided, however that Tenant shall not be obligated to provide any indemnification pursuant to this Section where the



event giving rise to such indemnification is caused solely by the gross negligence or willful misconduct of Landlord.

**Section 14. Environmental Matters.**

(a) Tenant covenants, represents, and warrants that, except in accordance with Environmental Laws, Tenant's use of the Premises shall not and will not involve the use, storage, generation, or disposal of Hazardous Materials (as defined herein), and that Tenant shall not cause or permit any Hazardous Materials to be brought, used, stored, generated, or disposed on or about the Premises by Tenant, its agents, employees, contractors, subcontractors, or invitees. For purposes of this section, the term "Hazardous Materials" means any environmentally regulated substance or material, waste, pollutant or contaminant, defined as such or regulated by any Environmental Laws. "Environmental Laws" means any federal, state or local statute, law, ordinance, code, common law, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning the protection of the environment, natural resources, health and safety, and/or activities involving any asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, PCBs, petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity) natural or synthetic gas products, radioactive materials, and/or hazardous or toxic substances, chemicals or materials, or any other waste, materials, pollutant or contaminant that is regulated to protect the environment, as may now or at any time hereafter be in effect.

(b) In the event of any discharge, spillage or other introduction in or on the Premises of any Hazardous Materials, Tenant shall promptly contain, remove or mitigate the same in accordance with applicable Environmental Laws.

(c) Tenant shall indemnify and hold harmless Landlord, and its managers, members, employees, lenders, agents, successors and assigns, from and against all liability, laws, claims, damages and expenses, including, but not limited to, reasonable attorney's fees and expert's fees, clean up or other remediation costs and expenses, and governmental fines, arising out of or in connection with the introduction of any Hazardous Materials on the Premises after the Commencement Date or the violation of any Environmental Law in connection with the Premises after the Commencement Date.

(d) Landlord represents that Landlord has no knowledge of the existence on the Premises of any Hazardous Materials.

**Section 15. Compliance with Laws.** At all times during the term of this Lease, Tenant shall conform to, obey, and comply in all material respects with all present and future laws, ordinances, and regulations of all legally constituted authorities existing at the Commencement Date or at any time during the continuance of the term hereof which in any way are applicable to this Lease or the use of the Premises or any repair, replacement, demolition, renovation, construction, restoration, or excavation being done on or to the Premises. The Tenant shall not use, or suffer or permit the Premises, or any part thereof to be used in any manner that would constitute a legal nuisance or for any hazardous purpose. In the event, as the result of the Tenant's acts or omissions to act during the term of this Lease, any addition, alteration, change, or repair or other work of

any nature, structural or otherwise, be lawfully required or ordered by an applicable governmental body or become necessary on account of any law, ordinance, or regulation of any governmental authority then in effect, or on account of any other reason with respect to the Premises, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be paid by the Tenant and, in no event shall the Landlord be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.

**Section 16. Estoppel Certificates.** Each of the Parties to this Lease shall, without charge to the other, at any reasonable time and from time to time, within ten (10) days after notice from the other party, deliver an estoppel certificate to such party or to any third party specified by such party, duly executed and acknowledged, certifying: that this Lease is unmodified and is in full force and effect or, if modified, that this Lease is in full force and effect as modified and specifying such modifications; the dates to which the rent and any other payments payable by Tenant under this Lease have been paid in advance; that, to the best knowledge of the signer of such certificate that the other party is not in default in the performance of any of the terms, covenants or conditions of this Lease, and if so, specifying the nature of each such default of which the signer may have knowledge, whether or not there are any then-existing setoffs or defenses against the enforcement of any of the terms, covenants and conditions of this Lease, and if so, specifying the nature of same; and to such other statements of fact relating to this Lease as may be reasonably requested.

**Section 17. Tenant's Default.**

(a) **Tenant's Default in the Payment of Rent.** If Tenant shall default in payment of rent or any other sums due by Tenant hereunder when due, Landlord shall give written notice of such default to Tenant, and the failure of Tenant to cure such default within forty-five (45) days after the date of receipt of such notice shall, at the option of Landlord, be declared an Event of Default by Tenant.

(b) **Other Defaults by Tenant.** If Tenant shall default in the performance of any other terms or provisions of this Lease, and if Landlord gives Tenant written notice of such default, and if Tenant shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such a character as to require more than thirty (30) days to cure, then, if Tenant shall fail to use reasonable diligence in curing such default, such failure shall be deemed an Event of Default, and Landlord may at its option cure such default for the account of and at the cost and expense of Tenant, and the reasonable sums so expended by Landlord shall be deemed to be additional rent and on demand shall be paid by Tenant on the day when rent shall next become due and payable.

(c) **Remedies for Default.** Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies, exercisable at Landlord's option:

(i) Upon twenty (20) days written notice to Tenant, to thereupon re-enter and take possession of the Demised Premises with or without legal process, and Landlord shall have the right, at its option, from time to time, without terminating this Lease, to re-enter and re-let the Demised Premises, or any part thereof, with or without legal process, as the agent and for the account of Tenant upon such terms and conditions as Landlord may deem advisable or satisfactory, in which event the rents received on such

re-letting shall be applied first to the expenses of such re-letting and collection including necessary renovations and alterations of the Demised Premises, reasonable attorney's fees and any real estate commissions, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, (A) at Landlord's option, Tenant shall pay Landlord any deficiency notwithstanding Landlord may have received rentals in excess of the rentals stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefor as such monthly deficiency shall arise, or (B) at Landlord's option, the entire deficiency, which is subject to ascertainment for the remaining Term of this Lease, shall be immediately due and payable by Tenant. Nothing herein, however, shall be construed to require Landlord to pay Tenant any surplus of any sums received by Landlord on a re-letting of the Demised Premises in excess of the rent provided in this Lease.

(ii) To terminate this Lease upon twenty (20) days written notice to Tenant, and to proceed against Tenant at law or in equity for damages for breach of contract, without regard to whether or not possession shall have been surrendered to or taken by Landlord, and may commence action immediately thereupon and recover judgment therefor.

(iii) No such re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such re-letting without termination, Landlord may at all times thereafter, elect to terminate this Lease. Any such re-entry shall be allowed by Tenant without hindrance, and Landlord shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.

(iv) Any and all rights, remedies and options given in this Lease to Landlord shall be cumulative and in addition to, without waiver of or in derogation of, any right or remedy given to it under any law now or thereafter in effect.

(d) Notwithstanding anything written or implied, either within this Section or in this Lease, Tenant shall not be considered to be in material default of Other Defaults, as defined in Section 17(b), at any time so long as Tenant is proceeding with reasonable diligence to cure any such default identified by the Landlord in a delivered written notice as required herein.

**Section 18. Waivers.** Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

**Section 19. Notices.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and either delivered in hand or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address mentioned below, or such other address as either party may designate by notice given from time to time in accordance with this section. The rent payable by Tenant hereunder shall be paid to

Landlord at the same place where a notice to Landlord is herein required to be directed. Notices shall be sent:

if to Landlord: Eastern Shore Shopping Center LLC  
c/o Randy Delchamps Real Estate & Development  
822 Azalea Road  
Mobile, Alabama 36693

if to Tenant: Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

**Section 20. Governing Law.** This Lease and the rights and obligations of the parties hereunder shall be governed by and be construed in accordance with the laws of the State of Alabama.

**Section 21. Quiet Enjoyment.** Landlord covenants that if and so long as this Lease is in effect and for so long as Tenant shall comply with its obligations hereunder, Tenant shall quietly and peaceably have, hold and enjoy the Demised Premises without hindrance, interference or molestation by any person claiming by or through Landlord, but subject to the Permitted Encumbrances.

**Section 22. Time of Essence.** Time is of the essence. Should any period of time specified herein end on a Saturday, Sunday or legal holiday, the period of time shall automatically be extended to 5:00 p.m. of the next full business day.

