

**This instrument prepared by:**

*Rev. 8-15-12*

Randolph H. Lanier  
Balch & Bingham LLP  
1901 Sixth Avenue North  
Suite 1500  
Birmingham, Alabama 35203  
(205) 251-8100

STATE OF ALABAMA      )


COUNTY OF SHELBY      )

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "**Agreement**") is made effective as of the 30<sup>th</sup> day of August, 2012, by and between **COMPASS MORTGAGE CORPORATION**, an Alabama corporation ("**CMC**") and **ALAMERICA BANK**, an Alabama state banking corporation ("**Alamerica**").

**RECITALS**

- A. The Village at Highland Lakes Improvement District, a public corporation organized under the laws of the State of Alabama ("**Highland Lakes District**") is the issuer of a certain Temporary Special Assessment Revenue Note Series 2006 in the amount of \$24,215,000 dated as of the 28th day of December, 2006, which evidences a certain \$24,215,000 loan from CMC to The Village at Highland Lakes, Inc., an Alabama corporation ("**TVHL**") (the "**CMC Highland Lakes District Loan**"). In connection with and to secure the Highland Lakes District Loan, CMC is the owner and holder of the following mortgages:
- (i) Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement executed by Highland Lakes District in favor of CMC dated as of the 28th day of December, 2006 and recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument Number 20061229000637690 (as amended, the "**Highland Lakes District Mortgage**");
  - (ii) Future Advance Accommodation Mortgage, Assignment of Rents and Leases and Security Agreement executed by Highland Lakes District, and by The Village at Highland Lakes, Ltd. ("**TVHL Ltd.**"), as accommodation mortgagor, in favor of CMC dated as of the 28th day of December, 2006 and recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument Number 20061229000637730 (as amended, the "**TVHL Ltd Highland Lakes District Mortgage**"); and

  
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Shelby Cnty Judge of Probate, AL  
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- (iii) Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement executed by Highland Lakes District and TVHL in favor of CMC dated as of the 28th day of December, 2006 and recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument Number 20061229000637710 (as amended, the "**TVHL Highland Lakes District Mortgage**").

TVHL Ltd. has been dissolved and its assets have been transferred to TVHL, subject to the TVHL Ltd Highland Lakes District Mortgage

The three mortgages described above are collectively referred to as the "**CMC Highland Lakes District Mortgages**").

Among other real properties, CMC Highland Lakes District Mortgages encumber that certain real property described on **Exhibit A** attached hereto and made a part hereof (the "**Highland Lakes District Subordinated Land**")

- B. Alamerica has made a \$750,000.00 loan to TVHL (the "**Alamerica TVHL Loan**") which is evidenced by a \$750,000 promissory note (the "**Alamerica TVHL Note**") and secured by, among other collateral, that certain [Mortgage and Security Agreement] executed by TVHL in favor of Alamerica dated as of the ~~30<sup>th</sup>~~<sup>30<sup>th</sup></sup> day of August, 2012 and recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument Number \* (the "**Alamerica TVHL Mortgage**").  
\* 20120911000343270

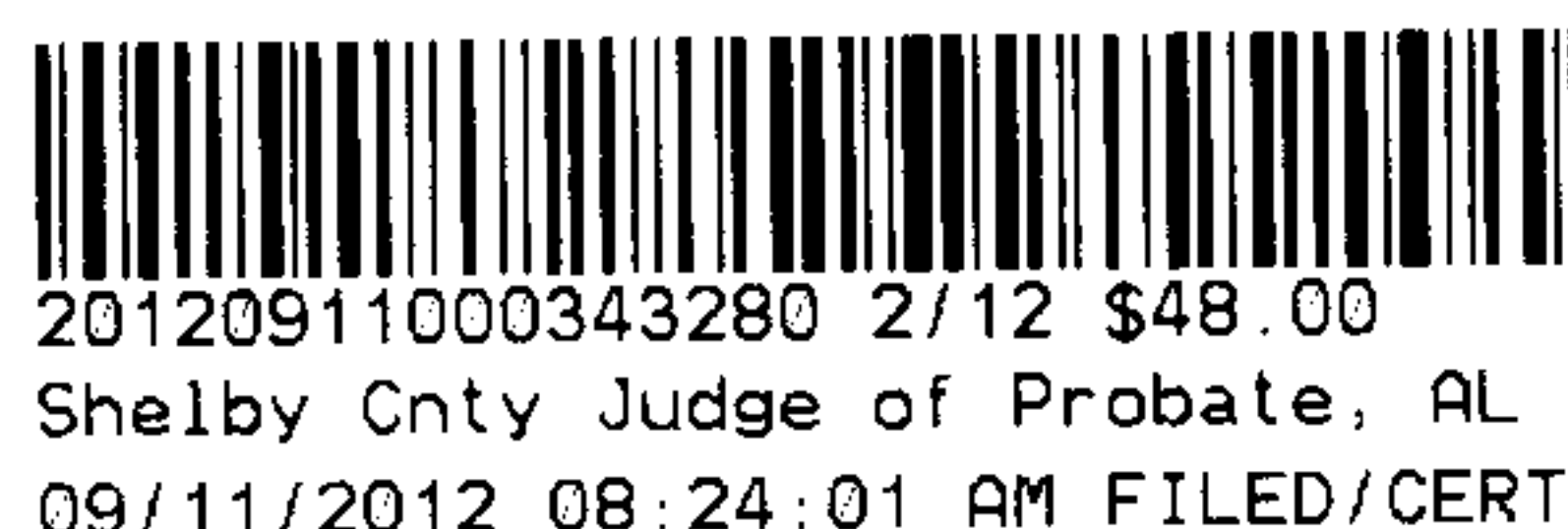
The Alamerica TVHL Loan is being made to finance the development by TVHL of a fifty (50) lot residential subdivision on the Highland Lakes District Subordinated Land (the "**Subdivision**"). The to-be-developed lots in the Subdivision are individually referred to herein as a "**Lot**" and collectively as the "**Lots**".

