


*This instrument prepared by  
and when recorded return to:*  
Claude McCain Moncus, Esq.  
CORLEY MONCUS, P.C.  
728 Shades Creek Parkway  
Suite 100  
Birmingham, Alabama 35209  
205.879.5959

  
20161222000467500 1/8 \$36.00  
Shelby Cnty Judge of Probate, AL  
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NEGATIVE PLEDGE AGREEMENT  
[NONENCUMBRANCE AGREEMENT]

**THIS NEGATIVE PLEDGE AGREEMENT [NONENCUMBRANCE AGREEMENT]** (this “Agreement”) is being entered into as of the 19<sup>th</sup> day of December, 2016 by **GATEWAY**, an Alabama non-profit corporation (“Borrower”), in favor of **OAKWORTH CAPITAL BANK**, an Alabama banking corporation (“Lender”).

**RECITALS:**

Simultaneously herewith, Borrower has executed and delivered a Promissory Note [Term Note Two] in the amount of Three Hundred Fifteen Thousand and no/100 Dollars (\$315,000.00) ) (together with all amendments, extensions, modifications, renewals, refinancings and consolidations thereof or thereto hereinafter referred to for convenience as the “Note”) for the purpose of refinancing its Property located in Shelby County, Alabama. The Loan made to Borrower pursuant to the Note are herein referred to as the “Loan.”

In order to induce Lender to make the Loan available to Borrower, Borrower has agreed to enter into this Agreement with respect to Borrower’s Property described in Exhibit “A” attached hereto and made a part hereof (the “Property”).

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Loan to Borrower, Borrower, intending to be legally bound hereby, agrees as follows:

1. **Representations and Warranties of Borrower.** To induce Lender to make the Loan to Borrower, Borrower represents and warrants to Lender that:
  - a. Borrower is an Alabama non-profit corporation, duly organized and validly existing under the laws of the State of Alabama;
  - b. Borrower has the lawful power to own its properties, including the Property, and to engage in the business it conducts;
  - c. The execution and performance of this Agreement will not, immediately, or with the passage of time, the giving of notice, or both, violate any provision of the articles of incorporation or the bylaws of the Borrower, or violate any laws or result in a default under any contract, agreement, or instrument to which

Borrower is a party or by which Borrower or any of its properties are bound;

- d. Borrower has the power and authority to enter into and perform this Agreement, and to incur the obligations herein, and has taken all corporate action necessary to authorize the execution, deliver, and performance of this Agreement;
- e. This Agreement, when delivered, will be valid, binding, and enforceable in accordance with its terms;
- f. There is no pending order, notice, claim, litigation, proceeding or investigation against or affecting Borrower or the Property, whether or not covered by insurance, that would involve the payment of \$25,000 or more if adversely determined;
- g. Borrower has good and marketable fee simple title to the Property and all of its assets, subject to no mortgage, security interest, encumbrance or lien other than the Title Exceptions as shown on Exhibit B attached hereto and made a part hereof (the "Title Exceptions");
- h. No representation or warranty by Borrower contained herein, or in any document furnished by Borrower in connection herewith, contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made;
- i. To Borrower's best knowledge and belief, no "hazardous substance" (as the term is defined in Section 1.01 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) has been released, discharged, or stored on the Property by Borrower, by any third party, or by any predecessor in interest or title to Borrower; and
- j. The Property is otherwise in compliance with all applicable local, state and federal environmental laws and regulations.

2. **Negative Pledge.** Until the Loan has been repaid in full, Borrower shall not sell, assign, mortgage, encumber, or otherwise convey or transfer the Property, or any portion thereof or any interest therein, without obtaining the prior written consent of the Lender, which consent may be withheld by Lender in its sole and absolute discretion; the foregoing shall not apply to amendments to the declaration of covenants applicable to the Property so long as the same occur in the normal course of Borrower's business and do not involve sale or conveyance of part of the Property.

