

Space Above This Line for Recorder's Use

**THIS DOCUMENT WAS PREPARED BY  
AND WHEN RECORDED RETURN TO:**

John G. McCullough  
McCullough Payne & Haan, LLC  
271 17<sup>th</sup> Street, NW, Suite 2200  
Atlanta, Georgia 30363-1032

**MORTGAGEE:**

ALLY Bank  
6895 Union Park Center  
Suite 435,  
Midvale, Utah 84047

**Cross Index to Mortgage recorded  
June 19, 2007, Instr. No. 20070619000287760  
Shelby County, Alabama records and  
Loan Modification Agreement recorded  
February 1, 2013, Instr. No.  
20130201000045390, aforesaid records.**

**SECOND MODIFICATION OF MORTGAGE**

STATE OF COLORADO


COUNTY OF EAGLE

**THIS SECOND MODIFICATION OF MORTGAGE** is made and entered into effective the 21st day of March, 2014, by and between **LWELLEN REALTY, LLC**, an Alabama limited liability company ("Mortgagor" or "Borrower") and **ALLY BANK**, (Ally Capital in Hawaii, Mississippi, Montana and New Jersey) ("Mortgagee" or "Bank").

**WITNESSETH:**

**WHEREAS**, Mortgagee has heretofore made a loan (the "Loan") to Mortgagor in the original sum of \$8,287,000.00 for the purpose of refinancing a loan on certain real property of Mortgagee located in Shelby County, Alabama; and

**WHEREAS**, Mortgagor's obligations to Mortgagee for the Loan was and is evidenced by a Commercial Real Estate Loan and Security Agreement dated June 15, 2007 (the "2007 Loan Agreement"), which Loan is secured by a Mortgage dated June 15, 2007, recorded June 19, 2007, as Instrument Number 20070619000287760, records of the Clerk of the Probate Judge of Shelby County, Alabama (the "Mortgage"), which Mortgage encumbers real property (the "Premises") described therein; and

  
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**WHEREAS**, the 2007 Loan Agreement and Mortgage were modified by that certain Loan Modification Agreement dated January 17, 2013, recorded February 1, 2013, as Instrument Number 20130201000045390, aforesaid records; and

**WHEREAS**, there is presently outstanding on the 2007 Loan Agreement, as modified, the sum of \$5,203,661.95; and

**WHEREAS**, Mortgagor now wishes to modify and renew the 2007 Loan Agreement by extending the maturity date, all on the terms and conditions set forth in this agreement, the Commercial Real Estate Loan and Security Agreement and Promissory Note (the "2014 Loan Agreement") dated concurrent herewith and other documents executed in connection with the above described transactions.

**NOW, THEREFORE**, for and in consideration of \$10.00 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are conclusively acknowledged by the parties hereto, the parties hereto agree that the Mortgage is modified by the following provisions:

1. This instrument is made and intended to secure the payment of the outstanding balance of FIVE MILLION TWO HUNDRED THREE THOUSAND SIX HUNDRED SIXTY ONE and 95/100 Dollars (\$5,203,661.95) owing by the Borrower to Bank as evidenced by the 2014 Loan Agreement, in accordance with the terms thereof, maturing April 1, 2024, together with any and all other indebtedness now owing or which may hereafter may be owing by the Borrower to Bank however incurred, including advances by Mortgagee or any transferee of Borrower for the purpose of paying taxes or premiums on insurance on the premises or to repair, maintain or improve the Premises (whether or not Mortgagor is at that time the owner of the Premises), and all renewal or renewals and extension or extensions and modification or modifications of the Loan Agreement or other indebtedness, either in whole or in part (all of which are without limitation collectively included with the term "Obligations", as that term is defined in the Mortgage).

2. **Borrower Representations and Warranties.** Borrower hereby represents and warrants to Bank as follows:

(a) **Due Execution.** This Agreement has been duly executed and constitutes the valid, legal and binding obligations of Borrower, enforceable in accordance with its respective terms.

(b) **No Actions.** There are no actions, suits or proceedings at law or in equity now pending or, to Borrower's best knowledge, threatened against or affecting the Property or Borrower that would have a materially adverse effect on Borrower's ability to perform their obligations hereunder or under the 2014 Loan Agreement, the Mortgage, this Agreement, or any other documents executed in connection therewith (the "Loan Documents"), and there are no facts now in existence which, with the giving of notice or the lapse of time, or both, would form the basis for any such action, suit or proceeding. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental agency.

