

WAIVER AGREEMENT

THIS WAIVER AGREEMENT ("Agreement") is made and entered into as of the 30th day of January, 2023 (the "Effective Date") among **ENCORE RETAIL BPTC, LLC**, a Delaware limited liability company ("Landlord"), **LA GRAN RIVIERA MAYA CANTINA & GRILL LLC**, an Alabama limited liability company ("Prospective Tenant"), and **PUBLIX ALABAMA, LLC**, an Alabama limited liability company ("Publix"), with reference to the following facts:

- A. Landlord and Publix entered into that certain Lease Agreement dated July 6, 2007 (as amended from time to time, the "Publix Lease"), whereby Landlord demised to Publix, and Publix hired from Landlord, certain Premises located in the shopping center commonly known as Pelham Towne Center, in Pelham, Shelby County, Alabama ("Shopping Center"), all as more specifically set forth in the Publix Lease.
- B. Landlord desires to lease to Prospective Tenant not more than 4,800 square feet of Leasable Floor Area (as defined in the Publix Lease) from the location designated space numbers 309 & 317 in the Shopping Center, as more particularly shown and so labeled on the drawing attached to this Agreement as **Exhibit A-1** ("Prospective Premises"), pursuant to an agreement between Landlord and Prospective Tenant ("Prospective Tenant Lease"). Exhibit A-1 is attached only to provide the location of the Prospective Premises and is not intended to, and does not, in any way amend, modify, delete, or supersede the site plan attached to the Publix Lease.
- C. Landlord and Prospective Tenant have requested Publix's waiver of certain prohibitive terms and conditions of the (i) Publix Lease, which prohibitive terms and conditions are set forth in that certain Memorandum of Lease dated July 6, 2007 and recorded in Official Records Instrument #20071004000464330 public records of Shelby County, Alabama (as amended from time to time, the "Memorandum of Publix Lease"), and (ii) Declaration of Restrictions, Covenants and Conditions and Grant of Easements dated June 4, 2008 and recorded in Official Records Instrument #20080616000243120, public records of Shelby County, Alabama (as amended from time to time, the "Declaration"), prior to entering into the Prospective Tenant Lease.
- D. Publix has agreed to waive certain provisions of the Publix Lease and the Declaration, subject to the terms and conditions set forth herein.

IN CONSIDERATION OF the sum of ten dollars (\$10.00), the foregoing facts, the mutual covenants, conditions and agreements set forth below, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Landlord, Prospective Tenant, and Publix hereby agree as follows:

1. Recitals. The above recitals to this Agreement are true and correct and, together with all exhibits attached to this Agreement, are hereby incorporated by this reference.
2. Representations. Landlord and Prospective Tenant represent and warrant to Publix as follows:
 - (a) Prospective Tenant intends to use the Prospective Premises only as a full-service Mexican restaurant serving Mexican cuisine and alcoholic beverages for on-site consumption only (the "Prospective Tenant Use"), and the Prospective Tenant Use shall not violate the terms and conditions set forth in the Memorandum of Publix Lease and the Declaration, including without limitation any exclusive or prohibited uses set forth therein, other than as expressly waived by Publix pursuant to this Agreement.
 - (b) The Prospective Tenant Lease shall forbid Prospective Tenant from violating the terms and conditions set forth in the Memorandum of Publix Lease and the Declaration, including Publix's exclusive right to engage in the retail sale of groceries and other products typically offered for sale in a grocery supermarket, except that Prospective Tenant may use the Prospective Premises for the Prospective Tenant Use.
 - (c) Landlord shall lease to the Prospective Tenant only the Prospective Premises, and the Prospective Premises shall not be expanded or relocated to any other location in the Shopping Center without Publix's prior written consent, which may be withheld in Publix's sole discretion.
 - (d) The Prospective Tenant Lease shall be for an initial term of ten (10) years, with only two (2) options to renew for a period of five (5) years each.
3. Publix Waiver. Publix hereby waives Paragraph 16.03(b) of the Publix Lease (which is reprinted in Paragraph 10 of the Memorandum of Publix Lease) and Section 9.1.1 of the Declaration, both solely to the 4,000 square foot limitation included therein, and both only to the extent necessary to allow the Prospective Tenant to use the Prospective Premises for the Prospective Tenant Use (for purposes of clarity, the Prospective Tenant shall be counted as one of the restaurants permitted within the Shopping Center and Outparcels pursuant to the Publix Lease and Declaration); provided, however, this waiver shall automatically expire upon the earlier of the following: (i) failure of Landlord and Prospective Tenant to enter into the Prospective Tenant Lease within three (3) months of the Effective Date of this Agreement; (ii) breach of any representations, terms, or conditions set forth in Paragraph 2 above; (iii) Prospective Tenant's breach of the terms and conditions set forth in the Memorandum of Publix Lease and the Declaration, including without limitation any exclusive or prohibited uses set forth therein, other than as expressly waived by Publix pursuant to this Agreement; (iv)

