  
20150326000095780 1/10 \$41.00  
Shelby Cnty Judge of Probate, AL  
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## NONDISTURBANCE AGREEMENT

**THIS NONDISTURBANCE AGREEMENT** (this "Agreement") is entered into effective as of March 26, 2015, by and between **THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER, ALABAMA** (the "Landlord") and **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee corporation, its successors and assigns ("Lender").

### WITNESSETH:

**WHEREAS**, pursuant to that certain Ground Lease and Option Agreement dated as of December 1, 2005 (the "Ground Lease"), Landlord leased to Colonial Realty Limited Partnership, a Delaware limited partnership (the "Original Tenant") certain property located in Shelby County, Alabama, which said Ground Lease and Option Agreement was evidenced by that certain Memorandum of Ground Lease and Option Agreement recorded in Instrument No. 20060111000019860, in the Probate Office of Shelby County, Alabama (the "Leased Property"); and

**WHEREAS**, the interest of the Original Tenant has subsequently been assigned and the tenant under the Ground Lease is now Highway 11/31 LLC, a Delaware limited liability company (the "Tenant") as evidenced by instrument recorded in Instrument No. 20071218000569440, in said Probate Office; and

**WHEREAS**, Tenant has executed a sublease of a portion of the Leased Property, being the Property described on Exhibit A-1 attached hereto, to Target Corporation pursuant to Sub-Ground Lease and Purchase and Sale Agreement (the "Sub-Ground Lease"), as evidenced by a memorandum thereof recorded in Instrument No. 2006113000022880, in said Probate Office; and

**WHEREAS**, the interest of Target Corporation in the Sub-Ground Lease has been assigned to Highway 11/31 II, LLC (the "Sub-Tenant"), a Delaware limited liability company by instrument recorded in Instrument No. 20130826000349370 and Instrument No. 20130826000349380, in said Probate Office; and

**WHEREAS**, the Ground Lease was amended by Memorandum of First Amendment to Ground Lease and Option Agreement by and between Landlord and Tenant dated as of August 26, 2013 and record in Instrument No. 20130826000349390, in said Probate Office; and

**WHEREAS**, the Sub-Ground Lease was amended by First Amendment of Sub-Ground Lease and Purchase and Sale Agreement dated as of July 29, 2013 and recorded in Instrument No. 20130826000349400, in said Probate Office.

Lender has agreed to make a loan in the original principal amount not to exceed \$49,056,293.00 to the Tenant and Sub-Tenant (together with any extensions, renewals, modification or refinancings thereof, (the "Loan") secured by that certain Mortgage and Security Agreement executed or to be executed by the Tenant and Sub-Tenant to the Lender (the "PLIC Mortgage") and evidenced by that certain Promissory Note in such principal amount executed by Tenant and Sub-Tenant and payable to the order of the Lender (the "PLIC Note");



**WHEREAS**, the PLIC Mortgage encumbers Tenant's and Sub-Tenant's leasehold interest in the Leased Property under the Ground Lease, such Leased Property being described on Exhibit A attached hereto, together with other property owned by Tenant and an affiliate of Tenant; and

**WHEREAS**, Landlord and Lender desire to confirm their understanding with respect to the Ground Lease and the Loan.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, Landlord and Lender agree and covenant as follows:

1. **Compliance of Mortgage with Ground Lease**. Landlord hereby agrees and confirms that the PLIC Mortgage is in compliance with the terms and provisions of the Ground Lease and hereby approves Tenant's assignment of its interest under the Ground Lease to Lender.

2. **Notice of Leasehold Mortgage**. Landlord hereby acknowledges receipt of written notice of the PLIC Mortgage for purposes of the Ground Lease.

3. **Lender as Third Party Beneficiary**. Landlord hereby agrees that, for so long as the PLIC Mortgage remains in force and effect, the Lender shall be a third party beneficiary of the provisions of the Ground Lease and shall be entitled to all benefits and rights of such status including, without limitation, that for so long as the Loan remains outstanding, Lender shall have the right to cure any default under the Ground Lease in the same manner and during the same cure period granted under the Ground Lease.

4. **Surrender or Amendment of Ground Lease**. Landlord hereby agrees that no termination, cancellation, notice not to renew the Ground Lease or surrender or amendment of the Ground Lease by Landlord and/or Tenant shall be effective for any purpose if done without the prior written consent of Lender.

5. **Notices to Lender and Right to Cure**. Landlord, upon delivering to Tenant any notice of a default or breach of any obligations of Tenant under the Ground Lease, shall simultaneously deliver a copy of such notice to Lender as provided in the Ground Lease.

