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Shelby Cnty Judge of Probate, AL  
08/28/2014 10:39:45 AM FILED/CERT

Prepared by, and after recording return to:  
Cogo Capital, LLC  
1121 E Mullan Ave  
Coeur d'Alene, ID 83814

**MORTGAGE,**  
**ASSIGNMENT OF RENTS,**  
**SECURITY AGREEMENT AND FIXTURE FILING**

**THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE ABOUT TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD BE FILED AND INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FINANCING STATEMENT COVERING FIXTURES.**

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**MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Instrument") is made to be effective this **Fifteenth day of August, 2014**, by **Azure Properties Group, LLC**, a Limited Liability Company organized and existing under the laws of Alabama, whose address is 2700 Corporate Dr, Ste 200, Birmingham, AL 35242, as trustor ("Borrower") and **Secured Investment High Yield Fund, LLC**, a Limited Liability Company organized and existing under the laws of Washington, whose address is 1121 E Mullan Ave, Coeur d'Alene, ID 83814 as beneficiary ("Lender"). Borrower's organizational identification number, if applicable, is 273-961.

Borrower is indebted to Lender in the principal amount of **Forty Two Thousand and No/100 Dollars (U.S. \$42,000.00)**, as evidenced by the Note payable to Lender dated as of the date of this Instrument, and maturing on **9/30/2016** (the "Maturity Date").

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower mortgages, warrants, grants, bargains, sells, conveys and assigns to Lender and Lender's successors and assigns, with power of sale, the Property, including the Land located in Shelby County, State of Alabama, and described in Exhibit A attached to this Instrument. To have and to hold the Property unto Lender and Lender's successors and assigns, forever.

Borrower represents and warrants that Borrower is lawfully seized of the Property and has the right, power and authority to grant, convey and assign the Property, and that the Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Property (the "Schedule of Title Exceptions"). Borrower covenants that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

**UNIFORM COVENANTS:** In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

**1. Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

**a. "Attorneys' Fees and Costs"** means (i) fees and out of pocket costs of Lender's and Loan Servicer's attorneys, as applicable, including costs of Lender's and Loan Servicer's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.

**b. "Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.



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- c. **“Business Day”** means any day other than a Saturday, a Sunday or any other day on which the national banking associations are not open for business.
- d. **“Controlling Interest”** means (i) 51 % or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 %, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party.
- e. **“Environmental Permit”** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Property.
- f. **“Event of Default”** means the occurrence of any event listed in Section 21.
- g. **“Equipment and Fixtures”** means all fixtures, apparatus, machinery, equipment, goods, engines, boilers, incinerators, building materials, appliances, supplies and other tangible personal property of every nature whatsoever now owned or hereafter acquired by the Borrower and now or hereafter located in, or on, or used, or useable, or intended to be used in connection with the Land or the Improvements, including, but not limited to, clothes washers and dryers, dishwashers, garbage disposal units, refrigerators, fans, heaters, stoves, ranges, ovens and trash compactors, lobby and all other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, entertainment, recreational and security equipment and goods, air and water filtration or purification devices, any and all heating, plumbing and lighting apparatus and fixtures, elevators and motors, engines and machinery, electrical equipment, incinerator apparatus, ventilating, air-conditioning and air cooling apparatus, water and gas apparatus, pipes, water heaters, mirrors, mantels, partitions, cleaning, intercom and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, water softeners, carpets, carpeting, storm windows and doors, window screens, screen doors, storm sash, window shades or blinds, awnings, locks, fences, trees, shrubs, and all other tangible personal property of every kind and nature whatsoever, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing all of which are hereby declared and shall be deemed to be fixtures and an accession to the freehold and a part of the Land and Improvements
- h. **“Governmental Authority”** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Property or the use, operation or improvement of the Property or over the Borrower.
- i. **“Hazardous Materials”** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant”

by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

**j.** “Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., and their state analogs.

**k.** “Improvements” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

**l.** “Indebtedness” means the principal of, interest at the fixed rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, fees, and costs, and default interest to protect the security of this Instrument.

**m.** “Initial Owners” means, with respect to Borrower or any other entity, the persons or entities that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100 % of the ownership interests in Borrower or that entity.

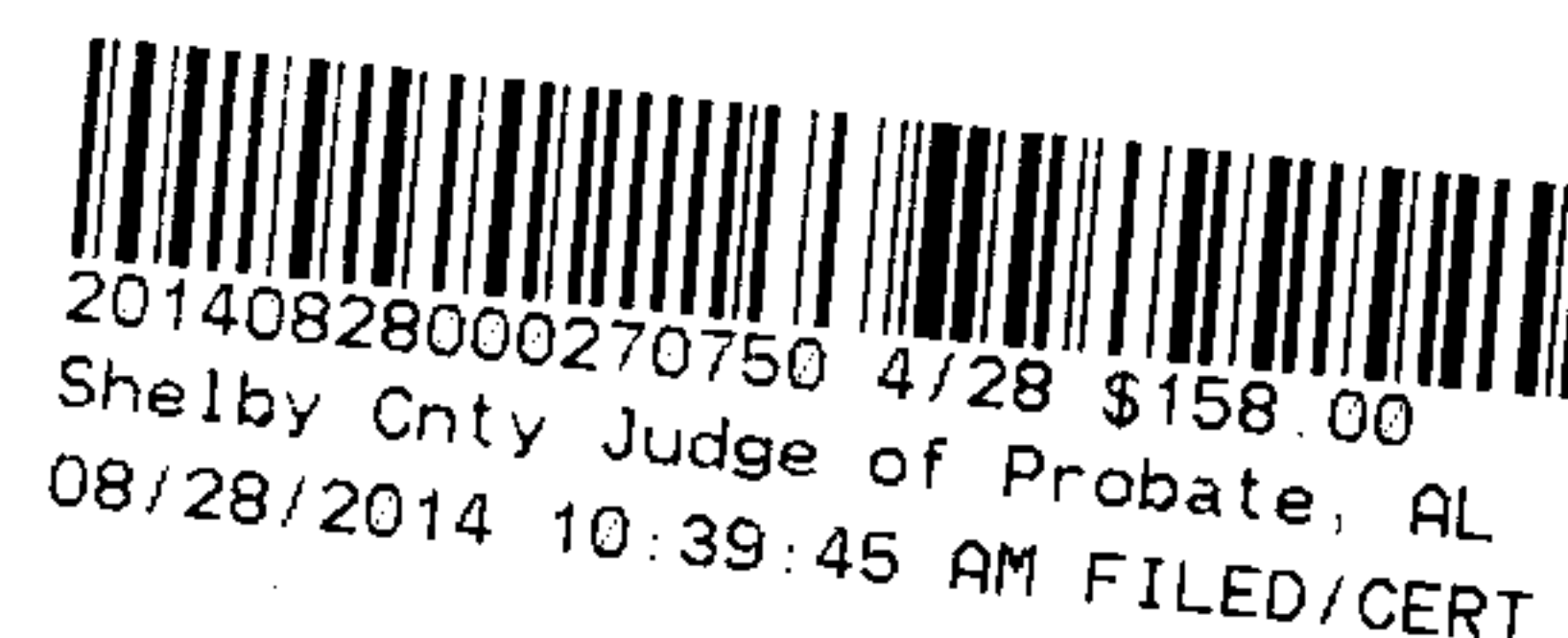
**n.** “Land” means the land described in Exhibit A.