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any other breach of this Agreement by Landlord or Prospective Tenant, including the failure to satisfy Landlord's obligations set forth in Paragraph 8 below within fifteen (15) days of demand therefor; (v) expiration or earlier termination of the Prospective Tenant Lease; or (vi) assignment, sublease, or conveyance of the Prospective Tenant Lease to an entity other than the Prospective Tenant without Publix's prior written consent, which may be withheld in Publix's sole discretion. Provided, however, the Prospective Tenant Lease may be assigned or subleased without Publix's prior written consent, if (a) the assignee or sublessee uses the Prospective Premises for the same Prospective Tenant Use; and (b) Landlord provides written notice of such assignment or sublease to Publix within ten (10) days of such assignment or sublease.

4. Notices. Whenever notice is required or permitted in 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 Paragraph 4, delivery of a notice to an address from which the recipient has moved but failed to notify the other party 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 in this Agreement shall be delivered to the party entitled thereto at the following addresses:

Landlord:
Encore Retail BPTC, LLC
6900 Dallas Parkway, 3rd Floor
Plano, Texas 75024

Prospective Tenant:
La Gran Riviera Maya Cantina & Grill LLC
P.O. Box 2835
Cullman, Alabama 35056

Publix:
Publix Alabama, LLC
Corporate Office
3300 Publix Corporate Parkway
Lakeland, Florida 33811-3002
PO Box 407
Lakeland, Florida 33802-0407

With a copy to:
Publix Alabama, LLC
Managing Real Estate Attorney
3300 Publix Corporate Parkway
Lakeland, Florida 33811-3002

The foregoing addresses may be modified by delivery of written notice of such modification to the party entitled thereto, which written notice shall be delivered and deemed effective as set forth herein.

5. Confidentiality. Landlord and Prospective Tenant acknowledge and agree that (i) Publix will be damaged by the disclosure of the terms and conditions of this Agreement and (ii) the terms and conditions of this Agreement have not been publicly disclosed and are not a matter of common knowledge; therefore, as further consideration for Publix entering into this Agreement, Landlord and Prospective Tenant agree to keep all terms and conditions contained herein confidential and not to disclose such terms and conditions to any third party, directly, indirectly, or otherwise, other than to an attorney or accountant as may be reasonably necessary for said person to review this Agreement on Landlord's or Prospective Tenant's behalf or as required by law. Landlord and Prospective Tenant further agree that if they should breach the terms of this paragraph, Publix will suffer irreparable damage; accordingly, Landlord and Prospective Tenant agree that in addition to Publix's remedies available in the Publix Lease (as to Landlord), herein, or at law and in equity (including but not limited to an action at law for money damages), Publix shall be entitled upon application to a court of competent jurisdiction to an injunction to specifically enforce the terms of this paragraph. Notwithstanding the foregoing, Landlord may disclose or publish the contents of this Agreement to a bona fide prospective purchaser or mortgagee of the Shopping Center, provided such prospective purchaser or mortgagee first executes a confidentiality agreement in form and content reasonably acceptable to Publix.
6. Effect on Publix Lease and Declaration. This Agreement is not intended to, and does not, in any way amend or modify the Publix Lease or the Declaration, but only waives Publix's rights with respect to the Prospective Tenant Use as specifically provided herein.
7. Recording Prohibited; Disclaimer Regarding Other Necessary Consents. Neither this Agreement nor a memorandum or short form of this Agreement shall be recorded. Furthermore, each of Landlord and