(c) **No Defaults.** Borrower is not in default under any contracts, agreements or commitments to which Borrower is a signatory or by which Borrower is bound, which default would have a materially adverse effect on their ability to perform Borrower's obligations under this Agreement and the Loan Documents. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the terms and conditions hereof or under the Loan Documents will not (a) violate any now existing provision of law or any now existing applicable regulation, order, writ, injunction or decree of any court or governmental agency having jurisdiction, or



(b) conflict or be inconsistent with, or result in any breach of, any of the terms, covenants, conditions or provision of, or constitute a default under, any mortgage, instrument, documents, commitment, agreement or contract of any kind to which Borrower is a signatory or by which Borrower may be bound. No event has occurred and no condition exists which, as of the execution of this Agreement, will result, either immediately or with a lapse of time or the giving of notice or both, in the occurrence or existence of any event of default under this Agreement or any of the Loan Documents. Borrower continues to be in compliance with all representations and warranties contained in the Loan Documents.

**3. Miscellaneous Provisions:**

(a) No Waiver. Any waiver of the rights of Bank occurring on or before the date of this Agreement shall not, and does not, constitute the waiver of any rights of Bank to fully enforce the terms and conditions of any of the Loan Documents hereafter. Nor shall the delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise herein prevent Bank from later pursuing remedies for which the applicable statutes of limitation have not run or been waived or from insisting upon full performance for the same or similar breaches or failures.

(b) Acknowledgment of Reliance. Borrower acknowledges and agrees that Bank is specifically relying upon the representations, warranties and agreements contained herein as an inducement to Bank to enter into this Agreement.

(c) Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such provision, to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Amendment. This Agreement shall not be amended or modified in any way except by an instrument in writing executed by each of the parties hereto.

(e) Choice of Law. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Alabama.

(f) Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto, and there are no agreements, understandings, warranties or representations with respect to the matters set forth herein except as specifically delineated herein. Any exhibits attached hereto are hereby incorporated herein by reference and made a part hereof. This instrument is not intended to have any legal effect, or to be a legally binding agreement, or any evidence thereof, until it has been signed by each of the parties hereto and all conditions to effectiveness hereunder have been satisfied.

(g) Ratification of Loan Documents. Borrower hereby ratifies and acknowledges the continuing validity and enforceability of the Loan Documents, as modified herein, and the obligations and first liens evidenced thereby.

(h) Loan Documents Continue. Except as expressly provided in this Agreement, all terms, covenants, conditions and provisions of the Loan Documents, such Loan Documents including but not limited to, the 2014 Loan Agreement, the Mortgage, Cross-Default, Cross-Collateralization, and Guaranty Agreement dated June 15, 2007, recorded on June 27, 2007, as Instrument Number 20070627000303270, Shelby County, Alabama records, Assignment of Lessor's Interest in Lease dated January 17, 2013, recorded February 1, 2013, as Instrument Number 20130201000045400, aforesaid records, Lease Subordination and Attornment Agreement dated concurrent herewith, General Security Agreement of



Edwards Chevrolet-280, Inc., Guaranty of Edwards Chevrolet-280, Inc. and the Environmental Indemnity Agreement, shall be and remain in full force and effect as written unmodified hereby. In the event of any conflict between the terms of this Agreement and the Loan Documents, this Agreement shall control. In no manner shall this Agreement impair the Loan Documents, the obligations, liabilities, liens or security interests represented thereby, nor shall such lien or liens or security interests in any manner be waived or impaired or diminished.

(i) Counterparts. This Agreement may be executed in one or more counterpart copies, all of which, in the aggregate, shall constitute but one agreement.

