
20150224000057560 1/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT

**This Instrument Prepared by
and return after recording to:**

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Alison Richter

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Non-Disturbance and Attornment Agreement (this "Agreement") is made as of the 29th day of January, 2015 by and among The Commercial Development Authority of the City of Alabaster, an Alabama municipal corporation (the "Landlord"), Highway 11/31, LLC, a Delaware limited liability company ("Sublandlord"), and ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation ("Subtenant"). Landlord, Sublandlord and Subtenant are sometimes hereinafter referred to as the "parties".

RECITALS

A. Landlord owns all right, title and interest in and to the fee estate of that certain real property and improvements located at The Colonial Alabaster Promenade Shopping Center, in the City of Alabaster, County of Shelby, State of Alabama, more particularly described on Exhibit A attached hereto (the "Property").

B. Landlord and Sublandlord share a landlord/tenant relationship by virtue of that certain Ground Lease, including an option to purchase, by and between Landlord and Colonial Realty Limited Partnership evidenced by Memorandum of Ground Lease and Option Agreement filed in Instrument No. 20060111000019860, as assigned to Highway 31 Alabaster Two, LLC in Instrument No. 20060111000019870 and Instrument No. 20060111000019880, as assigned to Sublandlord in Instrument No. 20071218000569440, as amended by Memorandum of First Amendment of Ground Lease and Option Agreement, recorded August 26, 2013, as Instrument No. 20130826000349390 (the "Prime Lease") pursuant to which Sublandlord leased the Property from Landlord.

C. Sublandlord and Subtenant have entered into that certain Shopping Center Lease dated January 29, 2014 (the "Sublease") pursuant to which Subtenant shall lease the premises more particularly described therein (the "Premises").

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties covenant and agree as follows:

1. Recitals Incorporated. The parties represent and warrant to each other that the recitals set forth above are true and correct.

2. Consent; Prime Lease Provisions. Landlord hereby consents to the subletting of the Premises by Sublandlord to Subtenant pursuant to the terms of the Sublease. Landlord and Sublandlord acknowledge and agree that the provisions of this Agreement shall control with respect to recognition of the Sublease.

3. Estoppel. Landlord and Sublandlord represent and warrant to Subtenant as follows:

(a) Landlord owns all right, title and interest in and to the fee estate of the Property.

(b) The Prime Lease is the only lease agreement between Landlord and Sublandlord with respect to the Premises. There are no amendments or modifications of the Prime Lease whether oral or written, and the Prime Lease is in full force and effect.

(c) Landlord and Sublandlord represent that neither Landlord nor Sublandlord is in default under the Prime Lease and no event has occurred, with notice or the passage of time which would constitute a default by either Landlord or Sublandlord.

(d) As of the date hereof, there is no mortgage encumbering Landlord's fee interest in the Property but there is a leasehold mortgage (which is the Existing Mortgage (as defined in the Sublease)) encumbering Sublandlord's leasehold interest in the Property.

4. Covenants.

(a) Landlord and Sublandlord shall not make any amendments, modifications or supplements to the Prime Lease that would adversely affect Tenant's right under the Sublease without obtaining the prior written consent of Tenant.

(b) Upon the reasonable request of Subtenant from time to time, each of Landlord and Sublandlord agree to execute, acknowledge and deliver to Subtenant within twenty-one (21) days after request, a written instrument in a form reasonably satisfactory to Subtenant duly executed and acknowledged (a) certifying that the Prime Lease has not been modified except as set forth in such certificate and is in full force and effect, as may be modified, (b) stating whether or not, to the knowledge of the party executing such instrument, the other party thereto is in default and, if so, stating the nature of such default, and (c) affirming such other factually accurate matters

pertaining to the provisions or subject matter of the Prime Lease as may be reasonably requested by Subtenant.

