

This document prepared by:
Shannon Dobo-Parent
Publix Super Markets, Inc.
P.O. Box 407
Lakeland, FL 33802-0407


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SUBORDINATION,
NON-DISTURBANCE AND
ATTORNMEN AGREEMENT

#1202 – Pelham Town Center, Pelham, Alabama

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (“Agreement”) made this 28th day of June, 2016, among First US Bank, an Alabama banking corporation, (hereinafter referred to as "Lender"), Publix Alabama, LLC, an Alabama limited liability company, (hereinafter referred to as "Tenant"), and Encore Retail BPTC, LLC, a Delaware limited liability company, as successor in interest to Sharp Pelham, LLC, (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 the First Amendment to Lease Agreement dated 09/20/2007 and the Second Amendment dated 06/27/2008 (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 Nine Million Two Hundred Thousand AND NO/100 DOLLARS (\$9,200,000⁰⁰) secured by that certain mortgage or security deed (hereinafter referred to as the "Mortgage"), dated June 28, 2016 and filed for record in Official Records Book *, page , public records of Shelby County, Alabama, and an assignment of leases and rents of even date therewith from Landlord to Lender covering the Premises.
* Inst # 20160629000226960

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. All terms, conditions, covenants and agreements set forth in this Agreement shall be of no force or effect until the Effective Date, as defined in Paragraph 15 below.

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. Landlord and Lender hereby advise, and represent to, Tenant that such assignment includes the right of Lender, upon default by Landlord under the Mortgage, to direct the party to whom Tenant is to pay rents and other payments due under the Lease. Upon written notice from Lender to Tenant, in strict accordance with the notice provisions of this Agreement, that Landlord is in default under the loan secured by the Mortgage, Tenant shall pay all monies thereafter due to Landlord under the Lease directly to Lender or such other party as Lender directs, until further directed by Lender; provided, however, Lender agrees that Tenant shall have no obligation to pay to Lender any amounts processed for payment by Tenant prior to Tenant's receipt of Lender's notice, even though such amounts may be for obligations coming due subsequent thereto. Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance of the obligations under the Lease by Tenant made in reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any amounts paid as instructed by Lender in accordance with the provisions hereof. Any dispute between Lender (or any successor in interest) and Landlord as to the existence of an event of default by Landlord under the provisions of the loan and the Mortgage, shall be dealt with and adjusted solely between Lender and Landlord, and Tenant shall not be made a party thereto.

7. Any provision of this Agreement to the contrary notwithstanding, Lender shall have no obligation, or not incur any 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:

First US Bank
300 Office Park Drive, Suite 175
Birmingham, AL 35223
Attn: David McCullum

Tenant:

Publix Alabama, LLC
c/o Publix Super Markets, Inc.
3300 Publix Corporate Parkway
Lakeland, FL 33811-3002
Attn: Vice President Real Estate

With a copy to:

Publix Super Markets, Inc.
3300 Publix Corporate Parkway
Lakeland, FL 33811-3002
Attn: General Counsel

Landlord:

Encore Retail BPTC, LLC
c/o Encore Enterprises, Inc.
5005 LBJ Freeway, Suite 1200
Dallas, TX 75254
Attn: Dan Underwood

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 which modifies Rent or reduces in any way the length of the term of the Lease and which is entered into on or subsequent to the Effective Date without its written consent being made a part of such amendment or modification; 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.

