

20060110000017070 1/10 \$38.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:33PM FILED/CERT

THIS LOAN ASSUMPTION AND MODIFICATION AGREEMENT (this “Agreement”) is made and entered into as of the 6th day of January, 2006 by and between **ADERHOLT HOMEBUILDERS, INC.**, an Alabama corporation (the “Borrower”), **MARK O. ADERHOLT**, an individual (the “Guarantor”), **FIRST AMERICAN BANK**, an Alabama banking corporation, as successor-in-interest to National Bank of Commerce of Birmingham (the “Lender”), and **ACOB, INC.**, an Alabama corporation (the “Assumptor”).

A. The Lender previously made a loan to the Borrower in the original principal amount of \$165,200.00 (the “Loan”) pursuant to that certain Construction Loan Agreement dated as of December 8, 2005 executed by the Borrower and the Lender (the “Loan Agreement”). The Loan is evidenced by that certain promissory note dated as of December 8, 2005 in the principal amount of \$165,200.00 executed by the Borrower in favor of the Lender (the “Note”). As of the date hereof, the outstanding principal balance of the Loan is \$35,259.80.

B. The Loan is secured by, among other things, that certain Future Advance Mortgage dated as of December 8, 2005 on certain property located in Shelby County, Alabama and more particularly described on Exhibit A attached hereto (the “Property”), which is filed for record in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 20051213000645170 (the “Mortgage”).

C. The Borrower's obligations under the Loan are absolutely and unconditionally guaranteed by the Guarantor pursuant to that certain Guaranty dated as of December 8, 2005 (the "Guaranty"). Collectively, the Loan Agreement, the Note, the Mortgage, the Guaranty and all other documents evidencing or relating to the Loans are hereinafter referred to as the "Loan Documents").

D. The Lender has also made various other construction loans to the Borrower (collectively, the “Other Construction Loans”), as evidenced by the promissory notes described on the attached Exhibit B (collectively, the “Other Construction Notes”).

E. The Other Construction Loans are secured by, among other things: (i) those certain future advance mortgages more particularly described on the attached Exhibit C (collectively, the “Other Construction Mortgages”); and (ii) the Mortgage. Collectively, the Other Construction Notes, the Other Construction Mortgages and all other documents evidencing or relating to the Other Construction Loans are hereinafter referred to as the “Other Construction Loan Documents”).

F. The Loan and the Other Construction Loans are cross-defaulted and cross-collateralized according to the express terms of the Loan Documents and the Other Construction Loan Documents.

G. The Borrower desires to sell the Property to the Assumptor, and the Assumptor desires to assume the Borrower's obligations under the Loan Documents.

H. The Lender has been asked to consent to: (i) the assumption by the Assumptor of the obligations of the Borrower under the Loan Documents; and (ii) the transfer of the Property to the Assumptor. The Lender has also been asked to waive any right that the Lender may have as the secured party under the Mortgage and other Loan Documents to declare a default under the terms of the Loan Documents based solely on the transfer of the Property by the Borrower to the Assumptor.


I. The Lender has agreed to such requests subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:


1. Acknowledgement of Recitals. The parties hereto expressly acknowledge and agree that the foregoing "Recitals" are true, correct and complete.

2. Assumption of the Loan. As of the date of this Agreement, the Assumptor agrees to and does hereby unconditionally assume and agree to perform all of the obligations, covenants, agreements and liabilities of the Borrower set forth in each of the Note and the Mortgage, whether as "Borrower", "Maker", "Grantor", "Debtor", "Assignor", or "Indemnitor", including without limitation, payment of all sums due under the Note. As of the date of this Agreement, Assumptor further agrees to abide by and be bound by all of the terms of the Loan Agreement, the Note and the Mortgage, all as though each of the Loan Agreement, the Note and the Mortgage had been made, executed and delivered by the Assumptor. The Assumptor acknowledges that it is purchasing the Property, as the case may be, subject to the Lender's interest therein as created and governed by the Mortgage. As of the date of this Agreement, the Assumptor agrees to perform each and every term, covenant and condition of and as Borrower under the Loan Agreement, the Note and the Mortgage. Nothing in this Agreement shall: (i) release or impair the Note; (ii) prevent the Lender from exercising any other remedy against the Property; (iii) constitute a substitution or novation of any of the Loan Documents, except as expressly provided for in Paragraph 8 hereto; or (iv) prevent or in any way hinder the Lender from exercising its remedies in respect to any collateral securing the Loan against any obligors or guarantors of the Loan except as otherwise set forth herein. The Assumptor further agrees to assume all indemnification obligations of the Borrower relating to the Property that are contained in the Loan Agreement, the Note and the Mortgage.


