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Shelby Cnty Judge of Probate, AL
05/06/2016 10:05:38 AM FILED/CERT

CONFIRMATION OF AND AMENDMENT TO MORTGAGE

THIS CONFIRMATION OF AND AMENDMENT TO MORTGAGE (this "Agreement") is entered into as of April ~~22~~ 2016 (the "Effective Date") by and between PACIFIC PREMIER BANK ("Lender") and MALATESTA GROUP, LLC, a Mississippi limited liability company and SONIC DRIVE IN OF CHELSEA, INC., an Alabama corporation ("Borrower").

PRELIMINARY STATEMENT

Lender and Borrower are parties to that certain Loan Agreement dated as of July 25, 2014 with respect to the Premises legally described on the attached Exhibit A (collectively, the "Loan Agreement"). Initially capitalized terms not otherwise defined in this Agreement have the meanings set forth in the Loan Agreement. Lender and Borrower have agreed to modify the Loan Documents, as applicable, as set forth in this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which is acknowledged, Borrower and Lender agree as follows:

1. **Modifications.** (a) The following sections on page 2 of the Mortgage, said Mortgage found of record in Instrument No. 20140911000286110 of the Land Mortgage Records of Shelby County, Alabama, are amended and restated as follows:

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

(i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby;


(iii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, that other certain equipment note in the amounts of \$1,000,000 dated as of April ~~22~~, 2016 executed by Borrower together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby (the "New Note"); and

(iv) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in the Related Loan Agreements and any Other Agreement, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby.

(b) The New Note and the other loan document executed in connection with the loan (the "New Loan") evidenced by the New Note are hereinafter the "New Loan Documents". Borrower hereby agrees and consents that the occurrence of an "Event of Default" under the Loan Documents and/or the New Loan Documents shall be an "Event of Default under all such documents. Accordingly, the Loan and the New Loan are fully cross-defaulted and cross collateralized, and all existing Loan Documents, the loan documents evidencing the loans made under the New Loan Documents shall be deemed modified to give full effect to this cross-default and cross collateralization provision.

2. **Ratification.** (a) Borrower acknowledges and agrees that: (i) except to the extent expressly provided for in this Agreement, the Loan Documents are not modified or amended by this Agreement and shall remain in full force and effect and this Agreement shall not constitute a waiver of any rights or remedies in respect of the Loan Documents; (ii) the Loan Documents (as modified by this Agreement) and all rights, title, interest, liens, powers and privileges by virtue thereof are hereby reaffirmed, ratified, renewed and extended and shall be and continue to be in full force and effect to secure the payment of the indebtedness evidenced by the Loan Documents and any and all restatements, renewals, modifications, amendments, increases and/or extensions thereof; (iii) no payment, discharge or release of any liens or collateral securing the Loan Documents is intended hereby and all liens on all such collateral shall continue in full force and effect, unimpaired from the date of their execution and perfection; and (iv) Lender and its predecessors in interest have performed all of their obligations under the Loan Documents and each of Borrower have no defenses, offsets, counterclaims, claims or demands of any nature which can be asserted against Lender and/or such predecessors for damages or to reduce or eliminate all or any part of the obligations of Borrower under the Loan Documents.

3. **Miscellaneous.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel. This Agreement, the Exhibits hereto, the Loan Documents and any other instruments referred to herein, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, of the parties or any of them with respect to the subject matter hereof, if any. Time is of the essence in the payment and performance of all obligations contemplated by this Agreement and the Loan Documents.


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IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement effective as of the date set forth above.

PACIFIC PREMIER BANK

By [Signature] JOHN W. RINALLI
Printed Name JOHN W. RINALLI
Its Executive Vice President

STATE OF New Jersey
COUNTY OF Essex

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] SS.
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On April 20, 2016, before me, the undersigned, a Notary Public in and for said State personally appeared John W. Rinalli known to me to be the Exec. Vice Pres of Pacific Premier Bank and acknowledged to me that such individual executed the within instrument on behalf of said bank.

WITNESS my hand and official seal.

[Signature: Ivette Gardiner]
Notary Public

My Commission Expires:

IVETTE GARDINER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/1/2019


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BORROWER:

MALATESTA GROUP, LLC, a Mississippi limited liability company

By [Signature]
Printed Name Greg Malatesta
Its Managing Member

STATE OF Mississippi
COUNTY OF Coahoma

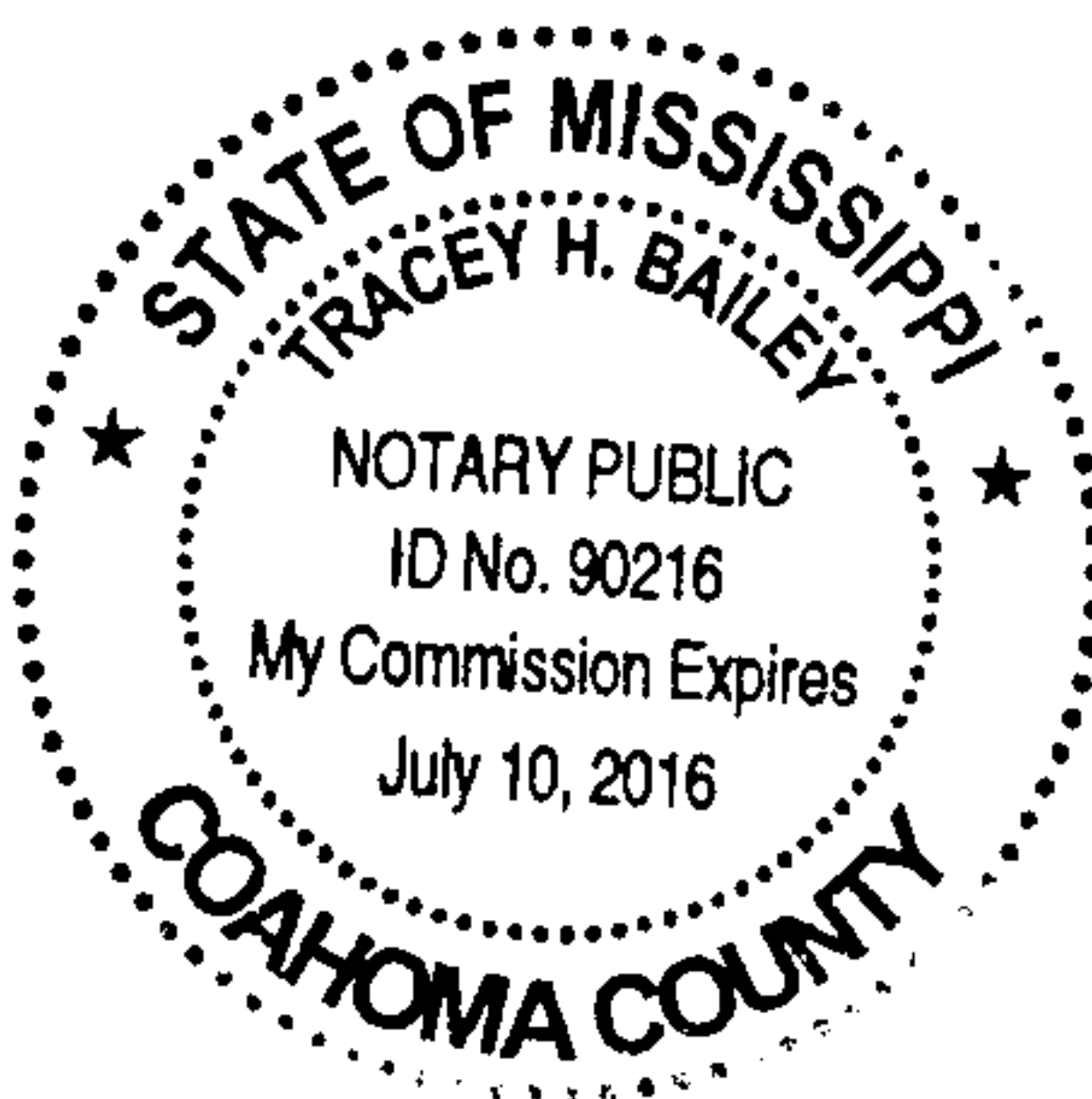
]] SS.]

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Greg Malatesta, whose name as Managing Member of **MALATESTA GROUP, LLC**, a Mississippi limited liability company, 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 and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 20th day of April, 2016.

[Signature: Tracey H. Bailey]
Notary Public

My Commission Expires:



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By [Signature]
Printed Name Greg Malatesta
Its President

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Greg Malatesta, whose name as President of **SONIC DRIVE IN OF CHELSEA, 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 and with full authority, executed the same voluntarily for and as the act of said corporation.

Tracey H. Bailey
Notary Public

A circular notary seal for Tracey H. Bailey, a Notary Public in the State of Mississippi. The seal features a dotted border. Inside the border, the text "STATE OF MISSISSIPPI" is at the top, "COAHOMA COUNTY" is at the bottom, and "TRACEY H. BAILEY" is in the center. Below the name, it says "NOTARY PUBLIC", "ID No. 90216", and "My Commission Expires July 10, 2016". Two stars are positioned on the left and right sides of the seal.

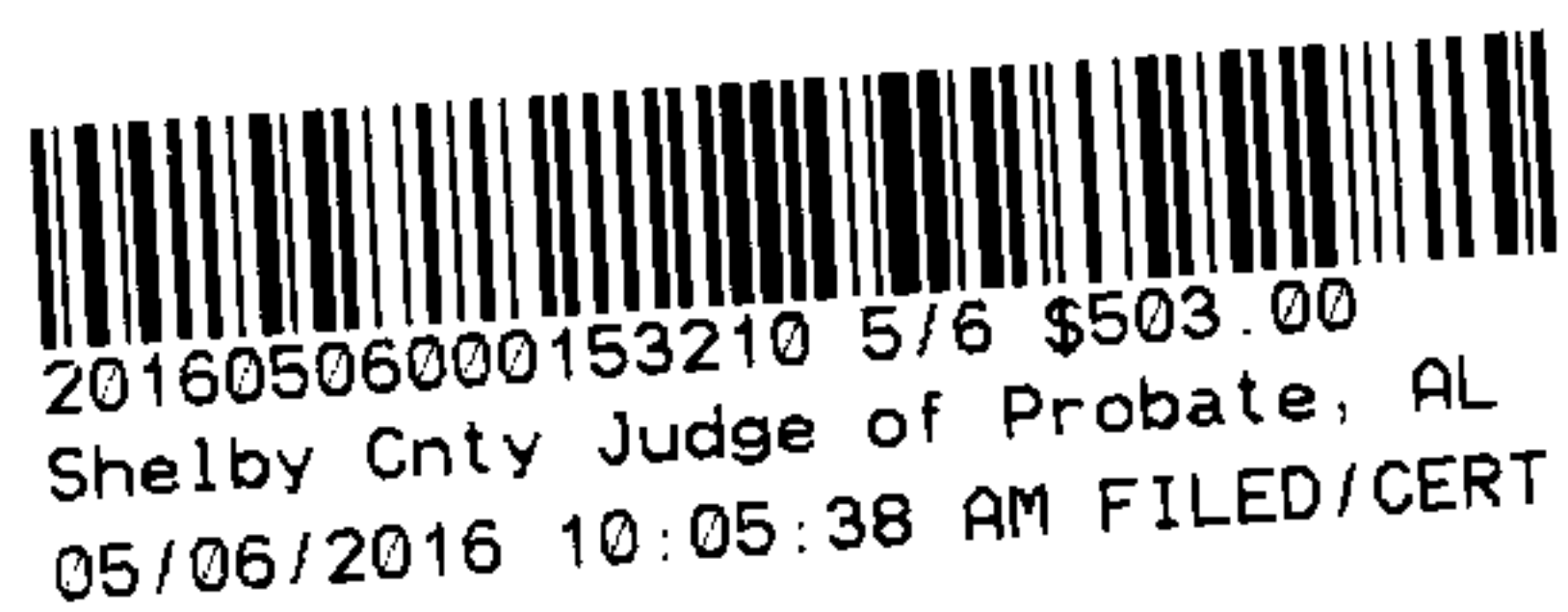



EXHIBIT A
LEGAL DESCRIPTION
CHELSEA

Lot 2, according to the Amended Map of Chelsea Pointe, as recorded in Map Book 38, Page 146, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

TOGETHER WITH rights obtained, that constitute an interest in real estate, under that certain Declaration of Restrictive Covenants and Operating Agreement by Double J&O, LLC, dated August 23, 2007, and recorded in Instrument # 20070807000366510, amended in Instrument # 20080221000071160, and Instrument # 20090407000126060.


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