


This instrument prepared by:
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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**ASSIGNMENT OF
PROMISSORY NOTE, MORTGAGE AND RELATED COLLATERAL**

ASSIGNMENT OF PROMISSORY NOTE, MORTGAGE AND RELATED COLLATERAL (this "Assignment") is made and entered into as of the 17th day of May, 2013 by and among **DANIEL SENIOR LIVING OF INVERNESS II, LLC**, an Alabama limited liability company ("Daniel"), **ROCKWELL HOMES, LLC**, an Alabama limited liability company ("Purchaser"), and **SOUTHERN STATES BANK**, an Alabama banking corporation ("Bank").

R E C I T A L S:

Contemporaneously herewith, Daniel has sold and conveyed to Purchaser, and Purchaser has purchased and acquired from Daniel, the following described real property (the "Lot") situated in Shelby County, Alabama.

Lot 39B, according to the Survey of The Cottages of Danberry, Resurvey No. 3, recorded in Map Book 41, Page 80 in the Office of the Judge of Probate of Shelby County, Alabama.

The Lot has been conveyed by Daniel to Purchaser subject to that certain Mortgage, Assignment of Leases and Security Agreement dated May 1, 2008 executed by Daniel in favor of Bank and recorded as Instrument No. 20080501000179730 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), as amended by First Amendment thereto dated July 11, 2008 and recorded as Instrument No. 20080714000282330 in the Probate Office (collectively, the "First Mortgage").

The First Mortgage secures that certain loan (the "First Mortgage Loan") made by Bank to Daniel in the principal amount not to exceed \$3,909,731.00 which is evidenced and secured by the following loan documents (collectively, the "First Loan Documents"):

- (a) Non-Revolving Construction Line Promissory Note dated as of March 11, 2013 in the original principal amount of \$1,914,730.99 executed by Daniel in favor of Bank;
- (b) The Mortgage;

(c) Amended and Restated Guaranty Agreement dated as of July 11, 2008 executed by Daniel Realty Company, LLC, an Alabama limited liability company in favor of Bank;

(d) Loan Agreement dated July 11, 2008 between Daniel and Bank; and

(e) UCC Financing Statement recorded as Instrument No. 20080501000179740 in the Probate Office; as amended by UCC Financing Statement Amendment recorded in Instrument No. 20080714000282340 in the Probate Office.

In connection with the sale of the Lot by Daniel to Purchaser, the entire purchase price for the Lot is represented by a loan (the "Purchase Money Loan") made contemporaneously herewith by Daniel to Purchaser.

The Purchase Money Loan is evidenced and secured by the following (collectively, the "Purchase Money Loan Documents"):

(a) Purchase Money Note dated as of the date hereof (the "Purchase Money Note") in the original principal amount of \$105,000.00;

(b) Purchase Money Mortgage and Security Agreement dated as of the date hereof (the "Purchase Money Mortgage") executed by Purchaser in favor of Daniel; and

(c) Guaranty executed by Sam Dariani in favor of Daniel.

Bank has consented to (a) the transfer and sale of the Lot by Daniel to Purchaser subject to the First Mortgage Loan Documents and (b) the execution of the Purchase Money Loan Documents, including, specifically, the encumbrance of the Lot with the Purchase Money Mortgage, subject to the parties hereto entering into this Assignment.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Recitals and Other Terms and Rules of Construction.**

(a) Recitals. The parties hereto acknowledge and agree that all of the foregoing Recitals are true and correct and incorporated into and made a part of this Assignment.

(b) Singular and Plural Terms. Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined.

(c) UCC Terms. Terms contained in this Assignment shall, unless otherwise defined herein or unless the context otherwise indicates, have the meanings, if any, assigned to them by Uniform Commercial Code in effect in the state in which any of the collateral for the First Mortgage Loan is located.

(d) Amendments to Documents. All references to any documents or instruments shall be deemed to refer to such documents or instruments as they have been previously amended, modified, extended, or renewed and as may hereafter be extended, renewed, modified, or amended and all replacements and substitutions therefor.

