

When recorded, return to:

SNELL & WILMER L.L.P.
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004-2202
Attention: Hayden Hilliard, Esq.

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement"), is made as of March 14, 2022, by and among SOUTHEAST RESTAURANT GROUP-WEN FL, LLC, a Louisiana limited liability company ("Tenant"), SOUTHEAST RESTAURANT DEVELOPMENT - WEN, LLC, a Louisiana limited liability company ("Landlord"), and FIFTH THIRD BANK, NATIONAL ASSOCIATION ("Lender").

PRELIMINARY STATEMENT

Landlord and Tenant are parties to that certain Lease Agreement dated March 14, 2022 (the "Lease"), pursuant to which Tenant leases from Landlord certain real property legally described on the attached Exhibit A and the improvements located thereon (the "Premises"). The Premises are or will be encumbered by that certain Mortgage, Security Agreement, Absolute Assignment of Leases and Rents, Financing Statement, and Fixture Filing, dated of even date herewith, from Landlord for the benefit of Lender (the "Mortgage"), securing the Obligations described in that certain Credit Agreement, dated of even date herewith, by and between Landlord, as Borrower, and Lender (as it may be amended, restated, replaced, and/or renewed from time to time, the "Credit Agreement"), and the other Loan Documents. Tenant has agreed to recognize the rights of Lender in accordance with the terms and provisions of this Agreement. Capitalized terms used herein and not defined shall have the meanings given to such terms in the Credit Agreement.

AGREEMENT

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. Subordination. Notwithstanding anything to the contrary contained in the Lease, the Lease and the leasehold estate created thereby are hereby declared to be, and hereafter shall continue at all times to be, junior, subject and subordinate, in each and every respect, to the Mortgage, including, without limitation, (a) any and all increases, renewals, modifications, extensions, substitutions, replacements and or consolidations of the Credit Agreement, Mortgage or other Loan Documents and (b) any future deed of trust or encumbrance affecting the Premises held by or made for the benefit of Lender and/or its successors and assigns. The foregoing subordination (i) is effective and self-operative without the necessity for execution of any further instruments and (ii) is to have the same force and effect as if such present or future Mortgages or

extensions, substitutions, replacements or consolidations had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof. Tenant hereby covenants with Lender that Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender and/or its successors and assigns without prior written notice to and prior written consent of Lender. At any time at the election of Lender, Lender shall have the right to declare the Lease superior to the lien, provisions, operation and effect of the Mortgage.

2. Attornment; Non-Disturbance.

(a) Notwithstanding the foregoing subordination, if the interest of Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings (judicial or non-judicial) for enforcement of the Mortgage or by reason of a deed in lieu of foreclosure or a transfer after foreclosure, Tenant, at the election of the Lender, its successors and assigns, the purchaser of the Premises at a foreclosure sale, or such purchaser's successors and assigns, including each subsequent purchaser of the Premises (each such purchaser and its successors and assigns, collectively, the "Purchaser") acquiring said interests, shall be bound to the Lender and Purchaser, as applicable, pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Lender or Purchaser, as applicable, were the original landlord under the Lease, and Tenant does hereby attorn to and agree to attorn to the Lender and Purchaser, as its landlord, said attornment to be effective and self-operative without the necessity for execution of any further instruments, upon Lender's or Purchaser's election after succeeding to the interest of the Landlord under the Lease.

(b) Notwithstanding the provisions of Section 1 and provided that Tenant is not in default under the Lease beyond any applicable notice and cure periods, the Lease shall not be terminated, nor shall Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Lease be terminated, in any foreclosure or any action or proceeding instituted under or in connection with the Mortgage.

