

20050111000017800 Pg 1/6 27.00
 Shelby Cnty Judge of Probate, AL
 01/11/2005 15:21:00 FILED/CERTIFIED



ALABAMA HOUSING FINANCE AUTHORITY
RECAPTURE MORTGAGE

NOTE TO PROBATE JUDGE: This Recapture Mortgage in favor of the Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's American Dream Downpayment Initiative, is exempt from payment of mortgage recordation taxes in the State of Alabama by act of legislature codified at Ala. Code §24-1A-12 (1992).

STATE OF ALABAMA

COUNTY OF JEFFERSON

THIS MORTGAGE IS A SUBORDINATE LIEN

THIS RECAPTURE MORTGAGE ("this Mortgage") is given on this 31ST day of DECEMBER, 2004 and is signed by

JAMES N. DONELLAN

(Print Name of Borrower)

ANGELA G. DONELLAN , HUSBAND AND WIFE

(Print Name of Additional Borrower, if any)

The person or persons who sign this Mortgage will be called the "Borrower."

The Borrower has granted this Mortgage in favor of the Alabama Housing Finance Authority ("AHFA"), a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's American Dream Downpayment Initiative, a component of the HOME Investment Partnerships Program, 24 C.F.R. Parts 91 and 92, Interim Rule, and the regulations promulgated thereunder (the "ADDI Regulations") and administered by AHFA for the State of Alabama, (collectively, the "ADDI Program"), and whose address is 2000 Interstate Park Drive, Suite 408, Montgomery, Alabama 36109, Attention: ADDI Program, in order to secure the Borrower's obligations to AHFA under this Mortgage and the Note described below.

I. RECAPTURE MORTGAGE NOTE

The Borrower has received **Ten Thousand Dollars (\$10,000)** (the "ADDI Assistance") from AHFA. AHFA provided the ADDI Assistance to the Borrower under the ADDI Program. In order to receive the ADDI Assistance, the Borrower has signed and delivered a Recapture Mortgage Note (the "Note") in a principal amount equal to the amount of the ADDI Assistance. The Borrower has promised in the Note to do the things required by the Note and to pay any amount due under the Note. This Mortgage secures the Borrower's obligations under the Note.

II. GRANT OF MORTGAGE LIEN AND SECURITY INTEREST

As security for the Borrower's payment obligations and other promises under this Mortgage and the Note, the Borrower grants, bargains, sells and conveys to AHFA a mortgage and security interest in all of the following property:

1. The land owned and occupied by the Borrower that is described in **Exhibit A** hereto. The land is located in the County of SHEBLY, State of Alabama. The street address for the land is 811 DOLPHIN COURT, ALABASTER, ALABAMA 35007.

2. All buildings and other improvements that are now or will be located on the above land.
3. All fixtures and equipment that are now attached to or used with the above land, buildings and improvements.

All of the above items together are called the "Property."

III. BORROWER'S REPRESENTATIONS

The Borrower confirms to AHFA that the Borrower lawfully owns the Property and rights that are pledged to AHFA under this Mortgage, that the Borrower has the right to pledge all of the Property to AHFA, and that the Property is not subject to any liens, easements or other encumbrances, except those already recorded against the Property on the date of this Mortgage. The Borrower agrees to protect and defend AHFA's rights to the Property against anyone else who tries to claim rights against the Property, except those claiming under the first lien mortgage described in Section XII or under other items already recorded against the Property on the date of this Mortgage.

IV. BORROWER'S PROMISES

In consideration for the benefits received as aforesaid, the Borrower agrees as follows:

1. The Borrower understands that the Property that is subject to this Mortgage must be used in ways that meet the requirements of the ADDI Regulations. The Borrower has executed the Note and a Homebuyer's Agreement between the Borrower and AHFA (the "Homebuyer's Agreement") that contain those restrictions.
2. The Borrower agrees to do everything that is required by the Note, the Homebuyer's Agreement and this Mortgage (all together, the "ADDI Program Documents"). If the Borrower fails to do those things, the Borrower agrees that it must repay to AHFA some or all of the ADDI Assistance. If that happens, AHFA will refer to the Note to determine the amount of ADDI Assistance that the Borrower must repay to AHFA.
3. The Borrower shall pay when due all liens, taxes, assessments and other governmental charges made against the Property. Any money that the Borrower spends for taxes or any other purposes on the Property do not count toward reduction or repayment of the ADDI Assistance. The ADDI Assistance may be repaid or reduced only as permitted under the Note.
4. The Borrower shall keep the Property in good repair and will not damage or abandon it, except for normal wear and tear. The Borrower will allow AHFA or its authorized representative to inspect the Property upon reasonable notice.
5. The Borrower shall use the Property in compliance with all applicable laws, ordinances and other requirements of any governmental authority.
6. The Borrower shall keep the Property insured against fire and other casualty (including flood insurance if Property is in a designated flood zone) in an amount acceptable to AHFA. The insurance policies for the Property must name AHFA as a mortgagee, loss payee and additional insured thereon, as its interest may appear. The Borrower will provide a Certificate of Insurance to AHFA each year showing that this insurance is in effect.
7. The Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of curtesy and dower in the Property.

V. AFFORDABILITY PERIOD

The requirement of the ADDI Program Documents and ADDI Regulations will apply to the Property for a period of five calendar years, calculated from the date of the Note (the

"Affordability Period"). The ADDI Program Documents and ADDI Regulations establish restrictions on how the Borrower can use, transfer, sell or rent the Property during the Affordability Period.

VI. RIGHTS GIVEN TO AHFA

The Borrower, by giving the Mortgage on the Property to AHFA, gives to AHFA those rights described in this Mortgage and all rights given by law to persons who hold mortgages in the State of Alabama, but subject to any limits or requirements created by the ADDI Program. The rights given to AHFA and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, AHFA will cancel this Mortgage at its expense.

VII. DEFAULT

AHFA may declare the Borrower in default under this Mortgage if:

1. The Borrower fails to comply with the provisions of the Note;
2. The Borrower fails to make any recapture payment required by the Note or this Mortgage;
3. The Borrower fails to keep any other promises made in this Mortgage;
4. The Borrower sells or transfers the Property to anyone else for any reason without compliance with the terms of the Note and this Mortgage;
5. The Borrower fails to comply with the terms of any other note or mortgage on the Property;
6. The holder of any lien on the Property starts to foreclose on the Property; or
7. Bankruptcy, insolvency or receivership proceedings are started by or against the Borrower.

VIII. AHFA'S RIGHTS UPON A DEFAULT OR EVENT OF NONCOMPLIANCE

If AHFA declares a default under this Mortgage, all sums due and owing to AHFA under the Note and under this Mortgage shall be immediately due and payable. AHFA shall have all rights and remedies described in Article VI of this Mortgage, but subject to the rights of prior mortgagees.

IX. NOTICES

All notices must be given in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Notices to AHFA must be sent to the mailing address given for AHFA on the first page of this Mortgage. AHFA will send all notices to the Borrower to the mailing address given for the Borrower in Section II of this Mortgage. Either Borrower or AHFA may change its address for notices by sending written notice to the other party.

X. NO WAIVER BY AHFA

AHFA may exercise any right under this Mortgage or under any law, even if AHFA has delayed exercising that right or has agreed in an earlier instance not to exercise that right. AHFA does not waive its right to declare the Borrower in default just because AHFA may have made payments or incurred expenses on behalf of the Borrower.

XI. EACH PERSON LIABLE

This Mortgage is legally binding upon the Borrower and all who succeed to the Borrower's responsibilities (such as heirs and executors) as well as any subsequent owner or purchaser of the Property. AHFA may enforce any of the provisions of the Note and this Mortgage against any Borrower who signs this Mortgage or against any subsequent purchaser or owner of the Property.

XII. SUBORDINATE MORTGAGE

The lien of this Mortgage is subordinate to and subject only to the terms and provisions of any first lien mortgage used to buy the Property and that is signed at the same time or before this Mortgage, including any subsequent refinancing of said first lien mortgage loan by the Borrower. This mortgage is also subordinate and subject to any other prior lien approved in advance in writing by AHFA.

XIII. NO ORAL CHANGES

This Mortgage can be changed only by a written agreement signed by both the Borrower and AHFA.