20060110000017070 2/10 \$38.00
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3. Representations and Warranties. Without limitation of any of the obligations, representations, warranties and liabilities assumed by the Assumptor in and pursuant to this Agreement and the Loan Agreement, the Note and the Mortgage, each of the Borrower, the Assumptor and the Guarantor represents and warrants to the Lender as of the date of this Agreement that:

- (a) As of the date hereof, the Note has an unpaid principal balance of \$35,259.80;
- (b) The Mortgage is a valid first priority lien on the Property. The Property also secures repayment of the Other Construction Loans;
- (c) There are no defenses, offsets or counterclaims to any of the Loan Documents;
- (d) Except as otherwise amended hereby, all provisions of the Loan Agreement, the Note and the Mortgage, as of the date hereof, are in full force and effect and are, by virtue thereof, enforceable against the Assumptor in accordance with their respective terms;
- (e) There are no defaults by the Borrower or the Guarantor under the provisions of any of the Loan Documents, nor does such party know of any facts or circumstances, which, with the passage of time, or the giving of notice, or both, would result in a default under such documents;
- (f) The Assumptor is not insolvent and will not be rendered insolvent as a consequence of the acquisition of the Property and the other transactions that are the subject of this Agreement;
- (g) The Assumptor has the capacity to execute, deliver, enter into and perform in accordance with this Agreement, the Loan Agreement, the Note and the Mortgage to which it is a party. Upon execution and delivery hereof and thereof, this Agreement, the Loan Agreement, the Note and the Mortgage will constitute valid and binding obligations of the Assumptor, enforceable in accordance with their respective terms, except to the extent the validity and binding nature may be limited or otherwise affected by bankruptcy, moratorium or similar laws affecting creditor's rights, and the Note will be entitled to the benefits of this Agreement and the other Loan Documents;
- (h) Each of such parties has filed or caused to be filed all federal, state and local tax returns, which are required to be filed by them, and have paid or caused to be paid all taxes as shown on said returns or on any assessment received by them, to the extent that such taxes have become due;
- (i) There are no subordinate liens of any kind covering or relating to the Property, nor are there any mechanics' or materialmen's liens or liens for taxes or assessments encumbering the Property that are due and payable, nor has notice of a lien or notice of intent to file a lien been received;


20060110000017070 3/10 \$38.00
Shelby Cnty Judge of Probate, AL
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(j) Upon transfer of the Property pursuant to this Agreement, the Assumptor will become the owner in fee of the Property, free and clear from any leases or contracts affecting the Property, other than the Loan Documents;

(k) The Assumptor possesses such licenses and permits as is required for the conduct of his business. No approval, consent, or authorization of any governmental authority which has not heretofore been obtained is necessary for the execution or delivery by the Assumptor of this Agreement or the Loan Agreement, the Note or the Mortgage, or for the performance by the Assumptor of any of the terms or conditions hereof or thereof;

(l) The Property and the use which the Assumptor contemplates therefor comply with all applicable restrictive covenants, zoning ordinances, building codes, applicable health and environmental laws and regulations, and all other applicable laws, rules and regulations. There are no suits, proceedings or investigations pending or threatened against or affecting the Assumptor which, if adversely determined, would have a material adverse affect on the Assumptor; nor is such party aware of any suits, proceedings or investigations pending or threatened against or affecting the Property at law or in equity, or before or by a governmental or administrative agency or instrumentality, which, if adversely determined, would have a material adverse affect on the Assumptor or the Property;

(m) The execution, delivery and performance of this Agreement and the assumption of each of the Loan Agreement, the Note and the Mortgage, do not contravene any law, order, decree, rule, or regulation to which such party is subject; and

(n) Each of said parties hereby certifies that it or he has thoroughly reviewed the provisions of this Agreement, the Loan Agreement, the Note and the Mortgage, that it or he has been advised and represented by counsel of its or his own choice in this transaction, and that it or he understands and consents to the provisions of such instruments.