**Section 23. Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 24. Miscellaneous.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant permitted under the provisions hereof, their respective approved successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

**Section 25. Entire Agreement.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

**Section 26. Authority of Parties.** Landlord represents and warrants to Tenant that Landlord has taken all necessary action to authorize the execution, delivery and performance by Landlord of this Lease; and Tenant represents and warrants to Landlord that Tenant has taken all necessary action to authorize the execution, delivery and performance by Tenant of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed, under seal, as of the day and year first set forth above.

**LANDLORD:**

**EASTERN SHORE SHOPPING CENTER, LLC**

By: 

Randy Delehamps  
Member and Manager

Date: 12/10/2009

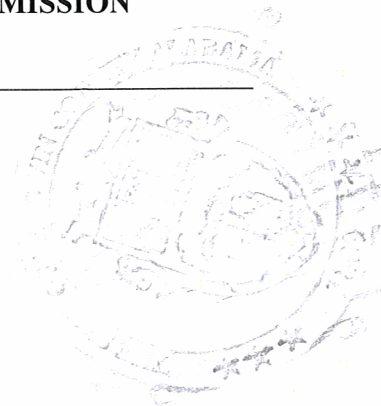
**TENANT:**

**BALDWIN COUNTY COMMISSION**

By: 

Charles F. Gruber  
Chairman

Date: 12/10/2009



STATE OF Alabama  
COUNTY OF Mobile

I, Traci Castillow, a Notary Public, in and for said County and State, hereby certify that Randy Delchamps, whose name as Member and Manager of Eastern Shore Shopping Center, LLC, a 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 conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

GIVEN under my hand and seal this the 10<sup>th</sup> day of December, 2009.

Traci Castillow

Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Apr 15, 2012  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA  
COUNTY OF Baldwin

I, Lori G. Ruffin, a Notary Public, in and for said County in said State, hereby certify that Charles F. Gruber, whose name as Chairman of the Baldwin County Commission 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 Agreement, he, in his capacity as such Chairman of the Baldwin County Commission, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal this the 10<sup>th</sup> day of December, 2009.

Lori G. Ruffin

Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 11, 2013  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**EXHIBIT A**

**Site Plan**





## **EXHIBIT B**

### **Legal Description**

Beginning at the Northeast corner of Lot 1, Schneider Leasehold as recorded in Map Book 8, Page 18, Probate Court Records, Baldwin County, Alabama; thence South 00 degrees 06 minutes 34 seconds West along the East line of said Lot 1, a distance of 476.50 feet to a point on the South line of said Lot 1; thence South 89 degrees 58 minutes 33 seconds West along said South line a distance of 103 feet to a point; thence North 00 degrees 06 minutes 34 seconds East a distance of 476.59 feet to a point on the North line of said Lot 1, Schneider Leasehold; thence East along said North line 103 feet to the point of beginning. Containing 1.127 Acres.

STATE OF ALABAMA     )

COUNTY OF BALDWIN    )

**AMENDMENT TO**  
**GROUND SUBLEASE**

**KNOW ALL MEN BY THESE PRESENTS** that this Amendment to the Ground Sublease (hereinafter "Sublease") is made by and between the Baldwin County Commission, (hereinafter "County") and Eastern Shore Shopping Center, LLC, (hereinafter "Shopping Center").

WITNESSETH:

**WHEREAS**, County approved the Ground Sublease between the County and the Eastern Shore Shopping Center, LLC for the purpose of development and operation of a BRATS transit hub facility; and

**WHEREAS**, to the satisfaction of both parties, the Ground Sublease was executed on the 10th day of December, 2009; and

**WHEREAS**, County and City have agreed to amend the number of years that the Sublease will be in effect (Term); and

**WHEREAS**, County and City wish to amend the executed Ground Sublease as provided below.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained within this Amendment, the sufficiency of which is hereby acknowledged, County and Shopping Center do hereby amend the Ground Sublease of December 10, 2009 as follows:

1. **RECITALS:**

The recitals stated above are incorporated by reference, as if fully set forth herein.

2. **AMENDED PROVISIONS:**

The provision of the original Ground Sublease dated December 10, 2009 referencing the "Term" and identified as "Section 2." is hereby amended to read as follows:

**Section 2. Term.**

(a) The initial term of this Lease shall commence on the Commencement Date and shall expire on the fortieth (40<sup>th</sup>) anniversary of the Rent Commencement Date (defined in Section 3), unless sooner terminated as provided herein (the "Initial Term"). The term "Commencement Date" shall be the date on which this Lease is fully executed by the Parties as evidenced by the dates below their respective signatures to the Lease.

(b) Provided Tenant is not then in default hereunder, Tenant and Landlord may agree to extend the Lease, for a term as determined by the Parties ("Extended Term"), if written notice is provided to Landlord not less six (6) months prior to expiration of said Initial Term. In the event such notice is provided and the Parties hereto agree to said Extended Term, this Lease must be amended to include the details of such Extended Term. Any reference in this Lease to "term" shall mean the then applicable term, whether it is the Initial Term or any Extended Term, provided Tenant and Landlord have agreed and executed the required Lease amendment for any such Extended Term.

3. **TERMS OF THE ORIGINAL GROUND SUBLEASE BROUGHT FORTH:**

Any and all provisions contained within the Ground Sublease dated December 10, 2009 currently in existence (as attached hereto) are hereby incorporated herein by reference to the extent they are not altered or amended herein by this amendment. To the extent that any provision of the Ground Sublease is altered, amended, or contradicted by this Amendment, the language and terms of this Amendment shall control.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

IN WITNESS WHEREOF, this Amendment has been executed by each of the parties hereto and signed by an officer thereunto duly authorized and attested.

BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama

BY: Charles F. Gruber 12/16/2010  
Charles F. Gruber Date  
Chairman

EASTERN SHORE SHOPPING CENTER, LLC

BY: Randy Delchamps 2/16/2010  
Randy Delchamps Date  
Member and Manager

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Loni G. Ruffin, a Notary Public, in and for said County in said State, hereby certify that Charles F. Gruber, whose name as Chairman of the Baldwin County Commission 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, in his capacity as such Chairman of the Baldwin County Commission, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal this the 16<sup>th</sup> day of February, 2010.

Loni G. Ruffin  
Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 11, 2013  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Loni G. Ruffin, a Notary Public, in and for said County in said State, hereby certify that Randy Delchamps, whose name as Member and Manager of Eastern Shore Shopping Center, LLC, a 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 company.

GIVEN under my hand and seal this the 16<sup>th</sup> day of February, 2010.

Loni G. Ruffin

Notary Public

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

STATE OF ALABAMA AT LARGE  
COMMISSION EXPIRES: Mar 11, 2013  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA §  
COUNTY OF MOBILE §

**GROUND SUBLEASE**

This **GROUND SUBLEASE** (this "Lease"), effective as of the Commencement Date [defined in Section 2(a) herein], is made by and between **EASTERN SHORE SHOPPING CENTER LLC**, ("Landlord") and the **BALDWIN COUNTY COMMISSION** ("Tenant"), collectively referred to as the "Parties."

In consideration of the sum of Ten Dollars (\$10.00) other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

**Section 1. Premises.**

(a) Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all that certain parcel of land, situated in Fairhope, Alabama, as shown on site plan attached hereto as Exhibit "A" and made part hereof together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto (all the foregoing hereinafter sometimes referred to as the "Demised Premises" or the "Premises"). A legal description of the Premises is set forth on Exhibit "B" attached hereto and made a part hereof. The Demised Premises are subject to those certain encumbrances described as follows (the "Permitted Encumbrances"):

(i) Lease dated September 9, 1998 by and between the Fairhope Single Tax Corporation as lessor and Landlord as lessee (the "Prime Lease"); and

(ii) Real Estate Mortgage dated October 21, 2008, made by Landlord in favor of Woodlands Bank.

