

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

FIRST MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 1st day of November, 2016, by and between **FAIRWAY- SHELBY, LLC**, an Alabama limited liability company ("Borrower"), the undersigned Guarantor ("Guarantor") (Borrower and Guarantor are sometimes collectively referred to as the "Obligors"), and **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee corporation ("Lender").

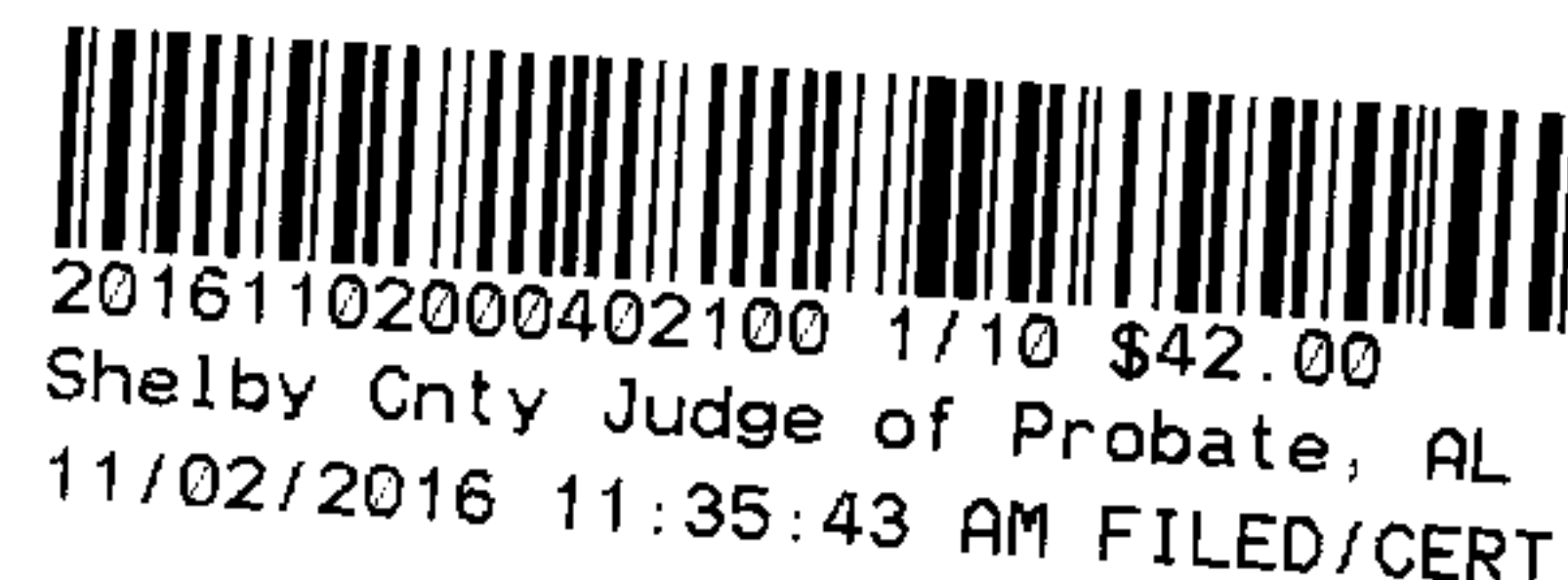
RECITALS:

A. Lender is the holder of a Promissory Note in the face amount of \$4,960,000.00, made by Borrower, dated October 25, 2006 (the "2006 Note"). The 2006 Note is secured by various documents and instruments all dated October 25, 2006, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded in Instrument No. 20061025000526390, in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Assignment of Rents and Leases recorded in Instrument No. 20061025000526400, in said records.
3. Assignment of Loan Documents dated December 19, 2007 from Lender to LaSalle Bank National Association, as trustee for the registered holders of Protective Finance Corporation REMIC, Commercial Mortgage Pass-Through Certificates, Series 2007-PL, as recorded in Instrument No. 20080129000036540, said records.

