

**AUTHORITY CAPITAL FUNDS**  
**ASSIGNMENT OF RENTS AND LEASES**

April THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made this 28<sup>th</sup> day of April, 2016, by Mountain View Village, Ltd., an Alabama limited partnership, whose address is 730 N. Dean Road, Suite 100, Auburn, Alabama 36830 (hereinafter referred to as "Borrower"), for the benefit of The Housing Authority of the City of Columbiana, Alabama, a public body corporate and politic organized and existing under the laws of the State of Alabama, whose address is P.O. Box 498, Columbiana, Alabama 35051 (hereinafter referred to as "Authority").

**PRELIMINARY STATEMENT OF FACTS:**

A. Pursuant to a Authority Capital Funds Loan Agreement of substantially even date herewith between Borrower and Authority, the Authority is making a loan to the Borrower with a principal amount of up to Six Hundred One Thousand and No/100 Dollars (\$601,000.00) (the "Loan" and the "Loan Agreement").

B. To evidence the Loan, Borrower has executed and delivered its Promissory Note in the amount of \$601,000.00 (the "Note") of substantially even date herewith, payable to the order of Authority, or so much thereof as may be advanced to or for the account of Borrower, which has a final maturity date as provided in the Note.

C. Pursuant to that certain Ground Lease between Borrower and Authority of substantially even date herewith, and all such further amendments thereto, Borrower has a leasehold interest in certain real property located in Columbiana, Shelby County, Alabama, and more fully described in Exhibit "A" attached hereto (herein the "Premises").

D. As an inducement for Authority to make the Loan and as security for the repayment of the Loan, the Borrower is executing and delivering to the Authority its Mortgage and Security Agreement of substantially even date herewith (herein the "Mortgage") mortgaging its leasehold interest in the Premises (the Loan Agreement, the Note, the Mortgage and other security documents referred to therein being collectively referred to as the "Loan Documents").

E. As further security for the repayment of the Note and performance of all obligations under the Loan Documents and all instruments securing payment thereof and all renewals, amendments, substitutions, extensions and modifications thereof, the Borrower is executing and delivering to the Authority this Assignment.

**NOW THEREFORE FOR VALUE RECEIVED**, Borrower hereby grants a security interest in, transfers and assigns to Authority (collectively, the "Security"):

- (i) all leases and agreements, other than the Ground Lease, for the leasing, use or occupancy of the Premises now, heretofore or hereafter entered into, and all renewals and extensions thereof (collectively, "**Lease**" or "**Leases**");
- (ii) the immediate and continuing right to receive and collect the rents, security and other deposits, income, profits and issues arising out of, payable from or collected from the premises



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including all monies owed the Borrower as landlord under a Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease (collectively the "Rental Income");

- (iii) all payments derived therefrom including but not limited to claims for the recovery of damages done to the Premises or for the abatement of any nuisance existing thereon, claims for damages resulting from default under said Leases whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of said Leases or the waiver of any obligation or term thereof prior to the expiration date (collectively, the "Payments");
- (iv) all rights and remedies the Borrower may have against a tenant under a Lease (the "Remedies");
- (v) all proceeds payable by reason of the exercise by a tenant of any option to purchase the Premises or any first refusal rights of a tenant contained in a Lease (the "Option Proceeds");
- (vi) all rights in and to any proceeds of insurance payable to Borrower and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Premises (the "Awards");
- (vii) any award or damages payable to the Borrower pursuant to any bankruptcy, insolvency or reorganization proceeding affecting any tenant (the "Bankruptcy Payments"); and
- (viii) any payments made to Borrower in lieu of rent ("Payments in Lieu").

**THIS ASSIGNMENT IS GIVEN FOR THE PURPOSE OF SECURING ALL OF THE FOLLOWING** (collectively, the "Obligations Secured Hereby"):

ONE. Payment of the indebtedness evidenced by and performance of the terms and conditions of the Note and all renewals, amendments, substitutions, extensions and modifications thereof;

TWO. Payment of all other sums with interest thereon becoming due and payable to the Authority pursuant to the Note, the Mortgage or any other instrument securing payment of the Note;

THREE. Performance and discharge of each and every obligation, covenant and agreement contained in the Loan Documents; and

FOUR. Other obligations of the Borrower to the Authority;


**THE BORROWER FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES:**

## **ARTICLE I PRESENT ASSIGNMENT**

1.1 ASSIGNMENT. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Borrower shall have the right to collect, upon accrual all of the Security, and to retain, use and enjoy the same unless and until an Event of Default shall occur hereunder. The right of Borrower to collect the Security shall constitute a revocable license in favor of Borrower

revocable by Authority in accordance with this Agreement. **THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**ARTICLE II  
PERFORMANCE OF LEASES**

