


This document prepared by:  
Megan Coker  
Publix Alabama, LLC  
P.O. Box 407  
Lakeland, FL 33802-0407

  
20080117000023330 1/7 \$29.00  
Shelby Cnty Judge of Probate, AL  
01/17/2008 10:50:47AM FILED/CERT

SUBORDINATION,  
NON-DISTURBANCE AND  
ATTORNMEN AGREEMENT

**#1202 – Pelham Towne Center, Pelham, Alabama**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") made this 10<sup>th</sup> day of December, 2007, among Compass Bank, (hereinafter referred to as "Lender"), Publix Alabama, LLC, an Alabama limited liability company, (hereinafter referred to as "Tenant"), and Sharp Pelham, LLC, an Alabama limited liability company, (hereinafter referred to as "Landlord"), with reference to the following facts:

A. Landlord and Tenant have entered into that certain Lease Agreement dated 07/06/2007 as amended by First Amendment to Lease dated 09/20/2007 (hereinafter collectively referred to as the "Lease"), relating to certain premises (hereinafter referred to as the "Premises") located or to be located in a shopping center constructed or to be constructed upon the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

B. Lender has made or has committed to make a loan to Landlord in the principal amount of Twelve Mil Six Hun Fifty Thousand AND NO/100 DOLLARS (\$ 12,650,000.00) secured or to be secured by a mortgage or security deed (hereinafter referred to as the "Mortgage") and an assignment of leases and rents from Landlord to Lender covering the Premises.

C. Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage held by Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. All terms used herein with an initial capital letter, unless otherwise defined or modified in this Agreement, shall have the same meaning assigned to them in the Lease.

2. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby is and shall continue to be subject and subordinate in all respects to the Mortgage and to any advancements made thereunder and to any renewals, modifications, consolidations, replacements and extensions thereof.

3. Lender does hereby agree with Tenant that, so long as Tenant complies with and performs its obligations under the Lease: (i) Lender will take no action which will interfere with or disturb Tenant's possession or use of the Premises or other rights under the Lease; (ii) in the event of any foreclosure sale pursuant to the Mortgage, conveyance in lieu of foreclosure or otherwise, said sale or conveyance shall be made subject to the Lease and this Agreement; and (iii) in the event Lender or any other person or entity becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, the Premises shall be subject to the Lease and Lender or any such other new owner shall recognize Tenant as the tenant of the Premises for the remainder of the term and all exercised renewal terms of the Lease in accordance with the provisions thereof.

4. Tenant does hereby agree with Lender that, in the event Lender, or any other person or entity becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant agrees, from and after such event, to attorn to and recognize Lender, or any other person or entity that becomes the owner of the Premises, as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to attorn to: (i) Lender when in possession of the Premises; (ii) a receiver appointed in an action to foreclose the Mortgage; or (iii) any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure. This provision shall operate automatically without further acknowledgment or instrument of attornment.



5. So long as the Mortgage remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a copy of all notices required to be given to Landlord by Tenant, including, without limitation, notices pursuant to which Tenant proposes to abate or reduce the rental payable under the Lease or to terminate or cancel the Lease, under and pursuant to the terms and provisions of the Lease and that no such notice to Landlord shall be effective as to Lender unless a copy of such notice is also mailed to Lender. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default of Landlord, or within the time permitted Landlord for curing any default under the Lease as therein provided, Lender may, but shall have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of Landlord by the terms of the Lease; and all payments so made and all things so done and performed by Lender shall be as effective to prevent the rights of Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Landlord.

6. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease as security for the loan, and Tenant hereby expressly consents to such assignment.

7. Any provision of this Agreement to the contrary notwithstanding, Lender shall have no obligation, or incur no liability, with respect to the erection and completion of the building in which the Premises are or will be located, or for the completion of the Premises or any improvements for Tenant's use and occupancy.

8. Whenever notice is required or permitted under this Agreement, it shall be in writing and shall be deemed to be properly given upon receipt or refusal if sent by U. S. Postal Service, postage prepaid, by certified or registered mail, return receipt requested, or if personally delivered by hand or sent by nationally recognized overnight courier service. For purposes of this Agreement, delivery of a notice to an address from which the recipient has moved but failed to notify the other parties of modification of such address as hereinafter provided shall be deemed to constitute refusal of such notice by the intended recipient. All notices required or permitted under this Agreement shall be delivered to the party entitled thereto at the following addresses:

Lender: Compass Bank  
P. O. Box 10566  
Birmingham, AL 35296  
Attn: Commercial Real Estate Department

Tenant: Publix Alabama, LLC  
3300 Publix Corporate Parkway  
Lakeland, FL 33811-3002  
Attn: John Frazier,  
President

With a copy to: Publix Alabama, LLC  
3300 Publix Corporate Parkway  
Lakeland, FL 33811-3002  
Attn: John A. Attaway, Jr.  
Senior Vice President and General Counsel

Landlord: Sharp Pelham, LLC  
c/o Sharp Realty and Management, LLC  
400 Union Hill Dr., Ste 300  
Birmingham, AL 35209  
Attn: Ronda Lusco

With a copy to: Sprain & Shires, PC  
1707 29<sup>th</sup> Court South  
Birmingham, AL 35209  
Attn: Robert Sprain, Esq.

