

When recorded, return to:

Condon Tobin Sladek Thornton Nerenberg PLLC
8080 Park Lane, Suite 700
Dallas, Texas 75231
Attn.: Michael D. Rist, Esq.



20220314000104280 1/11 \$52.00
Shelby Cnty Judge of Probate, AL
03/14/2022 11:08:01 AM FILED/CERT

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This Subordination, Attornment and Non-Disturbance Agreement ("Agreement") made to be effective March 9, 2022 ("Effective Date"), by and between **CALIBER HOLDINGS LLC**, a Delaware limited liability company, whose address is 2941 Lake Vista Drive, Lewisville, Texas 75067 ("Tenant"), and **SB PB VICTORY, L.P.**, a Texas limited partnership, whose address is 301 Commerce Street, Suite 3200, Fort Worth, TX 76102 ("Mortgagee").

STATEMENT OF PURPOSE

1. Mortgagee has made a certain loan to Landlord (hereinafter defined) in the original aggregate principal amount of **FOUR MILLION THREE HUNDRED FIFTY-TWO THOUSAND AND NO/100 DOLLARS (\$4,352,000.00)** (the "Loan"). To secure the Loan, Landlord has encumbered the real estate described on Exhibit A attached hereto and incorporated herein by reference (the "Landlord's Premises"), by entering into that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated the Effective Date, for the benefit of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the real property records of Shelby County, Alabama.
2. Tenant and **CROSS DEVELOPMENT CC PELHAM, LLC**, a Texas limited liability company ("Landlord") have entered into that certain Lease Agreement, dated as of June 17, 2021 (the "Lease").
3. Tenant and Mortgagee desire to confirm their understanding with respect to the lease and the Mortgage.

AGREEMENT

NOW, THEREFORE, in consideration of mutual covenants and agreements, together with \$1.00 and other valuable consideration, the adequacy, sufficiency and receipt of which are hereby acknowledged by the parties, Mortgagee and Tenant hereby agree and covenant as follows:

1. The Lease is hereby made, and shall at all times continue to be, subject and subordinate to the Mortgage and to all renewals, modifications or extensions thereof.



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2. Provided Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of its terms, covenants or conditions of the Lease to be performed by Tenant, (i) Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Mortgagee; (ii) Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the Lease term; (iii) Mortgagee shall not in any manner disaffirm the Lease; and (iv) Tenant shall not be named a party to any foreclosure proceeding unless required by state law.
3. If the interests of Landlord are transferred to Mortgagee by reason of foreclosure or other proceedings brought by Mortgagee and Mortgagee succeeds to the interest of Landlord under the Lease, Tenant shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the Lease Term with the same force and effect as if Mortgagee were Landlord under the Lease, and Tenant does hereby attorn to Mortgagee as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of Landlord under the Lease. Tenant shall be under no obligation to pay rent to Mortgagee until Tenant receives written notice from Mortgagee that it has appropriately exercised its remedies under the Mortgage and is able to receive such rent payments. Tenant may rely on such written notice and begin paying rent to Mortgagee without taking further action and Tenant shall incur no liability to Landlord in the event Tenant relies in good faith on such written notice to begin rent payments to Mortgagee. The respective rights and obligations of Tenant and Mortgagee upon such attornment (including, but not limited to, the disposition of fire insurance proceeds and/or condemnation awards), to the extent of the then remaining balance of the Lease Term shall be and are the same as set forth in the Lease, it being the intention of the parties to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth herein.
4. Notwithstanding anything to the contrary in the Lease or the Mortgage, if Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee shall assume Landlord's obligations under the Lease and be bound to Tenant under all terms, covenants and conditions of the Lease; provided, however, Mortgagee shall not be liable for or bound by any of the following matters: (i) any offset right that Tenant may have against Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Landlord that occurred before the date of attornment; (ii) any payment of rent that Tenant may have made to Landlord more than 30 days before the date such rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment; (iii) any obligation: (a) to pay Tenant any sum(s) that Landlord owed to Tenant or (b) with respect to any security deposited with Landlord, unless such sum or security were actually delivered to Mortgagee; (iv) any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent;