  
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**2.1 PERFORMANCE OF LEASES.** The Borrower shall:

- a. Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Leases of the Premises to be performed by the landlord thereunder;
- b. Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed and promptly send to the Authority any default notices that the Borrower sends or receives under the Leases;
- c. Except for the Senior Loans, not borrow against, pledge or further assign any rentals due under said Leases, except as permitted by the Loan Agreement executed as of approximately even date herewith between Borrower and Authority;
- d. Not permit the prepayment of any Rental Income (other than security or other deposits), for more than thirty (30) days in advance nor for more than the next accruing installment of Rental Income, nor anticipate, discount, compromise, forgive or waive any Security, except in the ordinary course of business and when it is reasonably prudent to disregard the foregoing;
- e. Not amend or modify any Lease or alter the obligations of the parties thereunder.

**ARTICLE III  
PROTECTION OF SECURITY**

**3.1 PROTECTION OF SECURITY.** The Authority shall have the right at Borrower's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the landlord thereunder, and Borrower agrees to pay all costs and expenses of Authority, including attorney's fees in a reasonable sum, in any such action or proceeding in which the Authority in its sole discretion may appear.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES**

**4.1 REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants:

- a. that it has full right and title to assign the Security;
- b. that there are no outstanding assignments or pledges of any Security other than with regard to the Senior Loans;

- c. that all obligations on the part of the landlord under any Lease have been fully complied with;
- d. that no Rents (other than security or other deposits) have been collected for more than thirty (30) days in advance of their due date or waived, anticipated, discounted, compromised or released, except as disclosed to Authority;
- e. that to Borrower's knowledge no tenant has any defenses, setoffs, or counterclaims against Borrower;
- f. Borrower has not executed any instrument that would prevent Authority from enjoying the benefits of this Agreement; and
- g. that no part of the Premises is used as a homestead or agricultural property.

#### **ARTICLE V EVENTS OF DEFAULT**

5.1 EVENT OF DEFAULT. An Event of Default under the Loan Documents not cured within any applicable grace period as provided in the Loan Documents shall constitute an Event of Default hereunder.

#### **ARTICLE VI REMEDIES**


6.1 REMEDIES. Upon an Event of Default, the Authority, may:

- a. declare all Obligations Secured Hereby immediately due and payable;
- b. revoke the privilege and license granted Borrower hereunder to collect the Security;
- c. at its option, without notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court:
  - 1. collect all of the Security payable under the Leases;
  - 2. enforce the payment of the Security payable under the Leases;
  - 3. exercise all of the rights of the Borrower under any Leases and all of the rights of the Authority hereunder; and
  - 4. enter upon, take possession of, manage and operate said Premises, or any part thereof;
- d. may cancel enforce or modify the Leases, and fix or modify the Security, and do any acts which the Authority deems proper to protect the security hereof with or without taking possession of said Premises, and apply the same to the costs and expenses of operation, management and collection, including reasonable attorney's fees, to the

payment of the expenses of any agent appointed by Authority, to the payment of taxes, assessments, insurance premiums and expenditures for the upkeep of the Premises and to the performance of the landlord's obligation under the Leases.

- 6.2 No action or inaction by the Authority pursuant to this Article VI shall cure or waive any default or waive, modify or affect notice of default under said Mortgage or invalidate any act done pursuant to such notice nor in any way operate to prevent the Authority from pursuing any remedy which it now or hereafter may have under the terms or conditions of said Mortgage or the Note secured thereby or any other instrument securing the same.
- 6.3 Notwithstanding any provision of this Assignment to the contrary, unless otherwise compelled by HUD or otherwise required by the RAD Requirements, Lender shall take no action with respect to a particular Event of Default if, at the time such Event of Default occurs, (i) Lender or any of its affiliates is the general partner of Borrower or (ii) Lender or any of its affiliates owns a Controlling Interest (as defined in Section 8.1 of the Ground Lease) in the general partner, managing member or controlling shareholder of Borrower, provided, however, on the Maturity Date the outstanding principal amount of the Note shall be due and payable and Lender shall have the right to take any actions hereunder to collect under the Note.

## ARTICLE VII GENERAL COVENANTS

  
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7.1 NO LIABILITY IMPOSED ON AUTHORITY. The Authority shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon the Authority, or for the carrying out of any of the terms and conditions of said Leases. This Assignment shall not operate to make the Authority responsible or liable for any waste committed on the Premises, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of said Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger for laches or failure to collect any Security.