The foregoing addresses may be modified by delivery of written notice of such modification to the parties entitled thereto, which written notice shall be delivered and deemed effective as set forth herein.



9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns.

10. Any provision of this Agreement to the contrary notwithstanding:

(a) except as provided in subparagraph (b) below, neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be liable to Tenant for any act or omission of any prior landlord (including Landlord);

(b) neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) of which Lender had not been notified pursuant to Paragraph 5 hereof;

(c) neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days prior to the due date of such payment;

(d) Lender shall not be bound by any amendment or modification of the Lease (except those amendments or modifications entered into prior to the date of this Agreement) made without its consent, which modifies Rent or affects in any way the length of the term of the Lease; and,

(e) the Right of First Refusal set forth in Paragraph 48 of the Lease is not intended to apply in the event of foreclosure or the conveyance of the Shopping Center pursuant to a deed-in-lieu of foreclosure, it being understood however that in no event shall such Right of First Refusal be extinguished by such foreclosure or deed-in-lieu of foreclosure, and such Right of First Refusal shall apply to any subsequent sale by the entity acquiring the property pursuant to such event of foreclosure or deed-in-lieu of foreclosure.

11. Any provision of the Mortgage to the contrary notwithstanding, with regard to the property damage insurance required pursuant to the terms and provisions of the Lease, or with regard to condemnation proceeds paid with respect to the Premises, Landlord and Lender agree that all insurance proceeds or condemnation proceeds paid or payable with respect to the Premises and received by Lender shall be applied to and paid for reconstruction or repair of improvements, if either Landlord or Tenant elects or is obligated to restore or repair such improvements, as set forth in and subject to the terms and conditions of the Lease.

12. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

13. Neither the Mortgage nor any other security instrument executed in conjunction therewith shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs, or other personal property of Tenant or its subtenants or licensees at any time furnished or installed on the Premises regardless of the manner or mode of attachment thereof.

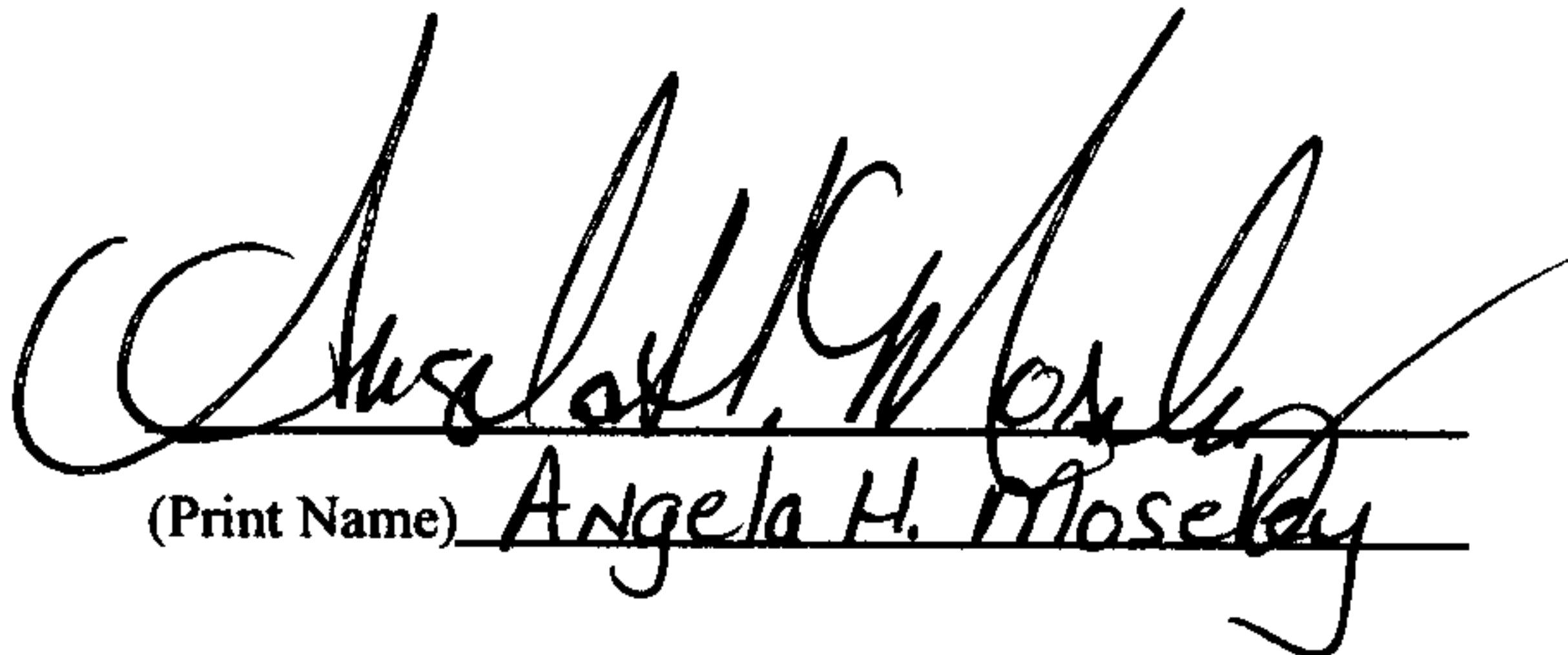
14. Nothing contained in this Agreement shall be deemed to modify or amend the terms and provisions of the Lease.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all shall constitute one and the same Agreement; provided, however, this Agreement shall not be effective or enforceable as to Tenant until after it has been fully executed by all parties, and a fully executed original counterpart has been received by Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

