

Upon recording return to:

Evans PLLC
Attn: Matthew D. Evans
19 Inverness Center Parkway, Suite 150
Birmingham, AL 35242

GROUND LESSOR'S CONSENT AND AGREEMENT

This **GROUND LESSOR'S CONSENT AND AGREEMENT** (the "Agreement") is made and entered into as of October 25, 2022 (the "Effective Date"), by and among **SERVISFIRST BANK**, an Alabama banking corporation (the "Bank"), **ENCORE FRANCHISES, LLC**, an Alabama limited liability company (the "Ground Lessee" or "Borrower"), and **CAPE GROUP, LLC**, an Alabama limited liability company (the "Ground Lessor" or "Landlord"). Bank, Borrower and Ground Lessor are sometimes individually referred to as a "Party" or collectively as the "Parties".

WHEREAS, Ground Lessor is the fee simple owner of certain real property located in Shelby County, Alabama as further described on the attached Exhibit A attached hereto and incorporated herein by reference (the "Demised Premises"); and

WHEREAS, pursuant to a certain Lease Agreement dated as of February 4, 2021, between Ground Lessor and Borrower (together with any and all modifications or amendments at any time thereto, hereinafter, the "Ground Lease"),

WHEREAS, Bank has made or will make a loan (the "Loan") to Borrower subject to the terms thereof, and such Loan is secured or will be secured by a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing on the Demised Premises (as amended from time to time, hereinafter referred to as the "Leasehold Mortgage"); and

NOW, THEREFORE, as a condition precedent to Bank's extension of the Loan or continued extension of the Loan and other good and valuable consideration, including, the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged the Ground Lessor desires to evidence its consent and agreement to the Leasehold Mortgage and to clarify and confirm certain conditions and agreement in relation thereto;

1. **Consent of Ground Lessor**. Ground Lessor hereby agrees and consents (i) to the lien of Bank under the Leasehold Mortgage on all right, title and interest of Borrower to the Demised Premises, including the leasehold interest under the Ground Lease and all rights arising thereunder (the "Ground Lessee Rights"); and (ii) Bank may without any further consent of Ground Lessee enforce its Leasehold Mortgage, provided, however, that subject to Section 12 of the Ground Lease, with Ground Lessor's consent pursuant to the terms hereof, Bank may assign, convey or sell to any purchaser or transferee, including Bank, any interest

of Ground Lessee following a foreclosure sale or other enforcement action of Bank pursuant to the Leasehold Mortgage (each, a "Transferee") and a Transferee shall acquire all Ground Lessee Rights. Notwithstanding the foregoing or anything contained herein to the contrary (i) Bank shall at all times be considered an approved Transferee; (ii) Ground Lessor agrees to not unreasonably withhold its consent to a proposed Transferee so long as such Transferee has prior managerial and/or operational experience of a gas station and is financially capable of performing the obligations under the Lease and would otherwise be able to materially satisfy all terms and conditions set forth in the Ground Lease. For purposes of determining financial capability, any proposed Transferee that has a net worth of \$1,000,000.00 or if such Transferee proposes a personal guaranty of the Transferee's obligations by an individual and such proposed guarantor has a net worth of at least \$1,000,000.00, then such proposed Transferee shall be deemed financial capable; and (iii) upon any proposal of a Transferee to Ground Lessor by Bank, Ground Lessor shall have thirty (30) days to approve or reject a proposed Transferee in accordance with the foregoing terms and conditions and in the event that Ground Lessor fails to reply to Bank within such thirty (30) day period, such proposed Transferee shall be deemed an approved Transferee. Provided, that the thirty (30) day approval period shall not start to run until the date Bank delivers, as prescribed in paragraph eight below, all documents or other information to Ground Lessor the Bank claims as proof that a proposed Transferee is suitable to assume the Lease.