Any notice required to be given to Lender shall reference the Leased Property as "Alabaster Promenade Shopping Center, Alabaster, Alabama" and be transmitted by means of a nationally recognized overnight delivery service, addressed to Lender at the address set forth below, or to such other address and/or designated person or department as may be provided to Landlord by Lender in accordance with this provision, and shall be deemed to have been delivered one (1) business day after deposited with such overnight deliver service. Lender's notice address is as follows:

Protective Life Insurance Company  
2801 Highway 280 South  
Birmingham, Alabama 35226  
Attention: Investment Department-Mortgage Loans

6. **Limitation of Liability**. Landlord acknowledges that the Lender shall not be liable or responsible in any manner for any of Tenant's obligations or covenants under the Ground Lease unless and until Lender becomes the owner of the leasehold estate of Tenant under the Ground Lease by foreclosure, assignment in lieu of foreclosure or otherwise, in which event Lender shall remain liable for such obligations and covenants only so long as it remains the owner of said leasehold estate.



7. **Assignment.** Landlord covenants and agrees that in the event of any foreclosure under the PLIC Mortgage, either by judicial proceedings, under power of sale contained therein, or assignment in lieu of foreclosure, all right, title and interest of Tenant under the Ground Lease may, be assigned to and vested in the purchaser at such foreclosure subject to the Ground Lease.

8. **New Lease.** Landlord covenants and agrees that in the event of a termination of the Ground Lease for any reason, including, without limitation, the occurrence of a default or the failure to exercise any renewal option or extension provision in the Ground Lease or in the event the Ground Lease is rejected by the Tenant or its trustee in bankruptcy, Landlord will enter into a new lease of the Leased Property with Lender consistent with the of the Ground Lease for the remainder of the Initial Term (as defined in the Ground Lease) and any unexercised Extension Terms (as defined in the Ground Lease).

9. **Landlord's Fee Interest.** Landlord hereby represents and warrants to Lender that Landlord's interest in the Leased Property is free and clear of all liens and encumbrances superior to the leasehold interest of Tenant under the Ground Lease. Landlord hereby agrees that it will not encumber the Leased Property with any lien or mortgage (which term shall encompass deeds of trust and all other types of security interests).

10. **Renewal or Extension Options and Amendments to Ground Lease.** Landlord represents and warrants to, and agrees with Lender that, all renewal or extension options in the Ground Lease are enforceable against the Landlord and exercisable by the Tenant or the Lender automatically at any time during the term of the Ground Lease unless Tenant (or its successor in interest) provides written notice to Landlord of its intent not to exercise such renewal option or extension, which notice shall not be effective unless consented to in writing by Lender. Landlord agrees that modifications or amendments to or termination of the Ground Lease by Tenant shall not be effective unless the Lender has approved such amendment, modification or termination in writing.

11. **Insurance Proceeds and Condemnation Proceeds.** Landlord acknowledges and agrees that, notwithstanding any contrary provision set forth in the Ground Lease, any proceeds of insurance payable resulting from a loss affecting the Leased Property and Improvements and/or any proceeds payable as a result of the partial taking of the Leased Property and improvements thereon shall be payable in accordance with the terms, provisions and requirements of the PLIC Mortgage.

12. **Modification of This Agreement; Successors and Assigns; Counterparts.** This Agreement may not be modified except by a written agreement signed by Landlord and Lender or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which, when taken together, shall constitute only one agreement.

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

LANDLORD

**THE COMMERCIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF ALABASTER,  
ALABAMA**

:

By: Brenda Fitzgerald  
Name: Brenda Fitzgerald  
Its: Secretary

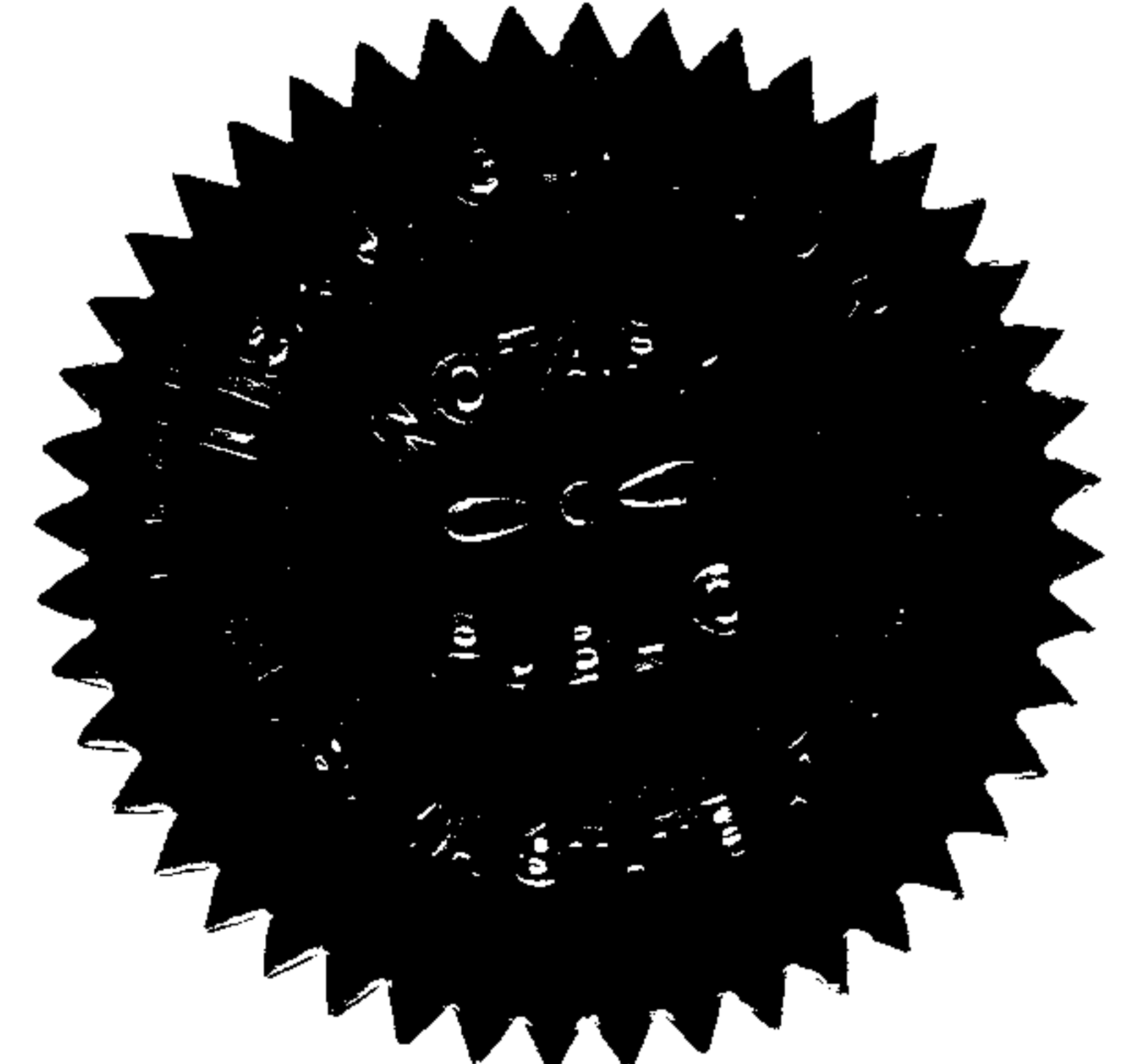
STATE OF ALABAMA       )  
                                      :  
COUNTY OF SHELBY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Brenda Fitzgerald, whose name as Secretary of **THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER, ALABAMA** 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 as such Secretary and with full authority, executed the same voluntarily for and as the act of **THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER, ALABAMA** on the day the same bears date. Given under my hand and official seal this 24<sup>th</sup> day of March, 2015.

Lisa J. Mayes  
Notary Public

MY COMMISSION EXPIRES 02/04/2018

My commission expires: 2/4/2018



[SIGNATURES CONTINUE ON NEXT PAGE]