XIV. SIGNATURES

The Borrower agrees to all terms of this Mortgage by signing below.

XV. ACKNOWLEDGEMENT

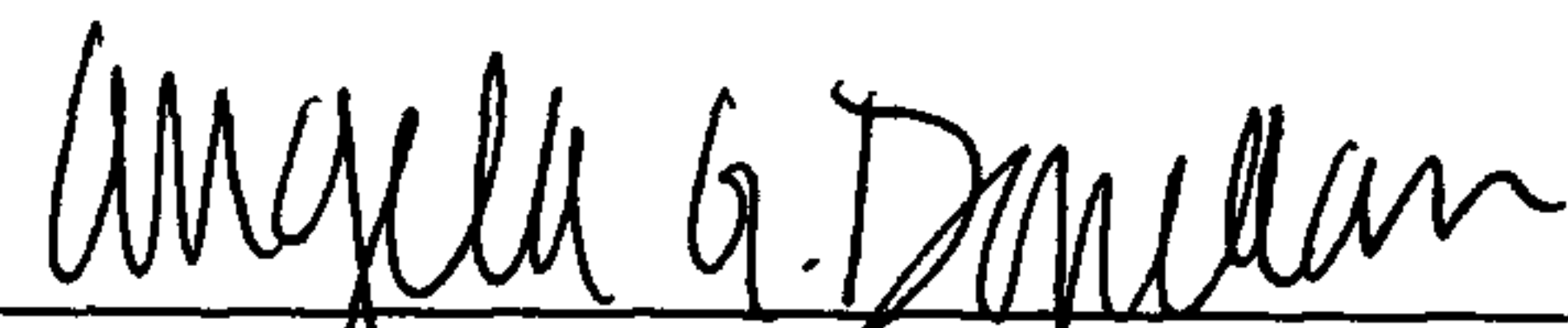
The Borrower acknowledges receipt of a true, correct and complete photocopy of this Mortgage upon the execution hereof and at no charge to the Borrower.

[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF, the undersigned Borrower signs this Note on the day and year indicated in the notary acknowledgement below.

WITNESS:

By: 
Signature of Borrower
JAMES N. DONELLAN
(Print Name of Borrower)

By: 
Signature of Additional Borrower, if any
ANGELA G. DONELLAN
(Print Name of Additional Borrower, if any)