All the documents and instruments referred to or described in this Paragraph A, and all other documents and instruments further securing the Note, including any guaranties, are referred to as the "2006 Loan Documents." The real and personal properties pledged and mortgaged under the 2006 Loan Documents are referred to as the "Project."

- B. Borrower has this date executed in favor of Lender an Amended and



Restated Promissory Note in the face amount of \$4,500,000 (the "2016 Note"), which 2016 Note amends and restates the 2006 Note. The 2016 Note is secured by the Loan Documents, as modified by this agreement.

W I T N E S S E T H:

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

1. **Note.** The 2016 Note is secured by the Indenture and by the other Loan Documents. All references to the Note, Secured Indebtedness, Secured Debt, or Secured Obligations appearing in the Indenture and other Loan Documents shall also include the Note and the indebtedness and obligations added by this document and the other Loan Documents. The Maturity Date of the 2016 Note is the same as the 2006 Note, which is November 1, 2031.

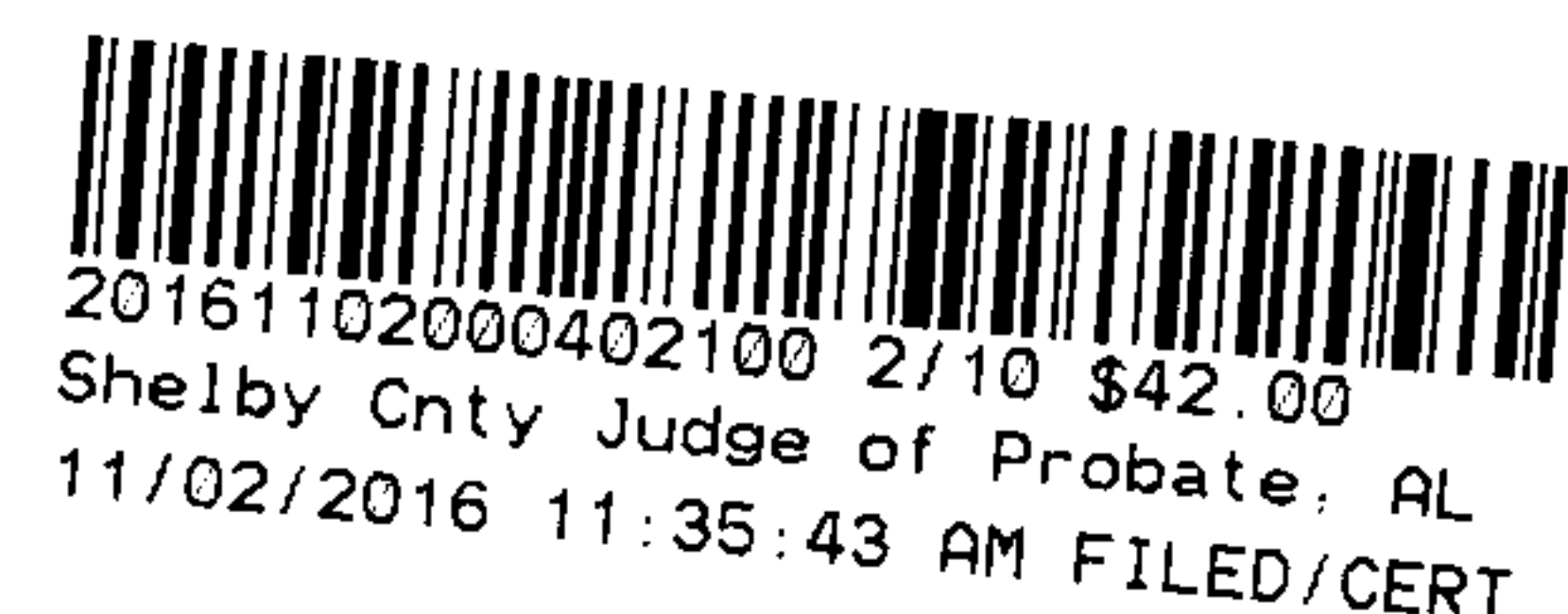
2. **References in Loan Documents.** All references in the Loan Documents to the term "Loan Documents" shall refer to and include this instrument, the Note, the other Loan Documents, and the Loan Documents as modified by this instrument, together with all other loan documents and instruments further securing the Note whether now existing or hereafter executed.