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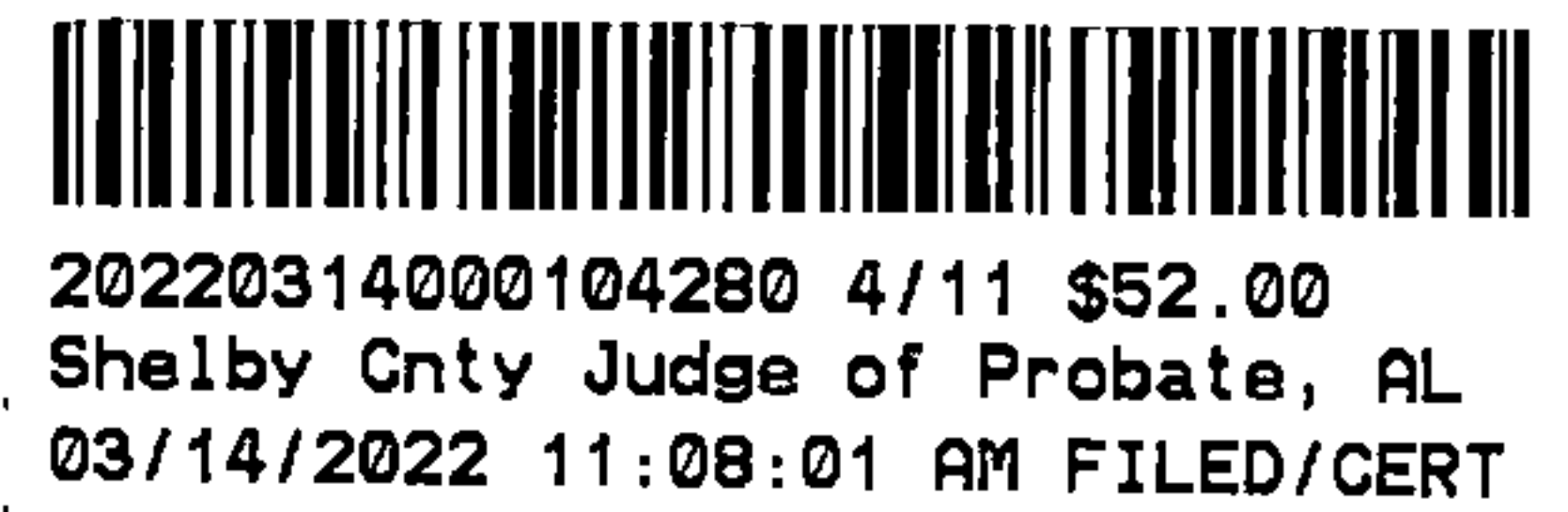
- (v) any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease, or (vi) any construction-related obligation of Landlord under the Lease.
5. In the event that the construction of the Landlord's Premises has not been substantially completed at the time the Mortgagee or any third party succeeds to the interest of the Landlord under the Lease by reason of foreclosure or other proceedings brought by the Mortgagee or by any transfer in lieu of foreclosure, then, in such event, Tenant hereby agrees that the Mortgagee or any such third party shall have the right to cancel and terminate the Lease upon written notice to Tenant. Any provision of this Agreement to the contrary notwithstanding, the Mortgagee shall have no obligation, or incur any liability, with respect to the erection and completion of the building in which the Landlord's Premises are located or for the completion of the Landlord's Premises or any improvements for Tenant's use and occupancy.
6. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Mortgagee's obligations and liability under the Lease shall never extend beyond Mortgagee's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Mortgagee's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Mortgagee. If Tenant obtains any money judgment against Mortgagee with respect to the Lease or the relationship between Mortgagee and Tenant, then Tenant shall look solely to Mortgagee's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Mortgagee.
7. All notices, consents and other communications pursuant to the provisions of this Agreement shall be given and deemed to have been properly served if delivered in writing (i) by certified mail, (ii) by a nationally recognized overnight courier providing signed proof of delivery or refusal thereof, or (iii) by facsimile; provided that a second copy of such notice is given by another method provided for herein on the date of the facsimile notice. Notices shall addressed as follows:

If to Mortgagee: SB PB VICTORY, L.P.
301 Commerce Street, Suite 3200
Fort Worth, TX 76102
ATTN: Mark Franklin

If to Tenant: Caliber Holdings LLC
2941 Lake Vista Drive
Lewisville, Texas 75067
ATTN: Chief Financial Officer

with a copy to:

Caliber Holdings LLC
2941 Lake Vista Drive
Lewisville, Texas 75067
ATTN: General Counsel
FACSIMILE: 972-906-5841
TELEPHONE: 469-948-9500



Date of service of a notice served by mail shall be the date which is three (3) days after the date on which such notice is deposited in a post office of the United States Post Office Department, certified mail, return receipt requested. Date of service by any other method shall be the date of receipt. Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective. Final execution and delivery of this Agreement is in the State of Texas and shall be construed in accordance with the laws of the State of Texas, notwithstanding its conflict of laws provisions.

8. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any termination right or offset right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.
9. The Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Mortgage and to any and all renewals, modifications and extensions, but any and all such renewals, modifications and extensions shall nevertheless be subject to and entitled to the benefits of the terms of this Agreement.
10. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by both parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns. If this Agreement conflicts with the

Lease, then this Agreement shall govern as between the parties, including upon any attornment pursuant to this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.
12. Capitalized terms not defined herein shall have the definitions given them in the Lease.

[SIGNATURE PAGES FOLLOW]



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EXECUTED on the dates in the acknowledgments below, but to be effective as of the Effective Date.