Prospective Tenant acknowledge and agree that Publix makes no representation as to whether any other consents/waivers from any other parties pursuant to the Declaration or via other instruments are required in order for Landlord and Prospective Tenant to enter into the Prospective Tenant Lease and conduct the Prospective Tenant Use, and nothing in this Agreement shall be construed as a representation by Publix that Publix has the sole authority to permit the Prospective Tenant Use and/or waive any term or provision of the Declaration (it being understood that it shall be Landlord's and Prospective Tenant's responsibility to confirm and obtain any and all necessary consents/waivers from all necessary parties pursuant to the Declaration, in form and content required by the Declaration).

8. Publix's Administrative and Legal Fees. Landlord shall reimburse Publix upon written demand for administrative and legal fees and expenses, including attorneys' fees, incurred by Publix in conjunction with the negotiation, preparation, and execution of this Agreement.
9. Counsel. Landlord and Prospective Tenant acknowledge and agree that legal counsel employed by Publix with regard to the negotiation, preparation, and execution of this Agreement represents Publix and does not represent Landlord or Prospective Tenant.
10. Execution. 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 until fully executed by all parties.
11. Successors and Assigns. This Agreement and the terms, covenants and conditions contained herein shall inure to the benefit of, and will be binding upon, the heirs, successors, executors, administrators and assigns of Landlord, and, with respect to Prospective Tenant, the permitted successors and assigns of Prospective Tenant per Section 3 of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective and duly authorized officers as of the day and year first written above.

LANDLORD:

ENCORE RETAIL BPTC, LLC, a
Delaware limited liability company

Nelson Laro
(Print Name) Nelson Laro

Christian Lewis
(Print Name) Christian Lewis
Two Witnesses

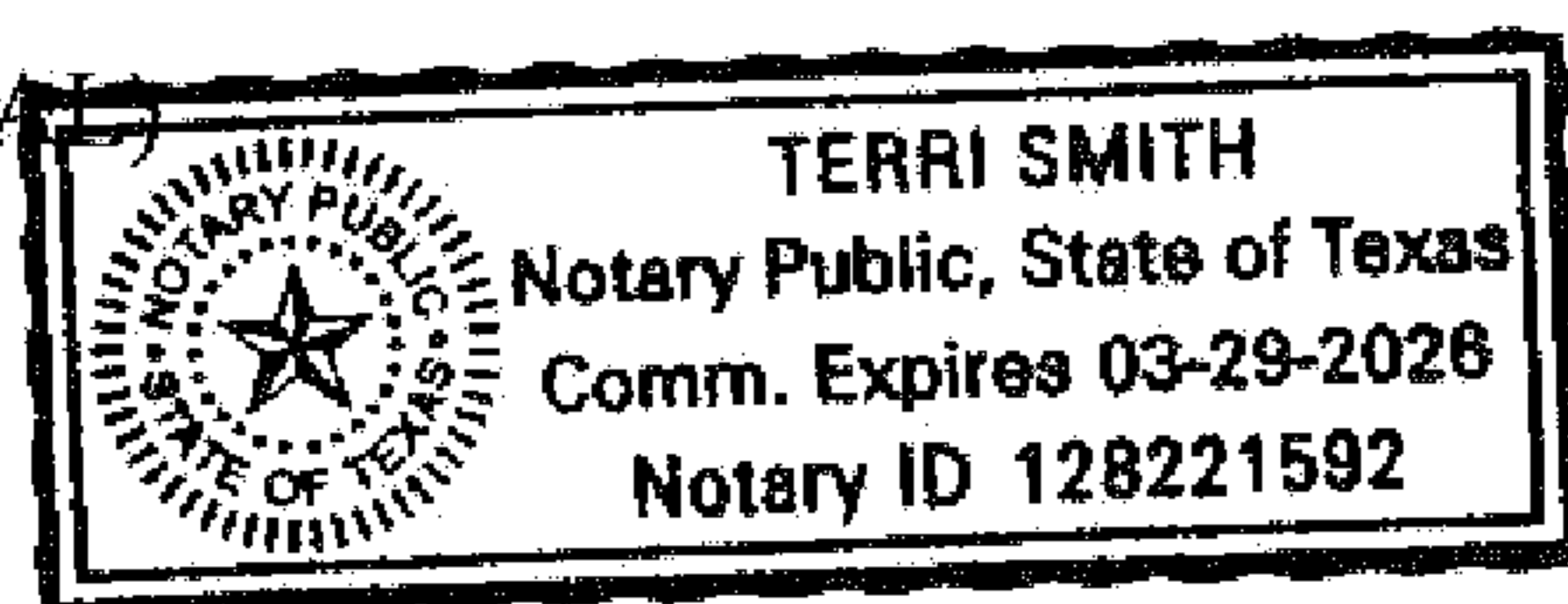
By: Yatin Gandhi
Name: Yatin Gandhi
Title: Authorized Signatory