4. **Guaranty.** Guarantor consents to this agreement; and each Loan Document executed by the Guarantor is ratified, confirmed, amended and restated to include this instrument as one of the Loan Documents described therein.

5. **Additional provisions.** The following provisions are added to the Indenture as numbered paragraphs therein:

4.1 (g) **Servicing Fees.** Borrower shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Lender or its third-party loan servicer for any servicing-related matter arising during the term of the Loan. Borrower agrees to immediately reimburse Lender or such servicer upon Lender's request for any such legal and/or processing fees and costs. Standard loan servicing fees are included in the interest rate, but fees may be charged for approvals, modifications or other actions requested by Borrower. Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

4.2 (f) **Marijuana/Controlled Substances.** UNLAWFUL USE, MEDICAL



MARIJUANA, CONTROLLED SUBSTANCES AND PROHIBITED ACTIVITIES. The Borrower shall not use, occupy, or permit the use or occupancy of any Property by the Borrower or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the medicinal use or distribution of marijuana (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy or possession of any Property (collectively a "lease") with any third person ("lessee") entered into after the date of this Indenture shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. The Borrower shall upon demand provide Lender with a written statement setting forth its compliance with this section and stating whether any Prohibited Activities are or may be occurring in, on or around the Property. If the Borrower becomes aware that any lessee is likely engaged in any Prohibited Activities, the Borrower shall, in compliance with applicable law, undertake commercially reasonable efforts to terminate the applicable lease and take all actions permitted by law to discontinue such activities. The Borrower shall keep Lender fully advised of its actions and plans to comply with this section and to prevent Prohibited Activities. This section is a material consideration and inducement upon which Lender relies in extending credit and other financial accommodations to the Borrower. Failure by the Borrower to comply with this section shall constitute a material non-curable Event of Default. Notwithstanding anything in this Indenture, the Note or any of the other Loan Documents regarding rights to cure Events of Default, Lender is entitled upon breach of this section to immediately exercise any and all remedies under this Indenture, the Note, any of the other Loan Documents, and by law. In addition and not by way of limitation, the Borrower shall indemnify, defend and hold Lender harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Property, Prohibited Activities by the Borrower or any lessee of the Property, or the Borrower's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property (with or without compensation to Lender, and whether or not Property is taken free of or subject to Lender's lien or security interest).

6. **Sales and Encumbrances.** Paragraph 6 of Exhibit B to the Indenture is hereby deleted and the following is substituted in lieu thereof:

6. **Sales and Encumbrances.** Notwithstanding anything to the contrary contained in Paragraph 4.5 of this Indenture, a "transfer" (described in subparagraphs (a) and (b) hereinbelow) shall be permitted provided that (i) no default exists under any of

the Loan Documents (and no event has occurred which, with the passage of time or giving of notice, could lead to a default), (ii) no such transfer shall be construed as a novation, release, impairment, or alteration of liability to Lender as set forth in the Note and other Loan Documents, (iii) upon any such transfer permitted herein, the initial restrictions of Paragraph 4.5 as amended hereby shall apply automatically to the transferee; and (iv) all of the additional conditions set forth herein are fully complied with:

(a) Any person or entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, may transfer by sale, gift or devise of such ownership interests in the Borrower so long as the transferee is (i) a Principal (defined as Fairway Investments, L.L.C.), or (ii) a Family Member of an individual member of Principal, or (iii) a trust for the benefit of an individual member of the Principal or a Family Member of Principal or one or more Family Members. "Family Member" means an adult who is the spouse, sibling, child or grandchild of a member of Principal or other person(s) holding an interest in Borrower or Principal. Subsequent transfers by Family Members to other Family Members will be permitted. Following any such transfer, the Principal shall maintain the same right and ability to manage and control Borrower (or other intermediate entity) as existed prior to the transfer and Lender shall be provided with written notice of all such transfers permitted under this subparagraph within fifteen (15) days prior to the date of the transfer. For the purposes of this subparagraph, the term "control" means that the Principal owns at least 51% of the voting membership interest in the Borrower and has full power and authority to bind Borrower.