**[SIGNATURES APPEAR ON FOLLOWING PAGES]**

20080117000023330 4/7 \$29.00  
Shelby Cnty Judge of Probate, AL  
01/17/2008 10:50:47AM FILED/CERT

  
(Print Name) Angela H. Moseley

Cathy S. Polgett  
(Print Name) Cathy S. Polgett  
Two Witnesses

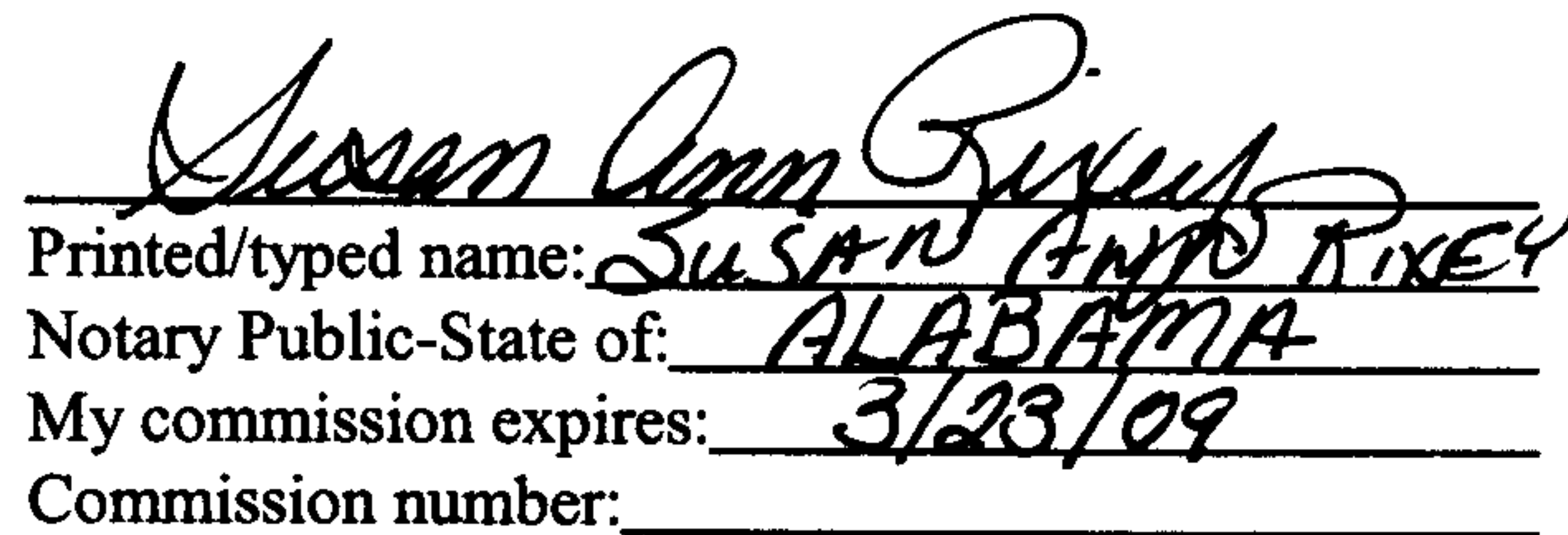
**LENDER:** Compass Bank

By: W. Neill Fox  
Name: W. Neill Fox  
As its: Executive Vice Pres.

