



20160602000188790 1/5 \$656.00
Shelby Cnty Judge of Probate, AL
06/02/2016 10:01:40 AM FILED/CERT

SECOND MORTGAGE

LWELLEN REALTY, LLC, Borrower

FOR THE BENEFIT OF

ALLY BANK, a Utah corporation, Lender

Address: 6985 Union Park Center, Suite 435
Midvale, Utah 84047

DATED: AS OF MAY 26, 2016

Property Addresses: 5499 Highway 280, Birmingham, Alabama
Tax ID No. 09-3-05-0-001-035.004 (Parcel 1)
Tax ID No. 09-3-05-0-001-025.000 (Parcel 2)

Prepared by and
Return to: McCULLOUGH PAYNE & HAAN, LLC
271 17th Street, NW
Suite 2200
Atlanta, Georgia 30363-1032

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING
STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ALA. CODE SECTION
7-9A-502(c), AS AMENDED.**

MORTGAGE

A. This Second Mortgage is made by and between:

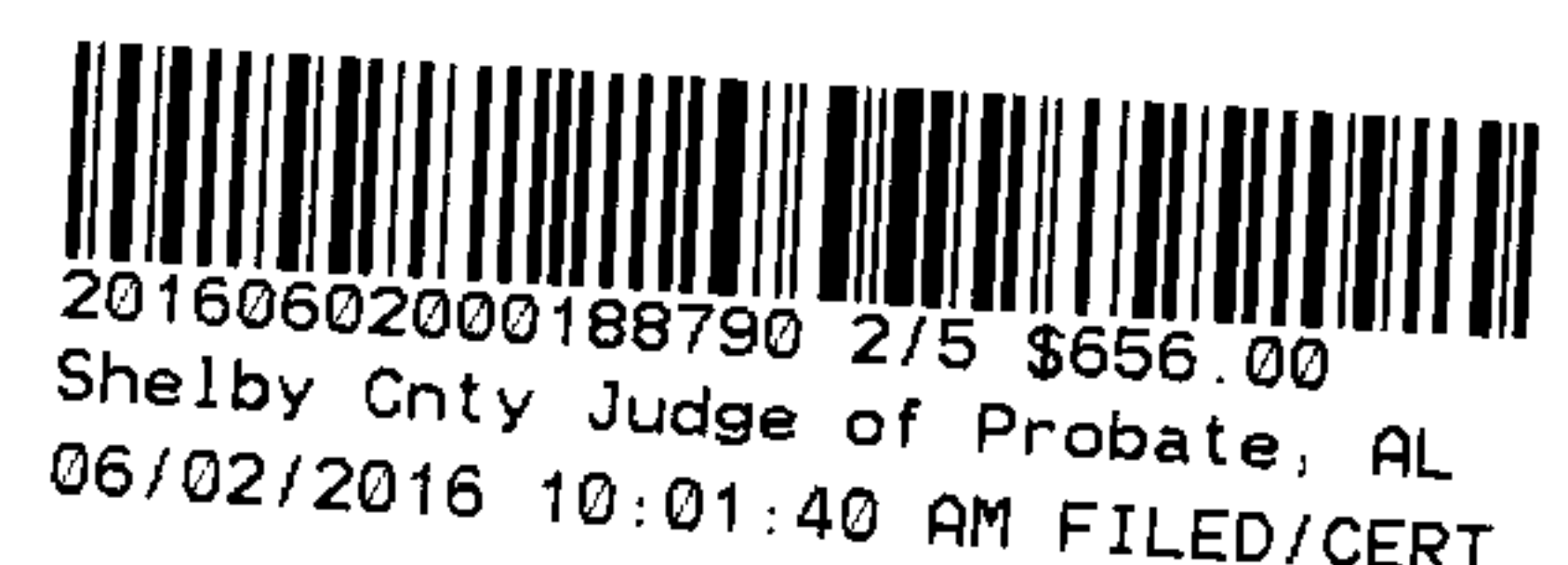
1. **LWELLEN REALTY, LLC**, an Alabama limited liability company ("Borrower").
2. **ALLY BANK** (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), a Utah corporation, located at 6985 Union Park Center, Suite 435, Midvale, Utah 84047 ("Bank").

B. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower mortgages, hypothecates, pledges, grants, conveys, bargains, sells, transfers, and warrants to Bank with power of sale:

1. All of Borrower's fee simple right, title, and interest in the property described in attached Exhibit A, including, without limitation, any and all appurtenances thereto, and any and all buildings, structures, fixtures, and improvements thereon, whether now or later existing (collectively "Property");
2. Any and all existing and future leases, subleases, and other agreements affecting the use, enjoyment, or occupancy of the Property, including all extensions, renewals, and/or replacements thereof (collectively "Leases");
3. All rents, revenues, profits, and other benefits arising under Leases or relating to the Leases and/or Property ("Rents");
4. All of Borrower's rights under or relating to the Leases, including, without limitation, the rights to:
 - a. Claim, receive, collect, and pay all Rents payable or receivable under the Leases;
 - b. Apply such Rents to Borrower's Obligations.
5. Proceeds of the foregoing.