**o.** “Leases” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Property, or any portion of the Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

**p.** “Lender” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.


**q.** “Loan Documents” means the Note, this Instrument, all guaranties, all borrower agreements, the loan purpose and use affidavit and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

**r.** “Loan Servicer” means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender.



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- s. **“Mold”** means mold, fungus, microbial contamination or pathogenic organisms.
- t. **“Note”** means that certain promissory note from Borrower to Lender in the original principal amount of Forty Two Thousand and No/100 Dollars (U.S. \$42,000.00) and dated as of even date herewith.
- u. **“Property”** means all of Borrower’s present and future right, title and interest in and to all of the following: (i) the Land; (ii) the Improvements; (iii) the Equipment and Fixtures; (iv) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated; (v) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Equipment and Fixtures or any other part of the Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement; (vi) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Equipment and Fixtures or any other part of the Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Equipment and Fixtures or any other part of the Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof; (vii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Equipment and Fixtures or any other part of the Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations; (viii) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; (ix) all Rents and Leases; (x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Property, and all undisbursed proceeds of the loan secured by this Instrument; (xi) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; (xii) all names under or by which any of the above Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Property; (xiii) all architectural, construction, development, management, leasing, maintenance, government subsidy, employment or similar contracts relating to Borrower’s use and operation of the Land, the Improvements or the Equipment and Fixtures, and all extensions, renewals and modifications thereof and substitutions therefor; all licenses, permits, permissions and approvals relating to the current and future use, occupancy, maintenance and operation of the Land, the Improvements or the Equipment and Fixtures, and all extensions, renewals and modifications thereof and substitutions therefor; all plans and specifications relating to the past, current or future construction of any Improvements or Equipment and Fixtures and all unexpired warranties, guarantees and sureties, if any, received by Borrower in connection with the operation and improvement of the Land, the Improvements or the Equipment and Fixtures; (xiv) all other assets of Borrower located on the Land (including inventory), and (xv) the proceeds of all of the foregoing.
- v. **“Property Jurisdiction”** is defined in Section 27.

  
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w. “**Rents**” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Property, whether now due, past due, or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

x. “**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien on the Land or the Improvements.

y. “**Transfer**” means (i) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (ii) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (iv) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (v) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. “Transfer” does not include: (i) a conveyance of the Property at a judicial or non-judicial foreclosure sale under this Instrument; (ii) the Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (iii) a lien against the Property for local taxes and/or assessments not then due and payable.

For purposes of defining the term Transfer, the term “partnership” shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term “partner” shall mean a general partner, a limited partner and a joint venturer.

2. **Payment of Indebtedness; Performance under Loan Documents.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

3. **Uniform Commercial Code Security Agreement.**

a. This Instrument is also a security agreement under the Uniform Commercial Code for any of the Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or



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amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.

b. Unless Borrower gives Notice to Lender within thirty (30) days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower shall not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Property is stored, held or located.

c. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

d. This Instrument constitutes and is filed as a fixture filing under the UCC covering the Property which now or in the future consists of goods comprising part of the Property which are or are to become fixtures upon the subject real estate. For the purposes of this fixture filing and the filing of this Instrument as a financing statement, the "debtor" is the Borrower, the "secured party" is Lender, and the real estate upon which the fixtures and/or other items are located is the Land. The Borrower's taxpayer identification number is: 46-3558659. The Borrower's organizational number is: 273-961. The Borrower's state of organization is as first listed above.

4. **Assignment of Rents; Appointment of Receiver; Lender in Possession.**

a. As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

b. After the occurrence of an Event of Default and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all

Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Property, including utilities, Taxes and insurance premiums, tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, (i) Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Property instructing them to pay all Rents to Lender, (ii) no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and (iii) no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

c. Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender, or paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 4(c), and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

d. If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Property and the execution or termination of contracts providing for the management, operation or maintenance of the Property, for the purposes of enforcing the assignment of Rents pursuant to Section 4(c), protecting the Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Property at any time after an Event of Default has occurred and is continuing, Borrower, by its



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execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, it being acknowledged and agreed that the Indebtedness is an obligation of the Borrower and must be paid out of maintenance charges payable by the Borrower's tenant shareholders under their proprietary leases or occupancy agreements. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Property, Borrower shall surrender possession of the Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Property, Lender may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

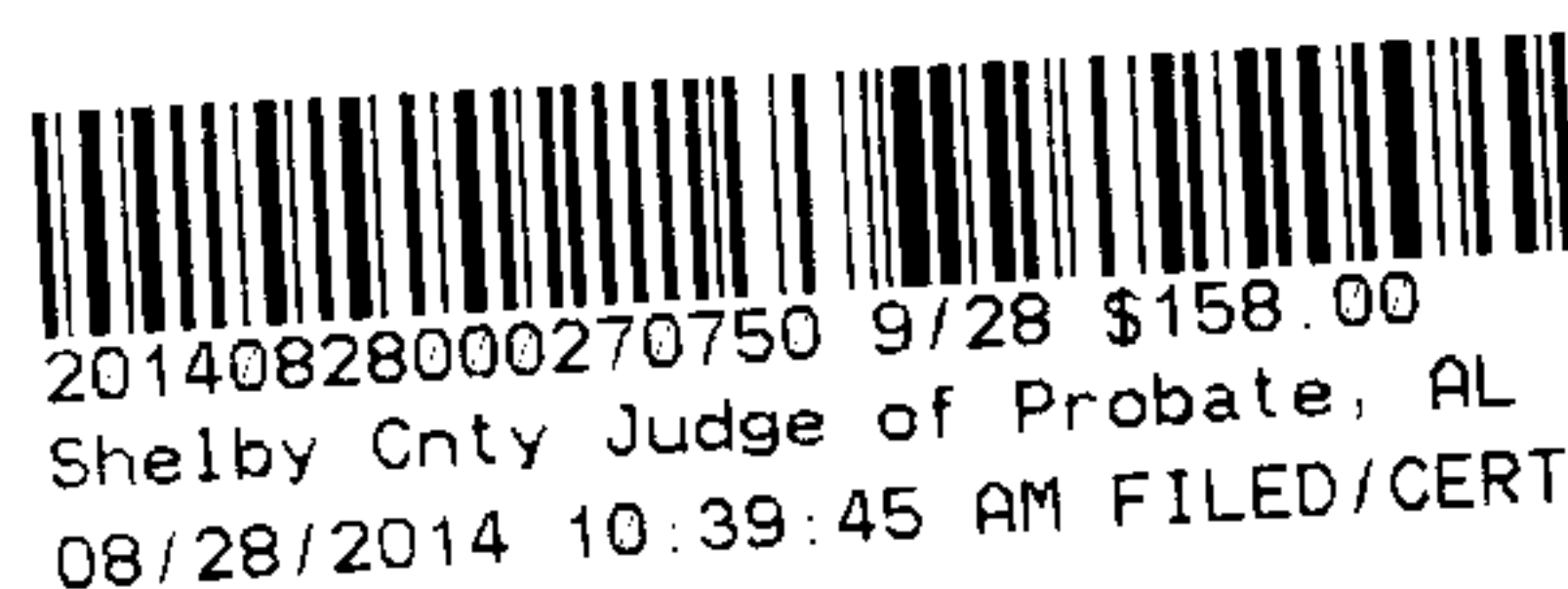
e. If Lender enters the Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property, by reason of any act or omission of Lender under Section 4(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