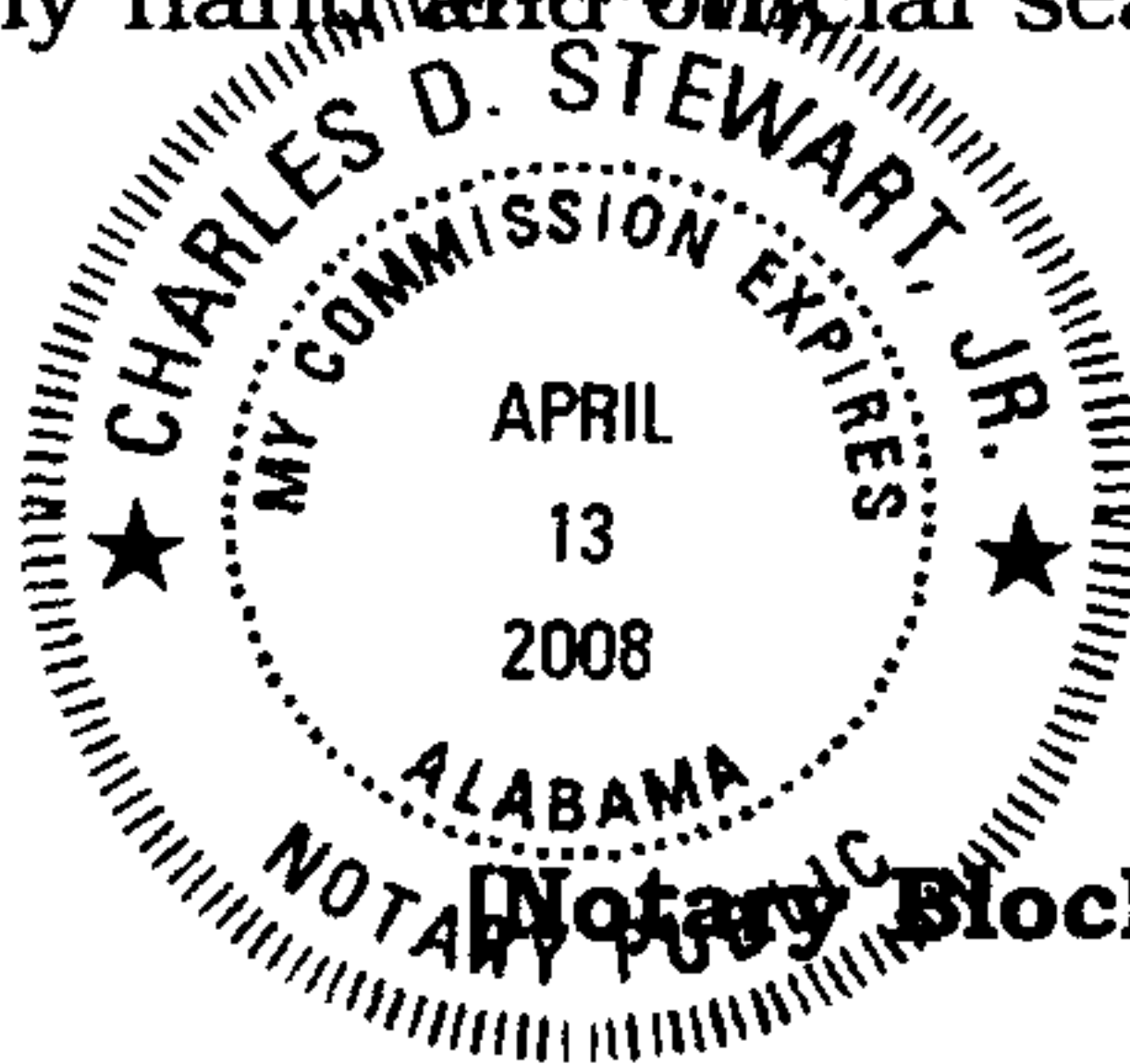
[Notary Block for Borrower]

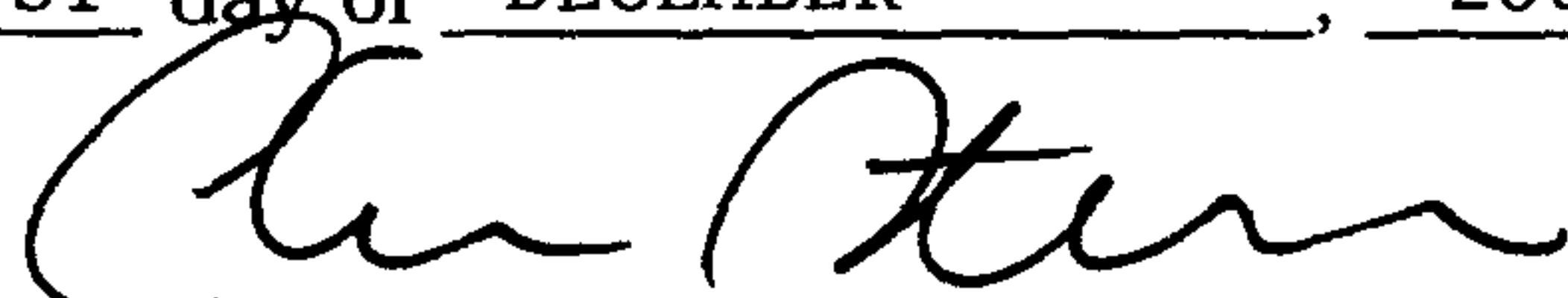
STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that JAMES N. DONELLAN, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 31ST day of DECEMBER, 2004.

