

This **SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT** (the "**Agreement**") is dated as of September 30, 2014 and is by and among **GREYSTONE SERVICING CORPORATION, INC.**, a Georgia corporation, having an address at 152 West 57th Street, 14th Floor, New York, New York 10019 (together with its successors and assigns, "**Lender**"), K&H Helena LLC, an Alabama limited liability company, having an office at 2626 Hanover Street, Palo Alto, AA 94304 ("**Landlord**"), and **Subway Real Estate, LLC, a Delaware limited liability company, successor in interest to** Subway Real Estate Corporation, a Delaware corporation having an office at 325 Bic Drive, Milford, CT 06461 ("**Tenant**").

WHEREAS, Lender has made or intends to make a loan to Landlord (the "**Loan**"), which Loan shall be evidenced by one or more promissory notes (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Promissory Note**") and secured by, among other things, that certain Mortgage or Deed of Trust, Assignment of Leases and Rents and Security Agreement (as the same may be amended, restated, replaced, severed, split, supplemented or otherwise modified from time to time, the "**Mortgage**") encumbering the real property located in Helena Market, Helena, Al more particularly described on **Exhibit A** annexed hereto and made a part hereof (the "**Property**");

WHEREAS, by a lease agreement (the "**Lease**") dated April 20th, 2007, between Landlord (or Landlord's predecessor in title) and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (such portion of the Property hereinafter referred to as the "**Premises**");

WHEREAS, Tenant acknowledges that Lender will rely on this Agreement in making the Loan to Landlord; and

WHEREAS, Lender and Tenant desire to evidence their understanding with respect to the Mortgage and the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. Tenant covenants, stipulates and agrees that the Lease and all of Tenant's right, title and interest in and to the Property thereunder (including but not limited to any option to purchase, right of first refusal to purchase or right of first offer to purchase the Property or any portion thereof) is hereby, and shall at all times continue to be, subordinated and made secondary and inferior in each and every respect to the Mortgage and the lien thereof, to all of the terms, conditions and provisions thereof and to any and all advances made or to be made thereunder, so that at all times the Mortgage shall be and remain a lien on the Property prior to and superior to the Lease for all purposes, subject to the provisions set forth herein. Subordination is to have the same force and effect as if the Mortgage and such renewals, modifications, consolidations, replacements and extensions had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that if Lender exercises any of its rights under the Mortgage, including entry or foreclosure of the Mortgage or exercise of a power of sale under the Mortgage, Lender will not disturb Tenant's right to use, occupy and possess the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period under any term, covenant or condition of the Lease.

3. If, at any time Lender (or any person, or such person's successors or assigns, who acquires the interest of Landlord under the Lease through foreclosure of the Mortgage or otherwise) shall succeed to the rights of Landlord under the Lease as a result of a default or event of default under the Mortgage, Tenant shall attorn to and recognize such person so succeeding to the rights of Landlord under the Lease (herein sometimes called "**Successor Landlord**") as Tenant's landlord under the Lease, said attornment to be effective and self-operative without the execution of any further instruments. Although said attornment shall be self-operative, Tenant agrees to execute and deliver to Lender or to any Successor Landlord, such other instrument or instruments as Lender or such other person shall from time to time request in order to confirm said attornment.

4. Landlord authorizes and directs Tenant to honor any written demand or notice from Lender instructing Tenant to pay rent or other sums to Lender rather than Landlord (a "**Payment Demand**"), regardless of any other or contrary notice or instruction which Tenant may receive from Landlord before or after Tenant's receipt of such Payment Demand. Tenant may rely upon any notice, instruction, Payment Demand, certificate, consent or other document from, and signed by, Lender and shall have no duty to Landlord to investigate the same or the circumstances under which the same was given. Any payment made by Tenant to Lender or in response to a Payment Demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease.

5. If Lender shall become the owner of the Property or the Property shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage or if the Property shall be transferred by deed in lieu of foreclosure, Lender or any Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) or bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior landlord (including Landlord); or

(b) obligated to cure any defaults of any prior landlord (including Landlord) which occurred, or to make any payment to Tenant which was required to be paid by any prior landlord (including Landlord), prior to the time that Lender or any Successor Landlord succeeded to the interest of such landlord under the Lease; or

(c) obligated to perform any construction obligations of any prior landlord (including Landlord) under the Lease or liable for any defects (latent, patent or otherwise) in the design, workmanship, materials, construction or otherwise with respect to improvements and buildings constructed on the Property; or