STATE OF TEXAS

COUNTY OF COLLIN

The foregoing instrument was signed, delivered, and acknowledged before me by means of (check one)
☒ physical presence or ☐ online notarization this 16th day of January, 2023, by Yatin Gandhi, Authorized
Signatory of ENCORE RETAIL BPTC, LLC, a Delaware limited liability company, on behalf of the company.
Such person (check one) ☒ is personally known to me or ☐ has produced a _____ as
identification.

(NOTARY SEAL)



Terri Smith
Printed/typed name: Terri Smith
Notary Public-State of: Texas
My commission expires: 3/29/26
Commission number: 128221592

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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PROSPECTIVE TENANT:

LA GRAN RIVIERA MAYA CANTINA & GRILL
LLC, an Alabama limited liability company

Dan Anderson
(Print Name) DAN ANDERSON

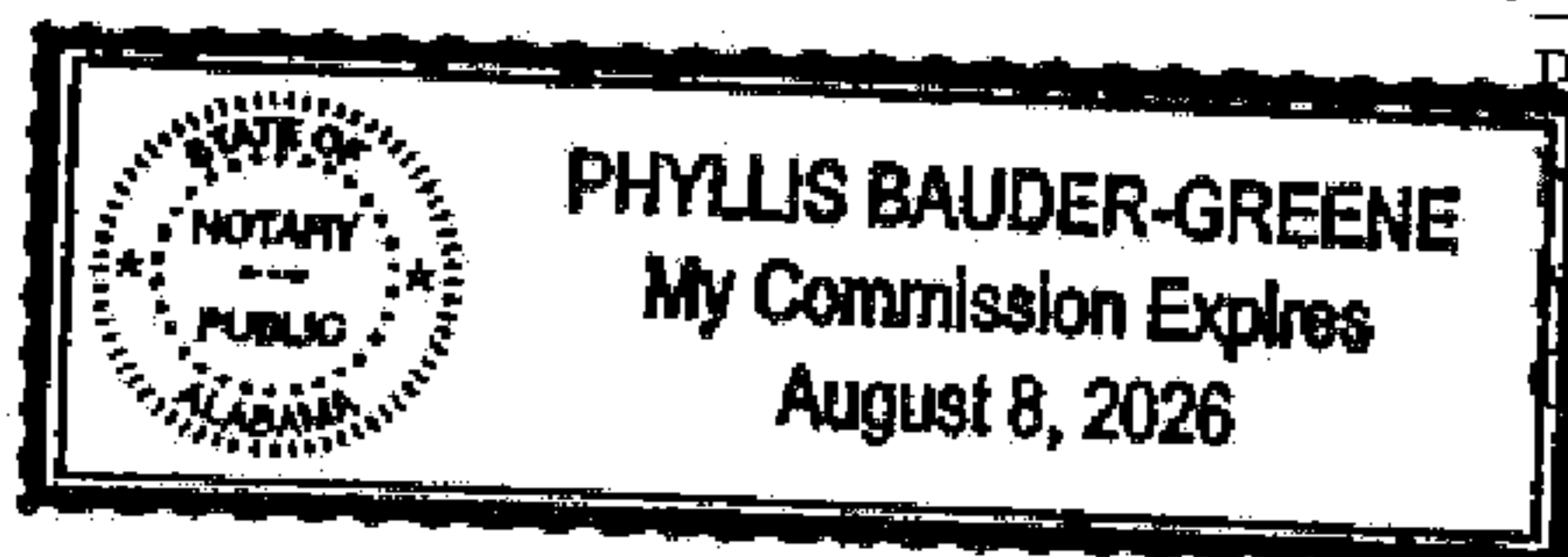
Ramona Underwood
(Print Name) Ramona Underwood
Two Witnesses