4. Consent to Transfer. In reliance upon the representations and warranties of Borrower, the Assumptor and the Guarantor contained in this Agreement, the Lender hereby consents to the Borrower's transfer of the Property to the Assumptor and waives the violations, if any, of provisions of the Mortgage and other Loan Documents resulting therefrom, subject to the strict performance by the Assumptor of each and every term of this Agreement; provided, however, this consent and waiver shall constitute neither a waiver of any other provision of the Mortgage or any of the other Loan Documents, nor a waiver of the provisions of the Mortgage or any of the other Loan Documents with respect to future transactions involving the Property.

5. Modification of Loan Documents. The parties hereby agree that the Loan Documents shall be modified as follows:

(a) The Loan Documents are hereby modified by conforming the information contained therein relating to notices to comply with the information contained in this Agreement.

(b) The Loan Documents are hereby modified to the extent necessary to incorporate all of the terms and conditions of this Agreement, including but not limited to, the addition of the

Assumtor as a Borrower with respect to obligations and agreements contained in the Loan Agreement, the Note and the Mortgage.

6. Costs. The Assumtor agrees to pay all fees and costs (including attorneys' fees) incurred by the Lender in connection with the Lender's consent to and approval of the transfer of the Property.

7. Waiver. By entering into this Agreement or any other agreement executed in connection herewith, the Lender is not and shall not be construed as waiving any event of default or breach now or hereafter existing or occurring under the Loan Documents. Regardless of when the parties' respective obligations begin to accrue or end, with respect to facts or events having occurred prior to the date hereof, which with the passage of time or the giving of notice, or both, could result in a default under the Loan Documents (a "Prior Default"), the Lender shall not be estopped from accelerating the Loan if such Prior Default had, or could have, a material adverse affect on the Property and such Prior Default remains uncured following written notice to the Assumtor, specifying the fact or event giving rise to the Prior Default and providing the Assumtor thirty (30) days to cure same.

8. Release of Borrower Under the Loan. In reliance upon the representations and warranties of Borrower, the Assumtor and the Guarantor contained in this Agreement, the Lender hereby releases the Borrower from any and all obligations under the Loan under any of the Loan Documents; provided, however, that the Property shall continue to secure both the Loan and the Other Construction Loans, it being expressly understood that the Lender does not intend to release, and is not releasing, its lien on the Property to secure repayment of the Loan and the Other Construction Loans. Notwithstanding anything herein to the contrary, the Loan and the Other Construction Loans shall continue to be cross-defaulted and cross-collateralized. The Guarantor shall not be released from any of his obligations under the Guaranty or the other Loan Documents. Neither the Borrower nor the Guarantor shall be released from any of their obligations under any of the Other Construction Loan Documents.


9. [Intentionally omitted].

10. General Provisions.

(a) This Agreement shall be construed according to and governed by the laws of the State of Alabama, without regard to its conflicts of law principles;

(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, such invalid, illegal or unenforceable provision will be deemed omitted and all other provisions of this Agreement shall remain in full force and effect;

(c) This Agreement contains the entire agreement between all of the parties hereto and is intended to be an integration of all prior agreements, conditions or undertakings between all the parties hereto with respect to the transfer of the Property by the Borrower to the Assumtor;


20060110000017070 5/10 \$38.00
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(d) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto;

(e) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms thereof;


(f) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns;

(g) The Borrower, the Assumptor and the Guarantor, by their execution of this Agreement, hereby acknowledge and covenant that a default, a breach of a representation or warranty, or the failure to fulfill any covenant under this Agreement by the Borrower, the Assumptor or the Guarantor, will constitute an event of default under the Loan Documents and the Other Construction Loan Documents, and the Lender shall be entitled to all remedies provided and contained in the Loan Documents and the Other Construction Loan Documents as if such remedies were fully set out herein;

(h) This Agreement and the other documents now or hereafter executed in connection with this Agreement are deemed to be "Loan Documents" as that term is defined herein.

(i) This Agreement may be executed in whole or in counterparts, each of which shall be an original but all of which, when taken together, shall constitute but one agreement.