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 4 day of January, 2008, by Neil Fox, as EVP of (Compass) Bank, an Alabama ~~limited liability company~~ <sup>banking corporation</sup>, on behalf of the corporation. Such person is personally known to me or produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

  
Printed/typed name: SUSAN ANN RIXEY  
Notary Public-State of: ALABAMA  
My commission expires: 3/23/09  
Commission number: \_\_\_\_\_



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Shelby Cnty Judge of Probate, AL  
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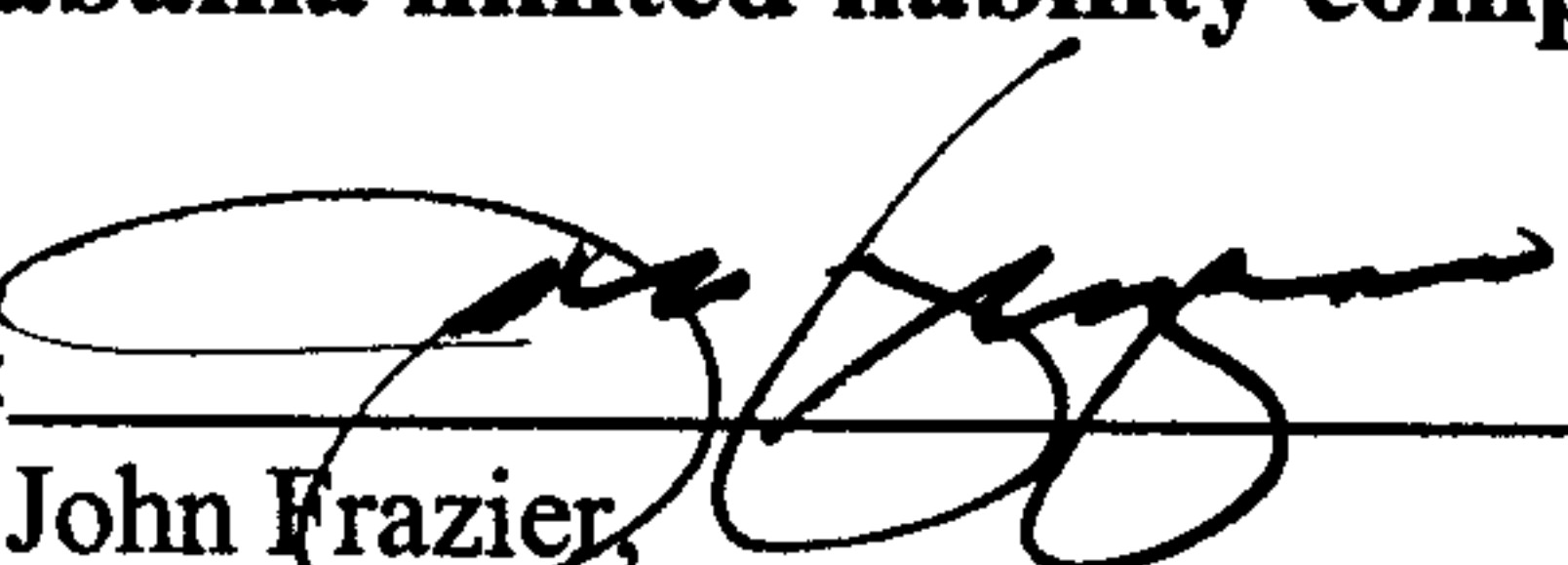
**TENANT**

**PUBLIX ALABAMA, LLC, an  
Alabama limited liability company**

  
(Print Name) VICKI BREKKE

  
(Print Name) Megan Coker

Two Witnesses

By:   
John Frazier,  
President

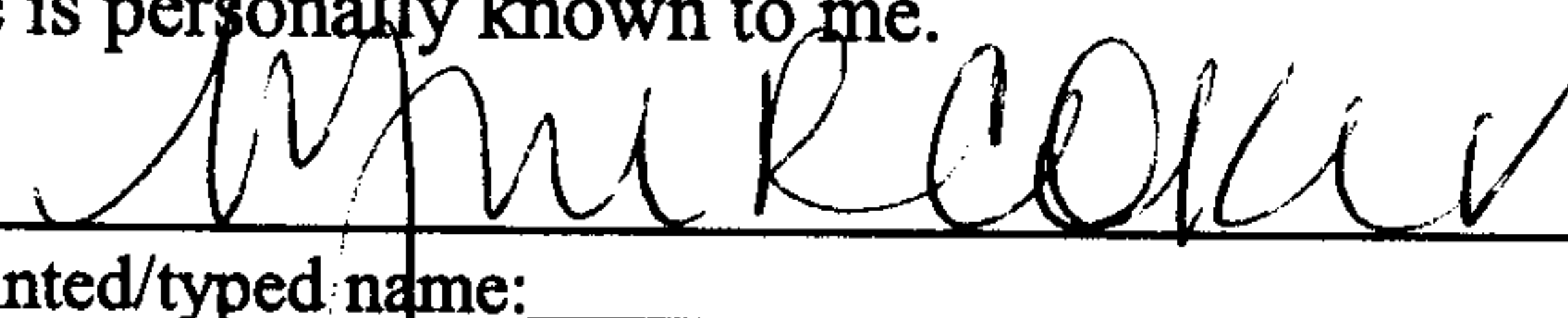
STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 10<sup>th</sup> day of December, 2007, by JOHN FRAZIER, as President of PUBLIX ALABAMA, LLC, an Alabama limited liability company, on behalf of the corporation. He is personally known to me.