2. Assignment of Promissory Note, Mortgage and Related Collateral. In consideration of Bank agreeing to the transfer and sale of the Lot by Daniel to Purchaser subject to the First Mortgage Loan Documents and Daniel's prior agreement with Bank to transfer and assign to the Bank the Purchase Money Loan Documents as additional security for the First Mortgage Loan, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as security for the prompt payment of all debts, obligations and liabilities now or hereafter existing, absolute or contingent, of Daniel to Bank, including, without limitation, the First Mortgage Loan and all obligations of Borrower under or with respect to the First Mortgage Loan Documents (collectively, the "Secured Indebtedness"), Daniel does hereby grant, bargain, sell, assign, negotiate, pledge, transfer, set over and convey unto Bank, and grants to Bank a security interest in, all of Daniel's right, title and interest in, to and under all of the following (collectively, the "Collateral"):

(a) The Purchase Money Loan Documents;

(b) Any and all assignments of rents, security agreements, financing statements, escrow deposits, reserve accounts, letters of credit, guaranties, indemnity agreements, estoppel certificates, certificates, affidavits, non-disturbance agreements, title insurance policies, other insurance policies, and other documents or agreements otherwise securing, evidencing, or relating to Purchaser's obligations under, or delivered to Daniel in connection with, the foregoing Purchase Money Loan Documents or any of them;

(c) All rights and remedies that Daniel might exercise with respect to any and all of the foregoing (subject to the terms of this Assignment); and

(d) Any and all proceeds and products of the foregoing, including without limitation condemnation awards and insurance proceeds.

3. Endorsement of Note. Contemporaneously herewith, Daniel has delivered to Bank the Purchase Money Note, endorsed to the order of Bank.

4. Representations and Warranties.

(a) Daniel represents and warrants to Bank that (i) Daniel owns the Collateral and all sums now or hereafter due thereunder, free and clear of all liens, claims, security interests, encumbrances, setoffs, defenses and counterclaims, except for the security interest granted to Bank by this Assignment; (ii) to its knowledge and belief, there are no setoffs, counterclaims or defenses which would materially affect the validity of the Purchase Money Loan Documents; (iii) the Purchase Money Loan Documents constitute the sole documents and agreements between Daniel and Purchaser relating to the Purchase Money Loan; (iv) there have been no amendments or modifications to the Purchase Money Loan Documents; (v) except for

this Assignment, the Purchase Money Loan Documents have not been previously assigned; and (iv) the Purchase Money Loan Documents are valid and in full force and effect.

(b) Daniel and Purchaser, jointly and severally, represent and warrant that, as of the date hereof, the total indebtedness (both principal and accrued interest) owing by Purchaser to Daniel under the Purchase Money Note is \$105,000.00 (which is the current principal balance of the Purchase Money Note); (iii) there have been no repayments or prepayments of any of the indebtedness represented by the Purchase Money Note, (iv) the Purchase Money Loan Documents will not be amended, modified, changed or altered in any respect without the express prior written consent of Bank, which consent may be given or withheld in the sole and absolute discretion of Bank, and (v) there are no offsets, claims, counterclaims or defenses held by Purchaser with respect to any of the Purchase Money Loan Documents.

(c) Purchaser consents to the aforesaid assignment by Daniel to Bank and acknowledges and agrees that (i) the Purchase Money Loan Documents have been collaterally assigned to Bank and agrees to be bound by the terms and conditions contained in this Related Assignment, (ii) all payments made by Purchaser under the Purchase Money Loan Documents shall be paid directly to Bank as provided in Sections 5 and 6 below and (iii) the Purchase Money Loan Documents may not be modified, amended, released, cancelled or changed, in whole or in part, without the prior written consent of Bank, which consent may be withheld in the sole and absolute discretion of Bank.

5. Application of Payments/Default.

(a) Daniel covenants and agrees that any payments, funds, property or other assets (including ownership of any real property previously encumbered by the Purchase Money Loan Documents) received by Daniel under or by virtue of the Purchase Money Loan Documents at any time prior to the payment in full of all of the Secured Indebtedness (collectively, "Payments") shall be immediately delivered to Bank and applied by Bank in payment of the Secured Indebtedness in such manner as Bank may elect.