MORTGAGEE

SB PB VICTORY, L.P.,
a Texas limited partnership



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By: Pinpoint Finco III, LLC,
a Texas limited liability company
Its General Partner

By: Arthur Holdings, LLC,
a Texas limited liability company
Its Manager

By: Patrick W. Dunne
Patrick W. Dunne
Authorized Signatory

By: Noel Nesser
Noel Nesser
Authorized Signatory

STATE OF TEXAS

COUNTY OF TARRANT

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This instrument was ACKNOWLEDGED before me on this 2 day of February, 2022, by Patrick W. Dunne, Authorized Signatory of ARTHUR HOLDINGS, LLC, a Texas limited liability company, Manager of PINPOINT FINCO III, LLC, a Texas limited liability company, as General Partner of SB PB VICTORY, L.P., a Texas limited partnership on behalf of said limited liability companies and limited partnership.

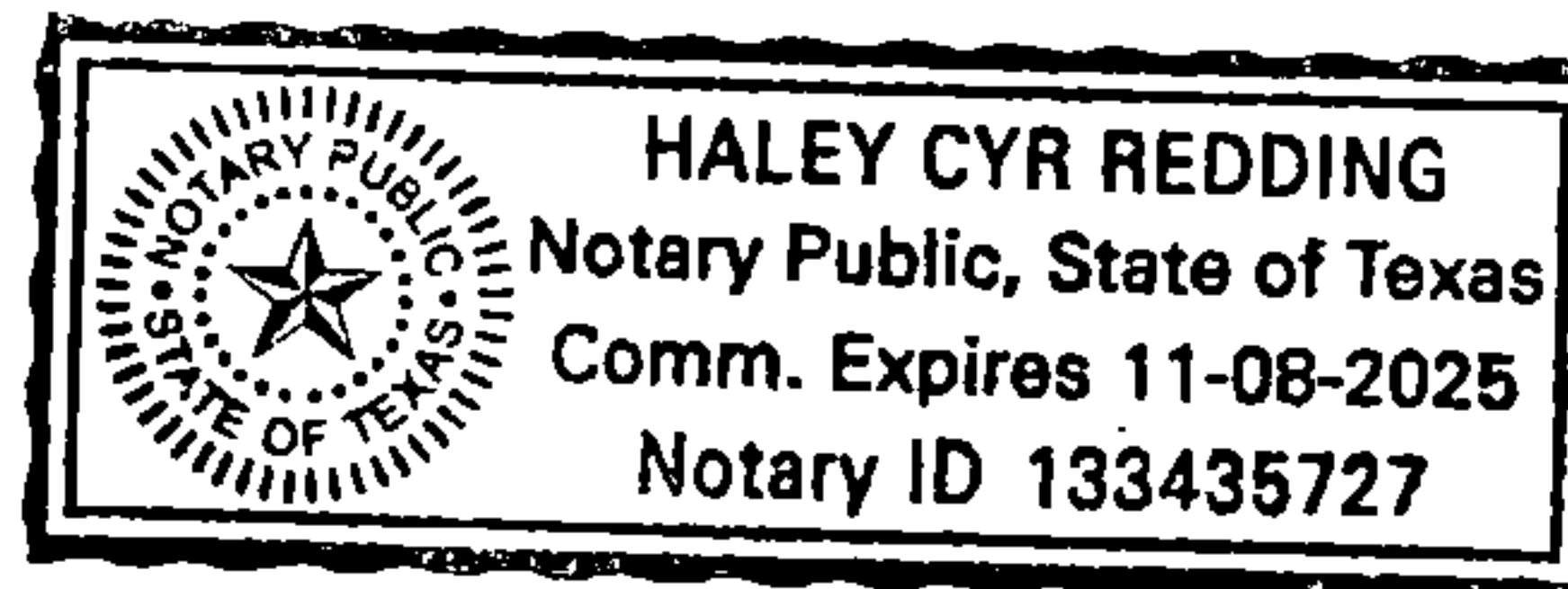
Hailey Cyr Redding

Notary Public in and for the State of Texas

STATE OF TEXAS

COUNTY OF TARRANT

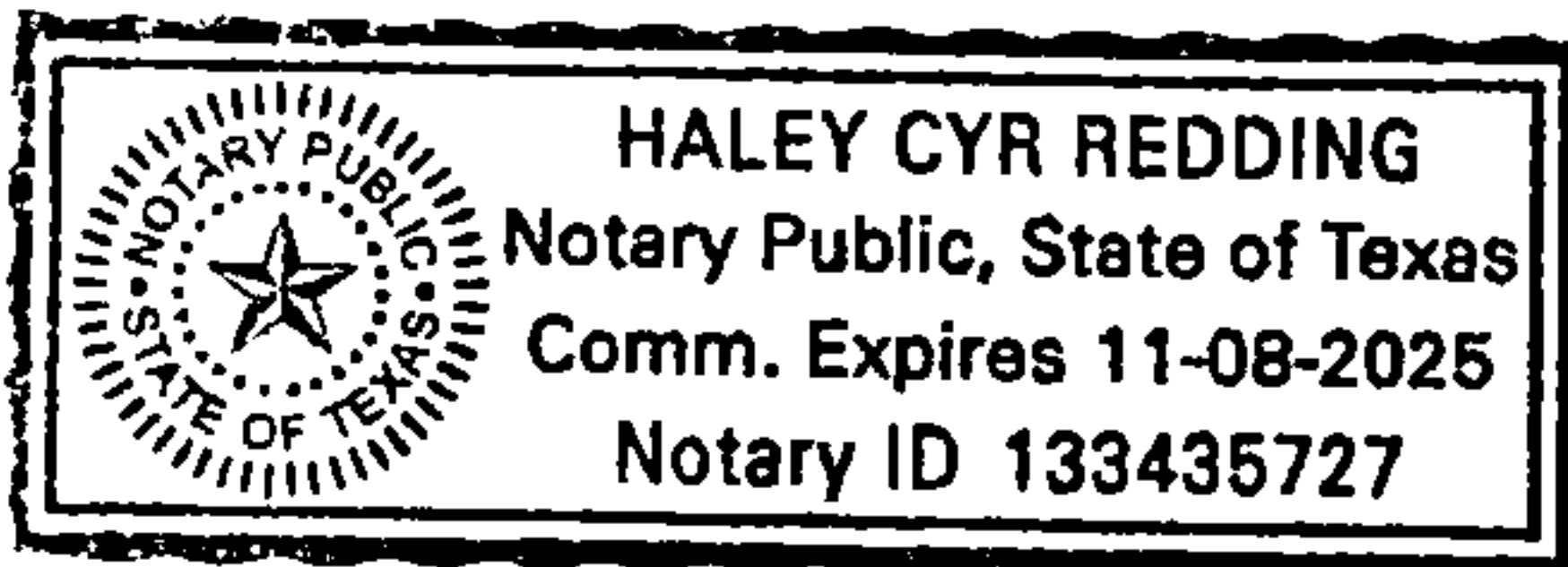
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This instrument was ACKNOWLEDGED before me on this 2 day of February, 2022, by Noel Nesser, Authorized Signatory of ARTHUR HOLDINGS, LLC, a Texas limited liability company, Manager of PINPOINT FINCO III, LLC, a Texas limited liability company, as General Partner of SB PB VICTORY, L.P., a Texas limited partnership on behalf of said limited liability companies and limited partnership.

Hailey Cyr Redding

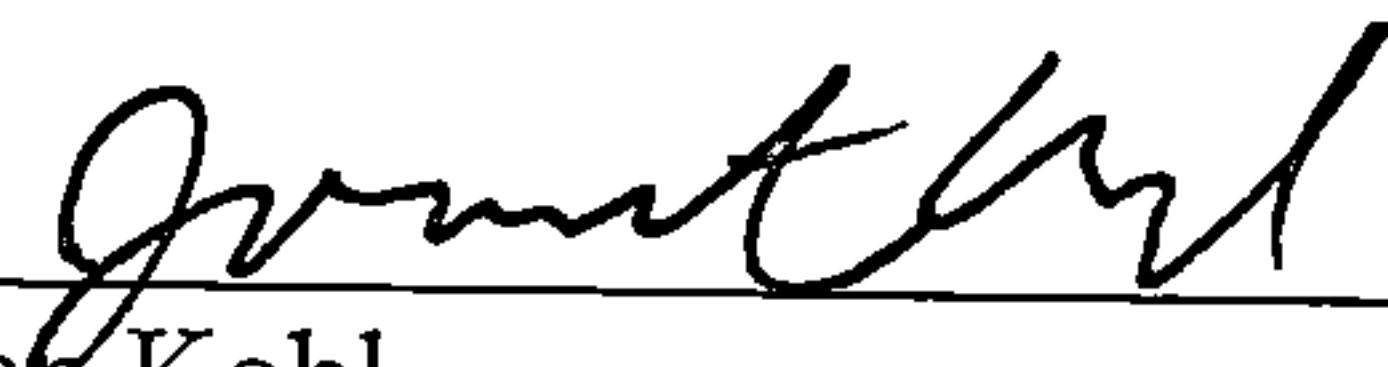
Notary Public in and for the State of Texas



EXECUTED on the dates in the acknowledgments below, but to be effective as of the Effective Date.