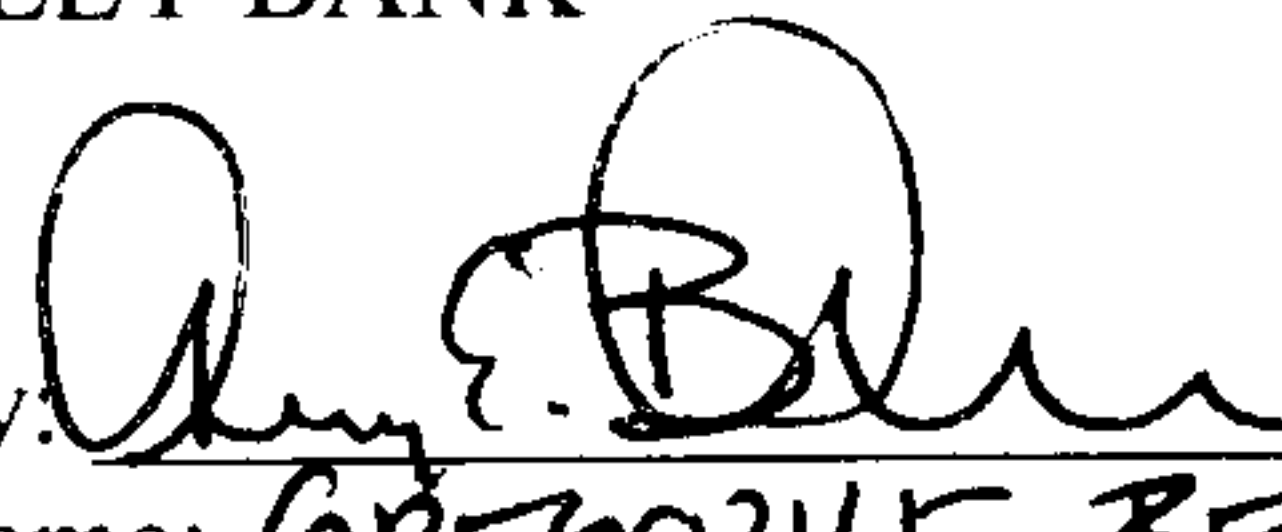
(j) Consent and Reaffirmation by Guarantors. By execution of this Agreement, the undersigned Guarantor consents to the renewal and modification of the indebtedness evidenced by the Loan Agreement and the Mortgage, as set forth in this Agreement. The undersigned Guarantor hereby reaffirms its obligations pursuant to that certain Guaranty agreement, dated concurrent herewith, executed by the undersigned Guarantor, and agrees that the execution and delivery of this Agreement shall not modify or amend the undersigned's obligations under said guaranty. The undersigned Guarantor acknowledges and agrees that said guaranty remains in full force and effect, that there are no claims, counterclaims, offsets or defenses to said guaranty, and that the undersigned Guarantor shall continue to guarantee the payment of the indebtedness evidenced by the 2014 Loan Agreement, pursuant to said guaranty.

4. Except as expressly modified hereby, the Mortgage and all other collateral documents executed relative thereto, shall remain in full force and effect, Mortgagor and Mortgagee ratifying and affirming the same.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and sealed by the parties as of the day and year first above written.