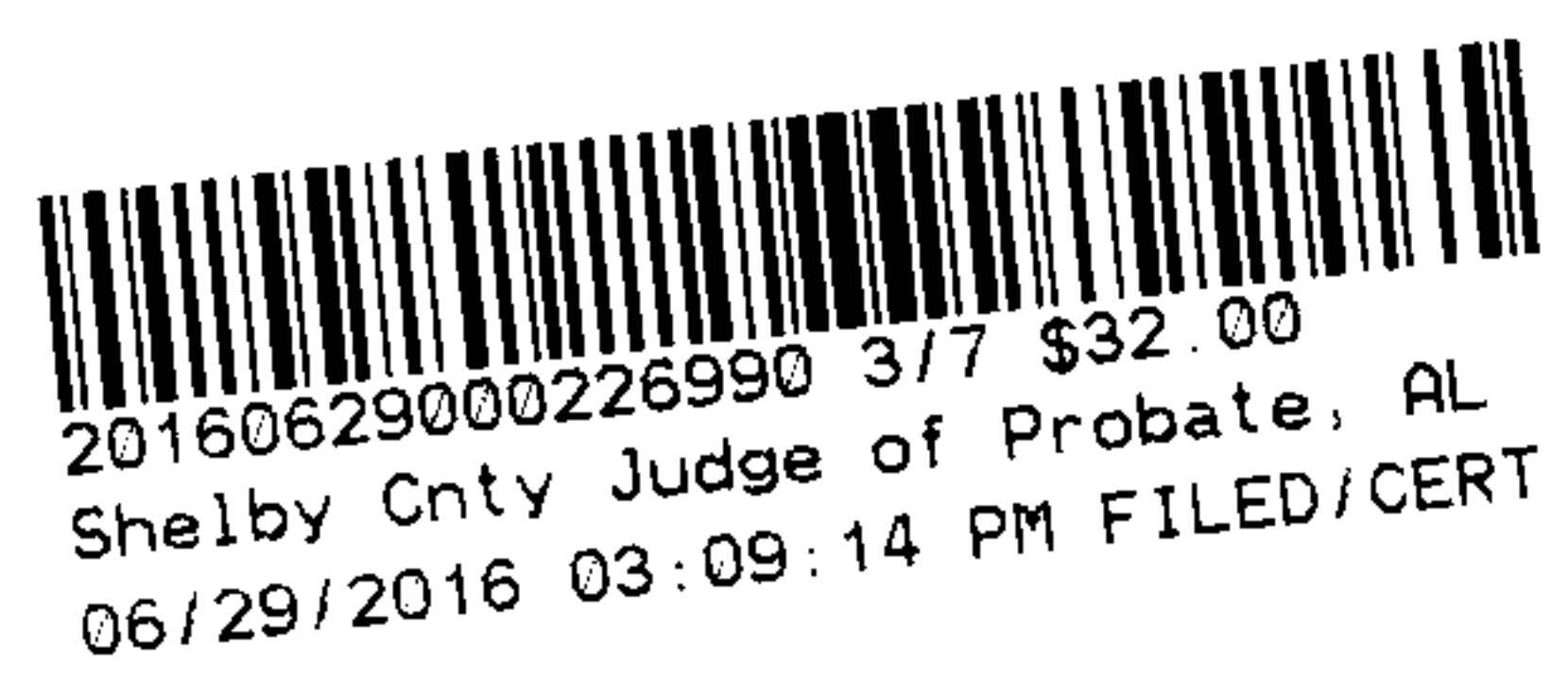
13. Neither the Mortgage nor any other security instrument executed in conjunction therewith shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs, or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees 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 the date of the last to occur of the following (the "Effective Date"): (i) it has been fully executed by all parties; (ii) the Mortgage has been filed for record in the county in which the Premises is located, and all recording information regarding the Mortgage is complete and set forth in Recital B above; and (iii) a fully executed and complete original counterpart has been received by Tenant.

