

20160202000032980 1/13 \$52.00
Shelby Cnty Judge of Probate, AL
02/02/2016 08:39:58 AM FILED/CERT

County Division Code: AL040
Inst. # 2016009774 Pages: 1 of 13
I certify this instrument filed on
2/1/2016 2:04 PM Doc: MTG
Alan L. King, Judge of Probate
Jefferson County, AL. Rec: \$52.00
MtgTx: \$5,359.50
Clerk: SSCOGGINS

Instrument Prepared By And
When Recorded Return To:
Nyemaster Goode, P.C.
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309
Attention: Rachel N. Parker

Off CO - 850
Shelby Co - 2070

Century/Chase, L.L.C. (AL.0248)

PARTIAL RELEASE AND MODIFICATION AGREEMENT
(Shelby County and Jefferson County)

The maximum principal amount secured in this instrument is \$3,573,000.00, for Jefferson and Shelby Counties. \$2,858,400 being allocated to Jefferson County property and tax portion in the amount of (\$4287.60) and \$714,600 being allocated to Shelby County property and tax portion in the amount of (\$1071.90).

THIS PARTIAL RELEASE AND MODIFICATION AGREEMENT (this "Agreement") is made as of the 29th day of January 2016, by and between CENTURY/CHASE, L.L.C., an Alabama limited liability company ("Borrower"), with a mailing address of 2 Office Park Circle, Suite 1, Birmingham, Alabama 35223, Attn: Richard T. Darden and THE OHIO NATIONAL LIFE INSURANCE COMPANY, an Ohio corporation ("Lender"), with the mailing address of One Financial Way, Cincinnati, Ohio 45242, Attn: Mortgages and Real Estate. Charles W. Daniel, individually, and Richard T. Darden, individually (together, "Guarantors"), are also parties to this Agreement.

RECITALS:

A. On July 6, 2011, Lender made a term loan in the original principal amount of \$4,550,000.00 (the "Loan") to Borrower secured by, among other things, land located in Shelby and Jefferson Counties, Alabama, legally described in Appendix I attached hereto, together with all improvements thereon, and the Loan remains outstanding as of the date hereof.

B. With regard to the Loan, Lender is the holder of the following documents (hereinafter, together with any and all other documents evidencing or securing the Loan, collectively, the "Loan Documents"):

(1) Promissory Note, dated July 6, 2011, made by Borrower in favor of Lender, in the original principal amount of \$4,550,000.00 (the "Original Note");

(2) Mortgage and Security Agreement, dated July 6, 2011, made by Borrower, as mortgagor, in favor of Lender, as mortgagee, and filed for record July 8, 2011, in Instrument No. 20110708000197690, in the Office of the Judge of Probate of Shelby County, Alabama, and

filed for record July 11, 2011, in Land Record 201105, Page 19315, in the Office of the Judge of Probate of Jefferson County, Alabama (the "Mortgage");

(3) Assignment of Leases and Rents, dated July 6, 2011, made by Borrower, as assignor, in favor of Lender, as assignee, filed for record July 8, 2011, in Instrument No. 20110708000197700, in the Office of the Judge of Probate of Shelby County, Alabama, and filed for record July 11, 2011, in Land Record 201105, Page 19353, in the Office of the Judge of Probate of Jefferson County (the "Assignment of Rents");

(4) Environmental Indemnity, dated July 6, 2011, executed by Borrower and Guarantors in favor of Lender (the "Indemnity");

(5) Guaranty of Non-Recourse Carve-Outs, dated July 6, 2011, executed by Guarantors in favor of Lender (the "Guaranty"); and

(6) UCC Financing Statement, showing Borrower as debtor and Lender as secured party, filed on July 8, 2011, as Filing Number 11-0322334 with the Alabama Secretary of State (the "UCC Filing").

