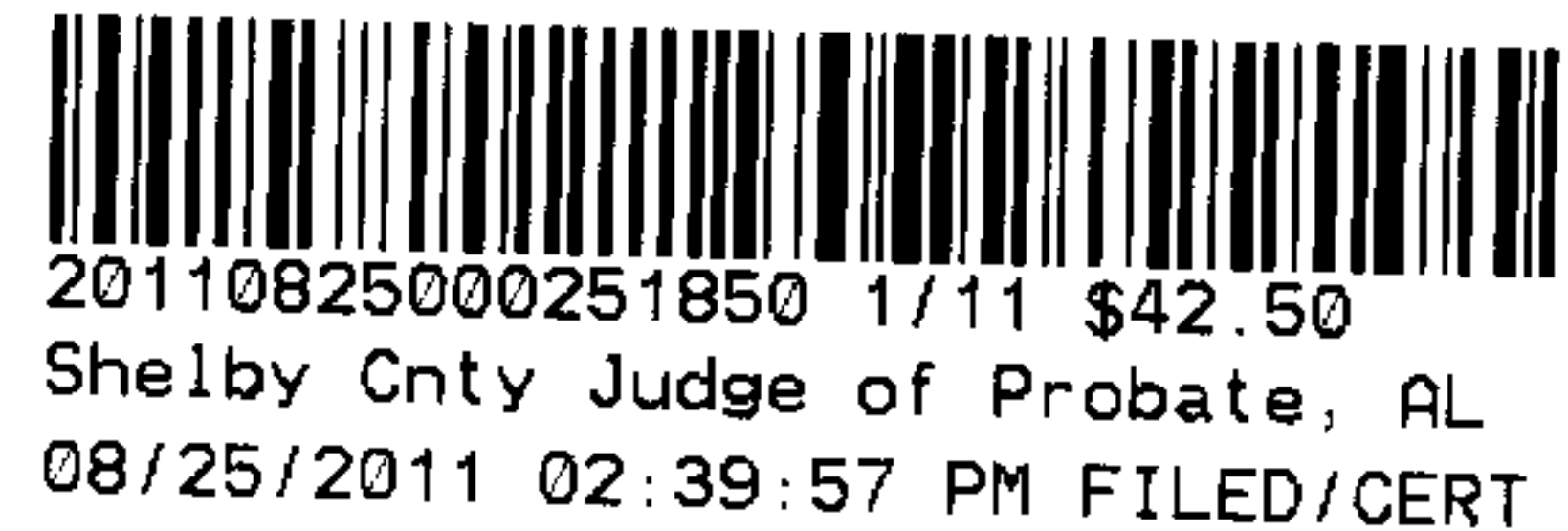


*This document was prepared by:*  
**Dwight L. Mixson, Jr.**  
**Burr & Forman LLP**  
**420 North 20th Street**  
**Suite 3100**  
**Birmingham, AL 35203**

508



## **DECLARATION OF EASEMENT AND COST-SHARING AGREEMENT**

**THIS DECLARATION OF EASEMENT AND COST-SHARING AGREEMENT** (this "Agreement") is made as of the 2nd day of August, 2011 ("Effective Date"), by and between **BW LEASING COMPANY, L.L.C.**, an Alabama limited liability company ("BW Leasing") and **BUILDING STARZ, LLC**, an Alabama limited liability company ("Building Starz"). BW Leasing and Building Starz together with their successors and assigns as owners of the property included within the six (6) platted lots of the Original Subdivision (hereinafter defined), as the same may be replatted in whole or part from time to time, are sometimes hereinafter referred to as the "Lot Owners."

### **RECITALS:**

BW Leasing is the owner of certain parcels of land consisting of Lots 1, 5 and 6 according to G.B.S. Development Co., LLC Record Plat, as recorded in Map Book 27, Page 13 of the Probate Office of Shelby County, Alabama (the "Recording Office") (the "Original Subdivision") and Lot 3-A, according to G.B.S. Development Replat of Lots 3 and 4, G.B.S. Development Co., LLC Record Plat, recorded in Map Book 42, Page 45 of the Recording Office (the "First Replatted Subdivision"). Building Starz is the owner of a certain parcel of land consisting of Lot 2 of the Original Subdivision. The Lot Owners acknowledge and agree that it will be mutually beneficial to establish certain easements and a cost-sharing agreement for certain common elements benefitting the lots of the Original Subdivision (individually, a "Lot" and collectively, the "Lots"), and the parties therefore mutually desire to enter into this Agreement to establish such easements and cost-sharing agreement, all as hereinafter set forth.

### **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of Ten and No/100 Dollars and the mutual agreements herein, the sufficiency of which is hereby acknowledged, the Lot Owners do hereby agree as follows:

#### **ARTICLE I. CONFIRMATION OF FACTS**

1.1 **Reaffirmation of Recitals.** All Recitals are true and correct and are incorporated as part of this Agreement.

1.2 **Lots.** All references to a particular Lot shall be construed as a reference to a Lot among the six (6) Lots of the Original Subdivision except that any reference to Lot 3-A shall be to Lot 3-A of the First Replatted Subdivision.



## **ARTICLE II. EASEMENTS**

2.1 **Sanitary Sewer Lines and Pumping Station.** The Lot Owner of Lot 3-A hereby declares and establishes, and grants and conveys to the other Lot Owners for their use and benefit during the term of this Agreement, a non-exclusive perpetual easement for connection to and utilization of the sanitary sewer pumping station located on Lot 3-A and the main sanitary sewer line leading to and connecting to such sanitary sewer pumping station located on Lot 3-A. At its sole option, but subject to any necessary governmental permits and approvals, the Lot Owner of Lot 3-A may designate the place and manner of any new connection and may relocate the sanitary sewer pumping station or main sanitary sewer line or connection to another location on Lot 3-A so long as such relocation may be completed without interruption of service to other Lots.

2.2 **Septic Field Lines.** The Lot Owner of Lot 3-A hereby declares and establishes, and grants and conveys to the Lot Owners of Lots 2 and 6 for their use and benefit during the term of this Agreement, a non-exclusive perpetual easement for use of and flowage into certain septic tank field lines as presently located in the portion of Lot 3-A shown as "Field Line Area" on the record plat of the First Replatted Subdivision in the Recording Office; however, nothing herein is intended to permit any new connections or expansion of such use, and, provided further, upon all improvement on such Lots being connected to the public sanitary sewer, this easement in Section 2.2 shall terminate. Any decision to terminate use of the septic field lines as they now exist shall be within the discretion of each Lot Owner currently utilizing the same except as mandated by the county health department or other governmental agency having jurisdiction thereof.

2.3 **Paved Ingress and Egress Easement.** The parties reaffirm the establishment of ingress/egress easements having widths of 28 feet and 24 feet as established by the Original Subdivision and revised by the First Replatted Subdivision. Such ingress/egress easement have been paved. The ingress/egress easements are and shall be available for use by all Lots and the respective Lot Owners, their employees, agents, contractors, and business invitees, for access between the Lots and Caldwell Mill Road, a public right of way.

## **ARTICLE III. MAINTENANCE AND ADDITIONAL COVENANTS**

3.1 **Maintenance and Costs.** The Lot Owner for Lot 3-A shall have primary responsibility for (a) maintenance, and, if needed, repair and replacement of (i) the sanitary sewer pumping station on Lot 3-A, (ii) the septic tank field lines on Lot 3-A, (iii) the common street lighting for the Original Subdivision, (iv) the existing fire hydrant located within the Original Subdivision and (v) the routine maintenance and repair and, as needed from time to time in the reasonable opinion of the Lot Owner of Lot 3-A, the resurfacing, of the paving within the ingress/egress easements; (b) the payment of all periodic invoices for electricity for such sanitary sewage pumping station and common street lighting; and (c) the payment of all periodic water bills for such hydrant. Such Lot Owner of Lot 3-A shall coordinate such maintenance, repair and replacement in accordance with and in compliance with all applicable governmental laws, rules, regulations, orders and ordinances and all requirements of utility providers (including sanitary sewer providers). All materials used in any repair and/or replacement shall be at least equal to the quality of the materials used originally. Notwithstanding anything to the contrary herein, any



damage (excluding wear and tear from normal use) caused by a Lot Owner or its employees, agents, contractors or customers shall be repaired promptly by such Lot Owner at such Lot Owner's expense.

3.2 **CAM Charges.** The parties have agreed that all reasonable costs and expenses incurred by the Lot Owner of Lot 3-A in performing its obligations under the preceding Section shall constitute common area maintenance charges ("CAM Charges"). The Lot Owner of Lot 3-A shall be entitled to reimbursement from other Lot Owner(s) for such other Lot Owner's Pro Rata Share (as hereinafter determined). CAM Charges shall not include any additional costs to upgrade the roadway for use by tractor trailers or other oversized vehicles that are required by a specific Lot Owner, unless such upgrade and the additional costs thereof are approved in writing in advance by all Lot Owners.

3.3 **Lot Owners' Pro Rata Shares.** In the case of (a) maintenance, repair and replacement of the common street lighting, the fire hydrant and the paved ingress/egress (including resurfacing as needed), (b) electricity for the common street lighting and (c) water bills for the fire hydrant, each Lot Owner's "Pro Rata Share" shall be one-sixth, with the Lot Owner of Lot 3-A, being a combination of two Lots of the Original Subdivision, having a two-sixths Pro Rata Share, or one-sixth Pro Rata share for each of the two original Lots. For all other expenses, the Pro Rata Share shall be determined by dividing the CAM Charges into the same number of shares as there are Lots that utilize the particular facility. Presently, Lots 2, 3 and 6 utilize the field lines and therefore the Lot Owners of those Lots shall have a Pro Rata Share of one-third each, to be recalculated if any such Lot or Lots cease to utilize the same (but the recalculation shall be made only as to CAM Charges incurred after cessation of use). Presently only Lot 3 utilizes the sanitary sewer pumping station and electricity therefor, but in the event any Lot Owner elects to utilize the same by connecting directly or through the main sewer line connected thereto the number of shares shall equal the number of Lots connected, and Pro Rata Shares shall be created equal to a fraction, the numerator of which is one times the number of Lots so connected and utilizing the pumping station that are owned by such Lot Owner and the denominator of which is equal to the total number of Lots so connected and utilizing the pumping station. Any combination of Lots or further subdivision of Lots shall not affect the manner of calculation of Pro Rata Shares which in all cases shall be based upon six shares (except as set forth above where no part of a Lot or Lots of the Original Subdivision utilizes the particular facility), and any further subdivision of a Lot of the Original Subdivision shall divide the Pro Rata Share of such Lot into the number of portions thereof as the number of newly formed lots (for example, if a Lot having a Pro Rata Share of one-sixth subdivides into two separate lots, each shall have a one-twelfth Pro Rata Share).

3.4 **Payment of CAM Charges.** CAM Charges incurred by the Lot Owner of Lot 3-A shall be billed at its option periodically to the other Lot Owner(s) but no more frequently than once each month or less frequently than once each calendar year, and reimbursement shall be made within thirty (30) days of submission, unless otherwise agreed among the Lot Owners. Each such billing shall set forth in reasonable detail the charges and the manner of calculation and a copy of any applicable invoices. Without limiting the foregoing, at the option of the Lot Owner of Lot 3-A, it may obtain an estimate from a third party contractor of any any item of repair or replacement that, once incurred, would constitute CAM Charges, and may, at its option, as a condition of such repair or replacement, submit to the other Lot Owners a description of the




item of repair or replacement, a copy of such estimate, and a request for payment in advance by each other Lot Owner of its Pro Rata Share. Such other Lot Owners shall then remit their respective Pro Rata Shares of such estimated cost to the Lot Owner of Lot 3-A within thirty (30) days. Upon receipt of the other Lot Owners' respective Pro Rata Shares of such estimated cost, the Lot Owner of Lot 3-A will cause such contractor to commence and complete such item of repair or replacement with reasonable diligence. Upon completion, the Lot Owner of Lot 3-A will then provide evidence of the final cost to the other Lot Owners and shall reimburse any overpayment or send notice requesting payment of any underpayment, which shall in each case be due within thirty (30) days.

#### ARTICLE IV. DEFAULT

4.1 **Default.** If any Lot Owner shall fail to perform any covenant or condition contained in this Agreement, any aggrieved Lot Owner shall give the defaulting Lot Owner written notice of such alleged default. If such default shall not have been cured within a period of thirty (30) days after notice of default (or such additional time as is reasonably necessary provided such default is not for nonpayment of money and is not reasonably susceptible of being cured within said period of thirty (30) days, and the defaulting Lot Owner has in good faith commenced curing such default within said thirty (30) day period and is prosecuting the cure of such default with diligence and continuity to completion), the aggrieved Lot Owner may institute legal and/or equitable proceedings for full and adequate relief from the consequences of said default. Without limiting the foregoing, if the Lot Owner fails to maintain, repair or replace any facility as required by this Agreement pursuant to and in accordance with the provisions of this Agreement, any non-defaulting Lot Owner, after notice and failure to timely cure as herein permitted, shall in addition or in the alternative to such proceedings have the right to perform such obligations on behalf of the defaulting Lot Owner of Lot 3-A, and the defaulting Lot Owner of Lot 3-A and other Lot Owners agree to reimburse, in accordance with their Pro Rata Shares, the Lot Owner performing the work, such reimbursement to be made within thirty (30) days of receipt of an invoice documenting such costs. No Lot Owners, however, shall be entitled to claim from another Lot Owner or be liable to another Lot Owner for consequential or punitive damage or any lost profits. Any claim for reimbursement by a Lot Owner of Lot 3-A against other Lot Owners, or by another Lot Owner who exercises the right to pay or perform on behalf of a defaulting Lot Owner of Lot 3-A, shall be secured by a lien on the Lot of the defaulting Lot Owner, which lien shall be effective upon recording of a notice thereof in the Recording Office but may be foreclosed only by a judicial proceeding. The lien shall be subordinate to any first mortgage then encumbering the Lot in question whether or not such first mortgage is otherwise subordinate to this Agreement.

#### ARTICLE V. MISCELLANEOUS

5.1 **Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that provides next day delivery and provides a receipt, and such notices shall be addressed as follows:

  
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Shelby Cnty Judge of Probate, AL  
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To: BW Leasing Company, L.L.C.  
523 Masters Circle  
Birmingham, Alabama 35244

To: Building Starz, LLC  
500 Caldwell Trace Park  
Birmingham, Alabama 35242

or to such other address as either Lot Owner may from time to time specify in writing to the other Lot Owner. Any notice to a transferee of a Lot Owner shall be made to such transferee Lot Owner at the legal address for such Lot assigned by the U.S. Postal Service or to such other address as such transferee Lot Owner may from time to time specify in writing to the other Lot Owners. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery).

5.2 **Estoppel Certificate.** Each Lot Owner agrees that upon written request, it will issue to another requesting Lot Owner, or its existing or prospective mortgagee or transferee, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(a) whether it knows of any default under this Agreement by the requesting Lot Owner, and if there are known defaults, specifying the nature thereof;

(b) whether there is any unpaid CAM Charge or other reimbursement due, and if so, the amount thereof;


(c) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(d) whether this Agreement is in full force and effect.

5.3 **Entire Agreement.** This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof.

5.4 **Time.** Time is of the essence in the performance of each Lot Owner's respective obligations contained herein.

5.5 **Attorneys' Fees.** If any Lot Owner fails to perform any of its obligations under this Agreement or if any dispute arises among one or more of the Lot Owners concerning the rights or obligations under this Agreement, then the defaulting Lot Owner or the Lot Owner not prevailing in such dispute, as the case may be, shall pay any and all reasonable costs and expenses incurred by the prevailing Lot Owner on account of such default and/or in enforcing or establishing its rights or another's obligations hereunder, including, without limitation, court costs (including costs of any trial or appeal therefrom) and reasonable attorneys' fees and disbursements.

  
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5.6 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5.7 **Governing Law; Jurisdiction and Venue.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA.

(b) For the purposes of any suit, action or proceeding involving this Agreement, each Lot Owner hereby expressly submits itself to the jurisdiction of all federal and state courts presiding in or with respect to matters in Shelby County, Alabama and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by certified or registered mail or by personal service, provided that a reasonable time for appearance is allowed, and each Lot Owner agrees that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by any Lot Owner. In furtherance of such agreement, each Lot Owner agrees upon the request of another Lot Owner to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.

(c) Each Lot Owner hereby irrevocably waives any objection that it may now or hereafter have to the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court presiding in or with respect to matters in Shelby County, Alabama and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

5.8 **Waiver of Trial by Jury.** EACH LOT OWNER HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE ASSERTION OF ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS BASED UPON OR RELATING TO THIS AGREEMENT.

5.9 **Rights and Obligations of Successors; Mortgagees; No Third Party Beneficiaries.** The easements, agreements and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns. Except as provided in the preceding sentence, this Agreement is for the exclusive benefit of the Lot Owners, and no easement or right herein shall be deemed to create an easement or right in favor of the public generally or inure to the benefit of any person or entity that is not a Lot Owner. Furthermore, except as so expressly provided, there shall be no implied duty to any person or entity that is not a Lot Owner, and no liability to the public or to persons or entities other than the Lot Owners for any breach of any obligation or duty created by this Agreement, and then only as expressly provided in this Agreement. Without limiting the foregoing, no Lot Owner shall, as a result of this Agreement, have any liability to another Lot Owner, the public or non-parties for injury, death or damage to property except such liability as such Lot Owner would have in the absence of this Agreement. Subject to the foregoing, each Lot Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the



portion of the Lots owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the deed conveying the Lot is properly recorded in the Recording Office, at which time the transferring Lot Owner shall be released from the obligations of this Agreement arising subsequent to the effective date of the recording. Mortgagees of any Lot shall be bound by and subject to the provisions hereof except as provided in Section 4.1. Each Lot Owner whose Lot is subject to a mortgage as of the date of this Agreement has caused its mortgagee to enter into the joinder and subordination attached hereto and constituting a part hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**BW LEASING COMPANY, L.L.C.,**  
an Alabama limited liability company

BY: *Ken Bush*  
Its *MANAGER*

STATE OF ALABAMA )  
COUNTY OF *Jefferson* )


Before me, the undersigned Notary Public in and for said County in said State, hereby certify that *Ken Bush*, whose name as *Manager* of BW Leasing Company, L.L.C., 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 such instrument, he, as such *Manager* and with fully authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this *9<sup>th</sup>* day of *August*, 2011.


[NOTARY SEAL]

*Christie Stevens Weekly*  
NOTARY PUBLIC  
My Commission Expires: *September 7, 2011*

*[Signatures continued on following page]*

  
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**BUILDING STARZ, LLC,**  
an Alabama limited liability company

BY:   
Its Managing Member

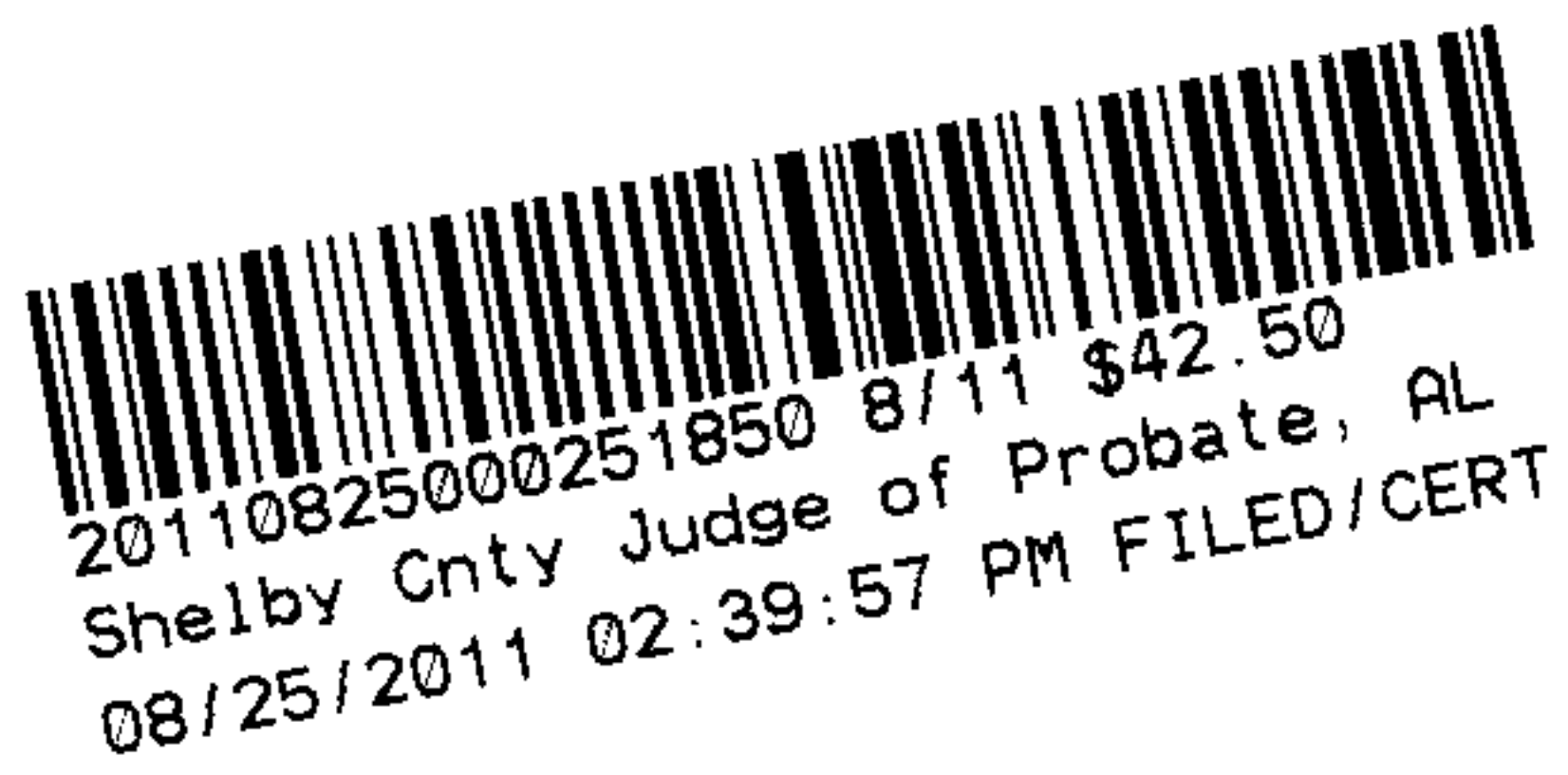
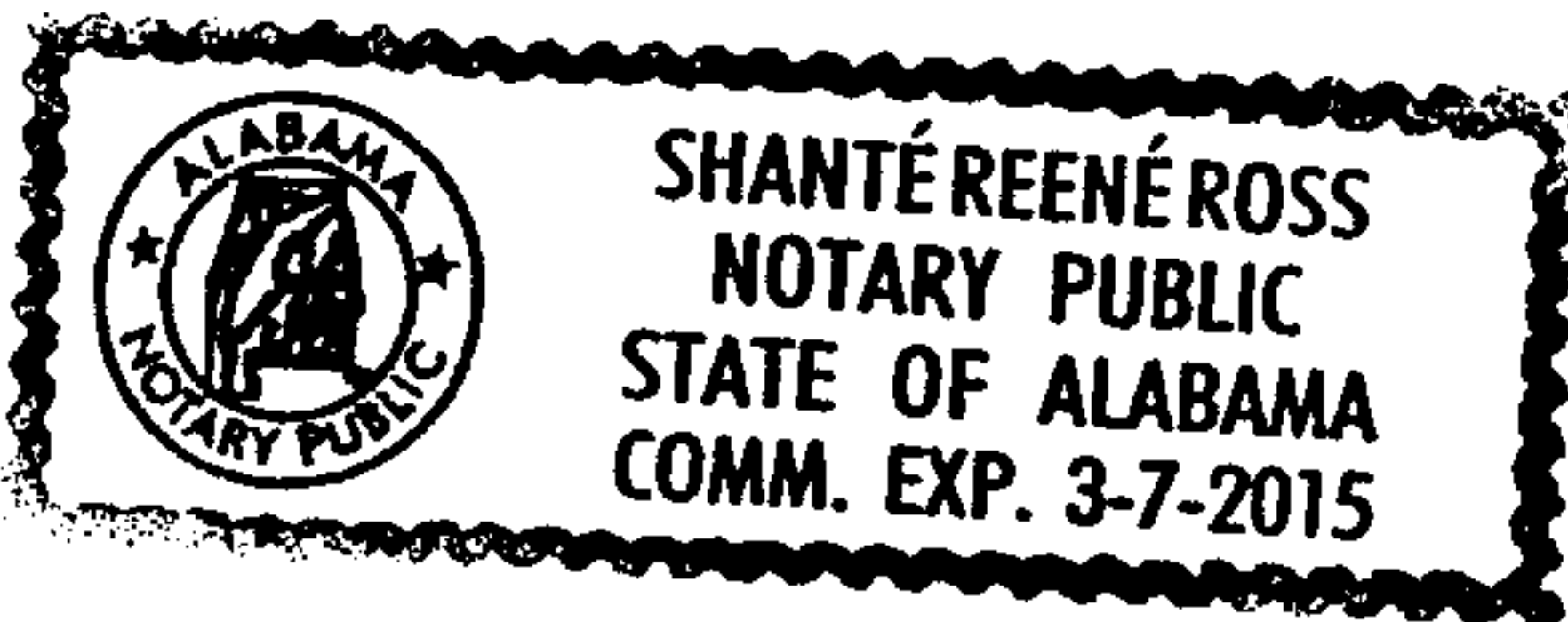
STATE OF ALABAMA                    )  
COUNTY OF \_\_\_\_\_            )

Before me, the undersigned Notary Public in and for said County in said State, hereby certify that Ann M Williams, whose name as Managing Member of Building Starz, 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 such instrument, s/he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 6 day of August, 2011.

  
NOTARY PUBLIC  
My Commission Expires: 3-7-15

[NOTARY SEAL]






**JOINDER AND SUBORDINATION**

The undersigned, as holder of a Mortgage, Assignment of Rents and Leases and Security Agreement dated June 30, 2011 ("Mortgage"), recorded in Instrument # 20110707000197430 upon Lot 2 according to G.B.S. Development Co., LLC Record Plat, as recorded in Map Book 27, Page 13 of the Probate Office of Shelby County, Alabama, joins herein, consents to the foregoing Agreement and agrees that its Mortgage is subject and subordinate to the terms of such Agreement (except as otherwise provided in Section 4.1 thereof).

**IN WITNESS WHEREOF**, the undersigned has caused this joinder and subordination to be executed as of the Effective Date.

COMPASS BANK

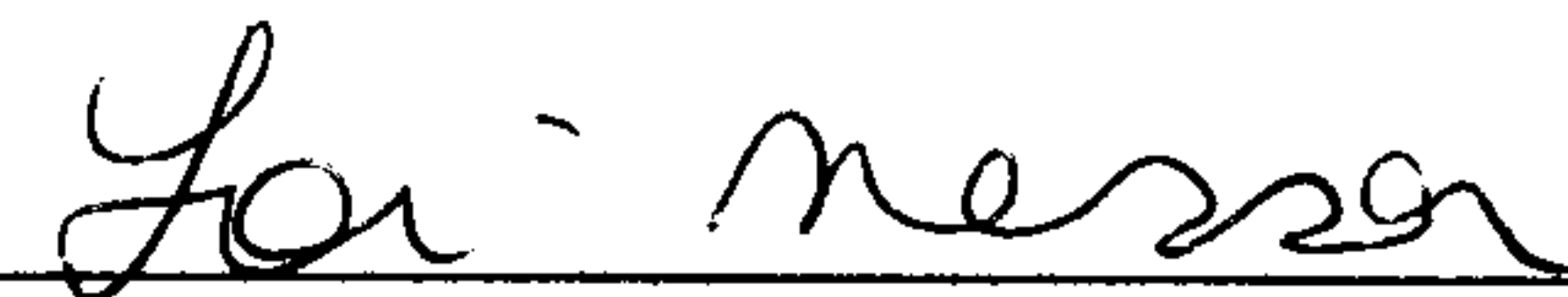
a/n Alabama banking corporation

BY:   
Its SVP

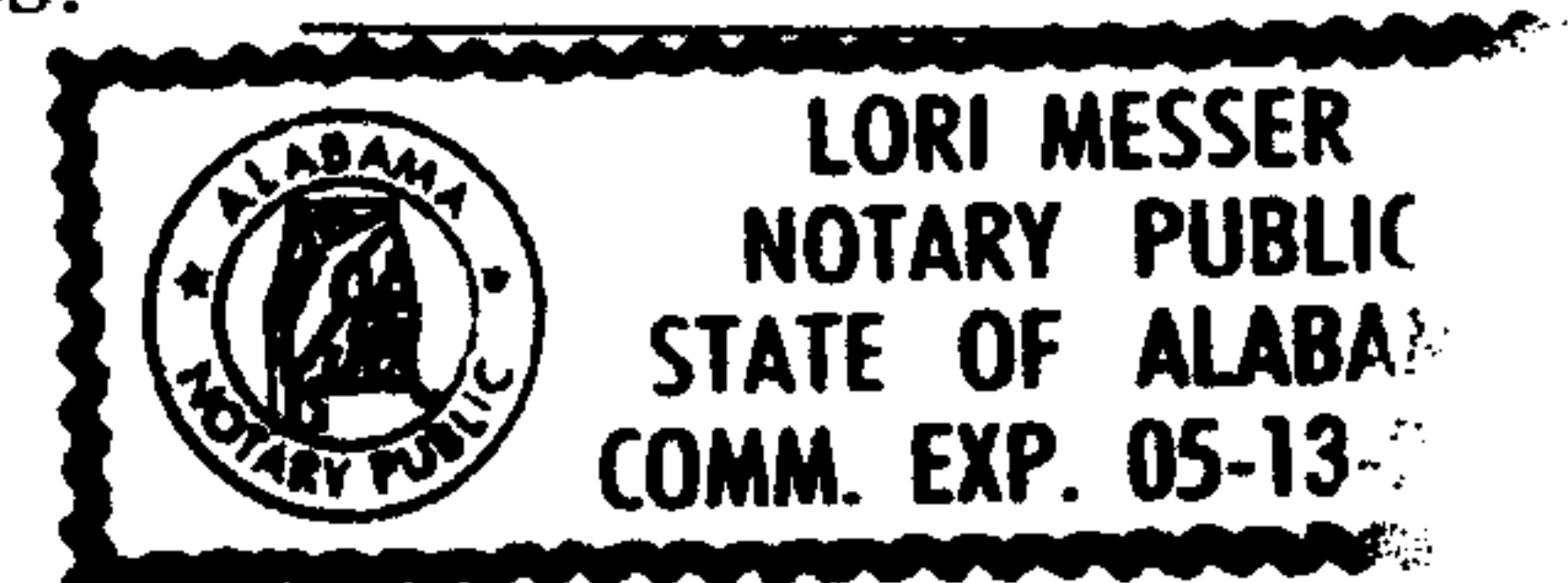
STATE OF Alabama )  
COUNTY OF Jefferson )

Before me, the undersigned Notary Public in and for said County in said State, hereby certify that Tom Genetti, whose name as SVP of Compass Bank, a(n) Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, s/he, as such SVP and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and seal, this 3 day of August, 2011.

  
NOTARY PUBLIC  
My Commission Expires:

[NOTARY SEAL]



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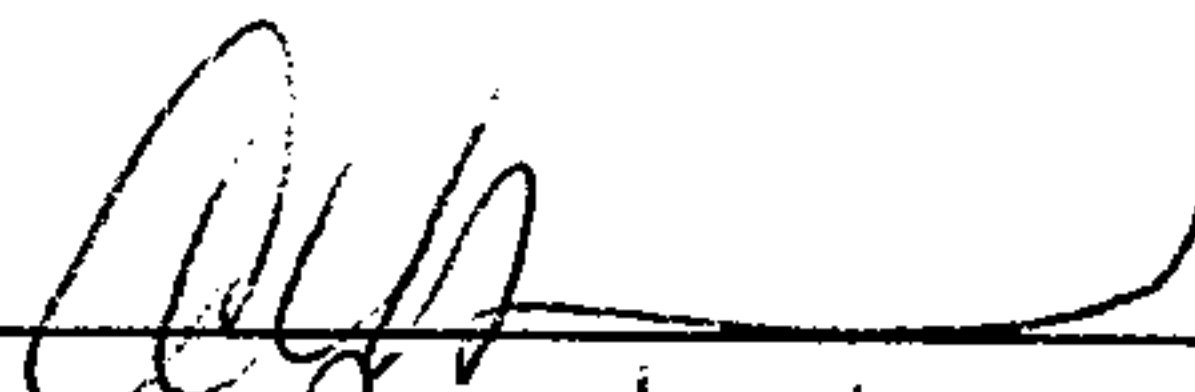
**JOINDER AND SUBORDINATION**

The undersigned, as tenant under an unrecorded lease for all or a part of Lot 2 according to G.B.S. Development Co., LLC Record Plat, as recorded in Map Book 27, Page 13 of the Probate Office of Shelby County, Alabama, joins herein, consents to the foregoing Agreement and agrees that its lease is subject and subordinate to the terms of such Agreement.

**IN WITNESS WHEREOF**, the undersigned has caused this joinder and subordination to be executed as of the Effective Date.

HOH GYMNASTICS, INC.  
an Alabama corporation


BY:  
Its

  
President

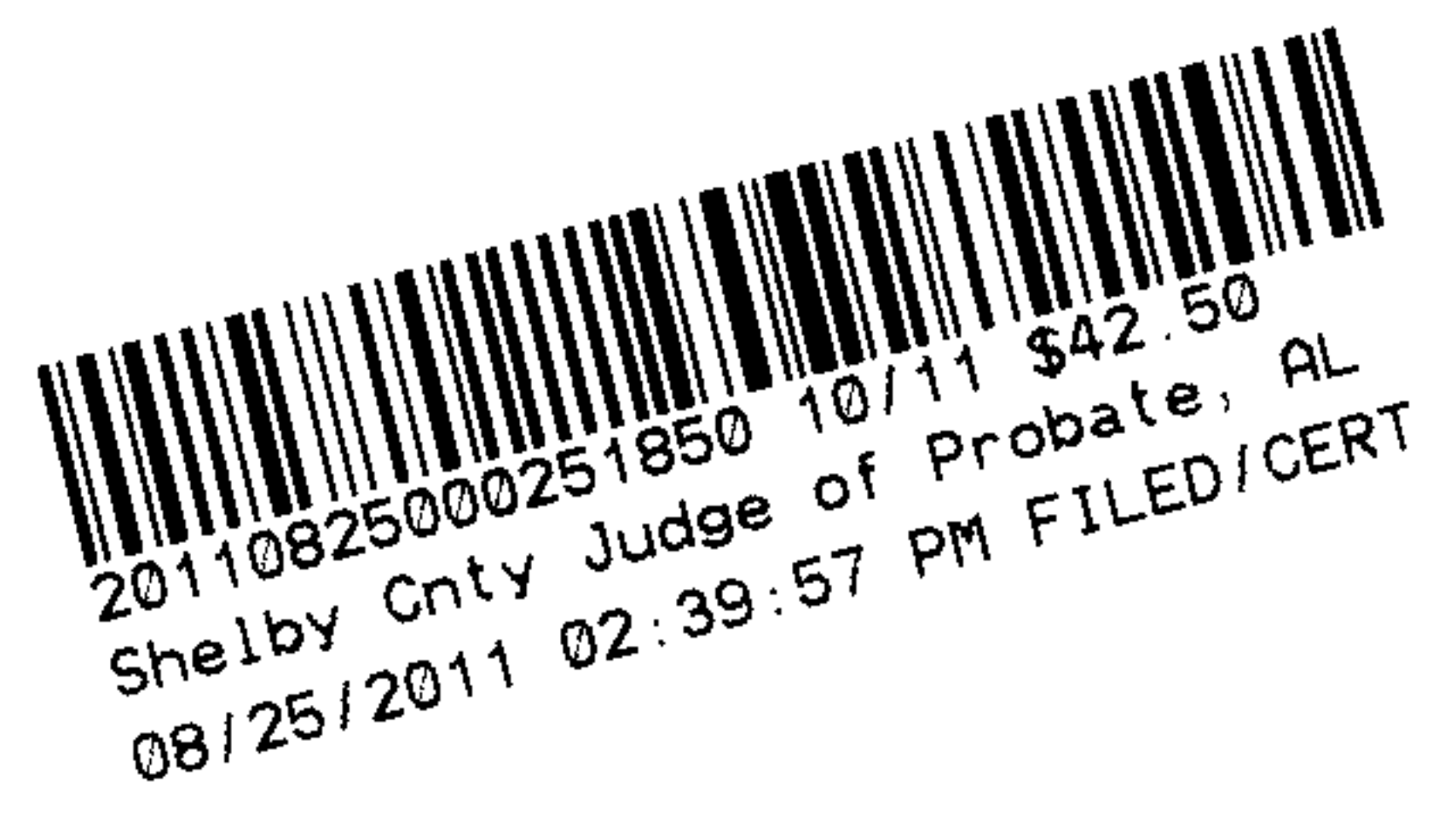
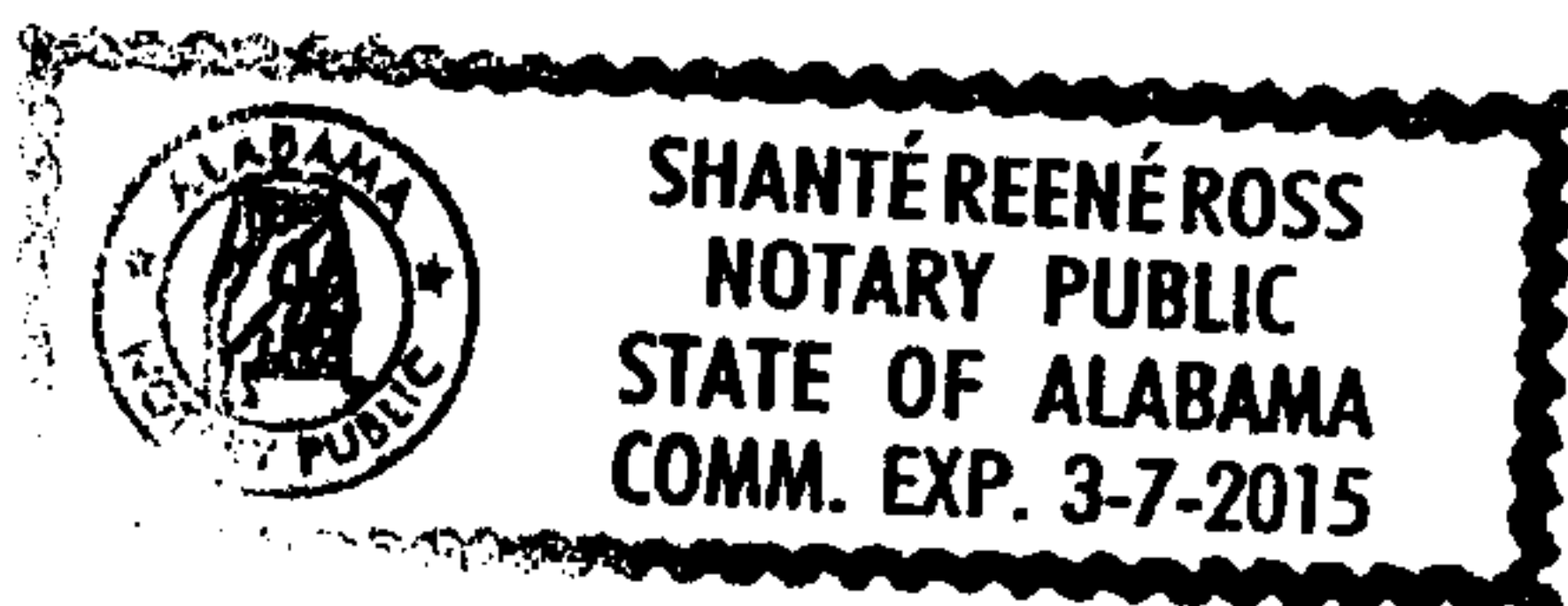
STATE OF ALABAMA                     )  
COUNTY OF Jackson                     )

Before me, the undersigned Notary Public in and for said County in said State, hereby certify that Ann M Williams, whose name as President of HOH Gymnastics, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 2<sup>nd</sup> day of August, 2011.

  
NOTARY PUBLIC  
My Commission Expires: 3-7-15

[NOTARY SEAL]





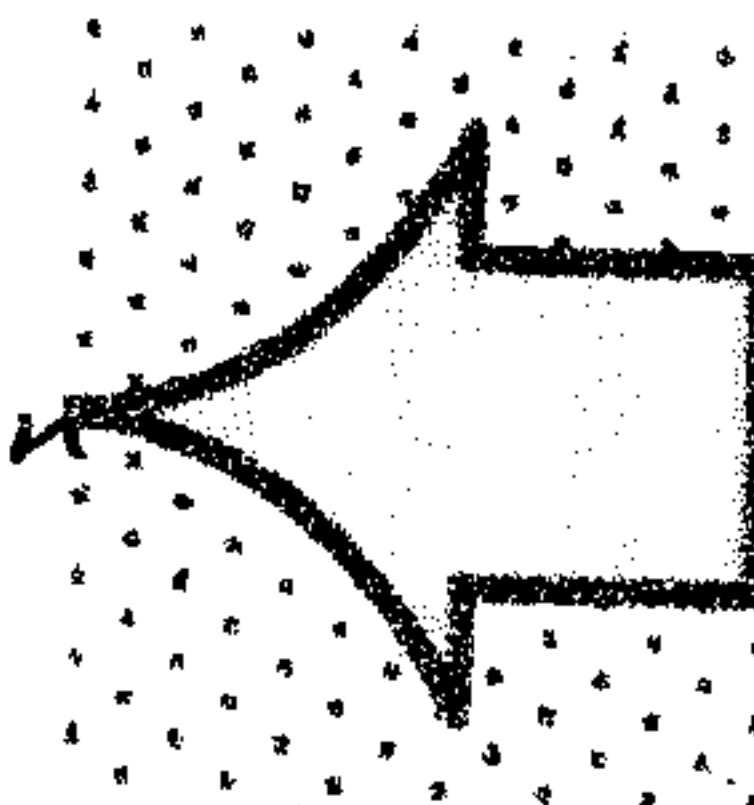
**JOINDER AND SUBORDINATION**

The undersigned, as holder of a Mortgage dated February 21, 2005 (the "Mortgage"), recorded in Instrument # 20050308000105860, and that Assignment of Rents and Leases dated February 21, 2005 (the "Assignment of Rents") recorded in Instrument # 20050308000105870, both of which being assigned to the undersigned by that Assignment of Note and Security recorded as Instrument # 20050308000105880 and pertaining to that real property know as Lot 2 according to G.B.S. Development Co., LLC Record Plat, as recorded in Map Book 27, Page 13 of the Probate Office of Shelby County, Alabama, joins herein, consents to the foregoing Agreement and agrees that its Mortgage and Assignment of Rents are subject and subordinate to the terms of such Agreement.

**IN WITNESS WHEREOF**, the undersigned has caused this joinder and subordination to be executed as of the Effective Date.

**U.S. SMALL BUSINESS ADMINISTRATION**

BY Don Schuneman  
Print Name: Don Schuneman  
Its: SLO



STATE OF ARKANSAS  
COUNTY OF PULASKI


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Don Schuneman whose name as SLO of the U.S. Small Business Administration, an agency of the U.S. Government, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer/agent/authorized representative, and with full authority, executed the same voluntarily, as an act of said U.S. Government agency as aforesaid.

GIVEN UNDER MY HAND and seal of office this, the 11 day of August, 2011.

[Signature]  
Notary Public  
My commission expires: \_\_\_\_\_

[NOTARY SEAL]

Shelby County, AL 08/25/2011  
State of Alabama  
Deed Tax: \$ .50

  
20110825000251850 11/11 \$42.50  
Shelby Cnty Judge of Probate, AL  
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