



20060125000040160 1/8 \$78.00
Shelby Cnty Judge of Probate, AL
01/25/2006 10:09:06AM FILED/CERT

SECOND MORTGAGE

This Mortgage ("Security Instrument") is made and entered into this 2nd day of **December, 2005**, by and between **Karnie C. Smith, Sr., and Clarissa Smith, his spouse**, whose address is **8198 Castlehill Road, Birmingham, Alabama 35242**, (hereinafter referred to as "Mortgagor"), and **Edmond V. Watters**, (hereinafter referred to as "Mortgagee"), whose address is **2170 Highland Avenue, Birmingham, Alabama 35205**, as follows:

WHEREAS, Mortgagor has this day become justly indebted to Mortgagee for money loaned in the sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)** and has agreed to pay the same with interest thereon according to the terms of a Promissory Note bearing even date herewith. The said principal and interest to be payable to **Edmond V. Watters** or at such other place as the holder may designate in writing delivered or mailed to the Mortgagor. Payments shall be in one installment of **Thirty Thousand and 00/100 Dollars (\$30,000.00)** due and payable on the 2nd day of **January, 2006**.

WHEREAS, the said Mortgagor is desirous of securing the prompt payment of said note and the one installment of principal and interest,

NOW, THEREFORE, in consideration of the said indebtedness, and to secure the prompt payment of the same at maturity, the undersigned Mortgagor, **Karnie C. Smith, Sr., and Clarissa Smith, his spouse** does hereby grant, bargain, sell, assign and convey unto the said Mortgagee, the following described real property situated in Jefferson County, to-wit:

See Attached Legal Description.

TO HAVE AND TO HOLD the said premises and every part thereof, unto the Mortgagee, its successors and assigns forever.

And Mortgagor does covenant with Mortgagee that it is seized of the said real property in fee simple, and has good right to convey the same; that the property is free from all liens, charges, encumbrances and restrictions except those specifically identified here-in-above, and Mortgagor and Mortgagor's successors and assigns will defend the title to the same unto Mortgagee, its successors and assigns, against the lawful claim of all persons whosoever.

This Mortgage is given as security for that certain Promissory Note from Mortgagor to Mortgagee in the amount of **Thirty Thousand and 00/100 Dollars (\$30,000.00)**, dated the date hereof.

This Mortgage is made, however, subject to the following covenants, conditions and agreements:

Edmond V. Watters

1. Mortgagor shall pay the said indebtedness and interest thereon when and as they shall become due, whether in course or under any condition, covenant, or agreement herein contained, together with any other indebtedness which Mortgagor may owe to Mortgagee, it being further agreed that any statement in a note or obligation that it is secured by this mortgage shall be conclusive evidence of such fact.

2. Mortgagor shall keep the premises in good condition and repair, reasonable wear and tear excepted, shall not permit nor perform any act which would in any way impair the value of the premises, shall not remove any fixture nor remove or demolish any building or improvement located on the above-described land without the written consent of Mortgagee and shall neither commit nor permit waste of the premises.

3. Mortgagor shall pay all debts, claims or other charges that may become liens against the premises or any part thereof for repairs or improvements that may have been or may hereafter be, made on the premises or any part thereof.

4. Mortgagor shall provide, maintain, and deliver to Mortgagee policies of fire and such other insurance as Mortgagee may from time to time require with such companies and in form and amounts satisfactory to Mortgagee, upon the buildings and improvements now or hereafter situated on the mortgaged premises, and shall assign and deliver to Mortgagee with satisfactory mortgage clauses all insurance policies of any kind or in any amount now or hereafter issued upon the premises. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the premises caused by any causality. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand, receive and receipt for all moneys becoming payable thereunder and to assign absolutely all policies to any endorsee of the note or to the grantee, assignee or other title holder of the leasehold interest and/or the leasehold improvements subject of this mortgage in the event of foreclosure of this mortgage. In the event of loss under any of the policies of insurance herein referred to, the proceeds of the policy shall be paid by the insurer to Mortgagee, which, at its sole and absolute direction, shall apply the same wholly or partially after deducting all costs of collection, including a reasonable attorney's fee, either as a payment of the indebtedness secured hereby, whether or not then due and payable, or toward the alterations, reconstruction, repair or restoration of the mortgaged premises, either to the portion thereof by which said loss was sustained or to any portion thereof.