f. If the Rents are not sufficient to meet the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness under Section 9.

g. Any entering upon and taking of control of the Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

**5. Assignment of Leases; Leases Affecting the Property.**

a. As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment



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of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

b. Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 5, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default and during the continuance of such Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

c. Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 5 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 5(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Lender's actual entry into and taking possession of the Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

d. Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 5 at any time after the occurrence of an Event of Default and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

e. Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms

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approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

6. **Application of Payments.** All payments received by Lender from Borrower under the Note will be applied first, to the payment of late fees and other costs and charges due in connection with the Note, as Lender determines in its sole discretion, then to the payment of accrued but unpaid interest, and then to reduction of the outstanding principal balance. All amounts due under the Note must be paid without setoff, counterclaim or any other deduction whatsoever. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

7. **Compliance with Laws and Organizational Documents.**

a. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

b. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Property that could endanger tenants or visitors, result in damage to the Property, result in forfeiture of the Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Property. Borrower represents and warrants to Lender that no portion of the Property has been or will be purchased with the proceeds of any illegal activity.

c. If the Borrower is an entity, Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Borrower's state of organization. Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is an limited liability company, joint venture or tenancy-in-common). If Borrower is a housing cooperative corporation or association, Borrower shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal revenue Code of 1986, as amended, or any successor statute thereto.

8. **Use of Property.** Borrower represents and warrants that the Property is not used principally for agricultural purposes and this Instrument does not secure an obligation incurred primarily for person, family or household purposes.

9. **Protection of Lender's Security Instrument; Instrument Secures Future Advances.**

a. If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of Attorneys' Fees and Costs; (ii) payment of fees and out-of-pocket expenses of accountants, inspectors and consultants; (iii) entry upon the Property to make repairs or secure the Property; (iv) procurement of the insurance required by Section 18; (v) payment of amounts which Borrower has failed to pay under Sections 12, 15, and 16; and (vi) advances made by Lender to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Property (a "Prior Lien").

b. Any amounts disbursed by Lender under this Section 9, or under any other provision of this Instrument that treats such disbursement as being made under this Section 9, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the Default Rate as defined in the Note.

c. Nothing in this Section 9 shall require Lender to incur any expense or take any action.

**10. Inspection.**

a. Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

b. If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

c. If Lender determines not to conduct an annual inspection of the Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually

provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect:

Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding mold, fungus, microbial contamination or pathogenic organisms ("Mold") or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Property or if Borrower has received any such written complaint, notice, letter or other written communication that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission.

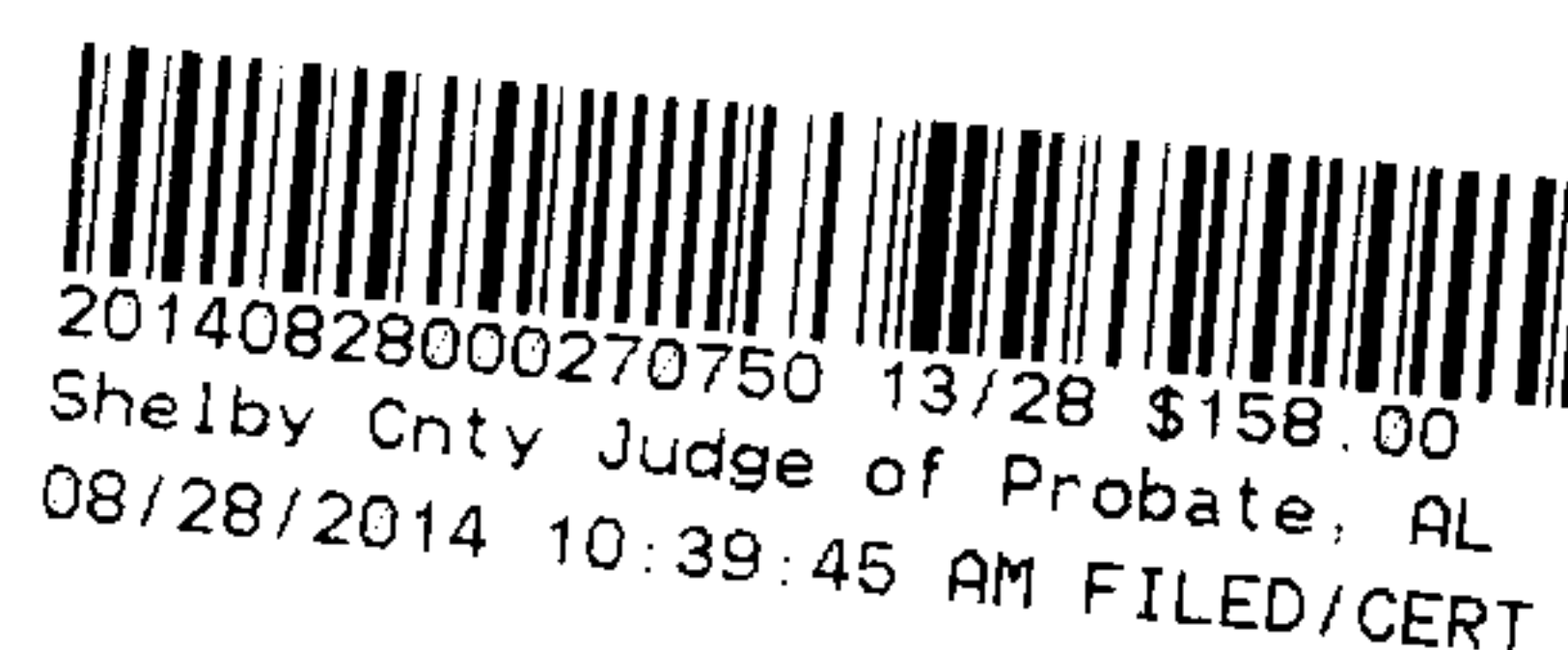
d. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Property at Borrower's expense.

