


THIS INSTRUMENT WAS PREPARED BY:

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Shelby Cnty Judge of Probate, AL
02/04/2015 01:23:35 PM FILED/CERT



STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGE MODIFICATION AGREEMENT

THIS MORTGAGE MODIFICATION AGREEMENT ("Agreement") made as of January 29, 2015, but having an effective date of December 31, 2014 (the "**Effective Date**"), is entered into by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender")** and **NSH CORP.,** an Alabama corporation (the "**Mortgagor**").

RECITALS

- A. Mortgagor is justly indebted to Lender for a revolving line of credit loan in the principal amount of up to \$13,500,000 (the "**Loan**"), which Loan is evidenced and secured by, *inter alia*, (i) that certain Second Amended and Restated Promissory Note Secured by Mortgage dated December 31, 2013 executed by Mortgagor in favor of Lender (as modified, amended or restated, the "**Existing Note**"), (ii) that certain Credit Facility Agreement dated as of April 29, 2011 between Mortgagor and Lender, as amended by Modification Agreement dated May 26, 2011, as amended by Second Modification Agreement dated January 18, 2012, as amended by Third Modification Agreement dated July 29, 2012, as amended by Fourth Modification Agreement dated August 22, 2012, as modified by Fifth Modification Agreement dated November 16, 2012, as modified by Sixth Modification Agreement dated April 26, 2013, as modified by Seventh Modification Agreement dated September 30, 2013, as modified by Eighth Modification Agreement dated January 13, 2014 and as modified by Ninth Modification Agreement dated September 12, 2014 (as modified, amended or restated, the "**Existing Credit Agreement**"), and (iii) that certain Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated September 12, 2014 from Mortgagor in favor of Lender, recorded as Instrument No. 20140923000297840 in the Office of the Judge of Probate of Shelby County, Alabama (together with all amendments and modifications thereto, the "**Mortgage**"). The Mortgage encumbers the real property described therein (the "**Property**").
- B. Mortgagor, SB Dev. Corp., an Alabama corporation ("**SBDC**") and NSH Nashville, LLC, a Tennessee limited liability company ("**NSH Nashville**" together with Mortgagor and SBDC, individually or collectively, the "**Borrower**") have requested certain modifications to the terms and conditions of the Loan, including, without limitation, the increase of the stated principal amount of the Loan from \$13,500,000 to \$20,000,000 (collectively, the "**Loan Modifications**"), and in conjunction with such Loan Modifications, the Existing Note and Existing Credit Agreement have been amended and restated pursuant to (i) that certain Third Amended

and Restated Promissory Note Secured by Mortgage dated on or about the date hereof from Borrower in favor of Lender (the "Note"), and (ii) that certain Amended and Restated Credit Facility Agreement dated on or about the date hereof between and among Borrower and Lender (the "Credit Agreement").

- C. As an additional requirement to consenting to the Loan Modifications, Lender requires that the Mortgage be modified and amended as hereafter set forth.
- D. The Note, Mortgage, Credit Agreement, this Agreement, the other documents described in the Credit Agreement as "Loan Documents", together with the Indemnity Agreement (as defined in the Credit Agreement), together with all other documents evidencing or securing the Loan, and all modifications and amendments thereto and any document required thereunder or hereunder, are collectively referred to herein as the "Credit Facility Documents".
- E. Each Borrower is affiliated and has substantial though not identical ownership. Borrower operates and manages their businesses as a common enterprise in all material respects. Mortgagor agrees and acknowledges that there is good and sufficient consideration for it to execute this Agreement as an inducement to Lender to enter into the Loan Modifications, and each Borrower will receive direct and indirect benefits, and, therefore, Mortgagor has agreed to execute this Agreement on the terms and conditions hereafter provided.