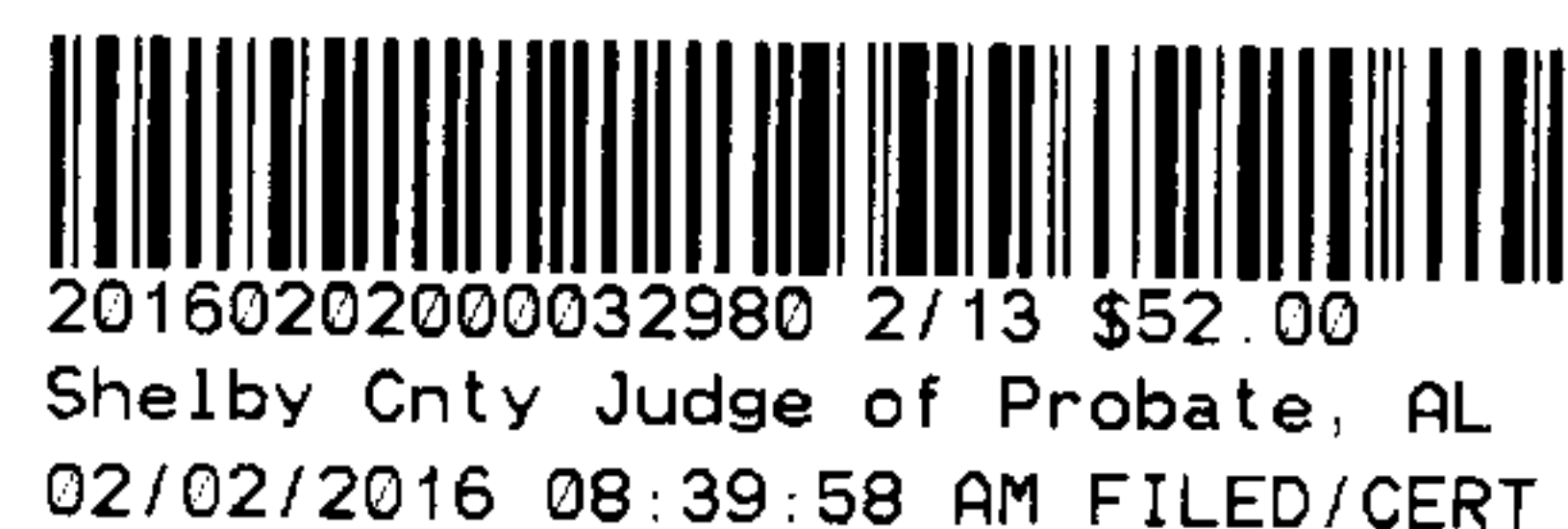
C. Borrower has requested and Lender has agreed to: (i) extend the term of the Loan such that the maturity date thereof is extended from its original maturity date of August 1, 2016 to January 1, 2021 and reamortize the principal indebtedness; (ii) release the property located at 400 Chase Park South, Birmingham, Alabama 35226, legally described in Appendix II, attached hereto and incorporated herein by this reference (the "Release Parcel"), from the real property securing the Loan; and (iii) modify the Loan Documents to eliminate the Release Parcel from the legal description of the real property subject to the Mortgage, the Assignment, and the UCC Filing. Lender has agreed to modify the Loan Documents in accordance with these requests of Borrower upon the terms and conditions set forth in this Agreement.

D. Borrower concurrently herewith is executing and delivering to Lender an Amended and Restated Promissory Note dated effective as of the date of this Agreement, in the principal amount of THREE MILLION, FIVE HUNDRED SEVENTY-THREE THOUSAND AND NO/100 DOLLARS (\$3,573,000.00) (as the same may be extended, renewed, refinanced, refunded, amended, modified or supplemented from time to time, the "Amended and Restated Note"), which amends and restates that Original Note in its entirety and incorporates the agreed upon changes to the Loan.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein as if fully set forth in this paragraph.

2. Definitions. Terms defined in the Loan Documents shall have the same meaning when used herein, unless defined otherwise in this Agreement.



3. Modification of the Mortgage. The Mortgage is hereby modified as follows:

(a) Maturity Date. On the cover sheet to the Mortgage, the Maturity Date is amended to read as "January 1, 2021."

(b) Note Amount. On the cover sheet to the Mortgage, the Note Amount is amended to read as "Three Million, Five Hundred Seventy-Three Thousand and No/100 Dollars (\$3,573,000.00)."

(c) References to the Note. All references to the Note are amended to refer to the Amended and Restated Note.

(d) References to Loan Documents. References in the Mortgage to any Loan Document, other than the Note but including the Mortgage, are amended to refer to such Loan Document as amended by this Agreement and as may from time to time be further amended.

(e) Amendment to Legal Description. Each and every reference in the Mortgage to "Exhibit A" or to the "Property" shall refer to the property interest in land, buildings, improvements, fixtures, furniture, rents, leases, proceeds and personal property as such relates to the real property described therein, modified to delete the Release Parcel, which description as modified is attached hereto as Exhibit A. Each and every reference in the Mortgage to the Property shall be to the real property described in Exhibit A attached hereto, and Exhibit A as presently attached to the Mortgage is hereby deleted and Exhibit A attached hereto is substituted therefor.

4. Modification of the Assignment of Rents. The Assignment of Rents is hereby modified as follows:

(a) Note Amount. On the cover sheet to the Assignment of Rents, the Note Amount is amended to read as "Three Million, Five Hundred Seventy-Three Thousand and No/100 Dollars (\$3,573,000.00)."

(b) References to the Note. All references to the Note are amended to refer to the Amended and Restated Note.

(c) References to Loan Documents. References in the Assignment of Rents to any Loan Document, other than the Note but including the Assignment of Rents, are amended to refer to such Loan Document as amended by this Agreement and as may from time to time be further amended.

(d) Amendment to Legal Description. Each and every reference in the Assignment of Rents to "Exhibit A" or to the "Property" shall refer to the property interest in land, buildings, improvements, fixtures, furniture, rents, leases, proceeds and personal property as such relates to the real property described therein, modified to delete the Release Parcel, which description as modified is attached hereto as Exhibit A. Each and every reference in the Assignment of Rents to the Property shall be to the real property described in Exhibit A attached hereto, and Exhibit A as presently attached to the Assignment of Rents is hereby deleted and Exhibit A attached hereto is substituted therefor.

5. Modification of the Guaranty. The Guaranty is modified in the following respects:

(a) References to the Note. Each and every reference to the "Note" shall refer to the Amended and Restated Note.