3. Further Acts. Notwithstanding any provisions contained in Sections 1 and 2 above which state that the attornment and subordination by Tenant to Purchaser are effective and self-operative without the execution of any further instrument, Tenant agrees that, upon request of Lender and/or Purchaser, it will execute such written agreement to evidence and affirm any and all of Tenant's obligations under this Agreement, and further, Tenant agrees that it will execute from time to time such further assurances and estoppel certificates as may reasonably be requested by Lender and any Purchaser. Without limiting the generality of the foregoing, if and to the extent that Landlord rejects the Lease in any federal or state proceeding, Tenant will, upon the request of Lender or Purchaser, immediately enter into a new lease directly with the Purchaser on the same terms as the Lease, provided execution of such new lease does not violate any bankruptcy law or related court order.

4. Limitation. Neither Lender nor any Purchaser shall be (a) liable for any act or omission of Landlord or any prior landlord (including the loss or misappropriation of any rental payments or security deposits); (b) subject to any credits, claims, setoffs, offsets or defenses which Tenant may have against Landlord or any prior landlord; (c) bound by (or responsible for) any advance payment of rent or any other monetary obligations under the Lease to Landlord in excess of one month's prepayment thereof in the case of rent, or in excess of one periodic payment in advance in the case of any other monetary obligations under the Lease; (d) responsible for any security deposit not actually received and held by Lender or Purchaser, as applicable; (e) bound by any amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Lease to which Lender or Purchaser, as applicable, has not consented in writing, and any attempted amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Lease without such consent shall be null and void and of no force and effect; (f) liable for latent and/or patent defects in the construction of the Premises; (g) liable for any breach of any warranty in the Lease by Landlord or a prior landlord; (h) bound by any obligation to construct any improvements or to make any payment to Tenant which was required to be made prior to the time Lender or Purchaser, as applicable, succeeded to Landlord's interest; (i) bound by any obligation to repair, replace, rebuild or restore the Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as may be required of the landlord under the Lease and as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation awards actually received by or made available to Lender (as successor in interest to Landlord) or Purchaser; (j) required to remove any person occupying the Premises or any part thereof; or (k) bound by any right of first refusal or right of first offer set forth in the Lease or any option to purchase all or any part of the Premises, in each case unless such option or right has been specifically consented to. Neither Lender nor any Purchaser shall be liable for any reason for amounts in excess of the value of its interest in the Premises, or for consequential or punitive damages of any kind.

5. Notice; Cure; Waivers. Tenant agrees to give prompt written notice to Lender (and to any successor in interest to Lender of which Tenant has been notified) of any default of the Landlord under the Lease if such default is of such a nature as to give Tenant a right to terminate the Lease, reduce rent or to credit or offset any amounts against future rents. If, within thirty (30) days after receipt of written notice from Tenant, Lender, at Lender's sole option, commences to cure a default of Landlord under the Lease that is capable of being cured by Lender, or commences to pursue any other of its remedies under the Mortgage and thereafter diligently pursues such cure to completion, Tenant agrees not to terminate the Lease, reduce rent, credit or offset against future rents, consent or acquiesce in the termination of the Lease or surrender the Premises and agrees to continue to be bound by the terms of the Lease and this Agreement. As against Lender and its successors in interest, Tenant hereby waives any default by Landlord which is not capable of being cured by Lender in the exercise of reasonable diligence.

6. Payments of Rent to Lender. Tenant hereby consents to each assignment of leases and rents from Landlord to Lender pursuant to the Mortgage and the other Loan Documents. Tenant acknowledges that the interest of Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in such assignment and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or any subsequent receipt or collection of rents thereunder, unless Lender

shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes the fee owner of the Premises, and then only with respect to periods in which Lender or its designee or nominee is the fee owner of the Premises. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan Documents, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease. Landlord consents in advance to such payment and waives all claims against Tenant for such payments.