7.2 INDEMNIFICATION. The Borrower shall and does hereby agree to indemnify and to hold Authority harmless from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment 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 excepting the gross negligence or intentional wrongful acts of Authority. Should the Authority incur any such liability, or in the defense of any such claims or demands or should a judgment be entered against Authority, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall bear interest thereon at the Default Rate as set forth in the Note, shall be secured hereby, shall be added to the Obligations Secured Hereby and Borrower shall reimburse the Authority for the same immediately upon demand, and upon the failure of Borrower to do so the Authority may declare all Obligations Secured Hereby immediately due and payable. The indemnification rights of Authority hereunder shall also extend to any participant of Authority.

7.3 TENANT TO RECOGNIZE AUTHORITY. Each tenant under any Lease is hereby irrevocably authorized and directed to recognize the claims of Authority or any receiver appointed without investigating the reason for any action taken or the validity or the amount of indebtedness owing to the Authority, or the existence of any Event of Default hereunder, or the application to be made by the Authority or such receiver. Borrower hereby irrevocably directs and authorizes the tenants to pay the Authority or such receiver all sums due under the Leases and consents and directs that said sums shall be paid to any such receiver in accordance with terms of its receivership or to Authority without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Authority is entitled to exercise its rights hereunder, and to the extent such sums are paid to Authority or such receiver, the Borrower agrees that the tenant shall have no further liability to Borrower for the same. The sole signature of the Authority or such receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Authority or such receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals collected under this Assignment shall upon notice from the Authority be drawn to the exclusive order of the Authority or such receiver.

7.4 SECURITY OR OTHER DEPOSITS. Upon an Event of Default, Borrower shall on demand transfer to the Authority any security or other deposits held by Borrower under the terms of any Lease, to be held by Authority and applied in accordance with the provisions of the Lease. Until Authority makes such demand and the deposits are paid over to Authority, the Authority assumes no responsibility for any such security or other deposit. The Borrower shall deposit the same in an account at the Authority, separated from its general funds, and if such deposits are required by law to be refunded to the respective tenants with interest thereon, such account shall be an interest bearing account.

7.5 ATTORNEY IN FACT. Borrower hereby irrevocably appoints Authority and its successors and assigns as its agent and attorney-in-fact, which appointment is coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Authority may deem necessary to make this Assignment and any further assignment effective.

7.6 ASSIGNMENT OF FUTURE LEASES. Until the Obligations Secured Hereby shall have been paid in full, Borrower shall, on demand of the Authority at any time or times:

- (a) deliver to the Authority executed copies of any and all other future Leases upon all or any part of the said Premises;
- (b) make, execute and deliver to Authority any and all assignments and other instruments sufficient to assign such Security thereunder to Authority or that the Authority may deem to be advisable for carrying out the true purposes and intent of this Assignment; and
- (c) furnish Authority with a rent roll of the Premises disclosing current tenancies, rents payable, and such other matters as Authority may reasonably request.

7.7 NO MORTGAGEE IN POSSESSION. Nothing herein contained and no action taken pursuant to this Assignment shall be construed as constituting the Authority a "Mortgagee in Possession."

7.8 CONTINUING RIGHTS. The rights and powers of Authority or any receiver hereunder shall continue and remain in full force and effect until all Obligations Secured Hereby, including any

deficiency remaining from a foreclosure sale, are satisfied, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of any period of redemption.

## **ARTICLE VIII MISCELLANEOUS**

8.1 SUCCESSORS AND ASSIGNS. This Assignment and each and every covenant, agreement and provision hereof shall be binding upon the Borrower and its successors and assigns including without limitation each and every from time to time record owner of the Premises or any other person having an interest therein and shall inure to the benefit of the Authority, its participants, and their successors and assigns. As used herein the words "successors and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.

8.2 GOVERNING LAW. This Assignment is executed pursuant to and shall be governed by the laws of the State of Alabama, without regard to principles of conflict of law.

8.3 SEVERABILITY. It is the intent of this Assignment to confer to Authority the rights and benefits hereunder to the full extent allowable by law. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

8.4 NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent, to the respective party's address as set forth in the Regulatory and Operating Agreement.

8.5 CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Assignment are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

8.6 RECITALS; DEFINITIONS. The foregoing Preliminary Statement of Facts and accompanying grants and definitions prior to Article 1 are true and correct and are incorporated herein by reference as the agreements of the parties. Any capitalized term not defined herein shall have the meaning assigned to it by the Loan Agreement.