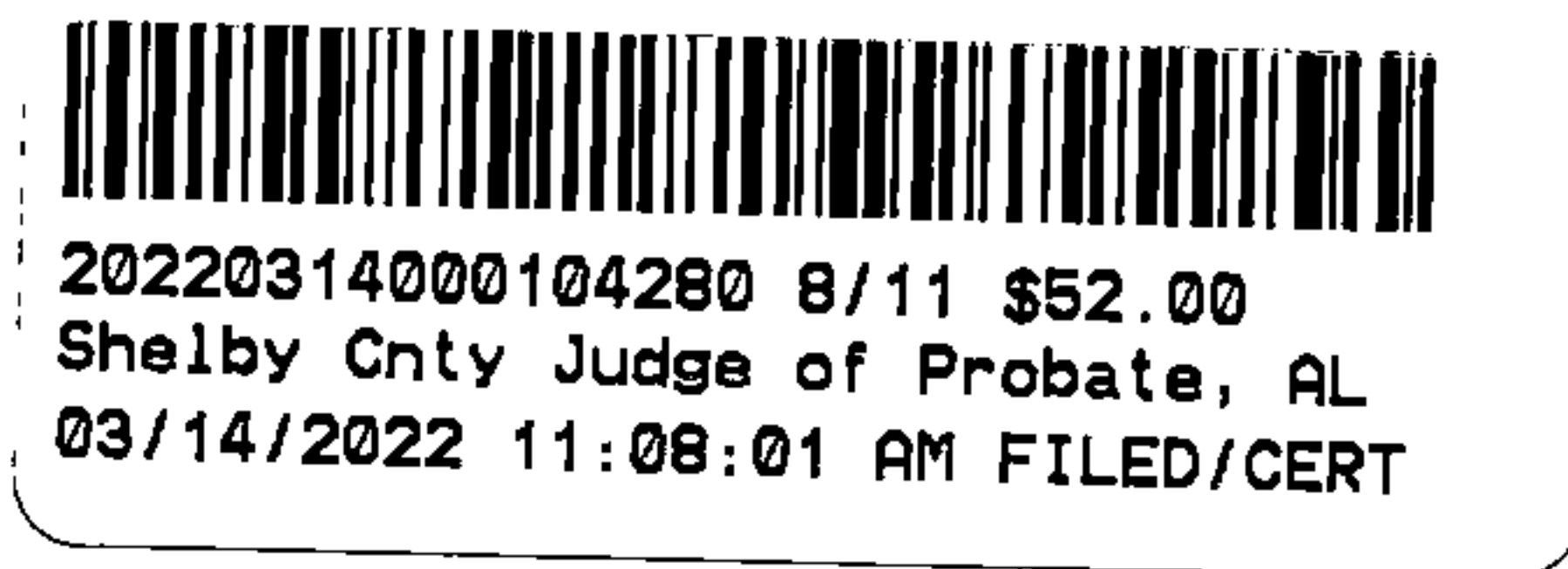
TENANT

CALIBER HOLDINGS LLC, a Delaware limited liability company

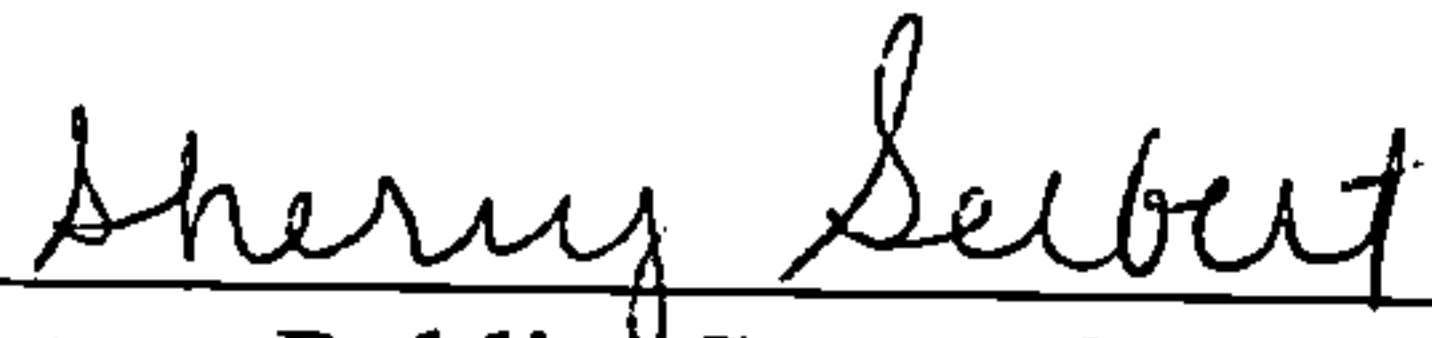
By: 
Jonathan Kohl
Senior Vice President