Any transfer permitted by this Paragraph shall not relieve the Borrower or the Principal(s) from their obligations under the Loan Documents (including, *inter alia*, any guaranty or environmental indemnity).

(b) A one-time transfer by a sale of the Property by the Borrower and assumption of the Loan by the purchaser ("Proposed Borrower") shall be permitted, so long as:

- (i) At least thirty (30) days prior to the proposed transfer, Lender shall have received a detailed explanation of the proposed conveyance and assumption, along with such financial data and information respecting the Proposed Borrower and the Proposed Principals (defined below) as Lender may request, including but not limited to a financial statement certified by a certified public accountant dated within two (2) months prior to the date of the requested conveyance; and
- (ii) Lender, in its sole unfettered discretion, shall have approved the Proposed Borrower and any Proposed Principal(s) (defined below) for the assumption; and

- (iii) Lender shall have received financial data and information respecting the Property including but not limited to an income and expense statement covering the operation of the Property for the five (5) year period immediately preceding the date of the request to convey, which financial information demonstrates in Lender's sole discretion, that the Property is producing and will continue to produce "Net Operating Income" (defined below) of at least one hundred twenty percent (120%) of the total annual debt service (defined below) of the Property. For purposes of this paragraph, "Net Operating Income" shall mean the annual gross income produced by the Property less all annual costs and expenses of operating, maintaining and repairing the Property, but excluding "debt service", defined as payments due under this loan and any other financing as may have been approved by Lender for which the Property serves as security; and
- (iv) Lender shall have received a management agreement acceptable to Lender executed by the Proposed Borrower with a management company acceptable to Lender, or such documents and information requested by Lender relating to the Proposed Borrower sufficient to demonstrate that the Proposed Borrower possesses the experience and capability needed in Lender's sole discretion to manage the Property; and
- (v) Lender shall have received an amount in good funds equal to one percent (1%) of the balance of the loan ("Assumption Fee") outstanding at the time the conveyance and assumption are approved by Lender, or in Lender's sole discretion, at the time of the conveyance and assumption; and
- (vi) Lender shall have received, prior to the transfer, documents acceptable to Lender by which the Proposed Borrower assumes the obligations of the Borrower under the Loan Documents and such individuals required by Lender ("Proposed Principals") assume the obligations of the Principals under the Loan Documents. Further, the Proposed Borrower and the Proposed Principals will execute and environmental indemnification, a limited guaranty/guaranty and such other documents as Lender shall require to accomplish the assumption of the loan.
- (vii) Borrower and/or Proposed Borrower must pay Lender's expenses for the assumption transaction (e.g. attorney's fees, recording fees, etc.)

If all the foregoing requirements are satisfied, Lender shall release Borrower and the Principals at the time of the assumption from all obligations under the Loan Documents (including the environmental indemnity agreement) which first occur or arise after the date of sale. Nothing herein shall be construed to require Lender to approve any Proposed Borrower or Proposed Principal.

7. **Subordinate Financing.** Paragraph 11(b)(iv) of Exhibit B to the Indenture is hereby amended to add the following: written notice of such action or proceeding will be given to Lender not later than the earlier of (a) ten (10) days after the commencement thereof, or (b) thirty (30) days prior to the date of the foreclosure sale.

7. **Representations and Warranties** Borrower represents and warrants to Lender that the following are true, correct and complete as of the date of this agreement:

7.1 **Due Organization, Authority.** Borrower represents that Borrower is duly organized and validly existing under the state in which Borrower is stated as being organized herein and in good standing under the laws of such state and has power adequate to carry on its businesses in each such State as presently conducted, to own and/or lease the Properties, to make and enter into those Loan Documents executed by Borrower and to carry out the transactions contemplated therein.