NOW, THEREFORE, Mortgagor and Lender agree as follows:

- 1. **REPRESENTATIONS AND WARRANTIES.** Mortgagor hereby represents and warrants that no Default, breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Mortgage (as modified by this Agreement) and that all representations and warranties herein and in the Mortgage is true and correct, which representations and warranties shall survive execution of this Agreement.
- 2. **MODIFICATION OF MORTGAGE AND OTHER CREDIT FACILITY DOCUMENTS.** The Mortgage is hereby modified as follows:
 - 2.1 All references in the Mortgage to the Loan in the amount of \$13,500,000 are hereby deleted in their entirety and hereafter all references to the Loan shall mean a loan in the stated principal amount of up to Twenty Million and No/100ths Dollars (\$20,000,000.00). Hereafter all references in the Credit Facility Documents to the Mortgage shall refer to the Mortgage as modified hereby.
 - 2.2 All references in the Mortgage to the "Borrower" or "Borrower(s)" are hereby modified to mean the Borrower as defined in the above Recitals.
 - 2.3 All references in the Mortgage to the "Note" and "Credit Agreement" are modified to refer to the Note and Credit Agreement as defined in the above Recitals.
 - 2.4 All references in the Mortgage to the "Mortgagor" being indebted to Lender for the Loan are hereby modified to mean the Borrower (as defined in the above Recitals) is indebted to Lender for the Loan.
 - 2.5 The definition of "Indebtedness" set forth in the Mortgage is hereby deleted in its entirety, and the following inserted in lieu thereof:

Indebtedness: (i) The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note or the other Loan Documents; (ii) such additional sums, with interest thereon, as may hereafter be borrowed from Mortgagee, its successors or assigns, by the Borrower or then record owner of the Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Mortgagor and Mortgagee that such future indebtedness may be incurred); and (iii) any and all other indebtedness, obligations and liabilities of any kind of the Borrower to Mortgagee,

now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including, but not limited to, indebtedness, obligations and liabilities to Mortgagee of the Mortgagor or Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Mortgagor or Borrower, as principal, surety, endorser, guarantor, accommodation party or otherwise (it being contemplated by Mortgagor and Mortgagee that Borrower may hereafter become indebted to Mortgagee in further sums).

3. **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Mortgagor has previously delivered to Lender all of the relevant formation and organizational documents of Mortgagor, of the partners, members or joint venturers of Mortgagor (if any), and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Mortgagor hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Mortgagor; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were previously delivered to Lender.
4. **NON-IMPAIRMENT.** Except as expressly provided herein, nothing in this Agreement shall alter or affect any provision, condition, or covenant contained in the Mortgage or affect or impair any rights, powers, or remedies of Lender, it being the intent of the parties hereto that the provisions of the Mortgage shall continue in full force and effect except as expressly modified hereby.
5. **MISCELLANEOUS.** This Agreement and the other Credit Facility Documents shall be governed by and interpreted in accordance with the laws of the State of Alabama, except if preempted by federal law. In any action brought or arising out of this Agreement or the Mortgage or other Credit Facility Documents, Mortgagor, and the general partners, members and joint venturers of Mortgagor, hereby consent to the jurisdiction of any federal or state court having proper venue within the State of Alabama and also consent to the service of process by any means authorized by Alabama or federal law. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. All capitalized terms used herein, which are not defined herein, shall have the meanings given to them in the other Credit Facility Documents. Time is of the essence of each term of the Credit Facility Documents, including this Agreement. If any provision of this Agreement or any of the other Credit Facility Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof.
6. **INTEGRATION; INTERPRETATION.** The Credit Facility Documents, including this Agreement, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Credit Facility Documents shall not be modified except by written instrument executed by all parties thereto. Any reference to the Credit Facility Documents includes any amendments, renewals or extensions thereof now or hereafter approved by Lender in writing.
7. **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

