

THIS INSTRUMENT PREPARED BY:

Property Consulting & Solutions, Inc.
3000 Gulf to Bay Blvd., Suite 601
Clearwater, FL 33759

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Property Consulting & Solutions, Inc.
3000 Gulf to Bay Blvd., Suite 601
Clearwater, FL 33759

Space above this line for recorder's use

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

Parcel: 02-7-36-6-001-027.008

THIS AGREEMENT, made this 17th day of August, 2017, by and between CITIZENS BANK, NATIONAL ASSOCIATION, a national banking association (hereinafter referred to as the "Lender"), and MD ALABAMA, LLC dba Metro Diner-Breakfast-Lunch-Dinner, a Florida limited liability company (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Tenant is the lessee under a certain lease dated **February 15, 2017**, (the "Lease") covering a portion of certain real property known as **Inverness Plaza** located at **185 Inverness Plaza**, Birmingham, Jefferson County, Alabama, as said premises are described in Exhibit A attached hereto ("Premises"), which Premises are owned by **Branch Inverness Associates, LP**, a Delaware limited liability company ("Landlord"), the Landlord under the Lease; and

WHEREAS, Lender has made a certain loan (the "Loan") to Landlord, which Loan is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended, modified, restated, extended or renewed from time to time, the "Mortgage") executed by the Landlord for the benefit of Lender and recorded in the Probate Court Land Records office of Jefferson County, Alabama, encumbering the Premises, and an Assignment of Leases and Rents (as amended, modified, restated, extended or renewed from time to time, the "Assignment") executed by the Landlord for the benefit of Lender and recorded in the Probate Court Land Records office of Jefferson County, Alabama,

assigning to Lender all of the right, title and interest of Landlord in and to all leases of the Premises, including the Lease, and all rents, revenues, income, payments, issues and profits arising from the leases or out of the Premises; and

WHEREAS, it is a condition precedent to Lender making the Loan that the Mortgage shall be, and remain, a lien or charge upon the Premises hereinbefore described, prior and superior to the Lease, and the leasehold estate created thereby; and

WHEREAS, Tenant desires to facilitate the making of the Loan by Lender to Landlord.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Tenant agree as follows:

1. Subordination. The Mortgage and Assignment and any renewals or extensions thereof, shall be and remain at all times a lien or charge on the Premises prior and superior to the Lease, the leasehold estate created thereby and to any options to lease or to purchase the Premises contained therein, and to all rights, privileges, and conditions therein contained. Tenant declares and acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the leasehold estate created by the Lease to the Mortgage and Assignment. All amendments, modifications, substitutions, renewals, extensions and replacements of the Lease shall be and remain so subordinated as provided in this paragraph without the necessity of any further act of the parties. Tenant also declares and acknowledges that it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, a specific loan secured by the Mortgage and Assignment will be made, and monetary and other obligations will be entered into by third parties which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. Non-Disturbance. Lender shall not, in the exercise of any right, remedy or privilege granted by the Mortgage or the Assignment, or otherwise available to Lender at law or in equity, disturb Tenant's possession under the Lease or interfere with any of the rights of Tenant under the Lease so long as Tenant is not in default under any provision of the Lease. Nothing contained in this Paragraph 2, however, shall be construed to limit or prevent Lender in or from exercising any of its rights hereunder, at law, or in equity in connection with any breach by Tenant of its obligations under the provisions of this Agreement.

3. Attornment.

(a) Tenant shall, upon written notice from Lender or Landlord, attorn (i) to Lender, (ii) to any receiver or similar official for the Premises appointed at the instance, upon the request or with the consent of Lender, (iii) to Lender upon any acquisition by Lender of the Premises and Landlord's interest in the Lease and (iv) to any person or entity who acquires the Premises and the Landlord's interest in the Lease pursuant to Lender's exercise of any right, remedy, or privilege granted by the Mortgage or the Assignment, or otherwise available at law or in equity. Without limiting the generality of the foregoing, Tenant shall attorn to any person or entity that acquires the Premises pursuant to foreclosure under the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange, or otherwise.