7. Certification. Tenant hereby certifies to and agrees with Lender as follows, with the understanding that Lender is relying on such certifications and agreements in the making of the loan evidenced by the Credit Agreement and secured by the Mortgage: (a) the Lease is in full force and effect; (b) all requirements for the commencement and validity of the Lease have been satisfied; (c) Tenant is not in default under the Lease; to the best of Tenant's knowledge, information and belief, the Landlord is not in default under the Lease; (d) no act, event or condition has occurred, which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; (e) no claim by Tenant of any nature exists against Landlord under the Lease and all obligations of Landlord have been fully performed; (f) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease; (g) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance; (h) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Premises; (i) the Lease has not been terminated, modified or amended and the Lease shall not hereafter be terminated, modified or amended without the prior written consent of Lender in each instance; (j) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease to any party and no other consents to the execution of this Agreement by the Tenant are required from any other party; and (k) upon termination of the Lease for any reason, the Improvements shall remain on the Premises.

8. Notices.

(a) Addresses. All notices, demands, requests, directions or other communications (collectively, "Notices") required or expressly authorized to be made pursuant to this Agreement will be written and addressed (i) if to Landlord to the address set forth for Landlord on the Agreement signature page or such other address as shall be notified in writing to Lender after the date hereof; (ii) if to Lender, at the address set forth for Lender on the Agreement signature page or such other address as shall be notified in writing to Lender after the date hereof; and (iii) if to Tenant at the address set forth for Tenant on the Agreement signature page or such other address as shall be notified in writing to Landlord and Lender after the date hereof. Notices may be given by hand delivery; by overnight delivery service, freight prepaid; or by US mail, postage paid.

(b) Effectiveness. Notices given as described above shall be effective and be deemed to have been received (i) upon personal delivery to a responsible individual at the address of the recipient, if the Notice is given by hand delivery; (ii) one business day after delivery to an overnight delivery service, if notice is given by overnight delivery service; and (iii) two (2) business days following deposit in US mail, if notice is given by US mail.

9. Insurance Proceeds/Condemnation Award. Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of the Mortgage shall continue to govern with respect to the disposition of any insurance proceeds or condemnation awards.

10. Modification. Without Lender's prior written consent, Tenant shall not consent to any modification of the Lease that would (i) reduce the term of the Lease, (ii) reduce the rent payable thereunder, (iii) change any notice or cure period set forth therein or (iv) materially increase the obligations or responsibilities of Landlord thereunder; nor shall the Tenant consent to any voluntary termination or cancellation of the Lease, other than as a result of a default by Landlord thereunder that is not cured within the applicable cure period.

11. Assignment. Tenant shall not assign its interest in the Lease, nor sublet its interest in the Premises, without Lender's prior written consent.

12. General Provisions.

(a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns. This Agreement shall also benefit Purchasers which are hereby declared to be express third party beneficiaries hereof.

(b) Controlling Law. This Agreement is made and entered into under, and shall be construed according to, the laws of the State and the jurisdiction where the Premises are located.

(c) Inconsistent Provisions. If any of the provisions, terms and conditions hereof are ambiguous or inconsistent, or conflict with any of the terms and provisions of the Lease, the Loan Documents, any amendments thereto, or any other documents executed in connection therewith, the provisions, terms and conditions of this Agreement shall control.

(d) Lender's Liability Under this Agreement. Neither Lender nor any member, partner, shareholder or beneficiary thereof shall have any personal liability with respect to any of the provisions of this Agreement, and if Lender is in default with respect to its obligations hereunder, Tenant shall look solely to the equity of Lender in the Premises.

(e) WAIVER OF JURY TRIAL. LANDLORD, TENANT AND LENDER, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

(f) Execution and Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple

separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart thereof.

(g) No Merger. If fee title to the Premises and the leasehold estate of Tenant pursuant to the Lease are held by the same person, such interest shall not merge but shall remain separate and distinct.

(h) Recordation. This Agreement shall only be recorded at the option and direction of Lender.

(i) Entire Agreement. This Agreement embodies the entire agreement of the parties and supersedes all prior agreements and understandings, oral or written, relating to the subject matter hereof. Lender and Tenant acknowledge and affirm that Lender or Tenant, as the case may be, did not rely on any statement, oral or written, not contained in this Agreement in making its decisions to enter into this Agreement.