By: [Signature]
Name: Jorge Ivan Sanchez Peralta
Title: Owner

STATE OF ALABAMA
COUNTY OF Jefferson

The foregoing instrument was signed, delivered, and acknowledged before me by means of (check one)
☒ physical presence or ☐ online notarization this 13th day of JANUARY, 2023, by
JORGE IVAN SANCHEZ PERALTA, of LA GRAN RIVIERA MAYA CANTINA & GRILL
LLC, an Alabama limited liability company, on behalf of the company. Such person (check one) ☐ is personally
known to me or ☒ has produced a DRIVER'S LICENSE as identification.

(NOTARY SEAL)



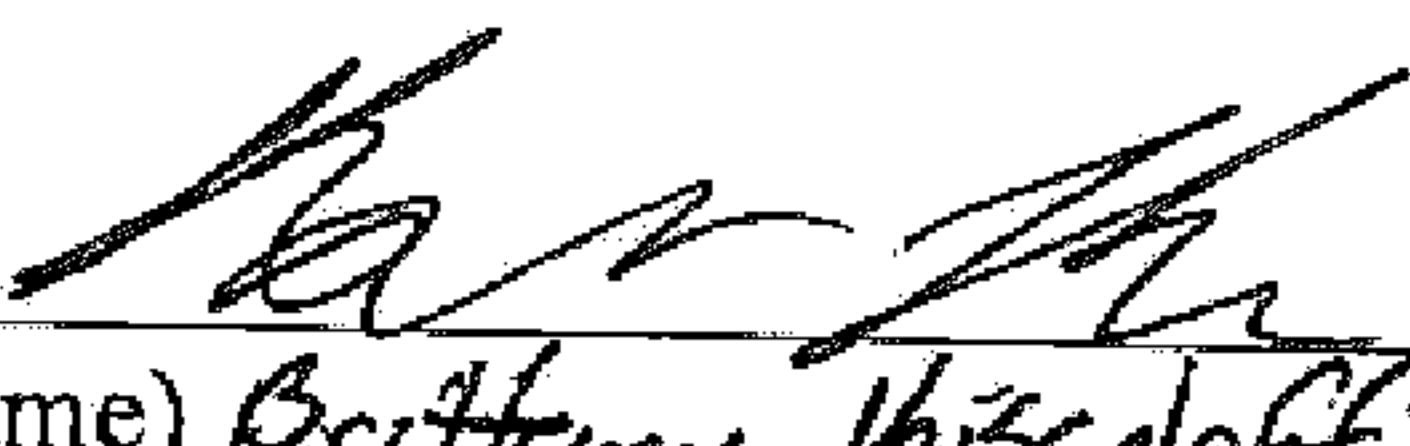
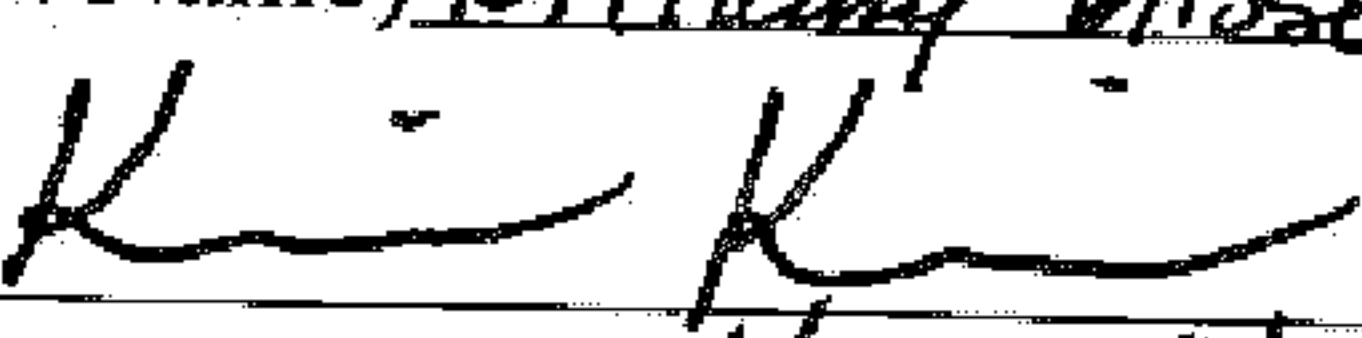
[Signature]
Printed/typed name: _____
Notary Public-State of: Alabama
My commission expires: _____
Commission number: _____

