


*This instrument prepared by  
and when recorded return to:*  
Claude McCain Moncus, Esq.  
CORLEY MONCUS, P.C.  
728 Shades Creek Parkway  
Suite 100  
Birmingham, Alabama 35209  
205.879.5959

  
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Shelby Cnty Judge of Probate, AL  
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**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
AND  
SECURITY AGREEMENT**

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT** (this "Mortgage"), made as of the 25<sup>th</sup> day of August, 2015, by **THE VILLAGE AT HIGHLAND LAKES, INC.**, an Alabama corporation (hereinafter called the "Mortgagor"), *mortgagor*, whose mailing address is 2700 Highway 280 South, Suite 425, Birmingham, Alabama 35223, Attn: Douglas D. Eddleman, in favor of **SERVISFIRST BANK**, an Alabama banking corporation (hereinafter called the "Lender"), *mortgagee*, whose mailing address is 850 Shades Creek Parkway, Suite 200, Birmingham, Alabama 35209, Attn: Wilson T. Holifield.

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ARTICLE 9-A OF THE UNIFORM COMMERCIAL CODE, CODE OF ALABAMA, 1975, AS AMENDED.**

**RECITALS**

A. Mortgagor is justly indebted to Lender for borrowed money in the principal sum of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) (the "Loan"), as evidenced by one or more promissory notes of even date herewith from Mortgagor, payable to Lender in installments with interest thereon (said promissory notes, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note") (the Note, together with this Mortgage, any amendments, modifications, and replacements hereof or thereof, and all other documents now or hereafter evidencing or securing the Note and all certificates, documents, and instruments now or hereafter executed by Mortgagor in favor of Lender, are collectively referred to herein as the "Loan Documents").

B. This is a FUTURE ADVANCE MORTGAGE and the Note evidences proceeds of which are to be advanced by the Lender to the Mortgagor pursuant to a Loan Agreement to be entered into of even date herewith (the "Loan Agreement"), and, in addition to the indebtedness evidenced by the Note, this Mortgage shall also secure all other indebtedness, obligations and liabilities of the Mortgagor to the Lender, whether now existing or hereafter arising.



C. As a condition precedent to making the Loan, Lender has required that Mortgagor execute this Mortgage as security for the Loan.

D. Mortgagor has agreed to grant to Lender a Mortgage, Assignment of Rents and Leases and Security Agreement on the property described in Exhibit "A" attached hereto and made a part hereof.

E. All capitalized terms used, but not specifically defined, in this Mortgage shall have the meaning given to them in the Loan Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the sum of Ten Dollars (\$10.00), and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Mortgagor under the Note, this Mortgage and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Mortgagor has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto Lender, its successors and assigns, all of the foregoing described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (which property is hereinafter referred to collectively as the "Premises"):

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

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


(c) All goods, equipment, inventory, supplies and other items or types of tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by the Mortgagor and attached to the Premises (other than fixtures); or placed on the Premises and used or useful in connection with, or in any way pertaining or relating to, the Premises or the use and occupancy thereof, though not attached to the Premises; or for which the proceeds of the Secured Indebtedness has been or may be advanced, wherever the same may be located; and

(d) All policies of hazard insurance now or hereafter in effect that insure the Premises, or any

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Improvements, or any other property conveyed or encumbered hereby, together with all right, title and interest of the Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums; and

(e) All rents, issues, profits and revenues of the Premises from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same, reserving only the right to Mortgagor to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

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

(g) All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to the Mortgagor or any subsequent owner of the Premises, or the Improvements, or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Premises, or the Improvements, or any other such property; and

(h) (1) All general intangibles relating to the development or use of the Premises, the Improvements or any other property conveyed or encumbered hereby, or the management and operation of any business of the Mortgagor thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Premises, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Premises, the Improvements or any other property conveyed or encumbered by this Agreement, or used or useful in connection therewith, whether now or hereafter entered into; and


(i) All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing; AND

(j) All proceeds of any of the foregoing.

**TO HAVE AND TO HOLD** the Premises and all parts thereof unto Lender, its successors and assigns forever, subject however to the terms and conditions herein set forth;

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**PROVIDED, HOWEVER,** that, if the Mortgagor shall pay to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor and shall keep, perform, and observe all and singular the covenants and promises in the Note and in each of the Loan Documents expressed to be kept, performed, and observed by and on the part of Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

**AND** Mortgagor covenants and agrees with Lender as follows:

## **ARTICLE I - GENERAL**

1.01 **Performance of Note and Mortgage.** Borrower will perform, observe, and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower.


1.02 **Warranty of Title.** Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever,

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

(a) Mortgagor shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever, (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Mortgagor shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Mortgagor has given prior written notice to Lender of Mortgagor's intent to so contest or object, and unless (i) Mortgagor shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Premises, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Mortgagor

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shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Mortgagor shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with the Note, and this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note, or this Mortgage.

(c) Mortgagor shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 1.04, below; and all utility charges which are incurred by Mortgagor for the benefit of the Premises, or which may become a charge or lien against the Premises for gas, electricity, water and sewer services and the like furnished to the Premises, and all other public or private assessments or charges of a similar nature affecting the Premises or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Mortgagor shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) Mortgagor shall not suffer or allow any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Premises; provided, however, that Mortgagor may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

#### 1.04 **Insurance.**


(a) Mortgagor shall procure for, deliver to and maintain for the benefit of Lender during the term of this Mortgage, certificates of insurance evidencing paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable endorsement in favor of Lender, providing the following types of insurance covering the Premises and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) to the extent any improvements are located on the Property, insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Premises without deduction for depreciation, nor less than the amount of Loan, and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury", including without limitation bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford immediate

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minimum protection to a limit of not less than \$1,000,000 with respect to personal injury or death to any one or more persons or damage to property;

(iii) worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Mortgagor engaged on or with respect to the Premises, in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;

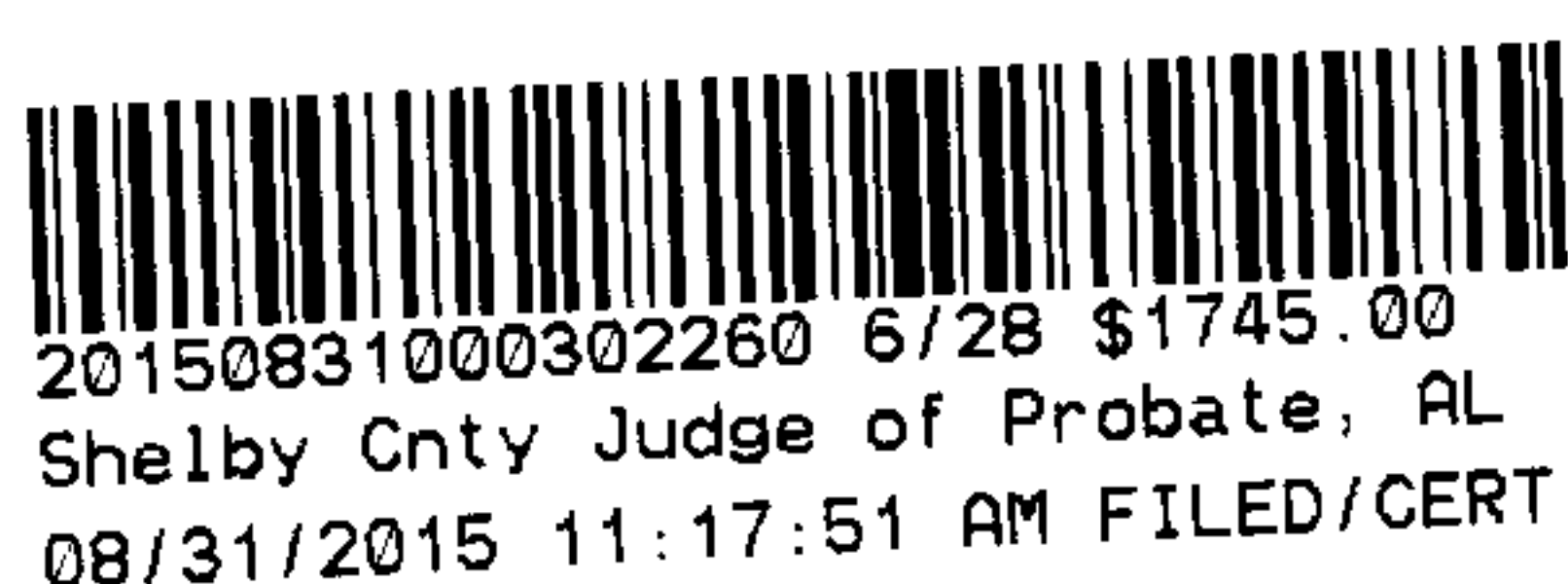
(iv) to the extent any improvements are located on the Property and are rented, business interruption or rental continuation insurance in such amounts as Lender may require; and

(v) such other insurance on the Premises or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

(b) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor.

