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Shelby Cnty Judge of Probate, AL  
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**COPY**

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Bk: LR200703 Pg:11539  
Jefferson County, Alabama  
I certify this instrument filed on:  
02/15/2007 12:42:26 PM MTG  
Judge of Probate- Alan L. King

**ALABAMA**

This Instrument Was Prepared By:

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Stites & Harbison PLLC  
Suite 1800, 424 Church Street  
Nashville, Tennessee 37219  
(615) 244-5200

After Recording, This Instrument Should Be Returned To The Preparer At The Address Shown Above.

**MORTGAGE, ASSIGNMENT OF LEASES, RENTS, AND PROFITS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

**COLLATERAL INCLUDES FIXTURES**

**THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS, AND PROFITS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT IS INTENDED TO BE, AND SHALL SERVE AS, A FINANCING STATEMENT PURSUANT TO APPLICABLE LAWS OF THE STATE OF ALABAMA, AS AMENDED.**

THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND PROFITS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made and entered into effective as of December 27, 2006, by EZELL HOLDINGS, LLC, an Alabama limited liability company (the "Grantor"), Grantor having its principal office at 103 Lanier Ave. Mobile, AL 36607; to and in favor of NATIONAL CITY BANK, a national bank ("Lender"), and Lender's successors and assigns, Lender having its principal office at 810 Crescent Center Drive, Suite 160 Four Corporate Center Franklin, Tennessee 37067-6257, Attn: Thomas W. Powell, Jr., or at such other place as Lender may from time to time designate.

**WITNESSETH:**

WHEREAS, the Grantor is justly indebted to Lender pursuant to a Promissory Note payable to Lender in the principal amount not exceeding Five Million Five Hundred Thousand and no/100 Dollars (\$5,500,000) of even date herewith, together with interest thereon, and all



modifications and extensions thereto (the "Note"). This Mortgage secures payment of the indebtedness evidenced by said promissory note, principal and interest, and any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest; and

WHEREAS, the term "Obligations" as used herein shall include all indebtedness and obligations of Grantor to Lender under the Note.

NOW THEREFORE, in consideration of and in order to secure the repayment of the Obligations, as well as the payment of all other sums of money secured hereby, as hereinafter provided; to secure the observance, performance and discharge by Grantor of all terms, covenants, conditions and agreements set forth in this Mortgage; in order to charge the properties, interests and rights hereinafter described with such payment, observance, performance and discharge; and in consideration of the sum of Ten Dollars paid by Lender to Grantor, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does hereby grant, bargain, sell and convey unto Lender, all of Grantor's right, title and interest (including, without limitation, any leasehold interest or leasehold estate) in and to the following described properties, including all rights, interests, replacements, substitutions and additions thereto, therein or therefore (collectively, the "Mortgaged Property");

(i) That certain real property described on Exhibit A hereto and by this reference made a part hereof (the "Real Property");

(ii) All buildings, structures and other improvements of any kind, nature or description now or hereafter erected, constructed, placed or located upon the Real Property (the "Improvements"), including, without limitation, any and all additions to, substitutions for or replacements of such Improvements;

(iii) All minerals, royalties, gas rights, water, water rights, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under or above all or any part of the Real Property;

(iv) All and singular, the tenements, hereditaments, strips and gores, rights-of-way, easements, privileges, profits and other appurtenances now or hereafter belonging or in any way appertaining to the Real Property, including, without limitation, all right, title and interest of Grantor in any after-acquired right, title, interest, remainder or reversion in and to the beds of any ways, streets, avenues, roads, alleys, passages and public places, open or proposed, in front of, running through, adjoining or adjacent to the Real Property (the "Appurtenances");

(v) Any and all leases, licenses, contracts, rents, license fees, royalties, issues, revenues, profits, proceeds, deposits, income and other benefits, including accounts receivable, termination fees, of, accruing to or derived from the Real Property, Improvements and Appurtenances, and all of Grantor's right, title and interest under any and all utility deposits, advance rentals, lease guaranties, letters of credit, and any other credit support furnished to Grantor in connection with any of the foregoing (the "Rents");



(vi) Any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any way, street, avenue, road, alley, passage or public place; (c) any other injury, damage, casualty or claim relating to the taking of, or decrease in the value of, the Real Property, Improvements or Appurtenances; or (d) proceeds of insurance awards, to the extent of all amounts which may be secured by this Mortgage at the date of any such award or payment including but not limited to Reasonable Attorneys' Fees (as hereinafter defined), costs and disbursements incurred by Lender in connection with the collection of such award or payment; and

(vii) All fixtures (as defined under the UCC, as such term is hereafter defined), now or hereafter attached to, installed in, or used in connection with the buildings and other improvements now erected or hereafter to be erected on said land, including, but not limited to, furnaces, steam boilers, hot-water boilers, oil burners, pipes, radiators, air-conditioning and sprinkler systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, motors, dynamos, cabinets and all other furnishings, tools, equipment and machinery, appliances, building supplies, materials, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which property and things are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the indebtedness herein mentioned (collectively, "Fixtures").

TO HAVE AND TO HOLD the foregoing Mortgaged Property and the rights hereby granted for its use and benefit unto Lender and its successors and assigns in fee simple forever.

In order to secure the repayment of Obligations, and to secure the observance, performance and discharge by Grantor of all covenants, conditions and agreements set forth in this Mortgage; and in order to charge the properties, interests and rights hereinafter described with such payment, observance, performance and discharge; and in consideration of the sum of Ten Dollars paid by Lender and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Lender a security interest in all Fixtures. The term Fixtures expressly excludes any toxic waste or substance deemed hazardous under federal, regional, state or local laws, codes, ordinances, statutes, rules, regulations, decisions or orders). The Mortgaged Property and the Fixtures are herein together referred to as the "Property."

Except as otherwise expressly provided in this Mortgage, all terms in this Mortgage relating to the Property and the grant of the foregoing security interest which are defined in the Uniform Commercial Code of the State (the "UCC") shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the UCC, as those meanings may be amended, revised or replaced from time to time. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the UCC have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date of this Mortgage, then such term, as used herein, shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this



Mortgage, such amendment or holding shall be disregarded in defining terms used in this Mortgage.

Grantor hereby covenants and warrants with and to Lender that Grantor is indefeasibly seized of the Property, and has good right, full power, and lawful authority to convey and encumber all of the same as aforesaid; that Grantor hereby fully warrants the title to the Property and will defend the same and the validity and priority of the lien and encumbrance of this Mortgage against the lawful claims of all persons whomsoever; and Grantor further warrants that the Property is free and clear of all liens except as described on Exhibit B hereto.

If Grantor shall pay to Lender the Obligations, and if Grantor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every one of the terms, covenants, conditions and agreements of this Mortgage, then this Mortgage and the estates and interests hereby granted and created shall cease, terminate and be null and void, and shall be discharged of record at the expense of Grantor.

Grantor, for the benefit of Lender and their respective successors and assigns, does hereby expressly covenant and agree as follows:

1. PAYMENT OF OBLIGATIONS. Grantor shall pay the Obligations promptly and punctually; and the Grantor shall promptly and punctually pay all other Obligations required to be paid by Grantor pursuant to the terms, covenants and conditions of this Mortgage.

2. PERFORMANCE OF OTHER OBLIGATIONS. Grantor shall perform, comply with and abide by each and every one of the terms, covenants, conditions and agreements contained and set forth in this Mortgage.

3. PRESERVATION AND MAINTENANCE OF PROPERTY; ACCESSIBILITY; HAZARDOUS WASTE.

(a) Grantor shall keep all Improvements now existing or hereafter erected on the Real Property in good order and repair. In furtherance of, and not by way of limitation upon, the foregoing covenant, Grantor shall effect such repairs as Lender may reasonably require, and from time to time make all needful and proper replacements so that the Improvements, Appurtenances, Fixtures will, at all times, be in good condition, fit and proper for the respective purposes for which it was originally erected or installed.

(b) Lender, and/or its agents, shall have the right and shall be permitted, but shall not be required, at all reasonable times, to enter upon and inspect the Property to insure compliance with the foregoing covenants, and any and all other terms, covenants, conditions and agreements set forth in this Mortgage.

4. PAYMENT OF TAXES, ASSESSMENTS AND OTHER CHARGES. Grantor shall pay or cause to be paid all taxes, assessments and other charges as already levied or assessed, or that may be hereafter levied or assessed, upon or against the Property, when the same shall become due and payable according to law, before delinquency, and before any interest or penalty shall attach thereto, and to deliver official receipts



evidencing the payment of the same to Lender not later than thirty (30) days following the payment of the same. Grantor shall have the right to contest, in good faith and in accordance with applicable laws and procedures, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property; provided, however, Grantor shall give written notice of its intent to bring such an action to Lender, and Lender may, in its sole discretion, require Grantor to post a bond or other collateral satisfactory to Lender (and acceptable to the title company insuring this Mortgage) as a result of Grantor's act.

5. PAYMENT OF MORTGAGE TAXES. Grantor shall pay or cause to be paid any and all taxes which may be levied or assessed directly or indirectly upon the Obligations and/or this Mortgage (except for income taxes payable by Lender), without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon Lender, and its respective successors or assigns. Upon violation of this covenant, or upon the rendering by any court of competent jurisdiction of a decision that such a covenant by Grantor is legally inoperative, or if any court of competent jurisdiction shall render a decision that the rate of said tax when added to the rate of interest provided for in the Note exceeds the then maximum rate of interest allowed by law, then, and in any such event, the Obligations hereby secured shall, at the option of Lender, its successors or assigns, become immediately due and payable, anything contained in this Mortgage or in the Note secured hereby notwithstanding. The additional amounts which may become due and payable hereunder shall become a part of the indebtedness secured by this Mortgage.