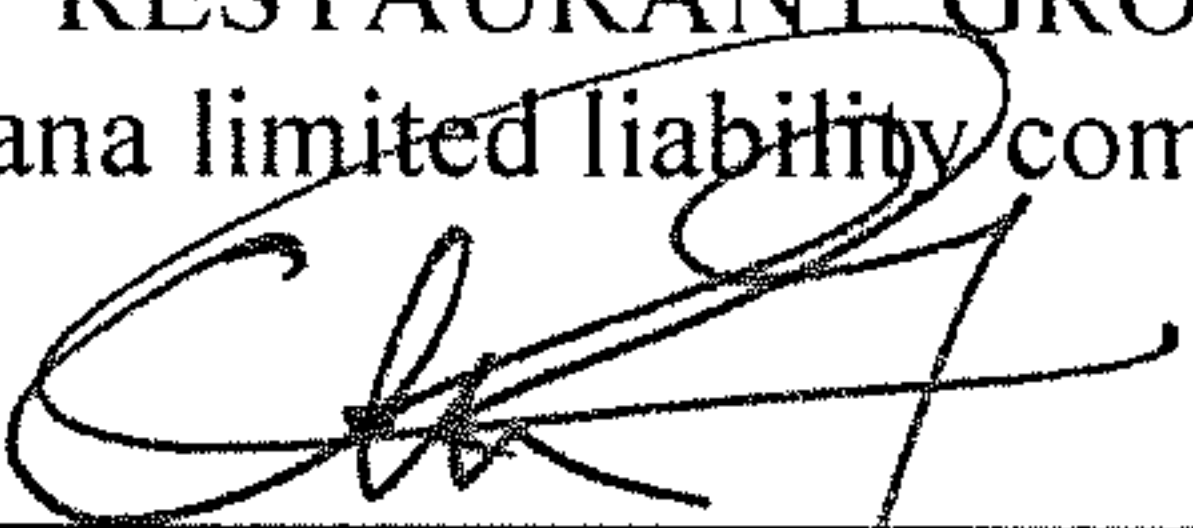
(j) Severability. Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.

TENANT:

SOUTHEAST RESTAURANT GROUP-WEN FL,
LLC, a Louisiana limited liability company

By: 

Name: Elie Khoury

Title: Authorized Signatory

Address for Notices:

1201 Canal Street, Unit C-2

New Orleans, LA 70112

Attn: Elie Khoury

STATE OF Louisiana)
Parish) SS
COUNTY OF Orleans)

On March 10, 2022, before me, the undersigned, a Notary Public in and for said State personally appeared Elie Khoury known to me to be the Authorized Signatory of Southeast Restaurant Group-WEN FL, LLC, a Louisiana limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

[SEAL]