(b) References to Loan Documents. Each and every reference to any "Loan Document" shall mean such Loan Document as modified by this Agreement.

(c) Reaffirmation of Guarantors. Each Guarantor hereby reaffirms his agreements, indemnities, covenants, warranties, representations and continuing obligations, updated to the date of this Agreement, under the Guaranty, as modified hereby. Each Guarantor hereby agrees that his obligations under the Guaranty, as modified hereby, shall not be diminished or discharged in any way by this Agreement or by the other modifications referenced in this Agreement.

6. Modification of the Indemnity. The Indemnity is modified in the following respects:

(a) References to the Note. Each and every reference to the "Note" shall refer to the Amended and Restated Note.

(b) References to Loan Documents. Each and every reference to any "Loan Document" shall mean such Loan Document as modified by this Agreement.

(c) Reaffirmation of Indemnitors. Borrower and Guarantors reaffirm their respective agreements, indemnities, covenants, warranties, representations and continuing obligations, updated to the date of this Agreement, under the Indemnity as modified hereby. Borrower and Guarantors agree that their obligations under the Indemnity, as modified hereby, shall not be diminished or discharged in any way by this Agreement or the other modifications referenced in this Agreement.

7. Representations and Warranties of Borrower. Borrower represents and warrants to Lender as follows:

(a) None of the Loan Documents has been changed, altered, modified or amended in any way except for those changes, alterations, modifications and amendments set forth in this Agreement;

(b) This Agreement and, except as may be modified by this Agreement, the Loan Documents, constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms;

(c) There exists no default under any one or more of the Loan Documents as modified by this Agreement;

(d) There are no liens or encumbrances against any of the Property other than the Loan Documents; and

(e) Borrower has no offset, defense or counterclaim against Lender arising out of or in respect of the Note or any of the Loan Documents as modified by this Agreement.

8. Representations and Warranties of Guarantors. Guarantors hereby represent and warrant to Lender as follows:

(a) Neither the Indemnity nor the Guaranty have been changed, altered, modified or amended in any way except for those changes, alterations, modifications and amendments recited in this Agreement.

(b) This Agreement, the Indemnity and the Guaranty, in each case as modified by this Agreement, constitute the legal, valid and binding obligations of Guarantors, enforceable in accordance with their respective terms.

(c) There exists no Event of Default, and to Guarantors' knowledge no event has occurred that with the passage of time or the giving of notice, or both, would be or become an Event of Default under the Indemnity or the Guaranty, in each case as modified by this Agreement.

(d) Guarantors have no offset, defense or counterclaim as against the Indemnity or the Guaranty, in each case as modified by this Agreement.

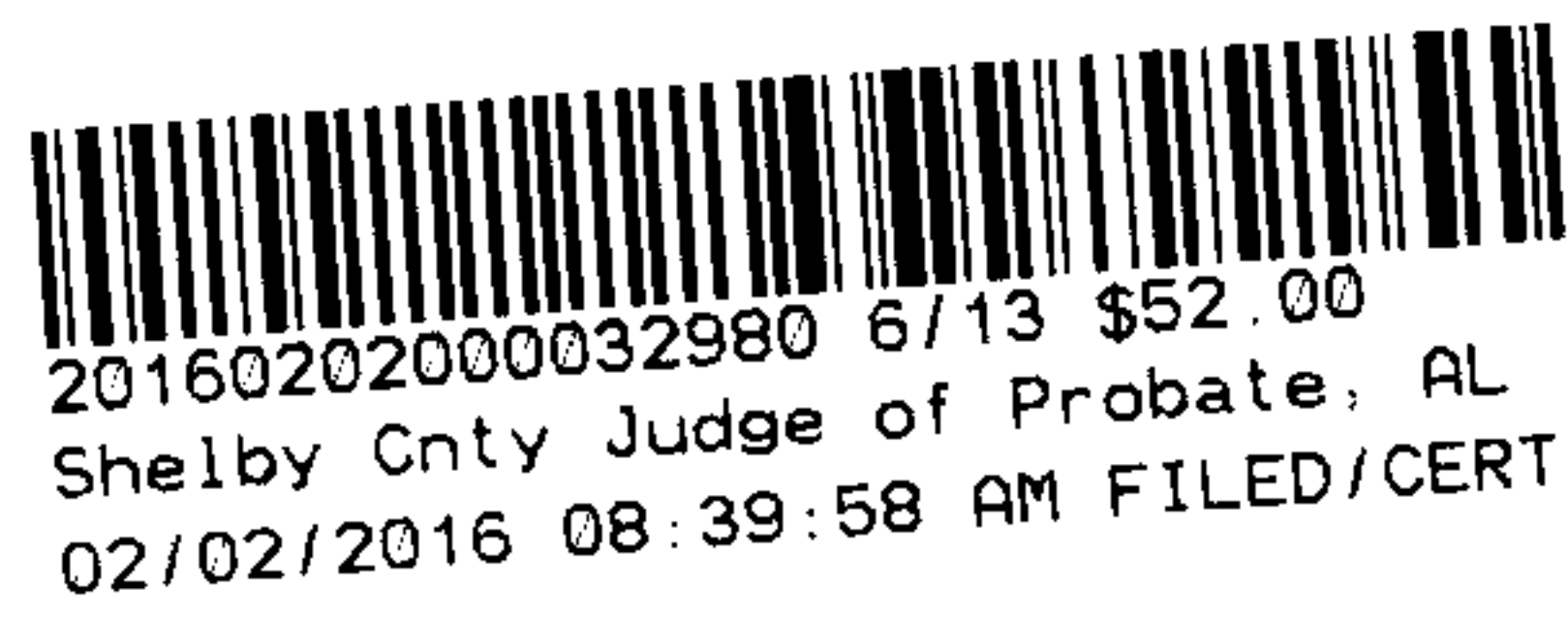
9. Reaffirmation. Borrower reaffirms to Lender its continuing obligations under the Loan Documents, as modified hereby. Borrower agrees that its obligations under the Loan Documents, remain in full force and effect and are not discharged or diminished in any way by this Agreement.