6. INSURANCE.

(a) Hazard Insurance. Grantor shall continuously, during the term of this Mortgage, take reasonable steps to cause the Improvements, Appurtenances, and Fixtures, now or hereafter existing, erected, installed and located in or upon the Real Property, to be insured with extended coverage insurance against loss or damage resulting from fire, lightning, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, windstorm, flood, and such other hazards, casualties, contingencies and perils including, without limitation, other risks insured against by persons operating like properties in the locality of the Property, or otherwise reasonably deemed necessary or advisable by Lender, on such forms and with such deductibles as may be required by Lender (collectively, "Casualty Insurance"), in an amount equal to one hundred percent (100%) of the full insurable value of the Property. Each such policy of insurance shall name Lender as insured first mortgagee and contain a noncontributing loss payable clause in favor of and in a form acceptable to Lender.

(b) Liability Insurance. Grantor shall maintain comprehensive public liability insurance covering the acts of Grantor and all of its employees. Such policy or policies shall insure against all claims for personal injury and death on an occurrence basis in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence or such other limits as Lender shall require. Each such policy of insurance shall name Lender as an additional insured.



(c) All insurance policies required by Lender shall be carried with a company or companies licensed to do business in the State, which is acceptable to Lender, which company or companies shall have a rating at the time this Mortgage is executed satisfactory to Lender. The original policy or policies and renewals thereof (or, at the sole option of Lender, duplicate originals or certified copies thereof), together with receipts evidencing payment of the premium therefor, shall be deposited with, held by and are hereby assigned to, Lender as additional security for the Obligations.

(d) All insurance policies shall provide for not less than thirty (30) days prior written notice to Lender of any intent to modify, non-renew, cancel or terminate the policy or policies, or the expiration of such policies of insurance, or the exclusion of any individual risk such as acts of terrorism.

(e) In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Obligations secured hereby, all right, title and interest of Grantor, in and to any insurance policies then in force including any rights to unearned premiums and existing claims, and in and to insurance proceeds then payable, shall pass to the purchaser or grantee.

(f) Should any claim arise under any insurance policy required by Lender hereunder, Grantor shall give immediate notice thereof to Lender. Lender is hereby irrevocably appointed attorney-in-fact coupled with an interest for Lender to, at its option, make proof of loss and/or to file a claim thereunder. Each insurance company concerned is hereby notified, authorized and directed to make payment for such loss directly to Lender, instead of to Grantor and Lender jointly, and Grantor hereby authorizes Lender to adjust and compromise any losses for which insurance proceeds are payable under any of the aforesaid insurance policies and, after deducting the costs of collection, to apply the proceeds of such insurance, at Lender's option either: (a) to the restoration or repair of the insured Improvements, Appurtenances, and Fixtures; or (b) to the reduction of any portion of the Obligations as selected by Lender, notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Obligations are otherwise adequately secured. None of such actions taken by Lender shall be deemed to be or result in a waiver or impairment of any equity, lien or right of Lender under and by virtue of this Mortgage, nor will the application of such insurance proceeds to the reduction of the Obligations serve to cure any Default in the payment thereof. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Obligations secured hereby, all right, title and interest of Grantor in and to any insurance policies then in force including any rights to unearned premiums and in and to insurance proceeds then payable, shall pass to the purchaser or grantee.

(g) In case of Grantor's failure to keep the Property properly insured as required herein, Lender, its successors or assigns, may, at its option (but shall not be required to) acquire such insurance as required herein at Grantor's sole expense.



(h) At least thirty (30) days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the insurer's agreement to reissue said policy and of the payment of the premium for reissuance.

7. OTHER INSURANCE. Grantor shall carry and maintain or cause to be carried and maintained such other insurance as may from time to time be required by the Lender.

8. COMPLIANCE WITH LAWS. Grantor shall observe, abide by and comply with all federal, regional, state and local laws, codes, ordinances, statutes, rules, regulations, decisions, orders, requirements or decrees (collectively, the "Laws") relating to the Property enacted, promulgated or issued by any federal, state, county or local governmental or quasi-governmental authority or any agency or subdivision thereof having jurisdiction over Grantor or the Property ("Governmental Authority"), which now or hereafter affect Grantor or the Property, and observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, permits (including, but not limited to, zoning, variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Property, or which have been granted to or contracted for by Grantor in connection with any existing, presently contemplated or future uses of the Property.

9. MAINTENANCE OF PERMITS. Grantor shall, or shall cause others to, obtain, keep and constantly maintain in full force and effect during the entire term of this Mortgage, all certificates, licenses and permits necessary to keep the Property operating for the Existing Use, except where such failure to do so, either with respect to the Property, or in the aggregate with all other properties securing payment of the Obligations, would not reasonably be expected to result in a Material Adverse Effect, and Grantor is diligently pursuing the reinstatement of any such certificates, licenses and permits that is not in full force and effect. Except as specifically provided for in this Mortgage, Grantor shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Lender.

10. EXECUTION OF ADDITIONAL DOCUMENTS. Grantor shall do, make, execute, acknowledge, witness and deliver all deeds, conveyances, mortgages, deeds of trust, assignments, estoppel certificates, subordination non-disturbance and attornments, notices of assignments, transfers, assurances, security agreements, financing statements and renewals thereof, and all other instruments or other acts necessary, as Lender shall from time to time reasonably require for the purpose of better assuring, conveying, assigning, transferring, securing and confirming unto Lender the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned, or which Grantor may now be or may hereafter become bound to encumber, create, convey or assign to Lender, or for the purpose of carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and to pay all filing, registration or recording fees and all taxes, costs and other expenses, including Reasonable Attorneys' Fees, incident to the



preparation, execution, acknowledgment, delivery and recordation of any of the same. By signing this Mortgage, Grantor authorizes Lender to file such financing statements, with or without the signature of Grantor, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Fixtures. Without limiting any other provision herein, Grantor hereby authorizes Lender to file one or more financing statements and any renewal or continuation statements thereof, describing the Property and the proceeds of the Property, including, without limitation, a financing statement covering "all Property (as defined in this Mortgage) of Grantor, all proceeds therefrom, and all rights and privileges with respect thereto." Grantor further authorizes Lender to file, with or without any additional signature from Grantor, as Lender may elect, such amendments and continuation statements as Lender may deem necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Fixtures. Grantor hereby ratifies any financing statements that may have been filed by Lender in advance of the date hereof to perfect Lender's security interest in the Fixtures.

11. AFTER-ACQUIRED PROPERTY SECURED. Grantor hereby subjects to the lien of this Mortgage all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Property hereinabove described, hereafter acquired by or released to Grantor, or constructed, assembled or placed by Grantor on the Real Property, and all conversions of the security constituted thereby.

12. PAYMENTS BY LENDER ON BEHALF OF GRANTOR. Grantor shall make or cause to be made, payment of any taxes, assessments or public charges on or with respect to the Property before the same shall become delinquent, and shall make payment of any insurance premiums or other charges, impositions, or liens herein or elsewhere required to be paid by Grantor, or if Grantor shall fail so to do, then Lender, at its sole option, but without obligation to do so, may make payment or payments of the same and also may redeem the Property from tax sale without any obligation to inquire into the validity of such taxes, assessments, charges, impositions or liens. In the case of any such payment by Lender, Grantor agrees to reimburse Lender, upon demand therefor, the amount of such payment and of any fees and expenses attendant in making the same, together with interest thereon at the Default Interest, as defined in that certain Credit Agreement entered into by and between Grantor and Lender of even date herewith (the "Credit Agreement"); and until paid such amounts and interest shall be added to and become part of the Loan secured hereby to the same extent that this Mortgage secures the repayment of the Loan. In making payments authorized by the provisions of this Section 12, Lender may do so whenever it, in its reasonable judgment and discretion (and during the continuance of an Event of Default, their sole judgment), determine that such advance or advances are necessary or desirable to protect the full security intended to be afforded by this Mortgage. Neither the right nor the exercise of the rights herein granted to Lender to make any such payments as aforesaid shall preclude Lender from exercising its option to cause the Obligations secured hereby to become immediately due and payable by reason of Grantor's default in making such payments as hereinabove required.



13. CONDEMNATION; EMINENT DOMAIN. Notwithstanding any taking of any part of the Property by eminent domain, alteration of the grade of any street or other injury to, or decrease in value of, the Property, by any public or quasi-public authority or corporation, Grantor shall continue to pay principal and interest on the Obligations, and any reduction in the Obligations resulting from the application by Lender of any award or payment for such taking, alterations, injury or decrease in value of the Property, as hereinafter set forth, shall be deemed to take effect only on the date of such receipt; and said award or payment may, at the option of Lender, be retained and applied by Lender toward payment of the Obligations, or be paid over, wholly or in part, to Grantor for the purpose of altering, restoring or rebuilding any part of the Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Property, or for any other purpose or object satisfactory to Lender, but Lender shall not be obligated to assume the proper application of any amount paid over to Grantor. If, prior to the receipt by Lender of such award or payment, the Property shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with interest thereon at the maximum nonusurious rate of interest permitted to be charged at the time, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to the extent of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment.

