
20070109000011840 1/6 \$7526.00
Shelby Cnty Judge of Probate, AL
01/09/2007 10:18:41AM FILED/CERT

PREPARED BY:

Dwight L. Mixson, Jr.
3100 Wachovia Tower
420 North 20th Street
Birmingham, Alabama 35203
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RETURN TO:

CREDU, VA9505
Wachovia Bank, National Association
816 Greenbrier Circle, Suite G, VA 9505
Chesapeake, Virginia 23320

A TOTAL OF \$22,500 IN RECORDING TAX HAS BEEN PAID ON THE CURRENT MAXIMUM PRINCIPAL AMOUNT OF \$15,000,000 IN CONNECTION WITH THE RECORDING OF THE MORTGAGES AT INSTRUMENT NOS. 20041101000600080 AND 20040311000125760, AND PRIOR AMENDMENTS THERETO (INCLUDING THE PRIOR INCREASE RECORDED AT 20050908000463950). RECORDING TAX OF \$7,500 ON THE ADDITIONAL PRINCIPAL INDEBTEDNESS OF \$5,000,000 IS BEING PAID IN CONNECTION WITH THE RECORDING OF A SEPARATE MODIFICATION RECORDED IN CONNECTION HERewith.

MODIFICATION OF MORTGAGE

THIS MODIFICATION OF MORTGAGE is made as of November 1, 2006, by **CHELSEA PARK HOMES, INC.**, whose address is 421 Office Park Drive, Birmingham, Alabama 35223, the Mortgagor under the Mortgage described below ("Mortgagor"), and delivered to **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association as Mortgagee (referred to herein as "Bank"), whose address is 10 South Jefferson Street, Roanoke, VA 24011.

RECITALS

Bank is owner and holder of a certain Mortgage (the "Mortgage") dated October 14, 2004, recorded as Instrument No. 20041101000600080, of the Office of the Judge of Probate of the County of SHELBY, State of Alabama together with all extensions and modifications thereof whenever made.

Bank is owner and holder of a certain promissory note (the "Note") in the original amount of \$10,000,000.00, dated February 24, 2004, made by THORNTON CONSTRUCTION COMPANY, INC. ("Borrower"), payment of which is secured by the Mortgage.

Bank and Borrower have modified the Note and accordingly Mortgagor and Bank have agreed to modify the Mortgage.

Mortgagor has agreed to mortgage the property described in EXHIBIT A attached hereto and made part hereof (the "Property") to Bank as additional security for all Obligations (hereinafter defined).

WITNESSETH:

In consideration of the foregoing premises Mortgagor and Bank hereby modify the Mortgage and any prior modifications thereof as follows:

1. **Note Modified.** Borrower has modified the Note (as modified, the "Modified Note") by modification dated as of November 1, 2006, that modifies the terms of the Note. The stated principal amount due under the Modified Note is increased from \$15,000,000.00 to \$20,000,000.00.

2. **Modified Note Secured.** Borrower acknowledge(s) and agree(s) (i) that the Modified Note is a modification of the Note to increase the principal amount thereof from \$15,000,000.00 to \$20,000,000.00, (ii) that the payment and performance of the Obligations (as the term "Obligations" is defined in the Modified Note) is secured by the Mortgage, (iii) that there are no defenses or impediments to enforcement of the lien of the Mortgage, and (iv) that the Modified Note is not a novation.

3. **Additional Property Encumbered by the Mortgage.** "Loan Documents" and "Default" have the definitions set forth in the Mortgage.

Grantor grants, bargains, sells, conveys and mortgages to Bank 4 Lots in Chelsea Park subdivision, Shelby County, Alabama as further described on the "Exhibit A" attached hereto and made part hereof (the "Property") as additional security for all indebtedness, fees, charges, expenses and other Obligations, including, without limitation, any obligations pursuant to any swap agreements as defined in 11 U.S.C. § 101, secured by the Mortgage, as herein modified.

NOW THEREFORE, and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant, bargain, sell and convey, with power of sale unto Bank, its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to Property, including all estates, rights, tenements, hereditaments, privileges easements, and appurtenances of any kind benefiting the Property, all means of access to and from the Property, whether public or private and all water and mineral rights.