11. **Books and Records.** Borrower shall keep and maintain at all times and upon Lender's request shall make available to Lender complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Property, and copies of all written contracts, Leases, and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Lender at any reasonable time. Borrower authorizes Lender to obtain a credit report on Borrower at any time. If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Property or its operation.

12. **Payment of Taxes, Assessments, Expenses, and Other Charges.**

a. Subject to Section 14, Borrower shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. Borrower shall likewise pay when due all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, the Agreement. Notwithstanding the foregoing provisions of this Section, if for any reason payment by Borrower of any such taxes, assessments or other charges would be unlawful, or if the payment thereof would render the indebtedness evidenced by a Note usurious, Lender may declare the Note, with interest thereon, to be immediately due and payable. Borrower shall promptly furnish to Lender all notices received by Borrower of amounts due under this Section and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

b. Borrower shall (i) pay the expenses of operating, managing, maintaining and repairing the Property (including utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay insurance premiums at least thirty (30) days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.



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13. **Liens.** Subject to Section 14 below, Borrower shall not create, incur or suffer to exist any lien, encumbrance or charge on the Property or any part thereof, other than liens that are Permitted Exceptions. Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property within fifteen (15) calendar days of the date that Borrower or Lender receives notice of same, whichever occurs first.

14. **Permitted Contests.** Borrower shall not be required to (i) pay any tax, assessment or other charge referred to in Section 12 hereof or (ii) discharge or remove any lien, encumbrance or charge referred to in Section 13 hereof, so long as Borrower shall (1) contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Properties or any part thereof and (C) any interference with the use or occupancy of the Properties or any part thereof and (2) shall give such security to Lender as may be demanded by Lender to ensure compliance with the foregoing provisions of this Section 14. Borrower shall give prompt written notice to Lender of the commencement of any contest referred to in this Section 14.

15. **Preservation and Maintenance of Property.** Borrower (i) shall keep all improvements now or hereafter erected on any Property in good repair and condition, ordinary depreciation excepted; (ii) shall, upon damage to or destruction of the Property or any part thereof by fire or other casualty, restore, repair, replace or rebuild the Property that is damaged or destroyed to the condition it was in immediately prior to such damage or destruction, whether or not any insurance proceeds are available or sufficient for such purpose, unless and to the extent that (A) Lender shall have elected to apply insurance proceeds to the reduction of the Indebtedness in accordance with Section 18.f) below, or (B) insurance proceeds are reasonably likely to be available with respect to such damage or destruction but such funds have not been made available to Borrower; (iii) shall consistently maintain the parking and landscaped areas of the Property in a commercially reasonable manner; (iv) shall not commit waste or permit impairment or deterioration of the Property; (v) shall not cause or permit any alteration of the design or structural character of any improvement now or hereafter erected on the Property if such alteration decreases the value of the Property; (vi) shall not remove from the Property any of the fixtures and personal property; and (vii) shall not abandon the Property.

16. **Management of Property.** The management of the Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Lender. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement which provides that such agreement and all fees and other payments thereunder are subordinate hereto and to Lender's right to receive payments of the indebtedness secured hereunder, which provides that all fees and other payments thereunder are subject to approval by Lender, and which is otherwise in form and substance satisfactory to Lender. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent

approved by Lender. All rents and profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, the payment of management fees, debt service on the Note and current expenses relating to Borrower's liabilities and obligations with respect to the Note, and none of the rents and profits generated by or derived from the Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. Lender's approval(s) under this Section shall not be unreasonably withheld, conditioned or delayed.

**17. Environmental Hazards.**

a. Borrower shall not cause or permit any of the following: (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Property or any other property of Borrower that is adjacent to the Property; (ii) the transportation of any Hazardous Materials to, from, or across the Property; (iii) any occurrence or condition on the Property or any other property of Borrower that is adjacent to the Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Property or any property of Borrower that is adjacent to the Property. The matters described in clauses (i) through (iv) above are referred to collectively in this Section as "Prohibited Activities or Conditions."

b. Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

c. Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing (which written disclosure may be in certain environmental assessments and other written reports accepted by Lender in connection with the funding of the Indebtedness and dated prior to the date of this Instrument): (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Property; (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Property; (iii) the Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws; (iv) to the best of Borrower's knowledge after reasonable and diligent inquiry, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Property in accordance with Hazardous Materials Laws now in effect and all such Environmental



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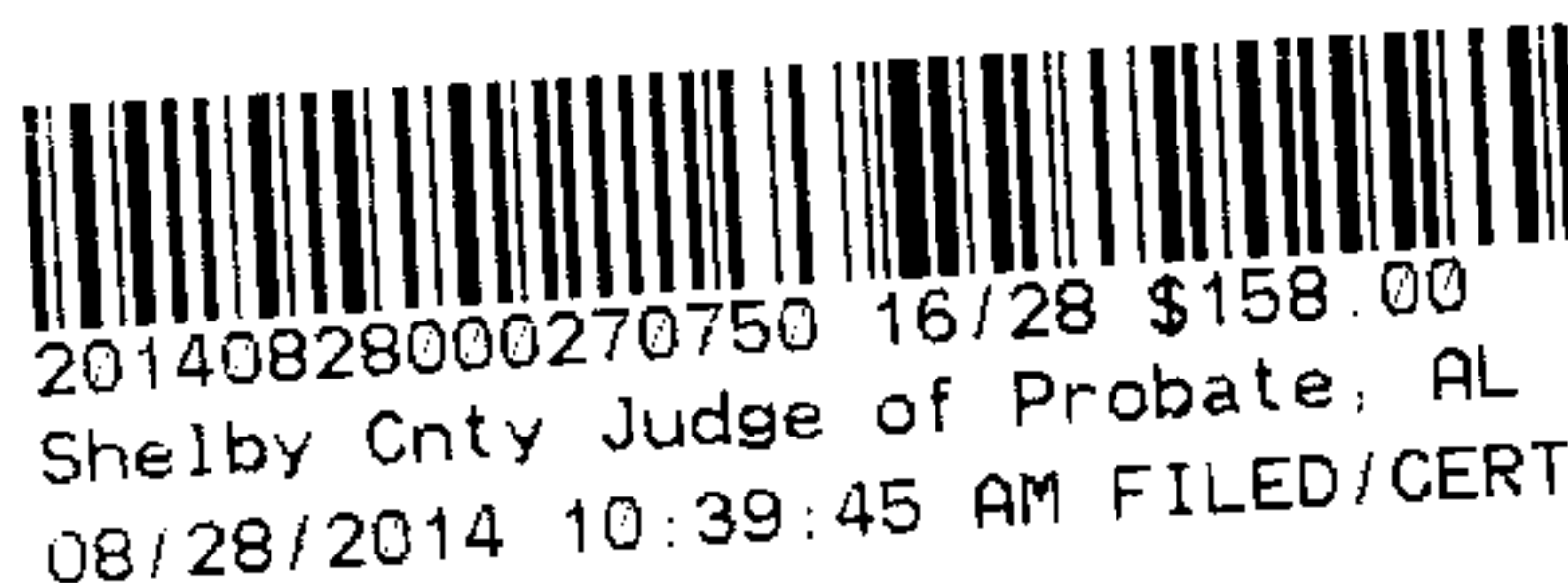
Permits are in full force and effect; (v) to the best of Borrower's knowledge after reasonable and diligent inquiry, no event has occurred with respect to the Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit; (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and (vii) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Property or any other property of Borrower that is adjacent to the Property.

d. Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events: (i) Borrower's discovery of any Prohibited Activity or Condition; (ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Property or any other property of Borrower that is adjacent to the Property; or Borrower's breach of any of its obligations under this Section. Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

e. Borrower shall comply with all Hazardous Materials Laws applicable to the Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

f. Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys' Fees and Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following: (i) any breach of any representation or warranty of Borrower in this Section; (ii) any failure by Borrower to perform any of its obligations under this Section; (iii) the existence or alleged existence of any Prohibited Activity or Condition; (iv) the presence or alleged presence of Hazardous Materials on or under the Property or in any of the Improvements or on or under any property of Borrower that is adjacent to the Property; and (v) the actual or alleged violation of any Hazardous Materials Law.

g. Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Section applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of



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Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its discretion, Lender shall permit Borrower to undertake the actions referenced in this Section in accordance with this Section 17(g) and Section 17(h) so long as Lender approves such action, which approval shall not be unreasonably withheld or delayed. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, consultants' fees and Attorneys' Fees and Costs.

**h.** Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (ii) may materially and adversely affect Lender, as determined by Lender in its discretion.

**i.** Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness; (iv) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document; (v) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Indebtedness; and (vii) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

**j.** Borrower shall, at its own cost and expense, do all of the following: (i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section; reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section; and (iii) reimburse Indemnitees for any and all expenses, including Attorneys' Fees and Costs, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section, or in monitoring and participating in any legal or administrative proceeding.

**k.** The provisions of this Section 17 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Lender or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 17 shall be

joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of, or held title to, the Property, Borrower shall have no obligation to indemnify the Indemnitees under this Section after the date of the release of record of the lien of this Instrument by payment in full at the Maturity Date or by voluntary prepayment in full.

**18. Insurance.**

**a. Risks to be Insured.** Borrower, at its sole cost and expense, will maintain insurance of the following character:

**i. Property Insurance.** Insurance on any improvements now existing or hereafter erected on any Property and on the fixtures and personal property included in the Property against loss by fire, and other hazards covered by the so-called "all-risk" form of policy without a co-insurance clause in an amount equal to the actual replacement cost thereof (exclusive of foundations and excavations) without deduction for physical depreciation, which insurance shall in no event be less than the unpaid Indebtedness outstanding at any given time. Borrower will at its sole cost and expense, from time to time and at any time, at the request of Lender, provide Lender with evidence satisfactory to Lender of the replacement cost of the Property. While any improvement is in the course of being constructed or rebuilt on any Property, Borrower shall provide the aforesaid hazard insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy for an amount equal to 100% of the insurable replacement value of such building or other improvement.

**ii. Worker's Compensation Insurance.** While any improvement is in the course of being constructed, renovated or rebuilt on any Property, such workers' compensation insurance as is required by statute.

**iii. Other Insurance.** Such other insurance as may from time to time be reasonably required by Lender in order to protect the interest of Lender.

**b. Policy Provisions.** All policies of insurance required pursuant to Section 18(a): (1) shall contain a standard noncontributory mortgagee clause naming Lender as the person to which all payments made by such insurance company shall be paid, (2) shall be maintained throughout the term of the Note without cost to Lender, (3) shall be assigned and delivered to Lender, (4) shall contain such provisions as Lender deems reasonably necessary or desirable to protect the interests of Lender, including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation, (5) shall be for a term of not less than one year, (6) shall be issued by an insurer licensed in the country in which the Property are located, (7) shall provide that Lender may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same, (8) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage,



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deductibles, loss payees and insureds, and (9) shall provide that all claims shall be allowable on events as they occur. All insurance policies and renewals thereof maintained by Borrower pursuant to subparagraphs (a)(i) and (a)(iii) above shall contain a standard mortgagee clause in favor of and in form acceptable to Lender. The insurance maintained pursuant to subparagraphs (a)(i) and (a)(ii) and (a)(iii) shall name Lender as an additional insured. Upon demand therefor, Borrower shall reimburse Lender for all of Lender's reasonable costs and expenses incurred in obtaining any or all of said policies or otherwise causing the compliance with the terms and provisions of this Section 18, including (without limitation) replacement of any so-called "forced placed" insurance coverages. All policies required pursuant to Section 18(a) shall be issued by an insurer with a claims paying ability rating of "A-/V" or better by A.M. Best Company's Ratings Services. Borrower shall pay the premiums for such policies as the same become due and payable. If Borrower receives from any insurer any written notification or threat of any actions or proceedings regarding the non-compliance or non-conformity of any Property with any insurance requirements, Borrower shall give prompt notice thereof to Lender.

c. **Delivery of Policy.** Borrower will deliver to Lender copies of policies and/or certificates evidencing any required insurance satisfactory to Lender evidencing the insurance which is required under this Section 18, and Borrower shall promptly furnish to Borrower copies of all renewal notices and all receipts of paid premiums received by them. At least thirty (30) days prior to the expiration date of a required policy, Borrower shall deliver to Lender a copy of a renewal policy in form satisfactory to Lender.