[signature page to follow]


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

THE "BORROWER":

ADERHOLT HOMEBUILDERS, INC.,
an Alabama corporation

By Mark O Aderholt President
Mark O. Aderholt, Its President

THE "GUARANTOR":

Mark O Aderholt
MARK O. ADERHOLT

THE "ASSUMPTOR":


ACOB, INC.,
an Alabama corporation

By Mark O Aderholt President
Mark O. Aderholt, Its President

THE "LENDER":

FIRST AMERICAN BANK,
an Alabama banking corporation

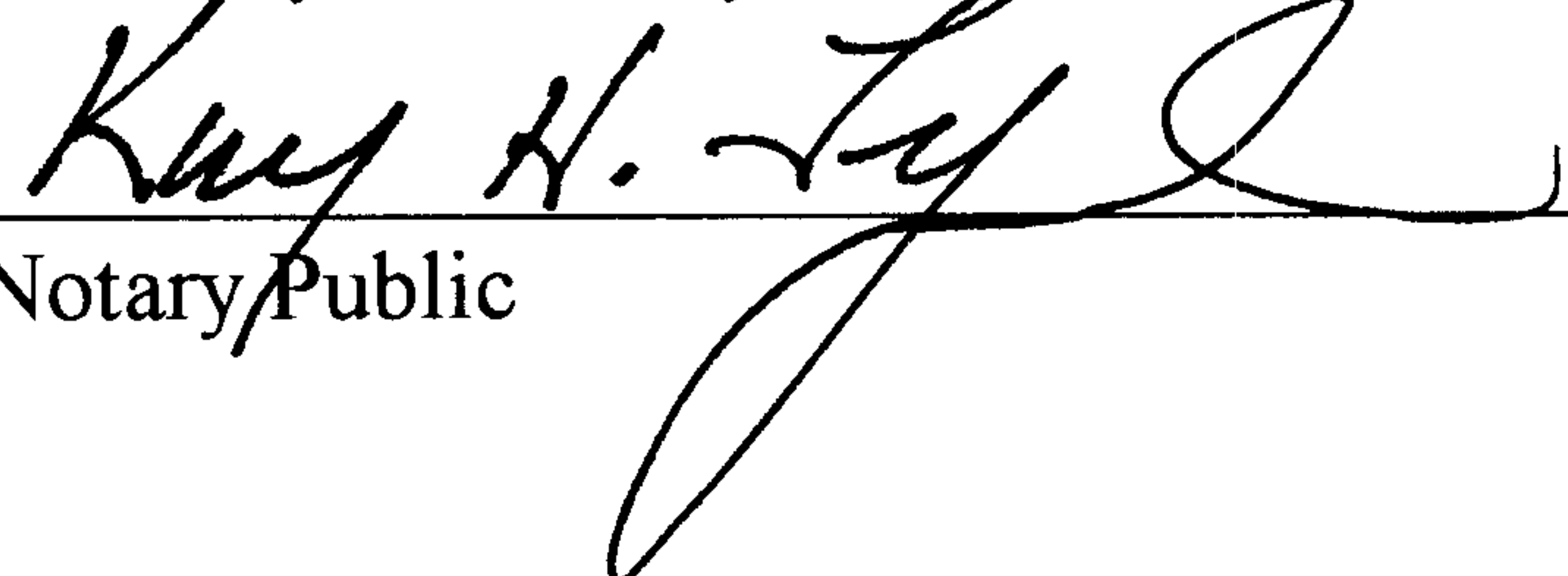
By Chris Cotton
Christopher P. Cotton, Its Senior Vice President


20060110000017070 7/10 \$38.00
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STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mark O. Aderholt, whose name as President of **ADERHOLT HOMEBUILDERS, INC.**, an Alabama corporation, 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 executed the same voluntarily on behalf of said corporation.

