

This instrument prepared by
and should be returned to:
Richard H. Sollner, Esq.
Trenam, Kemker, Scharf, Barkin,
Frye, O'Neill & Mullis, P.A.
101 E. Kennedy Boulevard, Suite 2700
Tampa, Florida 33602
NS 509407 AL-2

Cross References:

Deed to Mortgagor – Instrument No. 20071019000487340
Mortgage – Instrument No. 20071217000566360
Coll. Asst. – Instrument No. 20071217000566370
Shelby County, Alabama

MORTGAGE MODIFICATION AGREEMENT

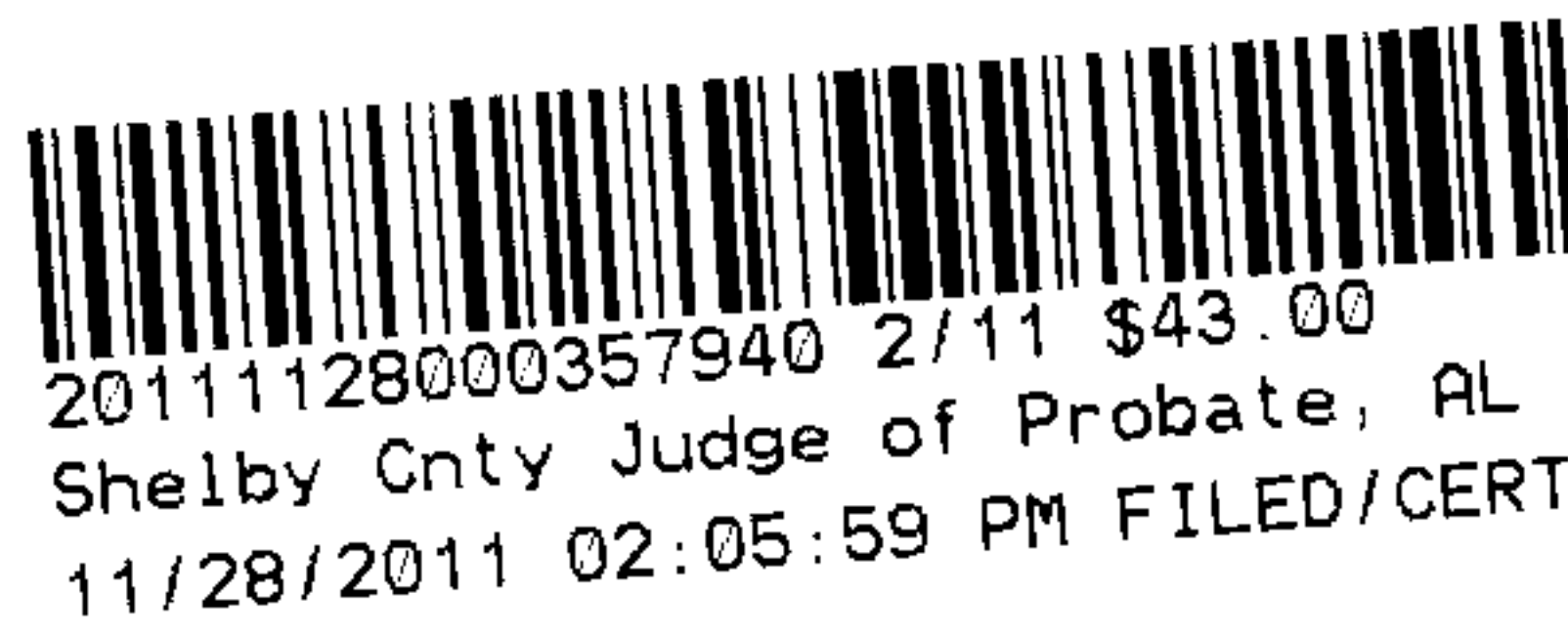
THIS MORTGAGE MODIFICATION AGREEMENT (this “**Agreement**”) is made and entered into effective as of May 28, 2011 (the “**Effective Date**”) and dated as of November 21, 2011 (“**Closing Date**”), by and between **ARCITERRA SHOPPES AT ALABASTER AL, LLC**, an Arizona limited liability company, which acquired title as **ARCITERRA SHOPPES AT ALABASTER LLC** by deed recorded as Instrument No. 20071019000487340 (“**Mortgagor**”), having a mailing address of 2720 East Camelback Road, Suite 220, Phoenix, Arizona 85016, and **WELLS FARGO BANK, N.A.**, as successor in interest by merger to Wachovia Bank, National Association, its successors and assigns (“**Mortgagee**”), having a mailing address of 401 East Jackson Street, Suite 1450, Tampa, Florida 33602.

WITNESSETH

WHEREAS, Mortgagor and certain affiliates of Mortgagor (collectively, “**Affiliates**”) executed and delivered to Mortgagee a Consolidation and Renewal Promissory Note dated as of May 2, 2008, in the original principal amount of \$17,040,000.00 (“**Prior Note**”); and

WHEREAS, payment and performance under the Prior Note is in part secured by a Mortgage and Security Agreement given by Mortgagor to Mortgagee (“**Mortgage**”) recorded as Instrument No. 20071217000566360 in the Office of the Judge of Probate of Shelby County, Alabama (the “**Records**”), and an Absolute Assignment of Leases and Rents given by Mortgagor to Mortgagee (“**Collateral Assignment**”) recorded as Instrument No. 20071217000566370 of the Records, both of which encumber the property described on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, contemporaneously herewith, Mortgagor and Affiliates have executed a Renewal Promissory Note Secured by Mortgage payable to the order of Mortgagee in the original principal amount of \$17,040,000.00 (“**Renewal Note**”), evidencing the renewal of the principal indebtedness previously evidenced by the Prior Note; and



WHEREAS, contemporaneously herewith, Mortgagor, Affiliates and Mortgagee have entered into a certain Consolidated, Amended and Restated Loan Agreement relating to the loans evidenced by the Renewal Notes (the “**Loan Agreement**”); and

WHEREAS, Mortgagor and Mortgagee desire to execute and record this Agreement for the purpose, among others, of giving record notice that:

(1) the Renewal Note has been executed and delivered by Mortgagor and Affiliates in renewal and replacement of the Prior Note; and

(2) the Renewal Note and the Loan Agreement are secured by, among other collateral, the Mortgage and Collateral Assignment (each as herein modified);

NOW THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Mortgagor and Mortgagee, the parties hereby covenant and agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

2. Modification of Mortgage and Collateral Assignment. The Mortgage and Collateral Assignment are hereby modified as follows:

(a) The payment and performance of Mortgagor’s and Affiliates’ obligations under the Renewal Note and the Loan Agreement are and shall be secured by the liens and security interests created by the Mortgage and Collateral Assignment.

(b) All references in the Mortgage and Collateral Assignment to the promissory note secured thereby shall be deemed and construed to refer to the Renewal Note.

(c) All references in the Mortgage and Collateral Assignment to the Loan Documents shall include the Loan Agreement.

(d) All references in the Mortgage and Collateral Assignment to “Liabilities” shall include, without limitation, payment and performance of all covenants and obligations of Mortgagor under the Swap Contract (as defined in the Loan Agreement), and all references in the Mortgage and Collateral assignment to a swap agreement or contract between Mortgagor and Mortgagee shall include, without limitation, the Swap Contract.

(e) Section 2.5 of the Mortgage is amended and restated in its entirety as follows:

2.5 **TAX AND INSURANCE IMPOUNDS.** At any time, at Mortgagee's option and upon its demand, Mortgagor, shall, until all Indebtedness has been paid in full, pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) all taxes, assessments, levies and

charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Property and will become due for the tax year during which such payment is so directed; (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due; and (c) such other expenses or costs relating to the Property as Mortgagee may reasonably require, including but not limited to budgeted operating expenses, replacement reserves, leasing reserve (each calculated in the manner set forth in that certain Cash Management Agreement between Mortgagor and certain affiliates of Mortgagor and the Mortgagee dated of even date herewith) and debt service for the Loan. If Mortgagee determines that any amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Mortgagee shall, unless an Event of Default exists hereunder or under any other Loan Document, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence of an Event of Default hereunder or under any other Loan Document, Mortgagee may apply all or any part of said sums to any Indebtedness and/or to cure such Event of Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of the Event of Default not cured by such application. Upon assignment of this Deed of Trust, Mortgagee shall have the right to assign all amounts collected and in its possession to its assignee whereupon Mortgagee and the Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Indebtedness (other than full repayment of the Indebtedness as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Indebtedness) or at such earlier time as Mortgagee may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor and no other party shall have any right or claim thereto.

3. No Setoffs or Defenses; Release.

(a) Mortgagor, for itself and its partners, members, shareholders, officers and directors, and for their respective heirs, personal representatives, successors, and assigns (collectively, the “**Releasors**”), acknowledges, agrees and represents to Mortgagee that, to best of Mortgagor’s knowledge as of the date hereof, none of them has any setoff, defense, claim or counterclaim under or with respect to the Prior Note, the Renewal Note, the Mortgage, the Collateral Assignment, or any other document evidencing, securing or otherwise relating to the indebtedness evidenced by the Prior Note (collectively, the “**Loan Documents**”).

(b) Mortgagor, for itself and the other Releasors, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby fully releases and discharges Mortgagee, its



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Shelby Cnty Judge of Probate, AL
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affiliates, subsidiaries and parent corporations, the respective partners, officers, directors, shareholders, agents, and employees of each of the foregoing, and their successors and assigns (collectively, the “**Released Parties**”), of and from any and all claims, counterclaims, defenses, setoffs, demands, actions, causes of action and damages that Mortgagor or any other Releasor may have had, may now have, or may hereafter have against any one or more of the Released Parties arising under, by reason of, or in connection with any conduct, course of dealing, statement, act or omission on the part of any of the Released Parties that arose, occurred or accrued at any time prior to and through the date hereof in connection with (i) any of the Loan Documents or, (ii) any of the indebtedness or obligations evidenced or secured thereby.

4. Documentary Stamp And Intangibles Taxes. Mortgagor hereby agrees to defend, indemnify, and hold Mortgagee harmless from and against any and all documentary stamp taxes and intangibles taxes (together with all interest, penalties, costs, and attorneys’ fees incurred in connection therewith) that may be at any time levied, assessed, or imposed by the State of Florida or any other governmental entity or agency upon the Prior Note, the Mortgage, the Collateral Assignment, any of the other Loan Documents, this Agreement, the Renewal Note, or any amendment, extension, or renewal of any of the foregoing, or upon Mortgagee by virtue of owning or holding any of the foregoing instruments or documents, all of which shall be secured by the lien and security interest of the Mortgage as modified by this Agreement (the “**Modified Mortgage**”). The provisions of this Paragraph shall survive the repayment of the Renewal Note and the satisfaction of the Modified Mortgage for so long as any claim may be asserted by the State of Florida or any such other governmental entity or agency.

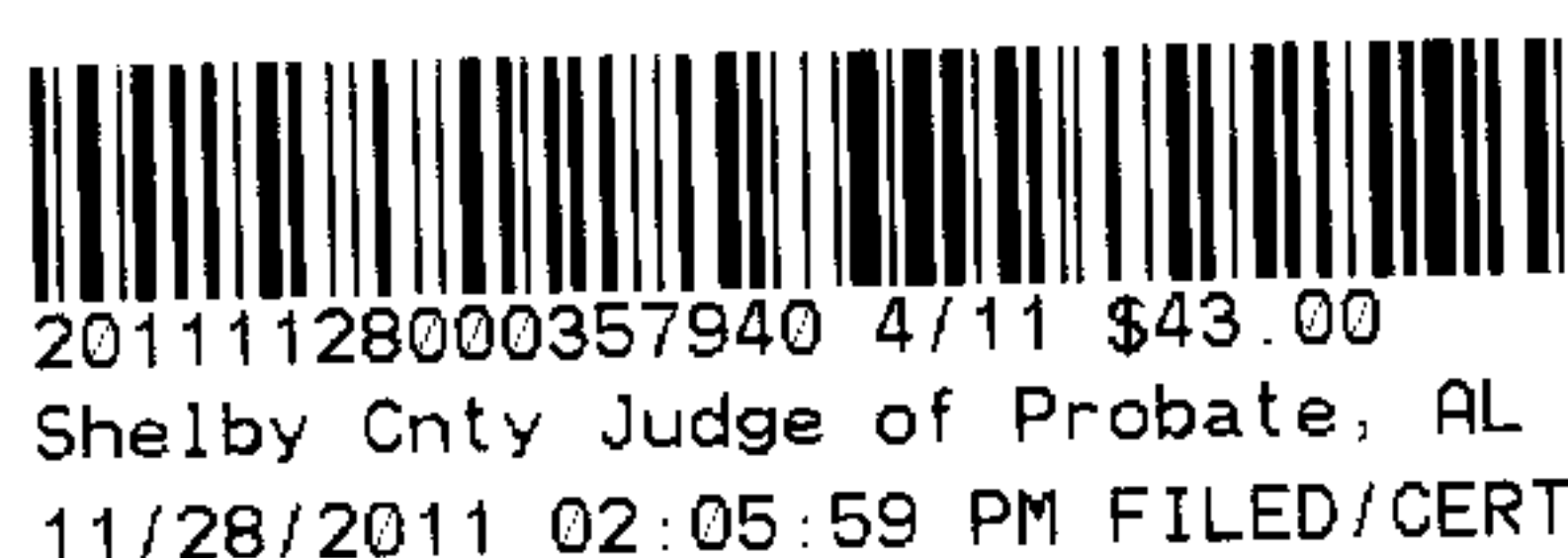
5. No Novation. It is the agreement and intent of the parties hereto (i) that neither this Agreement nor any other documents executed by Mortgagor or Mortgagee in connection herewith shall constitute a novation or in any way impair the first priority of the lien and security interest of the Mortgage, and (ii) that any and all sums advanced by Lender in connection herewith shall be secured by the Modified Mortgage with the same priority as the sums originally advanced under the Prior Note.

6. No Waiver. The execution of this Agreement by Mortgagee shall not be deemed to be a waiver of any default under any of the Loan Documents (as herein modified) that continues or arises after the Effective Date, nor shall this Agreement be deemed to impair any right that Mortgagee may otherwise have to accelerate the indebtedness evidenced by the Renewal Notes due to an event of default hereafter occurring, or to exercise any other remedy provided by the Prior Note, the Renewal Note, the Mortgage, the Collateral Assignment or any of the other Loan Documents, on account of any such default that continues or arises after the Effective Date.

7. Lien Priority. Mortgagor warrants to and covenants with Mortgagee that:

(a) the Mortgage (as hereby modified, to Mortgagor’s knowledge) is a valid first lien on and security interest in all of the property described therein;

(b) Mortgagor is indefeasibly seized of fee simple absolute title to the real property described in the Mortgage, free and clear of all encumbrances except as otherwise provided in the Loan Documents;



(c) Mortgagor has full right and lawful authority to execute and deliver this Agreement; and

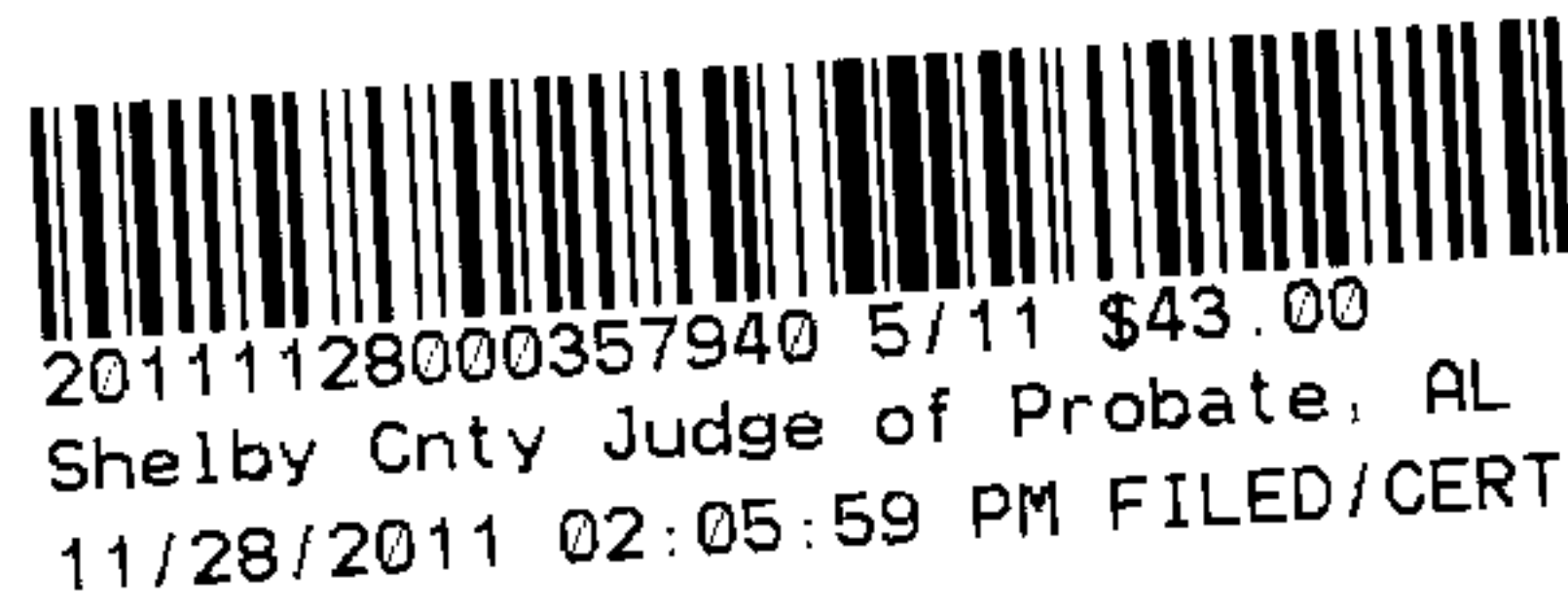
(d) the Mortgage has not been modified in any way except as provided hereby or otherwise described herein, and the Modified Mortgage is in full force and effect as of the date hereof, and is hereby affirmed by Mortgagor.