(NOTARY SEAL)

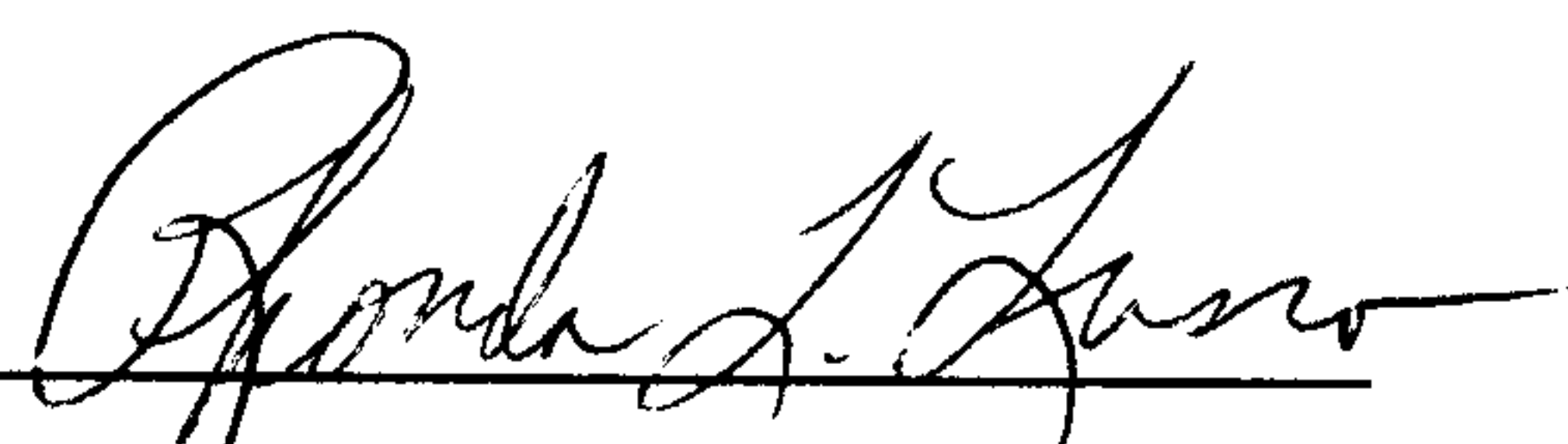


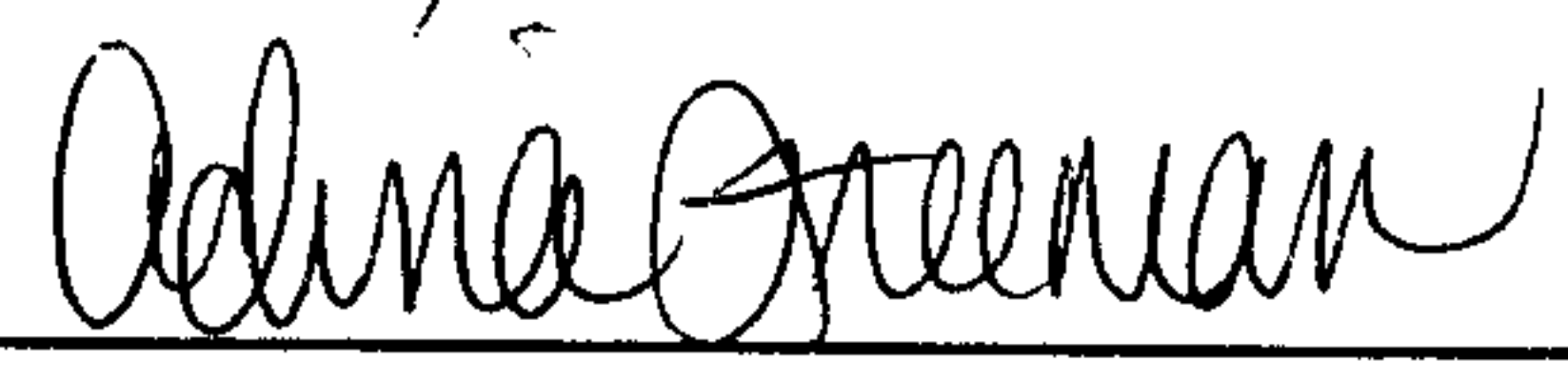
**Megan R. Coker**  
Commission # DD513476  
Expires February 1, 2010  
Bonded Troy Fam Insurance Inc. 800-385-7019