5. Subordination, Non-Disturbance. The Sublease and any right to possession created thereby, is and shall be subject and subordinate to the Prime Lease and all renewals, modifications, and extensions thereof. Notwithstanding the foregoing, so long as Subtenant is not in default of the Sublease beyond any applicable period of notice and cure, and subject to the attornment agreement herein, in the event of a termination of the Prime Lease or an assignment of the Sublandlord's interest in the Prime Lease to Landlord, Subtenant's possession and occupancy of the Premises and its rights and privileges under the Sublease (including, without limitation, its rights to use the Common Areas (as defined in the Sublease)) shall not be terminated and the Sublease shall continue as a direct lease between the Landlord, as lessor, and Subtenant, as lessee, on the terms and conditions set forth in the Sublease as if each party had entered into the Sublease as of the date of the termination or assignment of the Prime Lease subject to the provisions of this Agreement.

6. Attornment. Subject to the non-disturbance agreement herein, in the event of the termination of the Prime Lease or an assignment of the Sublandlord's interest in the Prime Lease to Landlord, Subtenant shall attorn to Landlord under the Sublease. Such attornment shall be effective and self-operative without the execution of any further instrument by any of the parties hereto.

7. Default by Sublandlord under Prime Lease. Landlord shall send simultaneous notice to Subtenant (at the address set forth herein) of any default by Sublandlord under the Prime Lease. Subtenant shall have the opportunity (but in no event shall Subtenant be required) to cure such default by Sublandlord concurrent with Sublandlord's right to cure by performing such actions or making such payments in accordance with and as required under the Prime Lease.

8. Fee Mortgage. Landlord agrees that should it elect to encumber its fee interest in the Property, that said encumbrance shall be subordinate to the Sublease and Subtenant's rights pursuant to said Sublease at all times during the term of the Sublease (as such Sublease may be renewed or extended from time to time) unless such Landlord's lender provides Subtenant with a non-disturbance agreement, stipulating that Subtenant's rights under the Sublease shall not be disturbed so long as Subtenant is not in default of the Sublease beyond applicable notice and cure periods.

9. Notices. Any notices required or permitted to be given under this Agreement or pursuant to any law or governmental regulation by the parties shall be in writing (whether or not expressly so provided) and shall be deemed delivered, received and effective upon receipt or refusal thereof, with regard to delivery via the United States mail, registered or certified mail, return receipt requested, postage prepaid, or one (1) business day after being sent by overnight express mail or nationally recognized courier service (e.g., Federal Express) to the applicable parties, at the respective addresses set forth below, or such other addresses as either party may designate by notice to the other from time to time. In lieu of registered or certified mail, and in any event during any period of postal strike or other interference with the mails, any notice may

be given by personal delivery with a receipt signed by the person served or by any person authorized by law to serve process in the jurisdiction where such service is accomplished and shall be effective when received. Notwithstanding the foregoing, any notice of default must state in bold, underlined and all capital letters, that "**THIS IS A NOTICE OF DEFAULT**". The parties' notice addresses shall be as follows:

TO LANDLORD:

Commercial Development Authority
of the City of Alabaster

1953 Municipal Way

Alabaster AL 35007

Attn: City Manager / Clerk

TO SUBLANDLORD:

Highway 11/31 II, LLC
c/o William A. Leitner III
2101 6th Avenue North, Suite 750
Birmingham, Alabama 35203

TO SUBTENANT:

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Sr. Vice President of Growth & Development