d. **Assignment of Policies.** In the event of the entry of judgment of foreclosure, sale of any Property by non-judicial foreclosure sale or delivery of a deed in lieu of foreclosure, Lender hereby is authorized (without the consent of Borrower) to assign any and all policies to the purchaser or transferee thereunder, or to take such other steps as Lender may deem advisable to cause the interest of such transferee or purchaser to be protected by any of the policies without credit or allowance to Borrower for prepaid premiums thereon.

e. **Notice of Damage or Destruction, Adjusting Loss.** If a Property or any part thereof shall be damaged or destroyed by fire or other casualty, Borrower will promptly give written notice thereof to the insurance carrier and Lender, and will not adjust any damage or loss which is reasonably estimated by Lender in good faith to exceed \$15,000.00 unless, Lender shall have joined in such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four-month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, Borrower does hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Borrower.

f. **Application of Insurance Proceeds.** All sums paid under any policy required by this Section 18 shall be paid directly to Lender. Any such proceeds received by Lender shall, after deduction therefrom of all reasonable expenses actually incurred by Lender, including attorneys' fees, at Lender's reasonable discretion be (1) released to Borrower, or (2) applied (upon compliance with such terms and conditions as may be required by Lender) to repair or restoration,

either partly or entirely, of the Property so damaged, or (3) applied to the payment of the secured indebtedness in such order and manner as Lender, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Indebtedness shall remain in full force and effect and the payment thereof shall not be excused.

**g. Reimbursement of Lender's Expenses.** Borrower shall promptly reimburse Lender upon demand for all of Lender's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses, together with interest from the date of disbursement at an annual rate equal to the regular interest rate under the Note (unless collection of interest from Borrower at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law).

**19. Condemnation.**

**a.** Borrower hereby irrevocably assigns to Lender any award or payment which becomes payable to Borrower on account of the Property by reason of any taking of the Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Borrower of notice of the institution of any proceeding or negotiations for a Taking, Borrower shall give notice thereof to Lender. Lender may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Borrower, notwithstanding that Lender may not be a party to any such proceeding, will promptly give to Lender copies of all notices, pleadings, judgments, determinations and other papers received by Borrower therein. Borrower will not enter into any agreement permitting or consenting to the taking of the Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Lender shall first have consented thereto in writing. All Taking awards shall be adjusted jointly by Borrower and Lender. All awards payable as a result of a Taking shall be paid to Lender, which may, at its sole option and discretion, apply them, after first deducting Lender's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in such order of application as Lender may determine, or to the repair or restoration of the Property, in such manner as Lender may determine. Notwithstanding the previous sentence, if Lender determines in its reasonable discretion that, after deducting Lender's expenses incurred in the collection thereof, the condemnation award (together with any additional capital contributions made by the partners of Borrower) is adequate to complete the repair or restoration, Borrower shall have the right to use the condemnation award to complete such repair or restoration as is necessitated by such Taking. Any application of Taking awards shall not extend or postpone the due dates of any regularly scheduled payment or mandatory prepayment payable under the Note or change the amount of any such payment or prepayment.

**b.** If the Taking involves the taking of any improvement now or hereafter located on any Property, Borrower shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Property as nearly as possible to its respective size, type and character immediately prior to the Taking, provided Lender determines in its reasonable discretion that the condemnation award (together with any additional capital contributions made by the partners of Borrower) is adequate to complete the repair or restoration, Borrower shall

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have the right to use the condemnation award to complete such repair or restoration. Borrower shall promptly reimburse Lender upon demand for all of Lender's reasonable expenses (including reasonable attorney's fees) incurred in the collection of awards and their disbursement in accordance with this Section, and all such expenses, together with interest from the date of disbursement at the regular interest rate under the Note (unless collection of interest from Borrower at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law).

**20. Transfer of the Property or Interests in Borrower.**

a. The occurrence of any of the following Transfers shall constitute an Event of Default under this Instrument: (i) a Transfer of all or any part of the Property or any interest in the Property; (ii) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than a Controlling Interest of all limited partnership interests in Borrower; (iii) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower; (iv) if Borrower is a limited liability company, (A) a Transfer of any membership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Borrower, (B) a Transfer of any membership or other interest of a manager in Borrower that results in a change of manager, or (C) a change of a nonmember manager; (v) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more Transfers by a single transferor within a 12-month period affecting an aggregate of 10 % or more of that stock; (vi) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Borrower, (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and (vii) if Borrower is a limited liability partnership, (A) a Transfer of any partnership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Borrower, or (B) a transfer of any partnership or other interest of a managing partner in Borrower that results in a change of manager.

b. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 20.

**21. Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

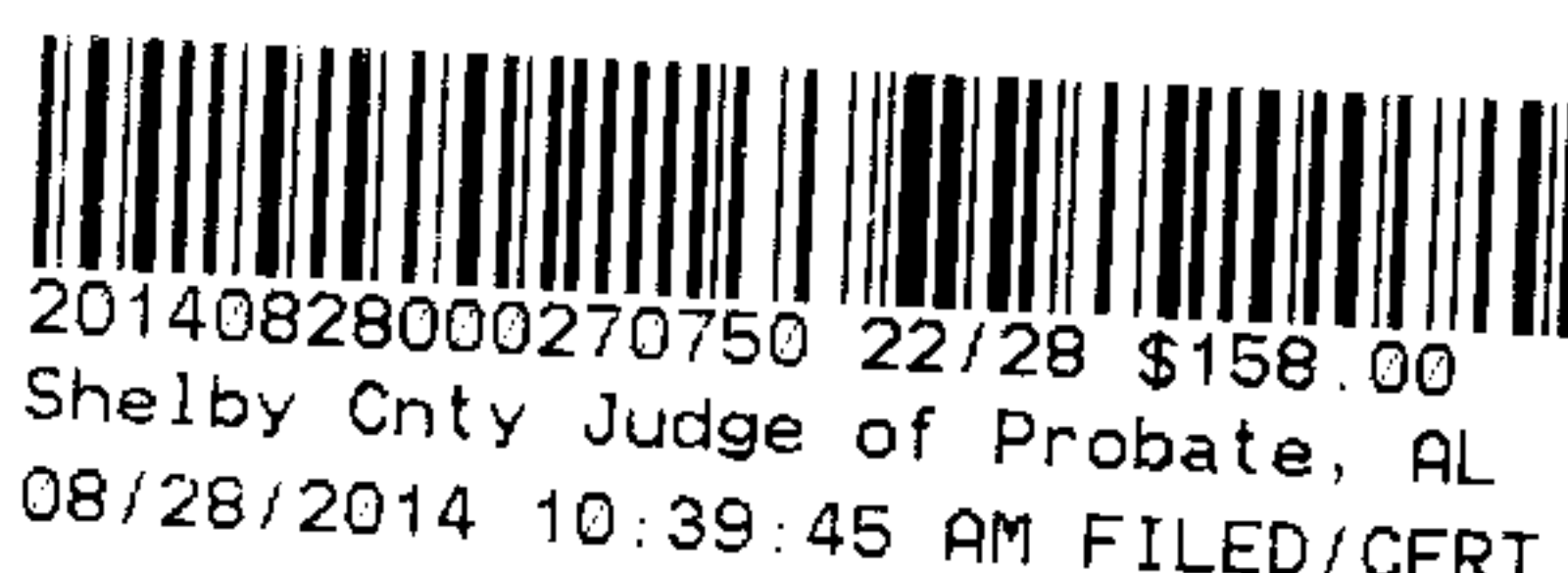
- a. any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;
- b. any failure by Borrower to maintain the insurance coverage required by Section 18;
- c. any failure by Borrower to comply with the provisions of Section 30;