Given under my hand and official seal this the 6th day of January, 2006



Notary Public

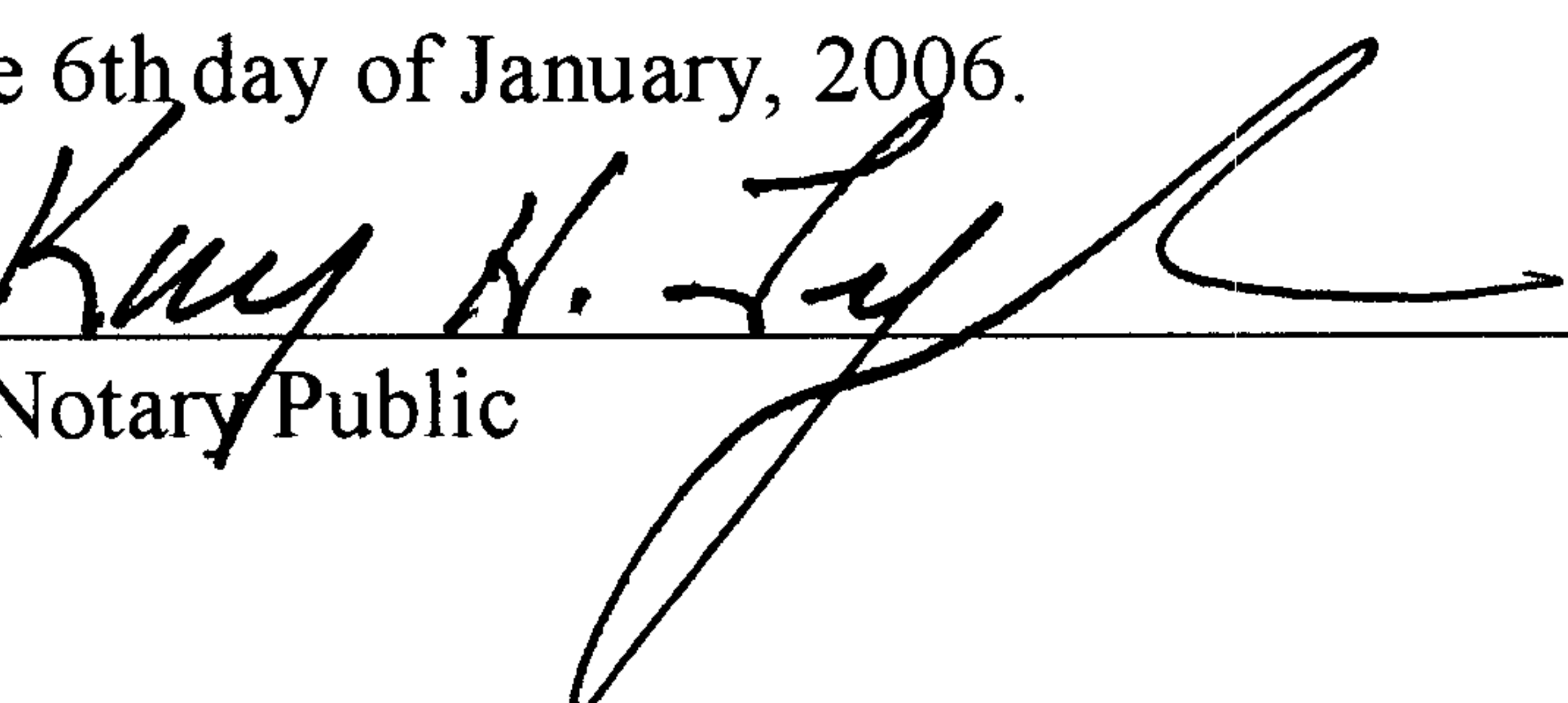
AFFIX SEAL

My commission expires: 11-6-08

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **MARK O. ADERHOLT**, 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 executed the same voluntarily.


Given under my hand and official seal this the 6th day of January, 2006.



Notary Public

AFFIX SEAL

My commission expires: 11-6-08


20060110000017070 8/10 \$38.00
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STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mark O. Aderholt, whose name as President of **ACOB, INC.**, an Alabama corporation, 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 executed the same voluntarily on behalf of said corporation.

Given under my hand and official seal this the 6th day of January, 2006



Notary Public

AFFIX SEAL

My commission expires: 11-6-08

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Christopher P. Cotton, whose name as Senior Vice President of **FIRST AMERICAN BANK**, an Alabama banking corporation, 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 executed the same voluntarily on behalf of said corporation.

Given under my hand and official seal this the 6th day of January, 2006.



Notary Public

AFFIX SEAL

My commission expires: 11-6-08

This instrument was prepared by:
Matthew W. Grill, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000



20060110000017070 9/10 \$38.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT A

(Legal Description of the Property)

Lot 100, according to the final plat of Lime Creek at Chelsea Preserve, Sector 3,
as recorded in Map Book 36, Page 31, in the Probate Office of Shelby County,
Alabama; being situated in Shelby County, Alabama



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