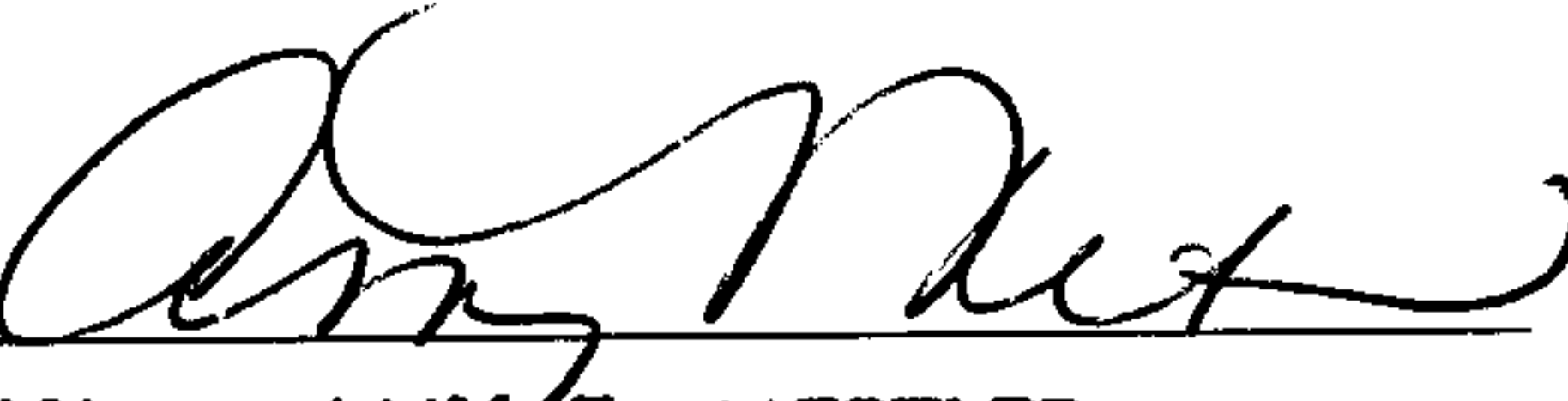


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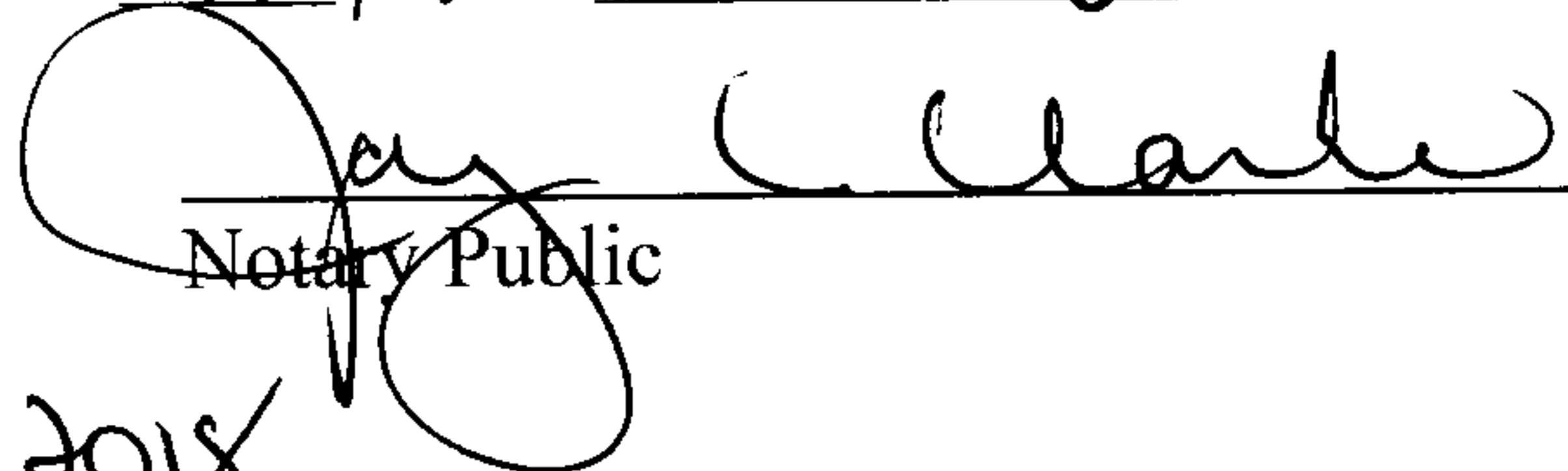
LENDER