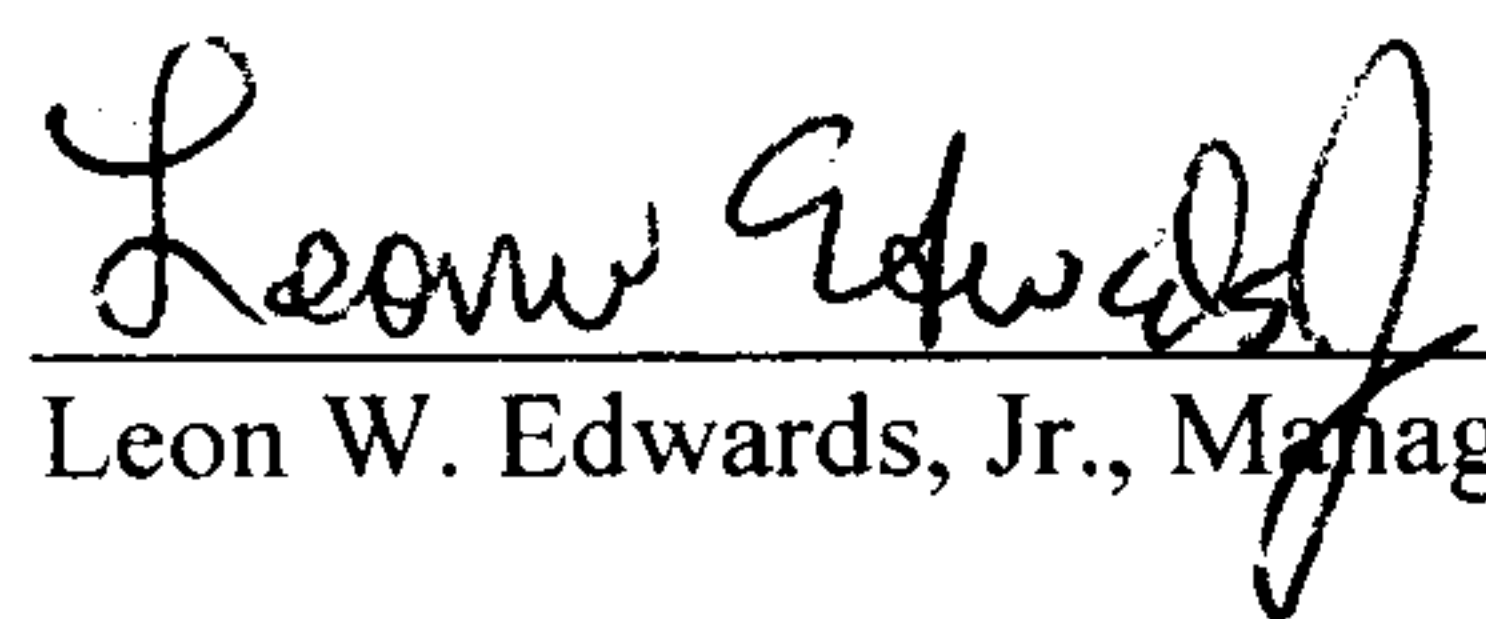
**MORTGAGEE:**

ALLY BANK

By:  (SEAL)  
Name: GREGORY E. BEHRMANN  
Title: Assistant Secretary

**MORTGAGOR:**


LWELLEN REALTY, LLC

By:  (SEAL)  
Leon W. Edwards, Jr., Manager

**GUARANTOR:**

EDWARDS CHEVROLET-280, INC.

By: \_\_\_\_\_ (SEAL)  
Leon W. Edwards, Sr., President

  
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[Acknowledgements on following page]

Edwards Chevrolet-280, Inc., Guaranty of Edwards Chevrolet-280, Inc. and the Environmental Indemnity Agreement, shall be and remain in full force and effect as written unmodified hereby. In the event of any conflict between the terms of this Agreement and the Loan Documents, this Agreement shall control. In no manner shall this Agreement impair the Loan Documents, the obligations, liabilities, liens or security interests represented thereby, nor shall such lien or liens or security interests in any manner be waived or impaired or diminished.

(i) Counterparts. This Agreement may be executed in one or more counterpart copies, all of which, in the aggregate, shall constitute but one agreement.

(j) Consent and Reaffirmation by Guarantors. By execution of this Agreement, the undersigned Guarantor consents to the renewal and modification of the indebtedness evidenced by the Loan Agreement and the Mortgage, as set forth in this Agreement. The undersigned Guarantor hereby reaffirms its obligations pursuant to that certain Guaranty agreement, dated concurrent herewith, executed by the undersigned Guarantor, and agrees that the execution and delivery of this Agreement shall not modify or amend the undersigned's obligations under said guaranty. The undersigned Guarantor acknowledges and agrees that said guaranty remains in full force and effect, that there are no claims, counterclaims, offsets or defenses to said guaranty, and that the undersigned Guarantor shall continue to guarantee the payment of the indebtedness evidenced by the 2014 Loan Agreement, pursuant to said guaranty.

4. Except as expressly modified hereby, the Mortgage and all other collateral documents executed relative thereto, shall remain in full force and effect, Mortgagor and Mortgagee ratifying and affirming the same.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and sealed by the parties as of the day and year first above written.

**MORTGAGEE:**

ALLY BANK

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: Assistant Secretary

**MORTGAGOR:**


LWELLEN REALTY, LLC

By: Leon W. Edwards, Jr. (SEAL)  
Leon W. Edwards, Jr., Manager

**GUARANTOR:**

EDWARDS CHEVROLET-280, INC.

