


State of Alabama  
County of Shelby

  
20140109C00008930 1/7 \$32.00  
Shelby Cnty Judge of Probate, AL  
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**AGREEMENT NOT TO ENCUMBER OR TRANSFER REAL PROPERTY**

**THIS AGREEMENT** is entered into on December 26, 2013 by and between THE VALLEYDALE BAPTIST CHURCH, an Alabama non-profit corporation (the "Borrower"), and CADENCE BANK, NATIONAL ASSOCIATION (the "Lender").

**Recitals**

A. The Borrower has applied to the Lender for loans in the aggregate principal amount of **\$7,880,000.00** (the "Loans"), which shall be evidenced by Promissory Notes (the "Notes") of even date herewith in the principal amounts of the Loans executed and delivered by the Borrower to the Lender.

B. In order to induce the Lender to make the Loan available to the Borrower, the Borrower has agreed to execute and deliver this Agreement to the Lender.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing recitals, and in further consideration of all advances heretofore or hereafter made by the Lender to the Borrower in connection with the Loan, the Borrower covenants and agrees with the Lender as follows:

1. **No Lien or Transfer.** From the date hereof until payment in full of the indebtedness evidenced by the Notes (the "Obligation"), and all other sums now or hereafter due and payable under this Agreement, the Note or any other documents executed in connection therewith (collectively, the "Credit Documents"), and the termination of this Agreement by the Lender in writing, unless the Lender shall otherwise consent in writing, the Borrower will not, whether directly or indirectly or voluntarily or involuntarily:

- (a) Incur, create, assume or suffer to exist any mortgage, deed of trust, security deed, security agreement, financing statement, pledge, security interest, lien, or charge whatsoever (hereinafter collectively sometimes called "Liens") with respect to any of the real estate and improvements situated in Shelby County, Alabama described on Exhibit A hereto (the "Property"), or any legal, beneficial or equitable interest therein, other than any Lien required under the terms of Section 2 of this Agreement.
- (b) (i) Sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise, (ii) permit to be the subject of any transaction described in clause (i) above, (iii) enter into an



agreement for any transaction described in clause (i) above with respect to, or (iv) grant an option which or take any action which pursuant to the terms of any agreement to which the Borrower is a party may result in any transaction described in clause (i) above with respect to, any of the Property, or any legal, beneficial or equitable interest therein (the foregoing, collectively or severally, called "Transfer").

Any person or legal representative of the Borrower to whom the Borrower's interest in the Property or any Lien thereon passes, by operation of law or otherwise, shall be bound by the provisions of this Agreement. The provisions of this Agreement shall apply to each and every such Lien or Transfer for all or any portion of the Property or any legal or equitable interest therein, regardless of whether or not the Lender has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Lien or Transfer of all or any portion of the Property or any legal, equitable or beneficial interest therein.

2. **Mortgage in Escrow.** Concurrently with the execution of this Agreement, the Borrower has delivered to the Lender a mortgage covering the Property and all related fixtures located therein and owned by the Borrower (the "Mortgage"), to be held by the Lender in escrow hereunder pursuant to the provisions hereof. So long as the Borrower is in compliance with the terms of the Credit Documents, the Lender shall hold the Mortgage in escrow; provided, however, that at any time following (i) the occurrence and during the continuance of any "Event of Default" as defined in the Notes or (ii) the Loan becoming due and payable in full (whether upon demand, by acceleration, at stated maturity or otherwise), the Lender shall have the right to file and record the Mortgage and to enforce its rights and remedies in accordance therewith and under the Credit Documents, and shall further be furnished with a Mortgagee's title insurance policy insuring its interest under the Mortgage in the Property in the amount of the Loan, which policy (1) shall be issued by an insurer reasonably acceptable to the Lender, (2) shall be issued in the current ALTA standard form, (3) shall reflect only such easements, encumbrances, restrictions and exceptions (other than liens securing property taxes not yet due and payable) as shall be approved by the Lender in its reasonable discretion, and (4) shall have an effective date subsequent to the recording of the Mortgage in favor of the Lender. The Borrower shall also (x) execute and deliver to the Lender any financing statements related to the Mortgage as the Lender shall then deem necessary to perfect the Lender's security interest thereunder; (y) furnish UCC searches sufficient to establish the Lender's security interest under the Mortgage as first priority; and (z) furnish the Lender with such opinions of counsel and other information as shall be sufficient to reasonably satisfy the Lender and its counsel as to the validity, legality, effectiveness, perfection, priority and enforceability of the Mortgage. All taxes, revenue stamps, filing and recording fees and charges, title insurance premiums, title examination fees, and other costs and expenses related to the execution, delivery, filing, and perfection of the Mortgage and the issuance of said title insurance policy shall be paid by the Borrower. The Lender shall have no obligation to terminate the above-described escrow or to cancel the Mortgage unless and until such time as (i) all of the Borrower's obligations under the Credit Documents have been satisfied in the Lender's discretion, and (ii) no indebtedness remains due and owing by the Borrower to



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the Lender.