14. COSTS OF COLLECTION. In the event that any portion of the Obligations is placed in the hands of an attorney for collection, or in the event that Lender shall become a party either as plaintiff or as defendant, in any action, suit, appeal or legal proceeding (including, without limitation, foreclosure, condemnation, bankruptcy, administrative proceedings or any proceeding wherein proof of claim is by law required to be filed), hearing, motion or application before any court or administrative body in relation to the Property or the lien and security interest granted or created hereby or herein, or for the recovery or protection of the Obligations or the Property, or for the foreclosure of this Mortgage, Grantor shall indemnify, save, defend and hold Lender harmless from and against any and all Losses incurred by Lender on account thereof, and Grantor shall repay, on demand, all such Losses, together with interest thereon until paid at the Default Interest (as defined in the Credit Agreement); all of which sums, if unpaid, shall be added to and become a part of the Obligations.

15. DEFAULT RATE. Any sums not paid within ten (10) days of the date when due, whether maturing by lapse of time or by reason of acceleration under the provisions of this Mortgage, and whether principal, interest or money owing for advancements pursuant to the terms of this Mortgage, shall bear interest until paid at the Default Interest (as defined in the Credit Agreement); all of which sums shall be added to and become a part of the Obligations.

16. SAVINGS CLAUSE. Notwithstanding any provisions in the Obligations or in this Mortgage to the contrary, the total liability for payments in the nature of interest, including but not limited to Default Interest (as defined in the Credit Agreement) and late payment charges, shall not exceed the limits imposed by the Laws of the State of



Tennessee or, if controlling, the Laws of the United States, relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the Obligations, any amount in excess of the maximum lawful rate of interest permitted to be charged by any Laws. In the event the Lender ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to reduce the unpaid principal balance of the Obligations. If the unpaid principal balance of the Obligations has been paid in full, any remaining excess shall be forthwith returned to Grantor.

17. TIME IS OF THE ESSENCE; MONETARY AND NON-MONETARY DEFAULTS. It is understood by Grantor that time is of the essence hereof in connection with all obligations of Grantor herein.

The occurrence of any of the following events shall constitute a Default hereunder:

- (a) Grantor shall abandon the Property;
- (b) An Event of Default occurs as defined in that certain Credit Agreement executed by Grantor and Lender of even date herewith; and
- (c) should any federal tax lien or claim of lien for labor or material be filed of record against Grantor or the Property and not be removed by payment or bond within thirty (30) days from date of recording.

Upon the occurrence and during the continuance of a Default, at the option of Lender, the principal of and the interest accrued on the Obligations and all other sums secured by this Mortgage shall immediately become due and payable as if all of said sums of money were originally stipulated to be paid on such day. In addition, Lender may avail itself of all rights and remedies provided by law or equity, and may foreclose or prosecute a suit at law or in equity as if all monies secured hereby had matured prior to its institution, anything in this Mortgage to the contrary notwithstanding. Except as required by applicable Laws or this Mortgage, Lender shall have no obligation to give Grantor notice of, or any period to cure any Default prior to exercising its rights, powers, privileges and remedies.

18. FORECLOSURE; OTHER REMEDIES. (a) Upon the occurrence of a Default, Lender may institute an action to foreclose this Mortgage as to the amount so declared due and payable, and thereupon the Property (or any portion thereof) shall be sold according to law to satisfy and pay the same, together with all costs, expenses and allowances thereof, including, without limitation, Reasonable Attorneys' Fees. The Property may be sold in one parcel, several parcels or groups of parcels, and Lender shall be entitled to bid at the sale, and, if the Lender is the highest bidder for the Property or any part or parts thereof, Lender shall be entitled to purchase the same. The failure or omission on the part of Lender to exercise the option for acceleration of maturity of the Obligations and foreclosure of this Mortgage following any Default as aforesaid or to exercise any other option or remedy granted hereunder to Lender when entitled to do so in any one or more instances, or the acceptance by Lender of partial payment of the Obligations secured hereby, whether before or subsequent to any



Default hereunder, shall not constitute a waiver of any such Default or the right to exercise any such option or remedy, but such option or remedy shall remain continuously in force. Acceleration of the maturity of the Obligations, once claimed hereunder by Lender, at the option of Lender, may be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way either affect or rescind such acceleration of maturity, nor act as a waiver, accord and satisfaction, modification, novation or similar defense.

(b) In addition to the rights and remedies, contained in this Section, Lender shall have all of the additional rights and remedies contained in this Mortgage.

19. PROTECTION OF LENDER' SECURITY. At any time during the continuation of a Default hereunder, Lender, or Lender's agents or contractors, is authorized, without notice and in Lender's sole discretion, to enter upon and take possession of the Property or any part thereof, and to perform any acts which Lender deems necessary or proper to conserve the security interest herein intended to be provided by the Property, to operate any business or businesses conducted thereon, and to collect and receive all Rents thereof and therefrom, including those past due as well as those accruing thereafter.

20. APPOINTMENT OF RECEIVER. If, at any time after a Default hereunder, Lender deems, in Lender's sole discretion, that a receivership may be necessary to protect the Property or its Rents, whether before or after maturity of the Obligations and whether before or at the time of or after the institution of foreclosure or suit to collect the Obligations or to enforce this Mortgage, Lender, as a matter of strict right and regardless of the value of the Property or the amounts due hereunder or secured hereby, or of the solvency of any party bound for the payment of such indebtedness, shall have the right, upon ex parte application and without notice to anyone, and by any court having jurisdiction, to the appointment of a receiver to take charge of, manage, preserve, protect and operate the Property, to collect the Rents thereof, to make all necessary and needful repairs, and to pay all taxes, assessments, insurance premiums and other such charges against and expenses of the Property, and to do such other acts as may by such court be authorized and directed, and after payment of the expenses of the receivership and the management of the Property, to apply the net proceeds of such receivership in reduction of the Obligations or in such other manner as the said court shall direct notwithstanding the fact that the amount owing thereon may not then be due and payable or the said Obligations are otherwise adequately secured. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured or until title to the Property shall have passed by sale under this Mortgage. Grantor hereby specifically waives its right to object to the appointment of a receiver as aforesaid, and hereby expressly agrees that such appointment shall be made as an admitted equity and as a matter of absolute right to Lender.

21. RIGHTS AND REMEDIES CUMULATIVE; FORBEARANCE NOT A WAIVER. The rights and remedies herein provided are cumulative, and Lender, as the holder of the Obligations and of every other obligation secured hereby, may recover



judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting any right or remedy available to Lender and without affecting or impairing the security of any right or remedy afforded hereby, and no enumeration of special rights or powers by any provisions hereof shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in Lender by law or equity. Grantor further agrees that no delay or omission on the part of Lender to exercise any rights or powers accruing to it hereunder shall impair any such right or power, or shall be construed to be a waiver of any such Default hereunder or an acquiescence therein; and every right, power and remedy granted herein or by law or equity to Lender may be exercised from time to time as often as Lender deems expedient.

Lender may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Obligations, in whole or in part, and in such portions and in such order as may seem best to Lender in its sole discretion, and any such action shall not be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any appraisement, valuation, stay, extension or redemption, and Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Grantor, and/or Grantor including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

22. MODIFICATION NOT AN IMPAIRMENT OF SECURITY. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior mortgages, deeds of trust, or other liens thereon, may release any part of the security described herein, or may release any person or entity liable for the Obligations secured hereby without in any way affecting the priority of this Mortgage, to the full extent of the Obligations remaining unpaid hereunder, upon any part of the security not expressly released. Lender may, at its option and within Lender's sole discretion, also agree with any party



obligated on the Obligations, or having any interest in the security described herein, to extend the time for payment of any part or all of the Obligations, and such agreement shall not, in any way, release or impair this Mortgage, but shall extend the same as against the title of all parties having any interest in said security, which interest is subject to this Mortgage.

23. FURTHER ENCUMBRANCE PROHIBITED; SUBROGATION. So long as the Obligations remain unpaid, Grantor shall not, either voluntarily or involuntarily, permit the Property or any part thereof to become subject to any secondary or subordinate lien, mortgage, deed of trust, security interest or encumbrance of any kind whatsoever without the prior written consent of Lender.

24. FUTURE ADVANCES SECURED. This Mortgage shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of Lender. Upon the request of Grantor, and at Lender's option prior to release of this Mortgage, Lender may make future advances to Grantor. All future advances with interest thereon shall be secured by this Mortgage to the same extent as if such future advances were made on the date of the execution of this Mortgage unless the parties shall agree otherwise in writing. Any advances or disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property, with interest on such disbursements as provided herein, shall be added to the principal balance of the Obligations and collected as a part thereof.

25. EFFECT OF SECURITY AGREEMENT; FIXTURE FILING. Grantor agrees to, and shall upon the request of Lender, execute and deliver to Lender, in form and content satisfactory to Lender, such financing statements, descriptions of property and such further assurances as Lender, in Lender's sole discretion, may from time to time consider necessary to create, perfect, continue and preserve the lien and encumbrances hereof, and the security interest granted herein, upon and in the Property.

This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. The information provided in this Section is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Grantor is the "Debtor" and its name and mailing address are set forth below in this Section. Lender is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth below in this Section. A statement describing the portion of the Mortgaged Property comprising the fixtures hereby secured is set forth in the Witnesseth Sections of this Mortgage.

FIXTURE FILING: THIS MORTGAGE SHALL BE EFFECTIVE AS A FIXTURE FILING AND IS TO BE FILED IN THE COUNTY RECORDING OFFICE. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE THE FOLLOWING INFORMATION IS FURNISHED:



- (a) the name and address of the debtor (Grantor) and owner of the Real Property described in this Mortgage is:

Ezell Holdings, LLC  
P.O. Box 290  
Mobile, AL 36607

- (b) the name and address of the secured party is:

National City Bank  
810 Crescent Center Drive, Suite 160  
Four Corporate Center  
Franklin, Tennessee 37067-6257  
Attention: Thomas W. Powell, Jr.