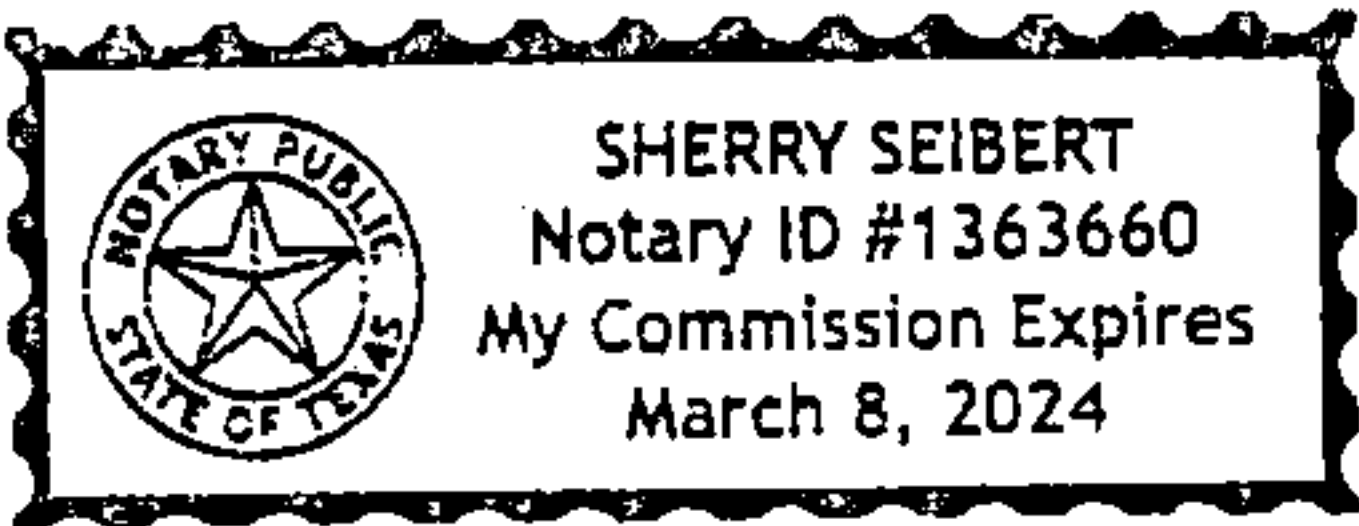
Date: 12-8, 2021

STATE OF TEXAS §
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COUNTY OF DENTON §



The foregoing instrument was ACKNOWLEDGED before me this 8th day of December, 2021, by Jonathan Kohl, who acknowledged himself to be the Senior Vice President of CALIBER HOLDINGS LLC, on behalf of said company.


Notary Public, State of Texas





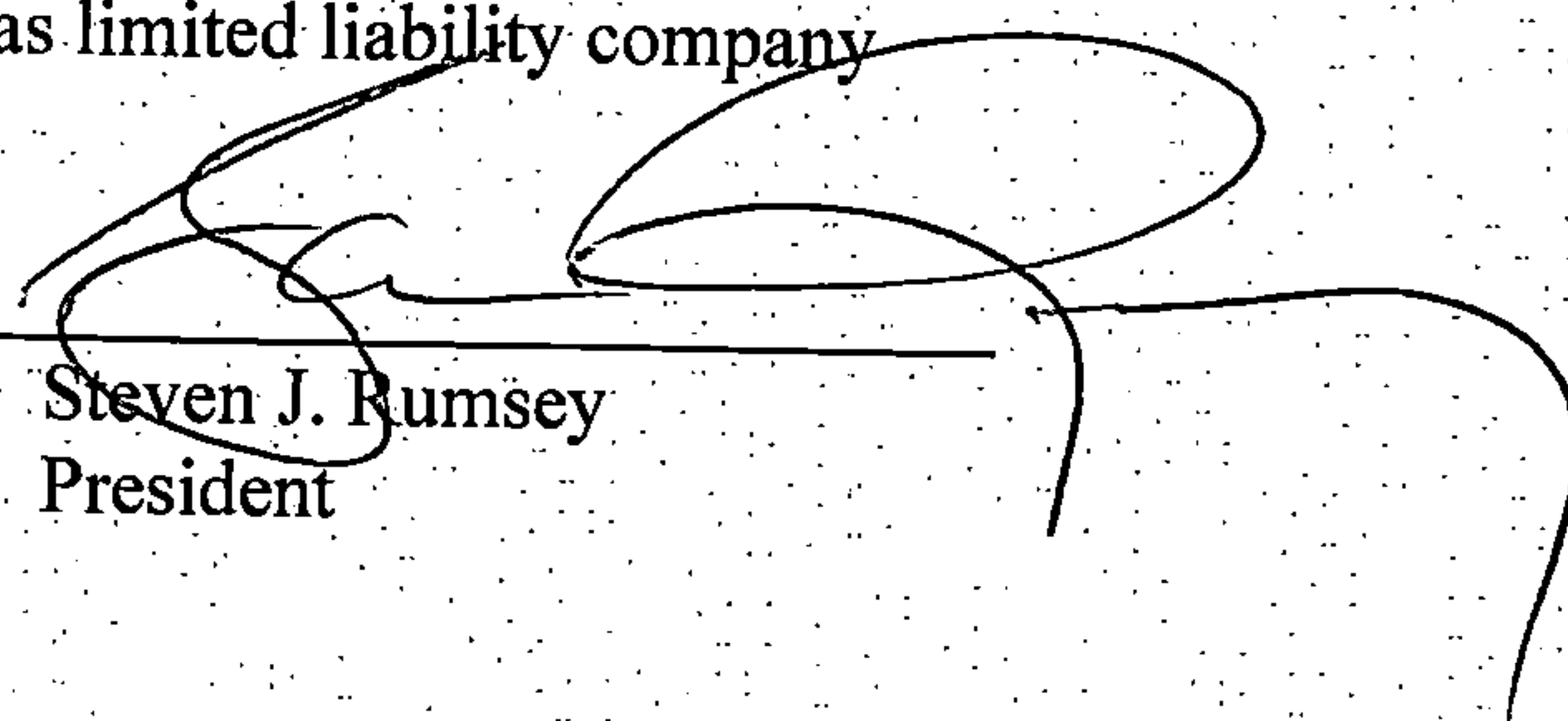
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LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant.