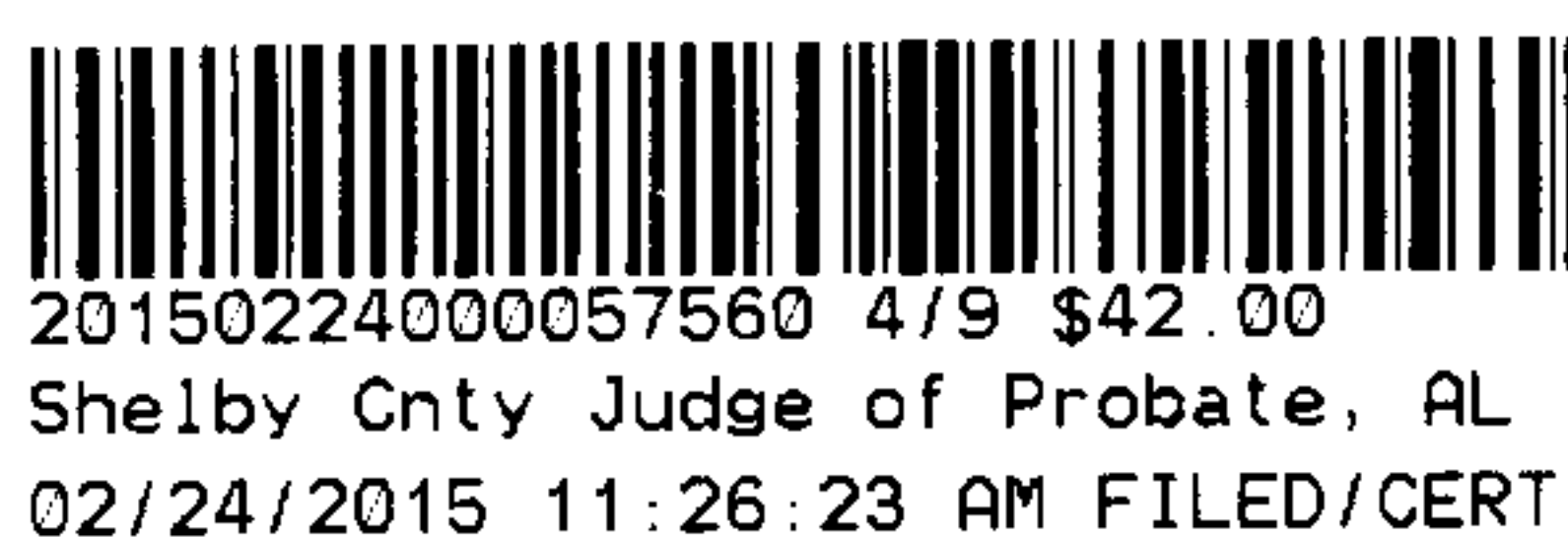
10. Miscellaneous.

A. If any provision of this Agreement is inconsistent with any provision of the Prime Lease, or the Sublease, the terms of this Agreement shall control as between Landlord and Sublandlord, as between Landlord and Subtenant, if applicable, and as between Sublandlord and Subtenant. If any provision of the Sublease is inconsistent with any provision of the Prime Lease, the Sublease shall control as between Sublandlord and Subtenant and as between Landlord and Subtenant (except as specifically set forth herein as between Landlord and Subtenant).

B. Each person executing this Agreement on behalf of any entity represents that he or she is authorized to execute this Agreement on behalf of such entity and that his or her signature shall bind the entity to the terms of this Agreement.

C. Headings in this Agreement are included merely for convenience and neither limit nor amplify the terms hereof.

D. This Agreement shall be binding upon Landlord, Sublandlord and Subtenant and their respective partners, officers, directors, shareholders, legal representatives,




NDA
Alabaster, AL
Store #1084

successors, and permitted assigns, and shall inure to the benefit of Landlord, Sublandlord, and Subtenant, and their respective partners, officers, directors, shareholders, legal representatives, successors, and permitted assigns.

E. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. However, this Agreement shall not be binding on any party until all parties have executed and delivered this Agreement, either all on one document or in counterparts.