C. This Second Mortgage secures payment and performance of any and all present and future debts, advances, obligations, and duties that Borrowers owe to Bank however arising under, and/or relating to, any and all loan and financing accommodations extended by Bank to Borrowers, whether joint or several, direct or indirect ("Obligations").

1. The Obligations include, without limitation, the real estate loan in the sum of FOUR HUNDRED TWENTY THOUSAND and 00/100's Dollars (\$420,000.00), plus interest and all of Bank's costs and expenses incurred in connection with this loan (collectively "Loan") evidenced by the Commercial Real Estate Loan and Security Agreement and Promissory Note, between Bank and Borrower, dated concurrent herewith ("Loan Agreement"), hereby incorporated by reference into this Mortgage.
2. The Loan bears interest and is due and payable in monthly installments beginning July 1, 2016.
3. Full and final payment of the Loan is due and payable on June 1, 2026.
4. Borrower and Bank expressly intend that this Second Mortgage secure any and all optional or obligatory future advances that Bank may make to Borrower from time to time, but any and all optional future advances are discretionary and are subject to such terms and conditions as Bank may require in its sole, absolute discretion.



- C. This Second Mortgage remains in effect until Bank releases it.
1. Upon full and final payment and performance of all of Borrower's Obligations, Bank will release this Second Mortgage.
 2. Upon release, this Second Mortgage will be void.
- D. Upon default under any Obligation:
1. To the extent permitted by law, Bank may completely or partially foreclose upon and sell the Property in accordance with the applicable private, non-judicial foreclosure procedures prescribed by state law;
 2. If state law prohibits private foreclosure sales, Bank may institute court proceedings for complete or partial foreclosure upon sale of the Property in accordance with state law.
- E. This Second Mortgage is governed by the laws of the state where the Property is located.
- F. This Second Mortgage may be executed and recorded in duplicate originals, and each duplicate shall have the same force and effect as the original.
- G. State-Specific Provisions. The provisions of the attached Addendum shall govern and control in the event of a conflict with any other provision of this Second Mortgage.

BORROWER:

LWELLEN REALTY, LLC

By: Leon W. Edwards, Jr. (SEAL)
Leon W. Edwards, Jr., Manager

ACKNOWLEDGEMENT

STATE OF ALABAMA)
COUNTY OF Jefferson) ss.
SHELBY)

I, Stacey Sessions Shirley, a Notary Public in and for said County and State, do hereby certify that Leon W. Edwards, Jr., whose name is signed to the foregoing conveyance, and who is to me known to be the Manager of Lwellsen Realty, LLC, acknowledged before me, on this day and being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 20 day of May, 2016.

Stacey Sessions Shirley
Notary Public in and for the State of Alabama,
My Commission Expires: **MY COMMISSION EXPIRES:**
June 23, 2019

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ADDENDUM TO MORTGAGE
(ALLY BANK/LWELLEN REALTY, LLC)

SPECIAL ALABAMA PROVISIONS

1. **Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Mortgage, the terms of the Special Alabama Provisions shall control and be binding.
2. **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph D of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Property hereunder.
3. **Application of Foreclosure of Sale Proceeds.** The proceeds of any foreclosure sale pursuant to Paragraph D, or otherwise shall be applied as follows: (a) First, to the costs and expenses of (i) retaking, storing and processing the Collateral and preparing the Collateral or the Property (as the case may be) for sale, and ii) making the sale, including reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage; (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Loan Agreement, this Mortgage, the other Loan Documents which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Loan Agreement or the other Loan Documents, such repayment to be applied in the manner determined by Lender; (c) Third, to the payment of the Indebtedness secured hereby, with interest to date of sale at the applicable rate or rates specified in the Loan Agreement, this Mortgage, the other Loan Documents, as applicable, whether or not all of such Indebtedness is then due; and (d) Fourth, the balance, if any, shall be paid as provided by law.
4. **Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants too any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