- C. A condition to the Alamerica TVHL Loan was that CMC would subordinate CMC Highland Lakes District Mortgages as to the Highland Lakes District Subordinated Land to Alamerica TVHL Mortgage.
- D. CMC has agreed to so subordinate CMC Highland Lakes District Mortgages as to the Highland Lakes District Subordinated Land on the terms set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, CMC and Alamerica hereby agree as follows:

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





2. **Subordination.** Subject in all respects to the other terms and conditions of this Agreement, the CMC Highland Lakes District Mortgages, as to the Highland Lakes District Subordinated Land (but no other real estate), shall be subject and subordinate in priority to the Alamerica TVHL Mortgage and any other documents evidencing, securing, guaranteeing or otherwise executed in connection with the Alamerica TVHL Loan (collectively, and together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the "**Alamerica TVHL Loan Documents**") and all advances made thereunder (up to, but not exceeding the principal amount of \$750,000.00) without regard to the application of such proceeds, together with all interest, prepayment premiums and all other sums due under the Alamerica TVHL Mortgage, and the Alamerica TVHL Note. The foregoing shall apply, notwithstanding the availability of other collateral to Alamerica or the actual date and time of execution, delivery, recordation, filing or perfection of the Alamerica TVHL Mortgage or the CMC Highland Lakes District Mortgages, or the lien or priority of payment thereof. In addition, and without limiting the foregoing, and subject in all respects to the other terms and conditions of this Agreement, CMC agrees that all rights of CMC under the CMC Highland Lakes District Mortgages in and to the Highland Lakes District Subordinated Land and the proceeds thereof (including, without limitation, proceeds of sales, assignments of leases and rents, issues and profits and the rights with respect to insurance proceeds and condemnation awards) shall be expressly subject and subordinate to the rights of Alamerica in and to the Highland Lakes District Subordinated Land and the proceeds thereof (including proceeds of sales, assignments of leases and rents, issues and profits and rights with respect to insurance proceeds and condemnation awards) on the terms set forth in the Alamerica TVHL Mortgage and the other Alamerica TVHL Loan Documents.
3. **Release of Lots by CMC.** So long as the Alamerica TVHL Loan remains unpaid, CMC agrees to release individual Lots in the Subdivision from the CMC Highland Lakes District Mortgages for no release price (\$0.00) upon demand by Alamerica as such Lots are sold by TVHL or by Alamerica and such Lots are released from the Alamerica TVHL Mortgage.
4. **Terms of Subordination.** CMC and Alamerica hereby agree that so long as any sum shall remain outstanding on the Alamerica TVHL Mortgage:
- (a) CMC shall simultaneously send to Alamerica notices of all Events of Default declared in writing by CMC under the CMC Highland Lakes District Loan. Alamerica shall have the right, but shall not have the obligation, (i) to cure such Events of Default within thirty (30) days after the expiration of the applicable grace period permitted to the borrower thereunder, if any, or (ii) as to any such Events of Default which are incapable of being cured with reasonable effort within any such grace or cure period (other than monetary defaults), and provided that Alamerica gives written notice to CMC within such thirty (30) day period, of its intention to cure any such default, Alamerica shall have such additional time to cure the Events of Default as is reasonably necessary, not to exceed in any event an additional ninety (90) days, so long as Alamerica has commenced and



thereafter expeditiously and continuously proceeds to complete, such cure. Nothing contained in this Agreement shall be deemed or construed to require Alamerica to commence or continue to prosecute any such cure to completion or prevent Alamerica from discontinuing such cure;

