


This instrument prepared by  
and after recording return to:

Ray D. Gibbons, Esq.  
Gibbons Graham LLC  
100 Corporate Parkway, Suite 125  
Birmingham, Alabama 35242

  
20140523000156760 1/11 \$1394.00  
Shelby Cnty Judge of Probate, AL  
05/23/2014 09:49:29 AM FILED/CERT

**MORTGAGE AND SECURITY AGREEMENT**

**THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS  
\$900,000.00**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage"), is made and entered into as of April 30, 2014, by **NSH CORP.**, an Alabama corporation, whose address is 3454 Market Street, Hoover, Alabama 35226, Attention: Dwight A. Sandlin (the "Mortgagor"), in favor of **RIME HOLDINGS, LLC**, an Alabama limited liability company, whose address is 100 Village Street, Birmingham, Alabama 35242, Attention: Lawrence S. Nickles (the "Mortgagee").

**W I T N E S S E T H:**

**WHEREAS**, pursuant to the provisions of that certain Construction Services Agreement dated March 4, 2014 between Mortgagor and Mortgagee, as amended from time to time (the "Construction Services Agreement"), Mortgagee has agreed to make the Construction Advances (as defined in the Construction Services Agreement) to Mortgagor; and

**WHEREAS**, Mortgagor desires to secure the obligations (the "Obligations") of Mortgagor to Mortgagee of every kind and description whatsoever, and arising out of, incurred pursuant to and/or in connection with this Mortgage, the Construction Services Agreement, and any and all other agreements, documents and instruments of any kind executed or delivered in connection herewith or therewith by Mortgagor with or for the benefit of Mortgagee (the "Transaction Documents"), and any and all extensions and renewals of any of the same, including but not limited to the obligation:

(A) To pay the principal of and interest on the Construction Advances in accordance with the terms of the Construction Services Agreement;

(B) To pay, repay or reimburse Mortgagee for all amounts owing hereunder and/or under any of the other Transaction Documents, including all damages, dues, penalties, fines, costs, amounts paid in settlement, taxes, losses, expenses, and fees (including court costs and attorneys' fees and expenses actually incurred), including, but not limited to such amounts incurred by Mortgagee by reason of a Default; and

(C) To reimburse Mortgagee, on demand, for all of Mortgagee's expenses and costs, including the fees and expenses of its counsel, in connection with the enforcement of this Mortgage and the other Transaction Documents, including, without limitation, any proceeding



brought or threatened to enforce payment of any of the obligations referred to in the foregoing paragraphs (A) and (B).

**NOW, THEREFORE**, for and in consideration of Mortgagee making the Construction Advances and to secure the prompt payment and performance of the Obligations, Mortgagor does hereby irrevocably CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Mortgagee, and its successors and assigns, all of Mortgagor's right, title and interest of whatever kind, nature or description, whether now existing or hereafter arising (the "Mortgagor's Interest") in and to the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, whether now owned or hereafter acquired, and including replacements and additions thereto (herein referred to collectively as the "Mortgaged Property"):

(a) All those certain tracts, pieces or parcels of land, and interests in land, located in Shelby County, Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(c) All easements, rights of way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(d) All rents, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance,



condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same;

(e) All leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Mortgaged Property, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Title 11, U.S. Code, or any similar laws of any jurisdiction for the relief of debtors ("Bankruptcy Law"), including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Law in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief;

(f) Any and all agreements entered into by Mortgagor with any person with respect to or for the benefit of the Mortgaged Property (collectively, the "Assigned Agreements"), including, without limitation, all agreements entered with any contractor, subcontractor, architect, engineer or other person with respect to any construction work to be performed at the Land, and any agreements with respect to any marketing, leasing, planning, designing, equipping and developing the Mortgaged Property, and any and all renewals, extensions or modifications thereof and guaranties of performance to Mortgagor thereunder; and

(g) All building permits, certificates of occupancy, and other permits, licenses, approvals, and authorizations of any governmental authority necessary to own, construct, use, occupy, operate, or maintain the Mortgaged Property or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Mortgagee and the successors, successors in title and assigns of Mortgagee, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of Mortgagor's Interest in and to the Mortgaged Property as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit A hereto, and Mortgagor hereby warrants and will forever defend the title thereto against the claims of all persons whomsoever, except as to those matters set forth in said Exhibit A.

The lien of this Mortgage automatically will attach to any further, greater, additional or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time hereafter acquired by Mortgagor by whatsoever means and without any further action or filing or recording on the part of Mortgagor or Mortgagee or any other person.

MORTGAGOR HEREBY COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:



## ARTICLE I

**1.01 Payment and Performance of Transaction Documents.** Mortgagor will perform, observe and comply with all the provisions of the Transaction Documents, including but not limited to, the due and punctual payment of all sums of money required to be paid by Mortgagor pursuant to the Construction Services Agreement.