10. No Other Change. Except as otherwise expressly set forth in this Agreement and in the Amended and Restated Note, each and every term, condition, warranty and provision of the Loan Documents shall remain in full force and effect, and such are hereby ratified, confirmed and approved by the parties hereto. A default under this Agreement will constitute an Event of Default under each of the Loan Documents.

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and assigns.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Alabama (excluding conflicts of law rules).

13. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.



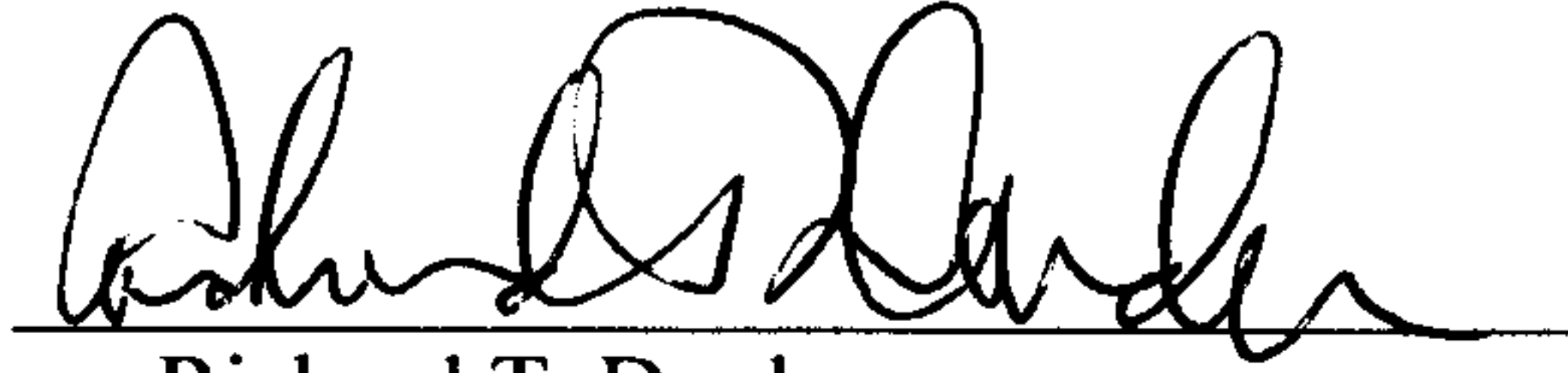
14. Consent to Reciprocal Easements Agreement. Lender hereby consents to Borrower entering into that certain Declaration of Reciprocal Easements and Agreement dated September 7, 2011, and recorded September 19, 2011, in Instrument Number 20110919000276870 in the Office of the Judge of Probate of Shelby County, Alabama.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the parties have executed this Agreement on the date set forth in the respective acknowledgments below, to be effective as of the date and year first above stated.


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Shelby Cnty Judge of Probate, AL
02/02/2016 08:39:58 AM FILED/CERT

CENTURY/CHASE, L.L.C., an Alabama
limited liability company

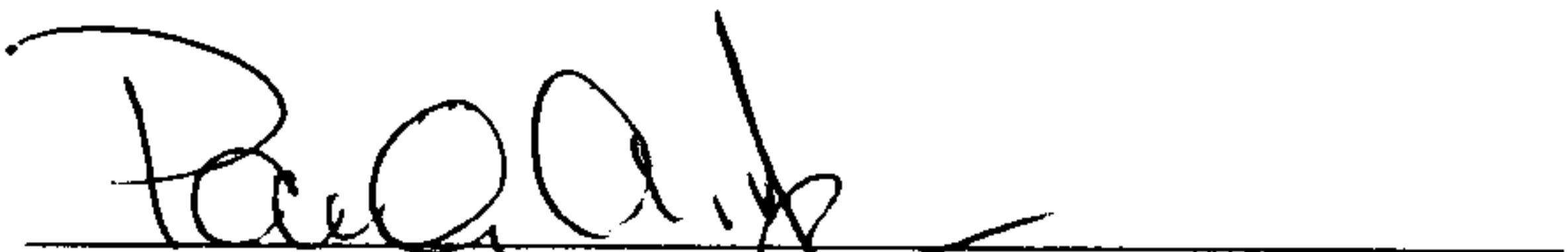
By: 
Name: Richard T. Darden
Title: Managing Member

STATE OF ALABAMA :
COUNTY OF Jefferson : ss:
:

Before me, a Notary Public in and for said state, personally appeared Richard T. Darden, the Managing Member of CENTURY/CHASE, L.L.C., an Alabama limited liability company, who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this 29th day of January, 2016.

