

THIS INSTRUMENT PREPARED BY:  
WEATHINGTON, MOORE, WEISSKOPF & HILL, P.C.  
Post Office Box 310  
Moody, Alabama 35004

Shelby Co. - 4070  
20120103000001770 1/5 \$474.00  
Shelby Cnty Judge of Probate, AL  
01/03/2012 12:43:08 PM FILED/CERT

**SECOND MORTGAGE**

STATE OF ALABAMA  
SHELBY COUNTY

THIS SECOND MORTGAGE (this "Mortgage") is made and entered into as of the 29<sup>th</sup> day of December, 2011, from James M. Thomas and wife, Teresa Thomas; and Michael Wayne O'Stean and wife, Ginger Kimbrough O'Stean, (hereinafter called "Mortgagors"), and **Timothy S. Clark**, an individual resident of the State of Alabama as Mortgagee (hereinafter "Mortgagee").

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, James M. Thomas and wife, Teresa Thomas; and Michael Wayne O'Stean and wife, Ginger Kimbrough O'Stean, have become justly indebted to the Mortgagee in the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) together with interest thereon as evidenced by that certain Promissory Note executed by Mortgagors on even date herewith;

NOW THEREFORE, in consideration of the premises, said Mortgagors, James M. Thomas and wife, Teresa Thomas; and Michael Wayne O'Stean and wife, Ginger Kimbrough O'Stean, and all others executing this mortgage, do hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate, to-wit:

PROPERTY OF JAMES M. THOMAS AND WIFE, TERESA THOMAS, situated in St. Clair County, Alabama:

Lot 40, according to the survey of Austin Hills, First Sector, as recorded in Map Book C, Page 76, in the Pell City Division of the Probate Office of St. Clair County, Alabama.

Subject to all restrictions, reservations, rights, easements, rights-of-way, provisions, covenants, terms, conditions and building set back lines of record.

PROPERTY OF MICHAEL WAYNE O'STEAN AND WIFE, GINGER KIMBROUGH O'STEAN, situated in Shelby County, Alabama:

Lot 603, according to the survey of Grade View Estates Givianpour Addition to Alabaster, 6<sup>th</sup> Addition, as recorded at Map Book 32, Page 48, in the Probate Office of Shelby County, Alabama



TO HAVE AND TO HOLD the above granted property unto the said Mortgagee, Mortgagee's successors, heirs and assigns forever.

And for the purpose of further securing the payment of said indebtedness Mortgagors warrant, covenant and agree with Mortgagee, his successors and assigns as follows:

1. THIS MORTGAGE IS A SECOND MORTGAGE, subject to the respective First Priority Mortgages of the undersigned as follows:

(a) Property of James M. Thomas and wife, Teresa Thomas: Mortgage dated as of October 9, 2006, from Mortgagor in favor of CitiFinancial Corporation, LLC, and recorded in the Office of the Judge of Probate of St. Clair County, Alabama (the "Thomas First Mortgage").

(b) Property of Michael Wayne O'Stean and wife, Ginger Kimbrough O'Stean: Mortgage dated March 14, 2007, from Mortgagor in favor of Central State Bank, Calera, Alabama, and recorded as Instrument #2007 0314000115670.

2. Mortgagors are lawfully seized in fee simple and possessed of the Mortgaged Property and each has a good right to convey the same as aforesaid.

3. Mortgagors shall pay all taxes and assessments, as well as all other liens or mortgages taking priority over this Mortgage.

4. Mortgagors shall keep the Mortgaged Property continuously insured in such amounts, in such manner, and with such companies as may be satisfactory to Mortgagee against loss by fire and wind (including so-called extended coverage), and other exposed hazards, including such hazards as Mortgagee may specify from time-to-time, with loss, if any, payable to Mortgagee under a standard mortgagee's clause providing at least 10 days' notice to Mortgagee of cancellation of such insurance, and shall deposit with Mortgagee proof of such policies of insurance, and shall pay the premiums therefor as the same become due. If Mortgagors fail to keep said property insured as above specified, or fail to deliver evidence of said insurance policies to said Mortgagee, then the said Mortgagee, or assigns, may at Mortgagee's option insure said property for said sum, for Mortgagee's own benefit, the policy if collected, to be credited on said indebtedness, less cost of collecting same; all amounts so expended by said Mortgagee for taxes, assessments or insurance, shall become a debt to said Mortgagee or assigns, additional to the debt hereby specially secured, and shall be covered by this Mortgage, and bear interest from date of payment by said Mortgagee, or assigns, and be at once due and payable.

5. Mortgagors shall take good care of the Mortgaged Property and shall not commit or permit any waste thereon or thereof, and shall keep the same repaired and at all times shall maintain the same in good condition as it now is, reasonable wear and tear alone excepted. If Mortgagors fail to make repairs to the Mortgaged Property, Mortgagee, in his sole discretion, may make such repairs at Mortgagors' expense. Mortgagee, his agents and assigns, may enter the Mortgaged Property at any reasonable time for the purpose of inspecting or repairing any



portion of the Mortgaged Property. Any such inspection or repair shall be for the Mortgagee's benefit only. Mortgagors hereby assign and grant to Mortgagee a lien upon any and all proceeds received by Mortgagors as a result of defects, structural or otherwise, in the Improvements.