8. Severability. In case any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions shall be in no way affected, prejudiced or disturbed thereby.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Mortgagor and Mortgagee, and their respective heirs, personal representatives, successors and assigns.

10. Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed and delivered this Agreement to be effective for all purposes as of the Effective Date.

WITNESSES:

“MORTGAGOR”

ARCITERRA SHOPPES AT ALABASTER AL, LLC, an Arizona limited liability company

By: ARCITERRA GROUP, LLC, an Arizona limited liability company, its Manager

Andre Thompson
Name: Andre Thompson

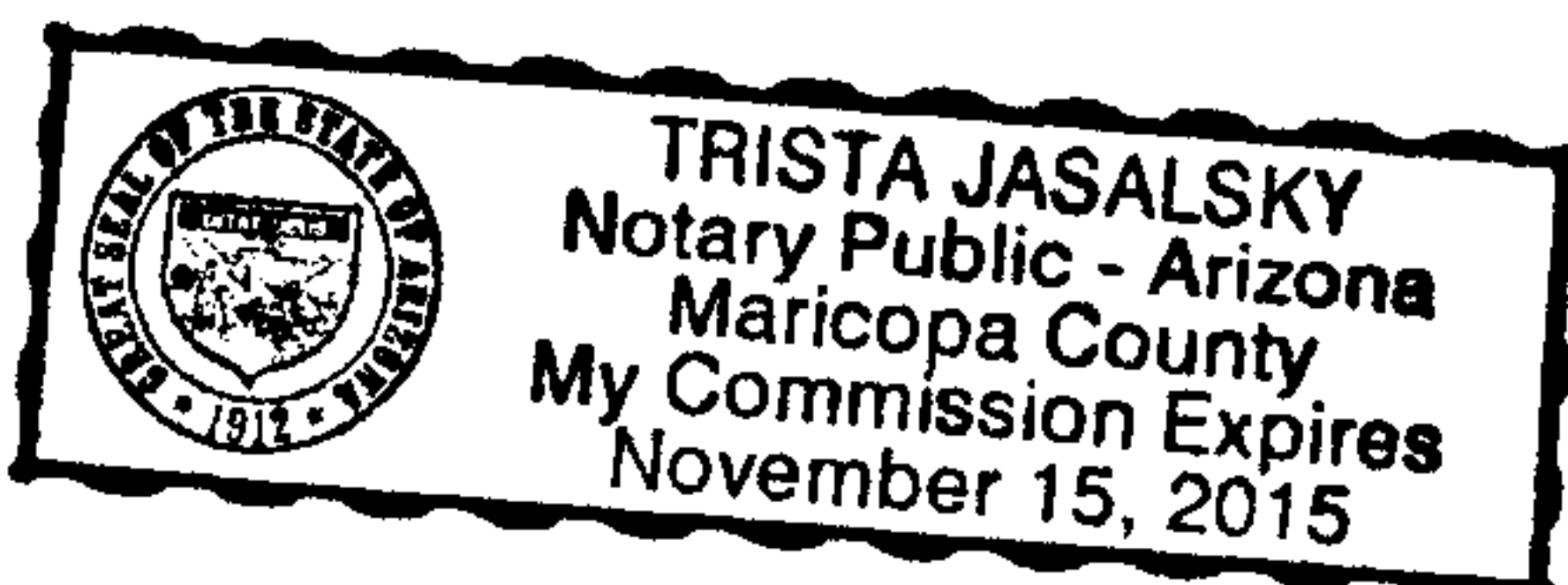
Blaine D. Rice
Name: Blaine D. Rice

By: Jonathan M. Larmore
Jonathan M. Larmore, Manager

STATE OF ARIZONA)
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on November 18 2011, by Jonathan M. Larmore, as Manager of ARCITERRA GROUP, LLC, an Arizona limited liability company, as the Manager of ARCITERRA SHOPPES AT ALABASTER AL, LLC, an Arizona limited liability company, on behalf of the companies, who either ☒ is personally known to me, or ☐ has presented _____ as identification.