(c) Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under this Section 1.04, and Mortgagor does hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Mortgagor or to Mortgagor and Lender jointly, Mortgagor agrees immediately to endorse and transfer such proceeds to Lender to the extent of Lender's interest therein. Upon the failure of Mortgagor to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsement or transfers for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender as Mortgagor's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair and restoration of the property so damaged, without affecting the lien of this Mortgage, or Lender may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys then remaining shall be paid to Mortgagor.

(d) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.04, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. If requested by Lender, Mortgagor shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or Lender, and Lender is hereby irrevocably appointed by Mortgagor as attorney-in-fact for Mortgagor to





assign any such policy to said purchaser or to Lender without accounting to Mortgagor for any unearned premiums thereon.


(e) All policies of insurance required pursuant to the terms of this Section 1.04 shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope of limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Lender evidence of policies of insurance required by this Section 1.04, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by Mortgagor, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.05 **Monthly Deposits.** If hereafter required by applicable banking regulatory authority, or otherwise at the option of Lender, Mortgagor shall, upon request of Lender, deposit with Lender, on the due date of each installment under the Note, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments and insurance premiums as estimated by Lender to be sufficient to pay such charges; said deposits to be held and to be used by Lender to pay current taxes and assessments, insurance premiums and other charges on the Premises as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Lender; Lender agrees to deposit such funds in an interest-bearing account acceptable to Mortgagor and Lender, and to pay such interest to Mortgagor upon the payment in full of the sums secured by this Mortgage. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Mortgagor will deposit with Lender such additional sums or sums as may be required in order for Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any default in the provisions of this Mortgage or the Note, or any instrument evidencing, securing or in any way related to the Secured Indebtedness, Lender may, at its option, apply any money in the fund relating from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.06 **Condemnation.** If all or any Material Part (as herein defined) of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the indebtedness secured hereby shall at the option of Lender become immediately due and payable. For purposes hereof, a "Material Part" of the Premises shall be any part thereof, which, if damaged or taken, shall prevent the cash flow available from the remaining portions of the Premises after such taking from supporting the remaining debt secured hereby is substantially the same ratio of coverage as the debt is being supported prior to such damage or taking. Mortgagor, immediately upon the obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Premises or any part thereof, will notify Lender, and Lender is hereby authorized, at its option to commence, appear in and prosecute, through counsel selected by Lender, in its own name or in Mortgagor's name, any action or proceeding relating to any condemnation. Mortgagor may compromise or settle any claim for compensation but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of Lender. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to

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Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittance therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds of all its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair or restoration of the Premises taken, or may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys shall be paid to Mortgagor.

1.07 **Care of Premises.**

(a) Mortgagor will keep the buildings (if any), parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) Mortgagor will not remove, demolish or alter the structural character of any Improvement located on the Land without the written consent of Lender, nor make or permit use of the Premises for any purpose other than for which the same are now used.

(c) If the Premises or any part thereof is damaged by fire or any other cause, Mortgagor will give immediate written notice thereof to Lender.

(d) Lender or its representative is hereby authorized to enter upon and inspect the Premises during normal business hours.

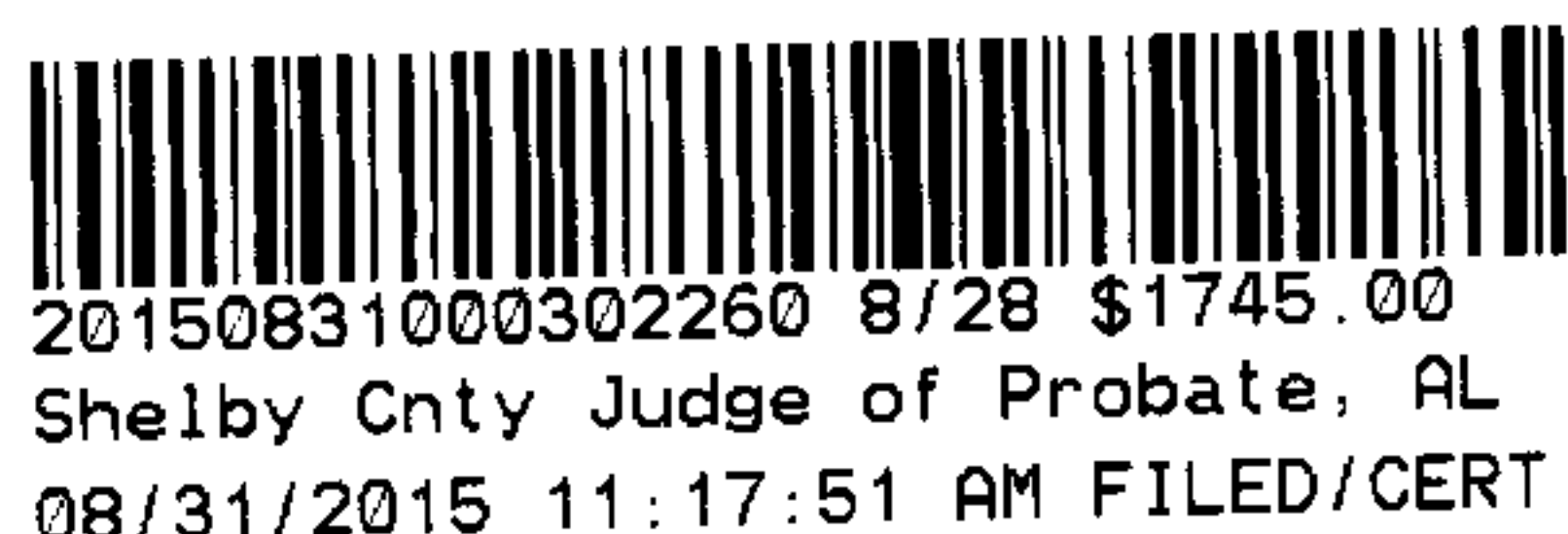
(e) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, Mortgagor will promptly restore the Premises to the equivalent of its original condition; and if a part of the Premises shall be damaged through condemnation, Mortgagor will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to Lender. Notwithstanding the foregoing, Mortgagor shall not be obligated so to restore unless in each instance Lender agrees to make available to Mortgagor any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Mortgagor of its obligation to restore. In the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, Mortgagor shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises (as determined by Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.08 **Leases.** Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Premises or any part thereof (if any). If requested by Lender, Mortgagor will furnish Lender with