2. **Agreement of Bank.** The Bank confirms and agrees that the Leasehold Mortgage does not encumber or create a lien on the fee simple interest of Ground Lessor in the Demised Premises.
3. **Non-disturbance.** Ground Lessor agrees that the enforcement of the Leasehold Mortgage shall not terminate the Ground Lease or disturb any Transferee, including Bank if it should be the Transferee, in obtaining the right of, and continuing as, ground lessee (as successor in interest to Borrower) in the possession and use of the Demised Premises, unless after such foreclosure, such Purchaser fails to cure any default under the Ground Lease in accordance with the terms of the Ground Lease or this Agreement. This non-disturbance applies to any option to extend or renew the Ground Lease term which is set forth in the Ground Lease as of the date of this Agreement, or which is later entered into between Ground Lessor and Borrower with the consent of Bank. This non-disturbance shall be effective and self-operative without the execution of any further instruments upon a Transferee succeeding to the interest of the Borrower under the Ground Lease. Upon completion of any foreclosure or trustee's sale proceedings by Bank under the Leasehold Mortgage (or completion of an assignment of the Ground Lease in lieu of foreclosure), Ground Lessor will recognize Bank, any Transferee or any other successor thereby to ground lessee's interest in the Ground Lease, as the ground lessee under the terms of the Ground Lease for all purposes thereunder and for the remaining term thereof.
4. **Attornment.** Subject to Section 3 above, if any transfer, assignment or conveyance of the Demised Premises should occur, any Transferee, including Bank if it should be the Transferee, shall and hereby does attorn to Ground Lessor as the landlord under the Ground

Lease, and any Transferee shall be bound to Ground Lessor under all of the terms, or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Ground Lease, all with the same force and effect as if Transferee had been the original ground lessee under the Ground Lease.

5. **Limitation of Liability.** Nothing in this Agreement shall be deemed or construed to be an agreement by Bank or any Transferee to perform any covenant of Borrower under the Ground Lease, unless and until Bank or such Transferee succeeds to the rights and obligations of Borrower under the Ground Lease. Ground Lessor agrees that if Bank becomes a Transferee and acquires such rights, then upon any subsequent transfer of the Demised Premises by Bank to a new owner, Bank shall have no further liability under the Ground Lease after the date of said transfer.
6. **Acknowledgments, Certifications and Agreements.** Ground Lessor and Ground Lessee hereby agree for the benefit of Bank as follows:
 - a. Ground Lessor is the current ground lessor under the Ground Lease and Ground Lessee is the current ground lessee under the Ground Lease.
 - b. Ground Lessor has not assigned or conveyed or agreed to assign or to convey Ground Lessor's interest under the Ground Lease in whole or in part, except in connection with the Loan.
 - c. Ground Lessee is the ground lessee under the Ground Lease, and there has been no assignment or conveyance of Ground Lessee's interest under the Ground Lease in whole or in part, except in connection with the Loan.
 - d. The Ground Lease is in full force and effect . The Ground Lease constitutes the full and entire understanding and agreement between Ground Lessor and Ground Lessee pertaining to the Ground Lease and the Demised Premises, and the undersigned shall not modify, amend, alter or change the Ground Lease without the express prior written consent of Lender.
 - e. As of the date hereof, Ground Lessee has complied with all conditions precedent required to be performed on its part.
 - f. Ground Lessor does not have any claims, causes of action, judgments, liabilities or demands of any kind, nature or character against Ground Lessee concerning the Ground Lease.
 - g. Ground Lessor is not in breach or default of any of the terms, conditions or provisions of the Ground Lease.
 - h. The Ground Lease is in full force and effect, and Ground Lessee is not, in any respect, in default under the terms and provisions of the Ground Lease.

i. In the event of a conflict between any term, provision or condition hereunder and under the Ground Lease, the term, provision or condition of this Agreement shall prevail.

j. Any and all eminent domain or condemnation awards or damages recoverable by the Ground Lessee or Ground Lessor (hereinafter, "Condemnation Proceeds") shall be paid to the Parties, after Ground Lessor's Costs are reimbursed, as stated in this Section. "Costs", for purposes of this section, shall only include attorney's fees and appraiser fees. The amount of reimbursement for Costs shall not exceed Ten Thousand Dollars (\$10,000.00). Ground Lessor shall have the exclusive right to negotiate and accept or deny offers from a condemning party, provided, however if a condemnation proceeding is commenced while an outstanding balance is owed for the Loan that affects the improvements financed by the Loan or the entire property, any such approval from Ground Lessor shall require the Bank's prior written consent not to be unreasonably withheld. A minimum of sixty percent (60%) of the Condemnation Proceeds shall be paid to Ground Lessor. Ground Lessee's share of the Condemnation Proceeds, if any, shall be subject to the following conditions: In the event a condemnation occurs while Ground Lessee has an outstanding balance owed for the Loan, up to forty percent (40%) of the condemnation award shall be used to satisfy the outstanding balance of the Loan and any remaining balance after payoff of the Loan shall go to Ground Lessor. In the event a) condemnation occurs within the first 10 years of the term of the Lease Agreement between Ground Lessor and Ground Lessee and b) Ground Lessee has paid the entire balance of the Loan contemplated by this agreement, forty percent (40%) of the remaining Condemnation Proceeds shall be paid to ground Lessee. Otherwise, Ground Lessee shall not be entitled to receive any portion of the Condemnation Proceeds and all of the award shall be paid to Ground Lessor.