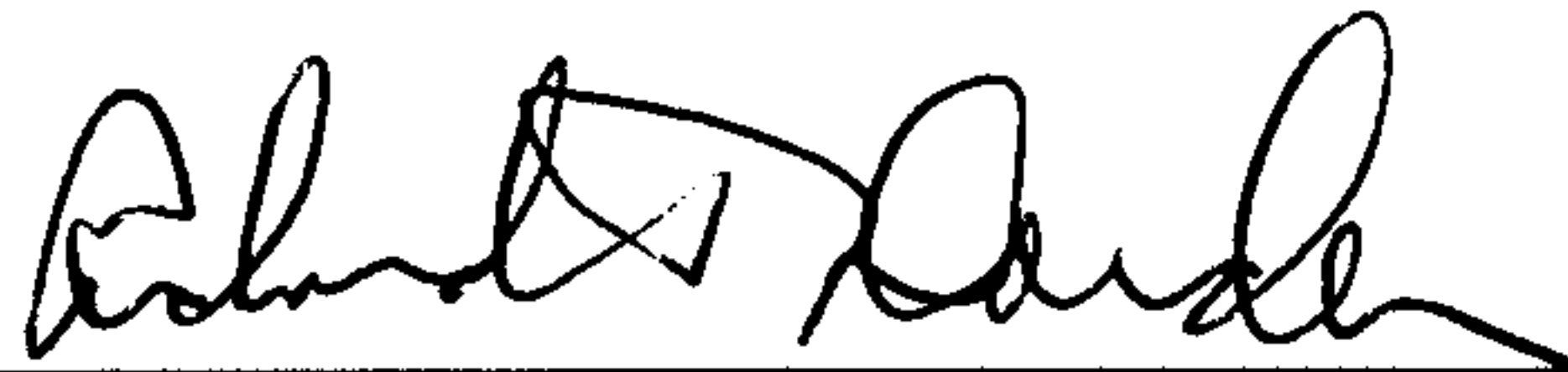
My Commission Expires
August 27, 2017


Notary Public

[SIGNATURE PAGE TO MODIFICATION AGREEMENT, CONTINUED ON FOLLOWING PAGE]

[MODIFICATION AGREEMENT]

20160202000032980 8/13 \$52.00
Shelby Cnty Judge of Probate, AL
02/02/2016 08:39:58 AM FILED/CERT



RICHARD T. DARDEN, Individually

STATE OF ALABAMA :
COUNTY OF Jefferson : SS:
:

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Richard T. Darden, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office this 29th day of January, 2016.

[SEAL]



NOTARY PUBLIC
My Commission Expires: August 27, 2017

Charles W. Daniel

CHARLES W. DANIEL, Individually



20160202000032980 9/13 \$52.00
Shelby Cnty Judge of Probate, AL
02/02/2016 08:39:58 AM FILED/CERT

STATE OF ALABAMA

:

: SS:

:

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles W. Daniel, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office this 28th day of January, 2016.

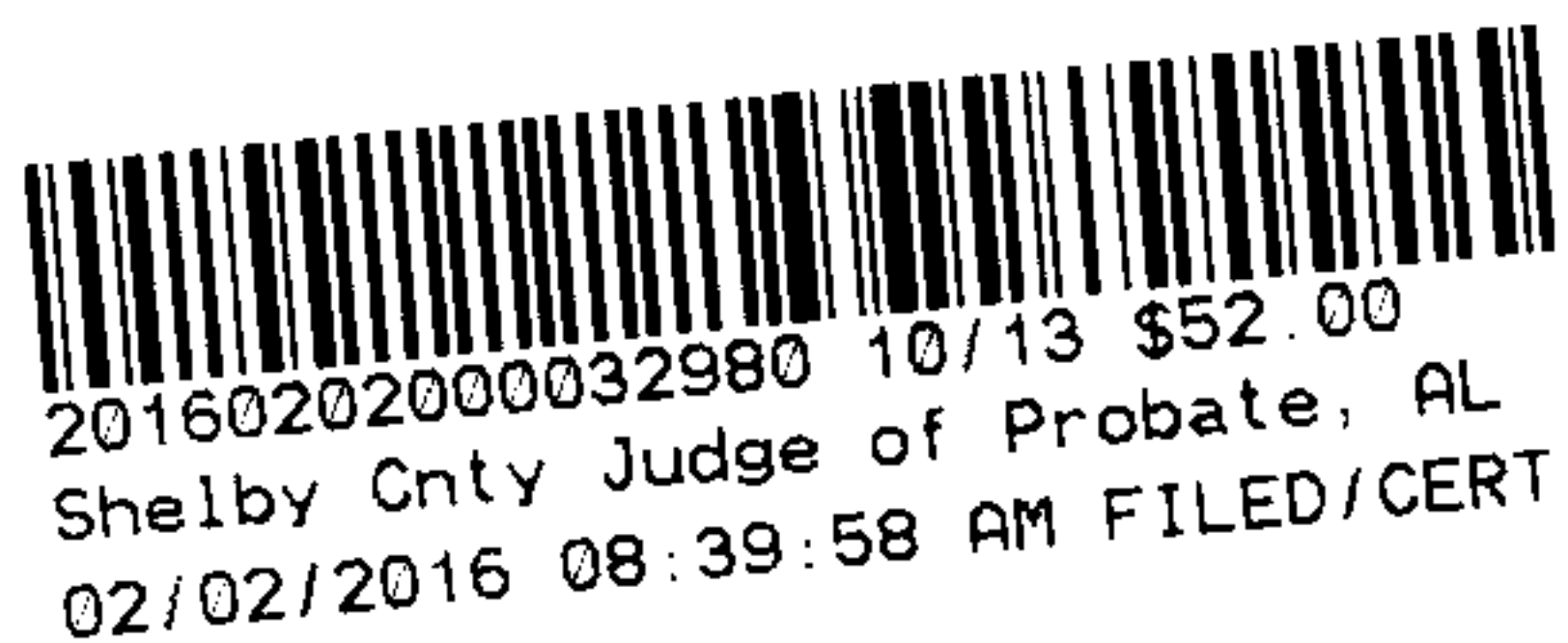
[SEAL]