(b) The Parties agree that in the event Tenant's survey of the Premises should conflict with the drawing on Exhibit "A" or the legal description on Exhibit "B", the Parties will execute an amendment to this Lease which will make the appropriate substitution for such exhibit(s).

(c) Landlord also grants to Tenant a non-exclusive easement (the "Access Easement") over and across the parking area of Landlord's adjacent shopping center (the "Center"), as shown on the site plan attached as Exhibit "A", subject to the following terms and conditions:

(i) The Access Easement shall be used only for access from the Premises to U.S. Highway 98 (Greeno Road), and the route shall commence at the southeastern corner of the Premises, thence along the drive between the southern-most building in the Center and the southern boundary of the Center, and thence along and over the driveways in the parking area of the Center.

(ii) Landlord reserves the right to construct buildings and other improvements in the parking area and to rearrange the driveways and parking splines

thereon, provided however that access from the Premises to U.S. Highway 98 shall not be denied by reason of such rearrangements.

(iii) In the event that Tenant obtains the right to use the adjacent drive for access to U.S. Highway 98, Landlord and Tenant shall amend this Lease to provide that the Access Easement is terminated and that all references to same in the Lease are deemed deleted. The "adjacent drive" is that driveway which is located on adjacent property south of the Center and running along the southern boundary of the Premises and the Center, as shown on Exhibit "A".

(iv) Notwithstanding the provisions of subsection (b) of this Section 1, the site plan attached hereto as Exhibit "A" shall remain a part of this Lease until such time as the Access Easement may be terminated.

## **Section 2. Term.**

(a) The initial term of this Lease shall commence on the Commencement Date and shall expire on the twentieth (20<sup>th</sup>) anniversary of the Rent Commencement Date (defined in Section 3), unless sooner terminated as provided herein (the "Initial Term"). The term "Commencement Date" shall be the date on which this Lease is fully executed by the Parties as evidenced by the dates below their respective signatures to this Lease.

(b) *Provided* Tenant is not then in default hereunder, Tenant shall have the right to extend the Lease term for three (3) extended terms of five (5) years each (each an "Extended Term"), commencing at the expiration of the then current term, by providing written notice to Landlord not less than six (6) months prior to expiration of said current term. Any reference in this Lease to the "term" shall mean the then applicable term, whether it is the Initial Term or any Extended Term, provided Tenant shall have elected to exercise its option for any such Extended Term.

## **Section 3. Rent.**

(a) Tenant shall pay rent to Landlord, at Landlord's address for notices (or to such other persons or at such other addresses as Landlord may, from time to time, by written notice direct), the sum of Twenty-Four Thousand and No/100 Dollars (\$24,000.00) per annum, commencing on the Rent Commencement Date and continuing on the same day of each year thereafter. The term "Rent Commencement Date" is the earlier of (i) that date on which Tenant receives the first installment of payments from the City of Fairhope providing financial assistance for the operation of the Permitted Use, or (ii) the expiration of the Inspection Period (defined in Section 5), unless Tenant shall have terminated this Lease as provided in said Section 5.

(b) Commencing on the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date and on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the annual rent shall be increased by an amount equal to fifteen (15%) of the annual installment of rent payable for the immediately preceding year.

**Section 4. Use of Premises.** The Premises shall be used only for development and operation of a HUB Center transit facility and for other uses and



activities reasonably related to providing transit and transportation services (the "Permitted Use").

**Section 5. Inspection Period.**

(a) Tenant shall have a period of the earlier of (i) the date of the Rent Commencement Date or (ii) five (5) months following the Commencement Date (in either case, the "Inspection Period") to (i) determine whether the Premises are suitable for the Permitted Use, and arrange for and secure financing for development of the Premises and construction of the Improvements (collectively, the "Conditions"), and (ii) obtain all authorizations, permits and licenses, including, but not limited to, building permits, signage permits (including but not limited to permits for pylon signage), zoning and subdivision interpretations and confirmations, permits and approvals and all variances, utility permits, authorizations and easements necessary for the Permitted Use and construction of the Improvements (collectively, "Approvals"). If the Conditions are not satisfied or if Tenant has not received or is denied or refused any such Approvals necessary to assure that the Permitted Use and construction of the Improvements will not be physically or financially impaired, all as determined in Tenant's sole discretion, prior to the expiration of the Inspection Period, or if the necessary Approvals are granted subject to any conditions that Tenant deems will physically or financially impair Tenant's intended use and development of the Premises prior to such expiration date, then Tenant may terminate this Lease by furnishing written notice to Landlord of election to terminate prior to the expiration of the Inspection Period. Landlord agrees upon request of Tenant to execute or join in the execution of any application for permits and licenses which may be necessary in connection with the Permitted Use or construction of the Improvements. Failure of Tenant to exercise its right to terminate this Lease in accordance with the terms of this Section 5 shall constitute a waiver of such right.

(b) In the event Tenant elects to terminate this Lease as provided in this Section 5, Tenant shall repair any damage to the Premises and shall restore same to the condition existing as of the Commencement Date.

**Section 6. Taxes and Utility Expenses.** Tenant shall pay or cause to be paid before delinquent all ad valorem taxes, general and special assessments and other public charges, if any (collectively, "Taxes"), levied upon or assessed against the Improvements to be constructed by Tenant on the Demised Premises. In the event that Tenant is exempt from payment of any Taxes, Tenant shall take such steps as may be appropriate to claim or establish such exemption, to the end that Landlord shall not be liable for any such Taxes. Tenant shall also pay or cause to be paid all charges for gas, electricity, water, sewer, and other public utility services supplied to the Demised Premises and used by Tenant during the term of this Lease. This provision does not require Tenant to pay any taxes on Landlord's property.

**Section 7. Improvements, Repairs, Additions and Replacements.**

(a) Tenant shall have the right, at its own cost and expense, to construct on any part or all of the Demised Premises, at any time and from time to time, any improvements that are consistent with the Permitted Use (the "Improvements"); provided,

that the same shall be in compliance with all then applicable building codes and ordinances.

(b) Tenant shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition, all Improvements at any time erected on the Demised Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

(c) Tenant may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Demised Premises, and Improvements thereon, as it may deem desirable, including the demolition of any Improvement(s) that now or hereafter may be situated or erected on the Demised Premises.

(d) Prior to commencement of construction of any Improvements or of any material alterations thereto, Tenant shall prepare and submit to Landlord for its approval plans and specifications for same, which approval shall not be unreasonably withheld or delayed.

(e) At all times during the term of this Lease title to the Improvements and all property affixed thereto or located therein or on the Premises, and all alterations, changes, additions and accessions thereto, shall be and remain vested in the Tenant. Upon the expiration or earlier termination of the term of this Lease, Tenant shall quit and surrender the Demised Premises and, unless Landlord requires that the Improvements be removed, title to the Improvements and such property, alterations, changes, additions and accessions shall, subject to the last sentence in this Section 7, automatically and without further act on the part of the Tenant or the Landlord, vest in the Landlord. In the event that Landlord requires removal of the Improvements, the term of this Lease shall be extended for such time as is reasonably necessary for Tenant to accomplish such removal but in no event to exceed a period of six (6) months. Such extension shall be on the same terms as set forth herein, except that no rent shall be due or payable by Tenant. Notwithstanding the foregoing, Tenant shall have the right, at its election, to remove that portion of the Improvements which constitute personal property and fixtures, as well as structures, fuel storage tanks and related equipment;

**Section 8. Assignment and Subletting.** Tenant may assign its interest in this Lease or sublet the Premises in whole or in part, provided (i) no such assignment or subletting shall relieve Tenant of its obligations hereunder, and (ii) Landlord first approves any such assignment or sublease, which approval shall not be unreasonably withheld or delayed.