7.2 **Execution, Delivery and Effect of Loan Documents.** Borrower represents (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Borrower, as the case may be, that each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, that there are no defenses, counterclaims, or set-offs to any of the Loan Documents, and that upon default Lender shall be entitled to exercise any one or more remedies under any one or more of the Loan Documents including without limitation suit, receivership, foreclosure, and/or other remedies available under law or equity.

7.3 **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to the leases executed by Borrower of portions of (or space in) the Properties or the personal or real property or other thing of value secured by the Loan Documents (the "Collateral"). No tenant or other party has asserted any claim or default relating to any such lease or to any of the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any laws to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

7.4 **Legal Actions.** There are no material actions, suits or proceedings

including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened, against or affecting Borrower, its business or the Collateral, or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Borrower would not have a material adverse effect on Borrower or the Collateral. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Collateral.

7.5 Financial Statements. All statements, financial or otherwise, submitted to Lender in connection with the loan evidenced by the Notes ("Loan") are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with sound accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statement as of the date thereof. Since the date thereof, Borrower has not experienced any material, adverse change in its finances, business, operations, affairs or prospects.

7.6 Title to Collateral. Borrower represents that Borrower has good and clear record and marketable title to the Collateral, free of all liens, encumbrances or restrictions other than the exceptions reflected in the title policies heretofore delivered to and approved by Lender ("Permitted Encumbrances").

7.7 Compliance with Laws and Private Covenants. The Collateral complies in all material respects with all laws. Borrower has examined and is familiar with the Permitted Encumbrances and there now exists no material violation thereof. Borrower has no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

7.8 Hazardous Waste. To the best knowledge and belief of Borrower, and except as disclosed in that certain Phase I Environmental Site Assessment, dated October 18, 2016, prepared by Bhate Environmental Associates, Inc., no release of any hazardous waste or hazardous substance (as defined under applicable laws) is present on, in, under, or at the Collateral, nor has Borrower received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

8. Ratification. Except as expressly modified herein, all of the terms, covenants, conditions, and stipulations of the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed by the Borrowers.

9. Counterparts. This agreement may be executed in counterparts, but all counterparts shall constitute but one and the same document.

IN WITNESS WHEREOF, the undersigned have caused this agreement to executed on the date referenced above.

"LENDER:"

PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation

By: [Signature] [SEAL]
Name: Robert R. Bedwell, III
Its: Sr. Vice President

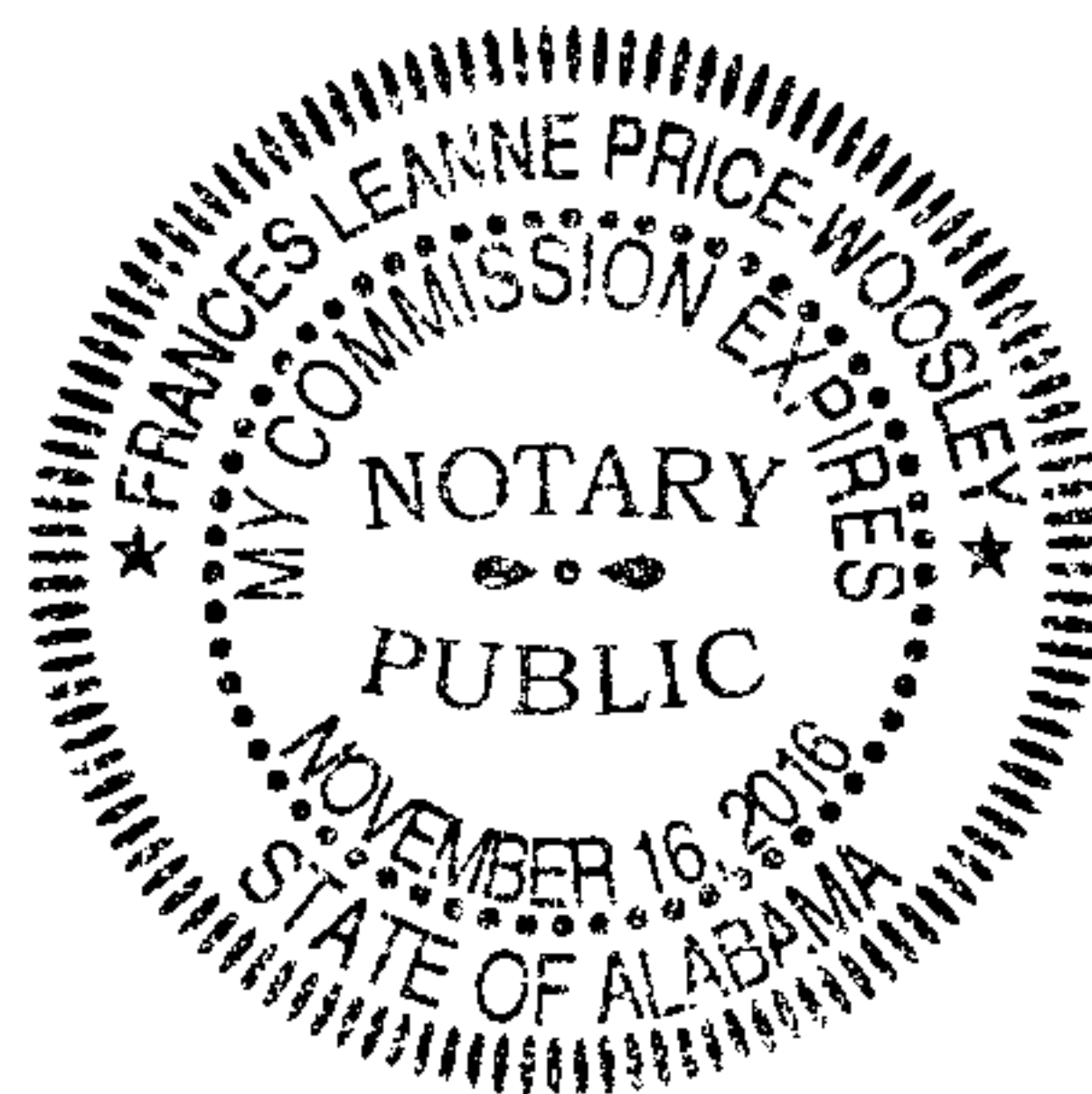
STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert R. Bedwell, III whose name as Sr. Vice President of **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee 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, on the day the same bears date. Given under my hand and official seal this 26th day of October, 2016.

[Signature]
Notary Public

My commission expires: 11/16/2016

[NOTARY SEAL]



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Shelby Cnty Judge of Probate, AL
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"BORROWER:"

