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12/09/2015 02:14:29 PM FILED/CERT

**MONARCH AT LEE BRANCH, LLC,**  
a Delaware limited liability company, as Landlord

and

**FORTRESS CREDIT CO LLC,**  
a Delaware limited liability company, as Lender

and

**EASTWYNN THEATRES INC., as successor-in-interest to RAVE MOTION PICTURES  
BIRMINGHAM III, LLC, as Tenant**

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**SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT**

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Dated: As of December 2, 2015

Location: 600-1401 Doug Baker Blvd.,  
Birmingham, Shelby County, Alabama

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Brownstein Hyatt Farber Schreck LLP  
410 Seventeenth Street, Suite 2200  
Denver, Colorado 80202  
Attention: Ana Lazo Tenzer

After Recording, Return to:

410 Seventeenth Street, Suite 2200  
Denver, Colorado 80202  
Attention: Ana Lazo Tenzer, Esq.



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### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 2nd day of December, 2015, by and between Fortress Credit Co LLC, a Delaware limited liability company (together with its successors and assigns, "Lender"), whose address for notice under this Agreement is c/o Fortress Investment Group, located at 1345 Avenue of the Americas, 46<sup>th</sup> Floor, New York, New York 10105, Attn: Constantine Dakolias and Eastwynn Theatres, Inc., as successor-in-interest to Rave Motion Pictures Birmingham III, LLC ("Tenant"), whose address for notice under this Agreement is \_\_\_\_\_.

#### **Statement of Background**


A. Lender has agreed to make a loan to Monarch at Lee Branch, LLC ("Landlord"), which will be evidenced by a promissory note (the "Note") made by Landlord to order of Lender and will be secured by, among other things, a mortgage or deed of trust, assignment of rents and leases, collateral assignment of property agreements, security agreement and fixture filing (the "Security Instrument") made by Landlord for the benefit of Lender covering the land (the "Land") described on Exhibit A attached hereto and all improvements (the "Improvements") now or hereafter located on the land (the Land and the Improvements hereinafter collectively referred to as the "Property").

B. Tenant is the tenant or lessee under a lease dated as of December 12, 2003, as amended by that certain First Amendment dated October 13, 2005, Second Amendment dated April 1, 20\_\_, and Third Amendment dated November 2012 (which lease, as the same may have been amended and supplemented as of the date hereof, is hereinafter called the "Lease"), covering approximately 67,950 square feet of space located in the Improvements (the "Premises"). Landlord holds all rights of landlord or lessor under the Lease.



C. The parties hereto desire to make the Lease subject and subordinate to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease in accordance with the terms and provisions of this Agreement

Statement of Agreement

  
20151209000421710 3/8 \$35.00  
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For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options (including options to acquire or lease all or any part of the Premises), liens and charges created thereby, is and shall continue to be subject and subordinate in all respects to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder.

2. Lender does hereby agree with Tenant that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant complies with and performs its obligations under the Lease, (a) the Lease shall continue in full force and effect as a direct Lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and Lender will not disturb the possession of Tenant, and (b) the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof; provided, however, that Lender shall not be subject to any claims, offsets or defenses which Tenant might have against any prior landlord including Landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the Premises or the Property) nor shall Lender be liable for any act or omission of any prior landlord including Landlord, nor shall Lender be bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Landlord) nor shall it be bound by any amendment or modification of the Lease made without its written consent. Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy. Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

3. Tenant does hereby agree with Lender that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and deliver upon





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request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease and the rent and all other sums due thereunder as security for said loan by entering an Assignment of Leases and Rents ("Assignment of Leases"), and Tenant hereby expressly consents to such assignment. Tenant agrees to notify Lender of any default by Landlord under the Lease; Lender shall have the same right to cure such default as is provided to Landlord under the Lease. In the event that Lender notifies Tenant of a default under the Mortgage and/or the Assignment of Leases and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice. Landlord shall have no claim against Tenant for any amounts paid to Lender pursuant to any such notice.

