

Prepared by and Return to:
J. Scott Sims, Esquire
Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
(205) 930-5160


20160810000285350 1/8 \$38.00
Shelby Cnty Judge of Probate, AL
08/10/2016 02:04:50 PM FILED/CERT

STATE OF ALABAMA

COUNTY OF SHELBY

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made as of the 16th day of May, 2016, by and among **E & R Properties, LLC**, an Alabama limited liability company (the "Landlord"), **Central State Bank**, (the "Lender"), and **FORESITE, LLC**, an Alabama limited liability company (the "Tenant").

WITNESSETH

WHEREAS, the Landlord is the landlord and the Tenant is the tenant under that certain Option and Lease Agreement dated as of March 9, 2016, (the "Lease"), for the property more particularly described on Exhibit A attached hereto (the "Premises"); and

WHEREAS, Landlord is the Mortgagor under that certain Mortgage and Security Agreement (the "First Mortgage") covering the Landlord's property, including the Premises, recorded in Instrument No. 20111013000304150, on October 13, 2011, in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, Landlord is the Mortgagor under that certain Mortgage covering the Landlord's property, including the Premises, recorded in Instrument No. 20121101000419640, on November 1, 2012, and as modified by that certain Modification of Mortgage recorded in Instrument No. 20130124000031750 on January 24, 2013, (as modified, the "Second Mortgage" and together with the First Mortgage, the "Mortgages") in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, the parties hereto desire to clarify their respective rights and obligations pursuant to the Mortgages.

NOW, THEREFORE, in consideration of the premises set forth herein, and the mutual benefits accruing to the parties, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. If, at the time Lender acquires title to, or possession of all or any part of the Premises, so long as Tenant is not then in default (beyond any period given Tenant in the Lease to cure such default) in the payment of any rent or in the performance of or compliance with any of the terms, provisions, covenants, conditions, agreements, promises, or undertakings to be performed or complied with by Tenant under the Lease, (a) the Lease shall not be terminated on

account of Lender acquiring title to or possession of the Premises; and (b) Tenant's right to possession of the Premises and Tenant's rights and privileges under the Lease (or any extensions thereof exercised by Tenant pursuant to the terms of the Lease) shall not be terminated or disturbed by Lender in the exercise of any of Lender's rights or remedies under the Mortgage or otherwise.

2. If Lender takes possession of, or acquires, the interest of Landlord under the Lease by judicial or non-judicial foreclosure, conveyance in lieu of foreclosure, exercise of any purchase rights or any other means or proceeding whatsoever, Tenant shall be bound to, and shall attorn to, Lender under all of the terms, provisions, covenants, conditions, agreements, and promises under the Lease for the remainder of the term of either the Lease or any extension thereof pursuant to the provisions of the Lease, with the same force and effect as if Lender had been named as landlord in the Lease, and shall pay rent to the Lender or its designee. Tenant's attornment shall be effective without the execution of any further document by any person or entity immediately upon Lender succeeding to the interest of Landlord under the Lease.

3. If Lender succeeds to the interest of Landlord under the Lease or otherwise acquires all of any part of or any interest or estate in the Premises, whether or not Tenant attorns to Lender, Lender shall have and succeed to all of the rights, privileges, actions, and remedies of Landlord under the Lease, to the same extent as if Lender had been named as landlord under the Lease. Except as otherwise set forth herein, from and after the date on which Lender succeeds to the interest of Landlord under the Lease or otherwise acquires all or any part of or interest in the Premises (provided Tenant attorns to Lender from and after such date), Tenant shall have and be entitled to the same rights and remedies against Lender for a breach of Landlord's duties and obligations occurring under the Lease after such date as Tenant would have had under the Lease against Landlord had Lender not succeeded to the interest of Landlord under the Lease or otherwise acquired all or any part of or interest in the Premises.

4. Subject to the provisions hereof, the Tenant hereby agrees that the Lease shall in all respects be, and is hereby expressly made, subject, subordinate and inferior to the liens and security interests of the Mortgage, and all other documents and instruments evidencing or securing (or which may hereafter evidence or secure) the indebtedness secured by the Mortgage and to all consolidations, extensions, modifications, renewals, recastings and refinancings thereof.