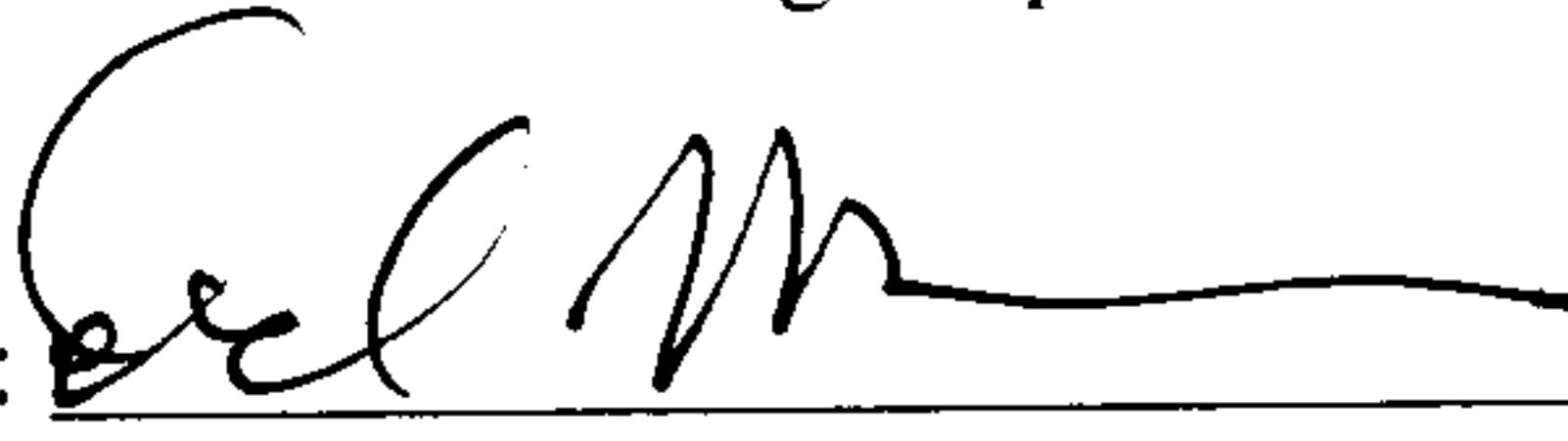
IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

[SIGNATURES APPEAR ON FOLLOWING PAGES]



LENDER:

FIRST US BANK,
an Alabama banking corporation

By: 

David McCullum
Its Senior Vice President

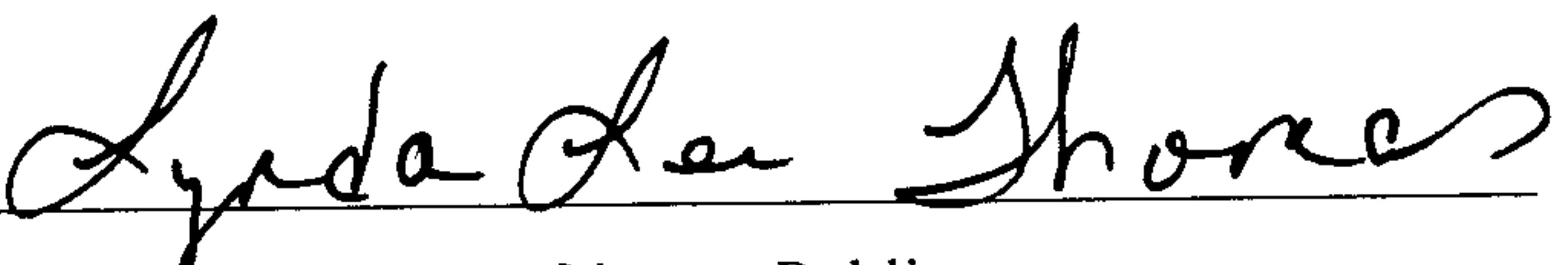
STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that David McCullum, whose name as Senior Vice President of First US Bank, an Alabama banking 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 said banking corporation.

Given under my hand and official seal this 28th day of June, 2016.




Notary Public

My commission expires: 8/20/2019


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TENANT

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

Kimberly Hammock
(Print Name) **Kimberly Hammock**

Yvonne Case
(Print Name) **Yvonne Case**
Two Witnesses

By: Jeffrey Chamberlain
Jeffrey Chamberlain,
President

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 20TH day of JUNE, 2016, by JEFFREY CHAMBERLAIN, as President of PUBLIX ALABAMA, LLC, an Alabama limited liability company, on behalf of the corporation. He is personally known to me.