**Section 9. Condition of Premises; Zoning and Permits.** Tenant acknowledges that Tenant will have access to the Premises to conduct such tests and studies as Tenant deems appropriate and that the Premises are hereby leased to Tenant "as is" and "with all faults" and without any representation or warranty being expressed or implied, including, but not limited to, any representation or warranty regarding environmental matters. Landlord shall not be responsible or liable for any injury, loss or damage to any persons or property caused by any defect, whether patent, latent or otherwise, existing in, on or under the Premises or any improvement located thereon, or from rain, wind, soil conditions or any other cause whatsoever. Nothing contained herein

shall be construed as a warranty that the Premises are suitable for the use and purpose for which they are leased.

**Section 10. Inspection.** Landlord shall have access to the Demised Premises and the right to inspect the Demised Premises at reasonable times. Provided that Tenant is in compliance with the terms and conditions of this Lease, Landlord, in inspecting the Demised Premises, shall not in any manner interfere with Tenant's use of the Demised Premises.

**Section 11. Insurance Required.**

(a) Tenant shall at all times maintain, with insurance companies authorized to do business in the State of Alabama, such coverage with respect to the Premises which shall cover risks of bodily injury and property damage arising out of the condition, maintenance, use or operation of the Premises and the Access Easement, including at least the aggregate amounts of insurance coverages as follows:

(i) general liability insurance providing coverage against claims for bodily injury and property damage, in a minimum amount of \$1,000,000 coverage per occurrence with respect to personal injury or death to anyone or more persons or damage to property; and

(ii) business vehicle liability insurance against claims for bodily injury, death or property damage arising out of the use of all owned, non-owned and hired vehicles, such insurance to be in the amount of at least \$1,000,000 coverage per occurrence with respect to bodily injury or death to one or more persons or damage to property; and

(iii) general annual aggregate limit in an amount not less than \$5,000,000.00 for all occurrences.

(b) All such policies shall name Landlord as an additional covered person and Tenant shall provide evidence of such coverage at Landlord's request.

**Section 12. Condemnation.** In the event of a taking of any portion of the Premises by eminent domain or any transfer in lieu thereof or by any other governmental action, which taking renders the Premises unsuitable in any material respect for Tenant's operations, Tenant may terminate this Lease as of the date of such taking by written notice to Landlord given within two (2) months after the taking deprives Tenant of possession of any such portion of, or access to the Premises.

**Section 13. Tenant's Indemnification.** Tenant shall protect, defend, indemnify and hold harmless Landlord and its officers, members, employees and agents against and from any loss, cost (including reasonable attorneys' fees), damage or other liability arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Landlord or Tenant, resulting from, arising out of, or in any way connected with (i) the performance of Tenant's obligations under this Lease, (ii) the construction, maintenance, repair, expansion, or operation of the Improvements, (iii) Tenant's possession of the Demised Premises, and (iv) Tenant's use of the Access Easement; provided, however that Tenant shall not be obligated to provide any indemnification pursuant to this Section where the

event giving rise to such indemnification is caused solely by the gross negligence or willful misconduct of Landlord.

**Section 14. Environmental Matters.**

(a) Tenant covenants, represents, and warrants that, except in accordance with Environmental Laws, Tenant's use of the Premises shall not and will not involve the use, storage, generation, or disposal of Hazardous Materials (as defined herein), and that Tenant shall not cause or permit any Hazardous Materials to be brought, used, stored, generated, or disposed on or about the Premises by Tenant, its agents, employees, contractors, subcontractors, or invitees. For purposes of this section, the term "Hazardous Materials" means any environmentally regulated substance or material, waste, pollutant or contaminant, defined as such or regulated by any Environmental Laws. "Environmental Laws" means any federal, state or local statute, law, ordinance, code, common law, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning the protection of the environment, natural resources, health and safety, and/or activities involving any asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, PCBs, petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity) natural or synthetic gas products, radioactive materials, and/or hazardous or toxic substances, chemicals or materials, or any other waste, materials, pollutant or contaminant that is regulated to protect the environment, as may now or at any time hereafter be in effect.

(b) In the event of any discharge, spillage or other introduction in or on the Premises of any Hazardous Materials, Tenant shall promptly contain, remove or mitigate the same in accordance with applicable Environmental Laws.

(c) Tenant shall indemnify and hold harmless Landlord, and its managers, members, employees, lenders, agents, successors and assigns, from and against all liability, laws, claims, damages and expenses, including, but not limited to, reasonable attorney's fees and expert's fees, clean up or other remediation costs and expenses, and governmental fines, arising out of or in connection with the introduction of any Hazardous Materials on the Premises after the Commencement Date or the violation of any Environmental Law in connection with the Premises after the Commencement Date.

(d) Landlord represents that Landlord has no knowledge of the existence on the Premises of any Hazardous Materials.

**Section 15. Compliance with Laws.** At all times during the term of this Lease, Tenant shall conform to, obey, and comply in all material respects with all present and future laws, ordinances, and regulations of all legally constituted authorities existing at the Commencement Date or at any time during the continuance of the term hereof which in any way are applicable to this Lease or the use of the Premises or any repair, replacement, demolition, renovation, construction, restoration, or excavation being done on or to the Premises. The Tenant shall not use, or suffer or permit the Premises, or any part thereof to be used in any manner that would constitute a legal nuisance or for any hazardous purpose. In the event, as the result of the Tenant's acts or omissions to act during the term of this Lease, any addition, alteration, change, or repair or other work of

any nature, structural or otherwise, be lawfully required or ordered by an applicable governmental body or become necessary on account of any law, ordinance, or regulation of any governmental authority then in effect, or on account of any other reason with respect to the Premises, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be paid by the Tenant and, in no event shall the Landlord be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.

**Section 16. Estoppel Certificates.** Each of the Parties to this Lease shall, without charge to the other, at any reasonable time and from time to time, within ten (10) days after notice from the other party, deliver an estoppel certificate to such party or to any third party specified by such party, duly executed and acknowledged, certifying: that this Lease is unmodified and is in full force and effect or, if modified, that this Lease is in full force and effect as modified and specifying such modifications; the dates to which the rent and any other payments payable by Tenant under this Lease have been paid in advance; that, to the best knowledge of the signer of such certificate that the other party is not in default in the performance of any of the terms, covenants or conditions of this Lease, and if so, specifying the nature of each such default of which the signer may have knowledge, whether or not there are any then-existing setoffs or defenses against the enforcement of any of the terms, covenants and conditions of this Lease, and if so, specifying the nature of same; and to such other statements of fact relating to this Lease as may be reasonably requested.

**Section 17. Tenant's Default.**

(a) **Tenant's Default in the Payment of Rent.** If Tenant shall default in payment of rent or any other sums due by Tenant hereunder when due, Landlord shall give written notice of such default to Tenant, and the failure of Tenant to cure such default within forty-five (45) days after the date of receipt of such notice shall, at the option of Landlord, be declared an Event of Default by Tenant.

(b) **Other Defaults by Tenant.** If Tenant shall default in the performance of any other terms or provisions of this Lease, and if Landlord gives Tenant written notice of such default, and if Tenant shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such a character as to require more than thirty (30) days to cure, then, if Tenant shall fail to use reasonable diligence in curing such default, such failure shall be deemed an Event of Default, and Landlord may at its option cure such default for the account of and at the cost and expense of Tenant, and the reasonable sums so expended by Landlord shall be deemed to be additional rent and on demand shall be paid by Tenant on the day when rent shall next become due and payable.