5. Any notice or communication required or permitted hereunder shall be given in writing, sent by United States mail, postage prepaid, registered or certified mail, or by reputable overnight courier service (such as Federal Express) or by telecopy (provided that such is confirmed by mail or overnight courier in the manner previously described) addressed as set forth on Exhibit B attached hereto, or to such other address or in care of such other person as hereafter shall be designated in writing by the applicable party sent in the manner provided in this paragraph and shall be deemed to have been given two days after mailing, or one day after having been sent by overnight courier or by telecopy (with confirmation as provided above).

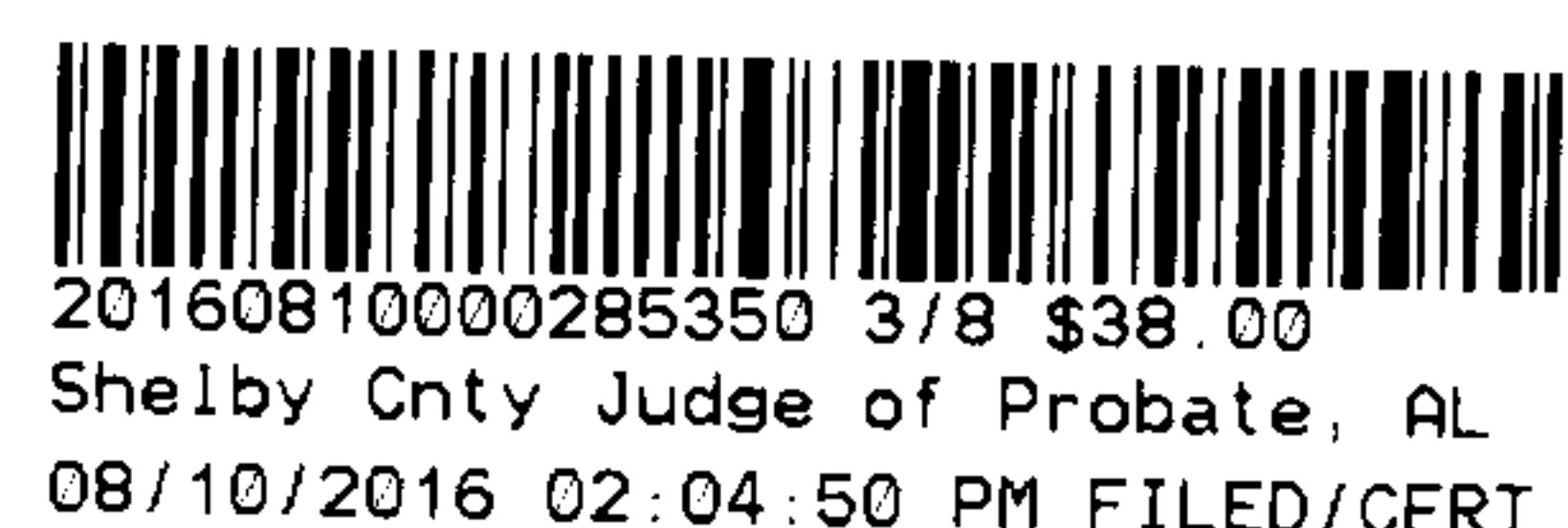
6. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon, the parties hereto, their successors and

assigns and any purchaser or purchasers at foreclosure of the Premises, and its or their respective heirs, personal representatives, successors and assigns.

7. This Agreement shall be governed by and construed under the laws of the State of Alabama.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall be constituted as one and the same instrument.

-The Remainder of This Page is Intentionally Left Blank-



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LANDLORD:

E & R Properties, LLC, an Alabama limited liability company

By: Eddie R. Gentry
Name: Eddie R. Gentry
Title: Member

By: Robin L. Gentry
Name: Robin L. Gentry
Title: Member

STATE OF ALABAMA)

COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Eddie R. Gentry and Robin L. Gentry, whose names as Members of **E & R Properties, LLC**, an Alabama limited liability company, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, they, as such members and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand this 13 day of May, 2016.

(NOTARIAL SEAL)

Brenda K Marsh
Notary Public

My Commission Expires: 10/25/17

LENDER:

CENTRAL STATE BANK

By: DAVID Comer

Name: DAVID Comer

Title: AVP/Lending Officer

STATE OF ALABAMA)

:

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DAVID Comer whose name as the AVP Lending Officer of CENTRAL STATE BANK 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 22 day of April, 2016.