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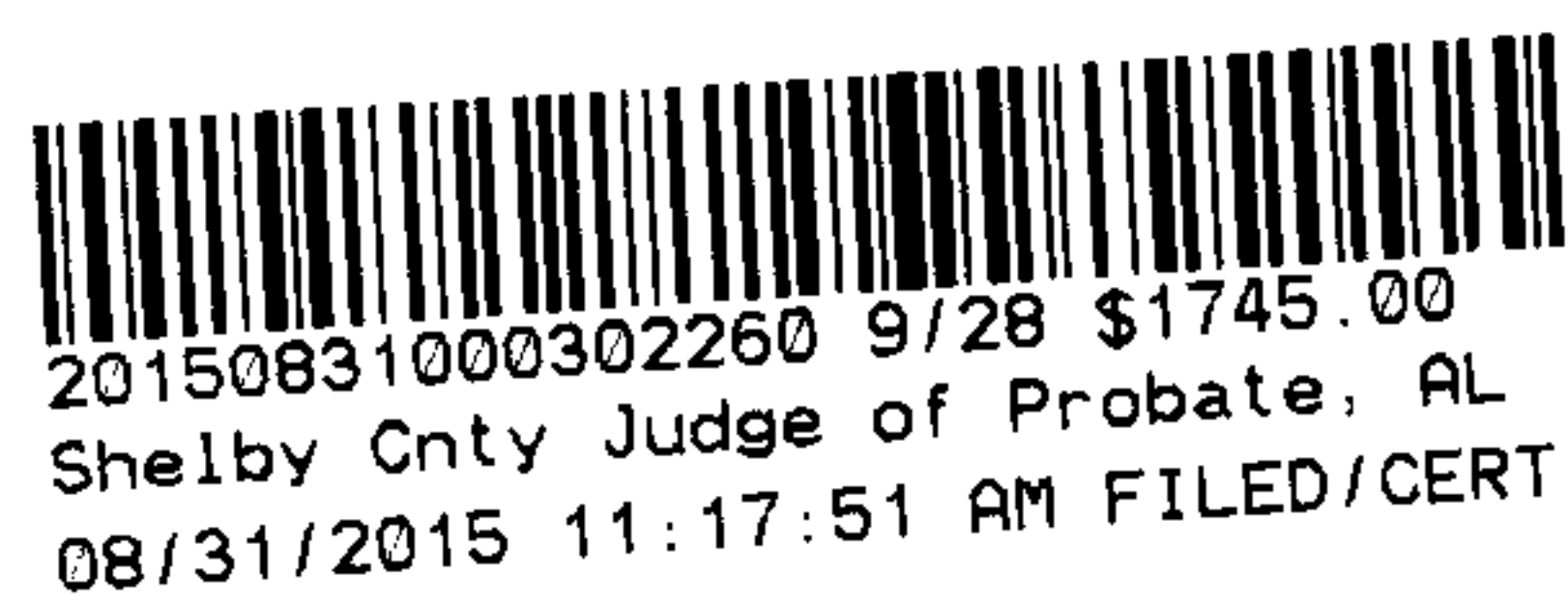
executed copies of all leases now or hereafter created with respect to all or any part of the Premises, and will enter into leases only upon a lease form previously approved by Lender and for a fair market rental, unless Mortgagor first obtains Lender's written approval of changes to such form or the execution of a lease not on such form. If requested by Lender, Mortgagor will separately assign to Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the Premises from time to time accruing.

1.09 **Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Mortgagor hereby grants to Lender a security interest in said personal property. If required by Lender, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Mortgagor and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Mortgagor and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any awareness in eminent domain proceedings for taking or for loss of value, or (iii) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Mortgagor will promptly upon demand reimburse Lender for the costs therefor.

1.10 **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Lender, Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds of trusts, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the

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obligations of Mortgagor under the Note, and under this Mortgage, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

1.11 **Indemnity; Expenses.** Mortgagor will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Mortgagor will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Premises, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that Mortgagor shall not be required to indemnify Lender for matters directly caused by Lender's gross negligence or willful misconduct.

1.12 **Estoppel Affidavits.** Upon ten (10) days prior written notice, Mortgagor shall furnish to Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.


1.13 **Subrogation.** To the full extent of the Secured Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby preserved and shall pass to and be held by Lender as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that the same may be satisfied and canceled of record.

1.14 **Books, Records, Accounts and Reports.**

(a) Mortgagor shall keep and maintain or shall cause to be kept and maintained, at Mortgagor's cost and expense, and in accordance with standard accounting principles, proper and accurate books, records and accounts reflecting all items of income and expense in connection with any services, equipment or

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furnishings provided in connection with the operation of the Premises. Lender, by Lender's agents, accountants and attorneys, shall have the right from time to time to examine such books, records and accounts at the office of Mortgagor or such other person or entity maintaining such books, records and accounts, to make such copies or extracts thereof as Lender shall desire, and to discuss Mortgagor's affairs, finances and accounts with Mortgagor and with the officers and principals of Mortgagor, at such reasonable times as may be requested by Lender.

(b) For as long as any portion of the Secured Indebtedness shall remain outstanding, Mortgagor will provide to Lender the financial information as required in the Loan Agreement.

The delivery of each of the financial statements required herein shall constitute Mortgagor's contemporaneous certification that (i) Mortgagor has complied with and is in compliance with all terms, covenants and conditions of this Mortgage which are binding upon it, and; (ii) there exists no Event of Default as defined in this Mortgage and no event which with the giving of notice or lapse of time, or both, would constitute such an Event of Default; or, if such is not the case, that one or more specified Events of Default have occurred, and; (iii) the representations and warranties contained in this Mortgage are true with the same affect as though made on the date of such certificate.

1.15 **Licenses and Permits Obtained.** Mortgagor represents and warrants that all necessary permits, licenses and certificates have been obtained to permit Mortgagor to operate the Premises in the manner contemplated, and Mortgagor will maintain in effect all such licenses, permits, and certificates, together with any other agreements necessary for the use and operation of the Premises.

1.16 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.16 shall control every other provision of this Mortgage and of the Note.

1.17 **Default Affidavits.** Upon the occurrence of any default hereunder, at Lender's request, Mortgagor shall deliver an affidavit specifying the nature of such default and the period of existence thereof and the action Mortgagor has taken or proposes to take with respect thereto.

1.18 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Note, or any of the Loan Documents, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), Mortgagor shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.



1.19 **Compliance with Zoning and Restrictions.** Mortgagor shall at all times operate the Premises in accordance with all applicable restrictions and zoning ordinances.

1.20 **Conveyance of Premises.** Mortgagor shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Premises or any ownership interests of Mortgagor without the prior written consent of Lender; except for Lots sold and released from this Mortgage, as set forth in the Loan Agreement. Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of Mortgagor or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of Lender the Secured Indebtedness shall be immediately due and payable in the event that Mortgagor conveys all or any portion of the Premises or any interest therein, or in the event that Mortgagor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.21 **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or asbestos, or oil, or hazardous substances, including without limitation the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 *et seq.*, the Clean Air Act, as amended 42 U.S.C. §§ 7401 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j; the terms "hazardous substance" and "release" means all pollutants, effluents, contaminants, emissions, toxic or hazardous wastes and other substances, the removal of which is required or the manufacture, use, maintenance, handling, discharge or release of which is regulated, restricted, prohibited or penalized by any Governmental Requirement, or even if not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property or the environment on which it is located or the occupants of the property adjacent thereto, including (1) asbestos or asbestos-containing materials, (2) urea formaldehyde foam insulation, (3) polychlorinated biphenyls (PCBs), (4) flammable explosives, (5) radon gas, (6) laboratory wastes, (7) experimental products, including genetically engineered microbes and other recombinant DNA products, (8) petroleum, crude oil, natural gas, natural gas liquid, liquefied natural gas, other petroleum products and synthetic gas usable as fuel, (9) radioactive materials, (10) ionizing radiation, and other non-ionizing radiation, pesticides, defoliants and corrosives and (11) any substance or mixture listed, defined or otherwise determined by any Governmental Authority to be hazardous, toxic or dangerous, or otherwise regulated, affected, controlled or giving rise to liability under any Governmental Requirement. Mortgagor represents and warrants to Lender that neither the Premises nor Mortgagor are in violation of or subject to any existing, pending or, to the best of Mortgagor's knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises; that Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Premises by reason of any Applicable Environmental Law; that Mortgagor has taken all steps necessary to determine and has determined that no

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asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Premises; and that the use which Mortgagor has made, makes or intends to make of the Premises will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Premises. Mortgagor agrees to notify Lender in the event that any governmental agency or other entity notifies Mortgagor that it may not be in compliance with any Applicable Environmental Laws. Mortgagor agrees to permit Lender to have access to the Premises at all reasonable times in order to conduct any tests which Lender deems are necessary to ensure that Mortgagor and the Premises are in compliance with all Applicable Environmental Laws. Mortgagor acknowledges that, pursuant to that certain Environmental Indemnity of even date herewith, it has agreed to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Premises and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorney's fees and expenses arising from the application of any such Applicable Environmental Law to the Premises or Lender, and that such Environmental Indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure; provided, however, that such Environmental Indemnity shall not extend to acts of Lender which result in such fines, charges, fees, expenses, damages, losses, liabilities, or response costs.