By: Leon W. Edwards, Jr. (SEAL)  
Leon W. Edwards, Jr., President

  
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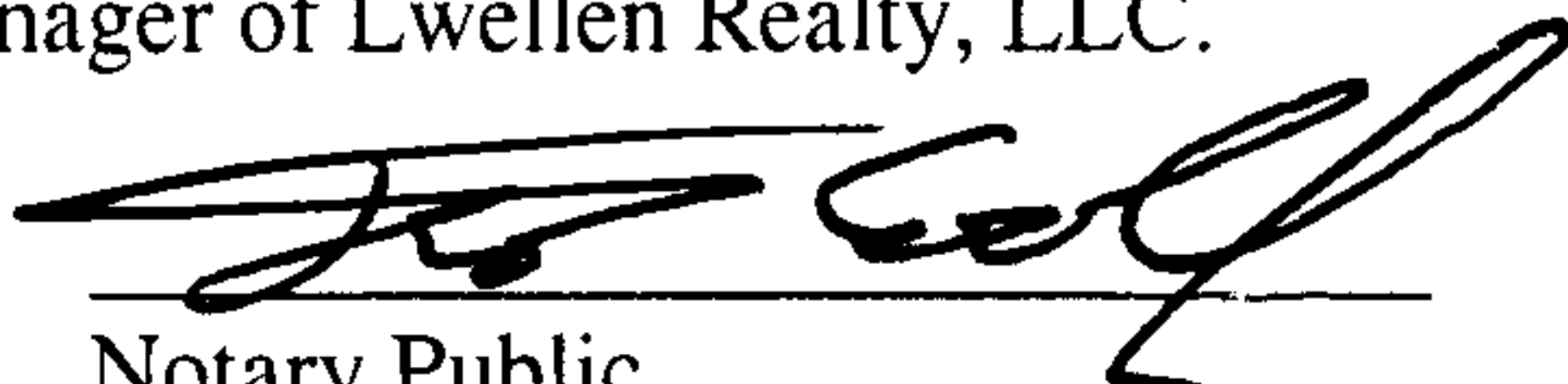
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**ACKNOWLEDGEMENTS**

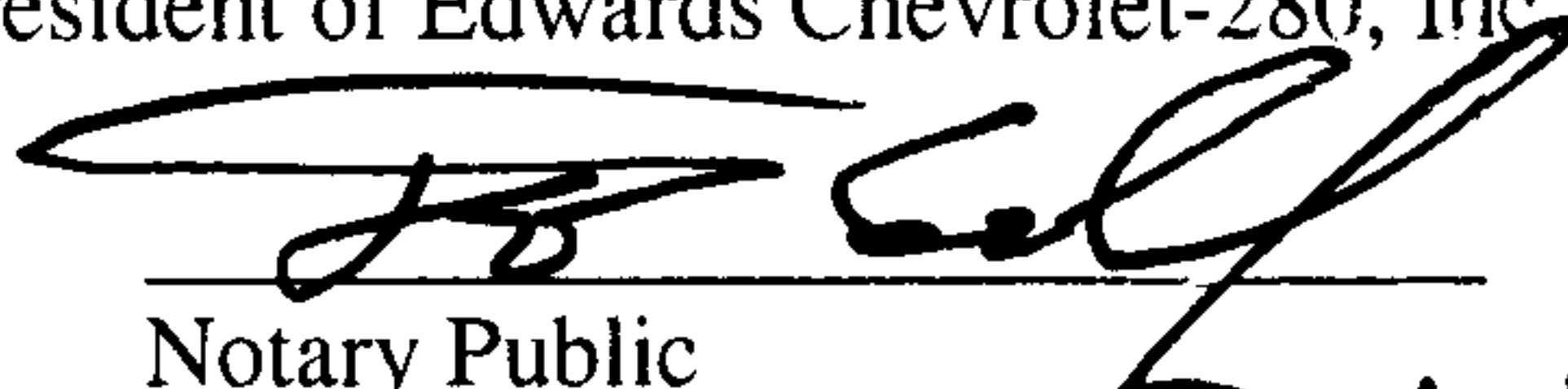
STATE OF ALABAMA  
COUNTY OF SHELBY

On this 31 day of March, 2014, before me personally came and appeared Leon W. Edwards, Jr., to me known and known by me to be one of the persons described in and who executed this instrument and acknowledged that he executed the same as Manager of Lwellen Realty, LLC.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 4/2/15

STATE OF ALABAMA  
COUNTY OF SHELBY

On this 31 day of March, 2014, before me personally came and appeared Leon W. Edwards, Jr., to me known and known by me to be one of the persons described in and who executed this instrument and acknowledged that he executed the same as President of Edwards Chevrolet-280, Inc.