(c) **Remedies for Default.** Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies, exercisable at Landlord's option:

(i) Upon twenty (20) days written notice to Tenant, to thereupon re-enter and take possession of the Demised Premises with or without legal process, and Landlord shall have the right, at its option, from time to time, without terminating this Lease, to re-enter and re-let the Demised Premises, or any part thereof, with or without legal process, as the agent and for the account of Tenant upon such terms and conditions as Landlord may deem advisable or satisfactory, in which event the rents received on such

re-letting shall be applied first to the expenses of such re-letting and collection including necessary renovations and alterations of the Demised Premises, reasonable attorney's fees and any real estate commissions, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, (A) at Landlord's option, Tenant shall pay Landlord any deficiency monthly notwithstanding Landlord may have received rentals in excess of the rentals stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefor as such monthly deficiency shall arise, or (B) at Landlord's option, the entire deficiency, which is subject to ascertainment for the remaining Term of this Lease, shall be immediately due and payable by Tenant. Nothing herein, however, shall be construed to require Landlord to pay Tenant any surplus of any sums received by Landlord on a re-letting of the Demised Premises in excess of the rent provided in this Lease.

(ii) To terminate this Lease upon twenty (20) days written notice to Tenant, and to proceed against Tenant at law or in equity for damages for breach of contract, without regard to whether or not possession shall have been surrendered to or taken by Landlord, and may commence action immediately thereupon and recover judgment therefor.

(iii) No such re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such re-letting without termination, Landlord may at all times thereafter, elect to terminate this Lease. Any such re-entry shall be allowed by Tenant without hindrance, and Landlord shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.

(iv) Any and all rights, remedies and options given in this Lease to Landlord shall be cumulative and in addition to, without waiver of or in derogation of, any right or remedy given to it under any law now or thereafter in effect.

(d) Notwithstanding anything written or implied, either within this Section or in this Lease, Tenant shall not be considered to be in material default of Other Defaults, as defined in Section 17(b), at any time so long as Tenant is proceeding with reasonable diligence to cure any such default identified by the Landlord in a delivered written notice as required herein.

**Section 18. Waivers.** Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

**Section 19. Notices.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and either delivered in hand or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address mentioned below, or such other address as either party may designate by notice given from time to time in accordance with this section. The rent payable by Tenant hereunder shall be paid to

Landlord at the same place where a notice to Landlord is herein required to be directed. Notices shall be sent:

if to Landlord: Eastern Shore Shopping Center LLC  
c/o Randy Delchamps Real Estate & Development  
822 Azalea Road  
Mobile, Alabama 36693

if to Tenant: Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

**Section 20. Governing Law.** This Lease and the rights and obligations of the parties hereunder shall be governed by and be construed in accordance with the laws of the State of Alabama.

**Section 21. Quiet Enjoyment.** Landlord covenants that if and so long as this Lease is in effect and for so long as Tenant shall comply with its obligations hereunder, Tenant shall quietly and peaceably have, hold and enjoy the Demised Premises without hindrance, interference or molestation by any person claiming by or through Landlord, but subject to the Permitted Encumbrances.

**Section 22. Time of Essence.** Time is of the essence. Should any period of time specified herein end on a Saturday, Sunday or legal holiday, the period of time shall automatically be extended to 5:00 p.m. of the next full business day.

**Section 23. Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 24. Miscellaneous.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant permitted under the provisions hereof, their respective approved successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

**Section 25. Entire Agreement.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

**Section 26. Authority of Parties.** Landlord represents and warrants to Tenant that Landlord has taken all necessary action to authorize the execution, delivery and performance by Landlord of this Lease; and Tenant represents and warrants to Landlord that Tenant has taken all necessary action to authorize the execution, delivery and performance by Tenant of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed, under seal, as of the day and year first set forth above.

**LANDLORD:**

**EASTERN SHORE SHOPPING CENTER, LLC**

By: 

Randy Delchamps  
Member and Manager

Date: 12/10/2009

**TENANT:**

**BALDWIN COUNTY COMMISSION**

By: 

Charles F. Gruber  
Chairman

Date: 12/10/2009



STATE OF Alabama  
COUNTY OF Mobile

I, Traci Castillow, a Notary Public, in and for said County and State, hereby certify that Randy Delchamps, whose name as Member and Manager of Eastern Shore Shopping Center, LLC, a 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 conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

GIVEN under my hand and seal this the 10<sup>th</sup> day of December, 2009.

Traci Castillow  
Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Apr 15, 2012  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA  
COUNTY OF Baldwin

I, Lori G. Ruffin, a Notary Public, in and for said County in said State, hereby certify that Charles F. Gruber, whose name as Chairman of the Baldwin County Commission 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 Agreement, he, in his capacity as such Chairman of the Baldwin County Commission, executed the same voluntarily on the day the same bears date.

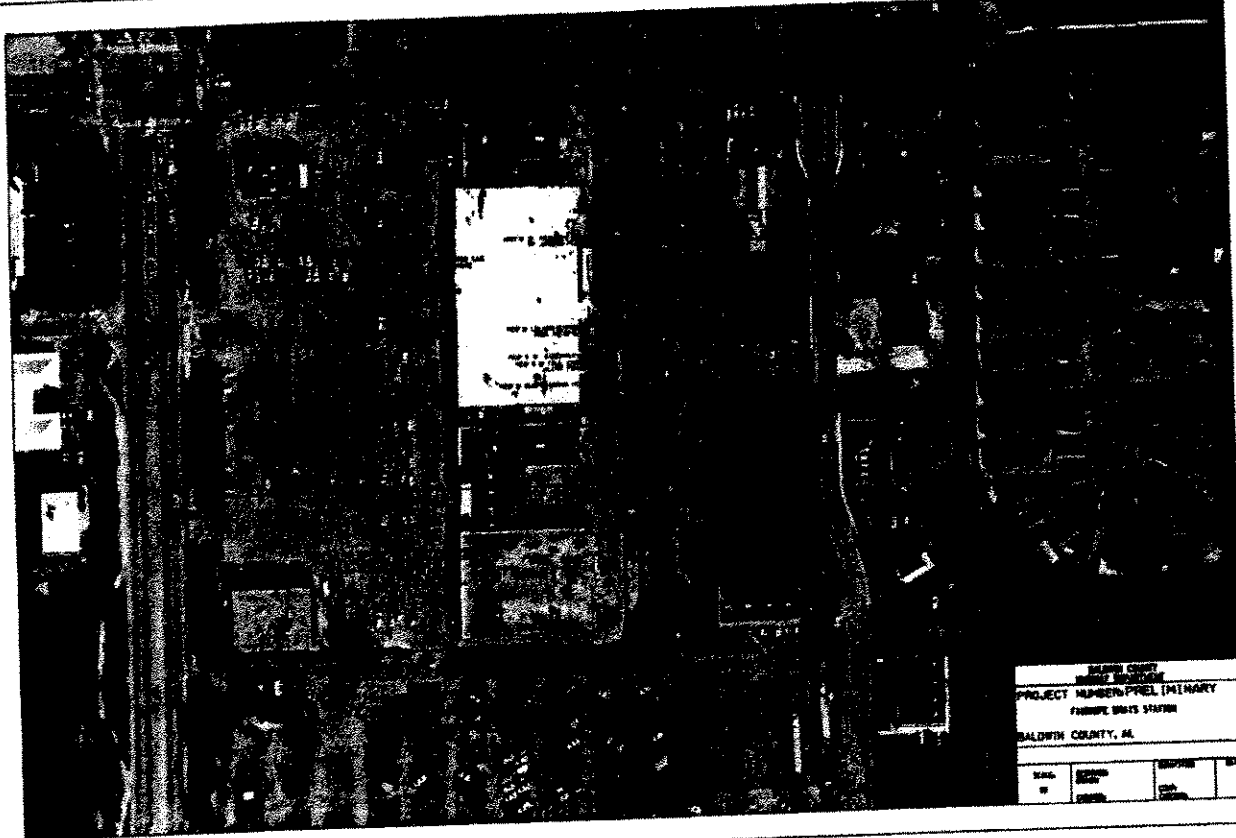
GIVEN under my hand and seal this the 10<sup>th</sup> day of December, 2009.