3. **Severability.** If all or any portion of this Agreement shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein.

4. **Notice.** Any notice required or permitted to be given hereunder shall be deemed to have been given when personally delivered or deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid and properly addressed to the respective party to whom such notice relates at the following addresses:

To Lender: CADENCE BANK  
2100 Third Avenue North, Suite 1100  
Birmingham, AL 35203  
Attention: Andrew Smith

To Borrower: THE VALLEYDALE BAPTIST CHURCH  
2324 Valleydale Road  
Birmingham, AL 35244

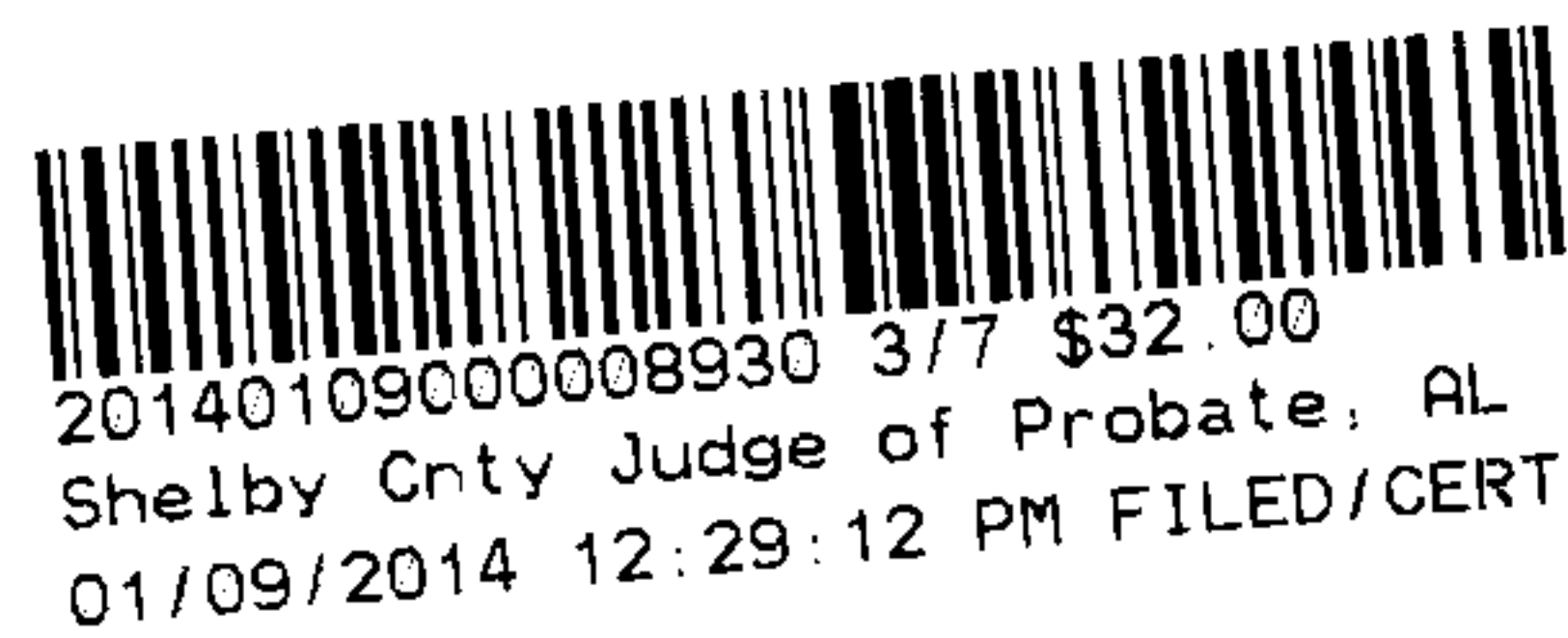
or at such alternate addresses as shall be specified by notice given in the manner herein provided.

5. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the state in which the Property is located without regard to principles of conflicts of laws, except that the internal laws of the State of Alabama (without regard to principles of conflicts of laws) shall govern (i) those terms and conditions contained in the Notes which are incorporated by reference herein, and (ii) the resolution of issues arising under the Notes to the extent that such resolution is necessary to the interpretation of this Agreement.

6. **Sole Discretion of Lender.** Whenever the Lender's judgment, consent or approval is required hereunder for any matter, or the Lender shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole discretion of the Lender.

7. **Provisions as to Covenants and Agreements.** All of the Borrower's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

8. **Matters to be in Writing.** This Agreement cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.



9. **Construction of Provisions.** This Agreement is subject to the rules of construction set forth in the Notes and other Credit Documents.

10. **Successors and Assigns.** The provisions hereof shall be binding upon the Borrower and the heirs, devisees, representatives, successors and permitted assigns of the Borrower, including the successors in interest of the Borrower in and to all or any part of the Property, and shall inure to the benefit of the Lender and its successors, legal representatives, substitutes and assigns.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement on the day first set forth above.

THE VALLEYDALE BAPTIST CHURCH, an Alabama non-profit corporation

By: Theodore M. Farrell  
Print Name: Theodore M. Farrell  
Title: Trustee

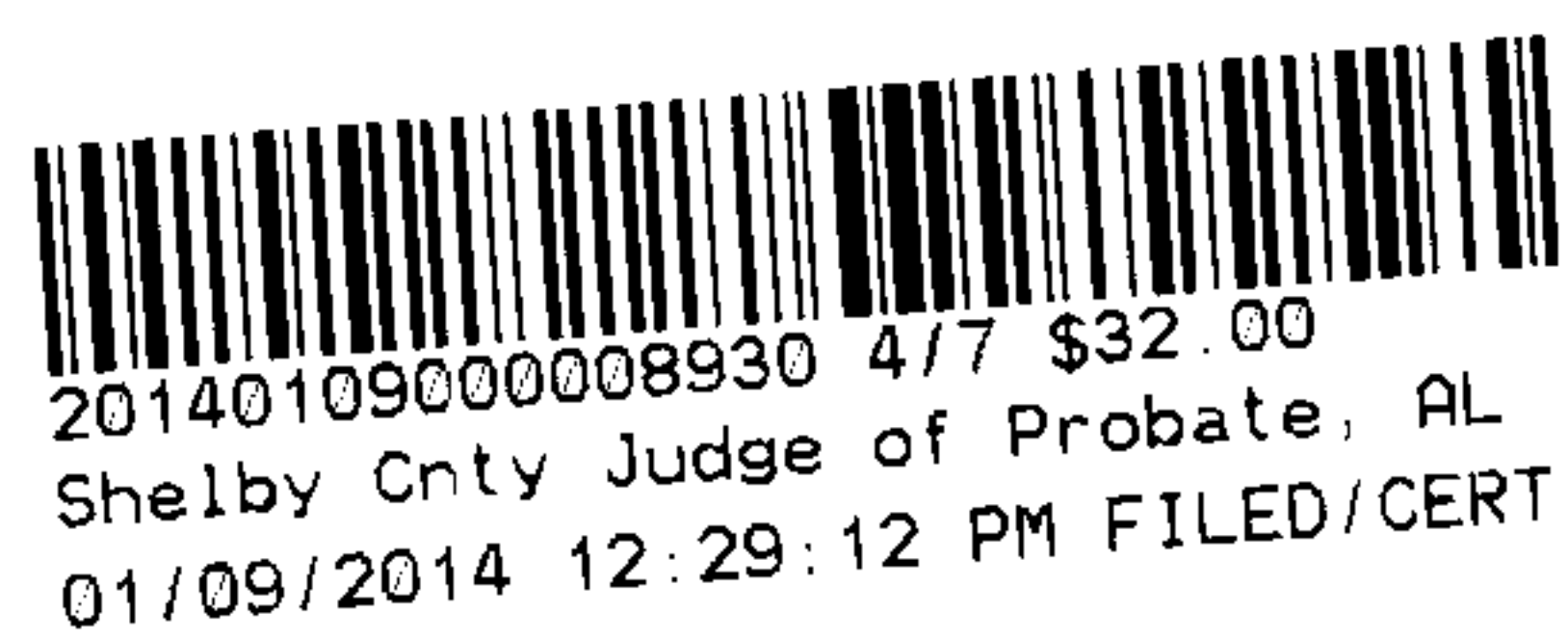
By: William Joseph Long  
Print Name: William Joseph Long  
Title: Trustee

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Theodore M. Farrell and William Joseph Long, whose names as Trustees of THE VALLEYDALE BAPTIST CHURCH, an Alabama non-profit corporation are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such trustees and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 26<sup>th</sup> day of December, 2013.