[SIGNATURE PAGE FOLLOWS]



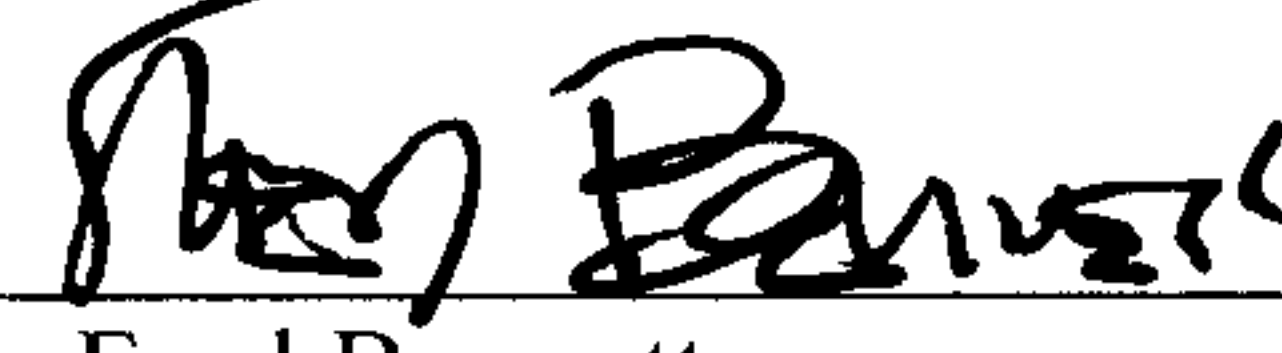
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IN WITNESS WHEREOF, this Assignment is executed as of the date first above written.


**BORROWER:**

**MOUNTAIN VIEW VILLAGE, LTD.**

By: MVV Bennett GP, LLC  
Its: General Partner

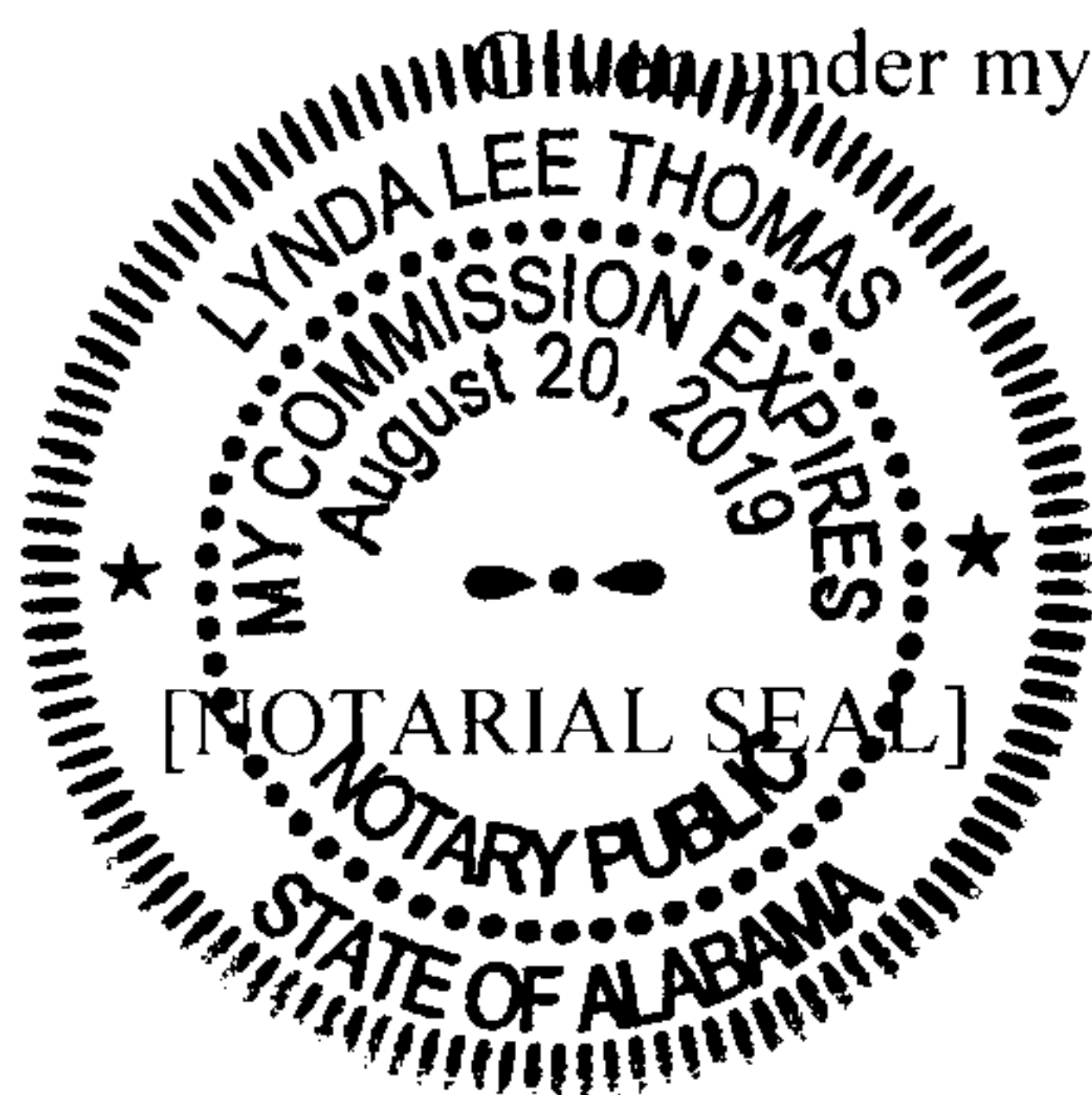
By:   
Name: Fred Bennett  
Title: Manager

