

Prepared by and after recording, return to:

Hartman Simons & Wood LLP
400 Interstate North Parkway, SE, Suite 600
Atlanta, Georgia 30339
Attn: Abbye Dalton, Esq.

STATE OF ALABAMA

COUNTY OF SHELBY

**SUBORDINATION, ATTORNMENT
AND NON-DISTURBANCE AGREEMENT**

THIS AGREEMENT is entered into as of the date set forth below by and between the Lender and Tenant defined below.

The following capitalized terms are definitions for the purpose of this agreement:

Lender: **PROTECTIVE LIFE INSURANCE COMPANY**, its subsidiaries and their successors and/or assigns

Tenant: **FIRST WATCH RESTAURANTS, INC.**, a Florida corporation

Landlord: **API HIGHWAY 31 RETAIL, LLC**, a Delaware limited liability company, as successor-in-interest to API Highway 31, LLC pursuant to that certain Assignment of Leases dated on or about the date hereof

Lease: Agreement of Lease dated October 21, 2024, as amended by that certain First Amendment to Lease Agreement dated November 22, 2024, demising the premises described therein (as amended, collectively, the "Leased Premises") and located on the Property.

Property: The real property described in **Exhibit A** attached hereto and made a part hereof, together with all buildings and improvements situated thereon.

Indenture: That certain Mortgage entered into by and between Lender and Landlord, as borrower, as same may be amended from time to time, which encumbers (or will encumber) the Property to secure a mortgage loan made by Lender to Landlord.

All other capitalized terms shall have the meaning ascribed to such terms in the Lease, unless otherwise defined in this Agreement.

WITNESSETH:

WHEREAS, Lender is the owner and holder of the Indenture; and

WHEREAS, Tenant is the holder of the lessee's interest in the Lease covering the Leased Premises; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Indenture.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. Subordination. The Lease and the rights of Tenant thereunder are now and at all times hereafter shall be subject and subordinate to the Indenture and to all renewals, modifications or extensions thereof, but such renewals, modifications and extensions shall nevertheless be subject and entitled to the benefits of the terms of this Agreement.

2. Non-disturbance. So long as 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 the terms, covenants or conditions of the Lease on Tenant's part to be performed; (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any renewals, modifications, or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender; (b) Tenant's occupancy of the Leased Premises shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof; and (c) Lender will not join Tenant as a party defendant in any action or proceeding brought by Lender for the purpose of enforcing any of its rights in the event of any default under the Indenture; provided however, Lender may join Tenant as a party in any such action or proceeding IF such joinder is necessary under any statute or law for the purpose of effecting the remedies available to the Lender under the Indenture, BUT ONLY for such purpose and NOT for the purpose of terminating the Lease.

3. Landlord Defaults/Cure. Notwithstanding anything in the Lease to the contrary, Tenant shall use commercially reasonable efforts to notify Lender in writing of the occurrence of any default by Landlord but the failure of Tenant to provide such notice shall not impact Tenant's rights and remedies under the Lease. Tenant shall permit Lender the same cure rights as Landlord under the Lease.

4. Attornment. If Lender shall become owner of the Leased Premises by reason of foreclosure or other proceedings brought by it, or by any other manner, or if Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option granted in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, PROVIDED, HOWEVER, that Tenant shall be under no obligation to pay Rent to Lender until Tenant receives

written notice from Lender that it has become such owner or has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

5. Limitation of Liability. If Lender shall become owner of the Leased Premises or if Lender shall succeed to Landlord's interest in the Lease, then during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein; PROVIDED, HOWEVER, that notwithstanding any provision in the Lease to the contrary, Lender shall not be:

(a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets or defenses which Tenant may have against any prior landlord arising under the Lease (including the Landlord), except (i) acts, omissions, offsets and defenses of which Lender has previously been given notice in accordance with the terms of this Agreement, and (ii) Tenant shall be permitted to offset any unpaid portion of the Allowance as permitted by the Lease regardless of whether Lender received prior notice of Landlord's non-payment of any portion of such Allowance; and (iii) while Lender shall not be obligated to perform any portion of Landlord's Work if Lender succeeds to the interest of Landlord prior to Landlord's completion of all of Landlord's Work, Tenant shall be entitled to exercise the remedies set forth in the Lease for such failure to complete Landlord's Work in the event that Lender elects not to complete such work;

(b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord) unless such sums are actually received by such Lender; or

(c) bound by any amendment or modification of the Lease made without its consent that (i) results in a reduction or rent of other sums due and payable pursuant to the Lease (ii) changes the term of the Lease, (iii) terminates the Lease, (iv) provides for payment of rent more than one month in advance, or (v) materially increases Landlord's obligations under the Lease.