(d) subject to any offsets, defenses or counterclaims which Tenant may be entitled to assert against any prior landlord (including Landlord); or

(e) bound by any payment of rent or additional rent by Tenant to any prior landlord (including Landlord) for more than one month in advance; or

(f) bound by any *material* amendment, *material* modification, termination or surrender of the Lease made without the written consent of Lender, *except and unless otherwise permitted by the Lease*; or

(g) liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to any prior landlord (including Landlord), whether or not still held by such prior landlord, unless and until Lender or any Successor Landlord has actually received said deposit for its own account as the landlord under the Lease as security for the performance of Tenant's obligation under the Lease (which deposit shall, nonetheless, be held subject to the provisions of the Lease).

6. Tenant hereby represents, warrants, covenants and agrees to and with Lender:

(a) to *use its best efforts to* deliver to Lender, by certified mail, return receipt requested, a duplicate of each notice of default delivered by Tenant to Landlord at the same time as such notice is given to Landlord and no such notice of default shall be deemed given by Tenant under the Lease unless and until *Tenant shall have used its best efforts to provide* a copy of such notice to Lender. Lender shall have the right (but shall not be obligated) to cure such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Tenant further agrees to afford Lender a period of thirty (30) days beyond any period afforded to Landlord for the curing of such default during which period Lender may elect (but shall not be obligated) to seek to cure such default, or, if such default cannot be cured within that time, then such additional time as may be necessary to cure such default (including but not limited to commencement of foreclosure proceedings) during which period Lender may elect (but shall not be obligated) to seek to cure such default, prior to taking any action to terminate the Lease. If the Lease shall terminate for any reason, upon Lender's written request given within thirty (30) days after such termination, Tenant, within fifteen (15) days after such request, shall execute and deliver to Lender a new lease of the Premises for the remainder of the term of the Lease and upon all of the same terms, covenants and conditions of the Lease;

(b) that Tenant is the sole owner of the leasehold estate created by the Lease; and

(c) to promptly certify in writing to Lender, in connection with any proposed assignment of the Mortgage, whether or not any default on the part of Landlord then exists under the Lease and to deliver to Lender any tenant estoppel certificates required under the Lease.

7. Tenant acknowledges that the interest of Landlord under the Lease is assigned to Lender solely as security for the Promissory Note, and Lender shall have no duty, liability or obligation under the Lease or any extension or renewal thereof, unless Lender shall specifically undertake such liability in writing or Lender becomes and then only with respect to periods in which Lender becomes, the fee owner of the Property.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises is located (excluding the choice of law rules thereof).

9. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns (including, without limitation, any successor holder of the Promissory Note) and may be amended, supplemented, waived or modified only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

10. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Tenant or Lender appearing below. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

Lender's Address: Greystone Servicing Corporation, Inc.
152 West 57th Street, 60th Floor
New York, New York 10019
Attention: General Counsel
Facsimile No.: (212) 649-9701

and to: Greystone Servicing Corporation, Inc.
152 West 57th Street, 60th Floor
New York, New York 10019
Attention: Robert Russell
Facsimile No.: (212) 649-9701

with a copy to: Frost Brown Todd LLC
400 West Market Street, Suite 3200
Louisville, Kentucky 40202
Attention: John W. Gragg, Esq.
Facsimile No. (502) 581-1087

Tenant's Address: Subway Real Estate, LLC
325 Bic Drive
Milford, CT, 06461
Attention: _____
Facsimile: (203) 876-6610

With a copy to: KJ Development
160 Village Street
Birmingham, Al 35242

Landlord's Address: K & H Helena LLC
46459 Roadrunner Road
Fremont, CA 94539

With a copy to: Retail Specialists, Inc.
P.O. Box 531247
Birmingham, AL 35253


11. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

12. In the event Lender shall acquire Landlord's interest in the Premises, Tenant shall look only to the estate and interest, if any, of Lender in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as a Successor Landlord under the Lease or under this Agreement, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, the relationship of the landlord and tenant under the Lease or Tenant's use or occupancy of the Premises or any claim arising under this Agreement.

13. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.


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20141001000306990 5/10 \$41.00
Shelby Cnty Judge of Probate, AL
10/01/2014 09:33:53 AM FILED/CERT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

TENANT:

SUBWAY REAL ESTATE, LLC, a Delaware
limited liability company

By: 
Name: Matthew Whelan
Title: Manager

STATE OF CONNECTICUT)

) Milford

COUNTY OF NEW HAVEN)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Matthew Whelan, whose name as Manager of Subway Real Estate, LLC, a Delaware limited liability company, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he/~~she~~ executed the same voluntarily and with full authority for and as the act of said limited liability company, on the day same bears date.