1.22 **Appraisals.** At Lender's request, Mortgagor will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Premises at any time and from time to time, and Mortgagor will cooperate with and provide any information requested in connection with such appraisals. At any time while the Secured Indebtedness remains outstanding, Lender may have the Premises reappraised at Mortgagor's expense if (i) an Event of Default shall then exist under the Loan Documents, or (ii) such appraisal shall be required by any regulatory guideline or authority to which Lender is subject, or (iii) Lender shall have determined, in the exercise of its sole discretion, that the aggregate value of the Premises has materially declined since the date of the last such appraisal, or (iv) Lender shall have determined, in the exercise of its sole discretion, that a material adverse change in the financial condition of Mortgagor has occurred; provided that Mortgagor shall in no event be responsible for the cost of more than one such reappraisal during any twelve (12) month period.

1.23 **Future Advances.** Lender, at its option, may make future advances to the Mortgagor, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Note. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of Mortgagor, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.24 **Representations and Warranties.** Mortgagor represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Mortgagor, that:

(a) There are no actions, suits, or proceedings pending or, to the best of Mortgagor's knowledge, threatened, which might adversely affect the financial condition of Mortgagor or any guarantor or which might

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impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Neither Mortgagor nor any guarantor is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on Mortgagor's or such guarantor's business or assets, and neither Mortgagor nor any guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Mortgagor or such guarantor is subject. Neither the execution nor the performance of this Mortgage, the Note, or any other Loan Document will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Mortgagor or any guarantor.

(b) All financial statements of Mortgagor and other business enterprises in which Mortgagor has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of its respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or persons to which it pertains, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(c) All utility and sanitary sewage services necessary for the use of the subdivided lots located within the Premises and all roads necessary for the use of the subdivided lots located within the Premises are available pursuant to permanent private or public easements which are not subject to the exclusive rights of any other persons which could interfere with Mortgagor's use thereof.

(d) There are no proceedings pending, or, to the best of Mortgagor's knowledge, threatened, to acquire by power of condemnation or eminent domain any portion of the Premises, or any interest therein, or to enjoin or similarly prevent the use of any of the Premises as presently used.

(e) All documents furnished to Lender by or on behalf of Mortgagor as part of or in support of the loan application or pursuant to any commitment letter issued by Lender are true, correct, and complete and accurately represent the matters to which they pertain.

(f) The Premises do and shall at all times comply with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations to zoning, building codes, set back requirements and environmental matters.

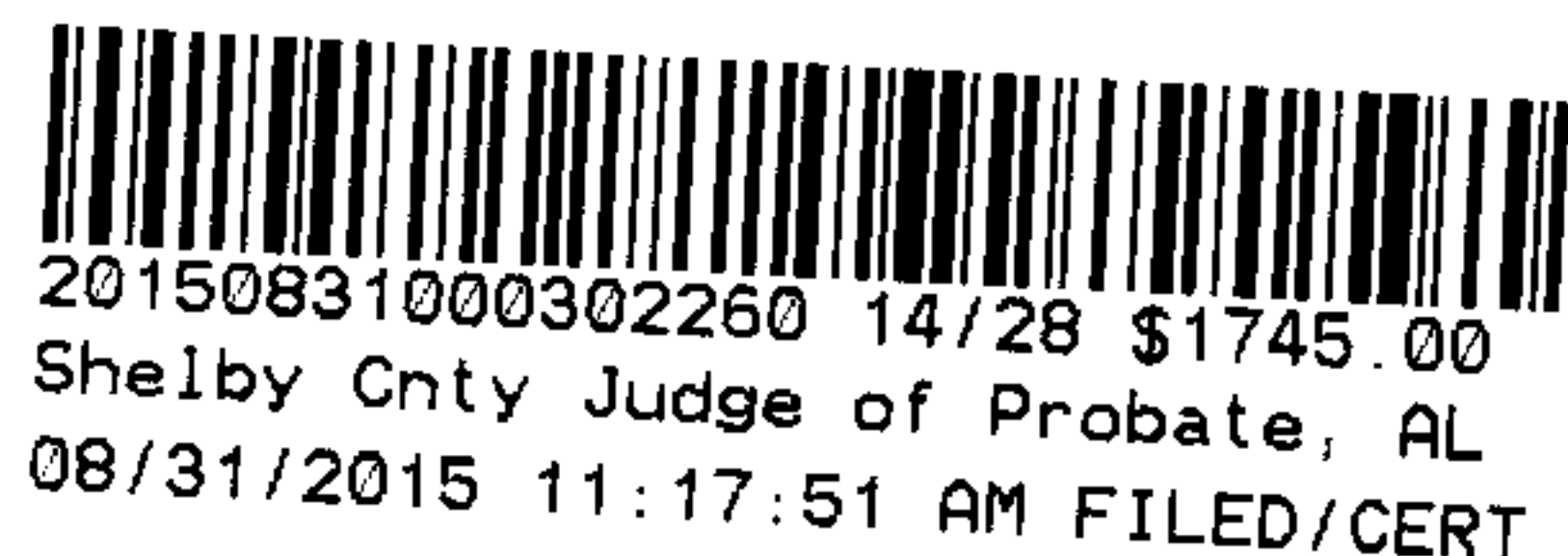
(g) Mortgagor is a duly organized and validly existing Alabama corporation having full power and authority to consummate the transactions contemplated by the Loan Documents.

## ARTICLE II - ASSIGNMENT OF RENTS AND LEASES

2.01 **Assignment.** Mortgagor, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Mortgagor, including but not limited to reasonable attorney's fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Agreement and in the Loan Documents, does hereby sell, assign and transfer unto the Lender all leases and

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subleases of all or part of the Mortgaged Property, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases and agreements, and all the avails thereof, to the Lender, and the Mortgagor does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 **Prepayment of Rent.** The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

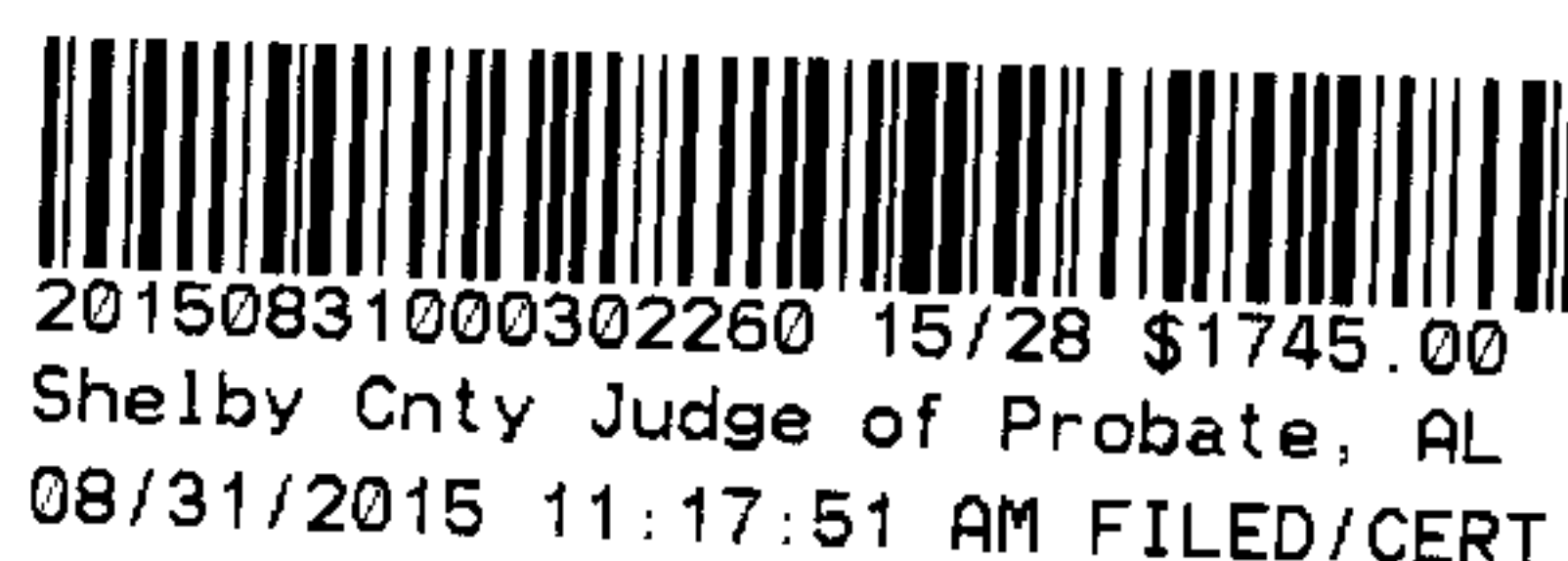
2.03 **Not Mortgagee In Possession; No Liability.** Nothing herein contained shall be construed as constituting the Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Mortgagor.