- (b) Alamerica shall simultaneously send to CMC notices of all Events of Default declared in writing by Alamerica under the Alamerica TVHL Loan. CMC shall have the right, but shall not have the obligation, (i) to cure any such Events of Default within thirty (30) days after the expiration of the applicable grace period permitted to the borrower thereunder, if any, or (ii) as to any such Events of Default which are incapable of being cured with reasonable effort within any such grace or cure period (other than monetary defaults), and provided that CMC gives written notice to Alamerica within such thirty (30) day period, of its intention to cure any such default, CMC shall have such additional time to cure the Events of Default as is reasonably necessary, not to exceed, in any event an additional ninety (90) days, so long as CMC has commenced and thereafter expeditiously and continuously proceeds to complete, such cure. Nothing contained in this Agreement shall be deemed or construed to require CMC to commence or continue to prosecute any such cure to completion or prevent CMC from discontinuing such cure;
- (c) Alamerica agrees that the Alamerica TVHL Loan will not have a revolving loan feature, no principal sum shall be re-advanced thereunder, and the outstanding principal balance thereof shall never exceed \$750,000.00.
- (d) Alamerica agrees to require a release price for the release of each of the Lots from the Alamerica TVHL Mortgage in an amount such that the Alamerica Loan will be paid in full by the sale of the first 15 of such Lots.
- (e) Any Event of Default declared in writing by Alamerica under the Alamerica TVHL Loan shall constitute an Event of Default under the CMC Highland Lakes District Loan at the option of CMC.
- (f) Any Event of Default declared in writing by CMC under the CMC Highland Lakes District Mortgages Loan shall constitute an Event of Default under the Alamerica TVHL Loan at the option of Alamerica.
- (g) Any foreclosure of the CMC Highland Lakes District Mortgages (or deed in lieu thereof) shall be made subject to the Alamerica TVHL Mortgage with respect to the Highland Lakes District Subordinated Land.
- (h) Nothing herein shall prohibit CMC from amending, modifying, extending, renewing or increasing the CMC Highland District Loan, with any such amendment, modification, extension, renewal or increase to be secured by the CMC Highland Lakes District Mortgages, subject to the provisions of this Agreement, and nothing herein shall prevent CMC from receiving or seeking the



receipt of indebtedness owed to it under the Highland Lakes District Loan (except with respect to receipts attributable to the Highland Lakes District Subordinated Land as subordinated in Section 2 above).

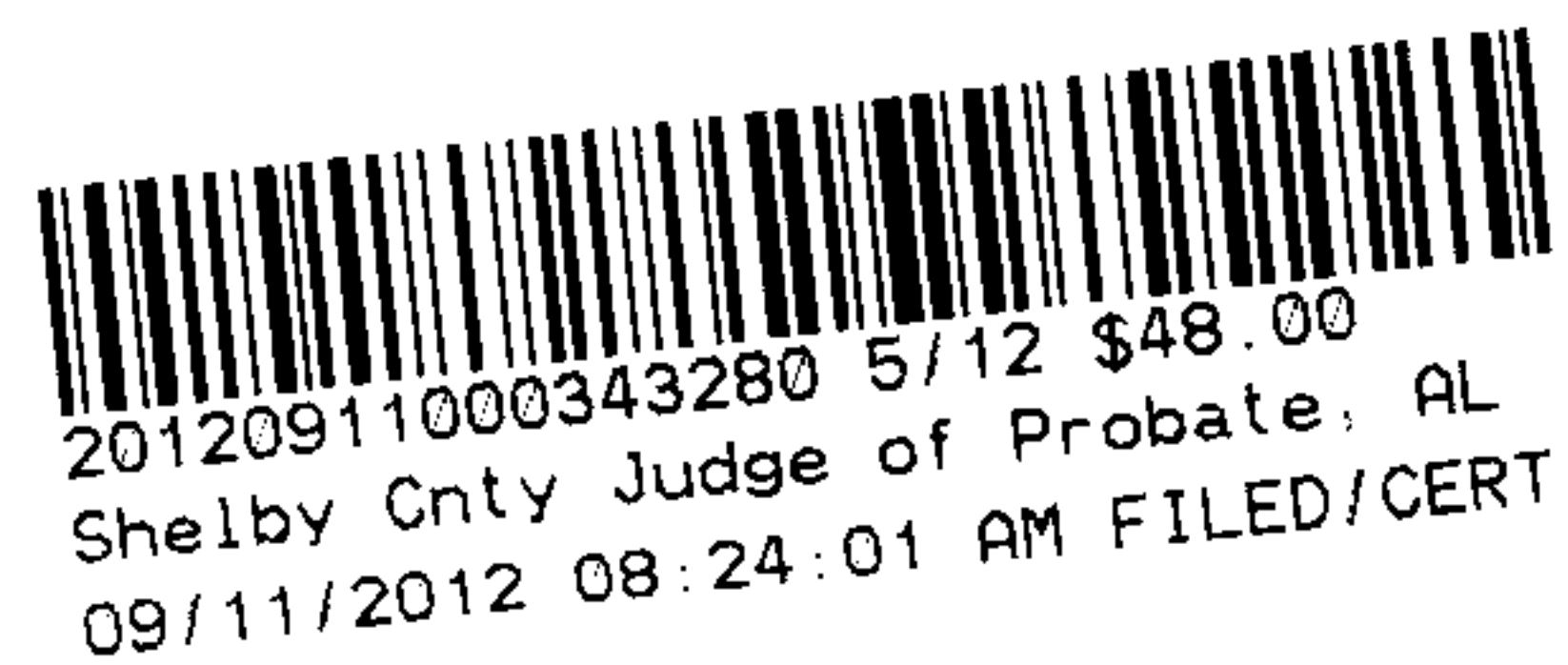
5. **Further Cooperation.** Alamerica and CMC shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms hereof.
6. **No Waiver.** No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
7. **Notices.** Any notice to be given under this Agreement shall be in writing and shall be deemed to be given when received by the party to whom it is addressed. Notices shall be in writing and sent by certified mail, hand delivery or by overnight delivery, such as Federal Express (in each case, return receipt requested). Notices to the other party hereto shall be sent to the address set forth below or such other address or addressees as shall be designated by such party in a written notice to the other parties:

*If to CMC:*

Compass Mortgage Corporation  
15 South 20th Street  
Suite 201  
Birmingham, Alabama 35233  
Attention: Mr. Greg Manuel

*If to Alamerica:*


Alamerica Bank  
2170 Highland Avenue  
Suite 150  
Birmingham, Alabama 35205  
Attention: Mr. Matt Rockett



8. **Conflict.** In the event of any conflict between the provisions of this Agreement and the provisions of the CMC Highland Lakes District Mortgages or the Alamerica TVHL Loan Documents, the provisions of this Agreement shall prevail.
9. **No third Party Beneficiaries.** No person, including, without limitation, TVHL, other than the parties hereto and their successors and assigns as holders of the Alamerica TVHL Mortgage and the CMC Highland Lakes District Mortgages shall have any rights under this Agreement.

10. **Counterparts.** This document may be executed in any number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) document and agreement, but in making proof of this document, it shall not be necessary to produce or account for more than one such counterpart, and counterpart pages may be combined into one single document.
11. **Modification.** No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party hereto unless it is in writing and is signed by said party.
12. **Invalidity.** In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereto.
13. **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.
14. **Benefit.** This Agreement shall bind and inure to the benefit of Alamerica and CMC, and their respective successors, permitted transferees and assigns.

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Shelby Cnty Judge of Probate, AL  
09/11/2012 08:24:01 AM FILED/CERT

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the date first set forth above.

CMC:

COMPASS MORTGAGE CORPORATION,  
an Alabama corporation

By: [Signature]  
Its Vice President

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Shane White, whose name as Vice President of **COMPASS MORTGAGE CORPORATION**, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