Lori G. Ruffin  
Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 11, 2013  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**EXHIBIT A**

**Site Plan**



STATE OF ALABAMA  
PROJECT NUMBER: PREL [M] HARY  
FARMER BRAYS STATION  
BALDWIN COUNTY, AL

NO.	DATE	TIME	BY

## **EXHIBIT B**

### **Legal Description**

Beginning at the Northeast corner of Lot 1, Schneider Leasehold as recorded in Map Book 8, Page 18, Probate Court Records, Baldwin County, Alabama; thence South 00 degrees 06 minutes 34 seconds West along the East line of said Lot 1, a distance of 476.50 feet to a point on the South line of said Lot 1; thence South 89 degrees 58 minutes 33 seconds West along said South line a distance of 103 feet to a point; thence North 00 degrees 06 minutes 34 seconds East a distance of 476.59 feet to a point on the North line of said Lot 1, Schneider Leasehold; thence East along said North line 103 feet to the point of beginning. Containing 1.127 Acres.

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

**SECOND AMENDMENT TO**  
**GROUND SUBLEASE**

**KNOW ALL MEN BY THESE PRESENTS** that this Second Amendment to the Ground Sublease (hereinafter "Sublease") is made by and between the Baldwin County Commission, (hereinafter "County") and Eastern Shore Shopping Center, LLC, (hereinafter "Shopping Center").

WITNESSETH:

**WHEREAS**, County approved the Ground Sublease between the County and the Eastern Shore Shopping Center, LLC for the purpose of development and operation of a BRATS transit hub facility; and

**WHEREAS**, to the satisfaction of both parties, the Ground Sublease was executed on the 10th day of December, 2009; and

**WHEREAS**, County and City agreed to amend the "Term" of the Sublease and to the satisfaction of both parties, an amendment was executed on February 16, 2010; and

**WHEREAS**, County has been advised of a discrepancy in the legal description of the property as contained in Exhibit "B" to the Sublease; and

**WHEREAS**, County and City have agreed to correct the property description and wish to amend the property description as provided below.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained within this Amendment, the sufficiency of which is hereby acknowledged,

County and Shopping Center do hereby amend the Ground Sublease of December 10, 2009 as follows:

1. **RECITALS:**

The recitals stated above are incorporated by reference, as if fully set forth herein.

2. **AMENDED PROVISIONS:**

(1) The property description of the original Ground Sublease dated December 10, 2009 referencing the "Premises" and identified as "Exhibit B" is hereby amended to read as follows:

**EXHIBIT B**

**Legal Description**

FROM THE CAPPED REBAR AT THE NORTHEAST CORNER OF LOT 1, SCHNEIDER LEASEHOLD, AS PER PLAT RECORDED ON SLIDE 690 – B, PROBATE COURT RECORDS, BALDWIN COUNTY, ALABAMA: THENCE RUN NORTH 89 DEGREES, 49 MINUTES, 38 SECONDS WEST ALONG THE NORTH LINE OF LOT 1, AND THE SOUTH RIGHT – OF – WAY LINE OF FAIRHOPE AVENUE A DISTANCE OF 16.00 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED: THENCE CONTINUE NORTH 89 DEGREES, 49 MINUTES, 38 SECONDS WEST A DISTANCE OF 87.0 FEET TO A POINT, THENCE RUN SOUTH 0 DEGREES, 11 MINUTES, 21 SECONDS WEST A DISTANCE OF 476.89 FEET TO A POINT ON THE SOUTH LINE OF LOT 1, OF THE AFORESAID RECORDS, THENCE RUN SOUTH 25 DEGREES, 57 MINUTES, 10 SECONDS EAST A DISTANCE OF 45.30 FEET TO A POINT, THENCE RUN SOUTH 0 DEGREES, 04 MINUTES, 06 SECONDS EAST A DISTANCE OF 159.35 FEET TO A POINT ON THE SOUTH LINE OF LOT 2, SCHNEIDER LEASEHOLD OF THE AFORESAID RECORDS, THENCE RUN SOUTH 89 DEGREES, 56 MINUTES, 01 SECONDS EAST ALONG THE SOUTH LINE OF LOT 2, A DISTANCE OF 82.33 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2, THENCE RUN NORTH 0 DEGREES, 11 MINUTES, 21 SECONDS EAST ALONG THE EAST LINE OF LOT 2 AND LOT 1 OF SCHNEIDER LEASEHOLD, A DISTANCE 492.26 FEET TO A POINT, THENCE RUN NORTH 89 DEGREES, 49 MINUTES, 38 SECONDS WEST A DISTANCE OF 16.00 FEET TO A POINT, THENCE RUN NORTH 0 DEGREES, 11 MINUTES, 21 SECONDS EAST A DISTANCE OF 184.50 FEET TO THE POINT OF BEGINNING. CONTAINING 1.45 ACRES MORE OR LESS.

(2) It is the intent of this amendment to remove from the original Exhibit B the following described property which is subject to a lease to Compass Bank:

BEGINNING AT THE CAPPED REBAR AT THE NORTHEAST CORNER OF LOT 1, SCHNEIDER LEASEHOLD, AS PER PLAT RECORDED ON SLIDE 690 – B, PROBATE COURT RECORDS, BALDWIN COUNTY, ALABAMA: THENCE RUN NORTH 89 DEGREES, 49 MINUTES, 38 SECONDS WEST ALONG THE NORTH LINE OF LOT 1, AND THE SOUTH RIGHT – OF – WAY LINE OF FAIRHOPE AVENUE A DISTANCE OF 16.00 FEET TO A POINT, THENCE RUN SOUTH 0 DEGREES, 11 MINUTES, 21 SECONDS WEST A DISTANCE OF 184.50 FEET TO A POINT, THENCE RUN SOUTH 89 DEGREES, 49 MINUTES, 38 SECONDS EAST A DISTANCE OF 16.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1, THENCE RUN NORTH 0 DEGREES, 11 MINUTES, 21 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 184.50 FEET TO THE CAPPED REBAR AT THE POINT OF BEGINNING. CONTAINING 0.07 ACRES MORE OR LESS.

3. **TERMS OF THE ORIGINAL GROUND SUBLEASE BROUGHT FORTH:**

Any and all provisions contained within the Ground Sublease dated December 10, 2009 and the Amendment dated February 16, 2010 currently in existence (as attached hereto) are hereby incorporated herein by reference to the extent they are not altered or amended herein by this Second Amendment. To the extent that any provision of the Ground Sublease and Amendment is altered, amended, or contradicted by this Second Amendment, the language and terms of this Second Amendment shall control.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

IN WITNESS WHEREOF, this Amendment has been executed by each of the parties hereto and signed by an officer thereunto duly authorized and attested.

BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama

BY: Charles F. Gruber / 4-6-2010  
Charles F. Gruber Date  
Chairman

EASTERN SHORE SHOPPING CENTER, LLC

BY: Randy Delchamps / 3/23/2010  
Randy Delchamps Date  
Member and Manager

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Lori G. Ruffin, a Notary Public, in and for said County in said State, hereby certify that Charles F. Gruber, whose name as Chairman of the Baldwin County Commission 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, in his capacity as such Chairman of the Baldwin County Commission, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal this the 6<sup>th</sup> day of April, 2010.

Lori G. Ruffin  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 11, 2013  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Liberty Mayo, a Notary Public, in and for said County in said State, hereby certify that Randy Delchamps, whose name as Member and Manager of Eastern Shore Shopping Center, LLC, a 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 company.

GIVEN under my hand and seal this the 23 day of March, 2010.