(NOTARY SEAL)



BETTYE H. WINOKER
MY COMMISSION # FF 199571
EXPIRES: February 15, 2019
Bonded Thru Budget Notary Services

Bettye H. Winoker
Printed/typed name: **Bettye H. Winoker**
Notary Public-State of: _____
My commission expires: _____
Commission number: _____

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LANDLORD:

ENCORE RETAIL BPTC, LLC,
a Delaware limited liability company

By: ER Management BPTC, LLC,
a Delaware limited liability company
Its Managing Member

By: Encore Retail, LLC
a Delaware limited liability company
Its Managing Member

By: Nicholas K. Barber
Nicholas K. Barber, Its President

STATE OF TEXAS)
 :
DALLAS COUNTY)

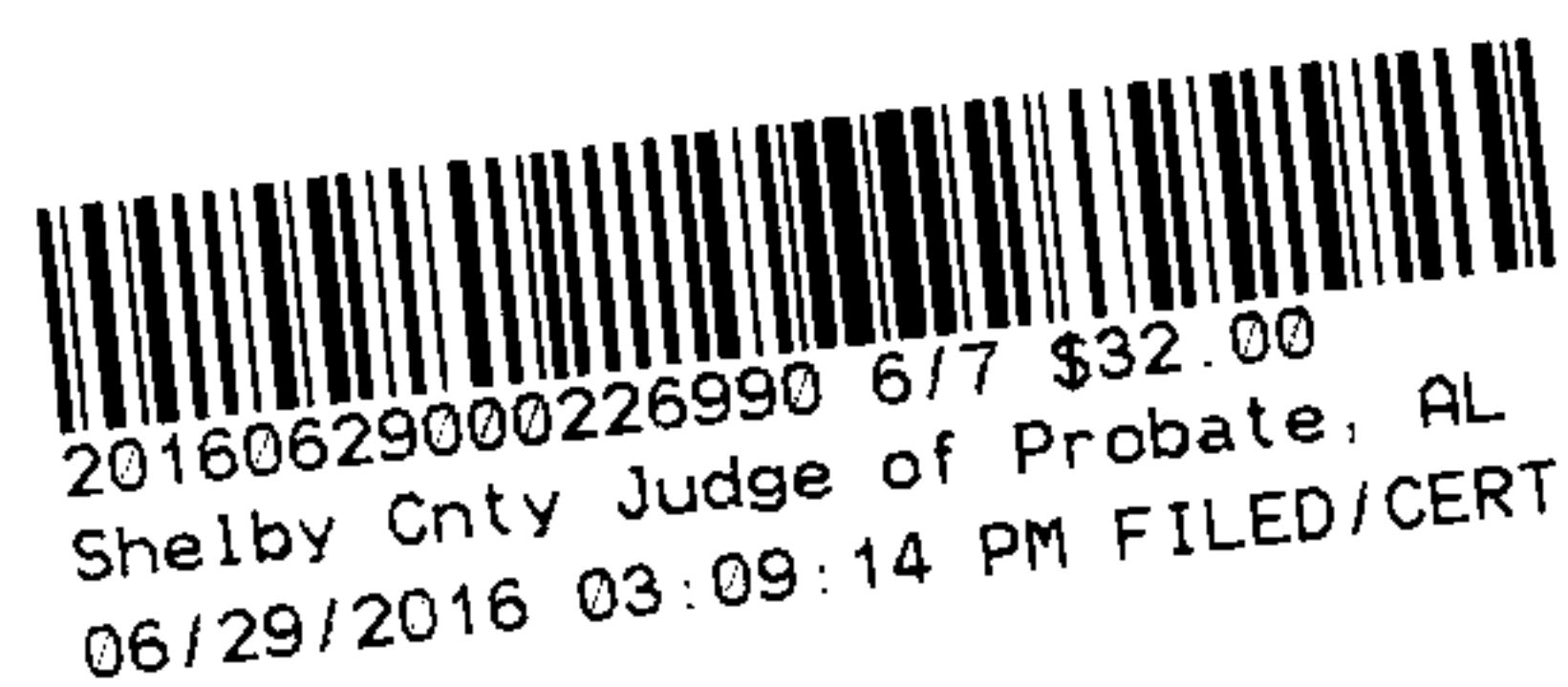
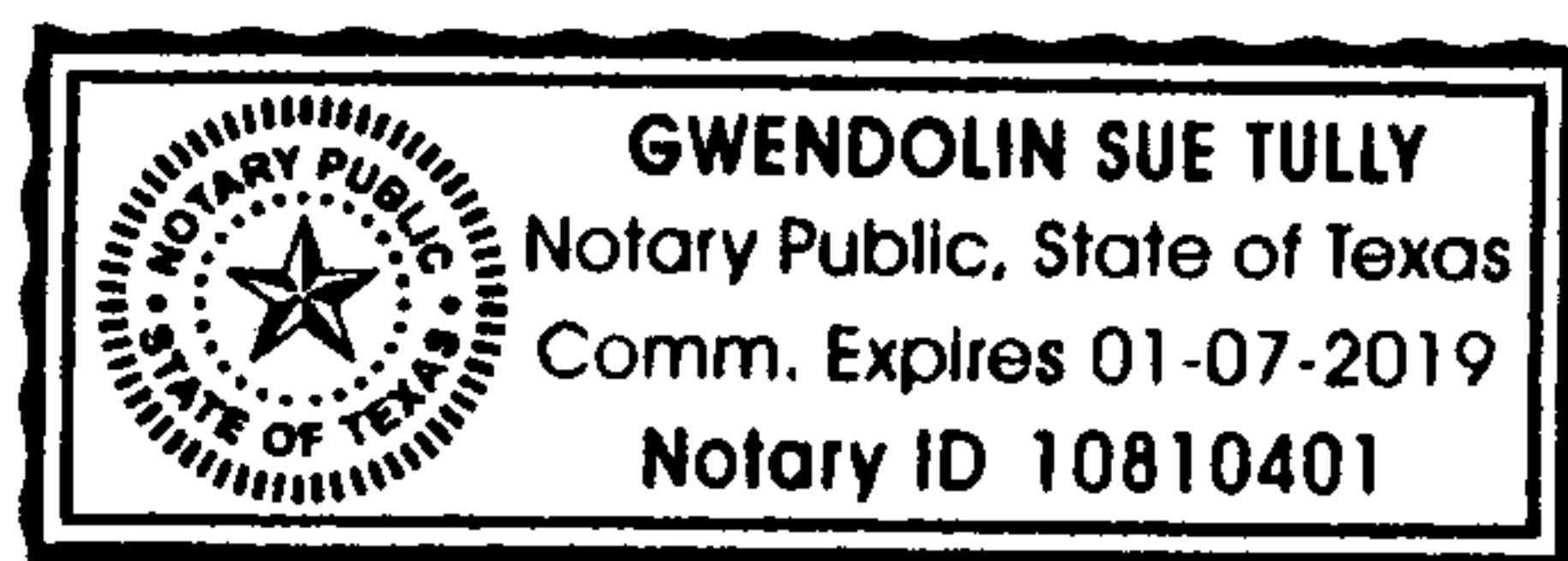
I, the undersigned, a notary public in and for said county in said state, hereby certify that Nicholas K. Barber, whose name as President of Encore Retail, LLC, a Delaware limited liability company, who is the Managing Member of ER Management BPTC, LLC, a Delaware limited liability company, who is the Managing Member of Encore Retail BPTC, 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, as such President and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 27th day of June, 2016.

Gwendolin Sue Tully
Notary Public

[NOTARIAL SEAL]

My commission expires: 1-7-19



STORE NO.:
SITE:

SHOPPING
CENTER:
STOREROOM:

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

PELHAM TOWNE CENTER
45,600 Square Feet

EXHIBIT A

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.


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