(b) Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, in accordance with the foregoing subparagraph (a) and any such person or entity to whom Tenant attorns shall not be: (i) liable for any breach, act or omission of any prior landlord; (ii) subject to any claims or to any defenses which Tenant might have against any prior landlord; (iii) bound by any rent, additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than one (1) month in advance of its due date under the Lease; (iv) bound by any amendment or modification of the Lease,

made without Lender's prior written consent; (v) bound by any election or exercise of any option to purchase by Tenant unless (A) Tenant delivers to the Lender written notice thereof and (B) the sales proceeds of such purchase would be sufficient to pay in full all sums then due and outstanding on the Loan; (vi) bound by any notice of default given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender; or (vii) be liable for the return of any security deposit or other sums held by any prior landlord, unless actually received.

(c) Lender and any other person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only to the extent provided therein and only for liabilities which occur during such person's or entity's period of ownership of the Premises.

4. Rents. The Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease (collectively, "Rents"), upon the occurrence of certain conditions as set forth in the Assignment, without Lender's taking possession of the Premises or otherwise assuming Landlord's obligations under the Lease. Upon receipt from Lender of written notice to pay Rents to or at the direction of Lender, Tenant shall make all such payments to or at the direction of Lender. Upon receipt of such notice, Tenant thereafter shall pay all Rents then due and becoming due from Tenant under the Lease, to or at the direction of Lender. Tenant agrees that Lender's demanding and/or receiving any such payments shall not operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease. Such payment of Rents to Lender shall continue until Lender directs Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay Rents to another person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Lender. The provisions of this Paragraph 4 will terminate upon the earliest to occur of (a) termination of the Lease, (b) the recording of a release of the Assignment, duly executed by Lender, or (c) Tenant's receipt of written notice to such effect from Lender.

5. Waste; Damage to Premises. Tenant agrees that, notwithstanding any provision of the Lease to the contrary, Lender shall in no event be liable for any waste permitted on the Premises by the Landlord or any tenant or be liable by reason of any damage to or defective condition of the Premises resulting in loss or injury to Tenant nor be liable for any other default, act or omission of the Landlord arising or accruing prior to the date when the Lender acquires title to the Premises, nor shall the Lender be subjected to any claim, or cause of action, or to any set off or credit or defense against rentals accruing after the Lender acquires such title, for any default, act or omission by the Landlord which arose or accrued prior to the date when the Lender acquired title.

6. Insurance Proceeds. Tenant agrees that, notwithstanding any provision of the Lease to the contrary, the terms of the Mortgage shall govern with respect to the disposition of any insurance proceeds or eminent domain awards. This section shall be effective so long as Lender or any future holder of the Mortgage shall have an interest in the Project, whether as lender or owner.

7. Integrated Agreement. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their successors and permitted assigns.

8. Notices. Any and all notices required or permitted to be given or served by the terms and provisions of this Agreement shall be in writing and signed by the duly authorized representative of the party giving the notice and shall be deemed duly given when (1) sent certified or registered mail, postage prepaid, return receipt requested, (2) delivered in person, or (3) delivered by express overnight delivery. If to the Lender, notice shall be addressed as follows: Citizens Bank, N.A., 5955 Carnegie Boulevard, Suite 200, Charlotte, NC 28209; if to Tenant, notice shall be addressed as follows: **MD-Alabama, LLC, 1511 N. Westshore Blvd., Suite 750, Tampa, Florida 33607 with a copy to Property Consulting and Solutions, Inc 3000 Gulf to Bay Blvd., Suite 601, Clearwater, FL 33759**. All notices shall be deemed received upon receipt, if delivered by personal or courier delivery, or if delivered by certified mail, then upon the earlier of (i) actual receipt, or (ii) the date of the first attempted delivery thereof. Either party

hereto may change its address and designate such other parties to receive additional copies of any notice for the above purposes by giving notice as aforesaid stating the change and setting forth the new address.