  
Printed/typed name: \_\_\_\_\_  
Notary Public-State of: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Commission number: \_\_\_\_\_

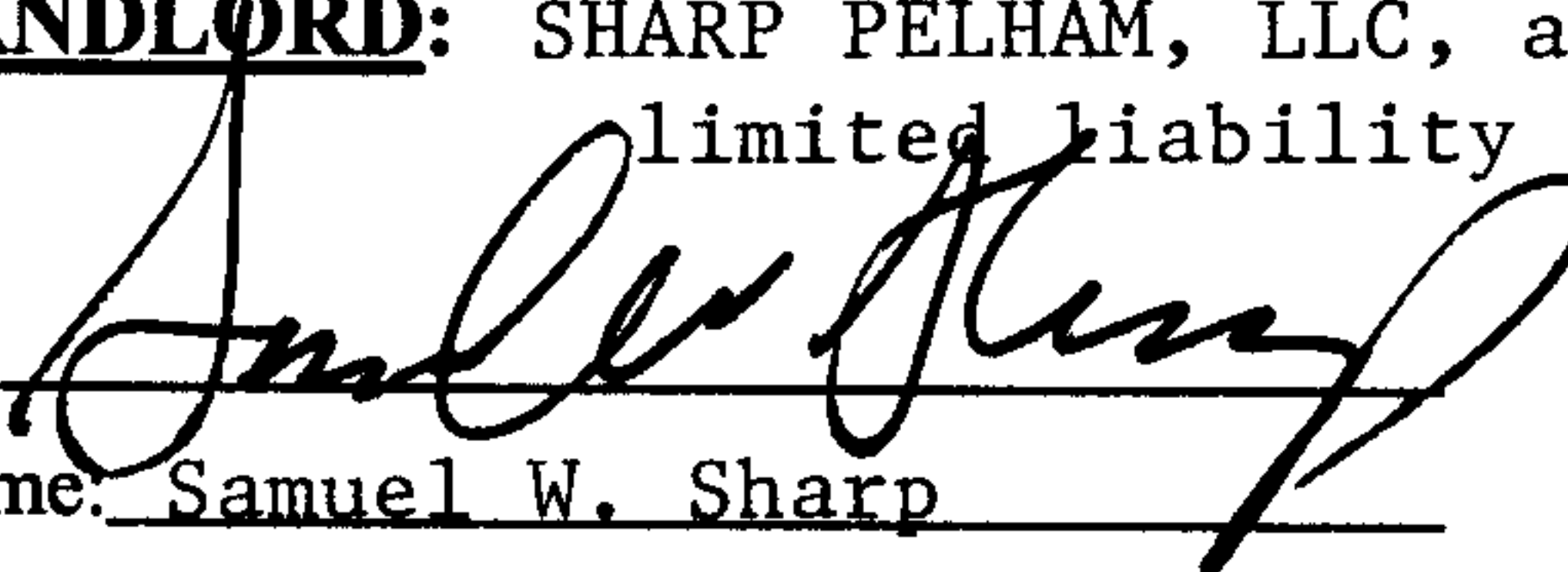


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Shelby Cnty Judge of Probate, AL  
01/17/2008 10:50:47AM FILED/CERT