David Comer
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES JUNE 27, 2016



20160810000285350 5/8 \$38.00
Shelby Cnty Judge of Probate, AL
08/10/2016 02:04:50 PM FILED/CERT

TENANT:

**FORESITE, LLC,
an Alabama limited liability company**

By: Krista M. Young

Name: **Krista M. Young**

Title: **CFO**

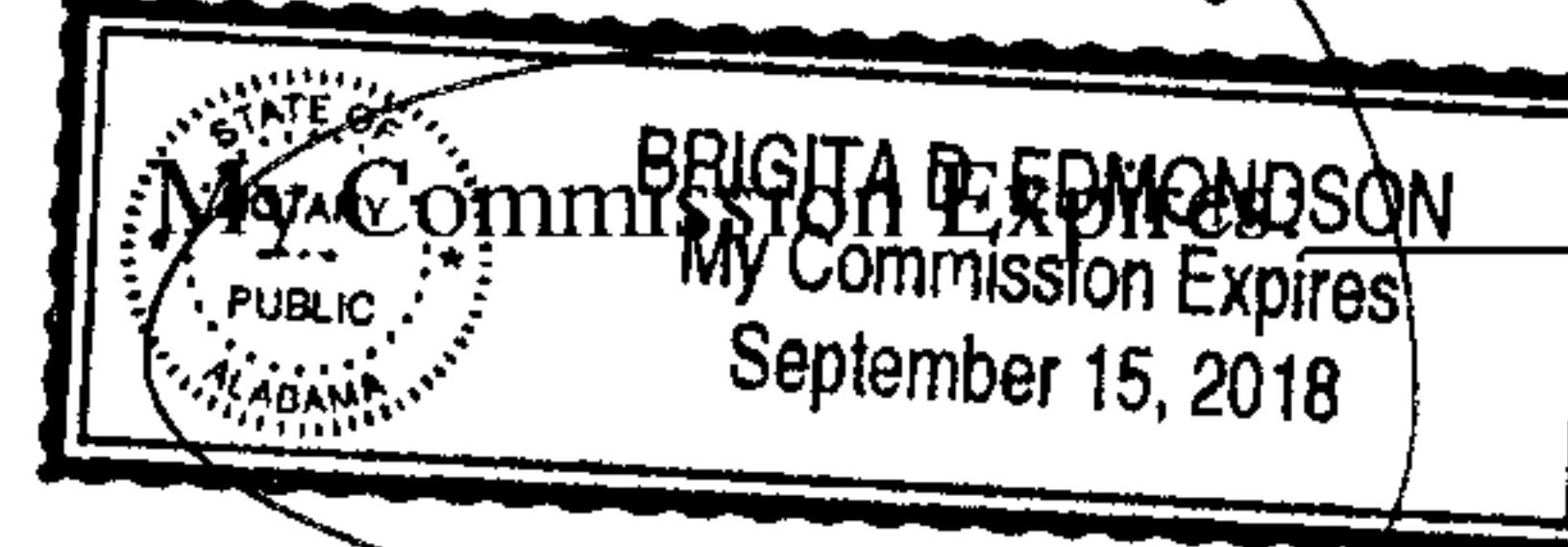
STATE OF ALABAMA)
:)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Krista M. Young, whose name as CFO of FORESITE, LLC, an Alabama 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 the said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand, this 16 day of May, 2016.

(NOTARIAL SEAL)

Notary Public



20160810000285350 6/8 \$38.00

Shelby Cnty Judge of Probate, AL

08/10/2016 02:04:50 PM FILED/CERT

EXHIBIT A

Tower Lease Area – as surveyed

A parcel of land located in the Southeast Quarter of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

COMMENCE at the Southeast corner of the Southeast Quarter of Section 24, Township 20 South, Range 3 West; thence run N 0°56'22" E along the East Section line of Section 24 for a distance of 634.89' to a point on the Southeast corner of parcel 13-6-24-4-001-001.008; thence continue along said Section line a distance of 22.67'; thence S 89°06'54"W a distance of 1.06' to a fence post and the **POINT OF BEGINNING**; thence S 89°06'54" W a distance of 60.00' to a 5/8" capped rebar (Bailey CA 899LS); thence N 0°53'06" W a distance of 60.00' to a 5/8" capped rebar (Bailey CA 899LS); thence N 89°06'54" E a distance of 60.00' to a 5/8" capped rebar (Bailey CA 899LS); thence S 0°53'06" E a distance of 60.00' to the **POINT OF BEGINNING**. Said parcel containing 3,600 square feet (0.08 Acres) more or less.