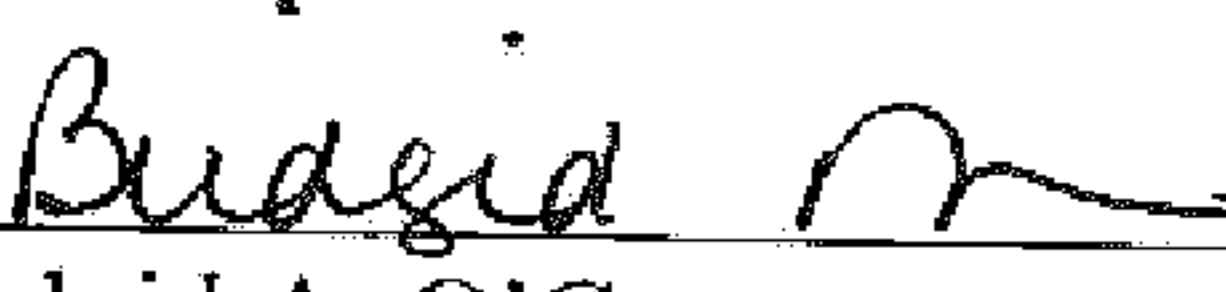
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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PUBLIX:

PUBLIX ALABAMA, LLC, an
Alabama limited liability company


(Print Name) Brittany Weisseloff

(Print Name) Kim Richard
Two Witnesses


By: 
Bridgid A. O'Connor,
Vice President

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was signed, delivered, and acknowledged before me by means of ☒ physical presence or ☐ online notarization this 30 day of January, 2023, by Bridgid A. O'Connor, Vice President of PUBLIX ALABAMA, LLC, an Alabama limited liability company, on behalf of the company. Such person ☒ is personally known to me or ☐ has produced a _____ as identification.