FAIRWAY - SHELBY, LLC, an Alabama limited liability company

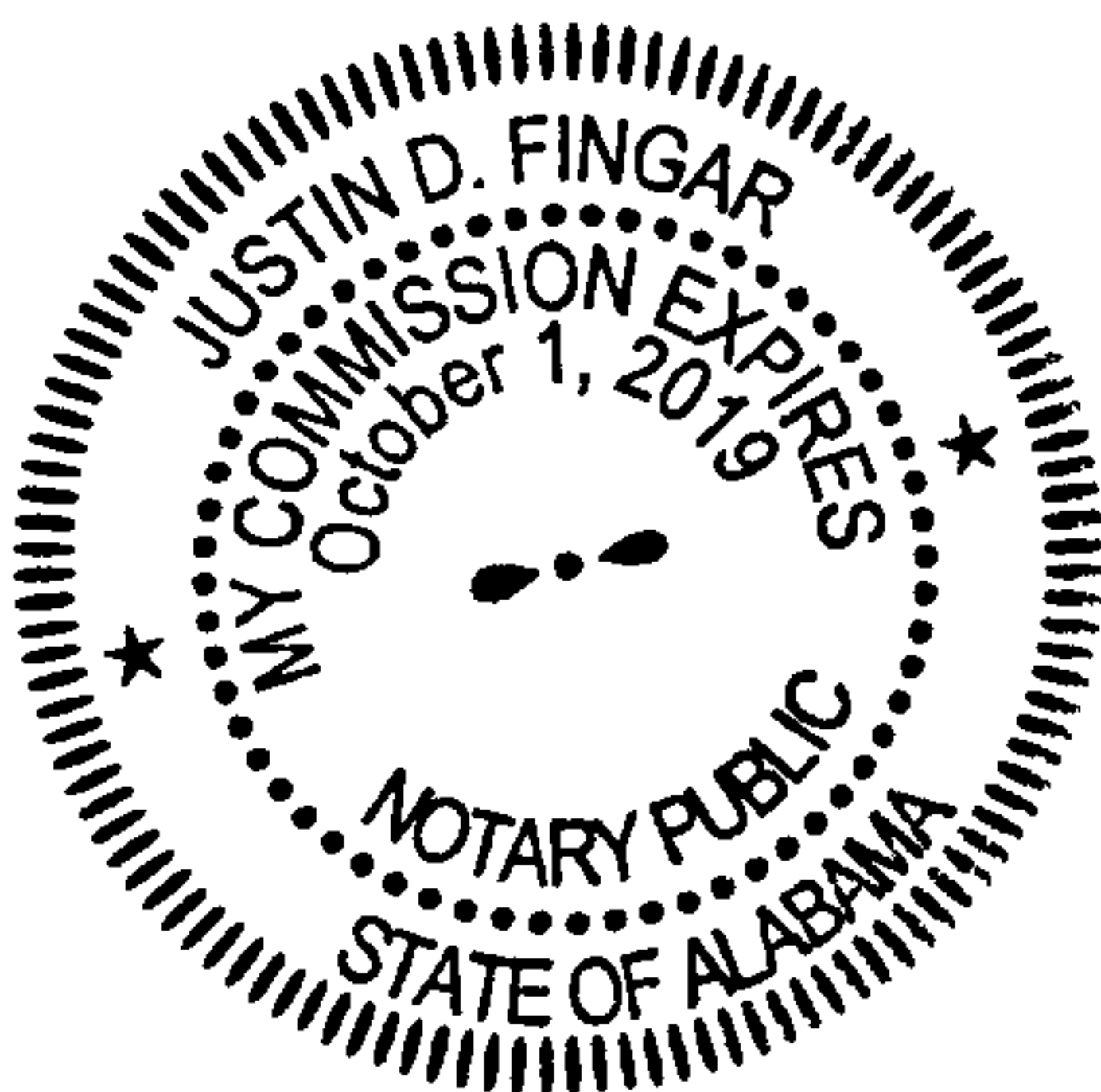
By: The Thompson Development Company, Inc., an Alabama corporation

By: [Signature] [SEAL]
Name: Guy S. Clifton
Its: Vice-President

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Guy S. Clifton, whose name as Vice President of The Thompson Development Company, Inc., an Alabama corporation, as Manager of **FAIRWAY - SHELBY, 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 said instrument, he as officer of said corporation in its capacity as manager of said limited liability company and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as manager of said limited liability company on the day the same bears date.

Given under my hand and official seal this 26th day of October, 2016.



Justin D. Fingar
Notary Public

My Commission Expires: 10/1/19


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Shelby Cnty Judge of Probate, AL
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"GUARANTOR:"