[Signatures Appear on Following Page]


20150224000057560 5/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT

NDA
Alabaster, AL
Store #1084

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

LANDLORD:

THE COMMERCIAL DEVELOPMENT
AUTHORITY OF THE CITY OF ALABASTER,
ALABAMA, an Alabama municipal corporation

Witness:

George Henry
Printed Name: George Henry
City Manager / Clerk

By: *Brenda Fitzgerald*
Printed Name: Brenda Fitzgerald
Title: Vice President / Secretary
Date: January 29, 2015

STATE OF Alabama)

COUNTY OF Shelby)

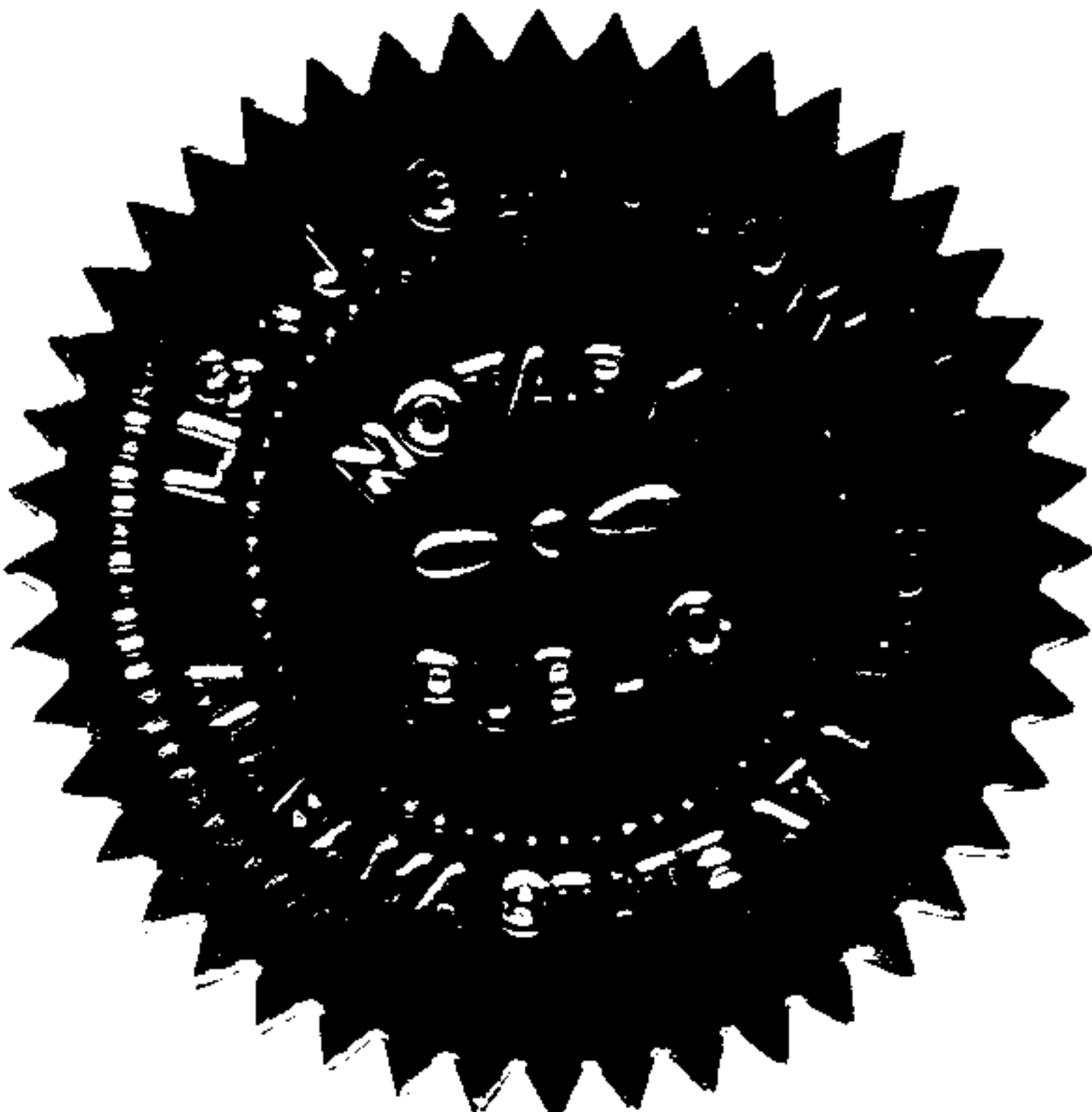
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Brenda Fitzgerald whose name as Vice President of the **Commercial Development Authority of the City of Alabaster, Alabama**, an Alabama municipal corporation is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation, on the day the same bears date.