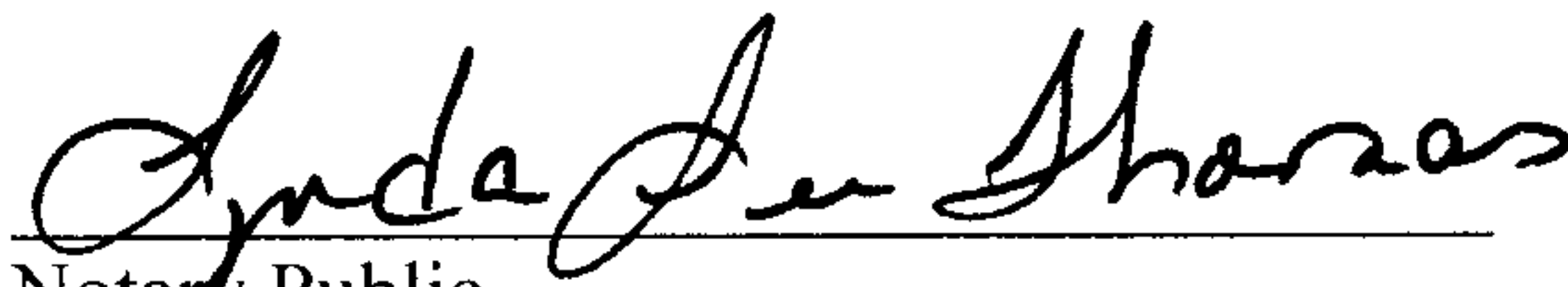
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I, the undersigned, a Notary Public in and for said County and State, hereby certify that Fred Bennett, whose name as Manager of MVV Bennett GP, LLC, an Alabama limited liability company, the general partner of Mountain View Village, Ltd., an Alabama limited partnership, is signed to the foregoing conveyance, 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 and with full authority, executed the same voluntarily for and as the act of said limited liability company on behalf of the limited partnership.

Given under my hand this 28<sup>th</sup> day of April, 2016.



  
Notary Public

My commission expires: 8/20/2019

Exhibit A  
Legal Description

A TRACT OR PARCEL OF LAND CONTAINING 9.41 ACRES LOCATED IN AND BEING A PART OF SECTION 25, TOWNSHIP 21 SOUTH, RANGE 1 WEST, HUNTSVILLE MERIDIAN, SHELBY COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

STARTING AT A 1/2" REBAR AND CAP STAMPED PRECISION CA-788 AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 21 SOUTH, RANGE 1 WEST, HUNTSVILLE MERIDIAN, SHELBY COUNTY, ALABAMA GO SOUTH 88°34'08" EAST 679.30 FEET TO A DISTURBED 1/2" REBAR & CAP STAMPED PRECISION CA-788; THENCE SOUTH 00°41'53" WEST 601.47 FEET TO A DISTURBED 1" PINCHED PIPE; THENCE NORTH 88°46'13" WEST 681.00 FEET TO A BROKEN 1" OPEN TOP PIPE; THENCE NORTH 00°51'43" EAST 603.84 FEET TO THE POINT OF BEGINNING.



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