  
(Print Name) Rhonda L. Lusco

  
(Print Name) Adina Freeman  
Two Witnesses

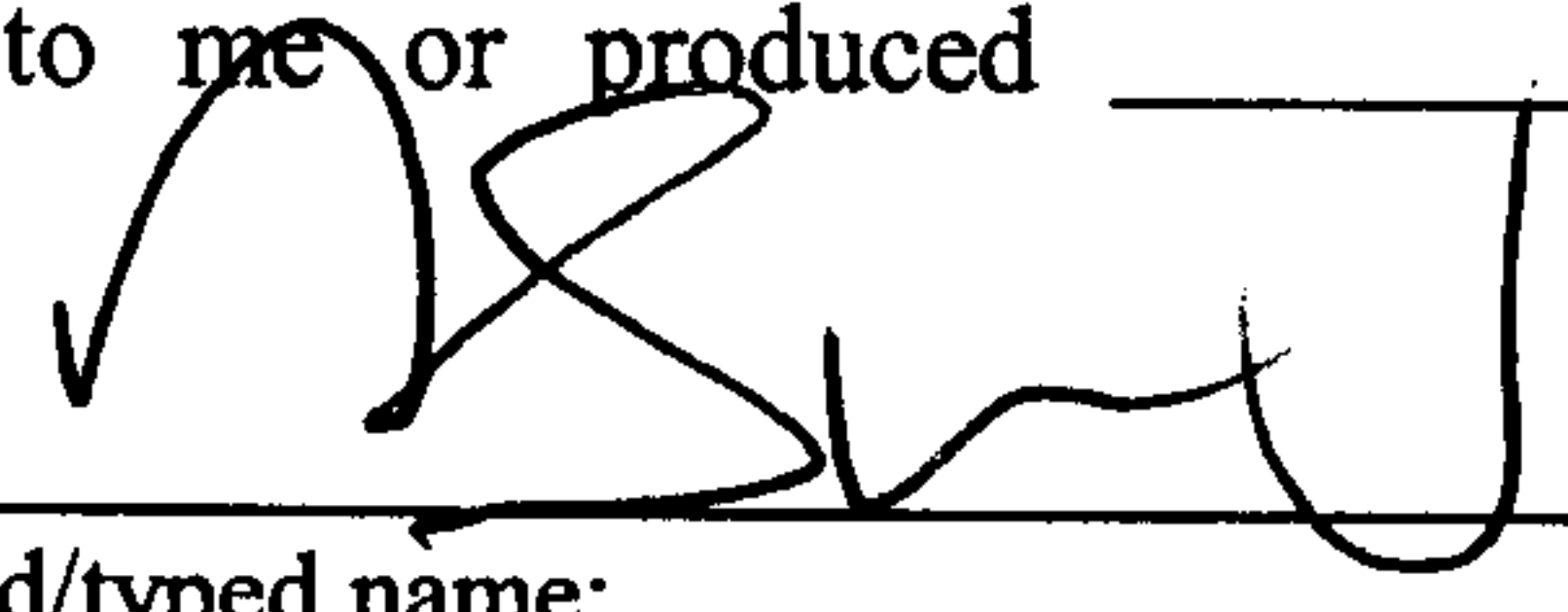
**LANDLORD:** SHARP PELHAM, LLC, an Alabama  
limited liability company

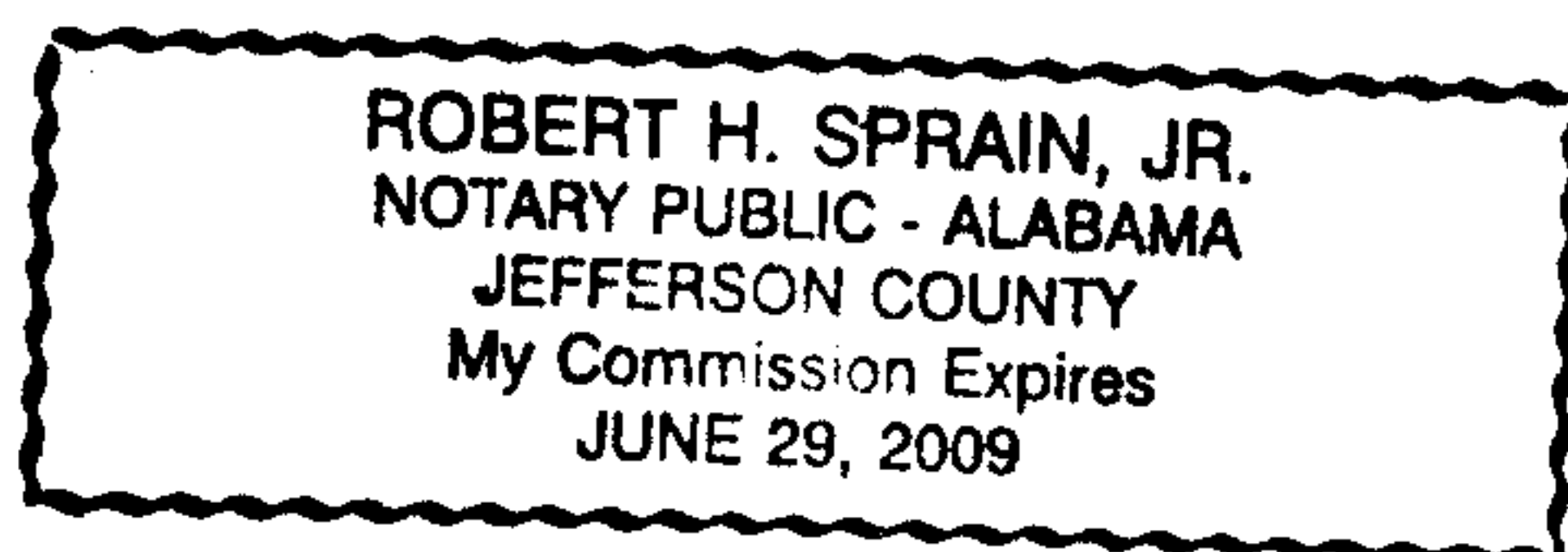
By:   
Name: Samuel W. Sharp  
As its: Member

ALABAMA  
STATE OF ~~FLORIDA~~  
COUNTY OF JEFFERSON

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this \_\_\_\_ day of  
January, 2007, by Samuel W. Sharp, as Member of  
Sharp Pelham, LLC, an Alabama limited liability company, on behalf of the  
corporation. Such person is personally known to me or produced \_\_\_\_\_ as  
identification.