2.04 **Present Assignment.** Although it is the intention of the parties that this assignment of rents and leases shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Lender shall not exercise any of the rights and powers conferred upon it in this Article II until and unless an Event of Default shall occur under this Mortgage.

2.05 **No Obligation of Lender Under Leases.** The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Mortgagor shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or

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demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements, the Mortgagor agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorney's fees immediately upon demand, and until the same are fully reimbursed by the Mortgagor, all such costs, expenses and attorney's fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 **Instruction to Lessees.** The Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

2.07 **Default (Assignment).** Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

### ARTICLE III - SECURITY AGREEMENT

3.01 **Grant of Security Interest.** Mortgagor (the "Debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "Secured Party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Mortgagor, including but not limited to attorney's fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Agreement, in the Loan Documents, and in the other Indebtedness Instruments, does hereby grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral").

3.02 **Definitions.** All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein.

3.03 **Financing Statements.** No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Mortgagor and Lender. At the Lender's request, the Mortgagor will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Lender to be necessary or desirable. The Mortgagor authorizes the Lender to prepare and to file financing statements covering the Collateral signed only by the Lender and to sign the Mortgagor's signature to such financing statements in jurisdictions where Mortgagor's signature is required. The Mortgagor promises to pay to the Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.



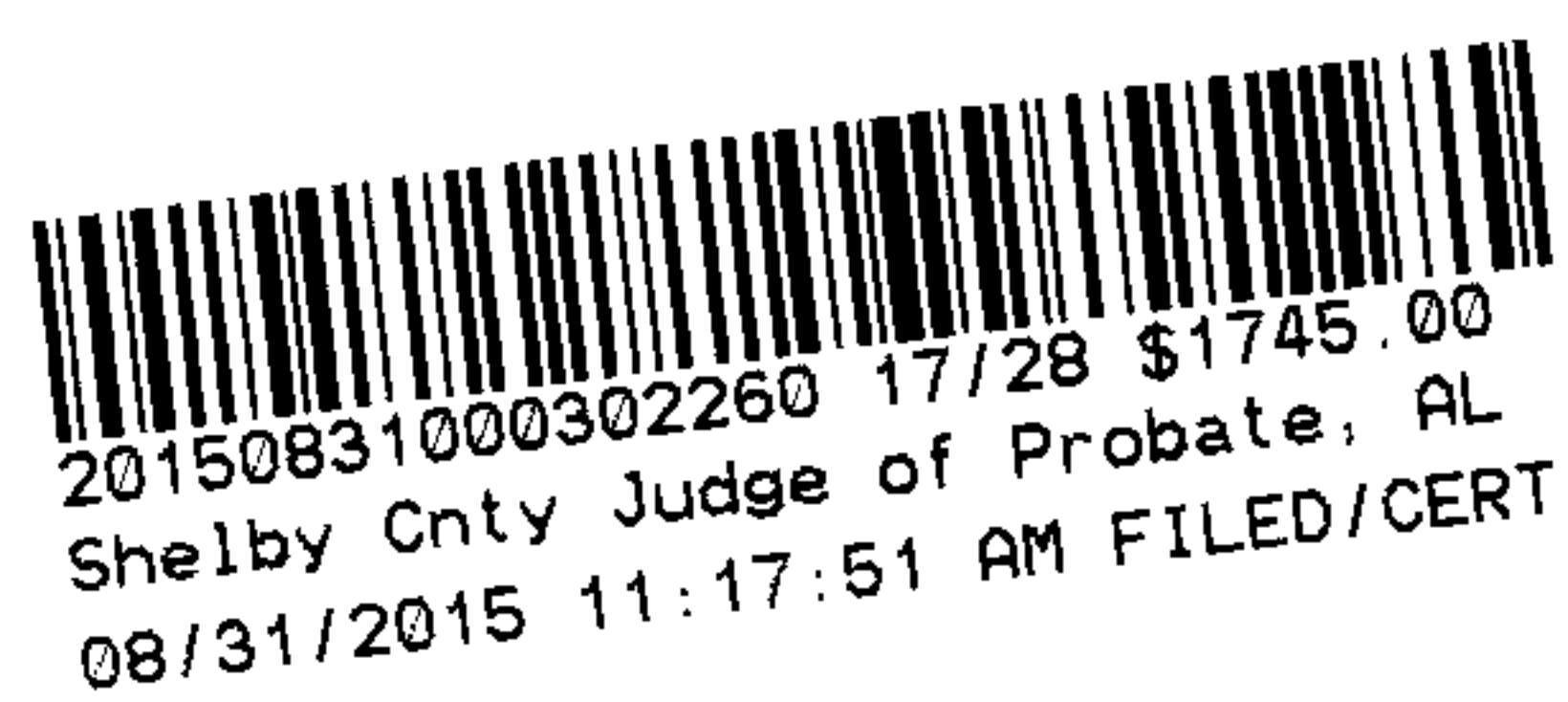
3.04 **Representations of Mortgagor (Collateral).** With respect to all of the Collateral, Mortgagor represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;
- (b) If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Note which Lender may disburse directly to the seller, contractor, or subcontractor;
- (c) All the Collateral will be kept at the address of Mortgagor shown in Paragraph 5.05 or, if not, at the real property described in Exhibit "A" hereto. Mortgagor shall promptly notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Mortgagor's business, Mortgagor, its agents or employees will not remove the Collateral from said location without the prior written consent of the Lender;
- (d) If certificates of title are issued or outstanding with respect to any of the Collateral, the Mortgagor shall cause the Lender's interest to be properly noted thereon; and
- (e) Mortgagor's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Lender. Mortgagor shall promptly advise the Lender in writing of any change in Mortgagor's name.

3.05 **Assignment of Liabilities.** If at any time or times by sale, assignment, negotiation, pledge or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

3.06 **Default (Security Agreement).** Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

3.07 **Fixture Filing.** This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9-A of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in the granting clause. The Mortgagor is the debtor, and the Lender is the secured party. The names of the debtor (Mortgagor) and the secured party (Lender) are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtor ("Grantor") as a fixture filing. The mailing address of the Lender set out in Section 5.05 is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in Section 5.05 is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in the granting clause. The real estate to which the goods are or are to be affixed is described in Exhibit "A." The Mortgagor is a record owner of the real estate.





## ARTICLE IV - EVENTS OF DEFAULT AND REMEDIES

4.01 **Events of Default.** The terms “Event of Default” or “Events of Default,” wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure of Mortgagor (i) to make any scheduled payment of interest or principal under the terms of the Note on or before the due date thereof, or (ii) to pay any other sum due, whether by acceleration or otherwise, under the terms of any Loan Document within ten (10) days after written demand therefor by Lender (in each case, a “Monetary Default”); or

(b) The failure of Mortgagor properly and timely to perform or observe any covenant or condition set forth in any Loan Document (other than a Monetary Default) which is not cured within any applicable cure period as set forth herein or, if no cure period is specified therefor, is not cured within thirty (30) days of Lender’s notice to Mortgagor of such Default; or

(c) The occurrence of any “Event of Default” under, and as defined in, any other Loan Document.