Liberty Mayo

Notary Public

My Commission Expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Nov 4, 2012  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



# Baldwin County Commission

## Agenda Action Form

---

**File #:** 23-0854, **Version:** 1

**Item #:** CD1

---

**Meeting Type:** BCC Regular Meeting

**Meeting Date:** 3/21/2023

**Item Status:** New

**From:** Ann Simpson, Director of Transportation

**Submitted by:** Ann Simpson, Director of Transportation

---

### **ITEM TITLE**

Notification of Transfer of Ownership and Assignment of Lease of BRATS Fairhope Transit Hub Located at the Eastern Shore Village Center

### **STAFF RECOMMENDATION**

Acknowledge and make a part of the record the transfer of ownership and assignment of Real Estate Sublease between the Baldwin County Commission and Eastern Shore Shopping Center, LLC, for the Baldwin Regional Area Transit Systems (BRATS) Fairhope Transit Hub located at the Eastern Shore Village Center from Robert N. Graham LLC to Benessere Partners LP, Benessere Partners II LP, and Lomas Property LLC (managed by Kleban Properties LLC).

### **BACKGROUND INFORMATION**

**Background:** Staff received notification from Robert N. Graham on December 27, 2022, notifying the county of the transfer of ownership and assignment of lease of the property where the BRATS Fairhope Transit Hub is located. The City of Fairhope pays the lease amount through an Intergovernmental Funding Agreement. Staff requests this transfer of ownership and assignment of lease be made part of the record.

### **Previous Commission action/date:**

12/01/2009 - The Baldwin County Commission (BCC) approved the Real Estate Sublease between the BCC and Eastern Shore Shopping Center, LLC.

12/15/2009 - The BCC approved the Intergovernmental Funding Agreement between the City of Fairhope and the Baldwin County Commission for the Transit Facility in Fairhope, AL.

02/16/2010 - The BCC approved the amended Real Estate sublease between Baldwin County Commission and the Eastern Shore Shopping Center, LLC.

03/02/2010 - The BCC approved the Amendment to the Intergovernmental Funding Agreement wherein the lease will be for the period of forty (40) years rather than a twenty (20) year lease with three (3), five (5) year renewal options.

04/06/2010 - The BCC approved Amendment #2 to the sublease between the BCC and the Eastern Shore Shopping Center, LLC for the Transit Facility in Fairhope, AL whereas a correction to the property description was made.

12/05/2017 - BCC approved Estoppel Certificate and Acknowledgement between the Baldwin County Commission and the Eastern Shore Shopping Center, LLC for the Transit Hub Facility in Fairhope, AL. Agenda Item BB1.

### **FINANCIAL IMPACT**

**Total cost of recommendation:** N/A

**Budget line item(s) to be used:** N/A

**If this is not a budgeted expenditure, does the recommendation create a need for funding?**  
N/A

### **LEGAL IMPACT**

**Is legal review necessary for this staff recommendation and related documents?**  
N/A

**Reviewed/approved by:** N/A

**Additional comments:** N/A

### **ADVERTISING REQUIREMENTS**

..  
**Is advertising required for this recommendation?** N/A

**If the proof of publication affidavit is not attached, list the reason:** N/A

### **FOLLOW UP IMPLEMENTATION**

**For time-sensitive follow up, select deadline date for follow up:** N/A

**Individual(s) responsible for follow up:** Administration - send email notification to Amanda Cunningham and Dana Austin of transfer of ownership and assignment of lease.

**Action required (list contact persons/addresses if documents are to be mailed or emailed):**  
No additional follow up required other than making Notification of Assignment of Lease part of the permanent record.

**Additional instructions/notes:** N/A

Robert N. Graham LLC  
P.O. Box 1207  
Purvis, MS 39475

December 27, 2022

Baldwin County  
Administration Department

Received: 12/28/2022

By: Anu Garg

VIA OVERNIGHT MAIL

Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, AL 36507

Ladies and Gentlemen:

We are pleased to announce that as of the date of this letter, the building in which your business is situated, located in the Eastern Shore Village Center, Fairhope, AL was sold to Benessere Partners LP, Benessere Partners II LP and Lomas Property LLC. The new management company is Kleban Properties LLC.

Your lease has been assigned to the buyer. All notices hereafter given to the Landlord under your lease should be sent to the following address:

Benessere Partners LP  
c/o Kleban Properties LLC  
1189 Post Road, Suite 3B  
Fairfield, CT 06824

With copy to:

Clyde Ellis  
1212 Farmer Street  
Vicksburg, MS 39183

Please note that special instructions with respect to the payment of rent are enclosed with this letter.

You are requested to immediately direct your liability insurance company that the Buyer, it's managing agent Kleban Properties LLC and it's lender BankPlus should be added as additional insured under your liability insurance policy and any other policy required under your lease. Within ten (10) days from the date of receipt hereof please furnish to Buyer a certificate of insurance reflecting the requested change.

It has been a pleasure working with you and having you as the tenant of the building.

Very truly yours,

Robert N. Graham

By:   
Name: Robert N. Graham  
Title: member

Enclosure: Tenant Direction Letter

**BENESSERE PARTNERS LP  
BENESSERE PARTNERS II LP  
LOMAS PROPERTY LLC**

**1189 POST ROAD, SUITE 3B  
FAIRFIELD, CT 06824**  
Office (203) 955 - 1978

December 27, 2022

**VIA UPS**

Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, AL 36507

**RE: NOTIFICATION OF ASSIGNMENT OF LEASE: WELCOME LETTER  
for Premises located in Eastern Shore Village Shopping Center, Fairhope, Alabama 36532**

Lease Date: December 2009

Tenant: Baldwin Rural Area Transportation System

Dear Mr. Gruber:

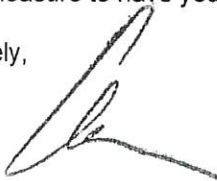
This letter shall constitute notice to you that the undersigned has granted a lien and security interest in the captioned lease and all rents, additional rents and all other monetary obligations to the landlord thereunder (collectively "Rent") in favor of BankPlus, as lender ("Lender"), to secure certain of the undersigned's obligation to Lender. The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

Benessere Partners LP  
C/O Kleban Properties  
1189 Post Road Suite 3B  
Fairfield, CT 06824

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except by the Lender, or any successor lender so identified by Lender, may be written notice to you rescind the instructions contained herein. Enclosed is a Tenant Welcome Package with details of information required from the tenant to the landlord.

It is a pleasure to have you as our Tenant.

Sincerely,



Kenneth Kleban  
President

## TENANT WELCOME PACKAGE

We are delighted to have you as our tenant. Property Management will be provided by Kleban Properties LLC.

Your property manager will provide you with pertinent information regarding your tenancy. Below are key contacts to assist you as needed.

**Diane Salerno** , Property Manager (203) 912-5729  
or email: [dsalerno@klebanproperties.com](mailto:dsalerno@klebanproperties.com)

**Becca Rowland** , Project Manager (404) 630-5997  
or email: [browland@klebanproperties.com](mailto:browland@klebanproperties.com)

**Sasha Hemingway** , Accounting (203) 955-1978  
or email: [accounting@klebanproperties.com](mailto:accounting@klebanproperties.com)

**Jan Kmiec**, Construction & Maintenance Manager (203) 209-4611  
or email: [jkmiec@klebanproperties.com](mailto:jkmiec@klebanproperties.com)

1. **Premises Address:**

**Eastern Shore Shopping Center  
Fairhope, AL 36532**

2. **Tenants Insurance:** Tenant is required to provide a Certificate of Insurance to the Landlord per lease agreement. The following additional insured must be added to your Certificate of Insurance and sent to our office per your lease.