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- d. fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, managers, members or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent schedule, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;
- e. any failure by Borrower to comply with the provisions of Section 19;
- f. any Event of Default under Section 20;
- g. any specified "Event of Default" under any Loan Documents shall occur
- h. the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Property;
- i. any failure by Borrower to perform any of its obligations as and when required under any Loan Document which continues beyond the applicable cure period, if any, specified in that Loan Document;
- j. any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Property of a right to declare all amounts due under that debt instrument immediately due and payable;
- k. any voluntary filing by Borrower for bankruptcy protection under the United States Bankruptcy Code or any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights to which Borrower voluntarily becomes subject, or the commencement of any involuntary case against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights which case is not dismissed or discharged within ninety (90) days after filing; and
- l. any representations and warranties by Borrower in this Instrument or any Loan Document which is false or misleading in any material respect.

22. **Forbearance Not a Waiver; Rights and Remedies Cumulative.** No delay by Lender in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Lender of any particular provision of the Agreement shall be deemed effective unless in writing signed by Lender. All such rights and remedies provided for herein or which Lender or any other holders of the Note may otherwise have, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. Lender's taking action pursuant to Section 9 or receiving proceeds, awards or damages pursuant to Sections 18 or 19 shall not impair any right or remedy available to Lender. Lender's exercise of any of the rights or remedies under the Loan Documents shall not cure or waive any Event of Default (or notice of default) under the Loan Documents or invalidate any act done pursuant to such notice. Acceleration of



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maturity of the Note, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Note.

**23. Loan Charges.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

**24. Waiver of Statute of Limitations; Waiver of Marshalling.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

**25. Further Assurances.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

**26. Estoppel Certificate.** Borrower shall, at any time and from time to time, upon not less than fifteen (15) calendar days prior notice by Lender, execute, acknowledge and deliver, without charge, to Lender or to any person designated by Lender, a statement in writing certifying that the Agreement is unmodified (or if there has been modifications, identifying the same by the date thereof and specifying the nature thereof), the aggregate principal amount then secured hereby and the aggregate unpaid balance of the Note, that Borrower has not received any notice of default or notice of acceleration or foreclosure of any Loan Document (or, if Borrower has received such notice, that it has been revoked, if such be the case), that to the knowledge of Borrower, no Event of Default exists hereunder (or, if any Event of Default exists, specifying the same and stating that the same has been cured, if such be the case), that Borrower to its knowledge have no claim or offset against Lender (or, if Borrower has any such claim, specifying the same), and the dates to which the interest and the other sums and charges payable by Borrower pursuant to the Note have been paid.

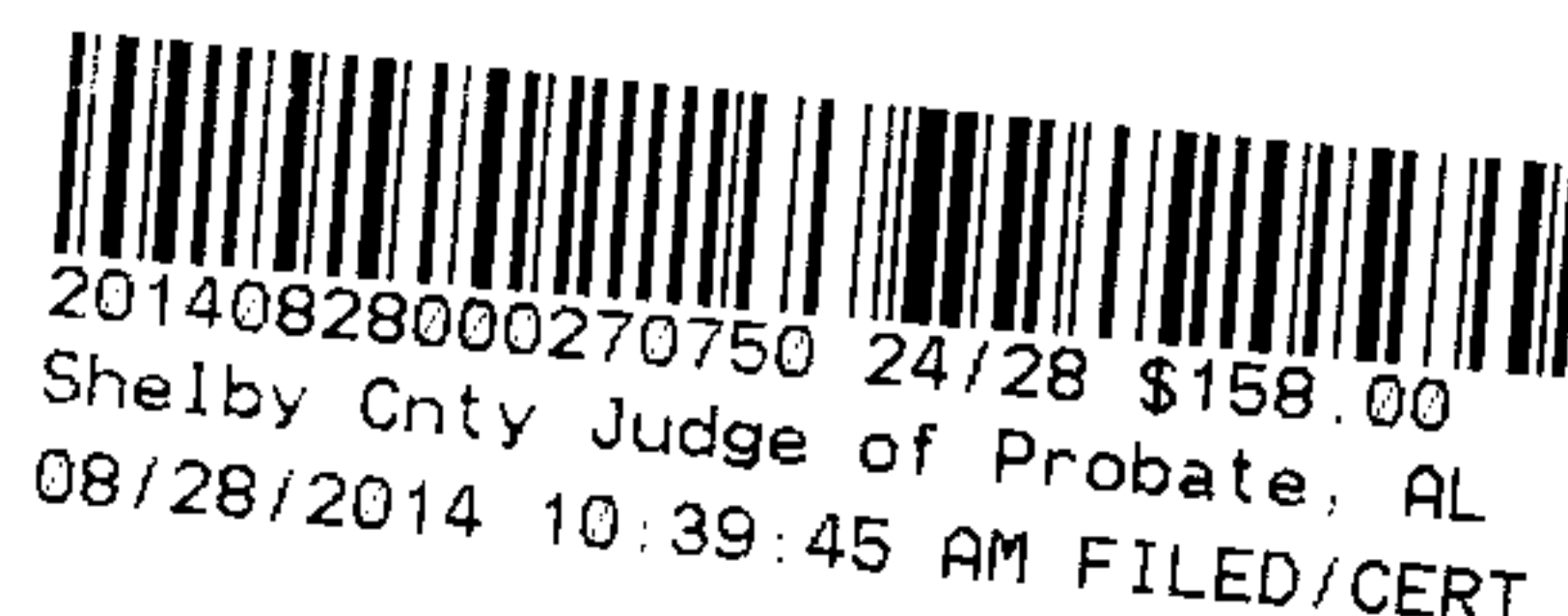
27. **Governing Law; Consent to Jurisdiction and Venue.** Lender and Borrower specifically acknowledge and agree that this Instrument and its interpretation and enforcement are governed by the laws of the state of Alabama. Furthermore, each of Lender and Borrower irrevocably (i) submits to the jurisdiction of any court of the state of Alabama located in Shelby County (the "Property Jurisdiction") for the purpose of any suit, action or other proceeding arising out of the Note (each, a "Proceeding"), (ii) agrees that all claims in respect of any Proceeding may be heard and determined in any such court, (iii) waives, to the fullest extent permitted by law, any immunity from jurisdiction of any such court or from any legal process therein, (iv) agrees not to commence any Proceeding other than in such courts and (v) waives, to the fullest extent permitted by law, any claim that such Proceeding is brought in an inconvenient forum. However, nothing in this Section 27 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