5. Lender shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy; provided, however, that in the event that Lender shall acquire title to the Premises or the Property, Lender shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property. Lender shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, including, without limitation, any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession. In the event that Lender shall acquire title to the Premises or the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Premises.

6. Tenant acknowledges, without limitation, that the subordinations provided hereby include a full and complete subordination by Tenant of any options it may have to purchase all or any portion of the Property, rights of first refusal or similar rights, whether such rights are provided in the Lease or elsewhere. Tenant hereby further agrees that any such option to purchase or right of first refusal shall be expressly inapplicable to any foreclosure of the Mortgage or acquisition of the Property or any interest therein by Lender or any designee of Lender by conveyance in lieu thereof or similar transaction.

7. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

9. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or




obligation under the Lease or otherwise until Lender shall have acquired the interest of Landlord in the Premises, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liability or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement.

10. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth above; provided, however, that every party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other parties in the manner set forth herein.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "Landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease, and the term "Lender" refers to Lender and to any successor-in-interest of Lender under the Mortgage.

12. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal to be effective as of the date set forth in the first paragraph hereof.

**LENDER:**

**FORTRESS CREDIT CO LLC,**  
a Delaware limited liability company

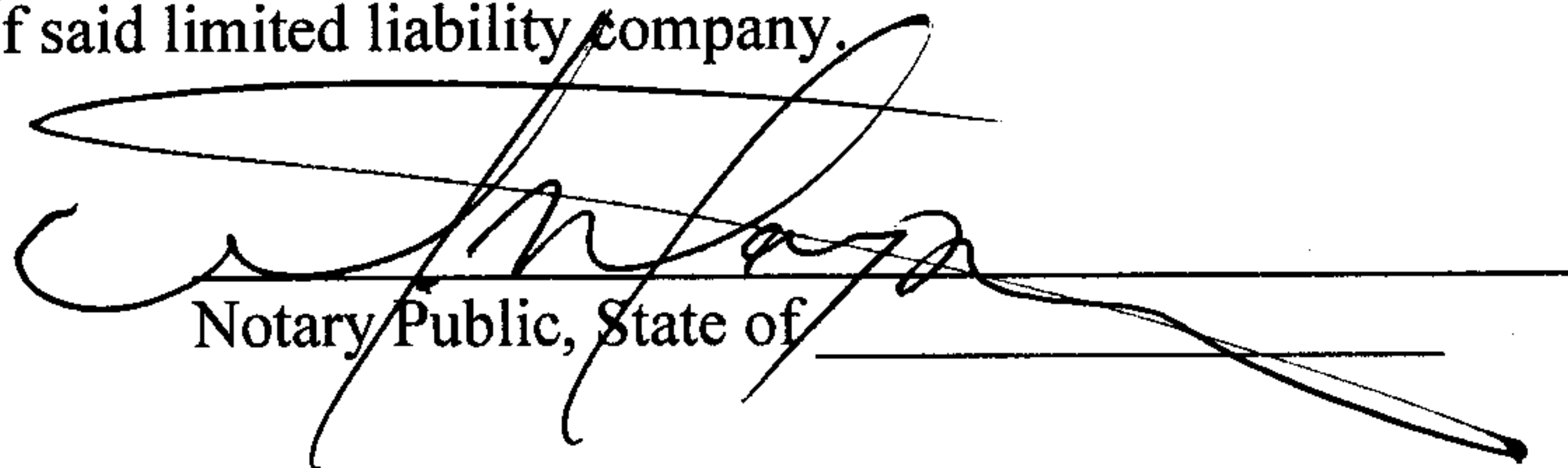
By: \_\_\_\_\_  
Name: **CONSTANTINE M. DAKOLIAS**  
Title: **PRESIDENT**