Paul A. [Signature]

NOTARY PUBLIC

My Commission Expires: August 21, 2017

THE OHIO NATIONAL LIFE INSURANCE
COMPANY



By: [Signature]
Name: G. Timothy Biggs
Title: Vice President, Mortgages & Real Estate

STATE OF OHIO :
: ss:
COUNTY OF Hamilton :

Before me, a Notary Public in and for said state, personally appeared G. Timothy Biggs, being the Vice President of THE OHIO NATIONAL LIFE INSURANCE COMPANY, an Ohio corporation, who acknowledged that he/she did execute the foregoing instrument on behalf of the said corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this 29th day of January, 2016.



AMANDA HOLLINGSWORTH
Notary Public, State of Ohio
My Commission Expires 7/20/19

Amanda Hollingsworth
Notary Public

[CONTINUATION OF SIGNATURE PAGES TO MODIFICATION AGREEMENT]

APPENDIX I

Original Legal Description

PARCEL I:

Lots 1 and 2, according to the survey of Century Park South as recorded in Map Book 117, Page 23 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama.

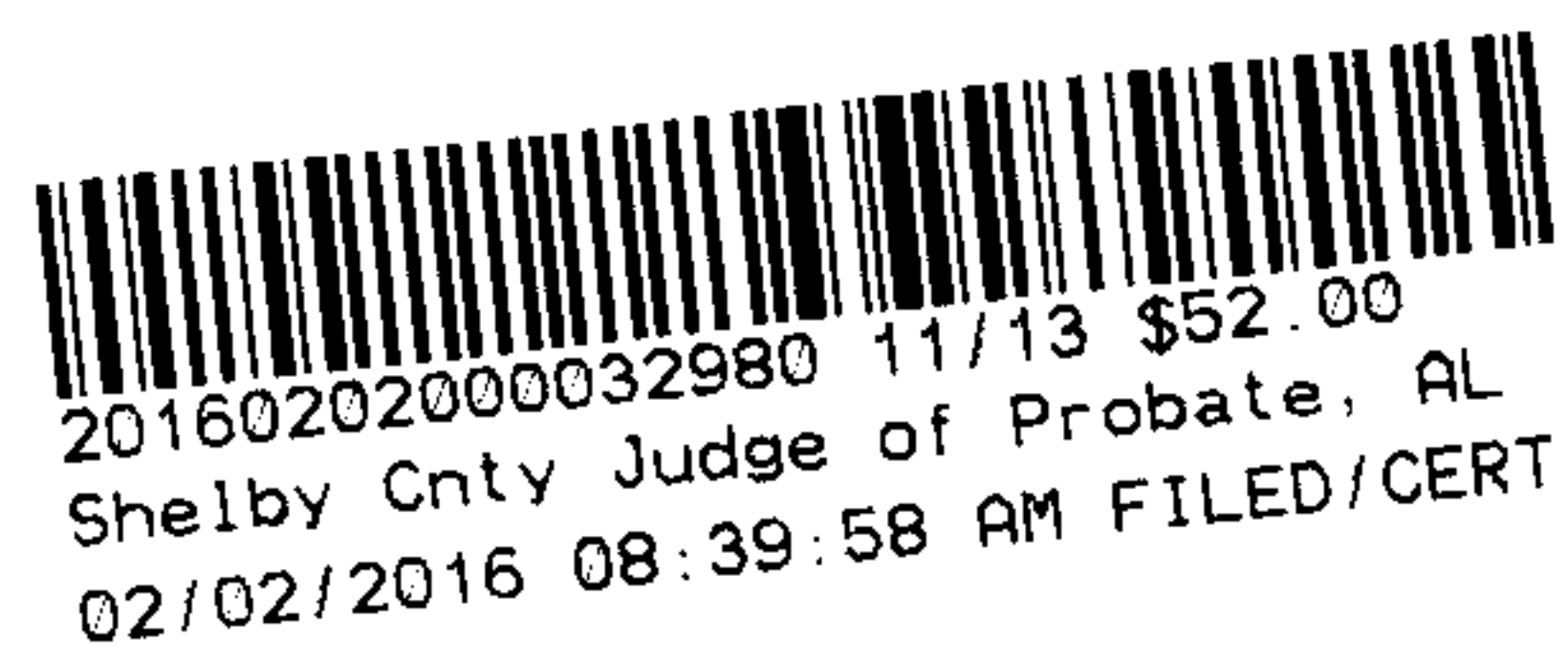
PARCEL II:

Description of Parcel I, Century Park North, Phase I, as recorded in Map Book 118, Page 80 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 1, Township 19 South, Range 3 West; thence run in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1,031.24 feet to a point on the Northeasterly right of way line of Interstate Highway I-65; thence 104 degrees 21 minutes 38 seconds to the left in a Southeasterly direction along the Northeasterly right of way line of Interstate Highway I-65 a distance of 388.95 feet to the point of beginning; thence continue along the last described course a distance of 120 feet; thence 76 degrees 54 minutes 58 seconds to the left in an Easterly direction a distance of 457.87 feet to a point; thence 108 degrees 18 minutes 54 seconds to the left in a Northwesterly direction a distance of 141.58 feet to the P.C. (point of curve) of a curve to the left having a central angle of 9 degrees 18 minutes 26 seconds and a radius of 244.95 feet; thence in the arc of said curve to the left in a Northwesterly direction a distance of 39.79 feet; thence 62 degrees 21 minutes 04 seconds to the left (angle measured to tangent) in a Westerly direction a distance of 262.86 feet; thence 90 degrees 00 minutes to the left in a Southerly direction a distance of 47 feet; thence 90 degrees 00 minutes to the right in a Westerly direction a distance of 131.55 feet; thence 13 degrees 05 minutes 02 seconds to the left in a Southwesterly direction a distance of 31.43 feet to the point of beginning; being situated in Jefferson County, Alabama.

PARCEL III:

Lots 1 & 2, according to the Final Plat of Chase Park South II, recorded in Map Book 41, Page 150 in the Probate Office of Shelby County, Alabama.



APPENDIX II

Release Parcel

Lot 1, according to the Final Plat of Chase Park South II, recorded in Map Book 41, Page 150 in the Probate Office of Shelby County, Alabama.