[Affix Seal]



Trista Jasalsky
Notary Public – State of Arizona
Print Name: Trista Jasalsky
My commission expires 11-15-15

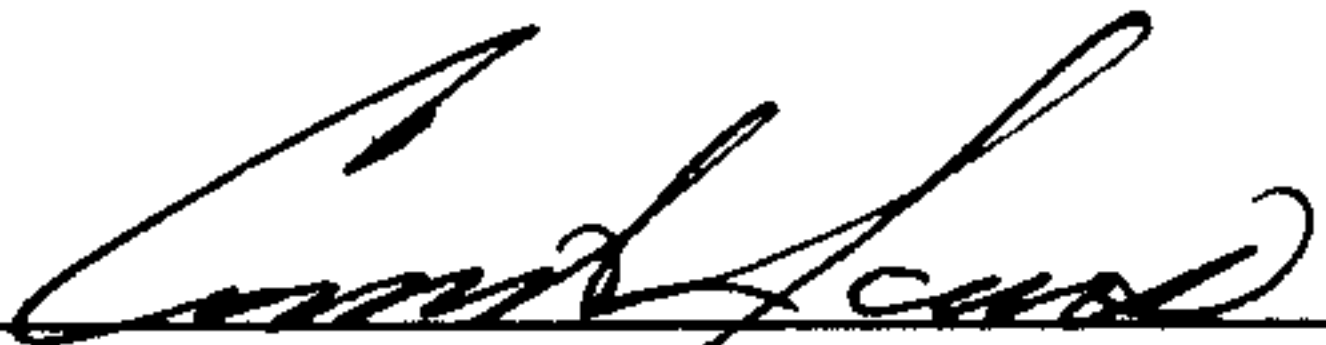
[EXECUTION BY MORTGAGEE FOLLOWS]


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WITNESSES:

“MORTGAGEE”

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, as successor in interest by
merger to Wachovia Bank, National
Association


Name: Corri A. Jones

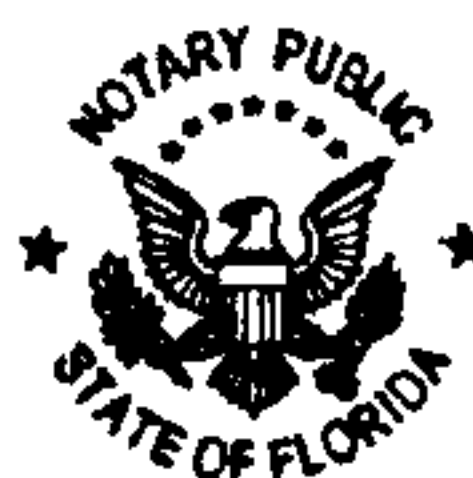
By: 
Daren Whatley, Assistant Vice
President


Name: Linda Best


STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me on November 18, 2011, by Daren Whatley, as Assistant Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, as successor in interest by merger to Wachovia Bank, National Association, on behalf of the association, who either ☒ is personally known to me, or ☐ has presented _____ as identification.

[Affix Seal]



CORRI A. JONES
MY COMMISSION # EE 060076
EXPIRES: February 25, 2015
Bonded Thru Budget Notary Services


Notary Public – State of Florida
Print Name: Corri A. Jones
My commission expires 2/25/15