The Property is subject to the terms of the Mortgage as fully as if the Property had been included in the description of the property subject to the Mortgage at the time execution of the Mortgage.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor **WARRANTS AND REPRESENTS** that Mortgagor is lawfully seized of the Property, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without imitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage and the other Loan Documents are complied with and abided by, (iii) any and all swap agreements (as defined in 11 U.S.C. § 101) secured hereunder have matured or been terminated, and (iv) any right or option of Borrower to obtain additional advances from Bank has terminated, including advances that are made in Bank's discretion ((i) through (iv) being referred to herein as the "Defeasance Conditions"), then the Mortgage and the estate hereby created shall cease and be null, void, and canceled of record but otherwise shall remain in full force and effect.

4. **Revolving Credit; Defeasance.** The Mortgage is modified to provide that it specifically secures revolving credit up to a maximum principal sum outstanding at any time and from time to time as specified in paragraph 1 above and shall remain in effect unless and until all Defeasance Conditions are satisfied.

5. **Mortgage Confirmed.** Mortgagor acknowledge(s) and agree(s) that the Mortgage and any prior modifications thereof, except as expressly modified by this Modification Agreement shall remain in full force and effect as originally executed and the terms of this Modification Agreement shall be part of the Mortgage.

6. **Document Taxes and Other Charges.** Mortgagor shall pay the full amount of any documentary stamp tax, intangible tax, interest, filing fees and penalties, if any, charged incident to the loan transaction and modification(s) described in or created by this Modification and the filing of this Agreement. If Mortgagor fails to pay the obligations under this paragraph, Bank may pay such obligations. Any amounts so paid by Bank shall bear interest at the default rate stated in the Modified Note and shall be secured by the Mortgage.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, Mortgagor and Bank have duly signed and sealed this instrument as of the day and year first above written.

MORTGAGOR:

CHELSEA PARK HOMES, INC.,
an Alabama corporation

[CORPORATE SEAL]