FAIRWAY INVESTMENTS, L.L.C., an Alabama limited liability company

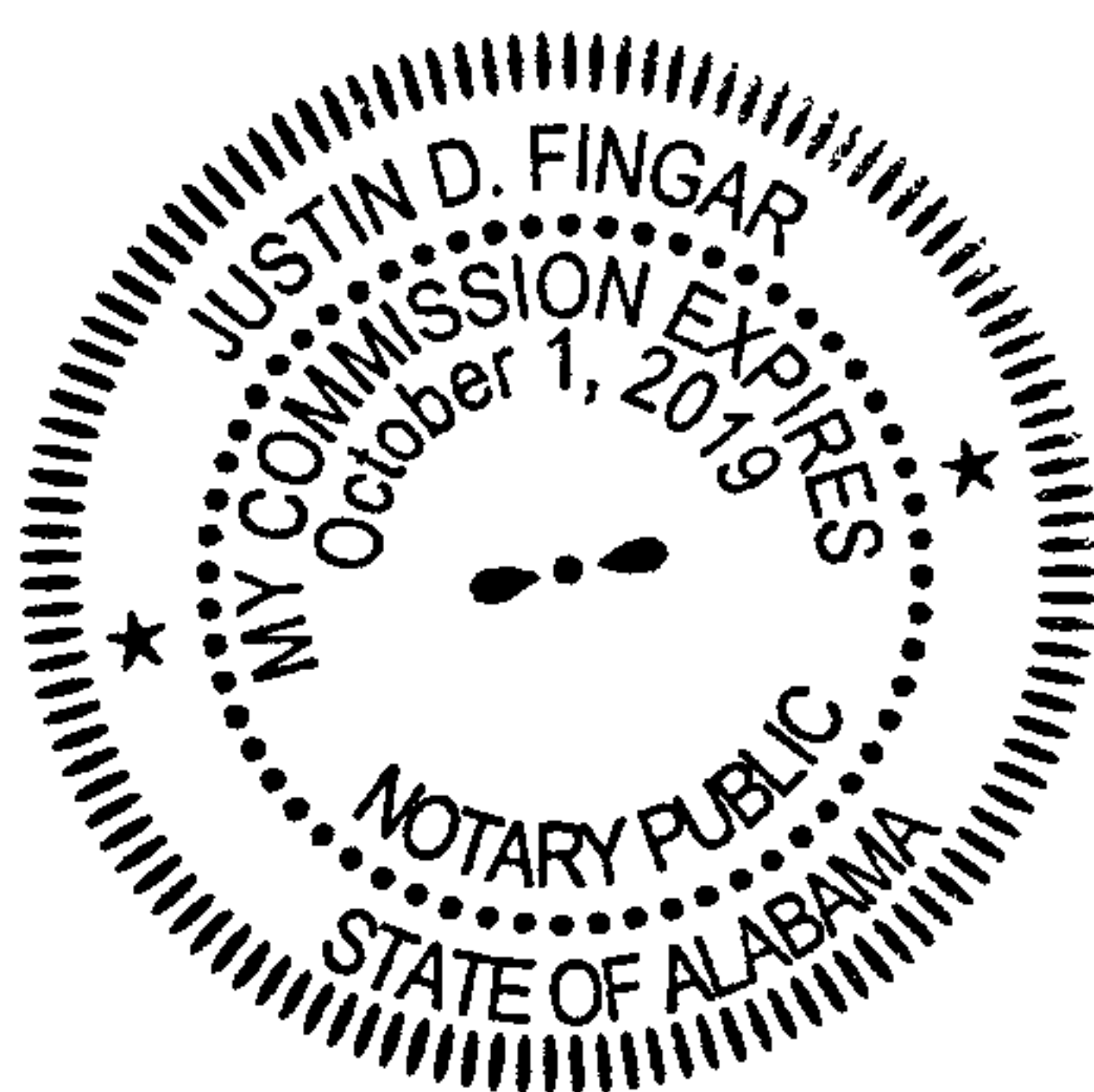
By: The Thompson Development Company, Inc., an Alabama corporation

By: [Signature] [SEAL]
Name: Guy S. Clifton
Its: Vice - Pres.

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Guy S. Clifton, whose name as Vice President of The Thompson Development Company, Inc., an Alabama corporation, as Manager of **FAIRWAY INVESTMENTS, L.L.C.**, 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 said instrument, he as officer of said corporation in its capacity as manager of said limited liability company and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as manager of said limited liability company on the day the same bears date.

Given under my hand and official seal this 26th day of October, 2016.



[Signature]
Notary Public

My Commission Expires: 10/1/19


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Shelby Cnty Judge of Probate, AL
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