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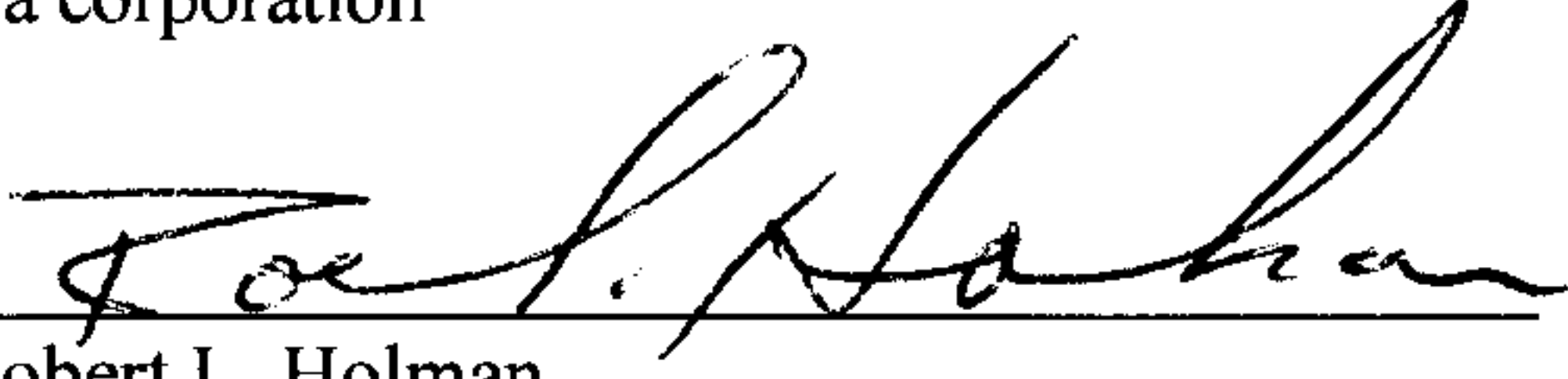
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IN WITNESS WHEREOF, Mortgagor and Lender have caused this Agreement to be duly executed as of the date first above written but to be effective as of the Effective Date.

"MORTGAGOR"

NSH CORP.,
an Alabama corporation

BY:

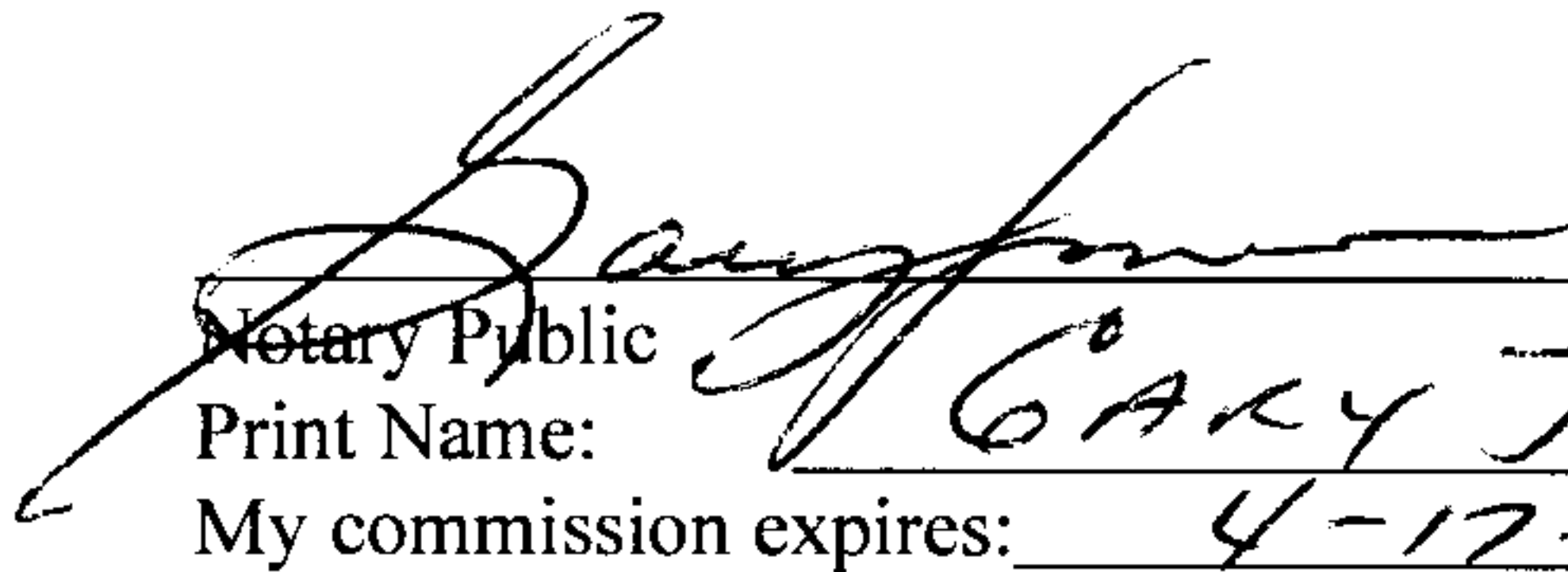

Robert L. Holman
Its Executive Vice President

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert L. Holman whose name as Executive Vice President of NSH Corp., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 29 day of January, 2015.