6. Right of First Refusal. So long as the Indenture (including all extensions, modifications and renewals thereof) encumbers the Property, Tenant agrees that any right of first refusal to purchase contained in the Lease and all rights of Tenant thereunder (a) are now and at all times hereafter shall be subject and subordinate to the Indenture, and (b) that foreclosure of the Indenture by Lender or a taking of a deed in lieu of foreclosure by Lender (collectively "foreclosure") will not give rise to any rights of Tenant under any such right of first refusal and Tenant will not attempt to assert any such rights in the event of foreclosure or assert any such rights against a purchaser at foreclosure; provided, however, foreclosure will not terminate any such right of first refusal which right shall continue to be applicable after foreclosure or a purchase at foreclosure, as applicable.

7. Unlawful Use and Prohibited Activities. Tenant shall not use or occupy or permit the use or occupancy of the Leased Premises in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law.

8. Definitions. (a) The terms "holder of a mortgage" and "Lender" or any similar term herein or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone who shall have succeeded to ownership of the Leased Premises or to Landlord's interests by, through or under foreclosure of the Indenture, or deed in lieu of such foreclosure or otherwise.

(b) The term "Landlord" shall be deemed to include Landlord, the holder of the lessor's interest in the Lease and the fee owner of the Leased Premises and the successors and assigns of any of the foregoing.

9. Rent Assignment. The Landlord has assigned to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Indenture, the Lender may at its option under the Rent Assignment require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender, Tenant agrees to pay any payments due under the terms of the Lease to the Lender. The Rent Assignment does not diminish any obligations of the Landlord under the Lease or impose any such obligations on the Lender. Tenant shall be under no obligation to ascertain whether a default by Landlord has occurred under the Indenture. Landlord hereby agrees that Tenant shall have the right to rely on any notice from Lender directing such payments to Lender and Landlord shall not make any claim of default under the Lease resulting from Tenant's delivery of Rent to Lender as a result of such notice. Landlord waives any right, claim or demand it may now or hereafter have against Tenant by reason of such direct payment to Lender and agrees that such direct payment to Lender shall discharge all obligations of Tenant to make such payment to Landlord.

10. Modifications; Successors and Assigns. This Agreement may NOT be modified except by a written agreement signed by the 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.

11. Notices. Any notices, communications and waivers under this Agreement shall be in writing and shall be: (a) delivered in person; (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested; or (c) by overnight express carrier, addressed in each case as follows:

To Lender: Protective Life Insurance Company
2801 Highway 280 South
Birmingham, AL 35223
Attn: Invest. Dept. [3-3ML]

To Landlord: API Highway 31 Retail, LLC
c/o Alumni Properties of Alabama, LLC
2000 Lay Dam Road

SNDA/Alabaster, AL

Clanton, Alabama 35045
Attn: Keith Owens

To Tenant:

First Watch Restaurants, Inc.
8725 Pendery Place, Suite 201
Bradenton, Florida 34201
Attn: Lease Administration

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received: (i) if personally delivered, then on the date of delivery; (ii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received; or (iii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent.

12. Binding Effect. The rights and obligations of Tenant and Lender shall bind and inure to the benefit of their respective successors and assigns. This Agreement shall be governed by the laws of the State of Alabama.