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

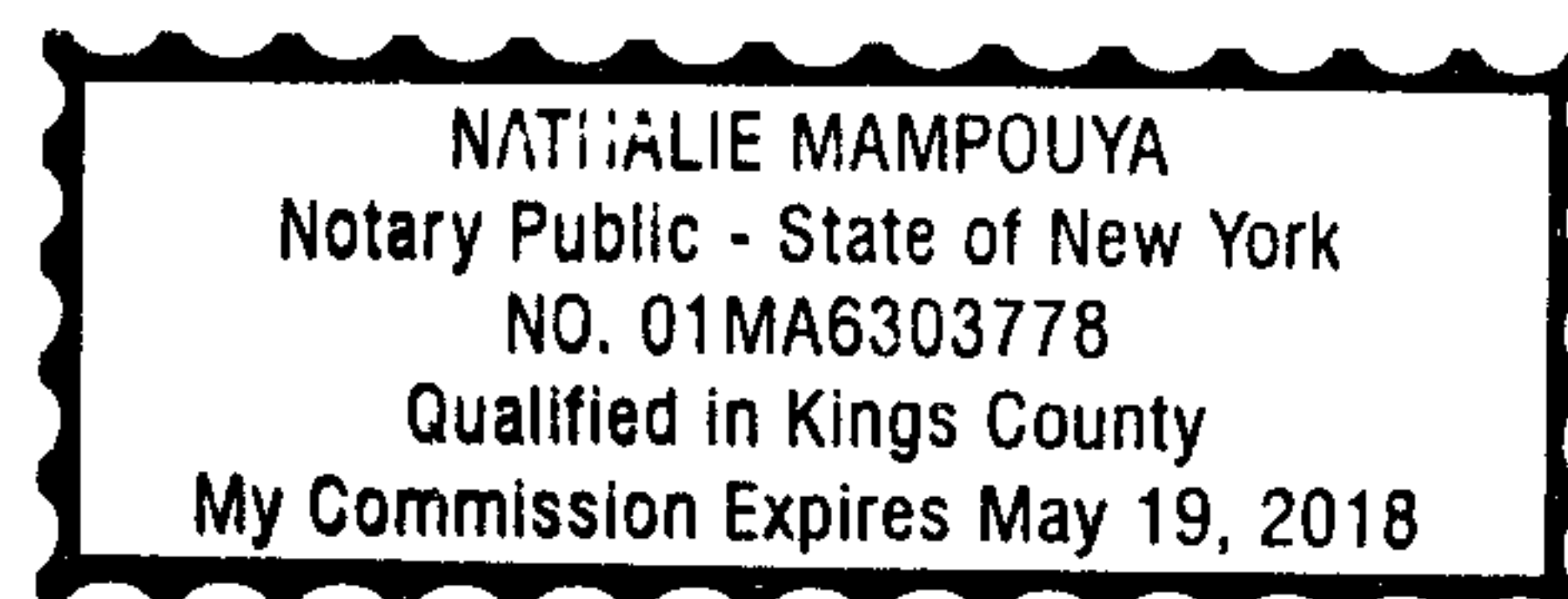
This instrument was ACKNOWLEDGED before me on the 13<sup>th</sup> day of November, 2015 by Constantine M. Dakolias, President of Fortress Credit Co LLC, a Delaware limited liability company, on behalf of said limited liability company.


[S E A L]

My Commission Expires:

  
Notary Public, State of \_\_\_\_\_

Printed Name of Notary Public



  
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TENANT:

EASTWYNN THEATRES, INC.,  
an Alabama corporation

By: Daniel E. Ellis  
Name: Daniel E. Ellis  
Title: Senior Vice President

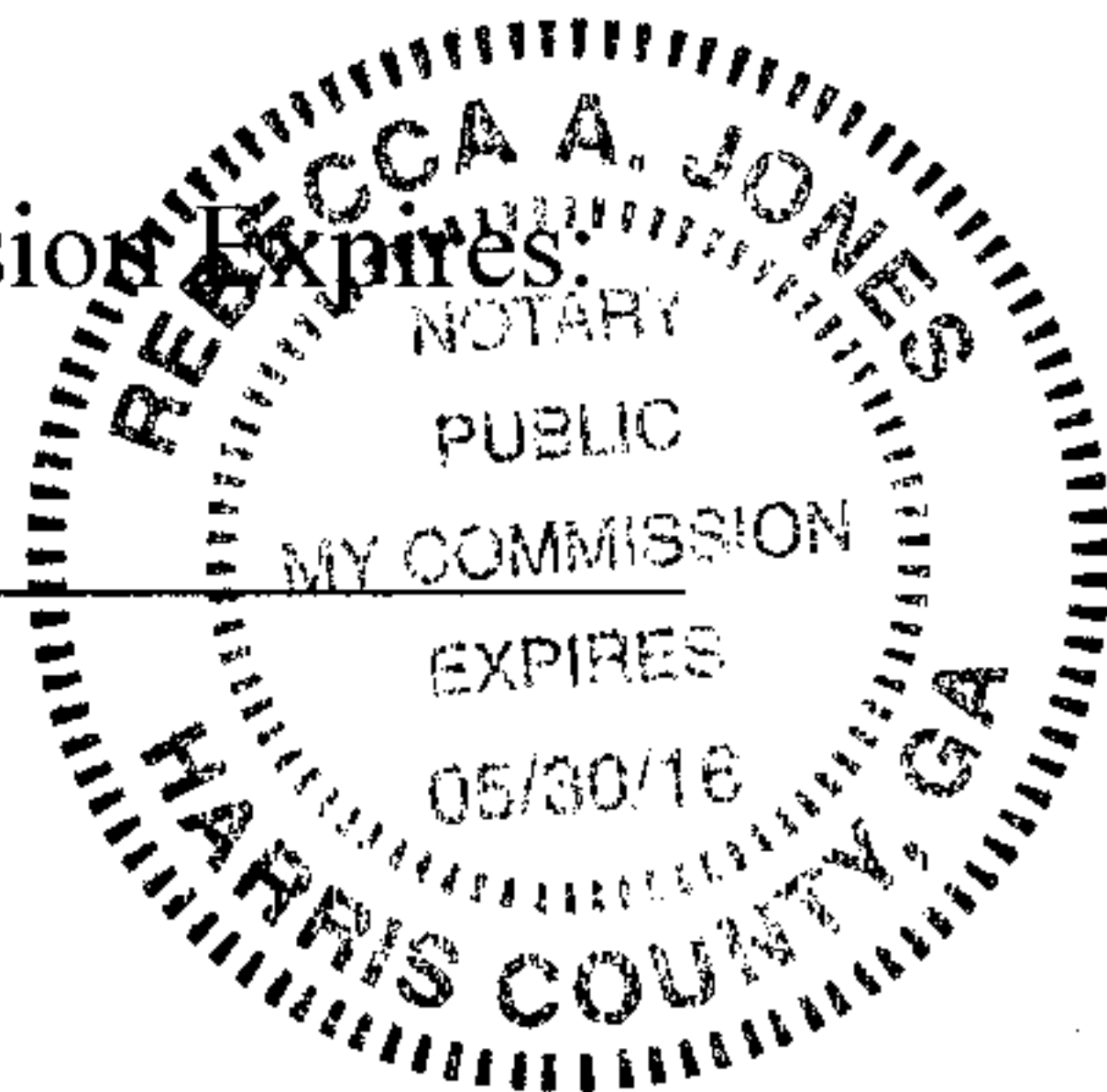
STATE OF Georgia  
COUNTY OF Muscookee

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This instrument was ACKNOWLEDGED before me on November 17, 2015 by Daniel Ellis, the SVP, Gen. Counsel & Secretary of Eastwyn Theatres, Inc. an Alabama Corporation, on behalf of said Tenant.