- (c) Information concerning the security interest evidenced by this instrument may be obtained from the secured party at its address above.

- (d) This document covers goods which are or are to become fixtures.

26. SUCCESSORS AND ASSIGNS; TERMINOLOGY. The provisions hereof shall be binding upon Grantor and the heirs, personal representatives, trustees, successors and assigns of Grantor, and shall inure to the benefit of Lender and its respective successors and assigns. Where more than one Grantor is named herein, the obligations and liabilities of said Grantor shall be joint and several.

Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: (a) the word "Grantor" shall mean Grantor and/or any subsequent owner or owners of the Property; (b) the word "Lender" shall mean Lender or any subsequent holder or holders of the Obligations secured by this Mortgage; (c) the word "person" shall mean an individual, trustee, trust, corporation, partnership, limited liability corporation, limited liability partnership, joint venture or unincorporated association; and (d) the word "State" shall mean the State of Alabama. As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Lender based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State. As used herein words of any gender shall include all other genders.

27. NOTICES. All notices, reports, requests or other written instruments required or permitted hereunder, shall be in writing, signed by the party giving or making the same, and shall be sent hand-delivered, effective upon receipt, sent by a nationally recognized overnight courier for overnight (next-day) delivery, effective when delivered for overnight (next-day) delivery, or sent by United States registered or certified mail, postage prepaid, with return receipt requested, deemed effective on the earlier of the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, addressed to the party intended to receive the same at the address set forth below or at such other address as



shall be given in writing by any party to another ("Written Notice"); provided, that Written Notice delivered to Lender shall not be effective until actually received by Lender at its address specified in this Section 27:

If to Grantor: Ezell Holdings, LLC  
P.O. Box 290  
Mobile, AL 36607

If to Lender: National City Bank  
810 Crescent Center Drive, Suite 160  
Four Corporate Center  
Franklin, Tennessee 37067-6257  
Attention: Thomas W. Powell, Jr.

With a copy to: Stites & Harbison, PLLC  
Suite 1800  
424 Church Street  
Nashville, Tennessee 37219  
Attention: Julian L. Bibb

28. GOVERNING LAW; WAIVER OF JURY TRIAL; SEVERABILITY. GRANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, AGAINST ANY OF LENDER, AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS, BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH ANY OF THE NOTE, THIS MORTGAGE, THE OBLIGATIONS OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, LENDER'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER), IN CONNECTION WITH THE OBLIGATIONS, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH ANY PARTY MAY BE PERMITTED TO ASSERT THEREUNDER, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL LENDER OR ITS RESPECTIVE SUCCESSORS OR ASSIGNS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS OR OPPORTUNITY) AND BY ITS EXECUTION HEREOF, GRANTOR WAIVES ANY RIGHT TO CLAIM OR SEEK ANY SUCH DAMAGES. This Mortgage and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the internal laws of the State, without regard to principles of conflicts of laws. The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Mortgage may be



brought in a court of record in the State or in the courts of the United States of America located in such State, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. If any clauses or provisions herein contained operate, or would prospectively operate, to invalidate this Mortgage, then such clauses or provisions only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

29. RIGHTS OF LENDER CUMULATIVE. The rights of Lender arising under the terms, covenants, conditions and agreements contained in this Mortgage shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others. No act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding. If Grantor is comprised of more than one person or entity, then the liability of each such person and entity hereunder shall be joint and several.

30. MODIFICATIONS. This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Grantor and Lender.

31. CAPTIONS. The captions set forth at the beginning of the various Sections of this Mortgage are for convenience only, and shall not be used to interpret or construe the provisions of this Mortgage.

*[Signatures on following page]*



IN WITNESS WHEREOF, the undersigned Grantor has caused this Mortgage to be executed as of the day and year first above written.

GRANTOR:

EZELL HOLDINGS, LLC

By: Elisse F. Watkins

Title: AUTHORIZED MEMBER

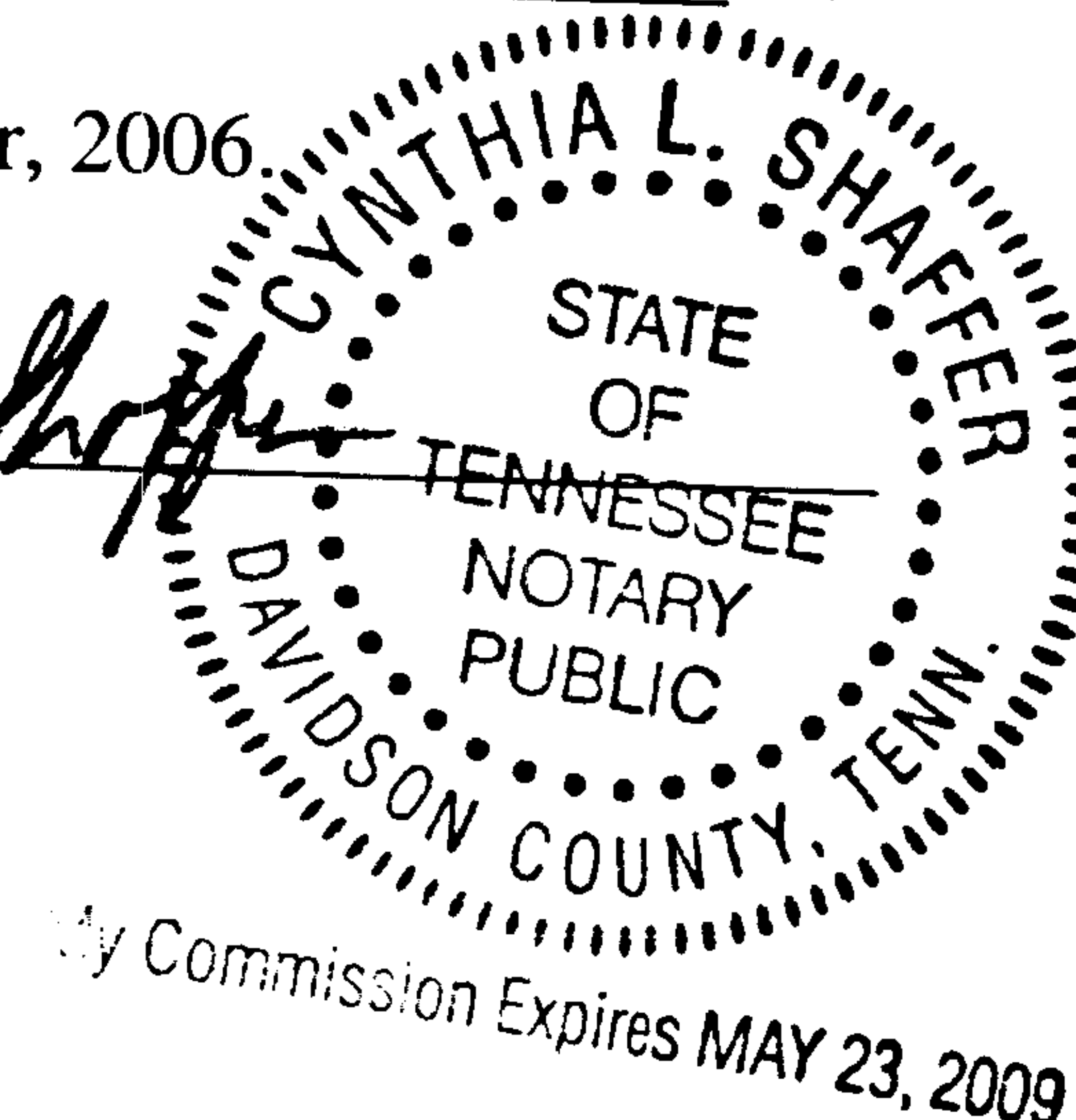
STATE OF Tennessee  
COUNTY OF Davidson

Before me, Cynthia L Shaffer, a Notary Public of said County and State, personally appeared Elisse F. Watkins, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Authorized Member (or other officer authorized to execute the instrument) of EZELL HOLDINGS, LLC, the within named bargainor, an Alabama limited liability company, and that she as such Authorized Member executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as its Authorized Member.

Witness my hand and seal, at Office, this 27<sup>th</sup> day of December, 2006.