3. **Insurance.**

(a) Borrower shall procure for, deliver to and maintain for the benefit of Lender during the term of this Agreement, certificates of insurance evidencing paid-up insurance policies of such insurance companies, in the forms and amounts previously provided to Lender and approved by Lender (as if Lender were the mortgagee), their equivalent, or a satisfactory mortgagee loss payable endorsement in

favor of Lender, providing the following types of insurance covering the Property and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Property without deduction for depreciation, and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury", including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 with respect to personal injury or death to any one or more persons or damage to property;

(iii) worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Borrower engaged on or with respect to the Property, in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;

(iv) such other insurance on the Property or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor, in substantially the form approved by the Lender as of the date hereof.

(b) All policies of insurance required by the terms of this Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Borrower, in substantially the form approved by Lender as of the date hereof.

(c) Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under this Section 3, and Borrower does hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender to the extent of Lender's interest therein. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsement or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair and restoration of the property so damaged, without affecting the lien of this Agreement, or Lender may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys then remaining shall be paid to Borrower.

Notwithstanding the foregoing, Lender agrees that the rights to proceeds described in this section shall only apply in the event Borrower is then in default under the Loan.

(d) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 3, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. If requested by Lender, Borrower shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder; notwithstanding the foregoing, Lender's right to unearned premium refunds shall only apply to the extent Borrower is then in default under the Loan.

(e) In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender evidence of policies of insurance required by this Section 1.04, subject to the notice provisions, and right to cure, contained in the Loan Agreement executed simultaneously herewith, but prior to the lapse of such insurance, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Borrower will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by Borrower, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Secured Indebtedness and shall be secured by this Agreement.

#### 4. Taxes, Liens and Other Charges.

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever, (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence upon request of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Agreement or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note or this Agreement.



(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Property, as required pursuant to Section 3, above; and all utility charges which are incurred by Borrower for the benefit of the Property, or which may become a charge or lien against the Property for gas, electricity, water and sewer services and the like furnished to the Property, and all other public or private assessments or charges of a similar nature affecting the Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Borrower shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Property; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Agreement. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

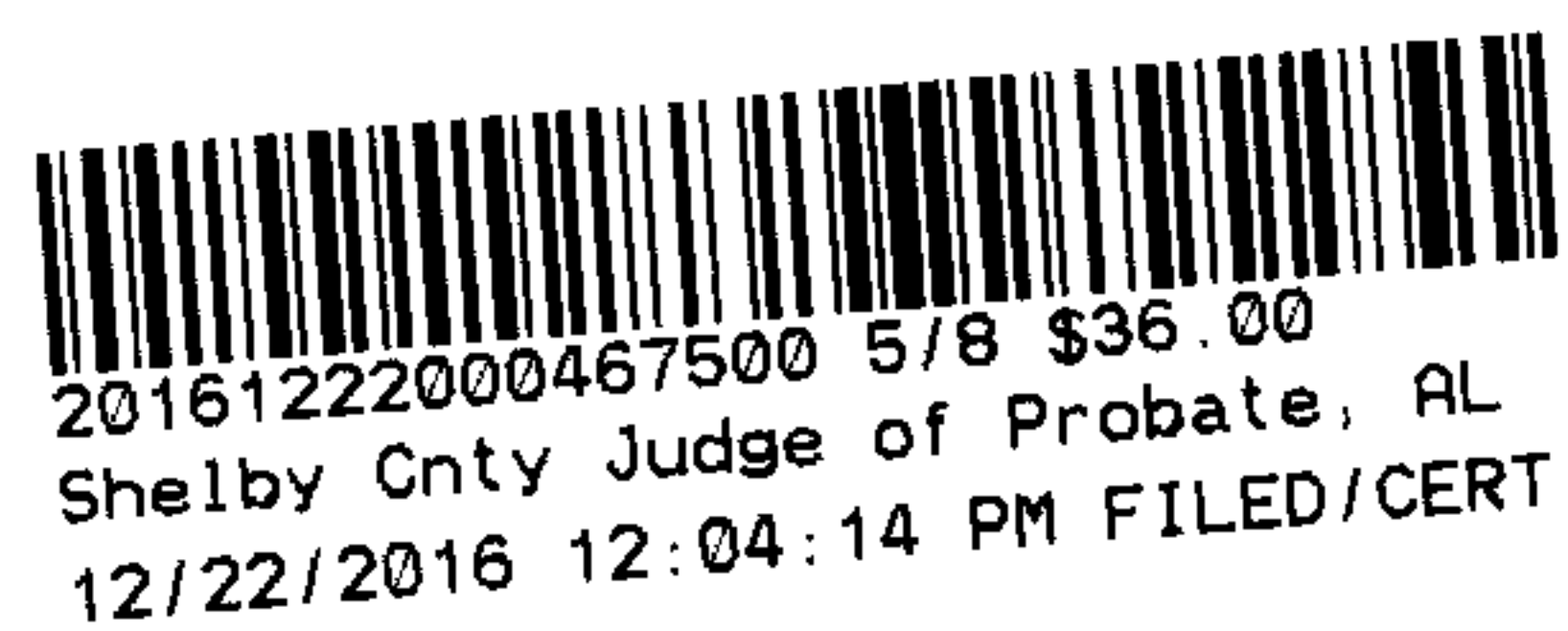
5. **Acceleration.** If Borrower should sell, assign, mortgage, encumber or convey all, or any part of the Property without the consent of the Lender, then, in such event, the Loan, and any and all indebtedness owing by Borrower to Lender, shall become immediately due and payable, without notice to Borrower, which notice Borrower hereby expressly waives.