(b) Purchaser covenants and agrees to pay all amounts due to Daniel under the Purchase Money Note directly to Bank.

(c) Upon the occurrence of default or any event of default by Daniel under any of the First Mortgage Loan Documents (collectively, an "Event of Default"), Bank shall have all of the rights with respect to the Collateral as are afforded to a secured party under the Uniform Commercial Code as enacted and in effect in the State of Alabama. Without limiting the foregoing, Daniel authorizes Bank, and its employees and agents, at Bank's option, exercised in the name of the Daniel or in the name of Bank as assignee, to collect any amounts due at any time under any of the Collateral, including, without limitation, notifying Purchaser of such Event of Default and directing that all payments of principal and interest under the Purchase Money Note be paid directly to Bank for application against the Secured Indebtedness. All payments of principal and interest on the Purchase Money Note received by Bank, and the proceeds of any disposition of the Purchase Money Note pursuant to the Uniform Commercial Code, shall be applied, first to the Bank's costs of collection and enforcement, including attorneys' fees, then to

the First Mortgage Loan and other Secured Indebtedness as the Bank may choose in its sole discretion; provided, however, that Bank's interest in the Collateral or any proceeds resulting from the sale or foreclosure of the Collateral shall be limited to the Secured Indebtedness.

(d) Daniel covenants and agrees not to exercise any remedies under the Purchase Money Loan Documents without the prior written consent of Bank, which consent may be withheld in the sole and absolute discretion of Bank. If Bank consents to the exercise of any remedies by Daniel following any default by Purchaser under any of the Purchase Money Loan Documents, then Daniel covenants and agrees to immediately deliver to Bank any funds, property or any other assets (including ownership of any real property previously encumbered by any of the Purchase Money Loan Documents (collectively, the "Enforcement Proceeds") to Bank which Daniel may receive in connection with the exercise of such remedies, which Enforcement Proceeds shall be applied to the payment of the Secured Indebtedness by Bank in such manner as determined by Bank, in its sole discretion.

(e) Notwithstanding the foregoing, if any real property which constitutes Enforcement Proceeds are delivered to Daniel (with Bank's consent as provided above), then Daniel shall simultaneously with receipt thereof, execute and deliver to and in favor of Bank a mortgage encumbering such real property, which mortgage shall be in form and substance satisfactory to Bank, shall constitute a first priority lien on such encumbered real property, and shall secure the Secured Indebtedness. Daniel covenants and agrees that in connection with the foregoing, it shall provide to Bank a mortgagee title insurance policy in form acceptable to Bank, in its sole discretion, shall pay all recording fees and expenses in connection therewith, and shall pay all costs and expenses of Bank relating thereto, including, without limitation, attorneys' fees and expenses, survey costs and expenses, and environmental assessment fees and expenses.

6. **Attorney-in Fact.** Daniel hereby appoints and constitutes Bank as Daniel's attorney-in-fact to exercise upon and at any time after the occurrence of an Event of Default, at Daniel's sole cost and expense, all or any of the following powers which, being coupled with an interest, shall be irrevocable until the Secured Indebtedness shall have been paid in full: (a) to make demand on Purchaser accelerating the maturity date of the Purchase Money Note; (b) to receive, take, endorse, assign and deliver in Daniel's name or in the name of Bank, or both, the Purchase Money Note and any and all checks, notes, drafts and other instruments that may come into the hands of Bank with respect to the Purchase Money Note; (c) to direct the maker of the Purchase Money Note to make all payments on account of the Secured Indebtedness evidenced by the Purchase Money Note directly to Bank in the name of Bank; and (d) to take or to bring, in the name of Daniel or in the name of the Bank, or both, all steps, actions, suits or proceedings deemed by the Bank necessary or desirable to collect the sums payable under the Purchase Money Note, all of which shall be applied to the Secured Indebtedness, and once the Secured Indebtedness is paid in full, then the balance, if any, shall be paid to Daniel.