(NOTARY SEAL)

  
Printed/typed name: \_\_\_\_\_  
Notary Public-State of: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Commission number: \_\_\_\_\_





STORE NO.:

SITE:

CR 52 AND HUNTLEY PARKWAY,  
PELHAM, SHELBY COUNTY,  
ALABAMA

SHOPPING

CENTER:

PELHAM TOWNE CENTER

STOREROOM:

45,600 Square Feet

## EXHIBIT A

20071004000464340 4/7 \$29.00  
Shelby Cnty Judge of Probate, AL  
10/04/2007 09:44:26AM FILED/CERT

### Shopping Center Tract Legal Description

A parcel of land situated in the Southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one-quarter of the Southwest one-quarter of said Section; thence run South 89 degrees 58 minutes 11 seconds East for a distance of 645.80 feet to the point of commencement of a curve to the right, said curve having a radius of 720.00 feet, a central angle of 06 degrees 05 minutes 18 seconds, a chord bearing of North 11 degrees 10 minutes 26 seconds East for a chord distance of 76.47 feet; thence run along arc of said curve for a distance of 76.51 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 780.00 feet, a central angle of 14 degrees 27 minutes 15 seconds, a chord bearing of North 06 degrees 59 minutes 28 seconds East for a chord distance of 196.25 feet; thence run along arc of said curve for a distance of 196.77 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 317.88 feet to the POINT OF BEGINNING; thence run along last described course for a distance of 300.00 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 241.63 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 333.14 feet; thence run South 85 degrees 59 minutes 18 seconds East for a distance of 162.05 feet; thence run North 27 degrees 07 minutes 20 seconds East for a distance of 103.19 feet; thence run North 04 degrees 01 minutes 50 seconds East for a distance of 119.92 feet to a point on the Southernmost right of way line of Shelby County Highway 52 (right of way varies); thence run South 76 degrees 52 minutes 19 seconds East along said right of way for a distance of 65.83 feet; thence leaving said right of way, run South 04 degrees 01 minutes 50 seconds West for a distance of 65.73 feet; thence run North 85 degrees 58 minutes 10 seconds West for a distance of 17.56 feet; thence run South 02 degrees 34 minutes 52 seconds West for a distance of 110.87 feet to the point of commencement of a curve to the right, said curve having a radius of 89.50 feet, a central angle of 25 degrees 08 minutes 43 seconds, a chord bearing of South 74 degrees 50 minutes 47 seconds East for a chord distance of 38.96 feet; thence run along arc of said curve for a distance of 39.28 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 45.50 feet, a central angle of 27 degrees 57 minutes 44 seconds, a chord bearing of South 76 degrees 15 minutes 18 seconds East for a chord distance of 21.99 feet; thence run along arc of said curve for a distance of 22.21 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 110.69 feet to the point of commencement of a curve to the left, said curve having a radius of 82.50 feet, a central angle of 89 degrees 09 minutes 25 seconds, a chord bearing of North 45 degrees 11 minutes 07 seconds East for a chord distance of 115.81 feet; thence run along arc of said curve for a distance of 128.38 feet; thence run North 00 degrees 36 minutes 23 seconds East for a distance of 59.35 feet to a point on the said Southernmost right of way line of Shelby County Highway 52; thence run South 79 degrees 39 minutes 20 seconds East along said right of way for a distance of 52.19 feet; thence leaving said right of way, run South 00 degrees 36 minutes 23 seconds West for a distance of 75.45 feet; thence run South 36 degrees 47 minutes 32 seconds West for a distance of 128.88 feet; thence run North 89 degrees 21 minutes 05 seconds West for a distance of 127.62 feet; thence run South 00 degrees 12 minutes 58 seconds East for a distance of 173.56 feet; thence run South 70 degrees 27 minutes 05 seconds East for a distance of 121.02 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 86.76 feet; thence run South 00 degrees 36 minutes 23 seconds West for a distance of 35.10 feet; thence run North 71 degrees 07 minutes 47 seconds West for a distance of 39.54 feet; thence run South 00 degrees 03 minutes 55 seconds East for a distance of 435.03 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 515.68 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 90.46 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 239.44 feet to the POINT OF BEGINNING. Said parcel contains 429,786 square feet or 9.87 acres more or less.