[Signature]  
Notary Public  
My commission expires: 1/18/15





## EXHIBIT "A"

That certain tract of land lying and being in the County of Shelby, State of Alabama, and being more particularly described as follows:

A portion of land situated in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  and in the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, and being more particularly described as follows: Begin at the Southwest corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama; thence run North along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section a distance of 328.20 feet; thence run right 91 degrees 48 minutes and run East a distance of 485.01 feet; thence run right 50 degrees 58 minutes and run Southeasterly a distance of 421.36 feet; thence turn left 51 degrees 00 minutes and run East a distance of 93.35 feet to the Northwesternly right of way line of Shelby County Road #17 (Valleydale Road); thence turn right 141 degrees 50 minutes 28 seconds and run Southwesterly along said Northwesternly right of way line a distance of 920.93 feet; thence turn right 4 degrees 30 minutes 37 seconds and continue Southwesterly along said right of way line a distance of 133.35 feet; thence turn right 135 degrees 30 minutes and run North and parallel to the West line of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 19 a distance of 242.93 feet; thence turn right 44 degrees 30 minutes and run Northeasterly and parallel to said right of way line a distance of 182.0 feet; thence turn left 132 degrees 42 minutes and run West and parallel to the North line of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 19 a distance of 254.56 feet to a point 20 feet East of the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence turn left 91 degrees 48 minutes and run South and parallel to the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section a distance of 510.09 feet to the Northwesternly right of way line of said county road; thence turn right 44 degrees 30 minutes and run Southwesterly along said right of way line a distance of 28.53 feet to the West line of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 19; thence turn right 135 degrees 30 minutes and run North along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section a distance of 975.65 feet to the point of beginning.

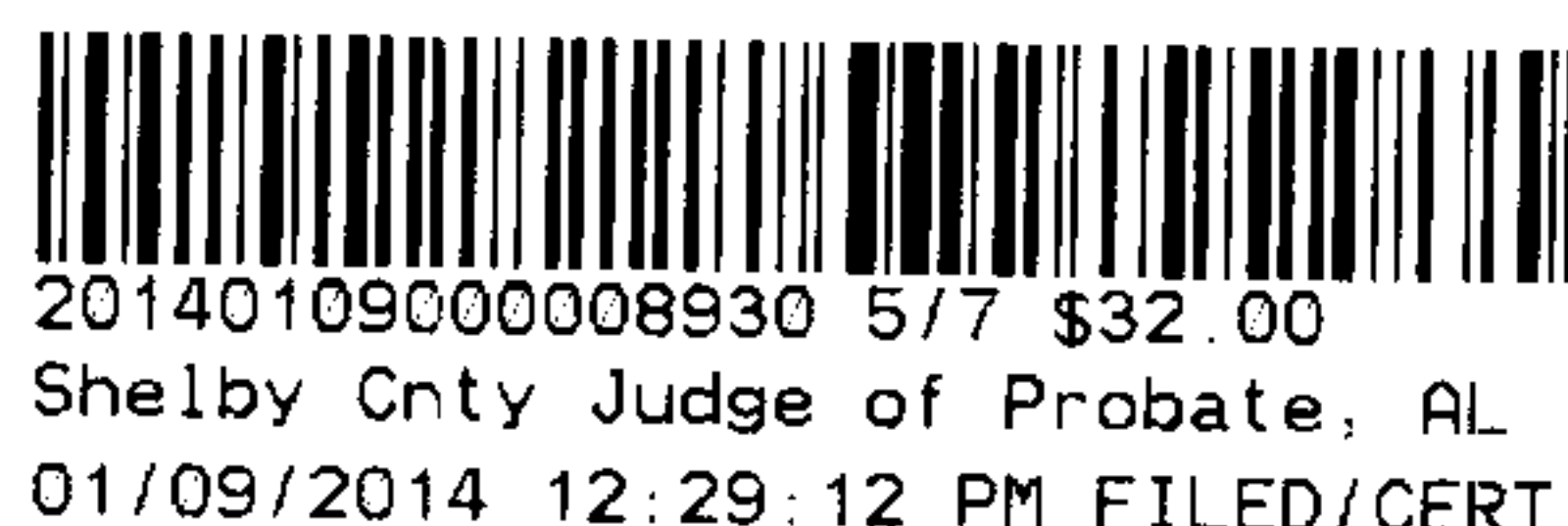
Less and Except the following:

Begin at the Southwest corner of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, thence North along the West line 280.06 feet to the center line of Shelby County Road No. 17, known as Valley Dale Road; thence right 44 degrees 30 minutes a distance of 20 feet to the point of beginning; thence North and parallel with the West line of the  $\frac{1}{4}$  -  $\frac{1}{4}$  section, 300 feet; thence Northeasterly and parallel with said road 181 feet; thence South and parallel with the  $\frac{1}{4}$  -  $\frac{1}{4}$  section line 300 feet more or less, to the center line of road; thence Southwesterly along the road 181 feet more or less to the point of beginning.

Also Less and Except the following:

Begin at the Southwest corner of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, thence North along the west line 280.06 feet to the center line of Shelby County Road No. 17, known as Valleydale Road; thence right 44 degrees 30 minutes a distance of 20 feet; thence North and parallel with the West line of the  $\frac{1}{4}$  -  $\frac{1}{4}$  section 300 feet; thence Northeasterly and parallel with said road 181 feet to the point of beginning; thence Northeasterly and parallel with said road 182 feet; thence South and parallel with the  $\frac{1}{4}$  -  $\frac{1}{4}$  section line 300 feet more or less to the center line of road; thence Southwesterly along the road 182 feet more or less to the point of beginning.

Also Less and Except the following:





Begin at the Southeast corner of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, thence North along the West line 280.06 feet to the center line of Shelby County Road No. 17, known as Valleydale Road; thence right 44 degrees 30 minutes a distance of 20 feet which is set aside as driveway; thence North and parallel with the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section 300 feet to the point of beginning; thence right Northeasterly and parallel with above said road 363 feet more or less to a point 300 feet North of said road; thence left due West to a point, 20 feet to said West line of  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence left due South to point of beginning.

All being situated in Shelby County, Alabama.

AND:

The North 30 acres of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, in Shelby County, Alabama; being situated in Shelby County, Alabama.

AND ALSO:

Begin at the Southeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, thence North along the East line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section 327.38 feet to the Northeast corner of the South 10 acre tract of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence 88 degrees 08 minutes left and West along the North line of said 10 acre tract 833.11 feet; thence 129 degrees 02 minutes left in a Southeasterly direction 421.36 feet to the South line of said 10 acre tract; thence 51 degrees 00 minutes left and East 579.37 feet to the point of beginning.

Less and Except the following:

Begin at the Southeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama; thence Northerly along the East line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  line 52.7 feet; thence 55 degrees 17 minutes left Northwesterly 268.0 feet to the East right of way boundary of Valleydale Road; thence 84 degrees 22 minutes left Southwesterly, along said right of way 253.3 feet to the South line of  $\frac{1}{4}$  -  $\frac{1}{4}$  Section line; thence 128 degrees 31 minutes left Easterly along said  $\frac{1}{4}$  -  $\frac{1}{4}$  line 384.5 feet to the point of beginning.