Cynthia L Shaffer  
Notary Public

My Commission Expires: 5/23/09



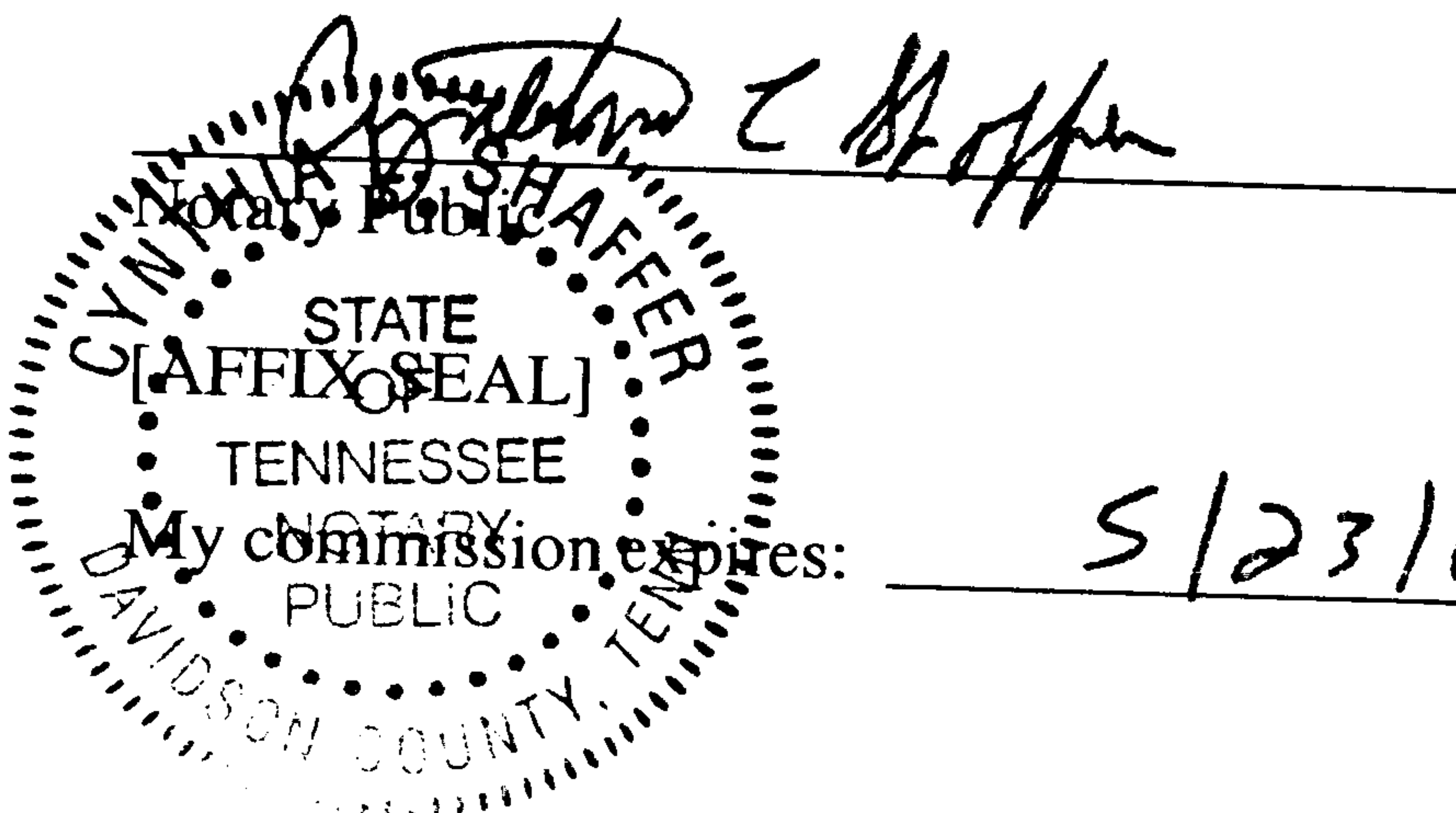




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Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:58AM FILED/CERT

STATE OF Tennessee)  
COUNTY OF Davidson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Elissa E. Wetherington, whose name as Authorized Member of Ezell Holdings, LLC, an Alabama limited liability company, 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, she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company. Given under my hand and official seal this the 27th day of December, 2006.



5/23/09

Expires MAY 23, 2009



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Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:58AM FILED/CERT

**ACCEPTED BY:**

NATIONAL CITY BANK

By: Thomas W. Powell, Jr.

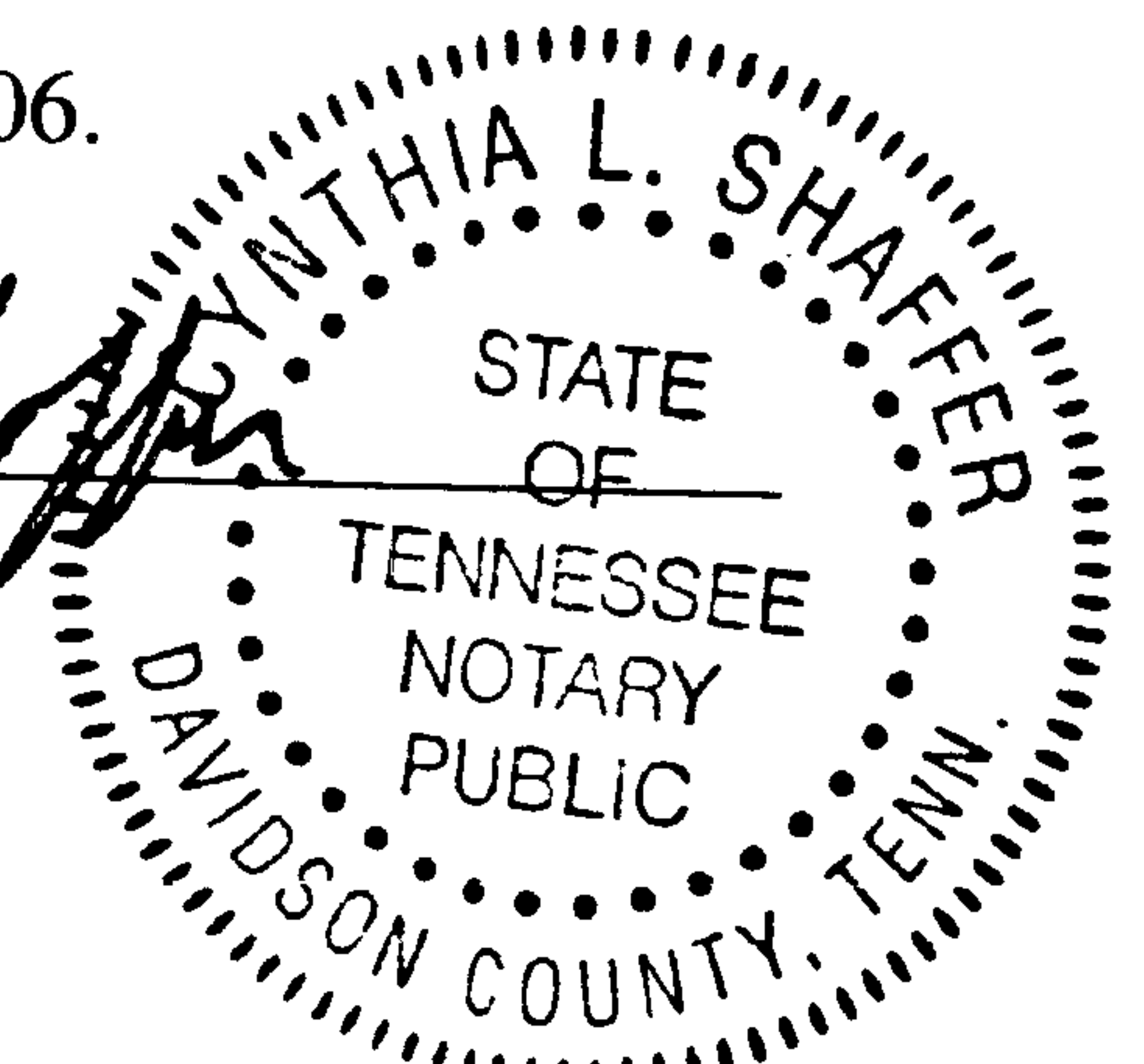
Title: SENIOR VICE PRESIDENT

STATE OF Tennessee  
COUNTY OF Davidson

Before me, Cynthia L. Shaffer, a Notary Public of said County and State, personally appeared Thomas W. Powell, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Senior Vice President (or other officer authorized to execute the instrument) of NATIONAL CITY BANK, the within named bargainer, a national bank, and that he as such Senior Vice President executed the foregoing instrument for the purposes therein contained, by signing the name of the national bank by himself as Senior Vice President.

Witness my hand and seal, at Office, this 27th day of December, 2006.