7. **Other Conditions.** It is the intent hereof that the obligations of Daniel shall be and remain unaffected (a) by the existence or non-existence, validity or invalidity of any pledge, assignment, mortgage or other conveyance given as security by Daniel for the First Mortgage Loan; or (b) by any understanding or agreement that any other person, corporation or other entity was or is to execute any guaranty or provide collateral for the First Mortgage Loan; or (c) by resort on the part of Bank to any other security or remedy for the collection of said First

Mortgage Loan; or (d) by the bankruptcy of Daniel and in case of such bankruptcy, by the failure of Bank to file claim against Daniel's estate for the amount of such bankrupt's liability hereunder.

8. **Renewal or Modification.** Bank may, without affecting Daniel's liability hereunder, from time to time (a) renew, extend or otherwise change the time for payment, or otherwise change the terms of the First Mortgage Loan or any part thereof, including increasing or decreasing the rate of interest thereof; (b) take and hold security for the payment of the Secured Indebtedness or the First Mortgage Loan, and exchange, modify, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof as Bank in its sole discretion may determine; and (d) release or substitute any one or more of the endorsers or guarantors.

9. **Covenants of Daniel.** Unless and until this Assignment is terminated pursuant to Section 10 below, Daniel shall not: (a) further sell, assign, pledge, encumber or otherwise dispose of any of the Collateral, unless such sale, assignment, pledge, encumbrance or disposition is approved by Bank in writing; (b) change, amend, modify, grant releases or waive any term or condition of the Collateral or agree to a compromise or any other modification of the terms or repayment of the Purchase Money Note or (c) accept, without the prior written approval of Bank, which approval may be given or withheld by Bank in its sole and absolute discretion, any substitute collateral from Purchaser as security for the Purchase Money Loan. Daniel shall perform all its obligations with respect to the Collateral, whether such obligations arise pursuant to the express terms of the Collateral or pursuant to governing law. If Daniel fails to perform any obligation with respect to the Collateral, then Bank may do so, and Daniel shall immediately upon demand reimburse Bank for any cost and expense, including reasonable attorneys' fees, incurred by Bank in connection with such performance. Daniel further covenants and agrees that it shall deliver to Bank (concurrently with the delivery or receipt by Daniel) any report, notice or other information sent to or received from Purchaser pursuant to the Purchase Money Loan Documents. Daniel shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein except as expressly provided in the Purchase Money Loan Documents.

10. **Termination.** This Assignment shall terminate and be of no further force and effect on the earlier to occur of (a) Bank filing a written satisfaction or release with respect to this Assignment in the Probate Office; or (b) ninety (90) days after the Secured Indebtedness has been paid in full and all payments made thereunder have become final and are not subject to being voided or refunded under Bankruptcy Code or other applicable law.

11. **Authority.** Where any one or more parties are corporations, partnerships, joint ventures, trusts, business organizations or enterprises, it shall not be necessary for Bank to inquire into the power or authority of the party or the officers, directors, partners, trustees or agents acting or purporting to act on their behalf.

12. **Expenses.** Daniel will pay all costs and expenses in connection with the enforcement of this Assignment, including, without limitation, attorneys' fees and out-of-pocket expenses incurred by Bank in the preparation of any of this Assignment and the enforcement of

this Assignment, and Daniel agrees to save Bank harmless from any and all such costs, expenses and liabilities.

13. **Protection of Security.** Bank shall have the right at any time, but shall not be obligated, to make any payments and perform any other acts that Bank may deem necessary to protect its security interest in the Collateral, including, without limitation, (a) the rights to cure any default or breach by Daniel; (b) the right to pay, purchase, contest or compromise any encumbrance, charge or lien that, in Bank's judgment, appears to be prior to or superior to the security interest granted hereunder, and to appear in and defend any action or proceeding purporting to affect its security interest in and/or the value of the Collateral; and (c) in exercising any such powers or authority, to pay all expenses incurred in connection therewith, including attorneys' fees. Daniel shall promptly repay all amounts advanced by Bank in connection with the foregoing. Daniel shall be bound by any such payment made or action taken by Bank hereunder. Bank shall have no obligation to make any of the foregoing payments or perform any of the foregoing acts.