13. Counterparts. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth in the acknowledgements below.

LENDER:
PROTECTIVE LIFE INSURANCE COMPANY

By:

Name: Colin House

Title: Sr Director Legal-Investments

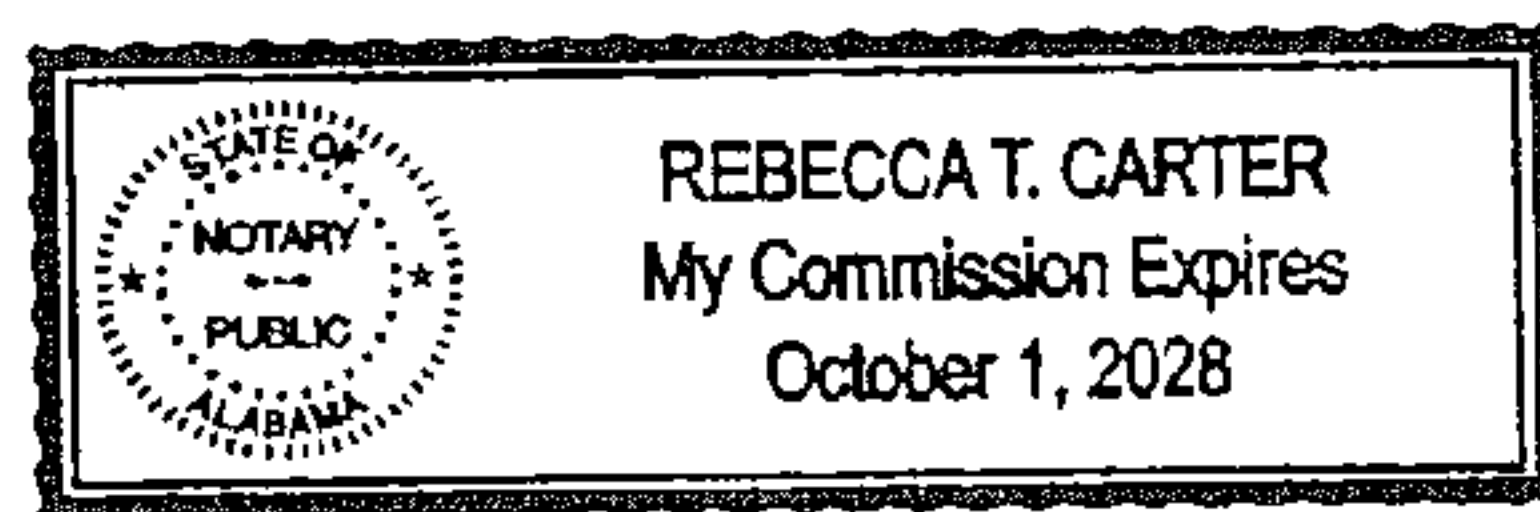
STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Rebecca T. Carter, a Notary Public in and for said County in said State, hereby certify that Colin House, whose name as Sr Director Legal-Investments of Protective Life Insurance Company, a Nebraska corporation, 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 said conveyance, ~~she~~/he, as such officer, and with full authority, executed the same voluntarily acting in his/~~her~~ capacity, as aforesaid.

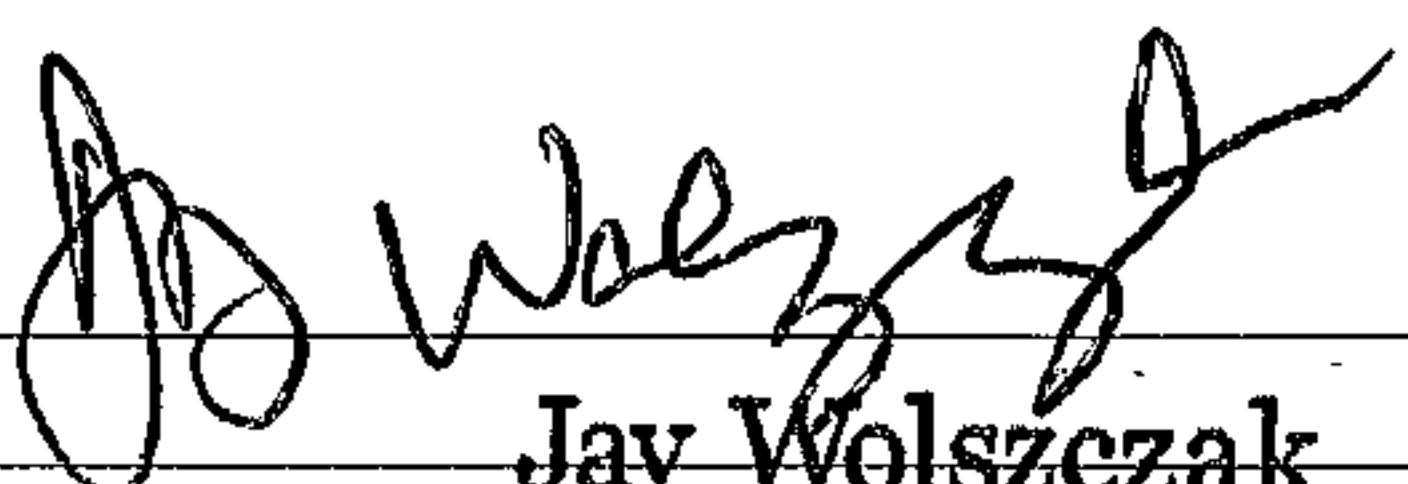
Given under my hand this the 24th day of February, 2025.