6. All amounts expended by Mortgagee for insurance or for the payment of taxes or assessments, or to discharge liens or mortgages on the Mortgaged Property or other obligations of Mortgagors, or to make repairs to any portion of the Mortgaged Property (i) shall be payable within thirty (30) days after notice to Mortgagors, (ii) shall bear the interest at the highest rate of interest payable on the principal sum of any document evidencing the indebtedness secured hereby, or if no such rate of interest is specified or if the rate specified therein would be unlawful, at the highest rate per annum permitted by law from the date of payment by Mortgagee, (iii) shall become a debt due Mortgagee additional to the indebtedness herein described, and (iv) shall be secured by this Mortgage.

7. No delay or failure of Mortgagee to exercise any option to declare the maturity of any indebtedness secured by this Mortgage shall be a waiver of the right to exercise such option, either as to past or present defaults on the part of Mortgagors, and the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagee shall not be a waiver of the right to accelerate the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes liens, assessments or obligations, it being agreed by Mortgagors that no terms or conditions contained in this Mortgage can be waived, altered or changed except as evidence in writing signed by Mortgagee and Mortgagors.

8. All indebtedness hereby secured shall be paid and discharged as it shall become due and payable, whether now existing or hereafter incurred.

9. If all or any part of the Mortgaged Property or any interest therein is sold, assigned, transferred or conveyed by Mortgagors without Mortgagee's prior consent, then in any such event Mortgagee, in his sole discretion, may declare all indebtedness secured hereby to be immediately due and payable without notice to Mortgagors. Mortgagee may withhold consent in his sole discretion, or condition consent to any transfer of possession of, or an interest in, the Mortgaged Property upon (i) the transferee's agreeing to pay a greater rate of interest on all or any part of the indebtedness secured hereby or to adjust the payment schedule of all or any part of the indebtedness secured hereby, (ii) Mortgagee's approval of the creditworthiness of the transferee, and (iii) the transferee's payment to Mortgagee of a reasonable transfer or assumption fee, and payment of all recording fees and mortgage taxes. If Mortgagee exercises this option, Mortgagee shall give Mortgagors notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Mortgagors must pay all sums secured by this Mortgage. If Mortgagors fail to pay these sums prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on borrower.

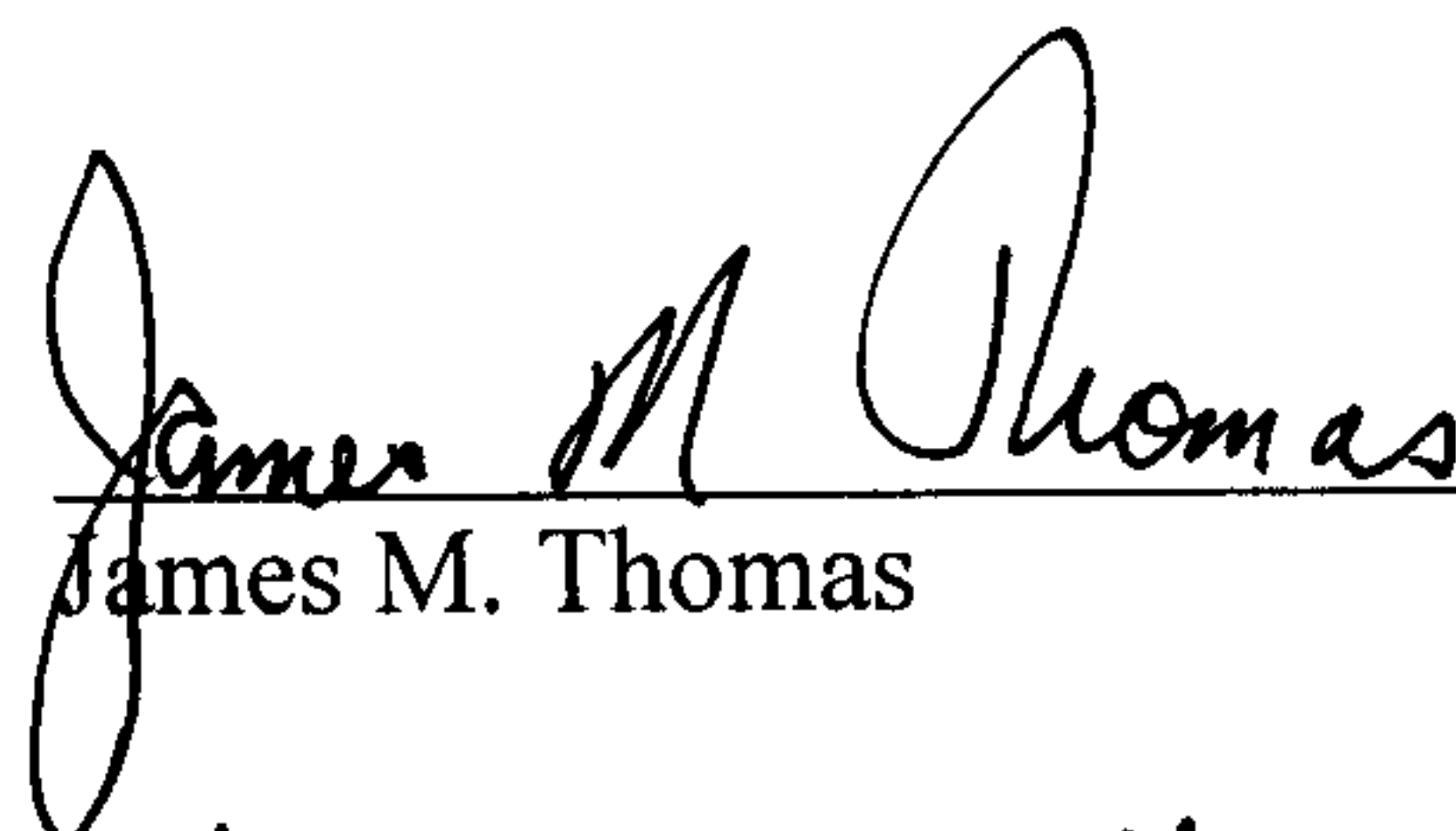
10. Should default be made in the payment of any sums expended by the said Mortgagee or assigns, or should said indebtedness hereby secured, or any part thereof, or the interest thereon, remain unpaid at maturity, or should the interest of said Mortgagee or assigns in