LANDLORD

CROSS DEVELOPMENT CC PELHAM, LLC,
a Texas limited liability company

By: 
Steven J. Rumsey
President

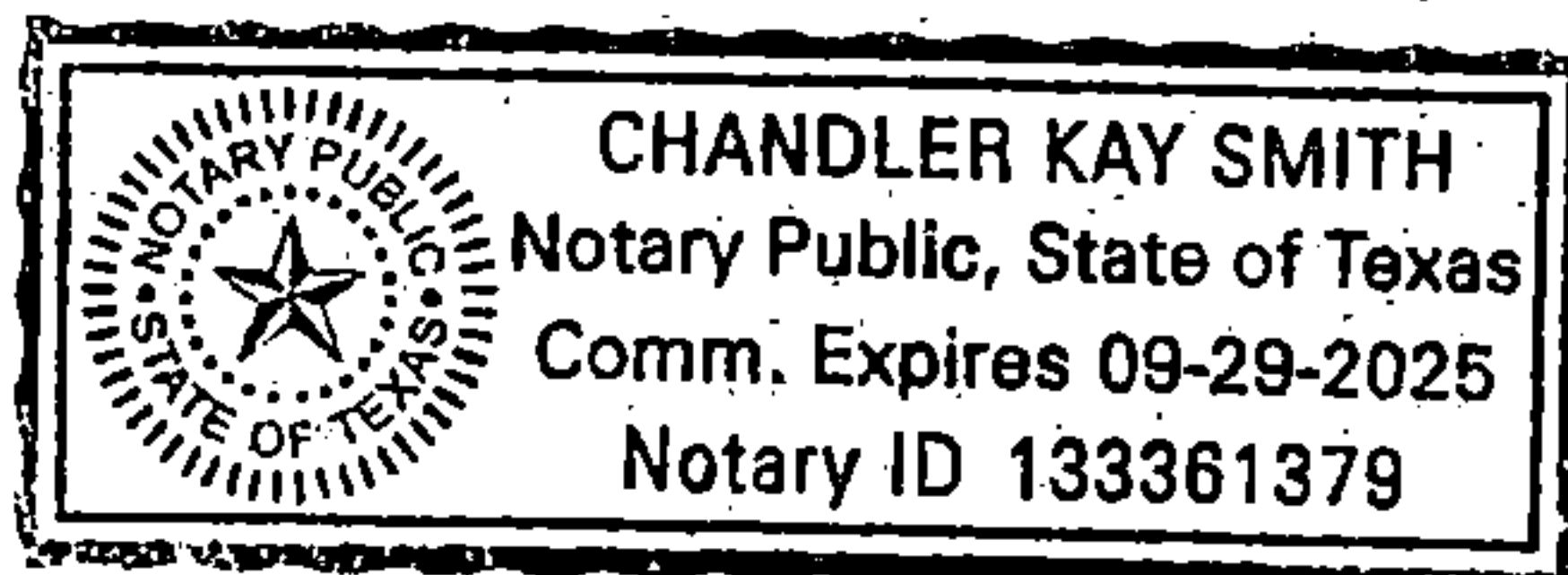
Date: 12 - 09, 2021

STATE OF TEXAS

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COUNTY OF DENTON

This instrument was ACKNOWLEDGED before me on the 9th day of December, 2021, by Steven J. Rumsey as President of CROSS DEVELOPMENT CC PELHAM, LLC, a Texas limited liability company, on behalf of each limited liability company.




Notary Public in and for the State of Texas



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GUARANTOR'S CONSENT

The undersigned, a guarantor of Tenant's obligations under the Lease (a "Guarantor"), consents to Tenant's execution, delivery and performance of the foregoing Agreement. From and after any attornment pursuant to the foregoing Agreement, that certain Guaranty dated June 17, 2021 (the "Guaranty") executed by Guarantor in favor of Landlord or its assignee shall automatically benefit and be enforceable by Mortgagee with respect to Tenant's obligations under the Lease as affected by the foregoing Agreement. Mortgagee's rights under the Guaranty shall not be subject to any defense, offset, claim, counterclaim, reduction or abatement of any kind resulting from any act, omission or waiver by Landlord for which Mortgagee would, pursuant to the foregoing Agreement, not be liable or answerable after an attornment. The foregoing does not limit any waivers or other provisions contained in the Guaranty. Guarantor confirms that the Guaranty is in full force and effect and Guarantor presently has no offset, defense, claim, counterclaim, reduction, deduction or abatement against Guarantor's obligations under the Guaranty.