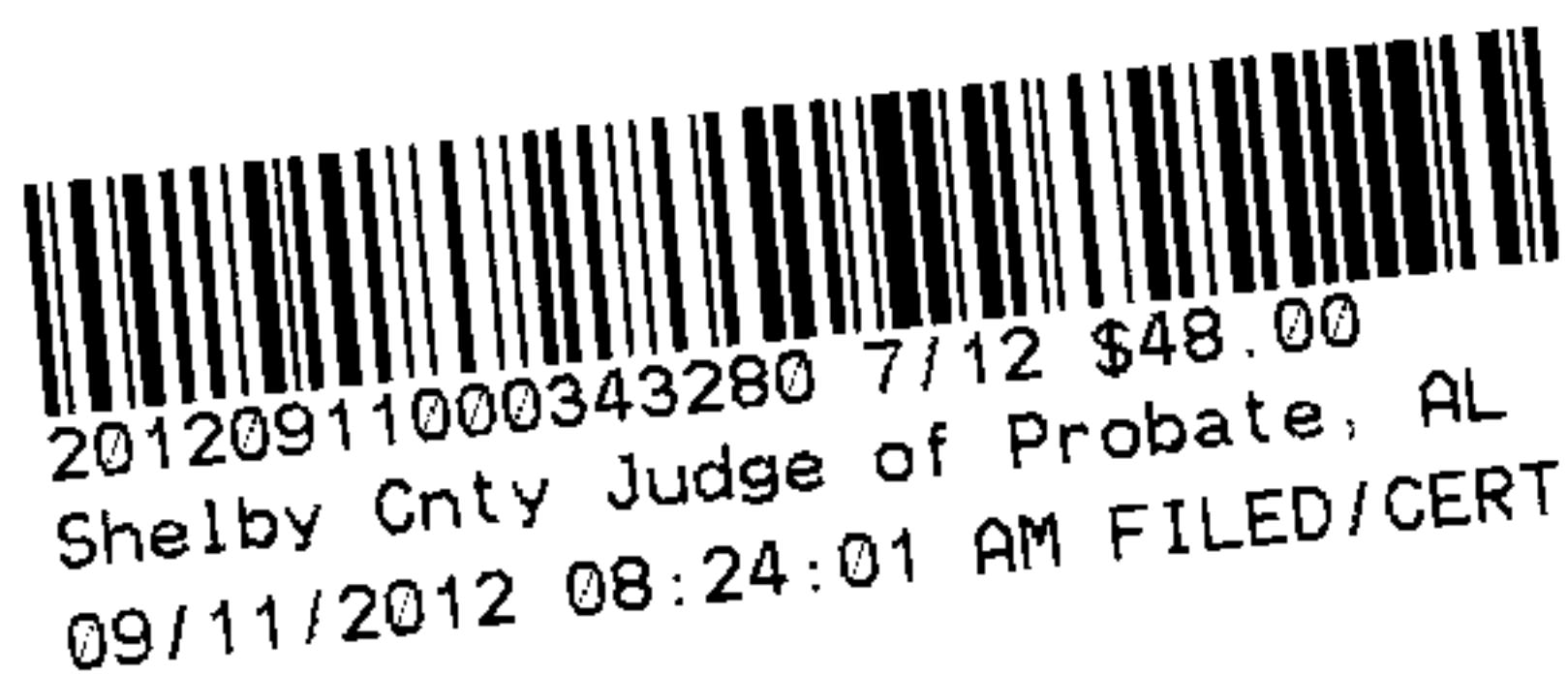
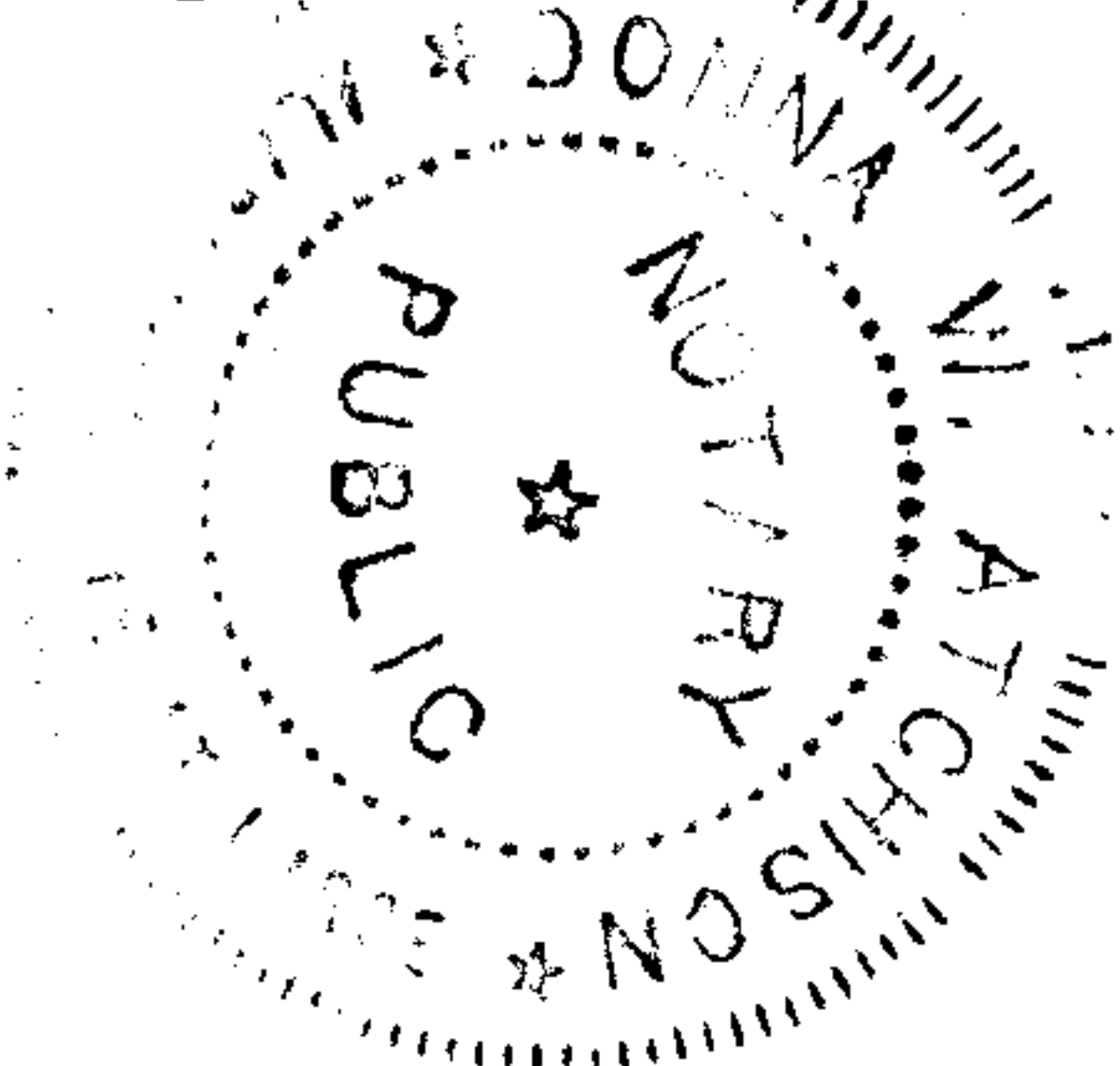
Given under my hand this the 30th day of August, 2012.

[Signature]

Notary Public

[NOTARIAL SEAL]

My commission expires: 12-29-2014





IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the date first set forth above.

ALAMERICA:

ALAMERICA BANK,  
an Alabama banking corporation

By: [Signature]  
Its Executive Vice President

STATE OF Alabama

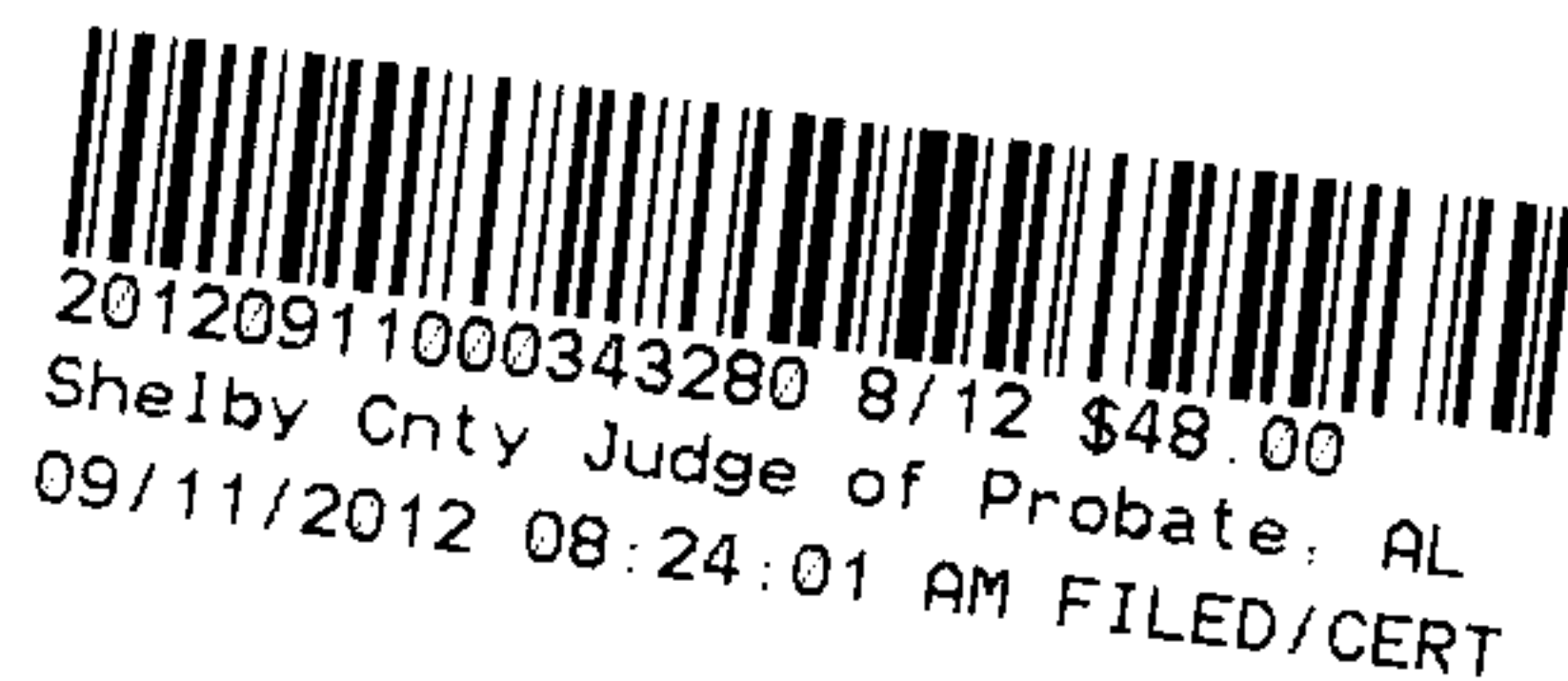
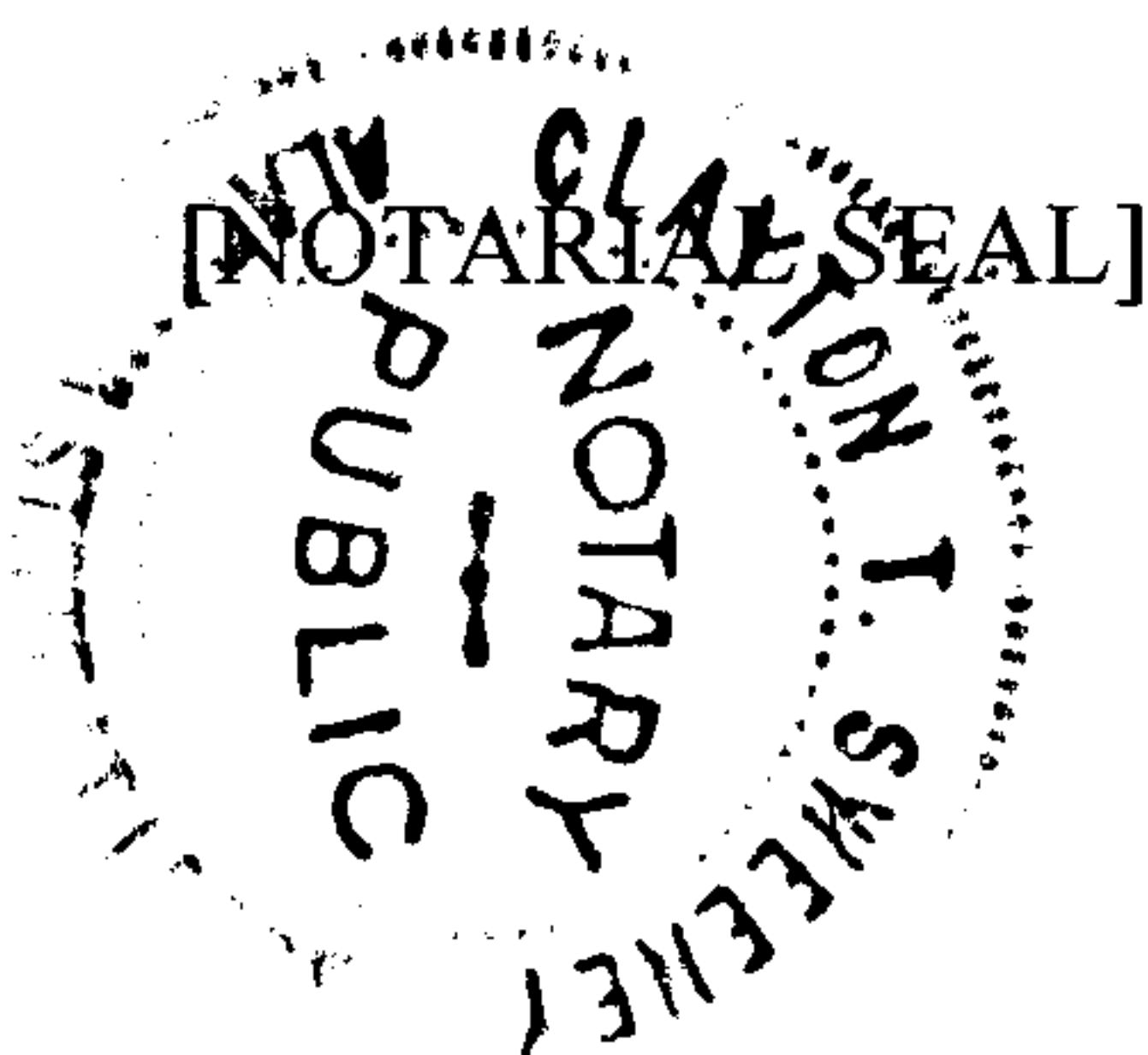
COUNTY OF Jefferson