**1.02 Taxes, Liens and Other Charges.**

(a) Mortgagor shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Mortgagee such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as Mortgagee may require.

(b) Mortgagor shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Mortgaged Property. Mortgagor shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Construction Advances and/or any one or more of the Transaction Documents.

**1.03 Security Agreement.** With respect all personal property (the "Personal Property") constituting part of the Mortgaged Property which is subject to the provisions of Article 9 of the Uniform Commercial Code as enacted in the state wherein the Land is situated (the "UCC"), this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Personal Property in compliance with the provisions of the UCC, and Mortgagor hereby grants to Mortgagee a security interest in said Personal Property. Mortgagor authorizes Mortgagee to file one or more financing statements reciting this Mortgage to be a security agreement affecting all of such Personal Property. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default, shall be (a) as prescribed herein or in any other Transaction Document with respect thereto, or (b) as prescribed by applicable law, including the UCC, all at Mortgagee's sole election. Mortgagor agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award



in eminent domain proceedings for taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this instrument or affect the priority of Mortgagee's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Mortgagee in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the UCC records. This Mortgage may be filed as a financing statement in any office where Mortgagee deems such filing necessary or desirable and Mortgagor will promptly upon demand reimburse Mortgagee for the costs therefor.

**1.04 Use of Mortgaged Property.** Mortgagor shall at all times operate the Mortgaged Property as part of a residential subdivision as contemplated in the Construction Services Agreement. Mortgagor shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Mortgagee.

**1.05 Conveyance of Mortgaged Property.** Except as otherwise expressly permitted by the Construction Services Agreement, Mortgagor shall not directly or indirectly encumber (by Lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Mortgagee.

**1.06 Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Mortgagee, Mortgagor will make, execute, and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be reasonably required by Mortgagee, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Mortgagee, be necessary or desirable in order to effectuate, complete or perfect or to continue and preserve (a) the obligations of Mortgagors under the Transaction Documents, and (b) the lien created by this Mortgage as a first and prior security interest upon, in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, Mortgagee may make, execute, record, file, rerecord and/or refile any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor so to do. The security interest provided for in this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

**1.07 Acquisition of Collateral.** Mortgagor shall not acquire any personal Property subject to any lien taking precedence over the lien of this Mortgage.

## **ARTICLE II**



**2.01 Events of Default.** Wherever used in this Mortgage, the terms (i) "Default" means the occurrence of an event described in this Section regardless of whether there shall have occurred any passage of time or giving of notice that would be necessary in order to constitute such event as an Event of Default, and (ii) "Event of Default" means the occurrence of an event described in this Section provided that there shall have occurred any passage of time or giving of notice that would be necessary in order to constitute such event as an Event of Default under this Section:

(a) any failure of Mortgagor to pay as and when due the Construction Advances and any interest accruing thereon;

(b) the failure of Mortgagor to pay, perform or observe any other obligation, condition, or covenant to be observed or performed by it under this Mortgage or any other Transaction Document, and such failure shall continue for seven (7) days after notice of such failure from Mortgagee;

(c) any material portion of the Mortgaged Property is subjected to actual or threatened waste, or any part thereof is removed, demolished or altered without the prior written consent of Mortgagee;

(d) substantial damage to, or partial or total destruction of, any of the Improvements by fire or other casualty or the taking of any of the Improvements, temporarily or permanently, by eminent domain, and Mortgagor's failure to pay to Mortgagee an amount equal to all Construction Advances applicable to the Improvement(s) so damaged or taken, and all accrued interest thereon;

(e) failure or refusal by any title insurance company that issues a mortgagee's title insurance policy insuring this Mortgage, by reason of any matter affecting title to the Mortgaged Property, to insure any Construction Advance as giving rise to a valid first lien, subject only to the liens acceptable to Mortgagee;

(f) any material adverse claim relating to the Mortgaged Property, by title, lien or otherwise, is established in any legal or equitable proceeding;

(g) the filing by Mortgagor of a voluntary petition in the commencement of any case or other action for relief under Bankruptcy Law ("Bankruptcy") or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself or himself under any present or future federal, state or other statute, law or regulation relating to Bankruptcy, insolvency or other relief for debtors, or Mortgagor seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Mortgagor or the making by Mortgagor of any general assignment for the benefit of creditors or the admission in writing by Mortgagor of its inability to pay its debts generally as they become due;

(h) the entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future



federal, state or other statute, law or regulation relating to Bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor or of a substantial part of Mortgagor's property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(i) any transfer of any of the Mortgaged Property or any interest therein, or any further encumbrance of any of the Mortgaged Property or any interest therein, except as permitted pursuant to the Construction Services Agreement; or

(j) the dissolution of Mortgagor.