Notary Public in and for said County and State

Stephen P. Scullin

Notary Public

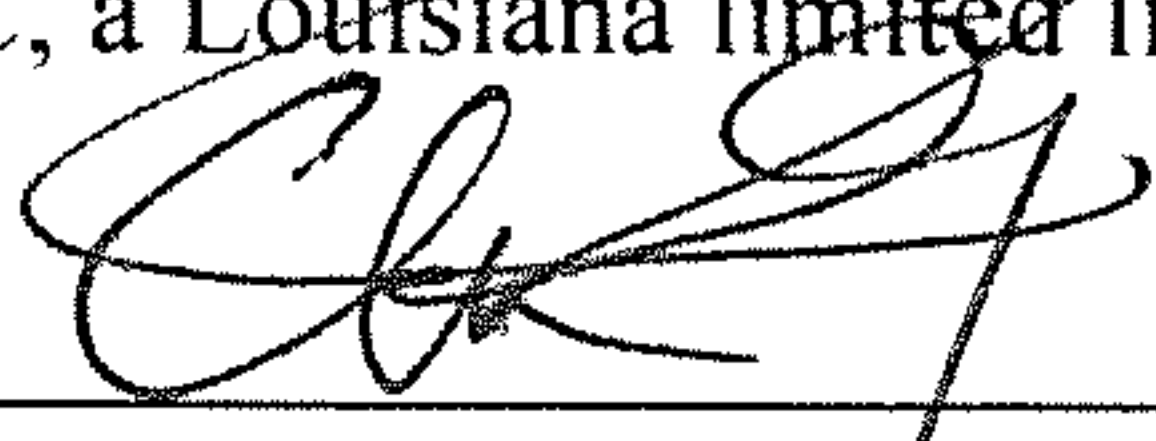
Bar # 30717

State of Louisiana

My commission is for life.

LANDLORD:

SOUTHEAST RESTAURANT DEVELOPMENT -
WEN, LLC, a Louisiana limited liability company

By: 

Name: Elie Khoury

Title: Sole Member and Manager

Address for Notices:

1201 Canal Street, Unit C-2

New Orleans, LA 70112

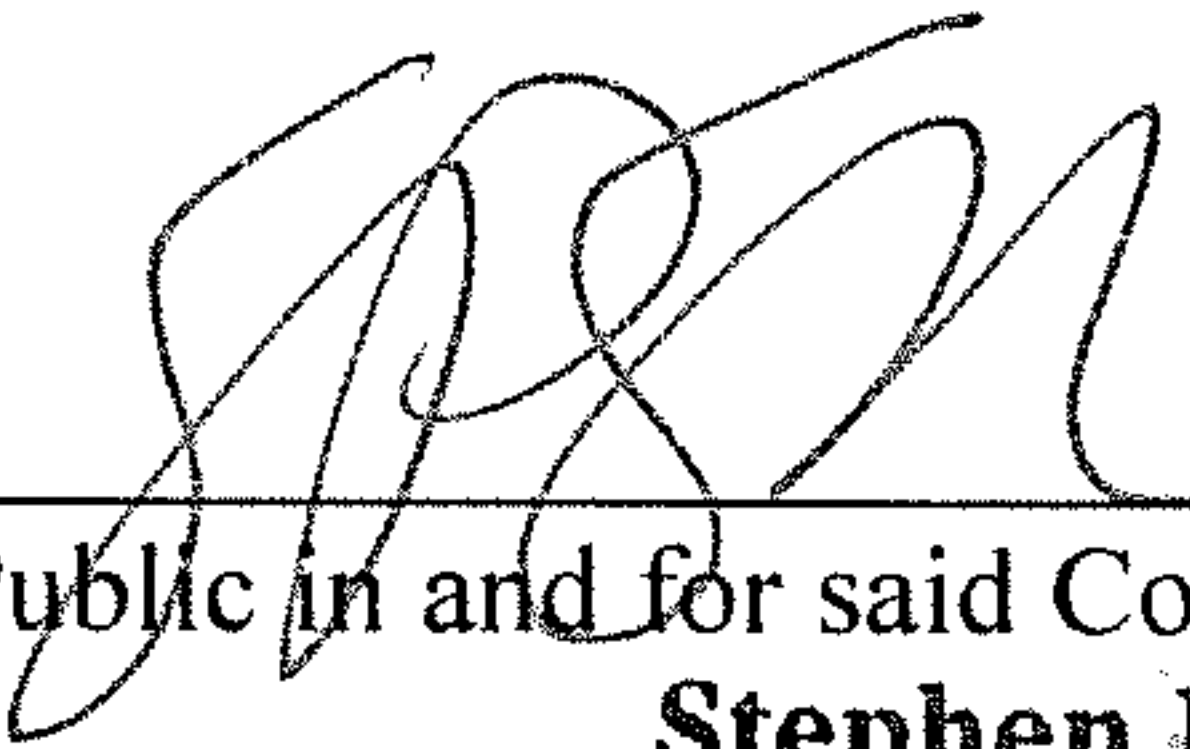
Attn: Elie Khoury

STATE OF Louisiana)
Parish) SS
COUNTY OF Orleans)