14. **Assignment as Security.** The parties hereto agree that this Assignment secures the Secured Indebtedness and is not a sale of accounts, contract rights or chattel paper.

15. **Further Assurances.** Daniel shall do, execute, acknowledge and deliver, at Daniel's sole cost and expense, all such further acts, conveyances, assignments, estoppel certificates, notices of assignment, transfers and assurances as Bank may require from time to time to better assure, convey, assign, transfer, and confirm to Bank, the rights now or hereafter intended to be granted to Bank under this Assignment, or under any other instrument under which Daniel may be or may hereafter become bound to convey or assign to Bank for carrying out the intention or facilitating this Assignment.

16. **Estoppel and Other Certificates.** Daniel and Purchaser covenant and agree to promptly execute and deliver to Bank estoppel certificates or other documentation requested from time to time by Bank regarding the amount of indebtedness then secured and outstanding under the Purchase Money Loan Documents, all in form acceptable to Bank.

17. **Miscellaneous.** Bank may, without notice, assign its rights of interest under this Assignment in whole or in part. This Assignment is given under the seal of all parties hereto, and it is intended that it is and shall constitute and have the effect of a sealed instrument according to law. Daniel acknowledges that the negotiation of the provisions of this Assignment took place, and this Assignment is being executed in the State of Alabama, or if executed elsewhere, shall become effective only upon Bank's receipt and acceptance thereof in said state; provided, however, that Bank shall have no obligation to give, nor shall Daniel or any other person or entity be entitled to receive, any notice of such receipt and acceptance for this Assignment to become fully effective, valid and binding obligations of Bank. Daniel acknowledges that any cause of action arising under this Assignment will be a cause of action arising from an Alabama transaction owing to a banking organization which is organized under Alabama law and/or conducts business from its offices in the State of Alabama, that it is foreseeable that this Assignment and the performance hereof have and will have significant effects in the State of Alabama, and that Daniel's execution of this Assignment will subject Daniel to the jurisdiction of the State of Alabama. Notwithstanding the foregoing, nothing


contained in this Assignment shall prevent Bank from bringing any action or exercising any rights against Daniel or Purchaser, any security for the Secured Indebtedness or any of Daniel's properties in any other county, state or jurisdiction. Initiating any such action or proceeding or taking any such action in any other state or jurisdiction shall in no event constitute a waiver by Bank of any of the foregoing.

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IN WITNESS WHEREOF, Purchaser, Daniel and Bank have caused this Assignment to be executed as of the day and year first above written.

PURCHASER:

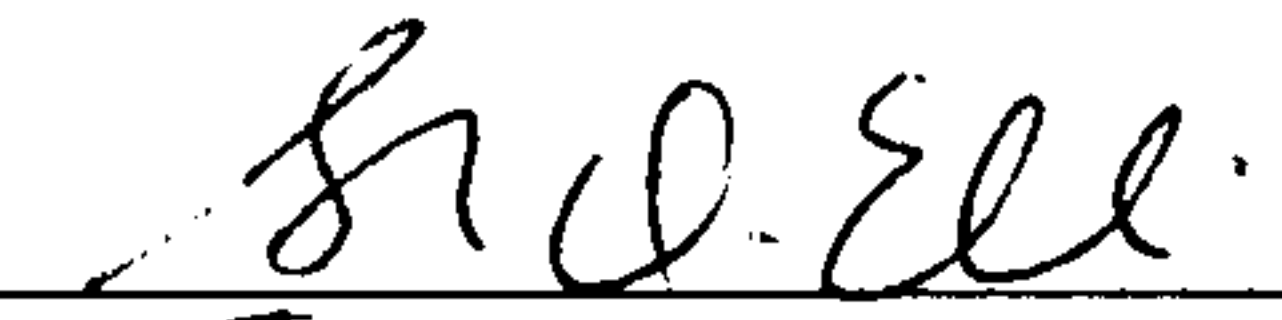
ROCKWELL HOMES, LLC, an Alabama limited liability company