Provided that with respect to any of the foregoing, such Event of Default will be deemed to have occurred upon the occurrence of such event without notice being required if Mortgagee is prevented from giving notice by Bankruptcy Law or other applicable law.

**2.02 Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Obligations shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

**2.03 Rights and Remedies.**

(a) If an Event of Default shall have occurred, then in addition to the rights and remedies provided for under any other Transaction Document or under applicable law, then at the option of Mortgagee this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and to the extent provided or allowed by Alabama law, Mortgagee, or its agent, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the front or main door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required. At any such sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Mortgagee shall have the right to enforce any of its remedies set forth herein without notice to Mortgagor, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security



instruments, Mortgagee at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Mortgagee may determine.

Said sale may be adjourned by Mortgagee, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(b) In the event of any sale of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment or non performance of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**2.04 Purchase by Mortgagee.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

**2.05 Mortgagor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) and all persons holding under Mortgagor shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.06 Waiver of Appraisement, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

**2.07 Waiver of Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part thereof.

**2.08 Leases.** Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be



asserted to be by Mortgagor, a defense to any proceeding instituted by Mortgagee to collect the sums secured hereby.

**2.09 Discontinuance of Proceedings.** In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

### **ARTICLE III**

**3.01 Successors and Assigns.** This Mortgage shall be binding upon Mortgagor, its heirs, successors and assigns and subsequent owners of the Mortgaged Property, or any part thereof, and shall inure to the benefit of the Mortgagee and its successors and assigns and any holder of the Obligations.

**3.02 Applicable Law.** This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

**3.03 Notices.** All notices provided for herein shall be given and deemed received when given and received in accordance with the terms of the Construction Services Agreement.

**3.04 Assignment.** This Mortgage is assignable by Mortgagee and any assignment of this Mortgage by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

**3.05 Future Advances.** Upon request of Mortgagor, Mortgagee, at Mortgagee's option so long as this Mortgage secures indebtedness held by Mortgagee, may make future advances to Mortgagor. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage or any other Transaction Document, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby.

\* \* \* \* \*



IN WITNESS WHEREOF, this Mortgage has been executed and delivered as of the date first above written.

NSH CORP.,  
an Alabama corporation

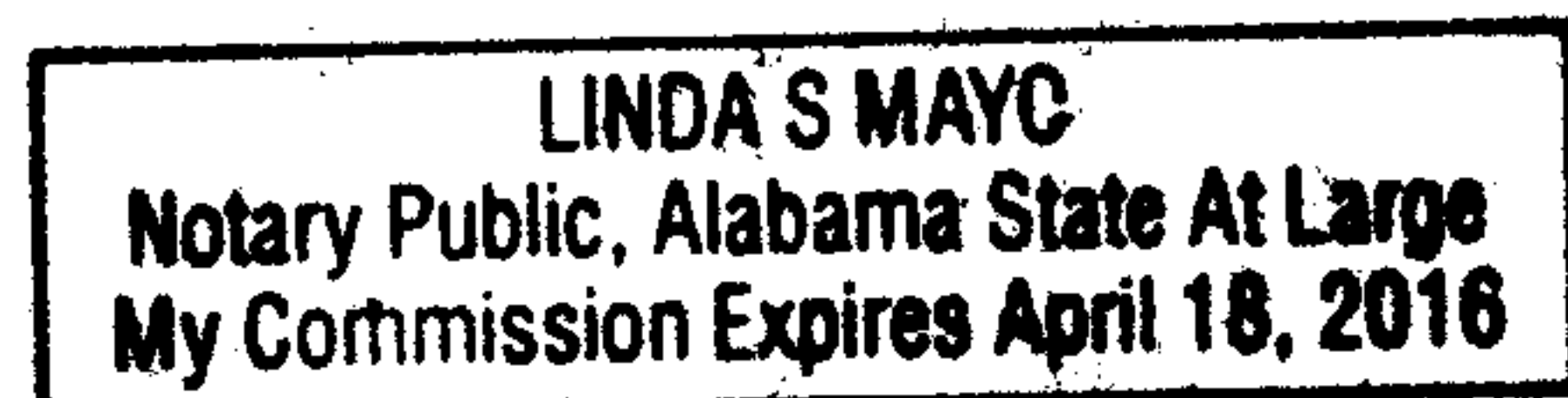
By: [Signature]  
Print Name: Jonathan M. Belcher  
Print Title: President

STATE OF ALABAMA  
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jonathan M. Belcher, whose name as President of NSH Corp., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation.

Given under my hand and official seal, this the 23rd day of April, 2014.

[SEAL]  
Linda S Mayo  
Notary Public  
My Commission Expires: 04-18-2016





**EXHIBIT "A"**  
**DESCRIPTION OF LAND**

Lots 169, 170, 171, 172 and 173 according to the Survey of Kensington Place, Phase II, as recorded in Map Book 42, Page 117, in the Probate Office of Shelby County, Alabama.