AFFIX SEAL




Notary Public
My commission expires: 4/13/08

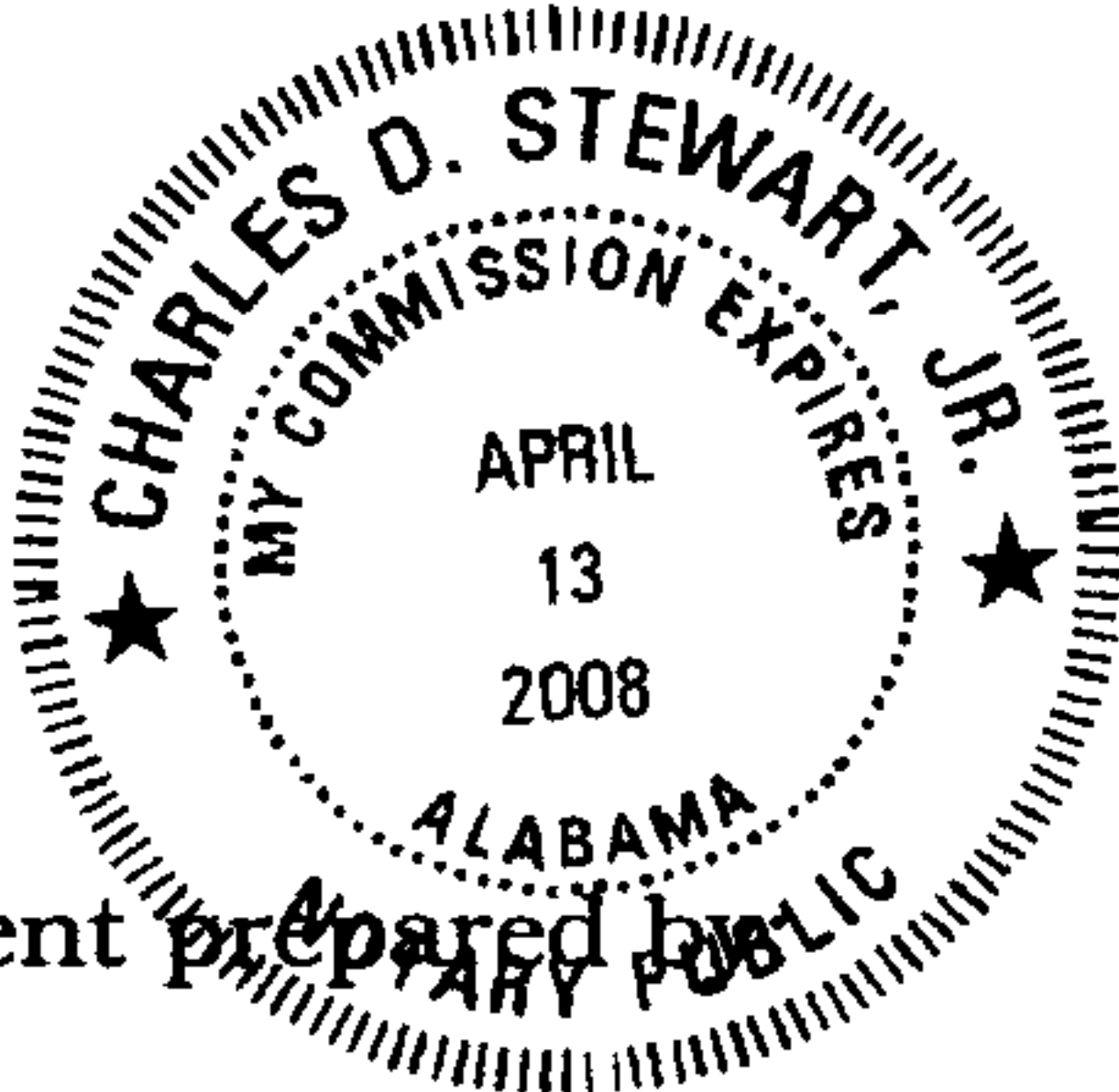
[Notary Block for Additional Borrower, if any]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that ANGELA G. DONELLAN, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 31ST day of DECEMBER, 2004.

AFFIX SEAL




Notary Public
My commission expires: 4/13/08

This instrument prepared by

Alabama Housing Finance Authority
2000 Interstate Park Drive, Suite 408
Montgomery, Alabama 36109
Attention: Single-Family Administrator

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Shelby Cnty Judge of Probate, AL
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EXHIBIT "A"

**Lot 56, Block 2, according to the Amended Map of Bermuda Lake Estates, Second Sector,
as recorded in Map Book 10, Page 88, in the Probate Office of Shelby County, Alabama.**