9. Assignability. The Lender shall have the right to assign this Agreement to the purchaser upon any foreclosure sale of the Premises or to any purchaser of its rights under the promissory note and loan documents evidencing the Loan and the Mortgage securing the same.

10. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Subordination, Non Disturbance and Attornment Agreement has been duly executed as of the day and year first above written.

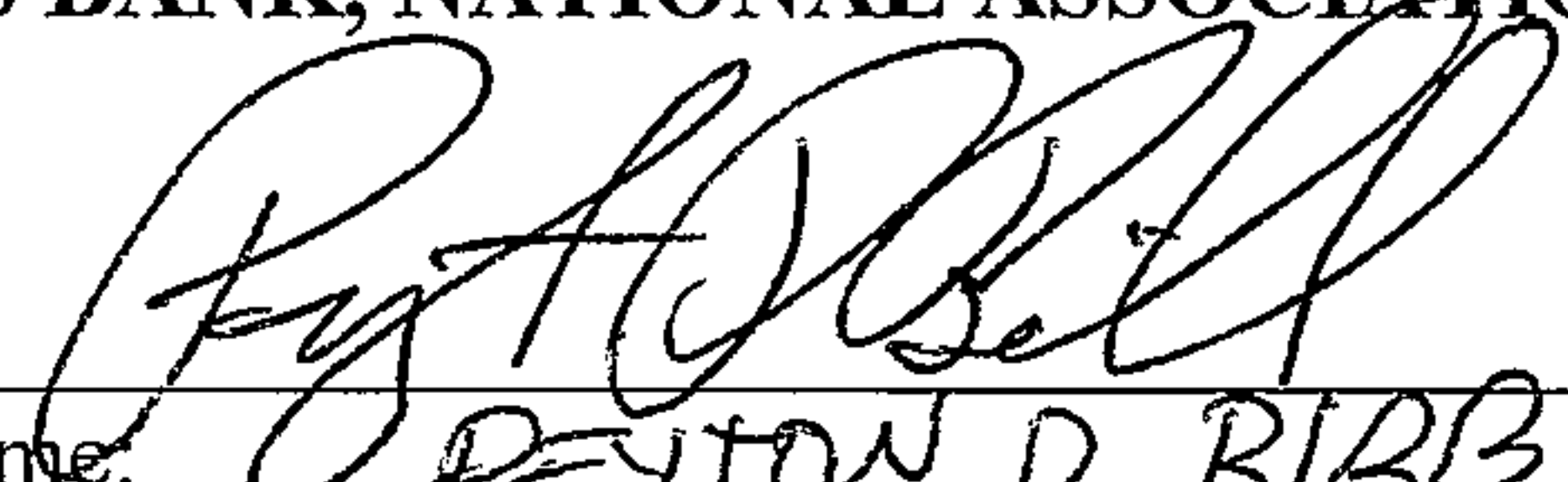
LENDER:

CITIZENS BANK, NATIONAL ASSOCIATION

By:

Name:

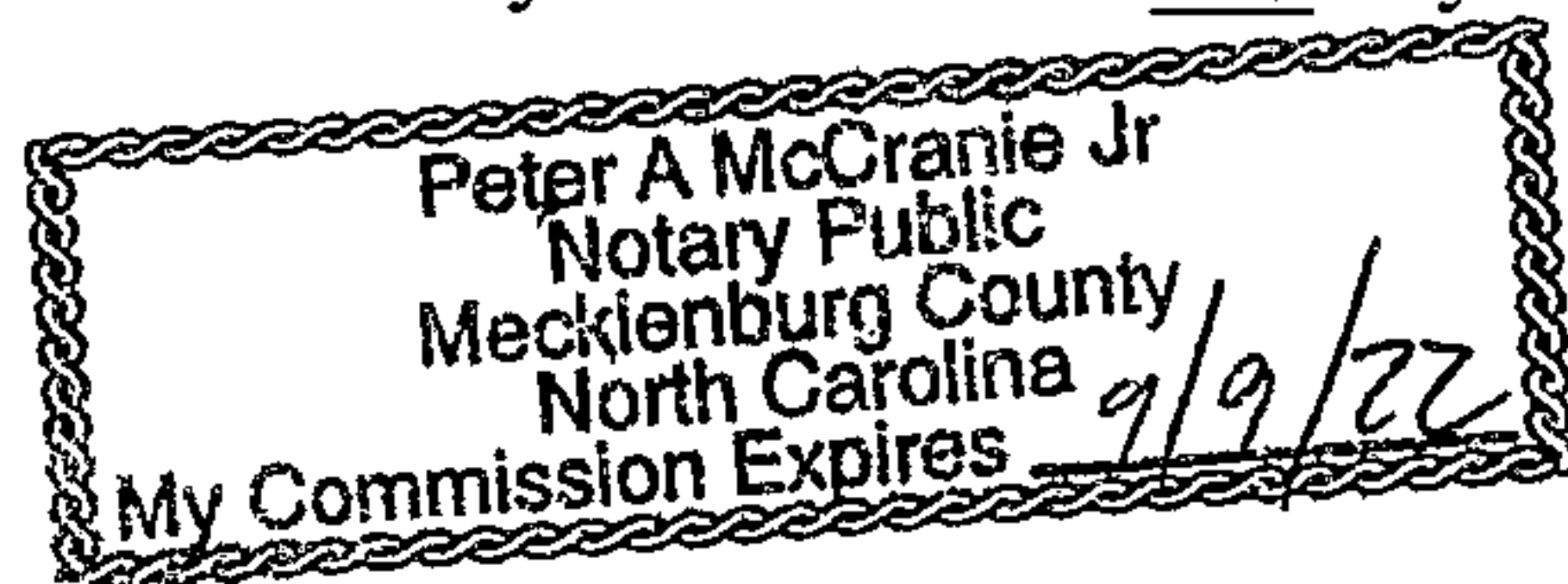
Title:


PEYTON D BIBB
SENIOR VICE PRESIDENT

STATE OF NC
Mecklenburg COUNTY)

I, Peter A McCranie Jr, a NOTARY in and for said County in said State, hereby certify that Peyton D Bibb whose name as Sr. VP of Citizen Bank, NA, a National Association, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such SR VP, and with full authority, executed the same voluntarily for and as the act of said Lender.

Given under my hand this the 17 day of August, 2016.



(Official Seal)


Official Signature of Notary

Peter A - McCranie Jr.
Notary's printed or typed name, Notary Public

My commission expires: 9/9/2022

TENANT:

MD-ALABAMA, LLC

a Florida limited liability company

By: Metro Diner Management, LLC
a Florida limited liability company

By: 