**PROTECTIVE LIFE INSURANCE  
COMPANY**

By:   
Name: AMY E. MERTLER  
Title: VICE PRESIDENT  
INVESTMENTS

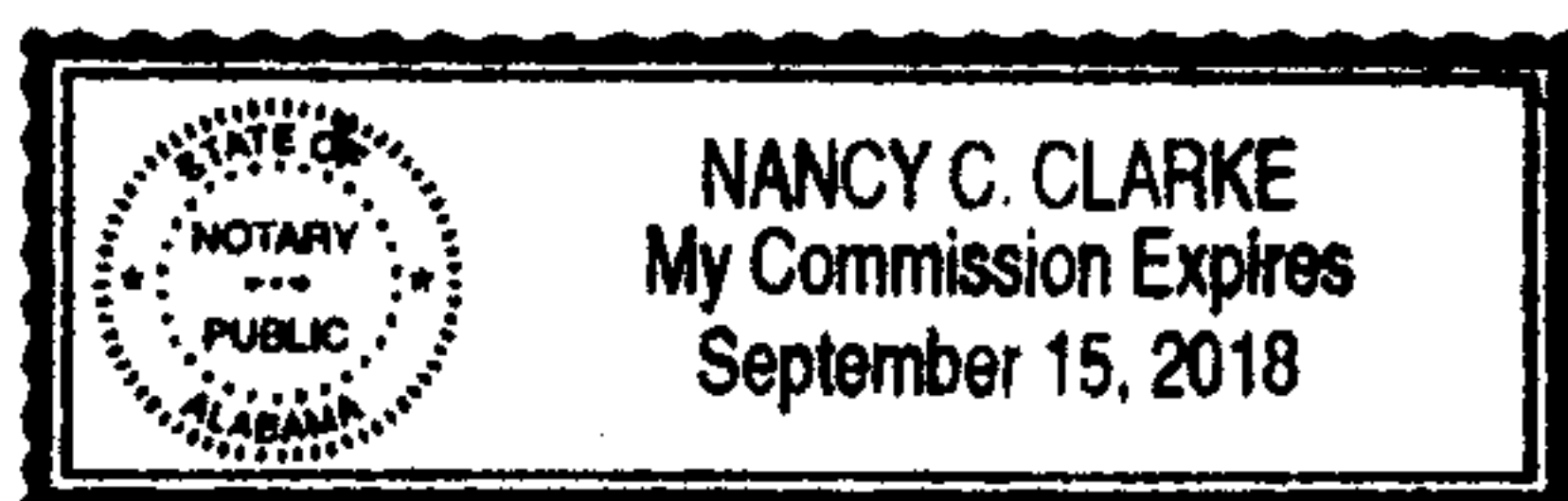
STATE OF ALABAMA     )  
                                      :  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Amy E. Mertler whose name as V.P. of **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee 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 as such officer and with full authority, executed the same voluntarily for and as the act of **PROTECTIVE LIFE INSURANCE COMPANY** on the day the same bears date. Given under my hand and official seal this 24<sup>th</sup> day of March, 2015.

  
Notary Public

My commission expires: 9-15-2018

[NOTARY SEAL]



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**TENANT'S/SUB-TENANT'S CONSENT**

Tenant and Sub-Tenant enter into this Agreement for the purpose of acknowledging the signing and delivering of this Agreement by the parties above and for the purpose of agreeing to the matters hereinabove stated which affect Tenant's and Sub-Tenant's interest in the Ground Lease and the Leased Property.

**HIGHWAY 11/31 LLC**, a Delaware limited liability company, by its Managers


(1)  [SEAL]  
John H. Watson, its Manager

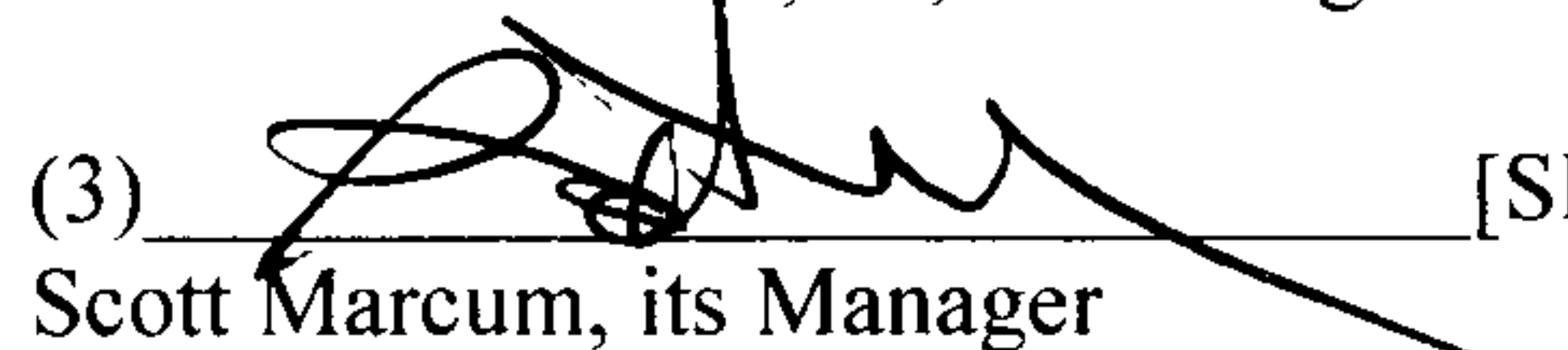
(2)  [SEAL]  
William A. Leitner, III, its Manager