By: 
Its: President

DANIEL:

DANIEL SENIOR LIVING OF INVERNESS II, LLC, an Alabama limited liability company

By: DANIEL MANAGEMENT CORPORATION, an Alabama corporation, its Manager

By: 
Its: Secretary

BANK:

SOUTHERN STATES BANK, an Alabama banking corporation

By: 
Its: President

STATE OF ALABAMA)
)
Jefferson COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Sam Dariani, whose name as President of Rockwell Homes, 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, he, 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 17th day of May, 2013.

[NOTARIAL SEAL]



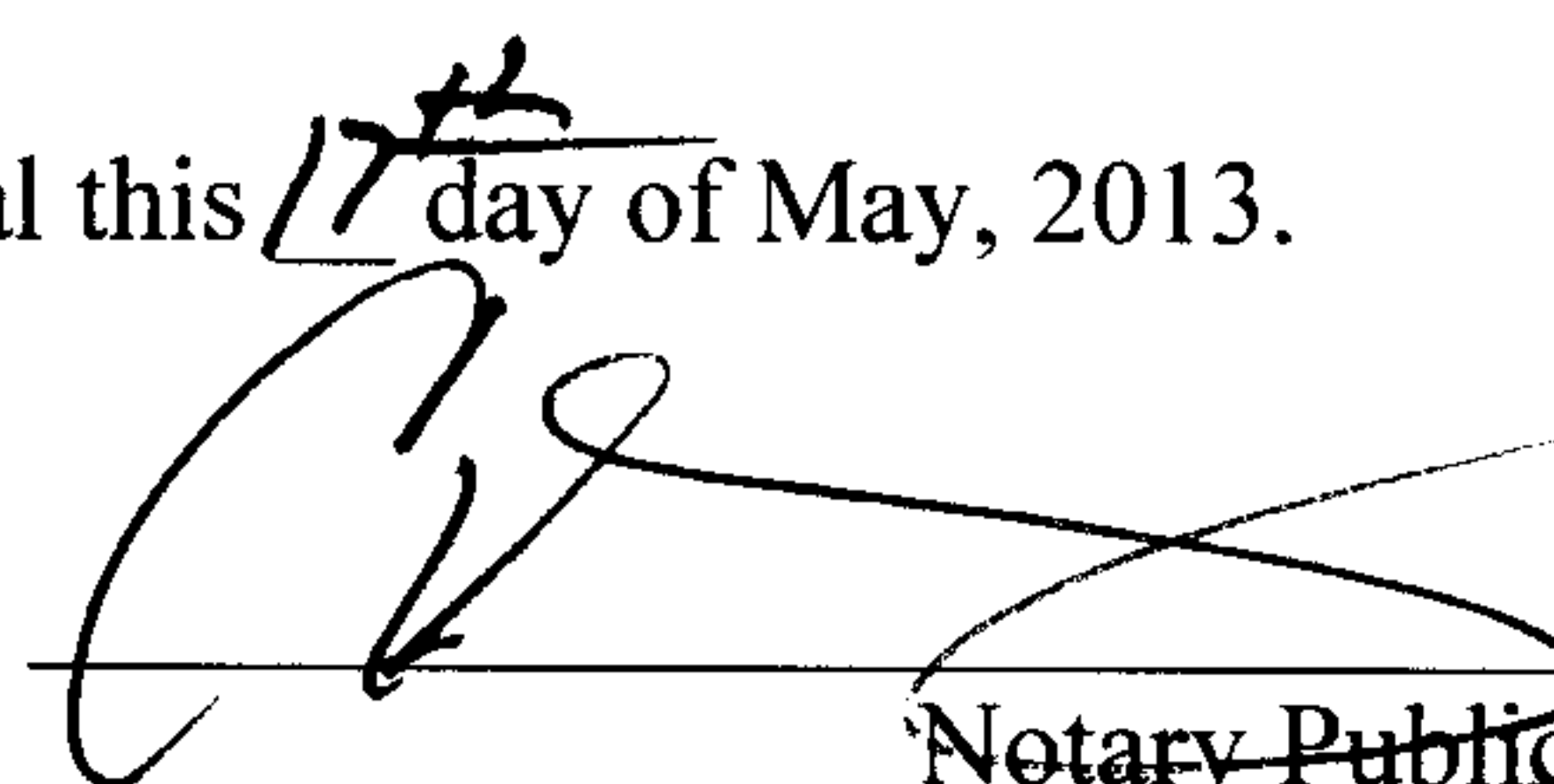
Notary Public
My commission expires: 6-5-2015