[S E A L]

My Commission Expires:



Rebecca A. Jones  
Notary Public, State of Georgia

Rebecca A. Jones  
Printed Name of Notary Public



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**LANDLORD:**

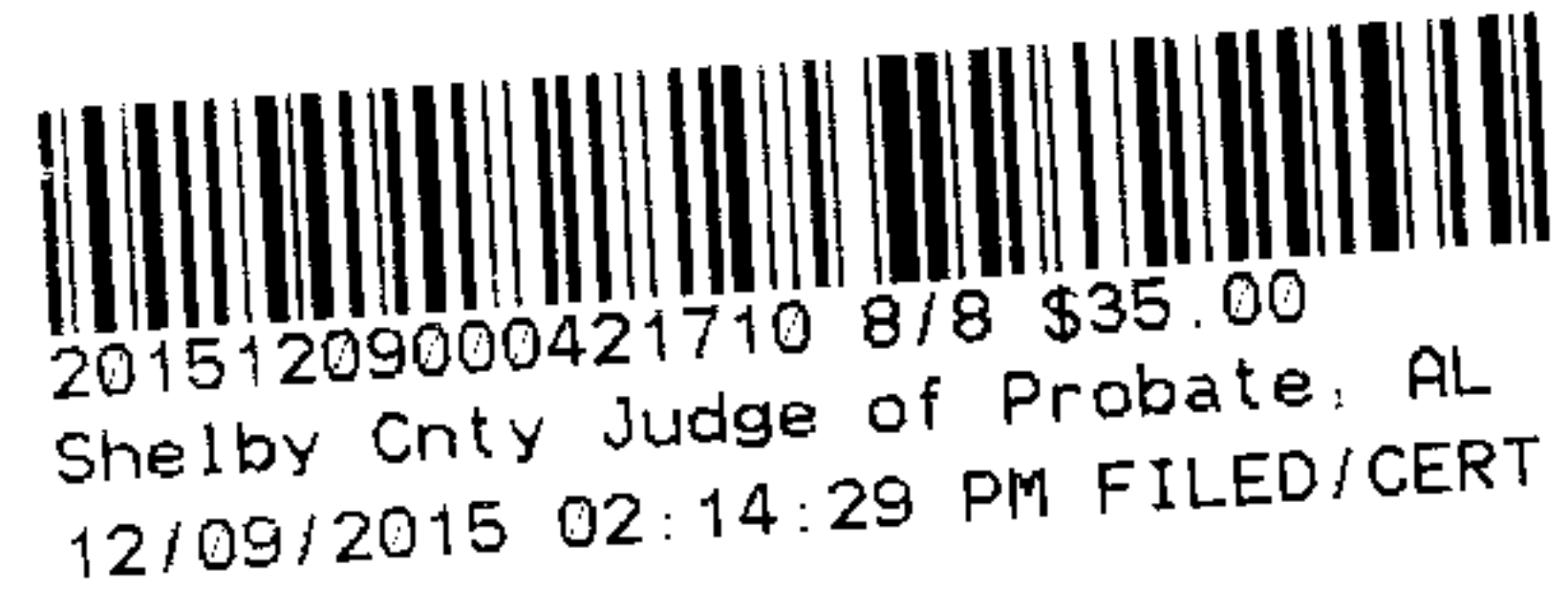
**MONARCH AT LEE BRANCH, LLC,**  
a Delaware limited liability company

By: Monarch Lee Branch Holdings, LLC,  
a Georgia limited liability company,  
its Managing Member

By: [Signature]  
Name: Stephen M. Callastra  
Its: Manager

STATE OF Georgia  
COUNTY OF Dekalb

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This instrument was ACKNOWLEDGED before me on November 9th, 2015 by Stephen M. Callastra, the Manager of Monarch Lee Branch Holdings, LLC, a Georgia limited liability company, the Managing Member of Monarch At Lee Branch, LLC, a Delaware limited liability company on behalf of said limited liability company.

[S E A L]

My Commission Expires:

July 25, 2018

[Signature]  
Notary Public, State of Georgia

Cindy Baetzel  
Printed Name of Notary Public