Name: Carl Sahlsten

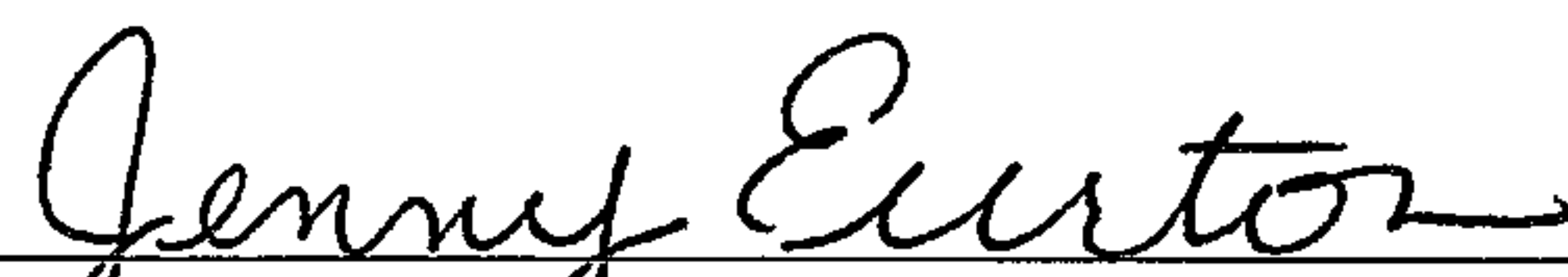
Title: CEO

STATE OF Florida

Hillsborough COUNTY)

I, Jenny Eurtan, a Notary in and for said County in said State, hereby certify that Carl Sahlsten whose named as CEO of Metro Diner Management, LLC, a Florida limited liability company, as Manager of MD-Alabama, LLC, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he she, as such CEO and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 21 day of July, 2016 7


Official Signature of Notary

(Official Seal)

JENNY EURTAN
Notary's printed or typed name, Notary Public

My commission expires: 11/6/2020

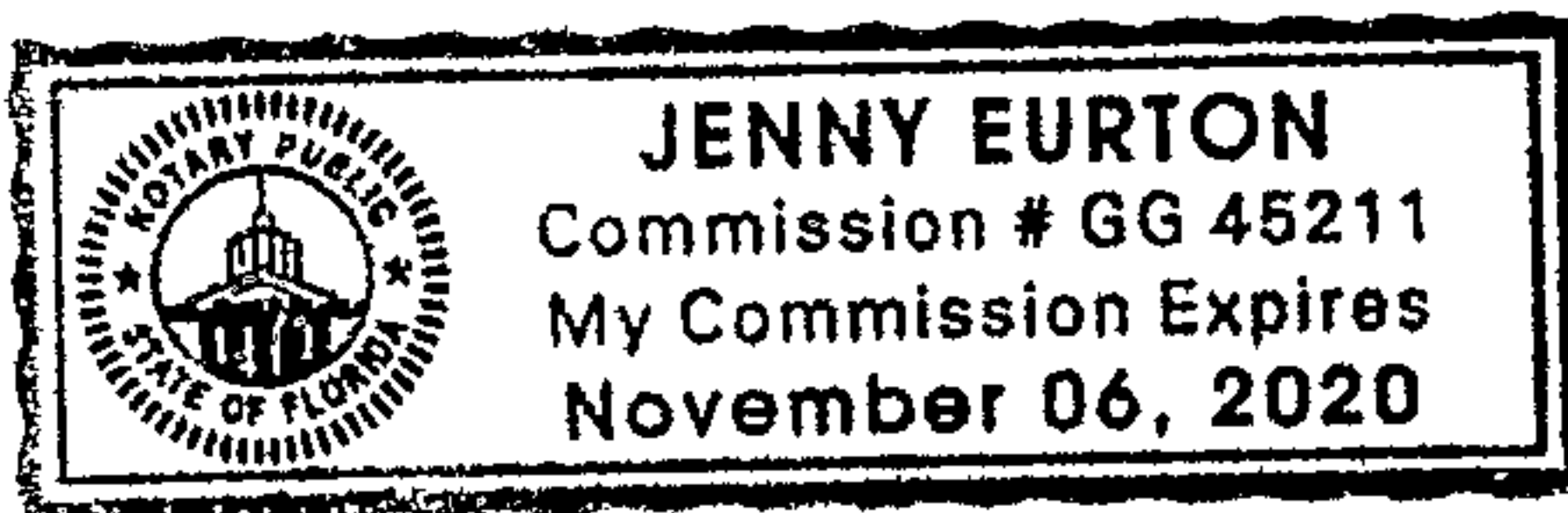


EXHIBIT A**LEGAL DESCRIPTION****Parcel 1 (Fee):**

All that piece or tract of land lying at the southwestern intersection of U.S. Highway 280 and County Road 17, known as Valleydale Road in Shelby County, Alabama and more particularly described as follows:

Beginning at an iron pin marking the northeastern corner of Parcel 2 as shown in Plat Book 9, Page 11, located on the southwestern right of way of U.S. Highway 280; thence running with U.S. Highway 280, $560^{\circ}56'31''$ E for 777.70 feet to an iron pin, passing "X's" in concrete: (1) at 59.50 feet and 345.50 feet (corner of leased property to AmSouth Bank); (2) at 420.56 feet (edge of ingress-egress road and NW corner of property leased to Compass Bank); thence continuing with U.S. Highway 280, $515^{\circ}50'49''$ E for 34.90 feet to an iron pin; thence leaving U.S. Highway 280 and running with property of WEC 2000 A-1, LLC for five (5) courses to-wit: (1) $S79^{\circ}07'59''$ W for 357.86 feet to an "X" in concrete; (2.) $S10^{\circ}52'11''$ E for 200.89 feet to an "X" in concrete; (3) a curve to the left with a chord bearing of $530^{\circ}22'38''$ E for 75.80 feet (R=113;50 feet; AL=77.29 feet); (4) $S49^{\circ}53'05''$ E for 6.69 feet; (5) a non-radial curve to the left with a chord bearing of $S86^{\circ}15'37''$ E for 85.58 feet (R=72.14 feet; AL=91.62 feet) to an iron pin on the western right of way of Valleydale Road; thence with Valleydale Road, a curve to the right with a chord bearing of $S40^{\circ}03'11''$ W for 177.19 feet (R=1392.42 feet; AL=177.31 feet); thence leaving Valleydale Road and running with property of HWY, 280 LLC, known as Outparcel "D" in Map Book 24, Page 02 for four (4) courses. to-wit: (1) a curve to the left with a chord bearing of $N13^{\circ}35'36''$ W for

85.58 feet (R=72.14 feet; AL=91.61 feet); (2) reverse curve to the right with a chord bearing of $N39^{\circ}57'58''$ W for 38.75 (R=111.50 feet; AL=38.95 feet); (3) third reverse curve to the left with a chord bearing of $N82^{\circ}56'16''$ E for 79.04 feet (R=149.50 feet; AL 91.54 feet); (4) $S44^{\circ}05'01''$ W for 289.86 feet to an iron pin; thence leaving Outparcel "D" and running with Inverness Site 35 for two (2) courses, to-wit: (1) $S79^{\circ}00'03''$ W for 53.06 feet to an iron pin; (2) $N60^{\circ}54'59''$ W for 490.07 feet to an iron pin in property boundary with Parcel 1 of Map Book 9, Page 11; thence leaving Site 35 and running with the eastern boundary of Parcels 1 and 2 as shown in Map Book 9, Page 11, $N29^{\circ}06'51''$ E for 852.31 feet to the Point of Beginning. AU curves should be considered non-radial.

This description is the remainder of Inverness Plaza Shopping Center located in section 36, Township 18 South, Range 2 West of Shelby County, Alabama after exception out those properties transferred to:

- (a) CVS Pharmacy in Instrument No. 200000035573
- (b) Hwy. 280 LLC in Instrument No. 1998-00020068, known as Outparcel "D" as recorded in Map Book 24, Page 2.

Parcel 2 (Easement):

Non-exclusive access and utility easements Reciprocal Easement Agreement by and between Metropolitan Life Insurance Company and Mountainview, LLC dated October 14, 2005 and recorded in Instrument #2005101900054400.



Filed and Recorded
 Official Public Records
 Judge James W. Fuhrmeister, Probate Judge,
 County Clerk
 Shelby County, AL
 09/26/2017 03:39:32 PM
 \$33.00 CHERRY
 20170926000350270