STATE OF ALABAMA)
)
Jefferson COUNTY)

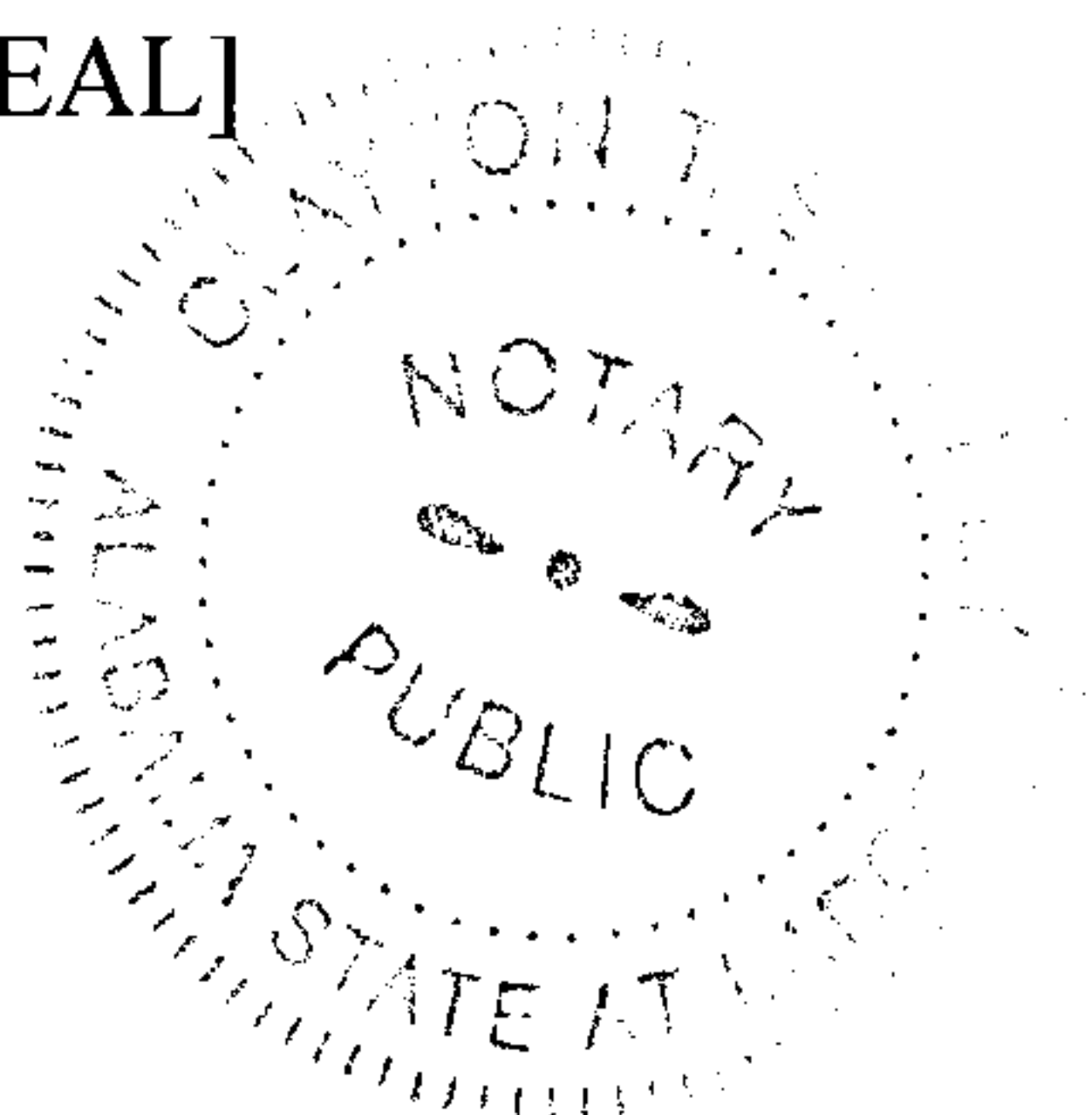
I, the undersigned, a notary public in and for said county in said state, hereby certify that Sheik RE/15, whose name as Secretary of Daniel Management Corporation, an Alabama corporation, as Manager of Daniel Senior Living of Inverness II, LLC an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this 17th day of May, 2013.