  
\_\_\_\_\_  
Notary Public  
My Commission Expires 4/2/15

STATE OF UTAH  
COUNTY OF SALT LAKE

I, the undersigned, a Notary Public in and for said County and State, hereby certify that \_\_\_\_\_, whose name as Assistant Secretary of ALLY BANK, is signed to and being informed of the contents of said instrument, he, as such officer personally came and appeared before me and with full authority, executed and acknowledged he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

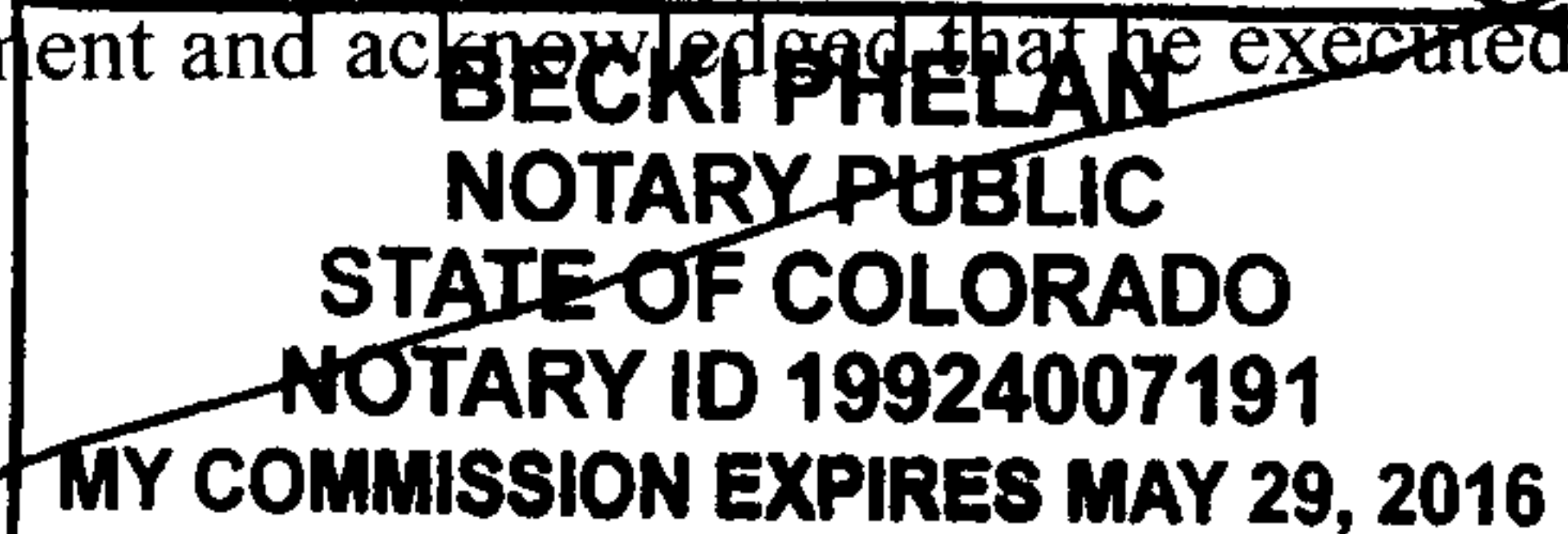
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Notary Public  
My Commission Expires:

  
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**ACKNOWLEDGEMENTS**

STATE OF COLORADO  
COUNTY OF EAGLE

On this 27 day of March, 2014, before me personally came and appeared Leon W. Edwards, Jr., to me known and known by me to be one of the persons described in and who executed this instrument and acknowledged that he executed the same as Manager of Lyellen Realty, LLC.