5. The rents, income, and profits of all and every part of the premises are hereby specifically pledged to the payment of the debt and all other obligations hereby secured. If default shall be made in the payment of the said indebtedness or any part thereof or in the performance of any covenant, condition or agreement of this mortgage, Mortgagee shall have the right forthwith to enter into and upon the premises, take possession thereof, and collect said rent, income and profits with or without the appointment of a receiver. All such net income, after payment of reasonable collection, management and attorney's fees, shall be applied toward the payment of any advances made by Mortgagee or in reduction of any indebtedness including interest thereon, hereby secured in such manner or proportion as Mortgagee may elect.

6. If Mortgagor fails to insure the premises, or to pay and furnish receipts for all taxes and assessments, or to pay debts, claims or other charges for repair, all as provided herein, Mortgagee may at its option, procure such insurance, pay such taxes and assessments, redeem

the property from any tax sale, or enter upon the premises and make such repairs as it may deem necessary and Mortgagor shall immediately pay to Mortgagee all sums which it shall have so paid. This mortgage shall stand as security in like manner and effect as for the payment of the indebtedness referred to above; but the failure of Mortgagee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Mortgagee liable to Mortgagor. If Mortgagee shall elect to advance insurance premiums, taxes or assessments, or redeem from tax sale, the receipt of the insurance company or the proper tax official shall be conclusive evidence of the amount, validity and the fact of payment thereof.

7. Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses and reasonable agent's or attorney's fees, which it may expend or become obligated to pay in any proceedings legal or otherwise, to prevent the commission of waste, to establish or sustain the lien of this mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions asserting priority to this mortgage; in payment, settlement, discharge or release of any asserted lie, claim, right, easement or restriction made upon advice of competent counsel that the same is superior to the lien of this mortgage; for title insurance abstract or extension thereof; in connection with any suit to enforce or foreclose this mortgage; or to recover any sum hereby secured, together with interest on all such sums at the maximum legal rate until paid; and for payment of such sums and interest, this mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

8. If default shall be made in the payment of the indebtedness secured hereby or any part thereof in accordance with the terms thereof, or in the performance of any covenant, condition, or agreement of this mortgage, or any other agreement given as security for said mortgage, or upon the attempted transfer of the property given as security hereunder without the prior written consent of the Mortgagee, which written consent shall not be unreasonably withheld, then the whole indebtedness hereby secured shall, at the option of the Mortgagee, become immediately due and payable and this mortgage subject to foreclosure; Mortgagee shall have the right to assign, transfer or sublet those interests in the estate; and Mortgagee shall have the right and is authorized to enter upon and take possession of the premises subject of this mortgage and after or without taking possession, to sell, transfer or assign the here-in-above described premises. In the event of sale of any interest subject of this mortgage, the same shall be conducted in accordance with the law of the State of Alabama. The Mortgagee or any person conducting said sale is authorized and empowered to execute to the purchaser at said sale title to the interest so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefore. At said sale, the premises may be offered for sale or sold as a whole without first offering them in any other manner or may be offered for sale and sold in any manner as Mortgagee may elect.

9. The proceeds of said conveyance shall be applied:

First, to the expenses of advertising and selling, including a reasonable attorney' s fee;

Second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay,



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for taxes, assessments, insurance or other charges, liens or debts as here-in-above provided;

Third, to the payment and satisfaction of the indebtedness evidenced by that certain mortgage dated of even date the same having a security interest superior to that evidenced herein;

Fourth, to the payment and satisfaction of the indebtedness hereby specially secured with interest to the date of sale;

Fifth, the balance, if any, shall be paid to the Mortgagors. If this mortgage be foreclosed in Chancery, reasonable attorney' s fees for foreclosing the same shall be paid out of the proceeds of the sale.

10. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

11. Any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to such debts the Mortgagor waives all rights of exemption under the Constitution and laws of the State of Alabama and agrees to pay a reasonable attorney' s fee for the collection thereof.

12. (a) No delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any option at any time and the payment or contracting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this mortgage on account of such failure of Mortgagor.

(b) No delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of said Mortgagor, and the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the entire unpaid indebtedness secured by this mortgage immediately due and payable without notice to the Mortgagor; and such election may be made although the Mortgagee may at any time or times prior to the rejection of such payment have accepted any late payment or payments, it being agreed that no notice need be given to the Mortgagor that future payments must be made within the time prescribed despite such former acceptances.