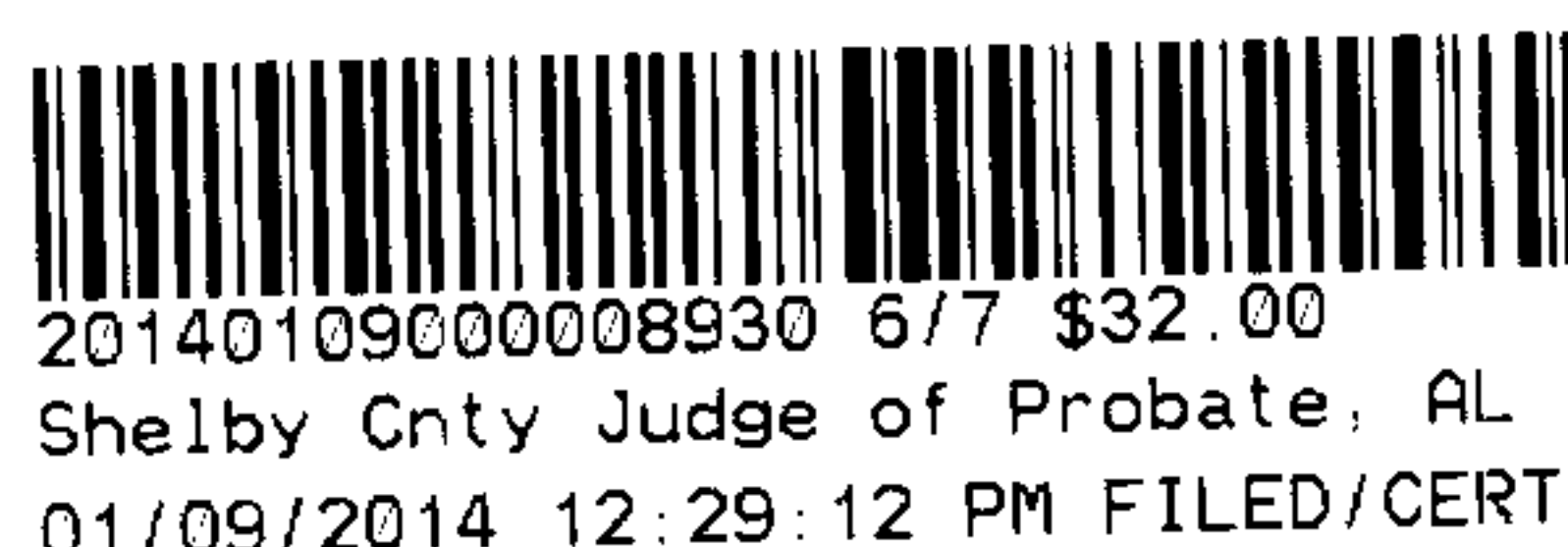
Also Less and Except the following:

Begin at the Southeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama; thence Northerly along the East line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section a distance of 52.7 feet to the point of beginning of tract of land herein described; thence continue along the last mentioned course 274.68 feet; thence left 88 degrees 08 minutes Westerly 113.5 feet to the East right of way boundary of Valleydale Road; thence 51 degrees 31 minutes left Southwesterly along said right of way 165.0 feet; thence 95 degrees 38 minutes left Southeasterly 268.0 feet to the point of beginning.

All being situated in Shelby County, Alabama.

Also Less and Except the following:

That portion of the property shown below in which GRANTOR shall retain a life estate in the dwelling presently located on said property. GRANTOR shall not pay any form of consideration to GRANTEE for the estate retained hereunder, but GRANTOR shall pay all taxes, insurance, utilities and other expenses incurred in connection with the estate retained hereunder. GRANTOR's life estate shall terminate upon



the death of the last to die of GRANTOR, or such earlier time as both GRANTORS vacate the dwelling for a period of twelve (12) consecutive months or more, or in the event that GRANTOR knowingly permanently vacate the dwelling.

Commence at the Southeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Westwardly along the South line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 487.75' to a point on the Northwesterly right of way of Valleydale Road. Said point also being the point of beginning; thence continue along the last described course for a distance of 91.11'; thence turn an angle to the right of 50 degrees 54 minutes 09 seconds for a distance of 188.0'; thence turn an angle to the right of 90 degrees 00 minutes 00 seconds for a distance of 186.0'; thence turn an angle to the right of 38 degrees 56 minutes 29 seconds for a distance of 96.0'; thence turn an angle to the right of 62 degrees 16 minutes 13 seconds for a distance of 153.0' to a point on said right of way; thence turn an angle to the right of 56 degrees 27 minutes 08 seconds along said right of way for a distance of 164.0' to the point of beginning.

All being situated in Shelby County, Alabama.

**SUBJECT TO:**

- i) Taxes and assessments for the year 2014, a lien but not yet payable;
- ii) Less and except any part of subject property lying within the right of way of a public road;
- iii) Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Instrument # 2001-48540 and Deed Book 4, Page 542;
- iv) Right of Way granted to Shelby County as recorded in Deed Book 179, Page 442;
- v) Transmission Line Permit to Alabama Power Company as recorded in Deed Book 129, Page 566;
- vi) Life Estate Reserved by Elbert Elkins Fulmer and Amy E. Williams in Instrument # 2002-01194;
- vii) Right of way granted to Alabama Power Company as set out in instrument(s) recorded in Instrument # 201102090000046960; and
- viii) Coal, oil, gas and mineral and mining rights which are not owned by Grantor/Mortgagor.