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Ma H Rockett, whose name as Executive Vice-President of ALAMERICA BANK, an 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 the instrument, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 30<sup>th</sup> day of August, 2012.

[Signature]  
Notary Public


My commission expires: 6-5-2015





## EXHIBIT A

### Highland Lakes District Subordinated Land

  
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LEGAL DESCRIPTION: VILLAGE AT HIGHLAND LAKES SECTOR 2

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 89°25'32" EAST ALONG THE SOUTH LINE OF SAID 1/4 – 1/4 LINE FOR 403.93 FEET; THENCE RUN NORTH 00°34'28" WEST FOR 244.51 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE RUN NORTH 60°12'22" WEST FOR 119.79 FEET TO THE SOUTHEAST CORNER OF LOT 116, ACCORDING THE SURVEY OF THE VILLAGE AT HIGHLAND LAKES SECTOR 1, AS RECORDED IN MAP BOOK 38, PAGE 24, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 14°26'04" EAST ALONG THE EAST LINE OF LOTS 115 AND 116 OF SAID SURVEY FOR 210.04 FEET TO A POINT ON THE EAST LINE OF LOT 115 OF SAID SURVEY; THENCE RUN NORTH 02°45'19" EAST ALONG THE EAST LINE OF LOTS 114, AND 115 OF SAID SURVEY FOR 98.17 FEET TO A POINT ON THE EAST LINE OF LOT 114 OF SAID SURVEY; THENCE RUN NORTH 04°42'50" WEST ALONG THE EAST LINE OF LOTS 113, AND 114 OF SAID SURVEY FOR 196.41 FEET TO A POINT ON THE EAST LINE OF LOT 113 OF SAID SURVEY; THENCE RUN NORTH 24°10'59" WEST ALONG THE EAST LINE OF LOT 113 FOR 61.92 FEET TO THE NORTHEAST CORNER OF LOT 113 OF SAID SURVEY AND A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF CROSSWAY TRAIL; THENCE RUN NORTH 24°10'59" WEST FOR 60.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CROSSWAY TRAIL AND THE SOUTHEAST CORNER OF LOT 112 OF SAID SURVEY TO A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 24°10'59" EAST, A RADIAL DISTANCE OF 896.92 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 01°34'24", A DISTANCE OF 24.63 FEET; THENCE RUN NORTH 22°36'35" WEST FOR 573.47 FEET; THENCE RUN NORTH 19°16'51" EAST FOR 228.79 FEET; THENCE RUN NORTH 67°53'49" EAST FOR 211.26 FEET; THENCE RUN SOUTH 56°06'11" EAST FOR 197.75 FEET; THENCE RUN SOUTH 72°07'33" EAST FOR 336.37 FEET; THENCE RUN SOUTH 55°45'20" EAST FOR 160.62 FEET; THENCE RUN SOUTH 37°01'15" EAST FOR 122.04 FEET; THENCE RUN SOUTH 06°03'37" EAST FOR 180.77 FEET; THENCE RUN SOUTH 33°47'13" EAST FOR 113.88 FEET; THENCE RUN SOUTH 43°03'19" WEST FOR 91.13 FEET; THENCE RUN NORTH 51°41'17" WEST FOR 148.78 FEET TO A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 51°41'17" WEST, A RADIAL DISTANCE OF 55.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 37°56'36", A DISTANCE OF 36.42 FEET; THENCE RUN SOUTH 22°44'09" EAST FOR 177.08 FEET; THENCE RUN NORTH 74°51'42" WEST FOR 210.90 FEET; THENCE RUN NORTH 37°54'53" WEST FOR 229.18 FEET; THENCE RUN NORTH 31°26'47" WEST FOR 170.00 FEET TO A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES SOUTH 31°26'47" EAST, A RADIAL DISTANCE OF 170.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 04°46'41", A DISTANCE OF 14.18 FEET;