30' Access & Utility Easement – as surveyed

An easement of land located in the Southeast Quarter of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

COMMENCE at the Southeast corner of the Southeast Quarter of Section 24, Township 20 South, Range 3 West; thence run N 0°56'22" E along the East Section line of Section 24 for a distance of 634.89' to a point on the Southeast corner of parcel 13-6-24-4-001-001.008; thence continue along said Section line a distance of 22.67'; thence S 89°06'54"W a distance of 1.06' to a fence post and the; thence S 89°06'54" W a distance of 60.00' to a 5/8" capped rebar (Bailey CA 899LS); thence N 0°53'06" W a distance of 30.00' to **POINT OF BEGINNING** of an easement 30' in width situated 15' on each side of the following described centerline; thence S 81°54'08" W a distance of 186.57'; thence S 87°56'17" W a distance of 210.15' to the East Right-of-Way of McCain Parkway and the **POINT OF ENDING**. Said easement containing 11,896 square feet (0.27 Acres) more or less.

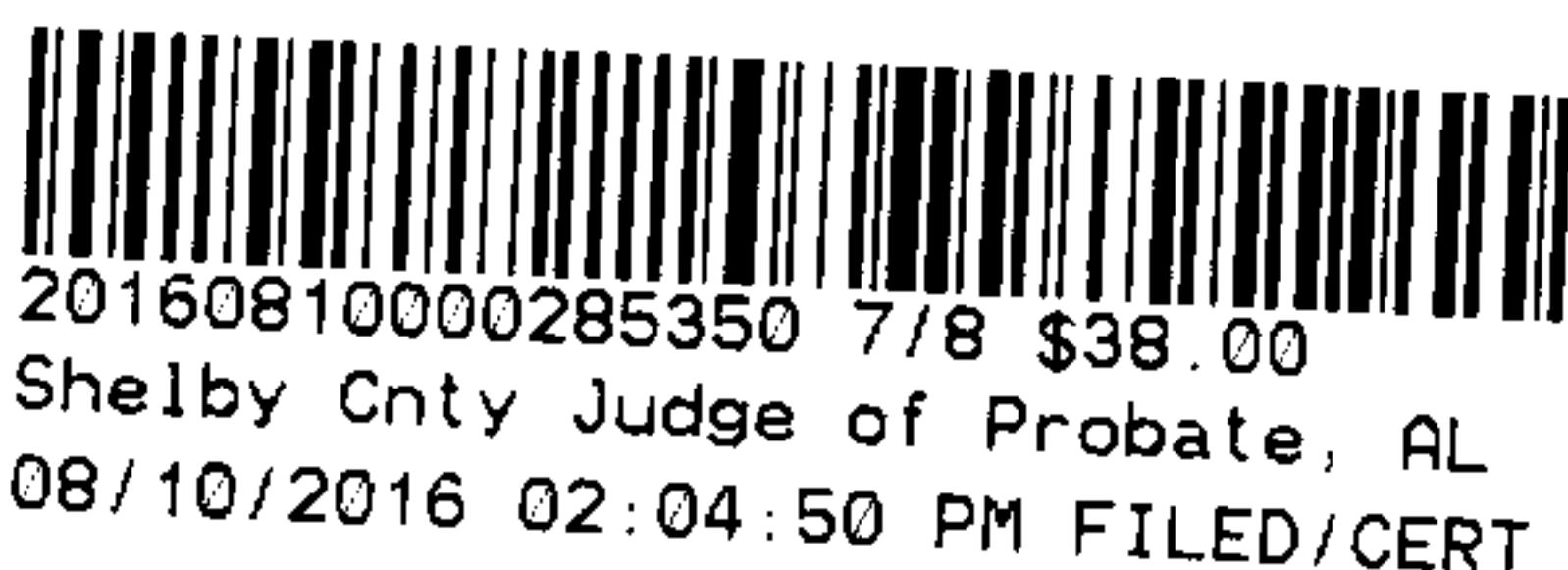


EXHIBIT B

Notice Addresses

If to Tenant:

ForeSite, LLC
3975 Asbury Road
Vestavia Hills, AL 35243
Attn: Lease Department

If to Landlord:

E & R Properties, LLC
907 Timberline Circle
Calera, AL 35040

If to Lender:

Central State Bank
P. O. Box 180
Calera, AL 35040