Rebecca T. Carter
Notary Public



TENANT:

FIRST WATCH RESTAURANTS, INC.,
a Florida corporation

By: 
Name: Jay Wolszczak
Title: Chief Legal Officer,
General Counsel & Secretary

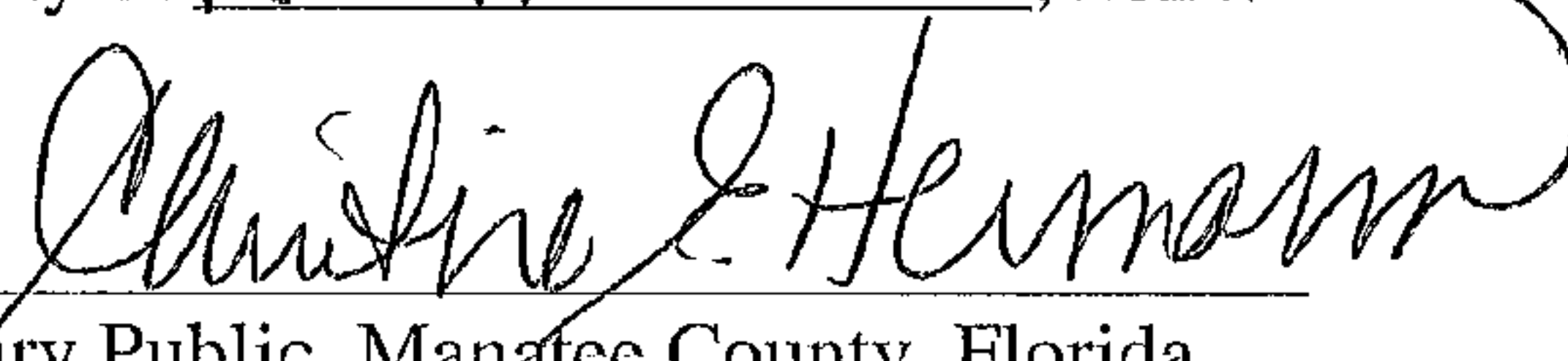
[CORPORATE SEAL]

Tenant's Address: First Watch Restaurants, Inc.
8725 Pendery Place, Suite 201
Bradenton, Florida 34201