Ground Lessor and Borrower makes the above statements, certifications and agreements for the benefit and protection of Bank with full knowledge that Bank will rely on the same in extending credit to Borrower.

7. **Counterparts**. This Agreement may be executed in one or more counterparts but all of the counterparts shall constitute one Agreement; provided, however, this Agreement shall not be effective and enforceable unless and until it is executed by the party to be charged.

8. **Notices**. All notices or demands hereunder shall be sufficient if sent by United States certified mail, postage prepaid, addressed as follows:

If to Bank: ServisFirst Bank
2500 Woodcrest Place
Birmingham, AL 35209

With a copy to: Evans PLLC
Attn: Matthew D. Evans

19 Inverness Center Parkway, Suite 150
Birmingham, AL 35242

If to Borrower: Encore Franchises, LLC
3945 Lorna Road
Hoover, AL 35244

If to Ground Lessor: Cape Group, LLC
3095 CAHABA VALLEY RD
INDIAN SPRINGS, AL 35124

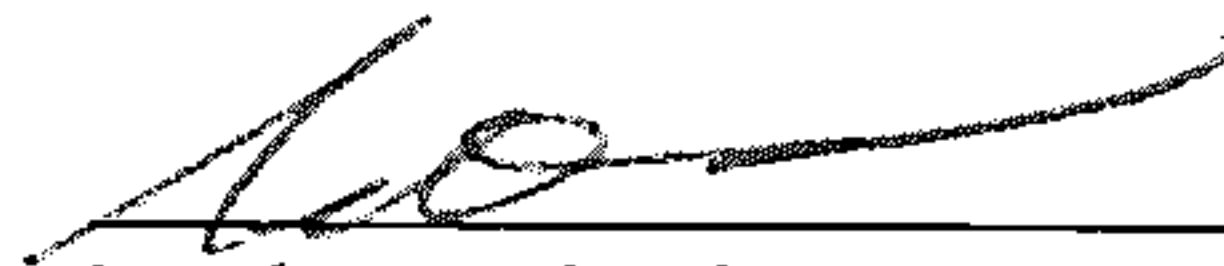
or such other address as any party may hereafter designate in writing to the other.

9. **Binding Effect.** This Agreement and all of the covenants, terms, conditions and obligations herein contained are covenants running with the land (the Demised Premises and binding thereon and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and successors in title to the Leased Premises and successors in title to the Property.

In witness whereof, the parties have executed this Agreement as of the date first above written.

BANK:

SERVISFIRST BANK,
an Alabama banking corporation

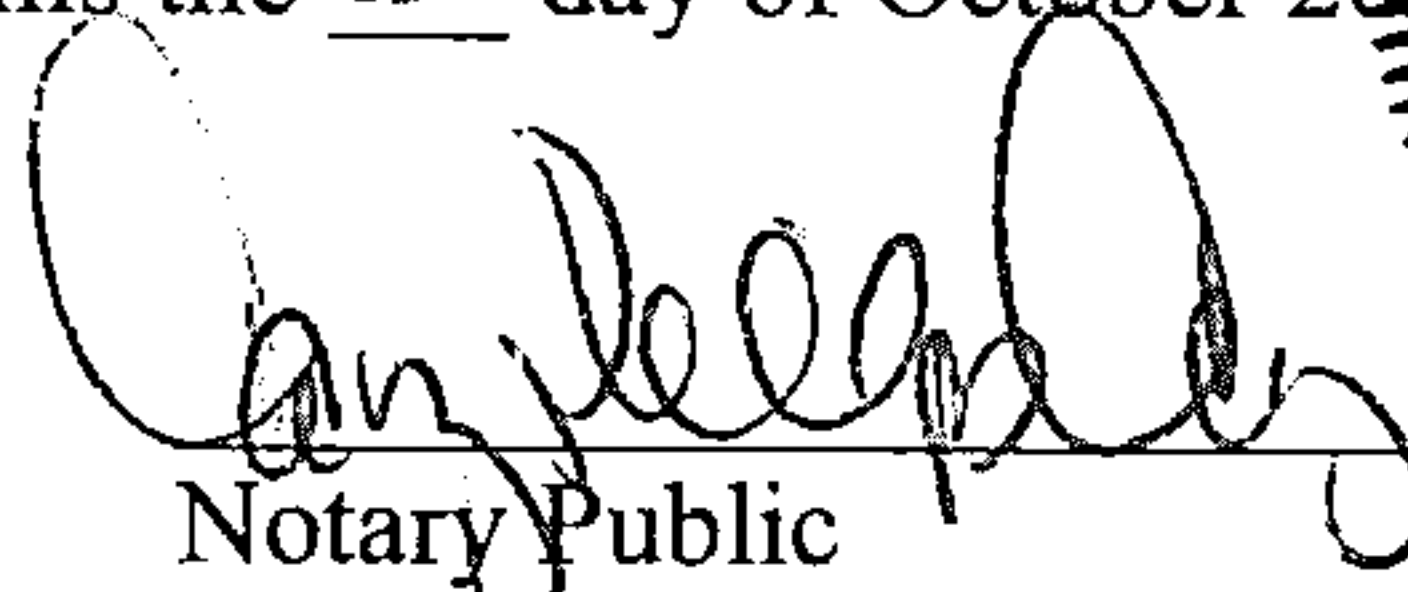


Nathan Nix, its Assistant Relationship Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

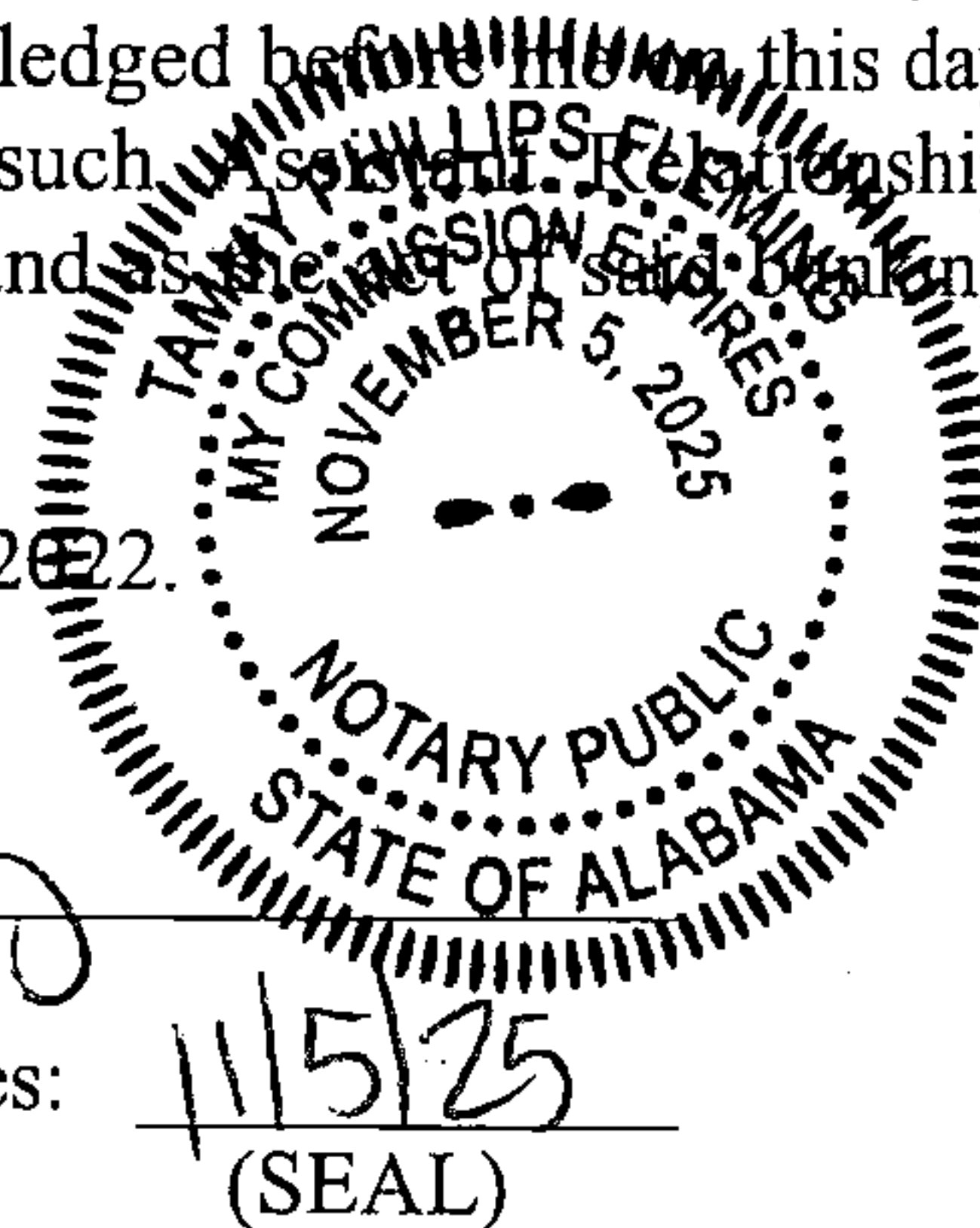
I, the undersigned, a notary public in and for said county in said state, hereby certify that Nathan Nix, whose name as Assistant Relationship Manager of **SERVISFIRST BANK**, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such Assistant Relationship Manager and with full authority, executed the same voluntarily for and as the manager of said banking corporation.