(NOTARY SEAL)

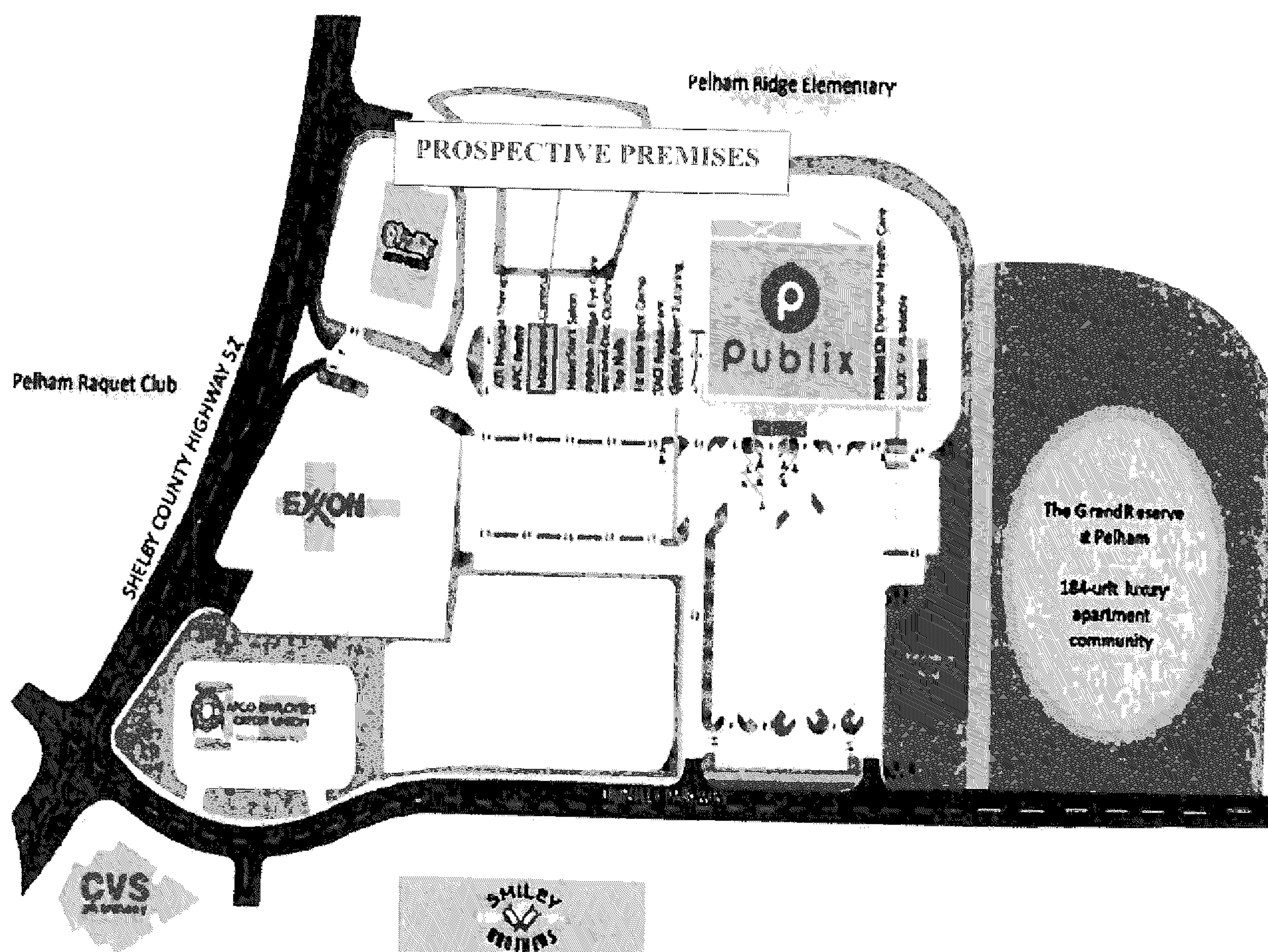

Printed/typed name: Jessica Hernandez
Notary Public-State of Florida
My commission expires: _____
Commission number: _____



JESSICA HERNANDEZ
Commission # HH 253135
Expires April 14, 2026

EXHIBIT A-1

DRAWING SHOWING LOCATION OF PROSPECTIVE PREMISES



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/20/2023 02:30:46 PM
\$41.00 JOANN
20230320000076270

Allie S. Bayl