GUARANTOR

WAND NEWCO 3, INC.,
a Delaware corporation

By: 
Jonathan Kohl
Senior Vice President

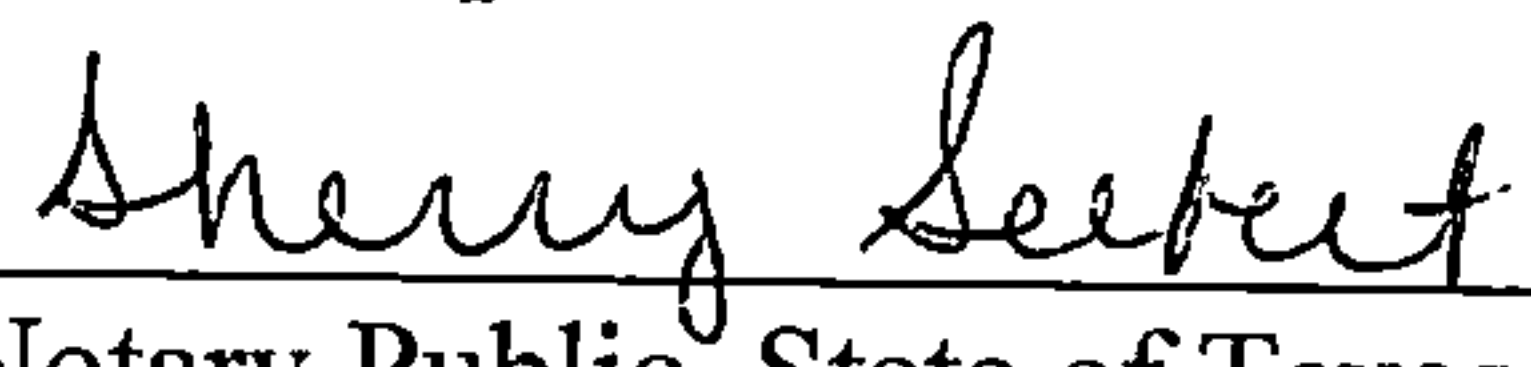
Date: 12-8, 2021

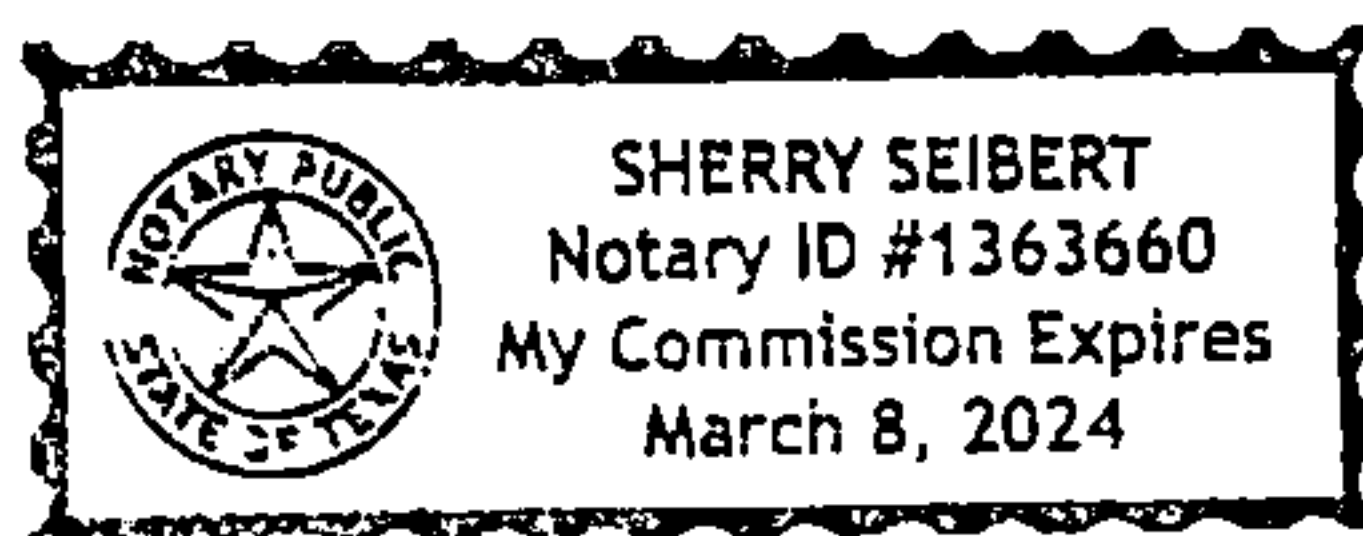
STATE OF TEXAS

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COUNTY OF DENTON

The foregoing instrument was ACKNOWLEDGED before me this 8th day of December, 2021, by Jonathan Kohl, who acknowledged himself to be the Senior Vice President of WAND NEWCO 3, INC., a Delaware corporation on behalf of said corporation.


Notary Public, State of Texas



Signature Page – Guarantor's Consent
SUBORDINATION, ATTORNMENT AND
NON-DISTURBANCE AGREEMENT



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EXHIBIT A

DESCRIPTION OF LANDLORD'S PREMISES

Lot 1-A, according to the Resurvey of Lots 1 & 2, Circle I Business Complex, Phase 2 as recorded in Map Book 55, Page 60 in the Probate Office of Shelby County, Alabama.

Together with those easement rights set out in Declaration of Protective Covenants for Circle I Business Complex as recorded in Instrument 20070416000174630, First Amendment to Declaration as recorded in Instrument 20070719000338340, Second Amendment to Declaration as recorded in Instrument 20090515000183390, Third Amendment to Declaration as recorded in Instrument 20220314000104250 in the Probate Office of Shelby County, Alabama.