GIVEN under my hand and seal this the 25 day of October 2022.



Notary Public

My Commission Expires:



GROUND LESSOR:

CAPE GROUP, LLC,
an Alabama limited liability company

J. Brewer
Jeff Brewer, its Manager

STATE OF ALABAMA
COUNTY OF Shelby

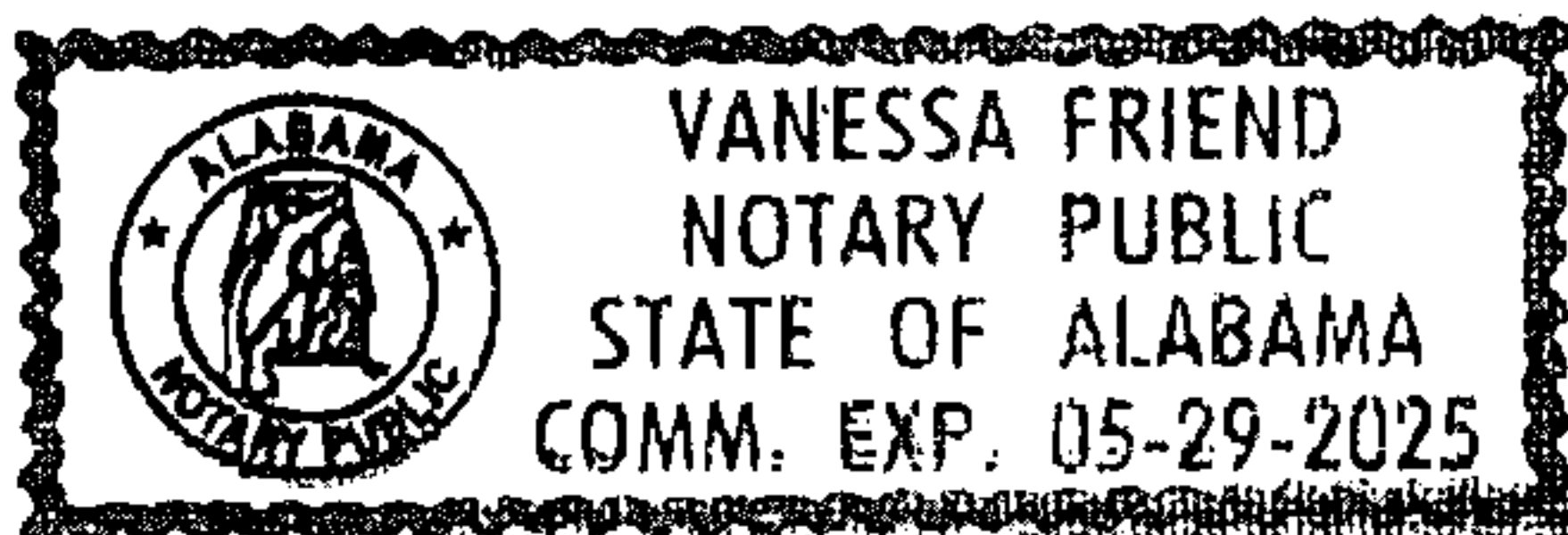
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I, the undersigned, a notary public in and for said county in said state, hereby certify that Jeff Brewer, whose name as Manager of **CAPE GROUP, LLC**, an Alabama limited liability company, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand and seal this the 13th day of October 2022.

[Signature]
Notary Public

My Commission Expires: 05/29/2025
[SEAL]



Executed and delivered as of the date first above written.