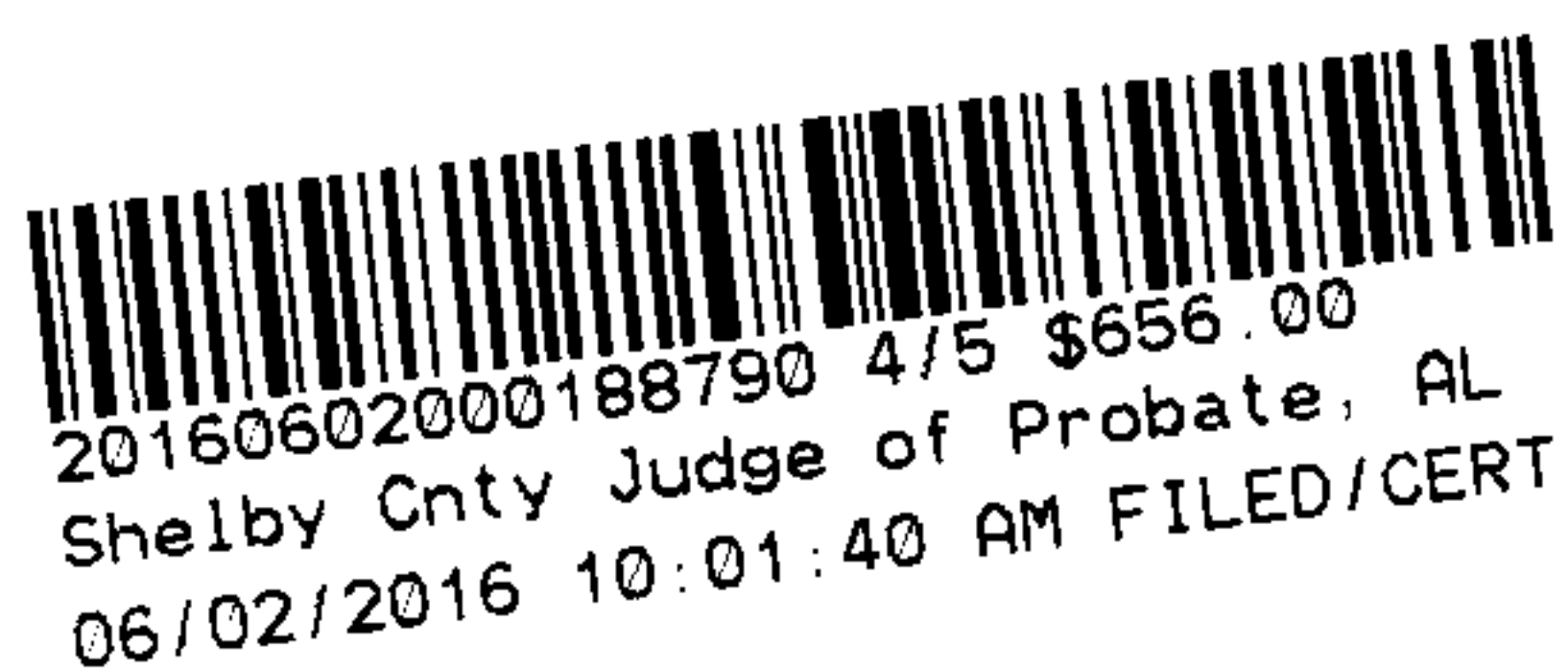


Exhibit A
LEGAL DESCRIPTION
(Lwellen Realty, LLC)

Parcel 1:


Lot 1-BB, according to a Resurvey of Lot 1-B of Resurvey of Lot 1-A, of Resurvey of Lot 1, B & S Subdivision, as recorded in Map Book 13, Page 143, in the Probate Office of Shelby County, Alabama.

Parcel 2:

A parcel of land lying and being in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at Northeast corner of the Northwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 5, Township 19 South, Range 1 West; thence run in a Southerly direction, along the East line of said Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ for a distance of 29.94 feet to a capped iron being the point of beginning; thence continue along the last said course for a distance of 210.06 feet to a 1 inch open top pin; thence with an interior angle of 92 degrees 17 minutes 43 seconds left, leaving said East line, run in a Westerly direction for a distance of 765.35 feet to a capped iron on the Eastern right-of-way of U.S. Highway 280; thence with an interior angle of 95 degrees 57 minutes 59 seconds left run in a Northerly direction along the Eastern right-of-way for a distance of 161.98 feet to a right-of-way monument; thence with an interior angle of 93 degrees 57 minutes 46 seconds left continue along said right-of-way for a distance of 143.30 feet to a right of way monument; thence with a deflection angle of 79 degrees 52 minutes 45 seconds left continue along said right-of-way in a Northerly direction for a distance of 29.79 feet to a capped iron on the Southern right-of-way of Bowling Drive; thence with an interior angle of 89 degrees 41 minutes 17 seconds left run in a Easterly direction along the last said right of way for a distance of 649.38 feet to the POINT OF BEGINNING.

Tax ID Numbers: 09-3-05-0-001-035.004 (Parcel 1), 09-3-05-0-001-025.000 (Parcel 2)


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