GIVEN under my hand and seal on this the 24th day of September, 2014.



Notary Public

My Commission Expires: 4/30/17

[SEAL]



Sharon A. Chaco
NOTARY PUBLIC
State of Connecticut
My Commission Expires
April 30, 2017



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Shelby Cnty Judge of Probate, AL
10/01/2014 09:33:53 AM FILED/CERT

LANDLORD:

K & H HELENA, LLC, a Delaware limited liability company

By: K & H FAIRWAY PLAZA, LLC, a California limited liability company, its Sole Member

By: 

Name: Christian Hansen

Title: Manager

STATE OF _____)

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Christian Hansen, whose name as Manager of K & H HELENA, LLC, a Delaware limited liability company, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he/she executed the same voluntarily and with full authority for and as the act of said limited liability company, on the day same bears date.


GIVEN under my hand and seal on this the _____ day of _____, 2014.



Notary Public

My Commission Expires: _____

[SEAL]


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Shelby Cnty Judge of Probate, AL
10/01/2014 09:33:53 AM FILED/CERT

SNDA (Subway)

State of: California
County of: Santa Clara

On 8/27/14, before me B. Ferrill, notary public personally appeared

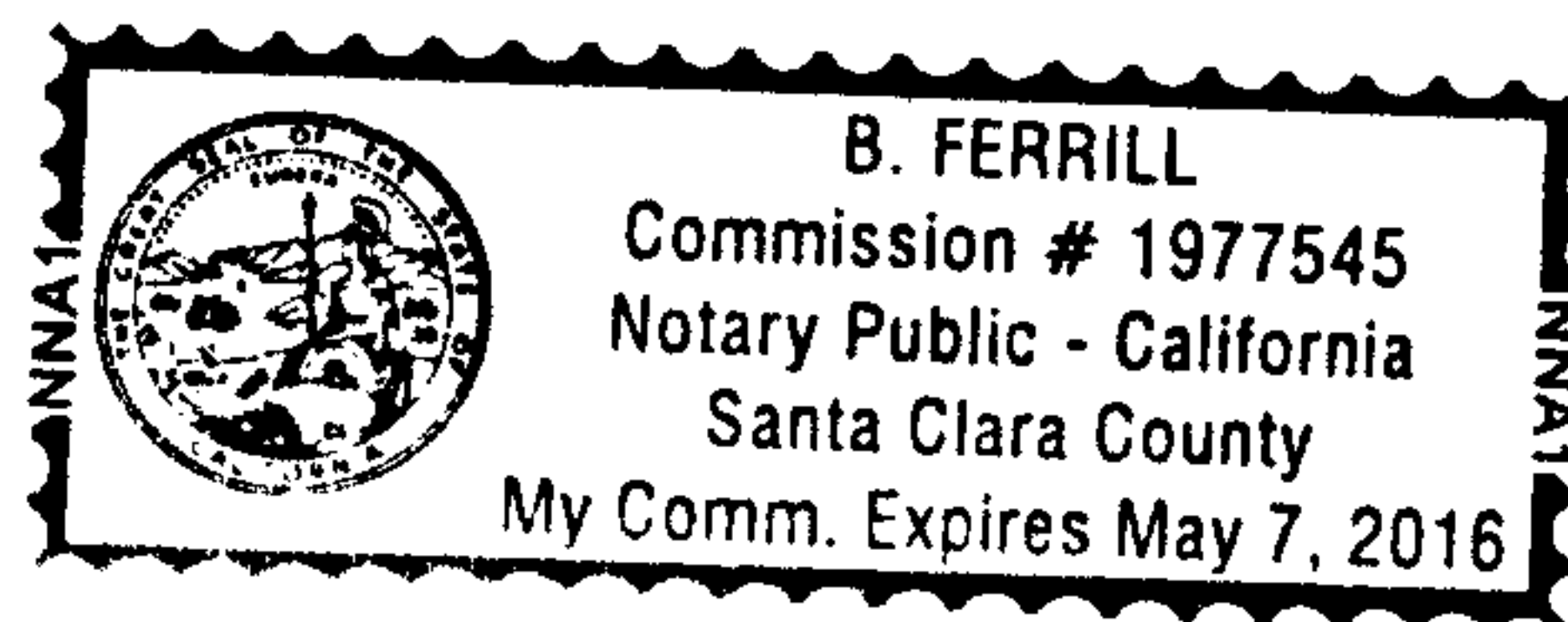
Christian Hansen

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

B. Ferrill

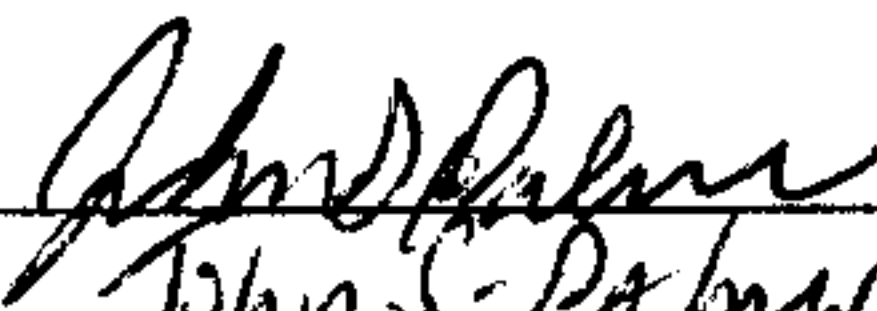


Notary Name: B. FERRILL
Commission expires: MAY 7, 2016
Commission #: 1977545
Notary Phone: 408-451-7800

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Shelby Cnty Judge of Probate, AL
10/01/2014 09:33:53 AM FILED/CERT