said property become endangered by reason of the enforcement of any prior lien or incumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of said indebtedness hereby secured shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by the law in case of past due mortgages, and the said Mortgagee, agents or assigns, shall be authorized to take possession of the premises hereby conveyed, and with or without first taking possession, after giving twenty-one (21) days' notice, by publishing once a week for three (3) consecutive weeks, the time, place and terms of sale, by publication in some newspaper published in the county where the property is located, sell the same in front of the Courthouse door of said County, (or the division thereof) where said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of the sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes, or other encumbrances, with interest thereon; Third, to the payment of said indebtedness in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and Fourth, the balance, if any, to be turned over to the said Mortgagors and undersigned further agree that said Mortgagee, agents or assigns may bid at said sale and purchase said property, if the highest bidder therefor, and undersigned further agree to pay a reasonable attorney's fee to said Mortgagee or assigns, for the foreclosure of this Mortgage in Chancery, should the same be so foreclosed, said fee to be a part of the debt hereby secured.

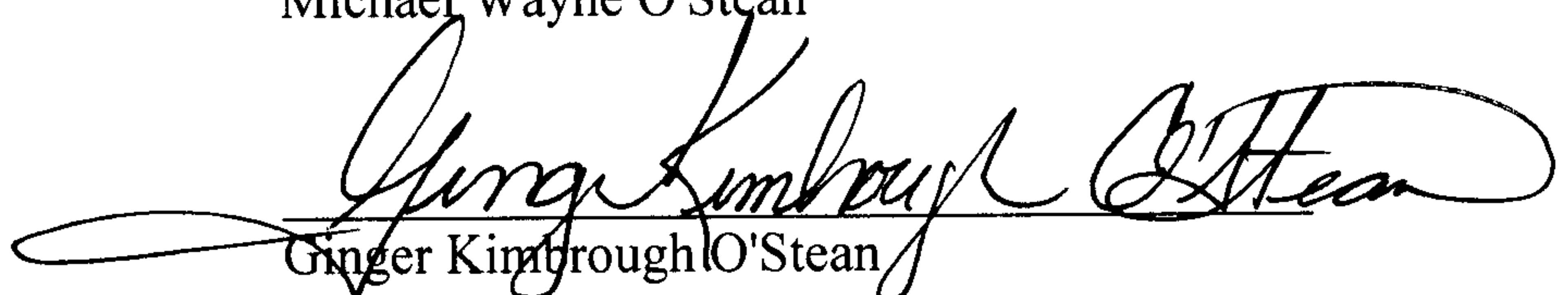
If all or any part of the subject property, or any interest in it, is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without lender's prior written consent, lender may, at her option, require immediate payment in full of all sums secured by this security instrument. However, this option shall not be exercised by lender if exercise is prohibited by federal laws as of the date of this security instrument.


IN WITNESS WHEREOF, Mortgagors have executed this Mortgage on this the 29th day of December, 2011.

  
James M. Thomas

  
Teresa Thomas

  
Michael Wayne O'Stean

  
Ginger Kimbrough O'Stean

  
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STATE OF ALABAMA  
SHELBY COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James M. Thomas and wife, Teresa Thomas, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29<sup>th</sup> day of December, 2011.

Frances H. Hoyle  
Notary Public

My Commission Expires: 12-9-2012

STATE OF ALABAMA  
SHELBY COUNTY


I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Michael Wayne O'Stean and wife, Ginger Kimbrough O'Stean, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 30<sup>th</sup> day of December, 2011.

[Signature]  
Notary Public

My Commission Expires:

**MY COMMISSION EXPIRES JULY 7, 2015**

  
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