BY: [Signature]
Print Name: Steven R. Chester
Its Vice President

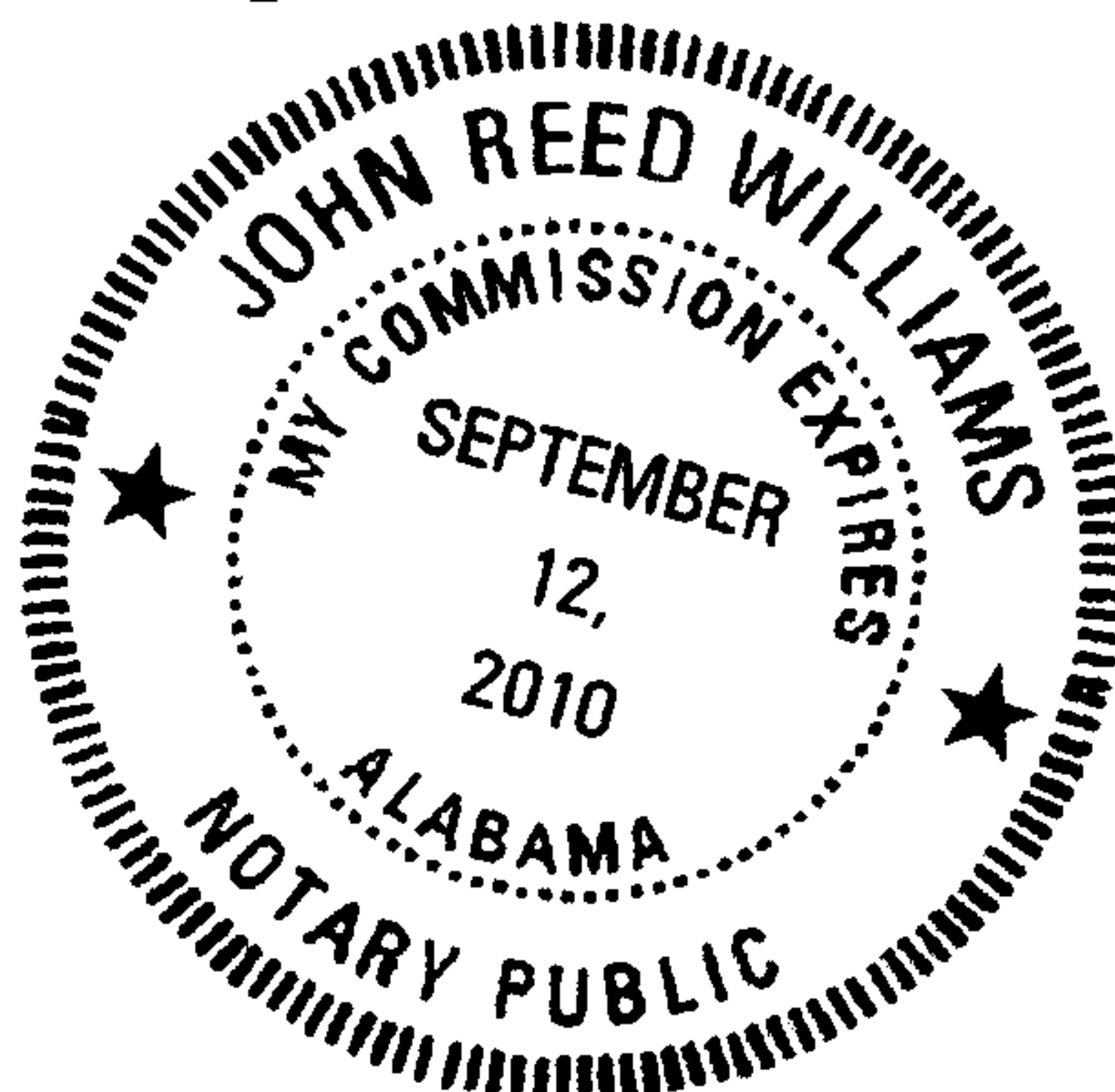
State of Alabama
County of Jefferson

Corporate Acknowledgment

I certify that before me appeared this day Steve R. Chester (Name), a person known to me, who after being sworn said he/she is Vice President (Title) of CHELSEA PARK HOMES, INC., a Alabama corporation, and is duly authorized to act on behalf of said Corporation, that the seal affixed to the foregoing instrument is the seal of said Corporation and that said instrument was signed and sealed by him/her on behalf of said Corporation, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said Corporation voluntarily and with full authority.

Witness my hand and official seal, this 8th day of January, 2007.

[NOTARY SEAL]



[Signature]
Notary Public
Print Name: John Reed Williams
My commission expires: 9/12/2010



BANK:

**WACHOVIA BANK, NATIONAL,
ASSOCIATION, a national banking association**

BY: Pamela Schuchert
Print Name: PAMELA SCHUCHERT
Its ASSIST VICE PRES

State of VIRGINIA
County of CITY OF CHESAPEAKE

Corporate Acknowledgment

I certify that before me appeared this day PAMELA SCHUCHERT (Name), a person known to me, who after being sworn said ~~he~~/she is ASSIST VICE PRES (Title) of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, and is duly authorized to act on behalf of said national banking association, that the seal affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed by him/her on behalf of said national banking association, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said national banking association voluntarily and with full authority.

Witness my hand and official seal, this 4th day of January, 2007.

[NOTARY SEAL]