Cynthia L. Shaffer  
Notary Public



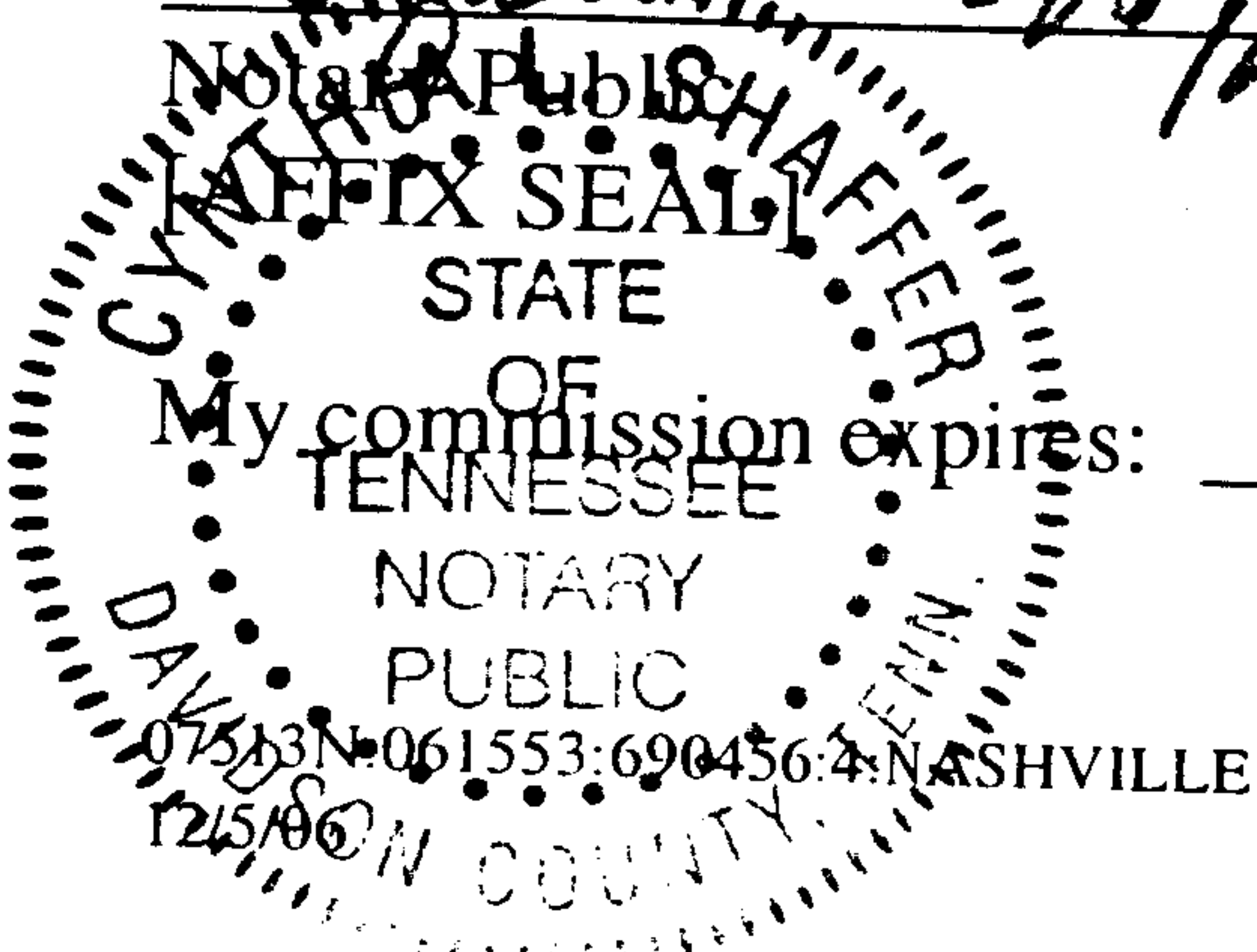
My Commission Expires: 5/23/09

STATE OF Tennessee

COUNTY OF Davidson


I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Thomas W. Powell, Jr., whose name as Senior Vice President of National City Bank, a national bank, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said state bank. Given under my hand and official seal this the 27th day of December, 2006.

Cynthia L. Shaffer



5/23/09



  
20070306000099720 20/33 \$108.00  
Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:58AM FILED/CERT

THIS INSTRUMENT PREPARED BY:

Nicholas G. Barca  
STITES & HARBISON  
424 Church Street, Suite 1800  
Nashville, Tennessee 37219  
Telephone: (615) 244-5200



**EXHIBIT A**

**Legal Description**

**Unit 287**

Lot 2, according to the plat of a Resubdivision of Lot 15, Block 2, FANNING HEIGHTS & OTHER LANDS (Sections 33 and 34, Township 3 South, Range I West), Huntsville, Alabama, as recorded in Plat Book 40, Page 32, in the Office of the Judge of Probate of Madison County, Alabama.

Subject to a restriction against leasing the premises for use as a home-style cooking restaurant set forth in a Memorandum of Lease appearing in Deed Book 829, Page 1011, Probate Records of Madison County, Alabama.

Subject to the terms of that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions recorded in Deed Book 971, Page 239 and conditions, easements and set-back requirements as shown on the above referenced plat.

**Unit No. 1033**

Lot 1 A of Resurvey of Lots 1 and 3 Cole Commercial Subdivision, as recorded in Map Book 180, page 30, in the Probate Office of Jefferson County, Alabama, less and except the southeast 20.0 feet, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1A; thence run South 04°51'29" East for 192.68 feet to a point on the Northeasterly right of way line of U.S. Highway 11 and a curve to the Southwest, said curve having a central angle of 01°04'16", a radius of 6,278.41 feet and a chord of 117.37 feet, South 82°55'05" West, thence turn an angle to the right of 88°18'41" to tangent and run Southwesterly along the arc of said curve and along said right of way for 117.37 feet to a point; thence turn an angle from tangent of 105°09'08" right and run North 07°32'04" East along the Southwesterly line of said Lot 1A for 281.04 feet to a point on the Southerly right of way line of Morrow Road; thence 61°21'38" right and run North 68°53'42" East along said fight of way line for 38.00 feet; thence turn 90°00'00" right to become tangent to a curve to the right, said curve having a radius of 56.96 feet and subtending a central angle of 30°44'49"; thence run Southeasterly along the arc of said curve for 30.57 feet; thence at tangent to said curve run South 09°38'31" West for 59.59 feet to a point; thence 104°30'00" left and run North 85°08'31" East for 34.94 feet to the point of beginning.

Together with a 25 foot wide access easement described as follows:

Part of Lot 1A and 3A of Resurvey of Lots 1 and Lot 3 Cole Commercial Subdivision, as recorded in Map Book 180, page 30, in the Office of the Judge of Probate of Jefferson County, Alabama situated in Section 33, Township 16 South, Range 1 West, more particularly described as:



Commence at the most Northeast corner of Lot 1A of said Resurvey of Lots 1 and 3 of Cole Commercial Subdivision as recorded in Map Book 180, page 30, is said Office of the Judge of Probate, said corner being the point of beginning of the centerline of a 25 foot wide easement herein described said point being on the East right of way line of Morrow Road and said point being the beginning of a curve to the right, said curve subtending a central angle of  $30^{\circ}44'49''$  and having a radius of 56.96 feet; thence run Southeasterly along the arc of said curve and said centerline of 25 foot wide easement for 30.57 feet; thence at tangent to said curve run South  $09^{\circ}38'31''$  West along the centerline of said 25 foot easement for 59.59 feet to a point at the Southwest corner of said Lot 3A of said Resurvey of Lots 1 and 3 of Cole Commercial Subdivision, thence continue South  $09^{\circ}38'31''$  West along the last stated course and the centerline of said 25 foot easement for 50.16 feet to an angle point, thence  $14^{\circ}30'00''$  left and run South  $04^{\circ}51'29''$  East along the centerline of said 25 foot wide easement for 145.69 feet to a point on the Northerly right of way line of US. Highway Number 11, said point also being the end of the centerline of said 25 foot easement.

### Unit 1283

That tract or Lot of land lying in the City of Florence, County of Lauderdale, State of Alabama known and described as follows, to wit:

Part of Lots 36 thru 40, in Block B, Second Addition to Weeden Heights, as same is recorded in the Office of the Judge of Probate of Lauderdale County, Alabama in Map Book 2, Page 20, and being more particularly described as follows: Begin at an existing iron pin at the Northwest corner of Lot 40 in said Second Addition to Weeden Heights, said point lying at the intersection of the South right of way line of Section Avenue and the East right of way line of Jefferson Street (formerly Detroit Street); thence along the North line of said Lot 40 and along the South right of way line of Section Avenue South  $88^{\circ}21'14''$  East 158.00 feet to a spike set; thence South  $8^{\circ}37'03''$  East 71.72 feet to an iron pin found on the Northern most right of way line of U.S. Highway No. 72 (180 foot right of way); thence along said right of way line South  $74^{\circ}35'16''$  West 178.22 feet to an iron pin found on the Easternmost right of way of Jefferson Street (formerly Detroit Street, 50 foot right of way); thence along said right of way line North  $1^{\circ}27'34''$  East 122.53 feet to the point of beginning of the tract of land hereby described, said tract of land contains 0.37 acres, more or less, or 16,026.2041 square feet.

ALSO: That portion of Section Avenue vacated and abandoned to the abutting property owners, as evidenced by Declaration of Vacation recorded on Fiche 98-411, Frames 1-8.

### Unit 1295

A parcel of land located in the Southwest quarter of the Southwest quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, said parcel being more particularly described as follows:.

Commence at the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 30, run thence Westwardly and along the quarter line 949.78 feet; thence, with a



deflection angle left of  $90^{\circ} 00' 00''$ , run Southwardly 1513.847 feet to a 5/8 inch capped rebar found at the Point of Beginning, said Point lying on the West right-of-way of Southpark Drive, said Point also being the Northeast corner of Lot 1 of Southpark as recorded in the Probate Office of Shelby County, Alabama in Map Book 20 at page 100; thence with a deflection angle right of  $87^{\circ} 54' 29''$ , run Westwardly 55.80 feet to a 5/8 inch capped rebar round at the Northwest corner of said Lot 1, said corner lying on the East right-of-way line of U.S. Highway No. 31, said right-of-way 200 feet wide; thence with an interior angle right of  $97^{\circ} 13' 55''$  run Southwestwardly and along said east right-of-way and the west Boundary of said Lot 1, said right-of-way curving to the right and having a radius of 5881.31 feet, a delta angle of  $02^{\circ} 09' 34''$  an arc length of 221.66 feet and a chord length of 221.64 feet to a 5/8 inch capped rebar found at the Southwest corner of said Lot 1; thence, with an interior angle of right of  $82^{\circ} 47' 07''$ , run Eastwardly and along the South boundary of said Lot 139.52 feet to a 5/8 inch capped rebar found at the Southeast corner of said Lot 1, said corner lying on the West right-of-way of South Park Drive, said right-of-way being 50 feet wide; thence with an interior angle of  $77^{\circ} 29' 52''$ , run Northwestwardly and along said West right-of-way, said right-of-way curving to the left and having a radius of 425.99 feet, a delta angle of  $25^{\circ} 00' 16''$ , an arc length of 185.91 feet and a chord length of 184.43 feet, to a 1/2 inch capped rebar set; thence, with an interior angle right of  $170^{\circ} 33' 28''$ , continue Northwestwardly along said right-of-way, said right-of-way curving to the right having a radius of 428.39 feet, a delta angle of  $5^{\circ} 44' 53''$  an arc length 42.98 feet and a chord length of 42.96 feet to the Point of beginning, thus making a closing interior angle right of  $11^{\circ} 55' 39''$ .

#### Unit No. 835

Begin at a stone marker known as the Southeast Corner of the NW 1/4 of Section 35, T-16-N, R-17-E, Montgomery County, Alabama; thence South  $89^{\circ} 03' 28''$  West 833.64 feet to an iron pin located in a curve on the East Right-of-Way of Interstate Highway No. 65; thence northeasterly along said curve (Chord bearing North  $09^{\circ} 56' 13''$  East, Chord 875.88 feet, Radius 17,038.73 feet) to a concrete marker and end of curve; thence continue along said Right-of-Way North  $21^{\circ} 24' 58''$  East 165.50 feet to an iron pin; thence leaving said Right-of-Way South  $79^{\circ} 19' 20''$  East 563.15 feet to an iron pin; thence North  $01^{\circ} 50' 03''$  West 421.35 feet to an iron pin; thence North  $00^{\circ} 21' 04''$  East 147.76 feet to an iron pin; thence North  $79^{\circ} 19' 09''$  West 150.60 feet to an iron pin; thence North  $10^{\circ} 40' 51''$  East 197.00 feet to a nail in concrete located-on the South Right-of-Way of South Boulevard; thence along said South Right-of-Way South  $79^{\circ} 19' 09''$  East 155.30 feet to an iron pin; thence leaving said Right-of-Way South  $00^{\circ} 21' 10''$  West 339.52 feet to an iron pin; thence South  $01^{\circ} 49' 32''$  East 1321.53 feet to the point of beginning, lying in and being a part of the NE 1/4-of the NW 1/4 and the SE 1/4 of the NW 1/4 all in Section 35, T-16-N, R-17-E, Montgomery County, Alabama.

#### Unit No. 908

A 0.54 acre tract or parcel of land situated in the East one half of the N.W. 1/4 of the S.W. 1/4 of Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, more particularly described as follows:



Beginning at the intersection of the West line of the East one-half of the N.W. 1/4 of the S.W. 1/4 of Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, and the South right of way line of Alabama Highway No. 67 and run South 49°44'01" East along the said South right of way line of Alabama Highway No. 67 a distance of 126.59 feet to a point; thence run: South 01°58'12" East a distance of 201.57 feet record (201.92 feet measure) to a point; thence run South 89°17'05" West a distance of 99.98 feet to a point on the West line of the said East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, Morgan County, Alabama; thence run North 00°42'55" West along the West line of the said East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, a distance of 284.55 feet record (284.90 feet measure) to the Point of Beginning of the herein described tract.

TOGETHER WITH an Easement over and across a parcel of property described as follows:

Begin at the Southwest corner of the above described property, said point also being on the West line of the East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, 284.90 feet measured, 284.95 feet deed, from the intersection of said West line and South right of way line of Alabama Highway No. 67; thence run South 00°42'55" East along said 1/4 1/4 Section line for 200 feet; thence turn an angle to the left of 90°00'00" and run 200 feet to a point; thence turn an angle to the left of 90°00'00" and run North 00°42'55" West for 113.83 feet to a point; thence turn an angle to the left of 49°15'17" and run North 89°17'05" West along the South line of the above described property for 99.98 feet to the point of beginning (said easement contains 35,690.81 sq. ft. Or 0.82 acres, more or less); said easement being for the purpose of accommodating septic tank field lines from the described premises and which easement shall terminate 180 days from the date that a sewer line is extended to within 10 feet of the demised premises and is available for tap and use and the cost to tap on does not exceed \$5,000.00.



## **EXHIBIT B**

### **Encumbrances**

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Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:58AM FILED/CERT

1. Subject to a restriction against leasing the premises for use as a home-style cooking restaurant set forth in a Memorandum of Lease appearing in Deed Book 829, page 1011, Probate Records of Madison County, Alabama. (#287)
2. Subject to the terms of that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, as recorded in Deed Book 971, page 239, and conditions, easements and set-back requirements as shown on the below referenced plat. (#287)
3. Minimum building set back lines and utility and drainage easements as shown on the recorded plat of record at Plat book 40, page 32, Probate Records of Madison County, Alabama. (#287)
4. Applicable zoning ordinances for the City of Huntsville, Alabama. (#287)
5. Taxes are still being assessed to Red River Development Partnership and it does not appear that the current owner has assessed the property for taxes. (#287)
6. Public utility easements of record affecting said property. (#835)
7. Easements or other uses of subject property not visible from the surface, or easements or claims of easements not shown by public record. (#835)
8. Municipal, County, or State assessments or special assessments, if any. (#835)
9. That certain Lease and Memorandum of Lease executed by Treetop Enterprises, Inc. to Waffle House on April 13, 1992 and recorded in the Office of the Judge of Probate of Montgomery County, Alabama, in Real Property Book 1242, at Page 511 and Real Property Book 1242, at Page 514 respectively, and assigned to Harris & Ezell Equipment Company at Real Property Book 1447, at Page 122. (#835)
10. That certain Memorandum of Lease executed by Harris & Ezell Equipment Company, a Tennessee General Partnership to Treetop Enterprises, Inc. on June 1, 1992 and recorded in the Office of the Judge of Probate of Montgomery County, Alabama, in Real Property Book 1254, at Page 768. (#835)
11. Easement in favor of American Telephone and Telegraph Company of Alabama dated August 7, 1940, filed for record on September 11, 1940, in the Office of the Judge of Probate of Montgomery County, Alabama, in Deed Book 219, at page 494. (#835)
12. Easement in favor of The Water Works and Sanitary Sewer Board of the City of Montgomery dated June 27, 1955, filed for record on July 19, 1955, in the Office of the Judge of Probate of Montgomery County, Alabama, in Deed Book 401, at page 150. (#835)



13. Relinquishment of all existing, future, or potential common law or statutory rights of access to the public way identified as Project No. I-65-1(48) from subject property by virtue of Right-of-Way Deed in favor of the State of Alabama filed for record on June 13, 1965, in the Office of the Judge of Probate of Montgomery County, Alabama, in Deed Book 589, at page 58. (#835)
14. Release of damages in favor of State of Alabama and all of its employees and officers by virtue of Right-of-Way Deed in favor of the State of Alabama filed for record on June 13, 1965, in the Office of the Judge of Probate of Montgomery County, Alabama, in Deed Book 589, at page 58. (#835)
15. Easements in favor of The Water Works and Sanitary Sewer Board of the City of Montgomery dated August 13, 1965, filed for record on December 20, 1965, in the Office of the Judge of Probate of Montgomery County, Alabama, in Deed Book 599, at page 563. (#835)
16. Grant of non-exclusive easement 16 feet in width, and agreements, terms, covenants, restrictions, conditions and reservations imposed upon subject property, as contained in Warranty Deed in favor of Peter E. Simon, et al, dated March 14, 1969, filed for record on April 1, 1969, in the Office of the Judge of Probate of Montgomery County, Alabama, in Real Property Book 61, at page 29. Provided, however, the restrictive covenants contained in Paragraph 6 of said Warranty Deed are of no further force and effect and are relinquished and removed as a covenant against the insured premises by virtue of that certain Relinquishment of Restrictive Covenants and Clarification of Easements executed by Parasmani, Inc., an Alabama corporation, dated January 28, 1992, recorded on January 29, 1992, in said Probate Office, in Real Property Book 1217, at page 979. (#835)
17. Easement for Sewer Lines and Water Mains in favor of The Water Works and Sanitary Sewer Board of the City of Montgomery, dated January 3, 1975, filed for record on January 10, 1975, in the Office of the Judge of Probate of Montgomery County, AL, in Real Property Book 253, at page 304. (#835)
18. Agreement for Cross Access dated January 20, 1992, between Treetop Enterprises, Inc. and Frederick E. and Linda O. Scarbrough, and recorded in Real Property Book 1217, at page 163, in the Office of the Judge of Probate of Montgomery County, AL. (#835)
19. Hold Harmless Agreement between Treetop Enterprises, Inc. and City of Montgomery dated January 20, 1992, and recorded in Real Property Book 1217, at page 162, in the Office of the Judge of Probate of Montgomery County, AL. (#835)
20. Restrictions, if any, of record in the Office of the Probate Records of Morgan County, Alabama. (#908)
21. Subject to a Lease of record at Volume 1448, page 203, Probate Records of Morgan County, Alabama. (#908)
22. Subject to a Sub-Lease of record at Volume 1485, page 601, Probate Records of Morgan County, Alabama. (#908)



23. Agreement between Waffle House, Inc. and Treetop Enterprises, Inc. dated September 16, 1993, and recorded in Volume 1496, page 120, Probate Records of Morgan County, Alabama with regard to Assignment of Option to Purchaser. (#908)
24. Tri-Party Agreement dated July 12, 1996, and recorded in Volume 1632, page 842, Probate Records of Morgan County, Alabama, between Treetop Enterprises, Inc., Nations Bank, N.A. and Waffle House, Inc. (#908)
25. Minimum building set back lines and utility and drainage easements as shown on the recorded plat of record in the Probate Records of Morgan County, Alabama. (#908)
26. Applicable zoning ordinances for the City of Decatur, Alabama. (#908)
27. Right-of-way granted Alabama Power Company recorded in Volume 4826, Page 270; Volume 6528, Page 384 and Volume 6528, Page 386 in the Probate Office of Jefferson Co., AL. (#1033)
28. Easements and rights in connection therewith as conveyed to State of Alabama by instrument recorded in Instrument #9406/4132 in the Probate Office of Jefferson Co., AL. (#1033)
29. Rights, covenants, rights of way and agreement as recorded in Volume 3455, Page 537 in the Probate Office of Jefferson Co., AL. (#1033)
30. 20 foot building restriction line from U.S. Highway No. 11 as shown on recorded map in the Probate Office of Jefferson Co., AL. (Lot 1) (#1033)
31. Easement over the Westerly 5 feet and Northerly 5 feet of said parcel for public utilities, sanitary sewers, storm sewers, storm ditches as shown on recorded map in the Probate Office of Jefferson Co., AL. (Lots 1 and 3) (#1033)
32. 20 foot easement for sanitary sewer in Northwesterly corner of Lot 1 as shown by recorded map in the Probate Office of Jefferson Co., AL. (#1033)
33. 20 foot building restriction line from Morrow Road as shown on recorded map in the Probate Office of Jefferson Co., AL. (Lot 3) (#1033)
34. Easements and building lines as shown on Map Book 180, Page 30 in the Probate Office of Jefferson Co., AL. (#1033)
35. Rights in and to Easement as set forth in Easement Agreement recorded under Instrument Number 9501/7614 in the Probate Office of Jefferson Co., AL. (#1033)
36. Tri-Party Agreement between Treetop Enterprises, Inc., Nations Bank, N.A. (South) and Waffle House, Inc. recorded under Instrument No. 9612/2138 in the Office of the Judge of Probate of Jefferson County, AL (#1033)