[NOTARY SEAL]


Notary Public
Print Name: GARY JONES
My commission expires: 4-17-2016

GARY JONES
Notary Public, Alabama State At Large
My Commission Expires April 17, 2016


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"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

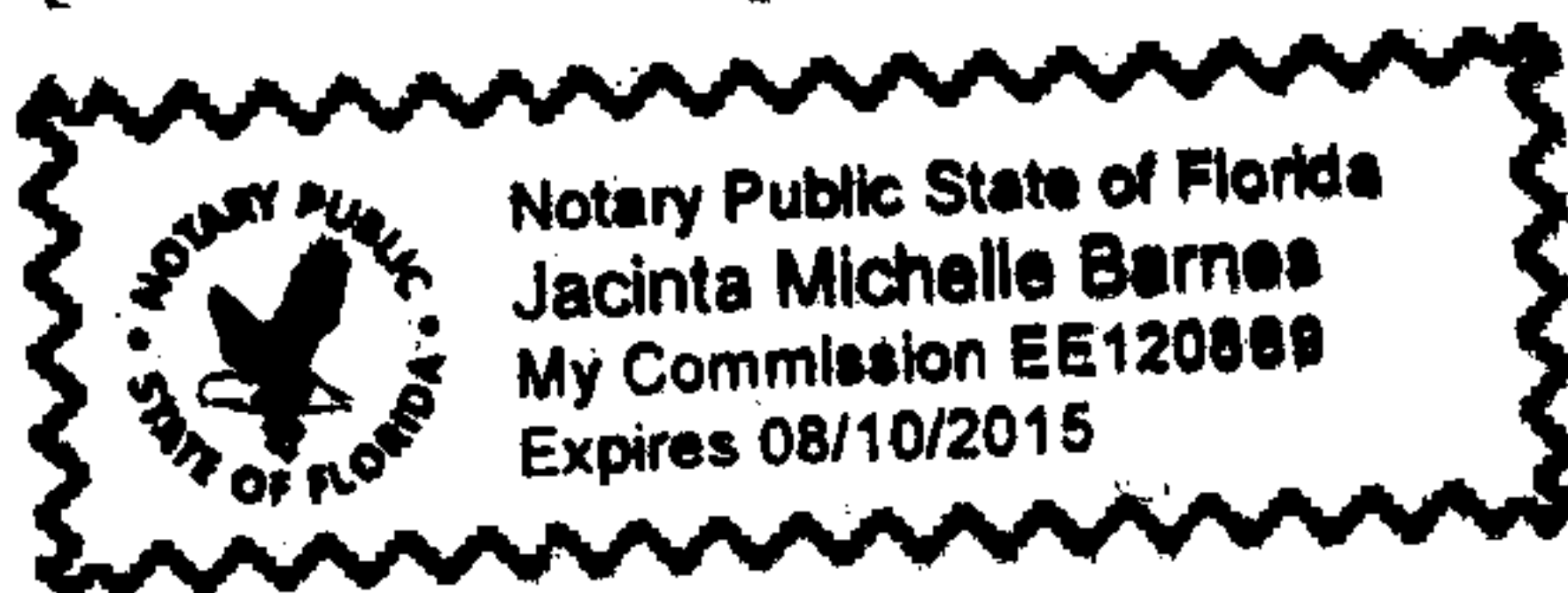
By: Susan S. Beaugrand
Susan S. Beaugrand
Its Senior Vice President

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Susan S. Beaugrand whose name as Senior Vice President of Wells Fargo Bank, National Association, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such Senior Vice President and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal this 28th day of January, 2015.

[NOTARY SEAL]



Jacinta Michelle Barnes
Notary Public
Print Name: Jacinta M. Barnes
My commission expires: 8-10-2015



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