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

4.03 **Right to Enter and Take Possession.**

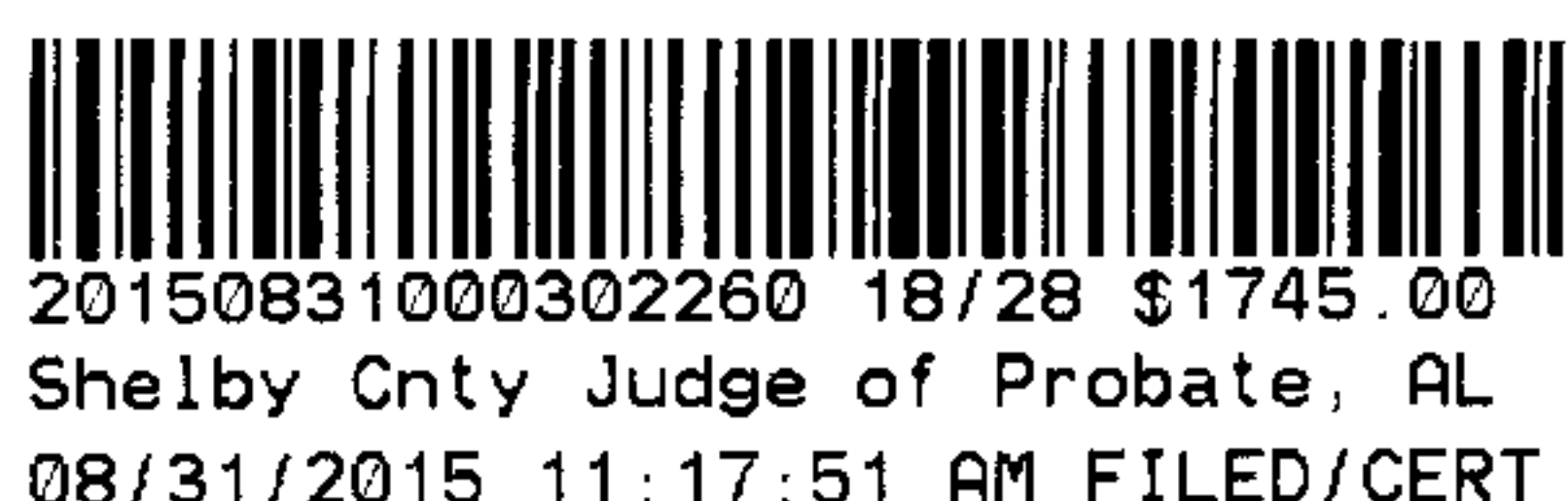
(a) If an Event of Default shall have occurred and be continuing, Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor;

(b) If Mortgagor shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Premises to Lender. Mortgagor will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers

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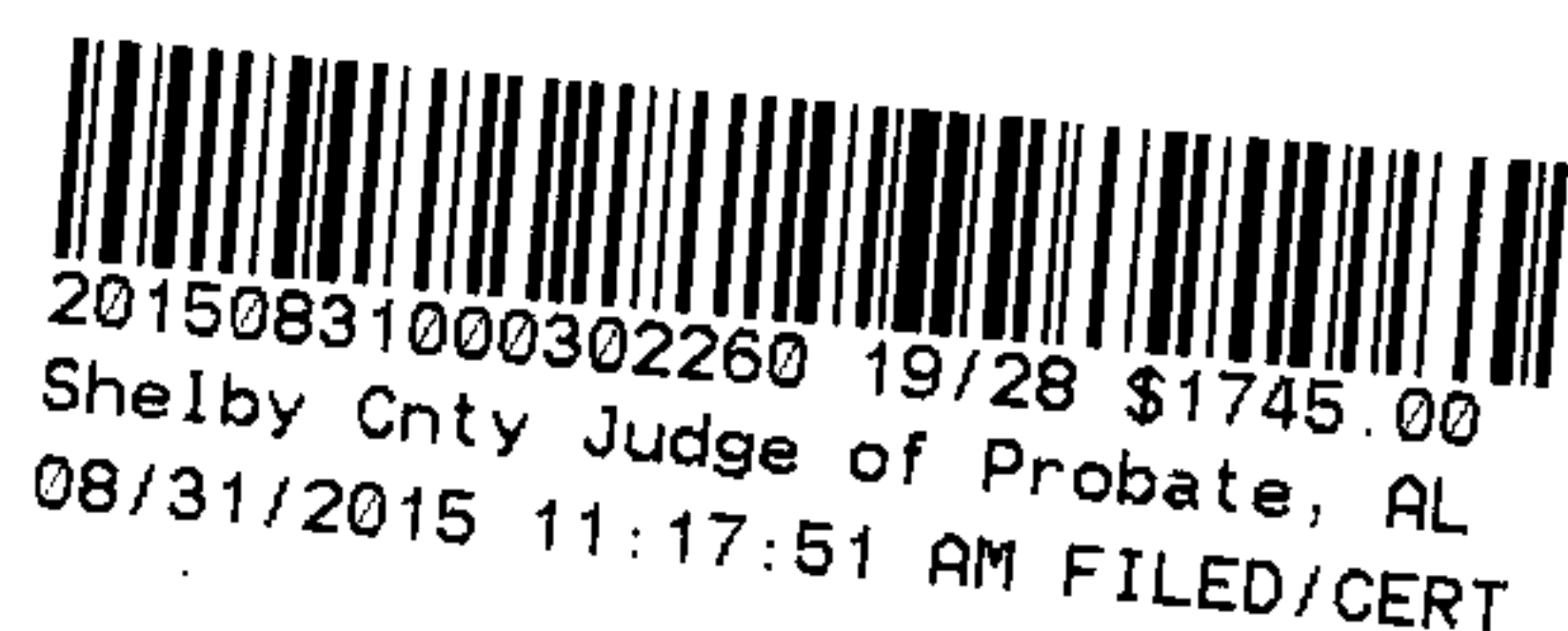


herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed by such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 4.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Mortgagor, its successors and assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 **Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holder under Mortgagor. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

4.05 **Receiver.** If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Mortgagor will pay unto Lender upon demand all expenses, including reasonable receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 4.05, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.





4.06 **Lender's Power of Enforcement and Power of Sale.**

(a) If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note, or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, at public outcry to the highest bidder for cash in front of the Court House door in the county where the property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed, as an entirety or in separate lots or parcels, as provided by applicable law, to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

4.07 **Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.


4.08 **Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Premises, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees (attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

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

4.10 **Waiver of Appraisement, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the delivery of possession thereof

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immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