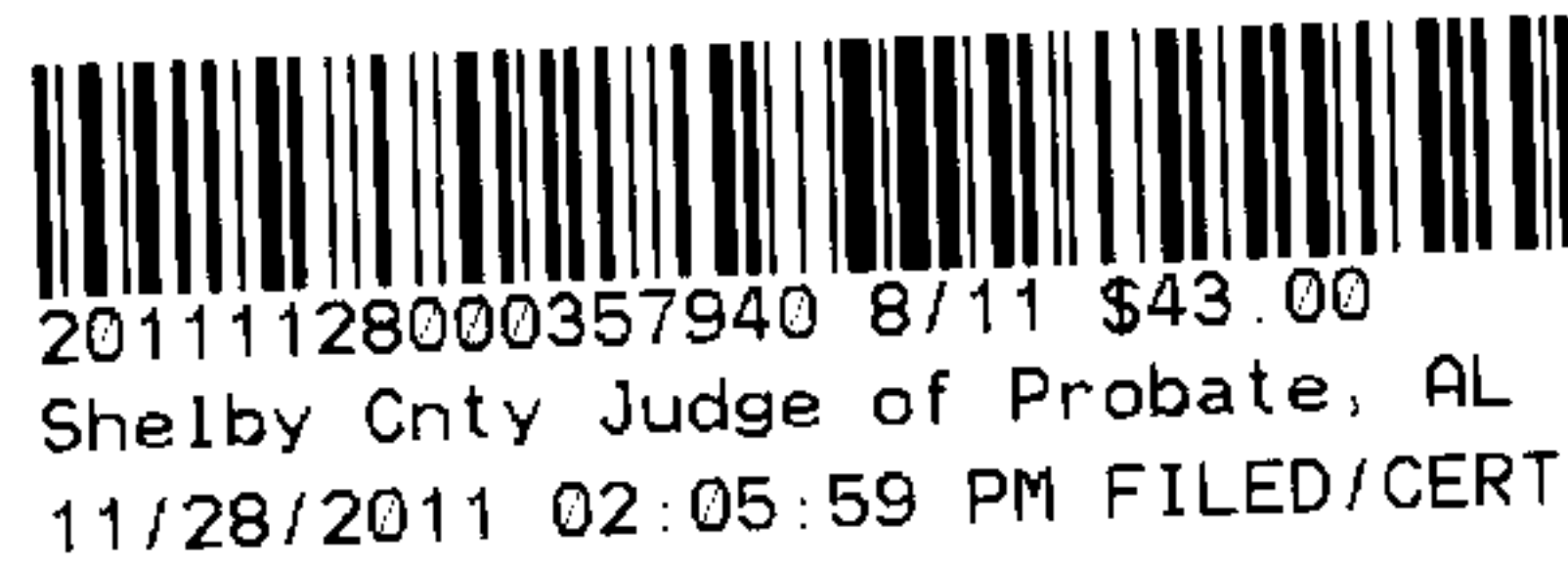


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Shelby Cnty Judge of Probate, AL
11/28/2011 02:05:59 PM FILED/CERT

EXHIBIT A

Lot 4, according to the map or survey of Balmoral Phase 1 Resurvey No. 1, as recorded in Map Book 36, Page 129, in the Probate Office of Shelby County, Alabama.

Being the same land acquired by the Mortgagor in Special Warranty Deed recorded as Instrument No. 20071019000487340 in the Probate Office of Shelby County, Alabama.



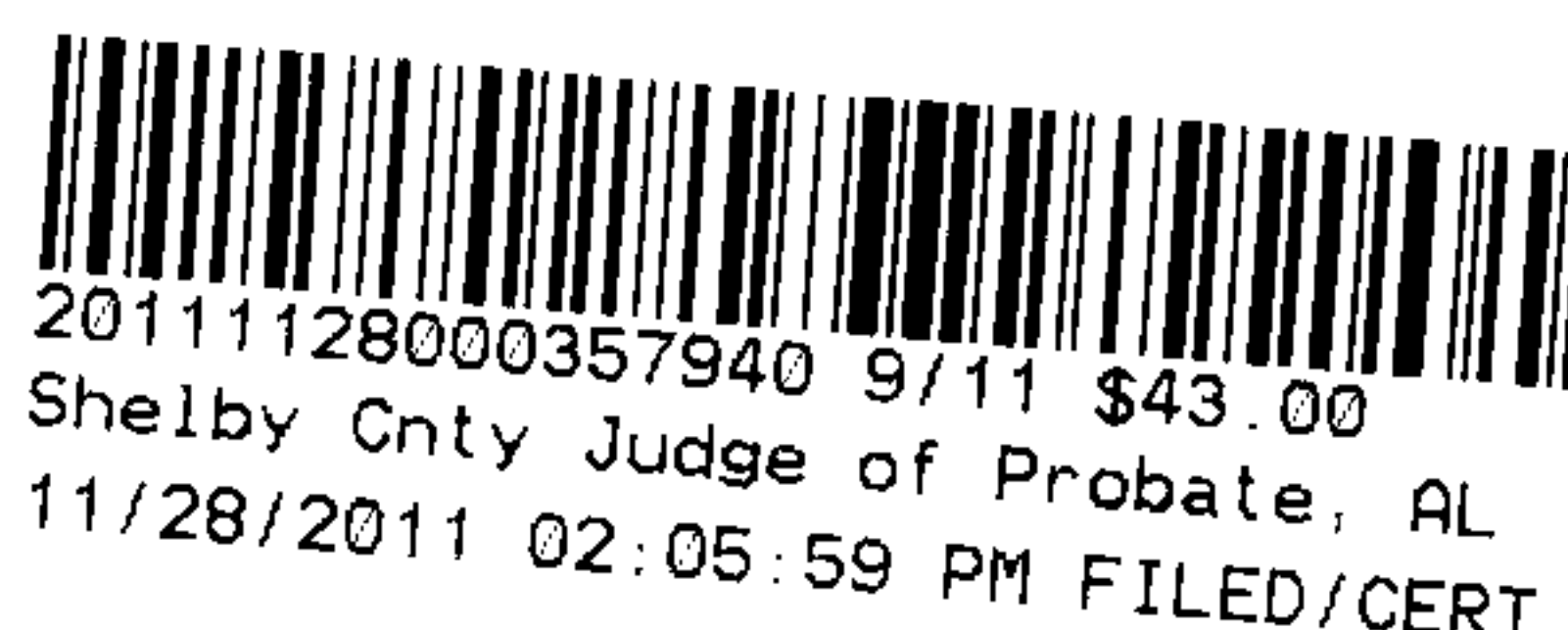
STATE OF ALABAMA)
) ss.
County of Montgomery)

BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

Comes Petitioner, Wells Fargo Bank, N.A., by its attorneys, and asks the Alabama Department of Revenue to fix and determine the amount of recording tax due, pursuant to §40-22-2(8), Code of Alabama 1975, upon the recordation of three certain Mortgage Modification Agreements to be executed by ArciTerra Shoppes at Alabaster AL, LLC, ArciTerra Festival Montgomery AL, LLC, and ArciTerra Walcent Greenville AL, LLC, each, an Arizona limited liability company (collectively, “Mortgagees”), and Petitioner. The Mortgage Modification Agreements each modifies a Mortgage and Security Agreement (collectively, the “Mortgages”) that grants property and secures indebtedness, which is located within and without the State of Alabama, in the current aggregate principal amount of \$17,040,000.00 as evidenced by a promissory note given by Mortgagees and certain affiliates of Mortgagees in favor of Petitioner (“Note”).

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

1. That the maximum indebtedness owed pursuant to the Note and secured by the Mortgages is \$17,040,000.00.
2. That the total value of all property covered by the Mortgages, both within and without the State of Alabama, is \$16,575,000.
3. That the Mortgagees previously paid mortgage tax in the State of Alabama on the original Mortgages in the amount of \$7,452.25, which was based upon the portion



of the principal amount of the loan in place at that time of \$13,535,000.00 that was secured by the properties located within the State of Alabama.


4. That the difference between the original loan amount and the new loan amount is \$3,505,000.00.
5. That the present total value of all property located within the State of Alabama and covered by the Mortgages is presently \$5,770,000.00, or **34.81%** of the total value of all property covered by the Mortgages both within and without the State of Alabama.
6. That the amount of indebtedness that is allocable to Alabama, upon which recording tax is due, as follows:

Location	Value
Montgomery	\$454,646
Shelby	\$541,345
Butler	\$224,151
TOTAL	\$1,220,142

7. That the amount of recording tax to be paid, at the rate of \$.15 for each \$100.00 of indebtedness, or fraction thereof, which is attributable to the property located within the State of Alabama, is as follows:

Location	Tax Amount
Montgomery	\$682.05
Shelby	\$812.10
Butler	\$336.30
TOTAL	\$1,830.40

8. That the Mortgage Modification Agreements shall be recorded in Shelby, Montgomery and Butler Counties.


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Shelby Cnty Judge of Probate, AL
11/28/2011 02:05:59 PM FILED/CERT

IT IS ORDERED, THEREFORE, that the Probate Judges in Montgomery, Shelby and Butler Counties shall collect recording tax in the amounts set forth in Paragraph 7, together with any applicable recording fees, upon the recording of the Mortgage Modification Agreements.

DONE this 15th day of November, 2011.

ALABAMA DEPARTMENT OF REVENUE

By: Cynthia Underwood
Assistant Commission of Revenue

ATTEST:

Michael E. Mason
As Secretary

K. E. Gable
Legal Division



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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA
MONTGOMERY CO.
I CERTIFY THIS INSTRUMENT
WAS FILED

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REESE MCKINNEY, JR.
JUDGE OF PROBATE