[NOTARIAL SEAL]



Notary Public
My commission expires: 6-5-2015



STATE OF ALABAMA)
)
)
Jefferson COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Patrick Cushman, whose name as President of Southern States 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

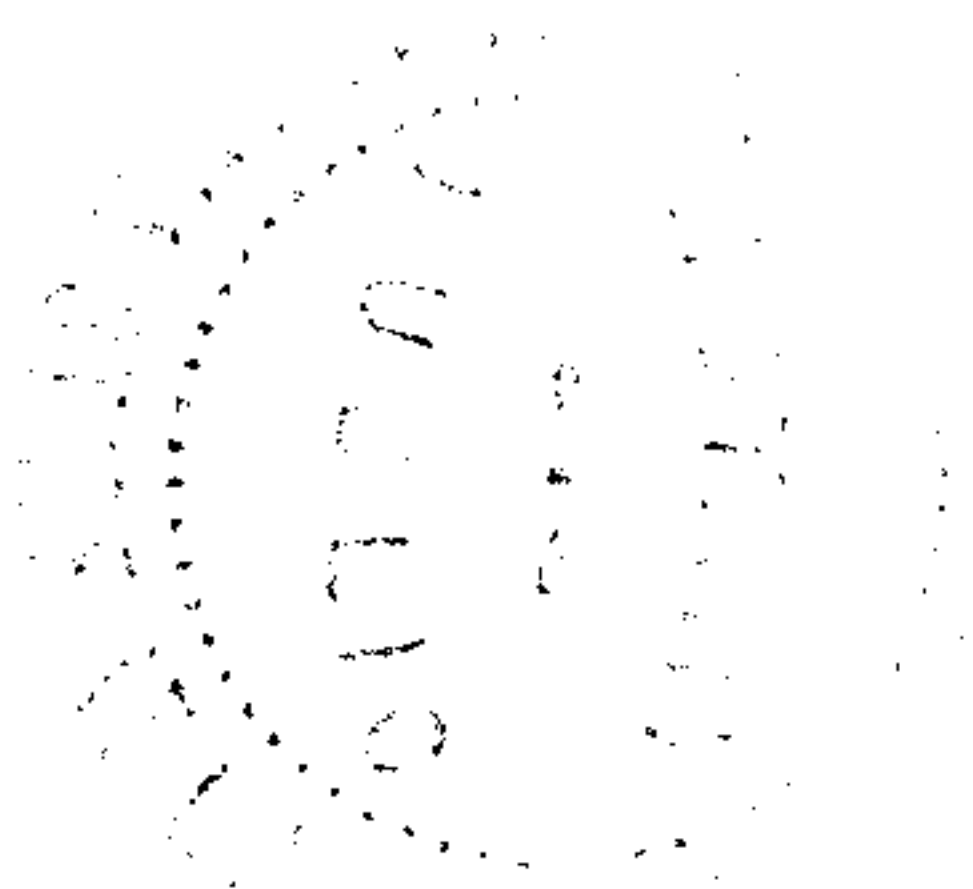
Given under my hand and official seal this 16 day of May, 2013.

Alicia W. H. H. H.
Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: June 1, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS



20130712000285270 11/11 \$44.00
Shelby Cnty Judge of Probate, AL
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