STATE OF FLORIDA
COUNTY OF MANATEE

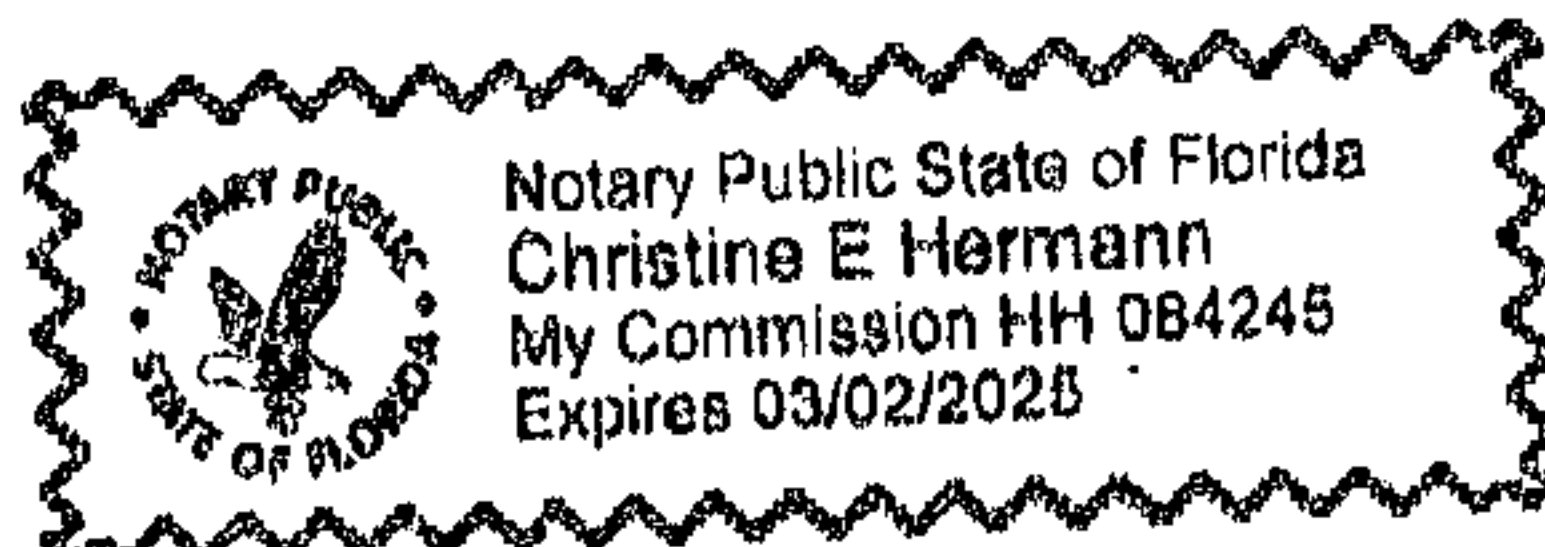
I, Christine E. Hermann, a Notary Public, in and for said County in said State,
hereby certify that Jay Wolszczak, the CLO, GC & Secy of FIRST
WATCH RESTAURANTS, INC., a Florida corporation, has signed the foregoing instrument and
who is known to me, acknowledged before me on this day that, being informed of the contents of
the instrument, he/she, as such officer and with full authority, executed the same voluntarily for
and as the act of said corporation.

Given under my hand and seal this 12th day of November, 2024.


Notary Public, Manatee County, Florida

[NOTARIAL SEAL]

My commission expires: _____



SNDA/Alabaster, AL

LANDLORD:

API HIGHWAY 31 RETAIL, LLC,
a Delaware limited liability company

By: 1407 [SEAL]
Keith Owens, Manager/CEO

Landlord's Address:

API Highway 31 Retail, LLC
c/o Alumni Properties of Alabama, LLC
2000 Lay Dam Road
Clanton, Alabama 35045

STATE OF ALABAMA
COUNTY OF ~~SHELBY~~ **JEFFERSON**

I, Keshia Hartman, a Notary Public, in and for said County in said State, hereby certify that Keith Owens, the Manager/CEO of API HIGHWAY 31 RETAIL, LLC, a Delaware limited liability company, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 21st day of February, 2025.

[NOTARIAL SEAL]