28. **Notices.** All notices, demands and other communications under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. Any party to this Instrument may change the address to which notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 28. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 28, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 28 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

29. **Sale of Note; Change in Services; Loan Servicing.** The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given Notice of the change. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

30. **Single Asset Borrower.** Until the Indebtedness is paid in full and if the Borrower is an entity and not a natural person, Borrower shall not: (a) own any real or personal property other than the Property and personal property related to the operation and maintenance of the Property; (b) operate any business other than the management and operation of the Property; and (c) maintain its assets in a way difficult to segregate and identify.

31. **Successors and Assigns Bound.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 20 shall be an Event of Default.



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32. **Joint and Several Liability.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

33. **Relationship of the Parties; No Third Party Beneficiary.** The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower. No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

34. **Severability; Amendments.** If for any reason any provision of this Instrument is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Instrument will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

35. **Construction.** The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

36. **Disclosure of Information.** Lender may furnish information regarding Borrower or the Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

37. **Subrogation.** If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances hereunder, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**38. Acceleration; Remedies.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any one or more other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall mail a copy of a notice of sale to Borrower in the manner provided in Section 28. Lender shall publish the notice of sale once a week for three consecutive weeks in a newspaper published in Shelby County, Alabama, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of that County. Lender may sell the Property in one or more parcels and in such order as Lender may determine. Lender may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and by re-publication of notice announcing the new sale date. Lender or Lender's designee may purchase the Property at any sale.

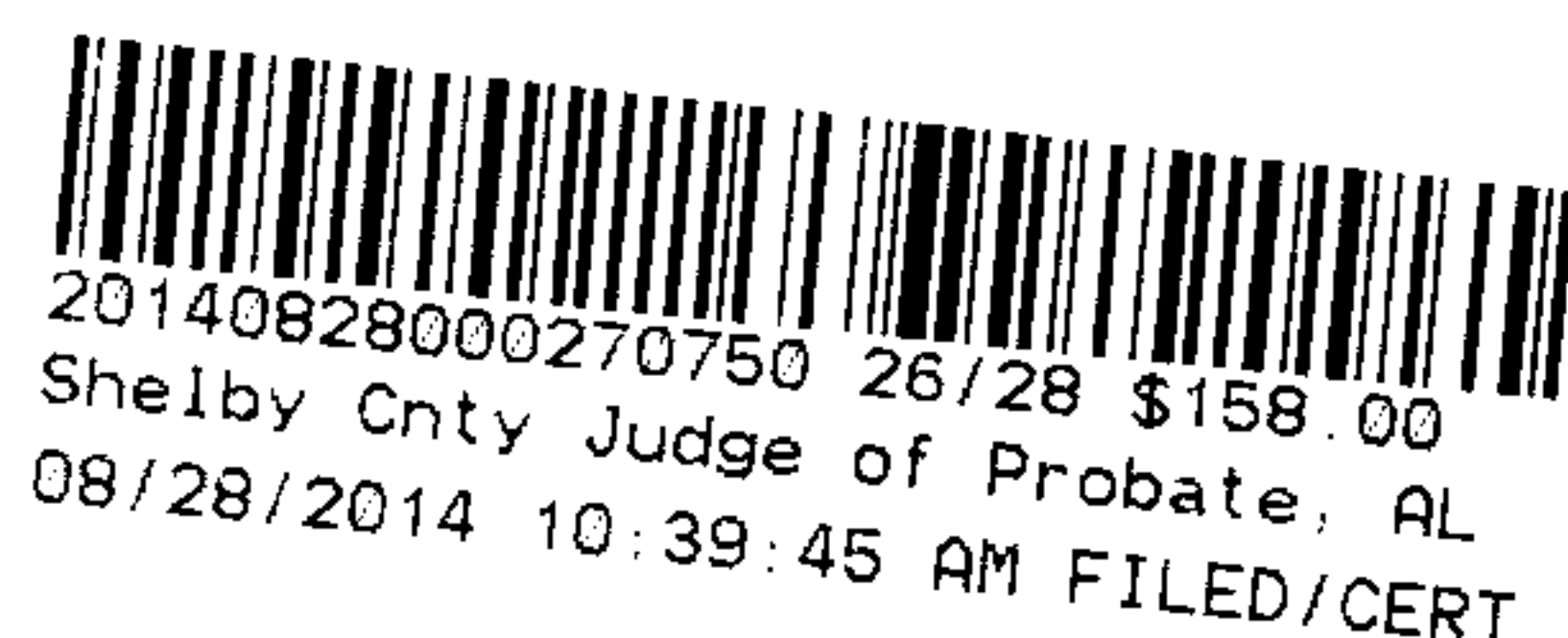
Lender shall deliver to the purchaser Lender's deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in Lender's deed shall be prima facie evidence of the truth of the statements made in those recitals. Borrower covenants and agrees that the proceeds of any sale shall be applied in the following order or as otherwise prescribed by law: (a) to all costs and expenses of the sale, including attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it.

**39. Defeasance.** Upon payment of the Indebtedness, this Instrument shall become null and void, and Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

**40. Waiver of Exemptions.** Borrower waives all rights of exemptions as to personal property. If Borrower is an individual, Borrower represents and warrants to Lender that the Property is not the homestead of Borrower or Borrower's spouse.

**41. Waiver of Trial by Jury.** **BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

*(Signature page follows)*



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**EXHIBIT A  
PROPERTY LEGAL DESCRIPTION**

**Property Address:** 362 Walker Way  
Pelham, AL 35124

**Legal Description:**  
Lot 301, according to the Amended Map of the Village at Stonehaven, Phase 3, First Addition, as recorded in Map Book 28, page 27 in the Probate Office of Shelby County, Alabama.

**Tax Parcel #:** 13-6-23-4-011-001.000

  
20140828000270750 28/28 \$158.00  
Shelby Cnty Judge of Probate, AL  
08/28/2014 10:39:45 AM FILED/CERT

*APD*