[Signature]  
Notary Public

My Commission Expires: 5/29/16

STATE OF COLORADO  
COUNTY OF EAGLE

On this \_\_\_\_ day of March, 2014, before me personally came and appeared Leon W. Edwards, Sr., to me known and known by me to be one of the persons described in and who executed this instrument and acknowledged that he executed the same as President of Edwards Chevrolet-280, Inc.

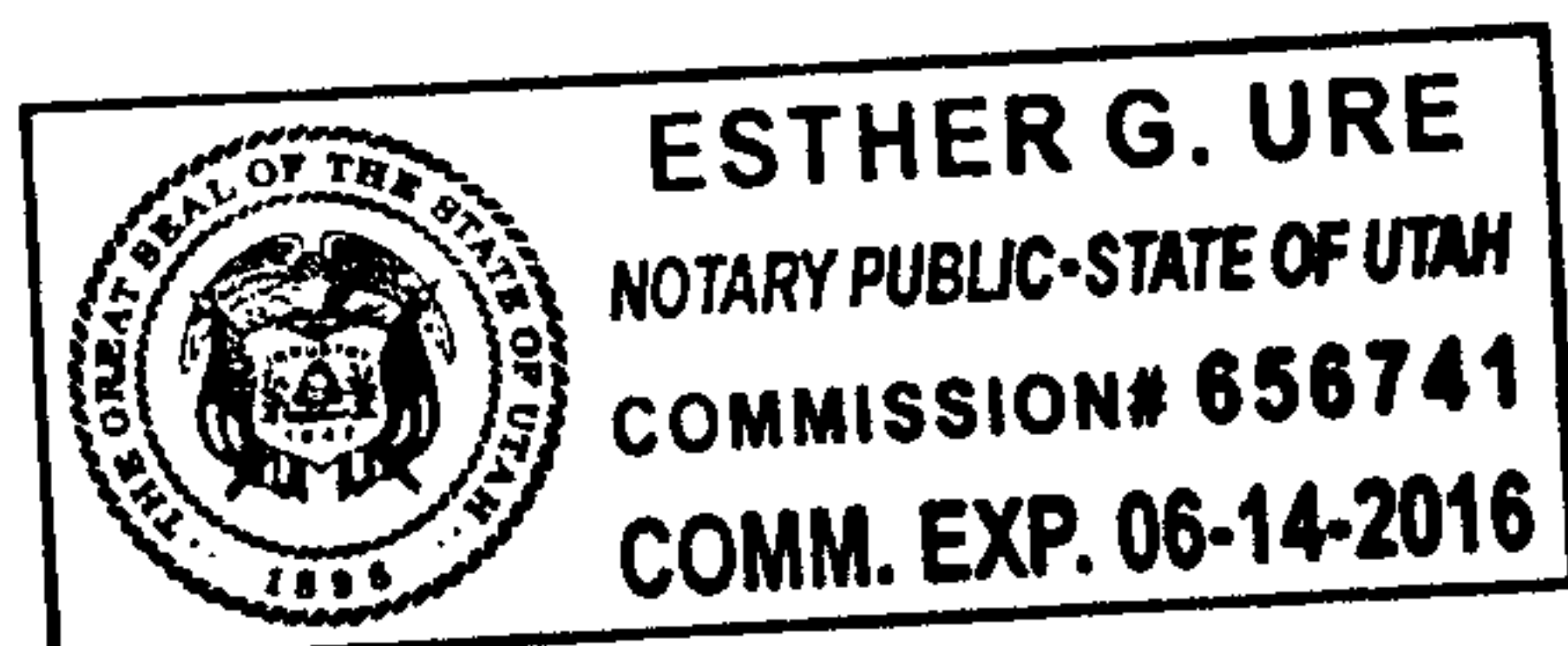
\_\_\_\_\_  
Notary Public

My Commission Expires

STATE OF UTAH  
COUNTY OF SALT LAKE

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Gregory E. Behrman whose name as Assistant Secretary of ALLY BANK, is signed to and being informed of the contents of said instrument, he, as such officer personally came and appeared before me and with full authority, executed and acknowledged he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 1<sup>st</sup> day of April, 2014.



[Signature]  
Notary Public

My Commission Expires: 6-14-16



Shelby Cnty Judge of Probate, AL  
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