(3)  [SEAL]  
Scott Marcum, its Manager

**HIGHWAY 11/31 II, LLC**, a Delaware limited liability company, by its Managers

(1)  [SEAL]  
John H. Watson, its Manager

(2)  [SEAL]  
William A. Leitner, III, its Manager

(3)  [SEAL]  
Scott Marcum, its Manager



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STATE OF ALABAMA       )  
                                     :  
COUNTY OF HOUSTON     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John H. Watson, whose name as Manager of **HIGHWAY 11/31 LLC** and **HIGHWAY 11/31 II, LLC**, each 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, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability companies, on the day the same bears date. Given under my hand and official seal this 20<sup>th</sup> day of March, 2015.

MARILYN C. CHANCEY  
Notary Public, State of Alabama  
Alabama State at Large  
My Commission Expires  
January 18, 2016

Marilyn C Chancey  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARY SEAL]

STATE OF ALABAMA       )  
                                     :  
COUNTY OF HOUSTON     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Scott Marcum, whose name as Manager of **HIGHWAY 11/31 LLC** and **HIGHWAY 11/31 II, LLC**, each 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, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability companies, on the day the same bears date. Given under my hand and official seal this 20<sup>th</sup> day of March, 2015.

MARILYN C. CHANCEY  
Notary Public, State of Alabama  
Alabama State at Large  
My Commission Expires  
January 18, 2016

Marilyn C Chancey  
Notary Public

My commission expires: \_\_\_\_\_

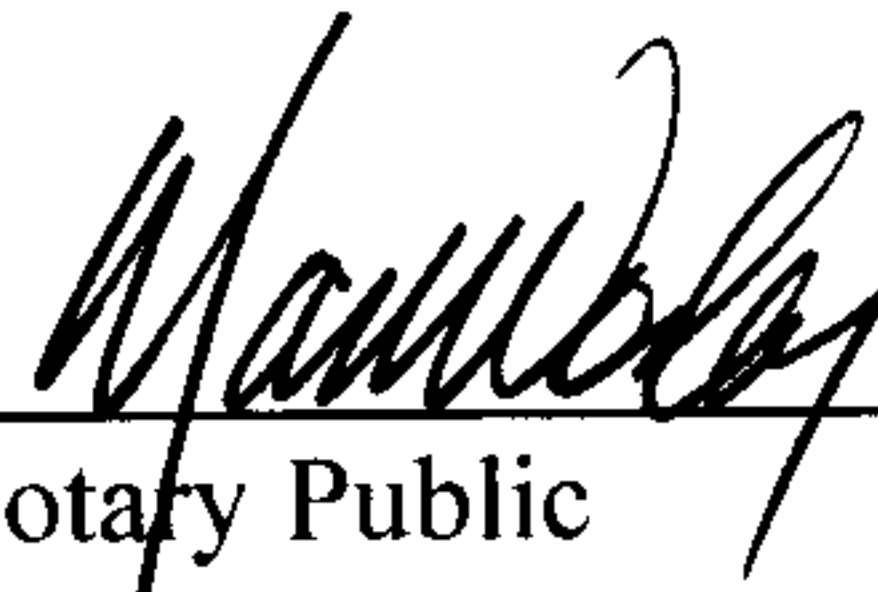
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STATE OF ALABAMA        )  
                                     :  
COUNTY OF JEFFERSON    )

I, the undersigned, 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** and **HIGHWAY 11/31 II, LLC**, each 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, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability companies, on the day the same bears date. Given under my hand and official seal this 24<sup>th</sup> day of March, 2015.

  
\_\_\_\_\_  
Notary Public

My commission expires: 11/1/2016

[NOTARY SEAL]



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## **EXHIBIT A**

Lots 9, 10, 11, 12 and 13 of Colonial Promenade Alabaster South, Map Book 38, Pages 119A and 119B, in the Probate Office of Shelby County, Alabama; and Lots 14-A and 15-A of Colonial Promenade Alabaster South No. 2, as recorded in Plat Book 43, Page 104, in the Probate Office of Shelby County, Alabama.



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**EXHIBIT A-1**

Lot 15-A of Colonial Promenade Alabaster South No. 2, as recorded in Plat Book 43, Page 104, in the Probate Office of Shelby County, Alabama.



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