Given under my hand and seal this the 29th day of January, 2015.

Lisa J. Massey
Notary Public

[NOTARIAL SEAL]

My Commission Expires: **MY COMMISSION EXPIRES 02/04/2018**




20150224000057560 6/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT

SUBTENANT:

ULTA SALON, COSMETICS &
FRAGRANCE, INC.,
a Delaware corporation

Witness:

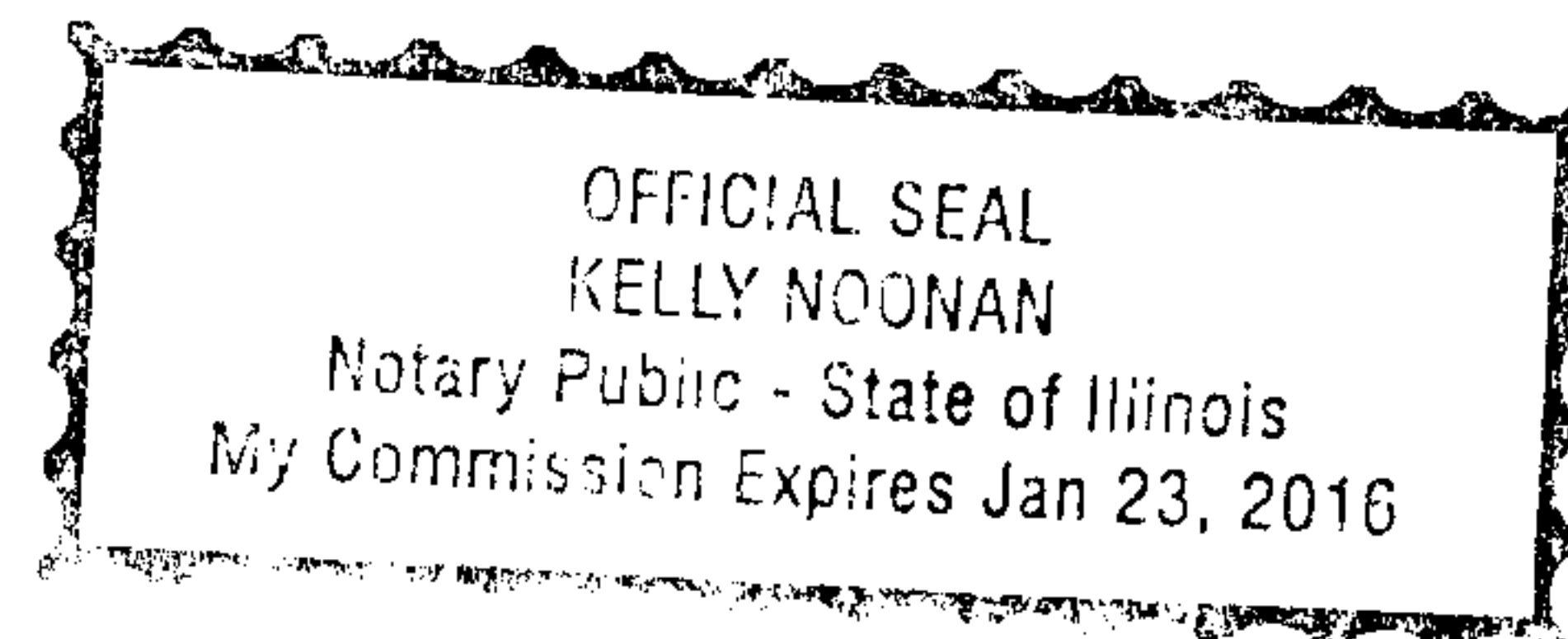
M. Golubiak
Printed Name: M. GOLUBIAK

By: *Alex J. Lelli, Jr.*
Printed Name: Alex J. Lelli, Jr. *JA*
Title: Senior Vice President,
Growth & Development
Date: 12-3, 2014

STATE OF ILLINOIS)
)SS:
COUNTY OF WILL)

This instrument was acknowledged before me on 12-3, 2014 by Alex J. Lelli, Jr. of
Ultra Salon, Cosmetics & Fragrance, Inc., a Delaware corporation.