BORROWER:

ENCORE FRANCHISES, LLC,
an Alabama limited liability company



Rahim Budhwani, its CEO

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rahim Budhwani, whose name as CEO of **ENCORE FRANCHISES, LLC**, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such CEO and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand and seal this the 18th day of October 2022.

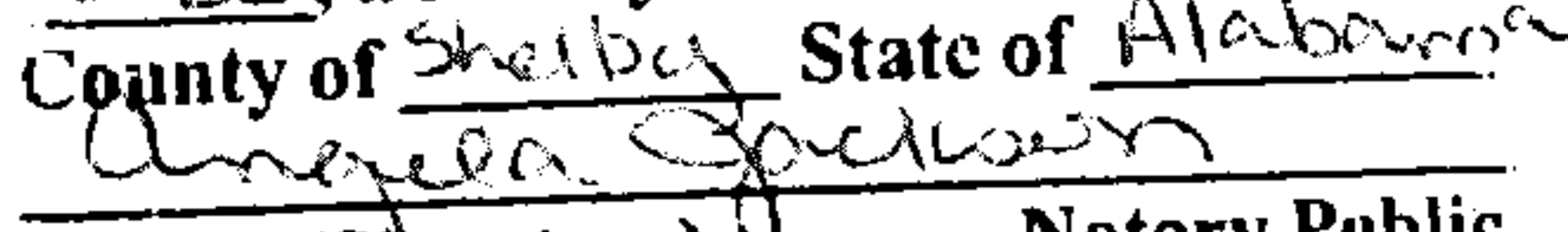
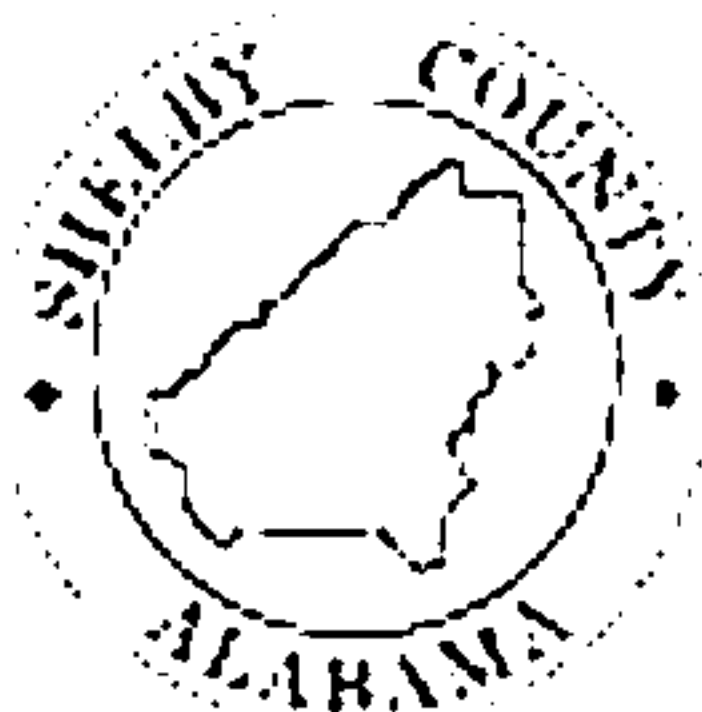
Subscribed and sworn to before me in my
presence, this 18th day of October
2022, a Notary Public in and for the
County of Shelby State of Alabama

(Signature) Notary Public
My commission expires May 9, 2024

EXHIBIT "A"
LEGAL DESCRIPTION

Part of the NE 1/4 of Section 28, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the at the NE corner of the NE 1/4 of the NE 1/4 of Section 28, Township 19 South, Range 2 West, Shelby County, Alabama; thence N 87°49'48"W along the north line of said 1/4-1/4 section for a distance of 1,097.00 feet to a point; thence S 11°07'22"E for a distance of 402.13 feet to a rebar capped K.B. Weygand; thence S 12°04'08"E for a distance of 554.96 feet to a railroad spike; thence S 12°01'54" E a distance of 217.30 feet to the POINT OF BEGINNING; thence continue along the last described course a distance of 105.95 feet to a %" rebar on the northerly right of way of Alabama Highway 119; thence S 68°59'56" W along said right of way a distance of 303.72 feet to a rebar capped KB Weygand; thence N 12°01'26"W, a distance of 137.47 feet to a point; thence N 77°58'34"E a distance of 100.00 feet to a point; thence N 32°58'34" E a distance of 22.36 feet to a point; thence N 77°57'22"E, a distance of 184.18 feet to the POINT OF BEGINNING

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Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
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Allen S. Bayl