On March 10, 2022, before me, the undersigned, a Notary Public in and for said State personally appeared Elie Khoury known to me to be the Sole Member and Manager of Southeast Restaurant Development - WEN, LLC, a Louisiana limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

[SEAL]


Notary Public in and for said County and State

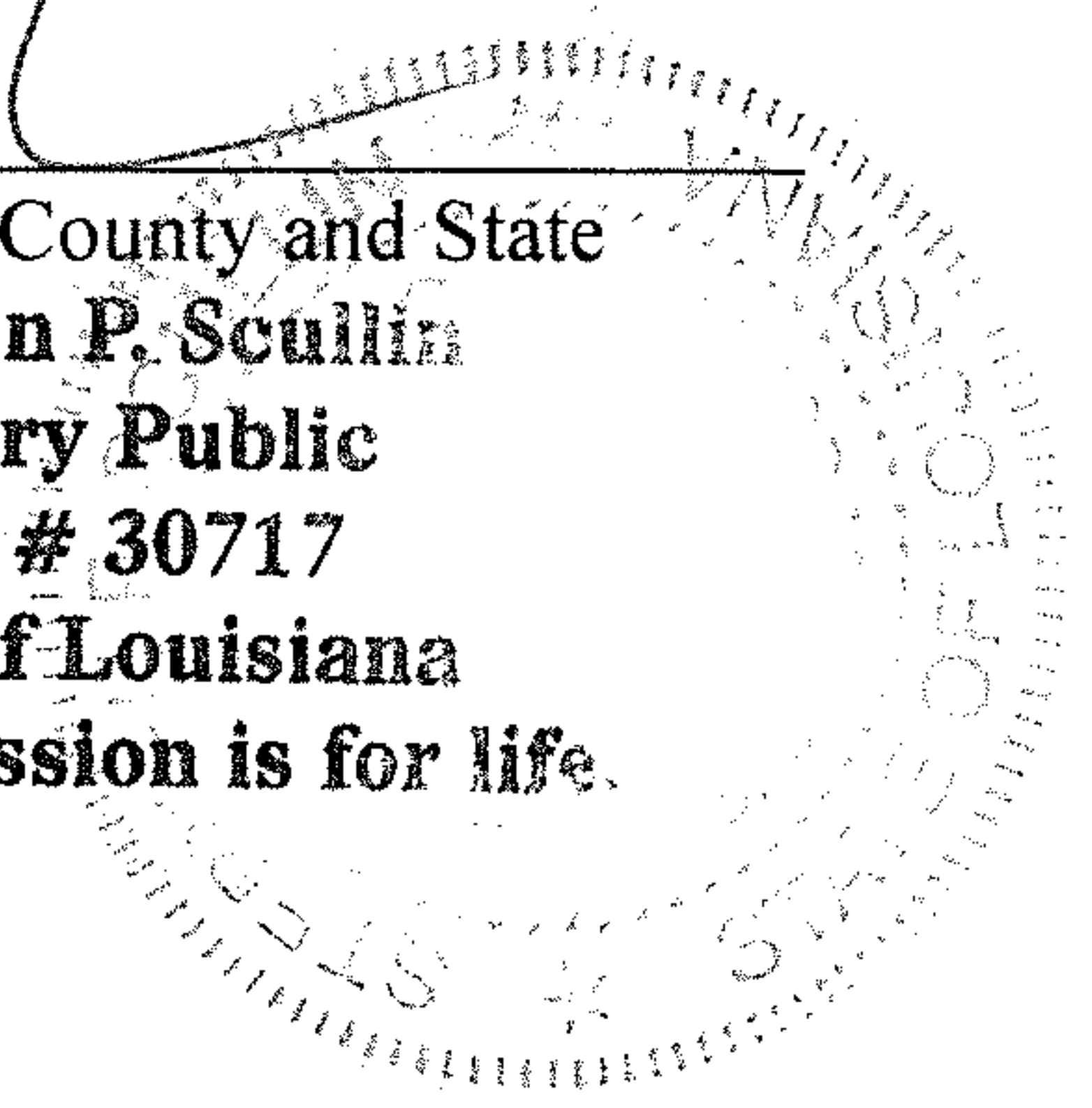
Stephen P. Scullin