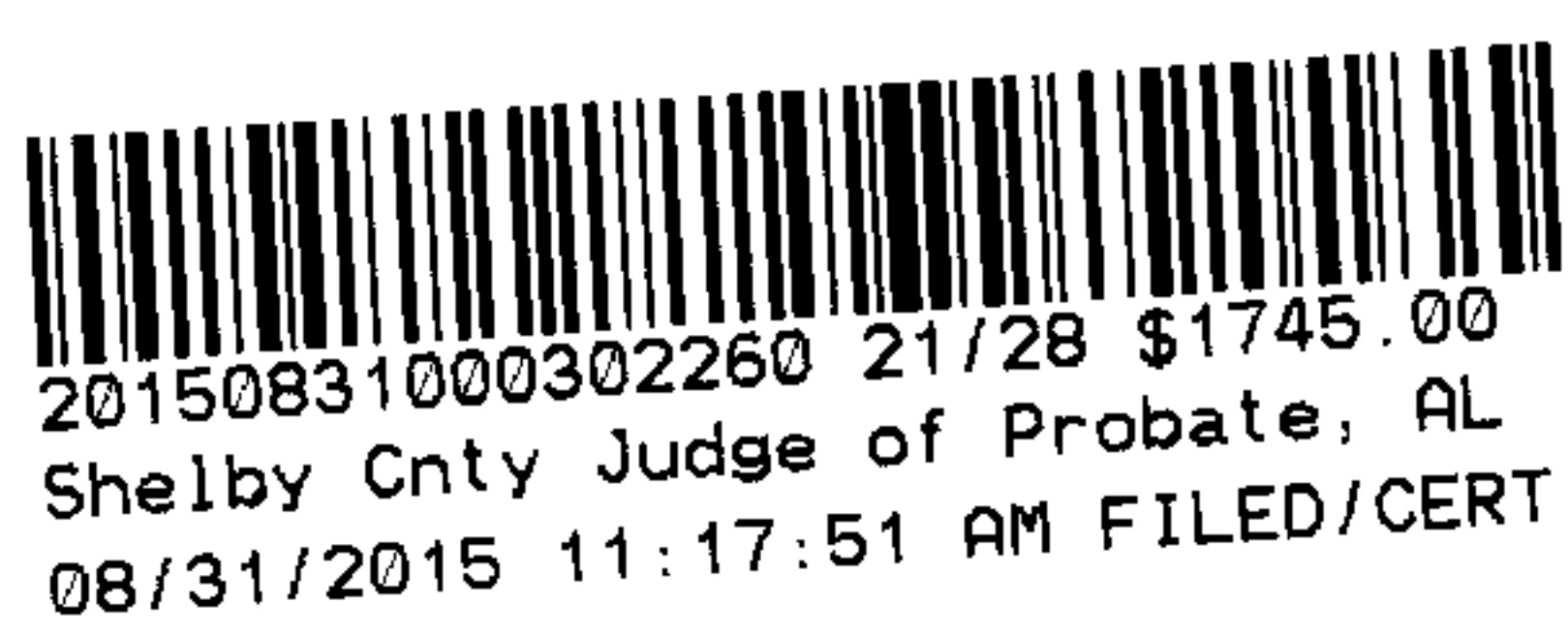
4.11 **Waiver of Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution of the laws of the United States and of any state, in and to the Premises and against the collection of the Secured Indebtedness, or any part thereof.

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

4.13 **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner effect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

4.14 **Waivers.** After consulting with and considering the advice of independent legal counsel selected by Mortgagor, Mortgagor makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

(a) No delay or omission by Lender or by any holder of the Note, to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute failure to declare an





Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.


(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, or this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

(c) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshaling, stay of execution, and extension. Mortgagor further agrees that if any law referred to in this paragraph and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties.

4.15 **Suits to Protect the Premises.** Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of

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or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

4.16 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

## ARTICLE V - MISCELLANEOUS

5.01 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Mortgagor and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Mortgagor" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Mortgagor or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.


5.02 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

5.03 **Severability; Complete Agreement.** If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note, the Loan Documents, and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

5.04 **Limitation of Interest.** It is the intent of Mortgagor and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Mortgagor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other

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instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Mortgagor upon such determination.

5.05 **Notices.** All notices and other communications provided for hereunder shall be in writing and be deemed received: (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below); (b) on the date deposited in U.S. mail, certified, with return receipt requested; or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth below. Either party may change its address for receipt notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 5.05.

*If to the Mortgagor:*

THE VILLAGE AT HIGHLAND LAKES, INC.  
2700 Highway 280 South, Suite 425  
Birmingham, AL 35223  
Attn: Douglas D. Eddleman

*If to the Lender:*

SERVISFIRST BANK  
850 Shades Creek Parkway, Suite 200  
Birmingham, Alabama 35209  
Attn: Wilson T. Holifield


5.06 **Replacement of Loan Documents.** Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of any Loan Documents to which Mortgagor is a party, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of any Loan Documents to which Mortgagor is a party, Mortgagor at Lender's expense will execute and deliver, in lieu thereof, such replacement documents, identical in form and substance to such lost document and dated as of the date of such lost document, and upon such execution and delivery all references in this Mortgage to the lost document shall be deemed to refer to such lost document.

5.07 **Assignment.** This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

5.08 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

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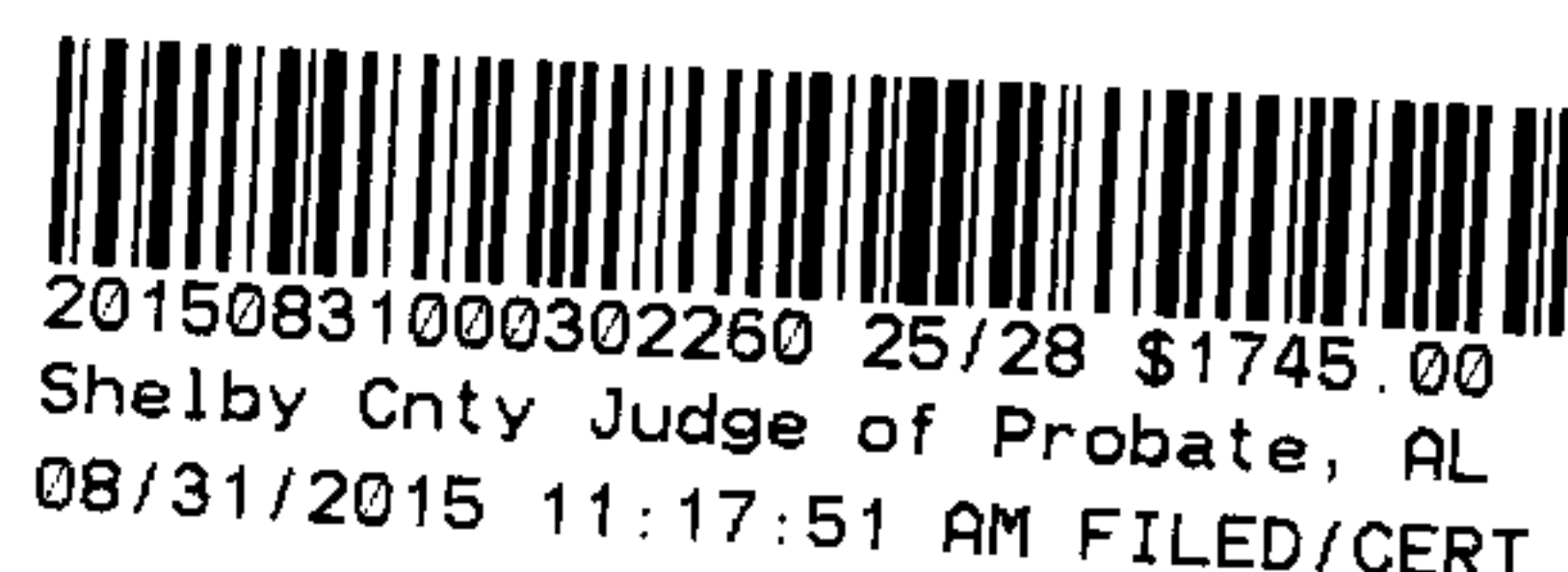
5.09 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN JEFFERSON COUNTY IN THE STATE OF ALABAMA, AND THE MORTGAGOR AGREES THAT THIS AGREEMENT SHALL BE DELIVERED TO AND HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS AGREEMENT BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF MORTGAGOR WITH JEFFERSON COUNTY AND THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH COUNTY AND STATE. MORTGAGOR CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF LAW; STATE OF ALABAMA, JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

5.10 **Release of Lots.** So long as no Event of Default shall have occurred and be continuing, subdivided lots ("Release Lots") may be released from the lien of this Mortgage upon Mortgagor's request in accordance with the provisions of the Loan Agreement.

5.11 **Waiver of Jury Trial.** MORTGAGOR AND LENDER, BY ACCEPTANCE OF THIS MORTGAGE, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THIS MORTGAGE, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGOR OR LENDER.

5.12 **Authorization to File Financing Statements.** Mortgagor hereby authorizes Lender to file a financing statement or statements under the UCC in connection with any of the collateral herein described in the form required to properly perfect Lender's first priority security interest therein. Mortgagor agrees that at any time and from time to time, at the expense of Mortgagor, Mortgagor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may request, in order to perfect and protect any security interest granted or purported to be granted hereby.