Kelly Noonan
Notary Public
State of Illinois



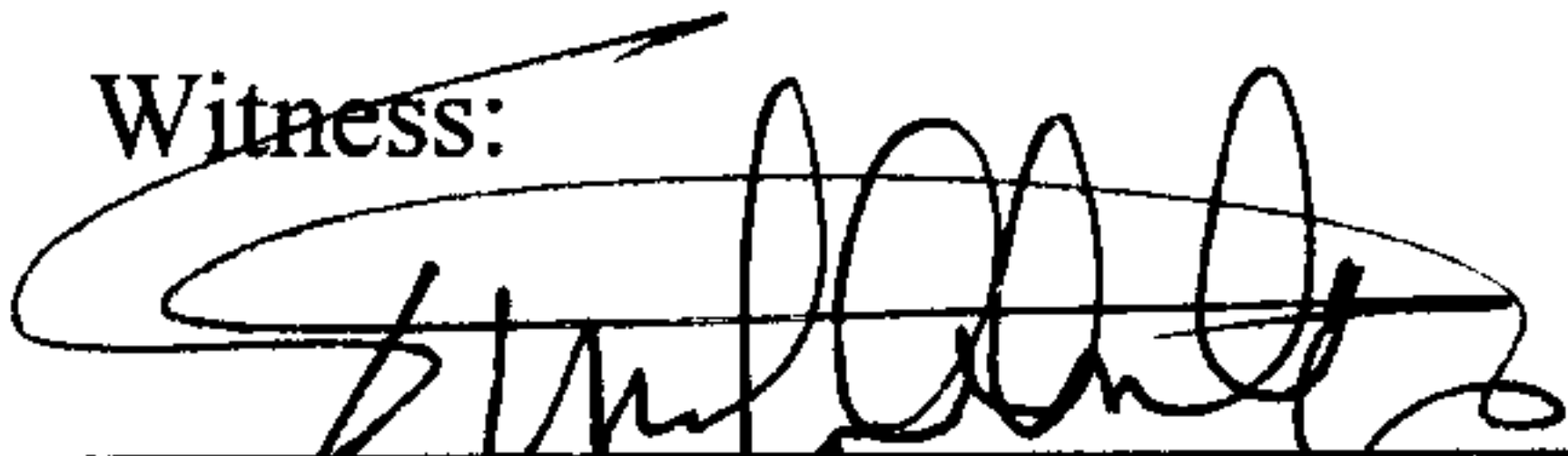
20150224000057560 7/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT

NDA
Alabaster, AL
Store #1084

SUBLANDLORD:

HIGHWAY 11/31, LLC, a Delaware
limited liability company

Witness:


Printed Name: TIMOTHY E. GUMP

By: 

Printed Name: William A. Leitner, III

Title: Manager

Date: Jan 29, 2015

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William A. Leitner, III, whose name as Manager of **Highway 11/31, LLC**, a Delaware 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 said instrument, he/she, in his/her capacity as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the 29th day of January, 2015.

Melanie Carol Thomas
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 4-28-18





20150224000057560 8/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT

EXHIBIT A

Legal Description of Property


Parcel I:

Lots 9, 10, 11, 12 and 13, according to the survey of Colonial Promenade Alabaster South, as recorded in Map Book 38, pages 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel IV:

Lot 14-A, according to the Survey of Colonial Promenade Alabaster South No. 2, as recorded in Map Book 43, page 104, in the Probate Office of Shelby County, Alabama.


20150224000057560 9/9 \$42.00
Shelby Cnty Judge of Probate, AL
02/24/2015 11:26:23 AM FILED/CERT