LENDER:

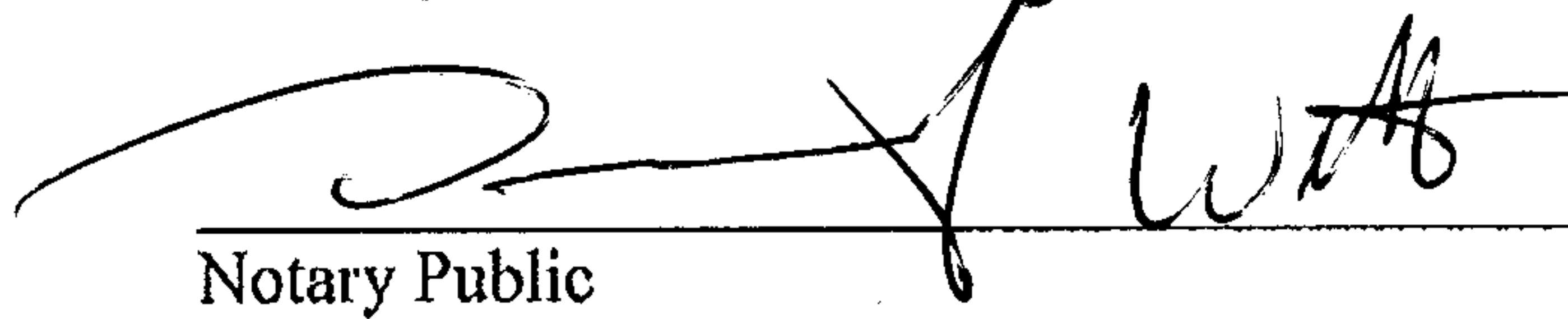
**GREYSTONE SERVICING CORPORATION,
INC., a Georgia corporation**

By: 
Name: John S. Palmer
Title: Vice President

STATE OF New York)
COUNTY OF New York)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that John Palmer, whose name as VP of GREYSTONE SERVICING CORPORATION, INC., a Georgia corporation, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he/she executed the same voluntarily and with full authority for and as the act of said corporation, on the day same bears date.

GIVEN under my hand and seal on this the 28th day of August, 2014.


Notary Public
My Commission Expires: _____

[SEAL]

DAVID WITT
Notary Public, State of New York
No. 01WI6064809
Qualified in Queens County
Commission Expires October 1, 2017



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Shelby Cnty Judge of Probate, AL
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Exhibit A

Legal Description of Property

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of said Section 21; thence run West along the quarter line sgs,gs feet; thence left goooo; 360.00 feet to the south line of Brookline Parkway and the Point of Beginning of the property described herein; thence continue southerly along the same course 483.08feet; thence right 87° 17'50" Westerly 661.68feet to a point on the easterly right-of-way of Shelby County Highway No. 17; thence right sgo 58'14" Northerly 323.00 feet; thence right goo 00'26" Easterly 202.30feet; thence left goo 00'38" Northerly 182.7g feet to the South line of Brookline Parkway; thence right 92° 48'04" Easterly 482.gg feet to the Point of Beginning.