37. Easement(s)/Right(s) of Way granted to Alabama Power Company as recorded under Instrument Number 9914/2467 in the Office of the Judge of Probate of Jefferson County, AL. (As to Easement Parcel) (#1033)
38. Subordination, Non Disturbance and Attornment Agreement between Waffle House, Inc.; Treetop Enterprises, Inc.; Nathaniel P. Harris, Jr. as Trustee of the Ezell Children's Trust and Suntrust Bank, Nashville, as recorded under Instrument Number 9804/8409 in the Probate Office of Jefferson Co., AL. (#1033)
39. Assignment of Lessor's interest in lease from Treetop Enterprises, Inc. to Nathaniel P. Harris, Jr. as Trustee of the Ezell Children's Trust recorded under Instrument Number 9804/3942 in the Probate Office of Jefferson Co., AL. (#1033)
40. Memorandum of Lease to Waffle House, Inc. recorded under Instrument Number 9508/8520; Instrument Number 9512/0485 and under Instrument Number 9512/0486 in the Probate Office of Jefferson Co., AL. (#1033)
41. Rights of the public as to any portion of the herein-described land lying within Jefferson Street and Alabama State Highway 72. (#1283)
42. An Easement for public utilities, as reserved by the City of Florence by that certain Abandonment Resolution filed for record July 23, 1998 on Fiche 0098-411 at Frame 01 in the Probate Office of Lauderdale Co., AL. (#1283)
43. Rights of any and all tenants/lessees of said property including any matters which may arise from a physical inspection of the premises. A review of the Personal Property Tax Records of said land indicate that Southwest Waffles L.L.C. is currently occupying said site as a Waffle House Operator. This company has no information regarding the lease documentation between the vested titleholder and said operator/lessee. (#1283)
44. Matters arising from any off-record documents whether or not referred to by documents examined for this report. (#1283)
45. Conditions as set forth on that certain Warranty Deed executed by Martin A. Pomerantz, a married man dated June 15, 1998, in favor of Treetop Enterprises, Inc., (a Tennessee Corporation) filed for record August 7, 1998 on Fiche 0098-445 at Frame 53 in the Probate Office of Lauderdale Co., AL. (#1283)
46. Conditions as set forth on that certain Quitclaim Deed executed by Martin A. Pomerantz, a married man dated August 17, 1998, in favor of Treetop Enterprises, Inc., (a Tennessee Corporation) filed for record August 19, 1998 on Fiche 0098-470 at Frame 45 in the Probate Office of Lauderdale Co., AL. (#1283)
47. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages, as recorded Deed Book 127, page 140 in the Office of the Judge of Probate of Shelby County, AL. (#1295)



48. Easements, rights and obligations reserved by Sunlink Corporation in deed to EES Joint Venture set forth in Book 285, page 203 in the Office of the Judge of Probate of Shelby County, AL. (#1295)

49. Agreement between the Harbert-Equitable Joint Venture and EES Joint Venture dated February 15, 1990 as referred to in deed to EES Joint Venture recorded in Book 285, page 207 and recorded in Instrument Number 1996-744 and Instrument Number 1996-745 in the Office of the Judge of Probate of Shelby County, AL. (#1295)

50. Transmission line permits to Alabama Power Company as recorded in Deed Book 101, page 523; Deed Book 139, page 157; Deed Book 219, page 586; Deed Book 251, page 886; Deed Book 319, page 40; Deed Book 292, page 356 and Real Volume 358, page 836 in the Office of the Judge of Probate of Shelby County, AL. (#1295)

51. Right of way in favor of Shelby County, Alabama in Deed Book 153, page 212 in the Office of the Judge of Probate of Shelby County, AL (as to Highway 31) together with release of damages contained therein. (#1295)

52. Restrictive Covenant Agreement as described in Instrument Number 1997-22108 in the Office of the Judge of Probate of Shelby County, AL (#1295).

53. Restrictions Appearing of Record in Misc. Book 13, page 50 and amended in Misc. Book 15, page 189 and Misc. Book 19, page 633 in the Office of the Judge of Probate of Shelby County, AL. (#1295)

54. Articles of Incorporation of Riverchase Business Association, Inc. recorded in Corp. Book 13, page 488 and amended in Corp. Book 15, page 819 in the Office of the Judge of Probate of Shelby County, AL. (#1295)

55. 25 foot minimum building line along south lot line; 35 foot minimum building line along west lot line; 35 foot minimum building line along east lot line and a 20 foot easement along west lot line all as shown on recorded Map Book 20, page 100 in the Office of the Judge of Probate of Shelby County, AL. (#1295)



## MORTGAGE RECORDATION TAX ORDER

STATE OF ALABAMA                   §                   A proceeding authorized by §40-22-2(8),  
MONTGOMERY COUNTY           §                   Code of Alabama 1975

### BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

Comes now the Mortgagee, National City Bank, a national banking association, and asks the Department of Revenue to fix and determine the amount of mortgage recording tax due, pursuant to §40-22-2(8), Code of Alabama 1975, upon recordation of the Mortgage, Assignment of Leases, Rents and Profits, Security Agreement and Fixture Financing Statement (the "Mortgage") from Ezell Holdings, LLC to the Mortgagee. The Mortgage encompasses property located within and without the State of Alabama and encompasses property in more than one county in Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. That the total amount of indebtedness owed to the Mortgagee, and secured by the Mortgage is \$5,500,000.
2. That the total value of all property covered by the Mortgage, both within and without the State of Alabama, is \$11,710,000.
3. That the total value of all property located within the State of Alabama, and covered by the Mortgage is \$ 3,675,000.
4. That the amount of indebtedness which is allocable to Alabama, and upon which mortgage recording tax is due upon recordation of the Mortgage is \$1,725,900.
5. That the amount of mortgage recording tax to be paid, at the rate of \$.15 for each \$100, or fraction thereof, of indebtedness, which is attributable to the property located within the



State of Alabama, is \$2,588.85.

6. That the Mortgage is to be recorded in Lauderdale, Madison, Montgomery, Morgan, Jefferson, and Shelby Counties.

7. That the relative property values of the properties lying within the State of Alabama are as follows:

<u>COUNTY</u>	<u>VALUE</u>	<u>PERCENTAGE</u>
Lauderdale	\$ 730,000	19.86%
Madison	\$ 875,000	23.80%
Montgomery	\$ 615,000	16.74%
Morgan	\$ 320,000	8.71%
Jefferson	\$ 365,000	9.94%
Shelby	\$ 770,000	20.95%
Total	\$ 3,675,000	100.00%

**IT IS ORDERED, THEREFORE,** that the probate judge in the county wherein the Mortgage will be recorded first, shall collect mortgage recording tax in the amount of \$2,588.85, and, pursuant to §40-22-2(7), Code of Alabama 1975, after deducting the probate judge's 5% commission, shall make distribution of such tax to the State of Alabama and to the counties named herein, in the percentages as set out in Paragraph 7. The probate judge of the county wherein the Mortgage will be recorded first also is entitled to collect any applicable recording fees. Upon payment of the mortgage recording tax and upon the initial filing of the Mortgage, copies of the Mortgage shall be acceptable for recordation in the other county, pursuant to §40-22-2(5), Code of



Alabama 1975, without the payment of any further mortgage recording tax. The probate judges of these counties are entitled to collect applicable recording fees, however. §40-22-2(5). Also, the Mortgagee is **ORDERED** to abide by the reporting and paying provisions of §40-22-2(2)b, Code of Alabama 1975, concerning any future advances.

DONE this 1<sup>st</sup> day of February, 2007.

ALABAMA DEPARTMENT OF REVENUE

By: Cynthia Underwood  
Assistant Commissioner of Revenue

ATTEST:

[Signature]  
As Secretary

[Signature]  
Legal Division



20070306000099720 33/33 \$108.00  
Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:58AM FILED/CERT

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**JUDGES ALAN L KING & SHERRI C FRIDAY**  
**JUDGE OF PROBATE**  
**JEFFERSON COUNTY, AL**

ALABAMA  
JEFFERSON

I do hereby certify this to be a true copy of the attached document filed and recorded in the  
aforesaid county as evidence by Instrument Number

20070215000258860 in Book No. LR 200703 Page No. 11539 and consists of 32.00 page/s.

Witness my hand and Official seal this 15 th day of February 2007.

Judges Alan L King & Sherri C Friday  
Judge of Probate

By : Alan L. King Deputy

SEAL

**JUDGE OF PROBATE**  
**716 Richard Arrington Jr. Blvd. North**  
**Birmingham, AL, 35203**  
**Recordings (205) 325-5411**