Sandra Goode
Notary Public
Print Name: Sandra Goode
My commission expires: _____

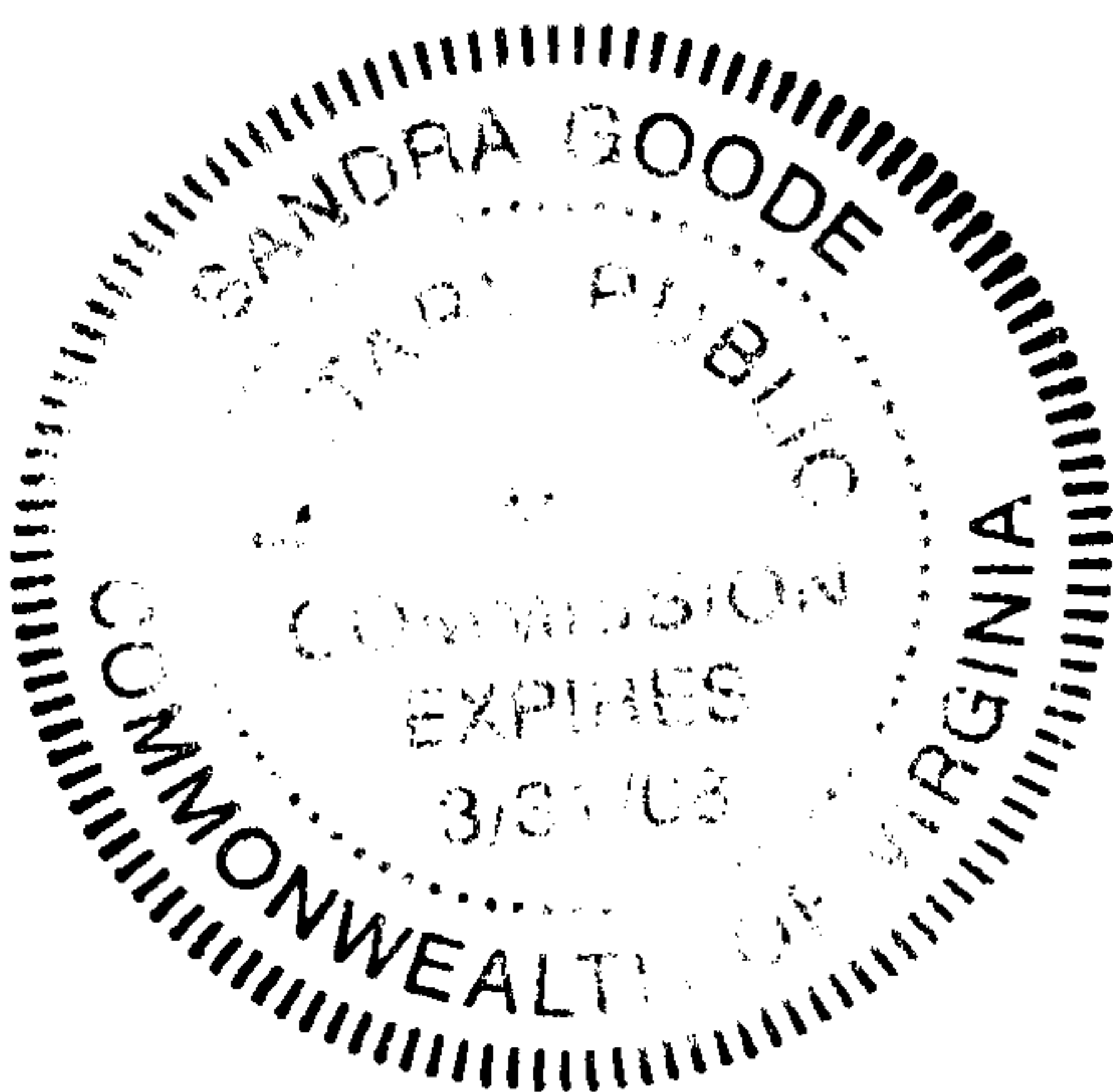



EXHIBIT A


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LOT 4-53, ACCORDING TO THE MAP AND SURVEY OF CHELSEA PARK, 4TH SECTOR, AS RECORDED IN MAP BOOK 34, PAGE 147 A & B, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.

LOT 4-52, ACCORDING TO THE MAP AND SURVEY OF CHELSEA PARK, 4TH SECTOR, AS RECORDED IN MAP BOOK 34, PAGE 147 A & B, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.

LOT 2-48, ACCORDING TO THE PLAT OF CHELSEA PARK 2ND SECTOR AS RECORDED IN MAP BOOK 34, PAGE 22 IN THE PROBATE OFFICE OF SHELBY COUNTY ALABAMA.

LOT 2-10, ACCORDING TO THE PLAT OF CHELSEA PARK 2ND SECTOR AS RECORDED IN MAP BOOK 34, PAGE 22 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA