

20160525000178310
05/25/2016 10:15:21 AM
MORT 1/12

THIS MORTGAGE IS RECORDED AS ADDITIONAL COLLATERAL FOR DEBT SECURED BY COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING RECORDED CONTEMPORANEOUSLY HEREWITH.

THIS INSTRUMENT PREPARED BY:

**Virginia S. Boliek
McGlinchey Stafford, PLLC
2100 Southbridge Parkway, Suite 650
Birmingham, AL 35209**

RESIDENTIAL MORTGAGE

**STATE OF ALABAMA)
COUNTY OF SHELBY)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, DIVERSIFIED REAL ESTATE HOLDINGS LLC, an Alabama limited liability company (the "Borrower"), is justly indebted USAMERIBANK, a Florida banking corporation (the "Lender"), pursuant to the terms of that certain Term Note between Borrower and Lender dated of even date herewith ("Note"), in the original principal amount of One Million, Forty One Thousand, Three Hundred Forty Nine Dollars (\$1,041,349.00) (the "Loan"); and

WHEREAS, the Borrower executed a Commercial Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the " Commercial Mortgage") of even date herewith in favor of Lender to secure the Note and the Obligations (as defined in the Commercial Mortgage);

WHEREAS, it is desired by ROBERT R. HUTSON, JR., and KIMBERLY H. HUTSON, husband and wife ("Mortgagors"), to secure the following by this Mortgage (hereinafter collectively referred to as the "Obligations"):

(a) the obligations under the Note, including, but not limited to, Borrower's obligation to pay the principal of and interest on the Note and all late charges and other sums due or to become due under the Note and all reasonable attorneys' fees ("Attorneys' Fees") and other costs of collection in accordance with the terms thereof;

(b) any amounts expended or advanced by Lender under this Mortgage, the Commercial Mortgage or the other Loan Documents (as defined in the Commercial Mortgage) or otherwise with respect to the care or preservation of the Mortgaged Property hereunder or under the Commercial Mortgage, the exercise of Lender's rights hereunder, under the Commercial Mortgage, or under any of the other Loan Documents or the enforcement of the Loan Documents; and

(c) all renewals, extensions and modifications of the Loan, and all refinancings of any part of the Loan and any and all other additional indebtedness of Mortgagors (or either of them) to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

WHEREAS, Lender would not make the Loan to the Borrower but for this Mortgage.

NOW THEREFORE, in consideration of the Loan and the Obligations, and to secure the prompt payment of the same at maturity, the Mortgagors do hereby grant, bargain, sell and convey unto the Lender, the following described real property (the "Mortgaged Property"):

See Exhibit A attached hereto and incorporated herein by reference.

The Mortgaged Property constitutes the homestead of the Mortgagors.

TO HAVE AND TO HOLD the above granted premises unto the Lender forever; and for the purpose of further securing the payment of the Loan and the Obligations, the Mortgagors agree to pay all taxes, or assessments, when legally imposed upon the Mortgaged Property, and should default be made in the payment of same, the Lender has the option of paying off the same; and to further secure the Obligations, the Mortgagors agree to keep the improvements on the Mortgaged Property insured against loss or damage by fire, lightning and tornado or similar disasters for the reasonable insurable value thereof, including liability insurance in such amounts as may from time to time be reasonably required by Lender with respect to personal injury or death to any one or more persons or damage to property, all with companies satisfactory to the Lender, with loss, if any, payable to the Lender as mortgagee, and promptly to deliver the policies, or any renewals of the policies to the Lender; and if the Mortgagors fail to keep the Mortgaged Property insured as above specified, or fails to deliver the insurance policies to the Lender then the Lender has the option of insuring the Mortgaged Property for said sum for the benefit of the Lender, the policy, if collected, to be credited on the Obligations, less cost of collecting same; all amounts so expended by the Lender for taxes, as Lender, additional to the debt hereby specifically secured, shall be covered by this Mortgage, and bear interest from the date of payment by the Lender at the rate provided in the Note and be at once due and payable.

Upon condition however, that if the Loan and the Obligations are paid in full and Mortgagors reimburse the Lender for any amounts Lender may have expended for taxes, assessments and insurance, and the interest thereon, then this conveyance to be null and void, but should default be made in the payment of any sum expended by the Lender or should the Obligations hereby secured, or any part thereof or the interest thereon remain unpaid at maturity, or should the interest of the Lender in the Mortgaged Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, or if any statement of lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen without regard to form and contents of such statement and without regard to the existence or nonexistence of the debt or any part thereof or of the lien on which such statement is based, or if any other "Event of Default" (as hereinafter defined) shall occur

then in any one of said events, the whole of the Obligations shall at once become due and payable and this Mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the Lender shall be authorized to take possession of the premises hereby conveyed and, with or without first taking possession, after giving 21 days' notice by publishing once a week for three consecutive weeks, the time, place and terms of sale, in some newspaper published in said County and State, to sell the same in lots or parcels, or en masse, as Lender may deem best in front of the Court House door in said County, at public outcry, to the highest bidder for cash and apply the proceeds of said sale, First, to the expense of advertising, selling and conveying, including reasonable attorneys' fees; Second, to the payment of any amounts that may have been expended, or that it may be necessary then to expend in paying insurance, taxes, or other encumbrances, with interest thereon; Third, to the payment of the Obligations in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale, and Fourth, the remainder if any, to be turned over to the Mortgagors, and the Mortgagors further agree that the Lender may bid at said sale and purchase the Mortgaged Property, if the highest bidder therefore, as though a stranger hereto, and the person acting as auctioneer at such sale is hereby authorized and empowered to execute a deed to the purchaser thereof in the name of the Mortgagors by such auctioneer as agent, or attorney in fact, and the Mortgagors further agree to pay reasonable attorneys' fees to the Lender for the foreclosure of this Mortgage, should the same be so foreclosed, the fee to be a part of the debt hereto secured.

It is expressly understood that the word "Lender" wherever used in this mortgage refers to the person, or to the persons or to the corporation named as grantee or grantees in the granting clause herein.

Any estate or interest herein conveyed to the Lender, or any right or power granted to the Lender in or by this Mortgage is hereby expressly conveyed and granted to the heirs, and agents, and assigns, of the Lender, or to the successors and agents and assigns of the Lender, if a corporation.

If all or any part of the Mortgage Property or any interest therein is sold or transferred by Mortgagors without Lender's prior written consent (a "Prohibited Transfer"), Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Mortgagors' notice of acceleration which notice shall provide a period of not less than 30 days from the date the notice is mailed within which Mortgagors may pay the sum declared due. If Mortgagors fails to pay such sum prior to the expiration of such period, Lender may, without further notice or demand on Lender, invoke any remedies or rights available to the Lender as contained herein as relates to default of payment of money indebtedness due or any and all other remedies available by law.

In addition to the foregoing, any of the following shall constitute an "Event of Default":

- (a) Failure by Borrower to pay when due any interest, principal, late charge or other amount under the Note or with respect to any of the Obligations;
- (b) a Default or Event of Default as defined in the Commercial Mortgage or any other Loan Document;

- (c) the insolvency of or filing by Mortgagors of a voluntary or involuntary petition seeking protection under any State or Federal bankruptcy statute;
- (d) the adjudication of a Mortgagor as bankrupt or insolvent;
- (e) a final judgment or judgments for the payment of money in excess of an aggregate of \$10,000.00 shall be rendered against any Mortgagor and the same shall remain undischarged for a period of 90 days during which execution shall not be effectively stayed;
- (f) if any Mortgagor shall fail to pay or discharge, before they become delinquent, all taxes, assessments and governmental charges or levies imposed upon the Mortgagor or its properties or income, except to the extent any such taxes or charges are being contested in good faith by appropriate proceedings, diligently conducted;
- (g) an event of default under the terms of any other mortgage on the Mortgaged Property; or
- (h) Death of a Mortgagor; or
- (i) The occurrence of a Prohibited Transfer or any further encumbrance of the Mortgaged Property, or any part thereof, without the prior written consent of Lender.

The Mortgagors covenant and agree that the Mortgaged Property is in compliance, and Mortgagors shall in the future comply and cause the Mortgaged Property to comply, with all applicable federal, state and local environmental laws, ordinances, and regulations (collectively, the "Environmental Laws"). There are no pending claims or threats of pending claims against Mortgagors or the Mortgaged Property by private, governmental or administrative authorities relating to environmental impairment, or Environmental Laws. Mortgagors shall not use the Mortgaged Property in a manner which will result in any non-complying disposal or release of any solid waste, hazardous waste, hazardous substance, or other contaminant (all as defined in the Environmental Laws) (collectively, "Hazardous Materials") in, on or under the Mortgaged Property, and covenants and agrees to keep, or cause the Mortgaged Property to be kept, free of any non-complying Hazardous Materials. The Lender from time to time may inspect, test and sample the Mortgaged Property for compliance with Environmental Laws and may add the cost of same to the principal balance of the indebtedness secured hereby. Mortgagors agree that Lender, in its sole discretion, may submit a copy of any environmental report or test results to federal and state environmental agencies, or any other governmental agency having regulatory control over the Mortgaged Property. In response to the presence of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property at any time, Mortgagors shall immediately take, at Mortgagors' sole expense, all remedial action required by the Environmental Laws or any judgment, consent decree, settlement or compromise with respect to any claims in connection therewith. If Mortgagors fail to take such remedial action, Lender, in its sole discretion, may take such remedial action and add any and all costs in connection therewith to the principal balance of the indebtedness secured hereby. Mortgagors shall

immediately notify Lender in writing of: (i) the discovery of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property; (ii) any knowledge by Mortgagors that the Mortgaged Property does not comply with any Environmental Laws; (iii) any Hazardous Materials claims or conditions; and (iv) the discovery by Mortgagors of any occurrence or condition on any real property adjoining the Mortgaged Property that is likely to cause the breach of the Environmental Laws as to the Mortgaged Property or any part thereof. Mortgagors shall defend, indemnify and hold Lender harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation costs of suit, reasonable attorney's fees, fees of expert witnesses, engineering fees, and costs of any environmental inspections, inquiries, audits, evaluations, assessments or other expenses) arising from or in connection with (i) the presence in, on or under the Mortgaged Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials in, on, under or from the Mortgaged Property; (ii) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to, during, or after the term hereof, and whether by Mortgagors or any predecessor in title of Mortgagors or any predecessor in title, or any third persons at any time occupying or present on the Mortgaged Property, in connection with the generation, manufacture, handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials in any time in, on or under the Mortgaged Property, or (iii) any breach of any representation, warranty or covenant under the terms of this Mortgage. The foregoing indemnity extends to the contamination of any property or natural resources arising in connection with Hazardous Materials, irrespective of whether activities were or will be undertaken in compliance with Environmental Laws or other applicable laws, regulations, codes and ordinances. Mortgagors shall not place any underground storage tanks or aboveground storage tanks on the Mortgaged Property without the prior written consent of Lender. Each Mortgagors covenant and agree to provide Lender with a copy of any and all correspondence, plans, specifications, reports, filings, and other documents relating to the Mortgaged Property submitted by Mortgagors to any federal or state environmental agency, or any other governmental agency having regulatory control over the Mortgaged Property, and further covenants and agrees to provide Lender with notice and a copy of any and all environmental inspections and test results conducted in, on, or under the Mortgaged Property. Any action taken by Lender pursuant hereto shall be solely for Lenders' benefit.

To the fullest extent allowed by law, which is now or hereafter existing, and after consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, the undersigned knowingly, voluntarily, and intentionally waive any right to a trial by jury with respect to any litigation based upon this transaction or this instrument, or arising out of, under, or in connection with any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledge that this provision is a material inducement for entering into this loan transaction by all parties.

Mortgagors agree that any suit, action or proceeding instituted against Mortgagors with respect to this Mortgage, the Note, or any of the other Loan Documents may be brought in Jefferson County, Alabama. By its execution hereof, Mortgagors hereby irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of the forum or the

jurisdiction of such court or from the execution of judgments resulting therefrom. Mortgagors hereby irrevocably accept and submit to the jurisdiction of the aforesaid court in any such suit, action or proceeding

[signature and acknowledgment on following page]

IN WITNESS WHEREOF, the Mortgagors has caused this instrument to be executed on this 18 day of May, 2016.

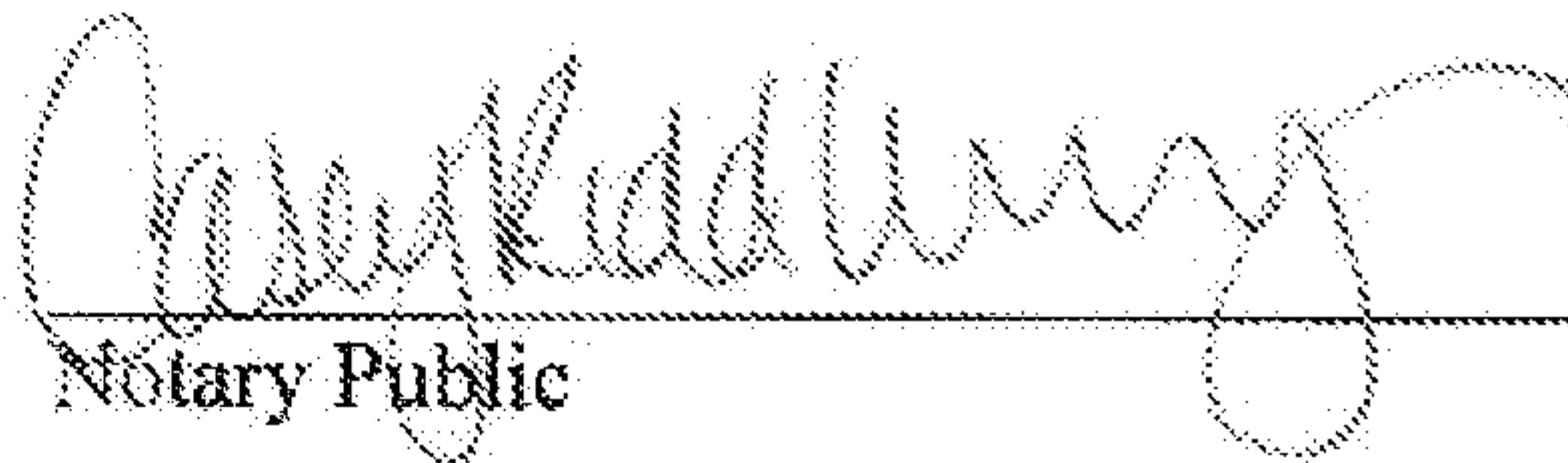
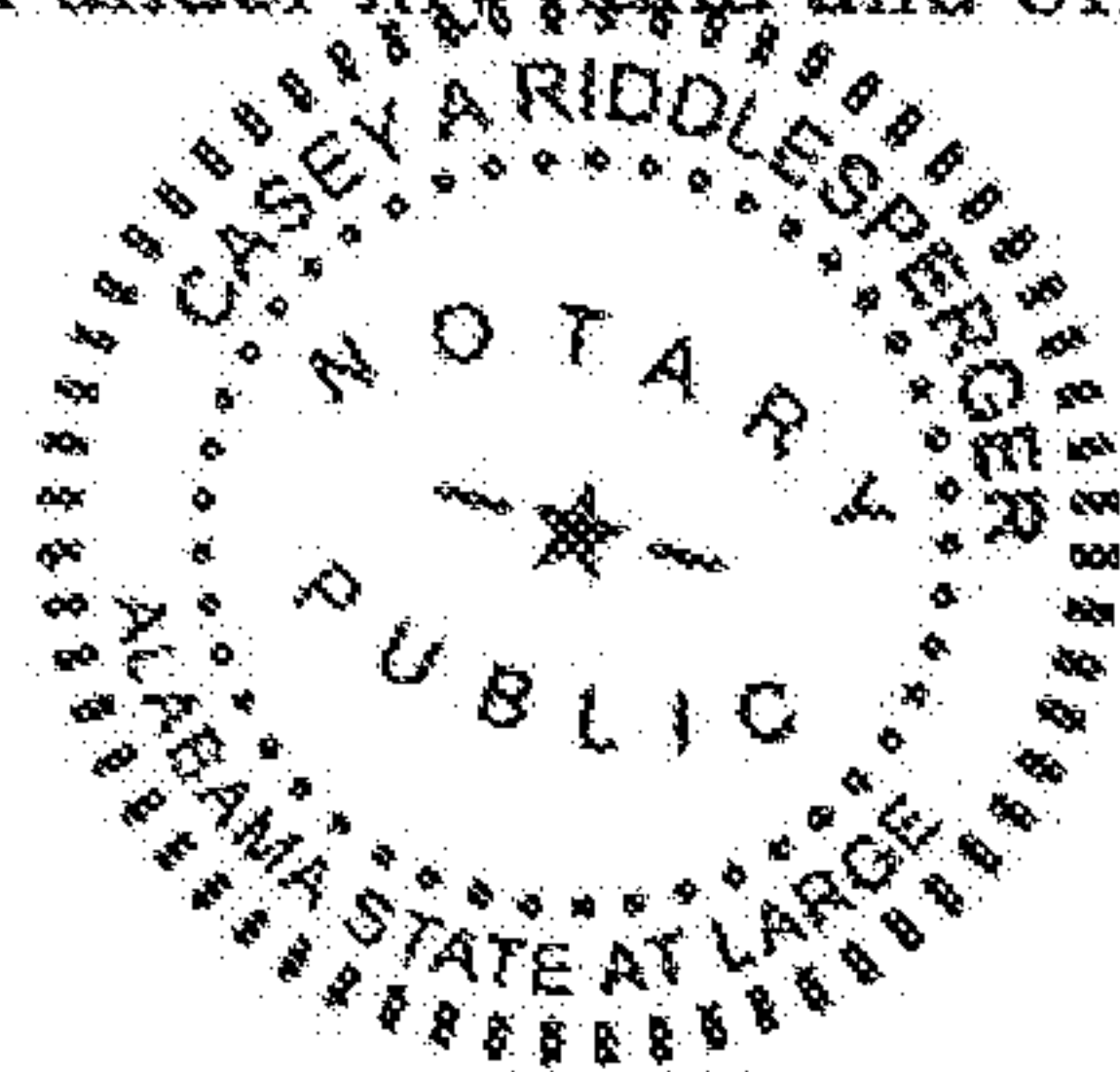
Mortgagors



ROBERT R. HUTSON, JR.

I, the undersigned, a Notary Public, in and for the State of Alabama at Large, do hereby certify that ROBERT R. HUTSON, JR., whose name 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 the Mortgage, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office on this 18 day of May, 2016



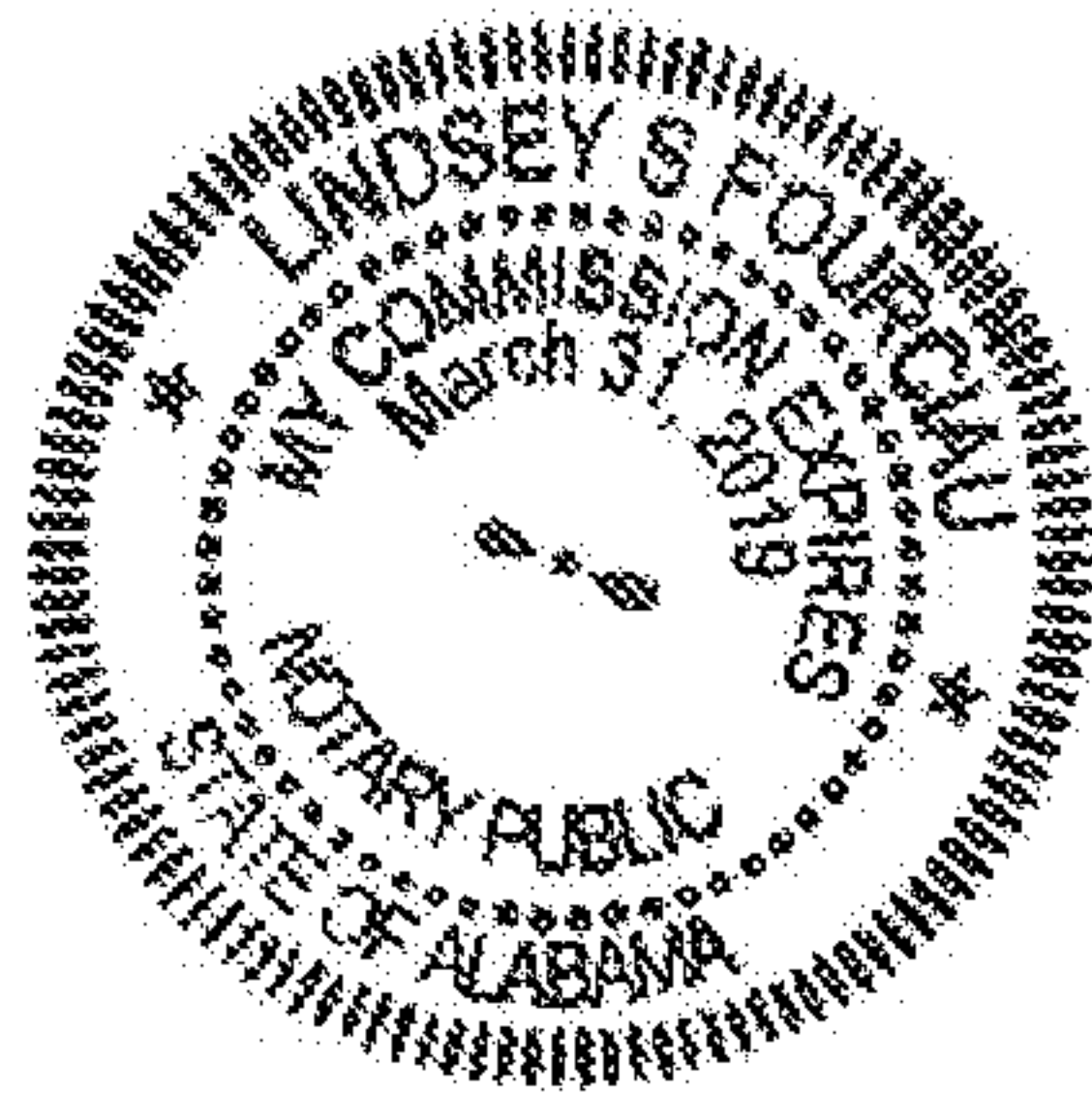
Notary Public

My Commission Expires: MY COMMISSION EXPIRES JANUARY 11, 2020


KIMBERLY H. HUTSON

I, the undersigned, a Notary Public, in and for the State of Alabama at Large, do hereby certify that KIMBERLY H. HUTSON, whose name 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 the Mortgage, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office on this 23rd day of May, 2016




Notary Public

My Commission Expires: 3/31/19

EXHIBIT A

**LEGAL DESCRIPTION OF LAND
WITH EXCEPTIONS**

Parcel I:

Lot 9-B-2B-2A, according to the Graham-Means Resurvey as recorded in Map Book 27, Page 78, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.

Parcel II:

Lot 22-A, according to the Survey of Final Plat Stonegate Realty Lake Lots Resurvey, as recorded in Map Book 29, Page 139, in the Probate Office of Shelby County, Alabama.

Subject to:

AS TO ALL PARCELS

1. **DELETED**
2. **DELETED**
3. **DELETED**
4. **DELETED**
5. **DELETED**
6. The policy does not insure against any reappraisal, assessed value adjustment, and/or escape taxes which may become due by virtue of any action of the Office of the Tax Assessor, The Office of the Tax Collector, and/or the Board of Equalization.
7. The lien of Ad Valorem taxes for the year 2016, and subsequent years.
8. **DELETED**
9. Title to all oil, gas and minerals within and underlying the premises, together with all oil and mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights. Anything to the contrary notwithstanding, this policy, (policy to be issued if in a commitment), does not attempt to set out any ownership interest in any oil, gas, and minerals or any rights in connection therewith, and said oil, gas, and minerals interests, and all rights of entry, including the right to mine or extract such oil, gas and mineral interests are not insured.
10. Flume and headwall encroaching into easement along north property line; A/C units and concrete located within easement along the north property line; awning and steps located within the easterly building setback; parking spaces and curbing with easement located along westerly property line and concrete pad for transfer located over the southerly property line as shown on survey of Rowland Jackins, Ala. PLS No. 18399, Jackins, Butler and Adams, Inc., dated May 13, 2016.

AS TO PARCEL 1

11. Such state of facts as shown on Diversified Resources Resurvey as recorded in Map Book 46, Page 24, Graham-Means Resurvey recorded in Map Book 27, Page 78 and on map of Meadow Brook Corporate Park South Phase II Resurvey No. 2 recorded in Map Book 23, Page 53 and map of Meadow Brook Corporate Park South, Phase II, Resurvey of Lot 9-B-2 recorded in Map Book 21, Page 125 in the Probate Office of Shelby County, Alabama.
12. Transmission Line Permit(s) to Alabama Power Company recorded in Deed Book 109, Page 490 and Deed Book 112, Page 134 in said Probate Office.
13. DELETED
14. Underground Cable Agreements to Alabama Power Company as recorded in Real Book 75, Page 634 in the Probate Office of Shelby County, Alabama.
15. Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park South as set out in Real Book 64, Page 91; Amendment in Real Book 95, Page 826; 2nd Amendment recorded in Real Book 141, Page 784; 3rd Amendment recorded in Real Book 177, Page 244; 4th Amendment recorded in Real Book 243, Page 453; 5th Amendment recorded in Real Book 245, Page 89; 6th Amendment recorded in Instrument No. 1992-23529; 7th Amendment recorded in Instrument No. 1995-03028; 8th Amendment recorded in Instrument No. 1995-04188, 9th Amendment recorded in Instrument No. 1996-5491; 10th Amendment recorded in Instrument No. 1996-32318; 11th Amendment recorded in Instrument No. 1997-30077; 12th Amendment recorded in Instrument No. 1997-37856 and 13th Amendment recorded in Instrument No. 1998-05588 et. seq.
16. Agreement with Alabama Power Company recorded in Misc. Book 48, 880.
17. DELETED
18. DELETED

AS TO PARCEL 2

19. Such state of facts as shown on Survey of Final Plat Stonegate Realty Lake Lots Resurvey recorded in Map Book 29, Page 139 in the Probate Office of Shelby County, Alabama.
20. Easement(s) to Alabama Power Company as recorded in Deed Book 185, Page 475; Deed Book 182, Page 326; Deed Book 184, Page 172, Deed Book 180, Page 35 and Instrument Number(s) 2002-8789 and Instrument Number 20040630000358590, in the Probate Office of Shelby County, Alabama.
21. Restrictions, covenants and conditions as set out in instrument(s) recorded in Instrument No. 2001-5954 as amended and restated in Instrument No. 2001-12016 together with Articles of Incorporation of Stonegate Farm Property Owner's Association., recorded in Instrument No. 2001-5955.
22. Agreement as set out in Instrument No. 1993-8112 in the Probate Office of Shelby County, Alabama.

23. Terms, conditions, reservations and restrictions contained in the agreement dated March 19 1993 by and between "Smyer" and Shelby Lake Corporation as set out by Instrument No. 1993-8110.
24. Easement and Use Restrictions Agreement recorded as Instrument No. 2001-02969.
25. DELETE
26. Restrictions, limitations and conditions as set out in Map Book 29, Page 4A and 4B.
27. Restrictive Covenants and Grant of Land Easement to Alabama Power Company as recorded in Instrument No. 2002-18715.
28. Rights of others in and to use of the lake.
29. Together with the nonexclusive easement to use the Development Roads as more particularly defined and described in the covenants.
30. Riparian and others rights created by the fact that subject property lies adjacent to a lake.
31. Mortgage from Robert R. Hutson, Jr, Husband and Kimberly J Hutson, Wife to Regions Bank d/b/a/ Regions Mortgage in the amount of \$1,000,000.00, dated April 8, 2015, and recorded April 21, 2015, in Instrument Number 20150421000128230.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
05/25/2016 10:15:21 AM
\$48.00 CHERRY
20160525000178310

A handwritten signature in black ink, appearing to read "James W. Fuhrmeister", is written over the printed name of the County Clerk.