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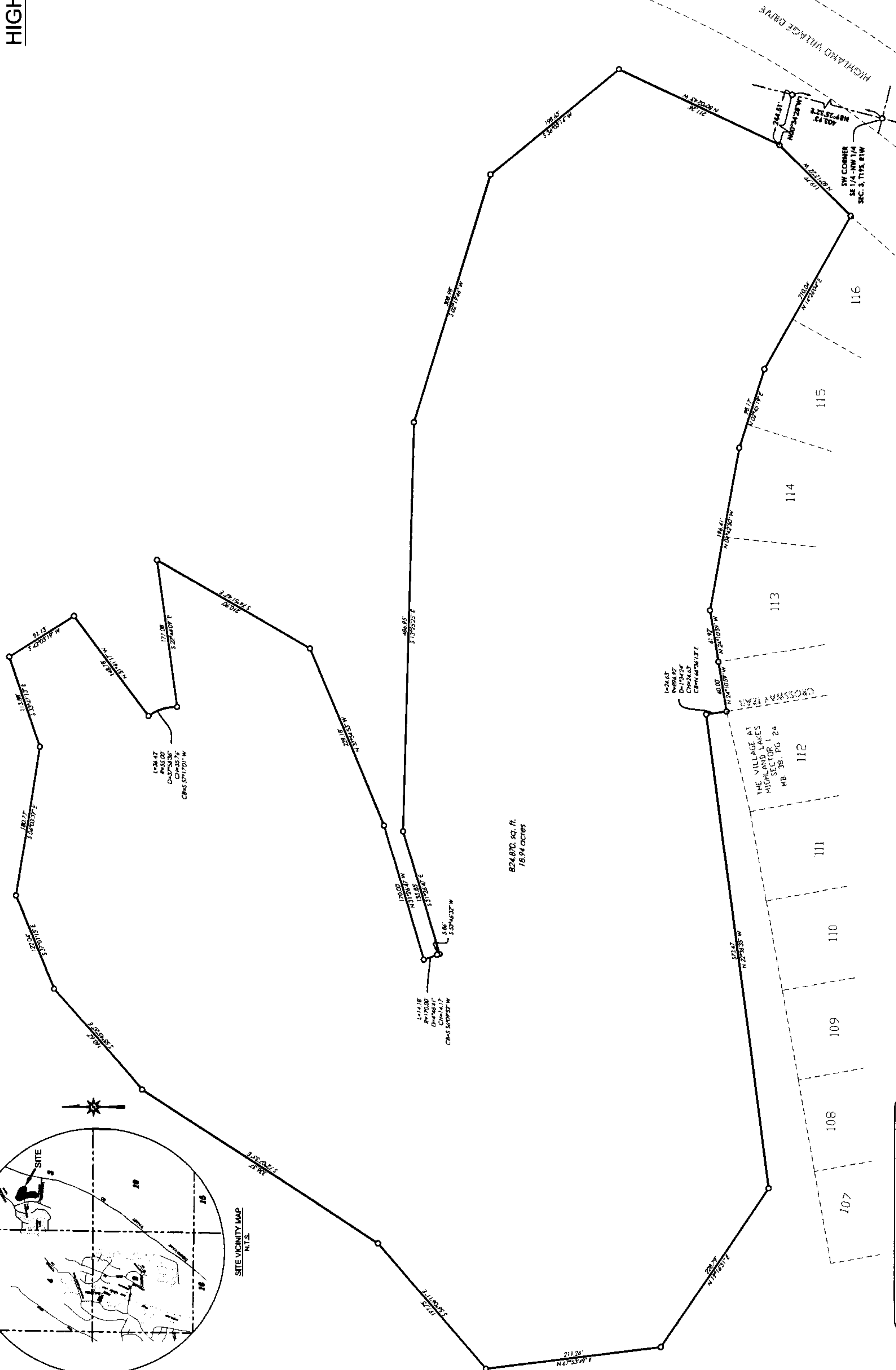
THENCE RUN SOUTH 53°46'32" WEST FOR 5.86 FEET; THENCE RUN SOUTH 31°26'47" EAST FOR 155.85 FEET; THENCE RUN SOUTH 13°25'25" EAST FOR 486.95 FEET; THENCE RUN SOUTH 02°19'46" WEST FOR 308.98 FEET; THENCE RUN SOUTH 36°03'14" WEST FOR 198.63 FEET; THENCE RUN NORTH 80°02'43" WEST FOR 211.26 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINING 824,870.40 SQUARE FEET OR 18.94 ACRES, MORE OR LESS.



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### SITE VICINITY MAP



PREPARED FOR AND OWNER:  
THE VILLAGE AT HIGHLAND LAKES, INC  
2700 HIGHWAY 280 EAST  
SUITE 425 WEST  
BIRMINGHAM, ALABAMA 35223  
(205) 871-9755

**ARRINGTON ENGINEERING**  
CIVIL ENGINEERS - SURVEYORS - LAND PLANNERS

Dynetics 6042 366-3665  
Fax 6042 366-3686  
P.O. Box 100  
2032 Vancouver Island  
Victoria BC V8N 6A1