6. **Recordation.** Borrower acknowledges and agrees that Lender intends to record this Agreement in the Probate Office of Shelby County, Alabama. Borrower agrees to pay all costs and expenses incurred by Lender in recording this agreement.

7. **Release.** Upon payment in full of the Loan, Lender agrees, upon request and at the expense of Borrower, to execute an instrument in recordable form canceling this Agreement.


8. **Costs and Expenses.** Borrower agrees to pay all customary and reasonable out-of-pocket expenses of the Lender (including the reasonable fees and expenses of its counsel) in connection with the enforcement of any provision of this Negative Pledge.

*[Signature page to follow]*



IN WITNESS WHEREOF, Borrower has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

GATEWAY, an Alabama non-profit corporation

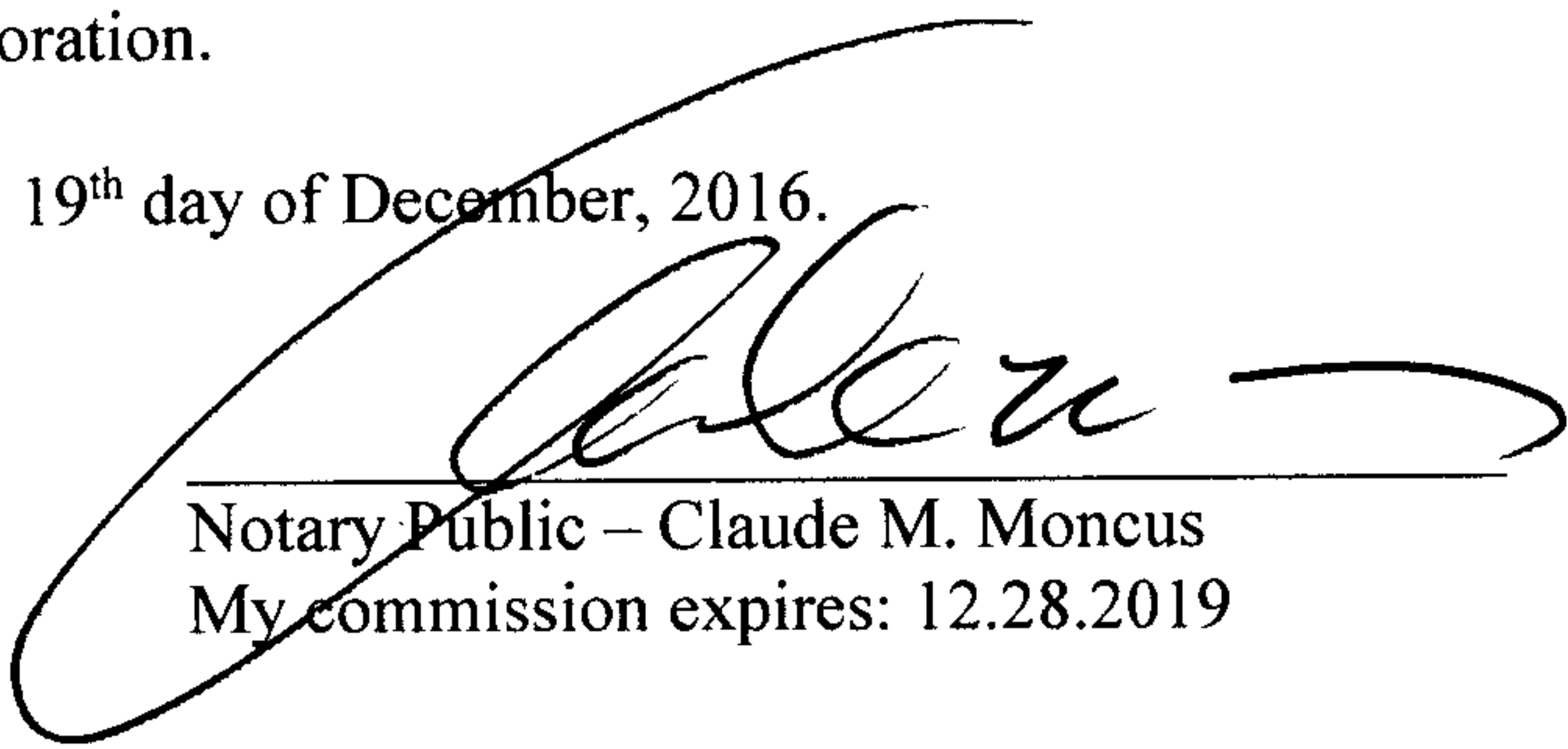
By:  [SEAL]  
Name: Tom Thompson  
Title: Chairman of the Board

STATE OF ALABAMA       )  
                                  :  
JEFFERSON COUNTY       )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tom Thompson whose name as Chairman of the Board of GATEWAY, an Alabama non-profit 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 19<sup>th</sup> day of December, 2016.

[Notary Seal]

  
Notary Public – Claude M. Moncus  
My commission expires: 12.28.2019



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## EXHIBIT A

### [Legal Description]

Lot 2, according to the Final Plat of Office Park Partners Survey of Business Circle, as recorded in Map Book 36, Page 68, in the Probate Office of Shelby County, Alabama.

Together with rights obtained, that constitute an interest in real estate, under that certain Declaration and Grant of Rights, Covenants and Easements by Business Circle Owners' Association dated March 1, 2006 and recorded in Inst. #20060511000224230.

Situated in Shelby County, Alabama.



  
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Exhibit B

[Title Exceptions]

1. Easements, restrictions and setback lines as shown on recorded map.
1. Declaration of Grant of Rights, Covenants and Easements as recorded in Instrument #20060511000224230.
2. Right of way granted to the City of Pelham as recorded in Deed Book 341, Page 725.
3. Right of way granted to Alabama Power Company as set out in instrument(s) recorded in Deed Book 223, Page 80; Deed Book 102, Page 397, and Deed Book 127, Page 597.
4. Easement for Sanitary Sewer Service Line as recorded in Inst. #20080815000329260.
5. Riparian and other rights created by the fact that the subject property fronts on Bishop Creek (easement rights).

  
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