Notary Public

Bar # 30717

State of Louisiana

My commission is for life.



LENDER:

FIFTH THIRD BANK, NATIONAL
ASSOCIATION

By: 
Name: James A. Rissler
Title: Vice President

Address for Notices:

Fifth Third Bank, National Association
38 Fountain Square Plaza, MD #10908F
Cincinnati, Ohio 45263

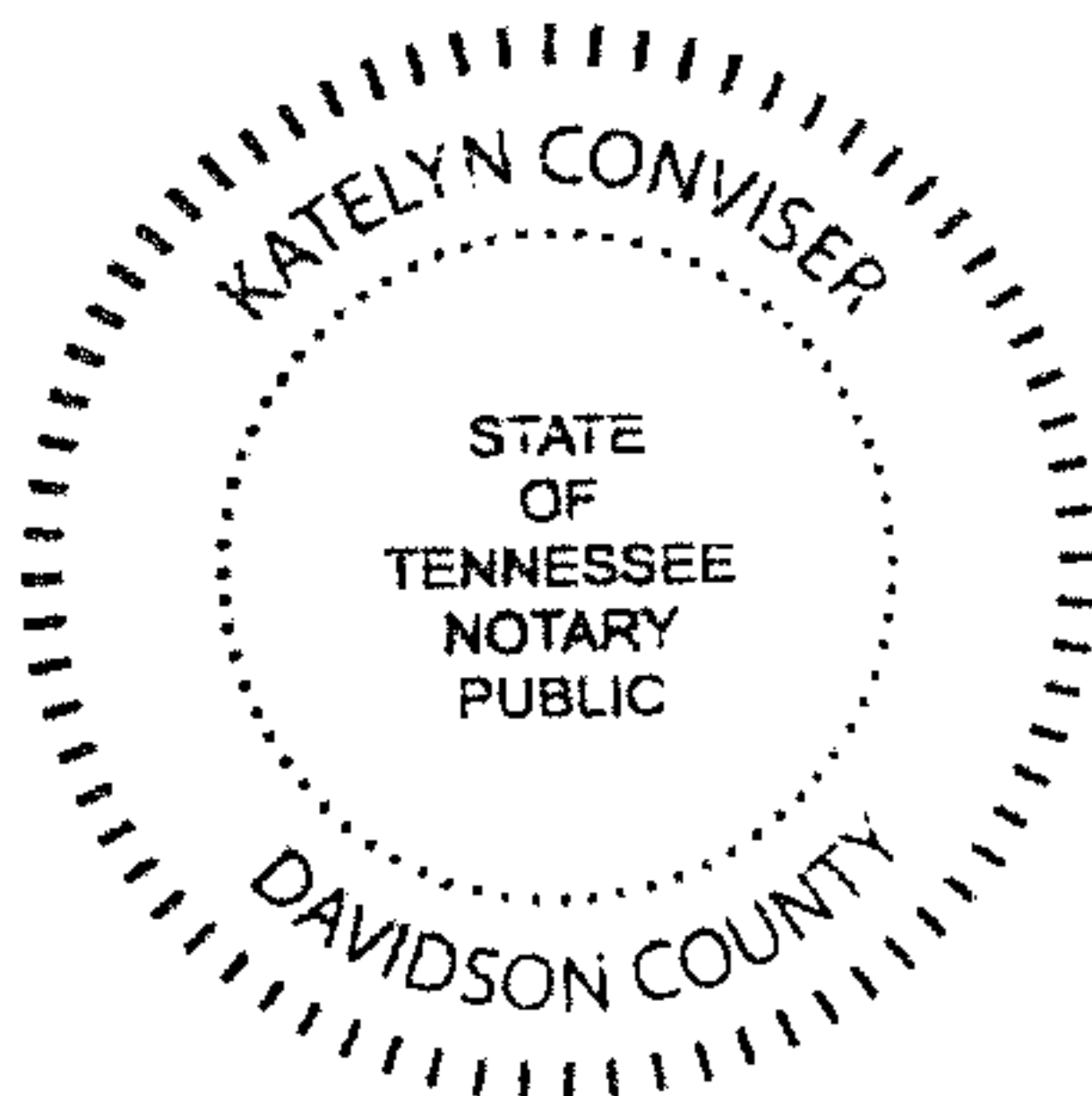
STATE OF Tennessee)
) SS
COUNTY OF Davidson)