13. All awards or damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Mortgagee, who may apply the same to payment of the installments under said note in the inverse order of their maturity, and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittance thereof and to appeal from any such award.

14. Mortgagee or their duly authorized agent or representative shall have access to and the right to inspect said premises at all reasonable times.

15. If the event of default shall have occurred and be continuing Mortgagee shall be entitled, as a matter of strict right and without regard to the value or occupancy of the security, to have a receiver appointed to enter upon and take possession of the premises, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of Alabama. The expenses included pursuant to the powers herein contained shall be secured hereby. The right to enter and take possession of said property, to manage and operate the same, to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or otherwise. Notwithstanding the appointment of any receiver, trustee, or other custodian, by the court having jurisdiction thereof, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, or other instruments at the time held by or payable or deliverable under the terms of this mortgage to the Mortgagee.

16. Any one or more of the following events shall constitute an event of default:

(a) Failure by Mortgagor to pay as and when due and payable any installments of principal or interest due under the note or taxes or insurance premiums; or

(b) Failure by Mortgagor to duly observe any other covenant, condition or agreement of this mortgage, the note, loan agreement, chattel mortgage, security agreement, or any other instrument in connection with the loan secured by this mortgage; or

(c) Filing by Mortgagor of a voluntary petition in bankruptcy or mortgagor's adjudication as a bankrupt or insolvent or the filing by Mortgagor of any petition or answer seeking or acquiescing of any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor or of all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulating relating to bankruptcy, insolvency or other relief for debtor, which order judgment or decree

remains un-vacated and un-stayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of the entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor, or of all or any substantial part of the mortgaged property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor which appointment shall remain un-vacated and un-stayed for an aggregate of thirty (30) days (whether or not consecutive).

(e) The entry by any court of last resort of a decision that an undertaking by Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose or the manner of collection of any such taxes, so as to affect adversely this mortgage or the debt secured hereby.

17. In the event of any default by Mortgagor of the terms and conditions of the Note secured hereby, or in this Mortgage, or in any other contract or agreement between Mortgagor and Mortgagee, such default shall be an event of default, entitling the Mortgagee to exercise the remedies provided herein, including the right to foreclose this mortgage in accordance with the terms hereof.

18. If at any time hereafter title to all or any part of the estate is transferred, whether by operation of law or otherwise, or if the Mortgagor is a corporation or other entity and the controlling interest of such corporation or other entity is changed by transfer of ownership interests, by operation of law or otherwise, Mortgagee may, at Mortgagee's option, declare the indebtedness and the interest secured hereby to be immediately due and payable. A waiver by Mortgagee of the provisions of this paragraph shall operate as a waiver only for the specific occasion as to which the waiver is given by Mortgagee and the provisions of this paragraph shall otherwise continue to be fully effective and operable as to any other occasion or occasions.

19. The Mortgagor covenants to the Mortgagee while the mortgage remains unpaid that mortgagor will not execute a mortgage or create or permit a lien which may be or become superior to the Mortgagee's lien which shall affect the Mortgagee position on the security of the said premises:

20. If the Mortgagee shall be made a party to any condemnation proceedings or to any suite involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if the Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to the lien of this mortgage in any respect, or if this mortgage be foreclosed in Chancery or under the power of sale hereinafter provided for, or if an action be brought for breach of any obligation hereunder, the Mortgagor will pay, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by the Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby and shall bear interest from the date it is paid or incurred and shall be at once due and payable. Any proceeds from Condemnation awards shall be applied to reduce the amount of the principal debt at the option of

Mortgagee.

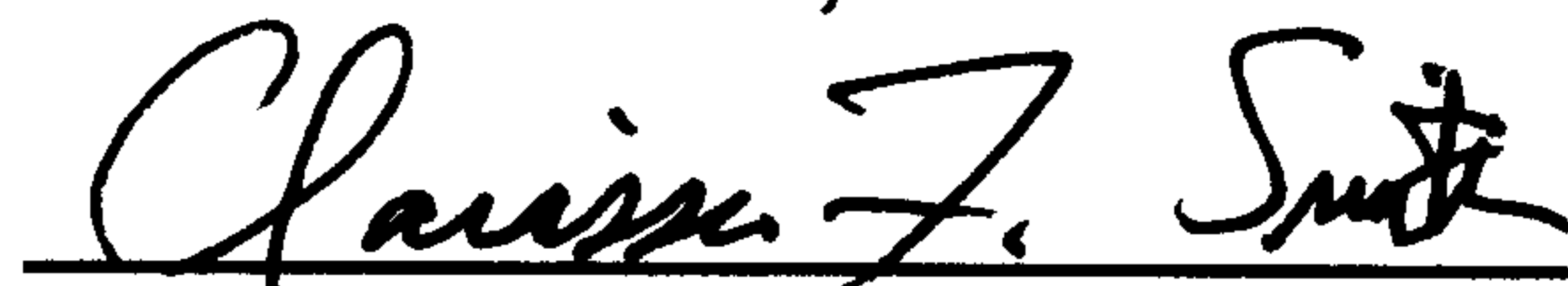
21. If Mortgagor shall fail to pay any real estate taxes, assessments or other government levy or charge or to make any other payment required to be paid by Mortgagor, without limiting the generality of any other provision of the aforesaid mortgage and without waiver or release of Mortgagor from any of its obligations Mortgagee shall have the right, but shall be under no obligation, to pay any such tax assessment, levy, charge, or other payment, and may perform any other act to take such action as may be appropriate to cause such other term, covenant, condition or obligation to be properly performed or observed on behalf of Mortgagor, and Mortgagor's right in and to such property be kept unimpaired and free from default, and Mortgagor shall permit Mortgagee to enter upon the mortgaged premises with or without notice and to do anything thereon or thereto which Mortgagee shall deem necessary or prudent for such purpose.

If, pursuant to any ground lease, Lessor or Landlord thereunder shall deliver to Mortgagee a duplicate copy of any notice given by Lessor or Landlord to Mortgagor, as Lessee or Tenant under any ground lease, such notice shall constitute full protection to Mortgagee from any action taken or omitted to be taken by Mortgagee, in good faith or reliance thereon.

22. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of the Mortgagor and Mortgagee. Nothing in this Mortgage prevents the Mortgagee from assigning or selling this loan to another lending institution.

EXECUTED by and between the parties hereto on the day and date first above written.

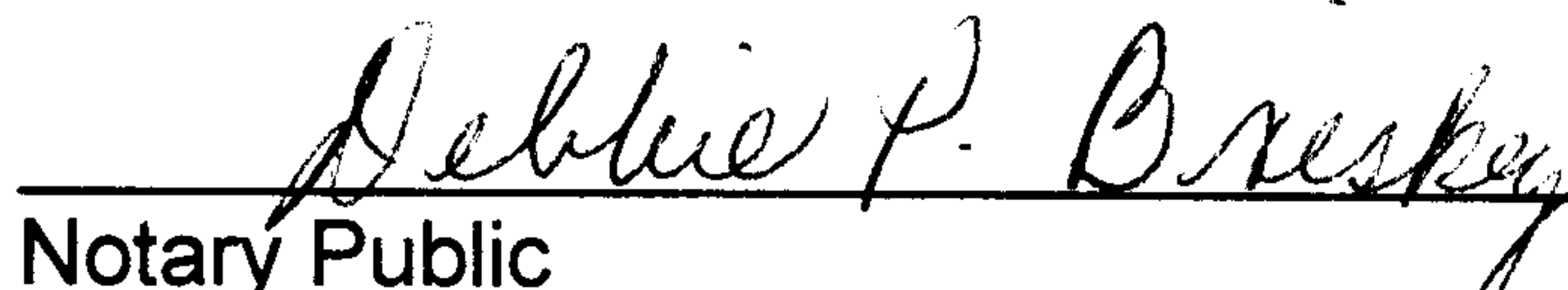

Karnie C. Smith, Sr.


Clarissa Smith

**STATE OF ALABAMA
JEFFERSON COUNTY**

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Karnie C. Smith, Sr., and Clarissa Smith**, whose names are 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, they executed the same voluntarily on the day the same bears date.

Given under my hand and Official seal this 2nd day of December, 2005.


Notary Public

My Commission Expires:

MY COMMISSION EXPIRES OCTOBER 28, 2009

Legal Description

Lot 54, according to the Survey of Greystone 8th Sector, as recorded in Map Book 20, Page 93, Shelby County, Alabama.

Clarissa Smith is one and the same person as Clarissa F. Smith, grantee in Instrument Number: 20050207000059660.