**Additional Insured:** Benessere Partners LP, Benessere Partners II LP and Kleban Properties LLC

**Certificate Holder:** Benessere Partners LP dba Eastern Shore Village 1189 Post Road 3B Fairfield CT 06824

**Certificate Holder:** BankPlus 509 Madison Street Huntsville, AL 35801

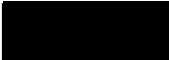
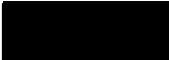
3. **Rent Payments/Correspondence:**

All rent payments should be payable to and mailed to: Benessere Partners LP

Mailing Address:

Benessere Partners LP  
C/O Kleban Properties  
1189 Post Road Suite 3B  
Fairfield, CT 06824

To send payment via ACH please use the information below:

Bank Name: BankPlus  
Account Name: Benessere Partners LP  
Account#:   
ABA#: 

All correspondence and property related issues should be directed to:

Benessere Partners LP  
**Attn: Diane Salerno**  
1189 Post Rd, Suite 3B  
Fairfield, CT 06824  
dsalerno@klebanproperties.com

Once again, we are very pleased to have you as our Tenant and wish you great success. Please do not hesitate to contact our office with any questions or concerns.

Sincerely,



**Diane Salerno**  
Property Manager

cc: Lease Administration

**DIANE SALERNO**  
VICE PRESIDENT  
OPERATIONS

1189 Post Road  
Fairfield, CT 06824



OFFICE: (203) 955-1978  
CELL: (203) 912-5729  
FAX: (203) 256-8763  
dsalerno@klebanproperties.com

# TENANT EMERGENCY CONTACT INFORMATION

TENANT NAME: Baldwin Rural Area Transportation System

EMERGENCY CONTACT:

NAME: Ann Simpson

EMAIL: ann.simpson@baldwincountyal.gov

Phone Number: 251-533-0599

On-site Management contact person:

Name: Ann Simpson

Email: ann.simpson@baldwincountyal.gov

Accounts Payable contact person and email address:

Name: Christie Davis

Email: cdavis@baldwincountyal.gov

## UTILITIES INFORMATION

Electricity Meter Number: 109595920

Backflow Meter Number: 52492491

Please return this information to [dsalerno@klebanproperties.com](mailto:dsalerno@klebanproperties.com) or mail to:

Benessere Partners LC  
1189 Post Road Suite 3B  
Fairfield CT 06824



# CERTIFICATE OF COVERAGE

1/4/2023

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.  
This certificate does not amend, extend or alter the coverage afforded by the coverages below.

**Third Party Administrator/Issuer:**  
County Risk Services, Inc.  
P.O. Box 589  
Montgomery, AL 36101-0589

Phone: (334) 394-3232 / Email: [underwriting@countyrisk.org](mailto:underwriting@countyrisk.org)

**Covered Member:**  
Baldwin County Commission  
312 Courthouse Sq, Ste 12  
Bay Minette, AL 36507

**Companies affording Coverage:**

- A. ACCA Liability Self-Insurance Fund, Inc.
- B. ACCA Liab. Self-Ins. Fund, Inc - Property Program
- C. ACCA WC Self-Insurance Fund

This is to certify that the coverages listed below have been issued to the member named above for the period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage described herein is subject to all the terms, exclusions and conditions of the relevant coverage document.

Fnd Ltr	Coverage Type	Policy Number	Effective Date	Expiration Date	Limits
A	<input checked="" type="checkbox"/> <b>General Liability</b> <input checked="" type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	[REDACTED]	1/1/2023	1/1/2024	Each Occurrence \$ 1,000,000 Annual Aggregate \$ 5,000,000
	<input type="checkbox"/> <b>Auto Liability</b> <input type="checkbox"/> Owned/Scheduled				Each Accident Limit \$ per occurrence
	<input type="checkbox"/> <b>Property</b>				<input type="checkbox"/> Scheduled Building Limit: \$ <input type="checkbox"/> Contents \$ <input type="checkbox"/> EDP Equipment \$ <input type="checkbox"/> Mobile Equipment \$ <input type="checkbox"/> Auto Physical Damage \$
	<input type="checkbox"/> <b>Workers' Compensation</b>				<input type="checkbox"/> Statutory Limits \$ <input type="checkbox"/> Employers' Liability
	<input type="checkbox"/> <b>Other</b> <input type="checkbox"/> Law Enforcement Liability				Each Occurrence Limit

Description of operations / locations/ vehicles / exclusions added by endorsement / special provisions:

CERTIFICATE HOLDER SHOWN IS AN "ADDITIONAL COVERED PERSON" AS DEFINED IN THE LIABILITY COVERAGE DOCUMENT, SECTION C- PERSONS COVERED UNDER THIS DOCUMENT, 1, (6), ISSUED TO THE ABOVE-NAMED COUNTY COMMISSION.

Fairhope Baldwin Rural Area Transportation System hub  
Eastern Shore Village Center, Fairhope AL

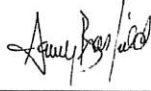
**CERTIFICATE HOLDER:**

BankPlus  
509 Madison Street

**Cancellation:** Should any of the above described coverages be cancelled before the expiration date thereof, notice will be delivered in accordance with the Coverage Document.

Huntsville, AL 35801

Authorized Representative



**DESCRIPTIONS (Continued)**

# CERTIFICATE OF COVERAGE

1/4/2023

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.  
This certificate does not amend, extend or alter the coverage afforded by the coverages below.

**Third Party Administrator/Issuer:**  
County Risk Services, Inc.  
P.O. Box 589  
Montgomery, AL 36101-0589

Phone: (334) 394-3232 / Email: [underwriting@countyrisk.org](mailto:underwriting@countyrisk.org)

**Covered Member:**  
Baldwin County Commission  
312 Courthouse Sq, Ste 12  
Bay Minette, AL 36507

**Companies affording Coverage:**

- A. ACCA Liability Self-Insurance Fund, Inc.
- B. ACCA Liab. Self-Ins. Fund, Inc - Property Program
- C. ACCA WC Self-Insurance Fund

This is to certify that the coverages listed below have been issued to the member named above for the period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage described herein is subject to all the terms, exclusions and conditions of the relevant coverage document.

Fnd Ltr	Coverage Type	Policy Number	Effective Date	Expiration Date	Limits
A	<input checked="" type="checkbox"/> <b>General Liability</b> <input checked="" type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	[REDACTED]	1/1/2023	1/1/2024	Each Occurrence \$ 1,000,000
					Annual Aggregate \$ 5,000,000
	<input type="checkbox"/> <b>Auto Liability</b> <input type="checkbox"/> Owned/Scheduled				Each Accident Limit \$ per occurrence
	<input type="checkbox"/> <b>Property</b>				<input type="checkbox"/> Scheduled Building Limit: \$ <input type="checkbox"/> Contents \$ <input type="checkbox"/> EDP Equipment \$ <input type="checkbox"/> Mobile Equipment \$ <input type="checkbox"/> Auto Physical Damage \$
	<input type="checkbox"/> <b>Workers' Compensation</b>				<input type="checkbox"/> Statutory Limits \$ <input type="checkbox"/> Employers' Liability
	<input type="checkbox"/> <b>Other</b>				
	<input type="checkbox"/> <b>Law Enforcement Liability</b>				Each Occurrence Limit

Description of operations / locations/ vehicles / exclusions added by endorsement / special provisions:

CERTIFICATE HOLDER SHOWN IS AN "ADDITIONAL COVERED PERSON" AS DEFINED IN THE LIABILITY COVERAGE DOCUMENT, SECTION C- PERSONS COVERED UNDER THIS DOCUMENT, 1, (6), ISSUED TO THE ABOVE-NAMED COUNTY COMMISSION.

Fairhope Baldwin Rural Area Transportation System hub  
Eastern Shore Village Center, Fairhope AL

**CERTIFICATE HOLDER:**

Benessere Partners LP dba Eastern Shore Village and  
Kleban Properties LLC

**Cancellation:** Should any of the above described coverages be cancelled before the expiration date thereof, notice will be delivered in accordance with the Coverage Document.

1189 Post Road  
3B  
Fairfield, CT 06824

Authorized Representative



**DESCRIPTIONS (Continued)**