Keshia Hartman
Notary Public, Jefferson County, Alabama

My commission expires: 02/28/26

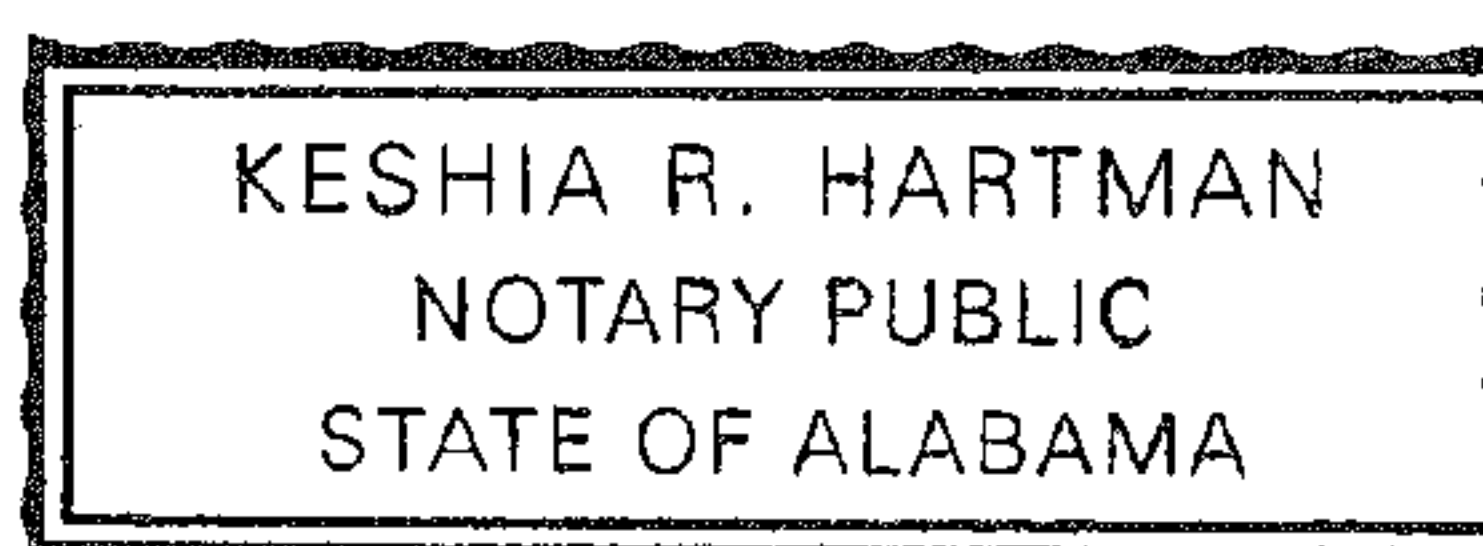


EXHIBIT "A"

Legal Description of Property

SHOPPES at District 31 TRACT-API Highway 31

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1 , TOWNSHIP 21 SOUTH, RANGE 3 WEST SHELBY COUNTY, ALABAMA

AND DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 1' PIPE AT THE NORTHEAST CORNER OF SAID QUARTER SECTION;THENCE RUN SOUTH 00 DEGREES 32 MINUTES 37 SECONDS EAST FOR 409.74 FEET TO A FOUND IRON (1/2" PIPE);THENCE RUN SOUTH 89 DEGREES 56 MINUTES 25 SECONDS WEST FOR 421.82 FEET TO A FOUND IRON (1" CRIMP) ;THENCE RUN SOUTH 00 DEGREES 13 MINUTES 41 SECONDS EAST FOR 205.73 FEET TO A FOUND IRON (1/2" PIN) ;THENCE RUN SOUTH 88 DEGREES 27 MINUTES 27 SECONDS EAST FOR 221.11 FEET;THENCE RUN SOUTH 00 DEGREES 20 MINUTES 53 SECONDS EAST FOR 390.10 FEET THENCE RUN NORTH 88 DEGREES 05 MINUTES 45 SECONDS WEST FOR 254.66 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF US HIGHWAY 31;THENCE RUN NORTH 45 DEGREES 20 MINUTES 59 SECONDS WEST ALONG SAID RIGHT OF WAY LINE FOR 241.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 45 DEGREES 20 MINUTES 59 SECONDS WEST ALONG SAID RIGHT OF WAY LINE FOR 370.33 FEET TO A FOUND IRON (1/2" REBAR) ;THENCE RUN NORTH 44 DEGREES 22 MINUTES 35 SECONDS WEST ALONG SAID RIGHT OF WAY LINE FOR 390.77 FEET TO A FOUND IRON 3/8" REBAR;THENCE RUN NORTH 01 DEGREES 14 MINUTES 57 SECONDS EAST FOR 108.40 FEET THENCE RUN SOUTH 88 DEGREES 45 MINUTES 03 SECONDS EAST FOR 270.17 FEET TO A FOUND IRON (1/2:" PIPE) ;THENCE RUN SOUTH 00 DEGREES 15 MINUTES 50 SECONDS EAST FOR 151.41 FEET TO A FOUND IRON (CAPPED SCS) ;THENCE RUN NORTH 89 DEGREES 52 MINUTES 13 SECONDS EAST FOR 159.68 FEET; THENCE RUN SOUTH 45 DEGREES 08 MINUTES 02 SECONDS EAST FOR 420.02 FEET;THENCE RUN SOUTH 44 DEGREES 51 MINUTES 55 SECONDS WEST FOR 274.70 FEET TO THE POINT OF BEGINNING.SAID TRACT OF LAND CONTAINING 194,010.56 S.F. OR 4.45 ACRES MORE OR LESS.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/24/2025 01:10:20 PM
\$48.00 JOANN
20250324000086920

SNDA/A *Allen S. Bayl*