On March 10th, 2022, before me, the undersigned, a Notary Public in and for said State personally appeared James A. Rissler known to me to be the Vice President of Fifth Third Bank, National Association and acknowledged to me that such individual executed the within instrument on behalf of said bank.

WITNESS my hand and official seal.


Notary Public in and for said County and State

[SEAL]



My Commission Expires
September 8, 2025

EXHIBIT A

LEGAL DESCRIPTION

PARCEL I:

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53 feet, thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 1009.25 feet to the point of beginning, from the point of beginning thus obtained continue along the last described course for a distance of 250.00 feet to a point on the Northwest right of way of Alabama Highway No. 119, thence turn an angle to the right of $88^{\circ}6'12''$ and run in a Southwesterly direction along the Northwest right of way for a distance of 160.00 feet, thence turn an angle to the right of $91^{\circ}53'48''$ and run in a Northwesterly direction for a distance of 250.00 feet, thence turn an angle to the right of $88^{\circ}6'12''$ and run in a Northeasterly direction for a distance of 160.00 feet to the point of beginning.

PARCEL II:

A SLOPE EASEMENT OVER THE FOLLOWING DESCRIBED PARCEL:

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53 feet; thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 979.25 feet to the point of beginning; thence $88^{\circ}06'12''$ right in a Southwesterly direction for a distance of 220 feet; thence $88^{\circ}06'12''$ left in a Southeasterly direction for a distance of 280 feet to a point on the Northwesterly right of way line of Alabama Hwy. #119; thence $91^{\circ}53'48''$ left in a Northeasterly direction and along said right of way line for a distance of 60 feet; thence $88^{\circ}06'12''$ left in a Northwesterly direction for a distance of 250 feet; thence $88^{\circ}06'12''$ right in a Northeasterly direction for a distance of 160 feet; thence $88^{\circ}06'12''$ left in a Northwesterly direction for a distance of 30 feet to the point of beginning.

PARCEL III:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PARCEL:

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the southeast 1/4 for a distance of 329.53 feet; thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 979.25 feet; thence $88^{\circ}06'12''$ right in a Southwesterly direction for a distance of 220 feet; thence $88^{\circ}06'12''$ left in a Southeasterly direction for a distance of 215 feet to the point of beginning; thence continue along last described course a distance of 65 feet to a point on the Northwesterly right of way line of Alabama Hwy #119; thence $91^{\circ}53'48''$ left in a Northeasterly direction and along said right of way line for a distance of 60 feet; thence

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88°06'12" left in a Northwesterly direction for a distance of 65 feet; thence 91°53'48" left in a Southwesterly direction for a distance of 60 feet to the point of beginning.

Together with rights acquired under document entitled Declaration of Easements, Covenants and Restrictions recorded under Instrument #1994-08120, and refiled under Instrument #1994-10053.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/31/2022 12:36:19 PM
\$52.00 BRITTANI
20220331000131680

Allen S. Bayl