*[Signature page to follow]*

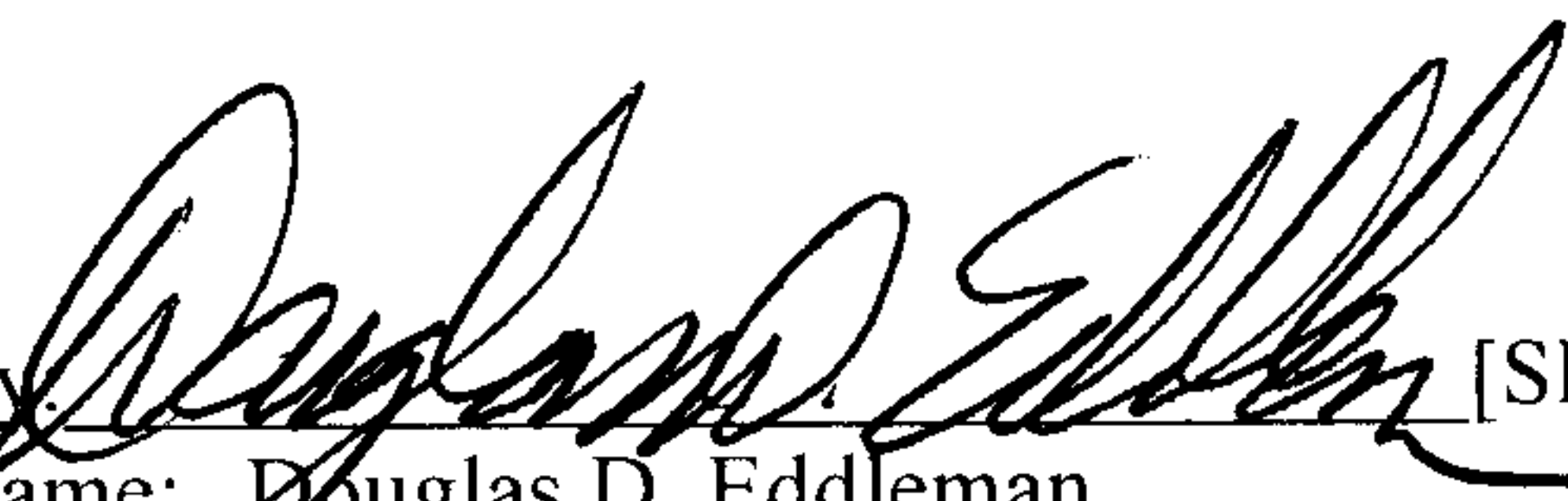




IN WITNESS WHEREOF, Mortgagor has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

**MORTGAGOR:**

**THE VILLAGE AT HIGHLAND LAKES,  
INC.,** an Alabama corporation

By:  [SEAL]  
Name: Douglas D. Eddleman  
Title: President

*The name, chief executive officer and organizational identification number of Mortgagor (as Debtor under the Alabama Uniform Commercial Code) is:*

THE VILLAGE AT HIGHLAND LAKES, INC.,  
an Alabama corporation

*Debtor Chief Executive Office Address:*

2700 Highway 280 South, Suite 425

Birmingham, Alabama 35223

Attn: Douglas D. Eddleman

*Alabama Debtor Organizational Number:*

236-481

*The name and chief executive officer of Lender (as Secured Party under the Alabama Uniform Commercial Code) are:*

SERVISFIRST BANK

850 Shades Creek Parkway, Suite 100

Birmingham, Alabama 35209

Attn: Wilson T. Holifield

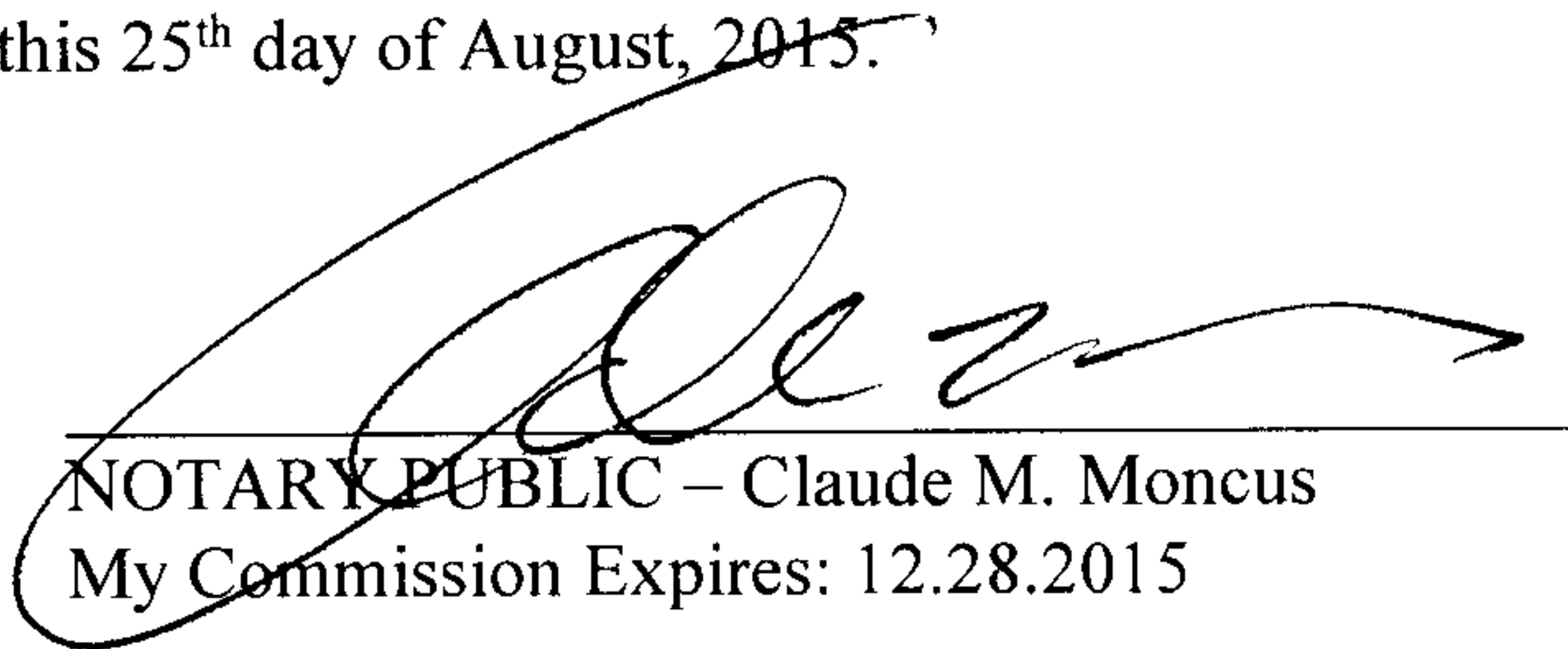


STATE OF ALABAMA       )  
                                     :  
COUNTY OF JEFFERSON    )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Douglas D. Eddleman, whose name as President of The Village at Highland Lakes, Inc., 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 said instrument, he as such officer aforesaid, and with full authority, executed the same for and as the act of said corporation.

Given under my hand and official seal this 25<sup>th</sup> day of August, 2015.

[NOTARIAL SEAL]

  
NOTARY PUBLIC – Claude M. Moncus  
My Commission Expires: 12.28.2015




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**EXHIBIT A**  
**LEGAL DESCRIPTION OF PREMISES**

LOTS 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 4-10, 4-11, 4-12, 4-17, 4-18, 4-19, 4-20, 4-21, 4-22, 4-23, 4-24, 4-25, 4-26, 4-27, 4-28, 4-29, 4-30, 4-31, 4-32, 4-33, 4-34, 4-35, 4-36, 4-37, 4-38, 4-39, 4-40, 4-41, 4-42, 4-43, 4-44, 4-45 AND 4-46, THE VILLAGE AT HIGHLAND LAKES SECTOR FOUR – ENGLISH VILLAGE NEIGHBORHOOD, AS RECORDED IN MAP BOOK 44, PAGE 131, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.

  
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