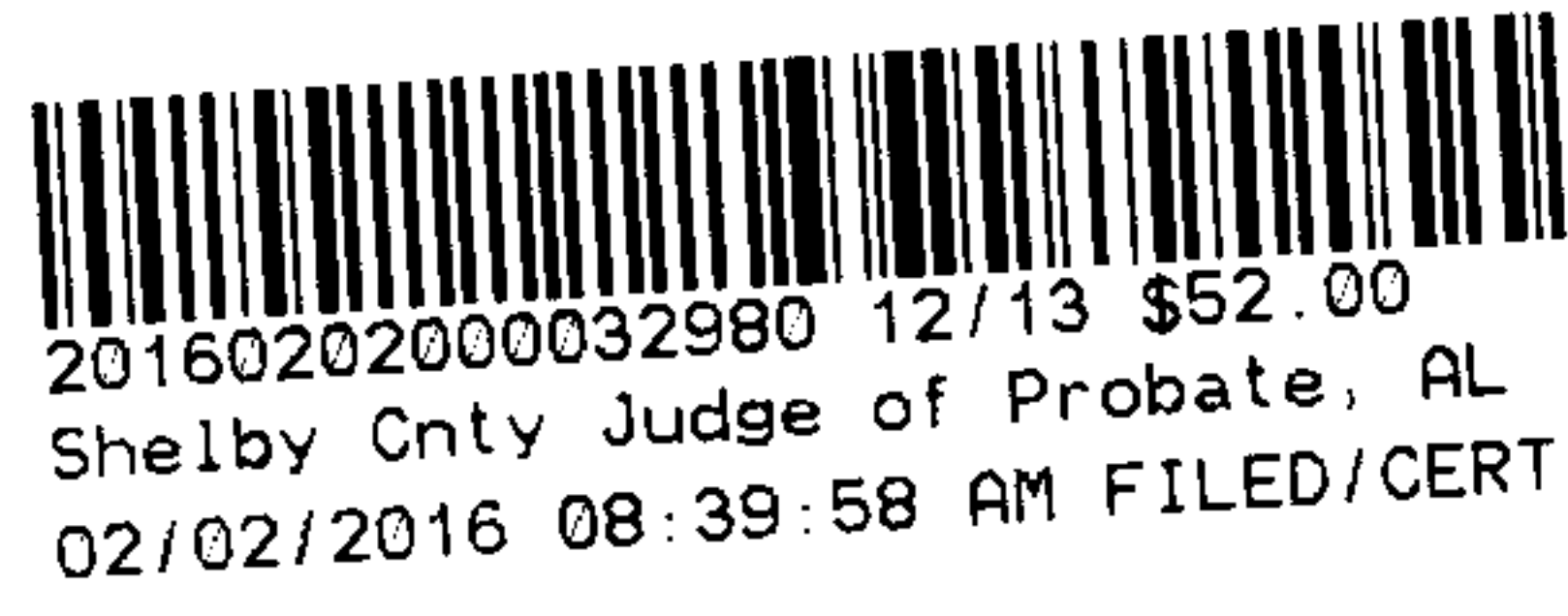
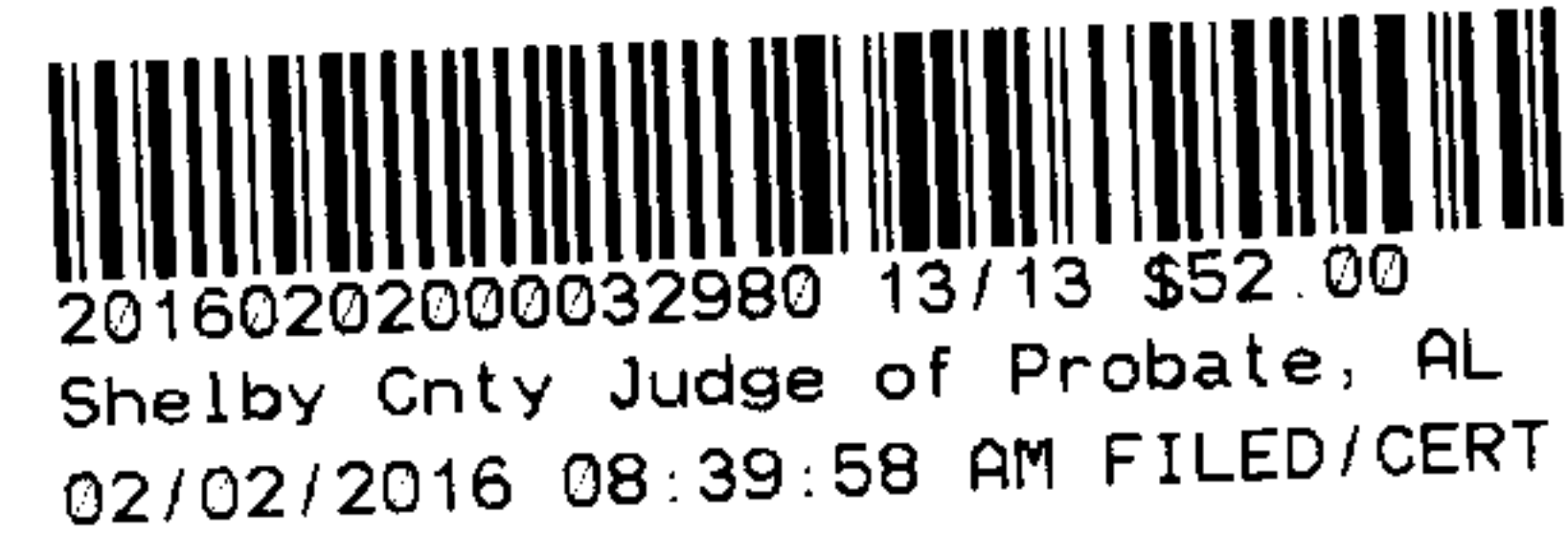


EXHIBIT A

Legal Description



PARCEL I:

Lots 1 and 2, according to the survey of Century Park South as recorded in Map Book 117, Page 23 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama.

PARCEL II:

Description of Parcel I, Century Park North, Phase I, as recorded in Map Book 118, Page 80 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 1, Township 19 South, Range 3 West; thence run in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1,031.24 feet to a point on the Northeasterly right of way line of Interstate Highway I-65; thence 104 degrees 21 minutes 38 seconds to the left in a Southeasterly direction along the Northeasterly right of way line of Interstate Highway I-65 a distance of 388.95 feet to the point of beginning; thence continue along the last described course a distance of 120 feet; thence 76 degrees 54 minutes 58 seconds to the left in an Easterly direction a distance of 457.87 feet to a point; thence 108 degrees 18 minutes 54 seconds to the left in a Northwesterly direction a distance of 141.58 feet to the P.C. (point of curve) of a curve to the left having a central angle of 9 degrees 18 minutes 26 seconds and a radius of 244.95 feet; thence in the arc of said curve to the left in a Northwesterly direction a distance of 39.79 feet; thence 62 degrees 21 minutes 04 seconds to the left (angle measured to tangent) in a Westerly direction a distance of 262.86 feet; thence 90 degrees 00 minutes to the left in a Southerly direction a distance of 47 feet; thence 90 degrees 00 minutes to the right in a Westerly direction a distance of 131.55 feet; thence 13 degrees 05 minutes 02 seconds to the left in a Southwesterly direction a distance of 31.43 feet to the point of beginning; being situated in Jefferson County, Alabama.

PARCEL III:

Lot 2, according to the Final Plat of Chase Park South II, recorded in Map Book 41, Page 150 in the Probate Office of Shelby County, Alabama.

Together with the beneficial easements set forth in the Declaration of Reciprocal Easements and Agreement dated September 7, 2011, and recorded September 19, 2011, in Instrument Number 20110919000276870 in the Office of the Judge of Probate of Shelby County, Alabama.

Recorder's Note:
Distribution Forms Completed