

CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

State of ALABAMA)

County of SHELBY)


20180305000069690 1/6 \$492.00
Shelby Cnty Judge of Probate, AL
03/05/2018 09:39:31 AM FILED/CERT

**THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE
FILING IN ACCORDANCE WITH THE PROVISIONS OF THE CODE OF
ALABAMA.**

1. THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made this 23rd day of FEBRUARY, 2018, between **SCOTCH HOMES & LAND DEVELOPMENT GROUP, INC.**, an Alabama corporation, whose address is 997 Willow Branch Trail, Chelsea, AL 35043 (herein collectively "Mortgagor", whether one or more), and Mortgagee, FIDELITY BANK a Georgia banking corporation, whose address is P.O. Box 105075 Atlanta, GA. 30348, and its successors and assigns ("Mortgagee").

2. WHEREAS, Mortgagor is or will be indebted to Mortgagee in the principal sum of Dollars (the "Loan") which Loan is evidenced by a promissory note from Mortgagor to Mortgagee dated February 23, 2018 (the "Note"), in the maximum principal amount of Three Hundred Eight Thousand and NO/100 Dollars (\$308,000.00) as provided in the Note; provided, however, Mortgagor may hereafter become indebted to Mortgagee or to a subsequent holder of this Mortgage on loans or otherwise.

3. IN CONSIDERATION OF the premises and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure to Mortgagee the repayment of the Loan and Obligations of Mortgagor to Mortgagee as defined below, Mortgagor does hereby grant, bargain, sell and convey to Mortgagee with power of sale, the property (the "Land") located in the County of Shelby, State of Alabama, and more particularly described as follows:

The property described on Exhibit "A" attached hereto and incorporated herein by this reference.

This is a purchase money mortgage.

4. And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances), Mortgagor hereby assigns and transfers to Mortgagee, and grant to Mortgagee a security interest in all buildings, structures, and improvements now or hereafter erected on the Land; all tenements, easements, rights, appurtenances, reversions, remainders, rents, royalties, rights and profits to, from and appertaining to, the land; all minerals, oil, gas, water, water rights, and water stock rights to trees, crops, timber and shrubs now or hereafter on the land; all equipment, machinery, and fixtures now or hereafter attached to the Land, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; any and all awards or payments, including interest thereon, and the right to receive same, as a result of the exercise of the right of condemnation, eminent domain, the alteration of the grade of any street, or any other injury to, taking of, or decrease, in the value of any of the foregoing property (all of the foregoing, together with the Land the "Property").

5. TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns forever, subject, however, to the terms and conditions herein.

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the Loan and the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, and shall pay any and all Obligations, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents, and in the documents and instruments evidencing, securing or relating to the Obligations (defined below) expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other document securing or evidencing the Loan (collectively the "Loan Documents") or any other Obligations (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

6. To the extent that any of the Property is property subject to the Uniform Commercial Code (the "Code"), this document is also a security agreement with respect to such Property (the "Collateral"). Mortgagor grants a security interest in the Collateral to Mortgagee to secure all of the Obligations (as hereinafter defined). Upon a Default (as hereinafter defined), Mortgagee may exercise all of the rights of a secured party under the Code.

This Mortgage is made and secures the repayment of all indebtedness of Mortgagor to Mortgagee evidenced by the Note, and any extension, modification, renewal, or substitution thereof or therefore, including, without limitation, all principal, interest, and costs of collection thereunder; the repayment of all other sums, with interest thereon, advanced in accordance herewith to protect the Property or the security of this Mortgage; the performance of the covenants and agreements of Mortgagor made in this Mortgage, including without limitations, the obligation of Mortgagor to repay all advances by Mortgagee for taxes, property insurance, repairs and maintenance of the Property, completion of improvements on the Property, amounts due holders of interests whose interest may jeopardize Mortgagee's secured position hereunder, expenses incident to any indebtedness secured by this Mortgage, and

foreclosure by action in any court and/or by exercise of the power of sale contained herein; and the repayment of the loan evidenced by the Note and all other indebtedness, liabilities, and obligations of Mortgagor to Mortgagee now existing or hereafter arising, whether absolute, or contingent, primary or secondary, joint or several (all or of the foregoing collectively the "Obligations"). The Note Loan and the Obligations may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

As additional security for the Obligations, Mortgagor hereby assigns to Mortgagee all leases, rents, profits, and income from the Property, provided that Mortgagor shall have the right, prior to a Default (as hereinafter defined), to collect and retain such rents, profits, and income as they become due and payable. Upon a Default (as hereinafter defined), Mortgagee, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All net rents, profits or income collected by Mortgagee or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, profits or income, including but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Mortgagee and the receiver shall be liable to account only for those rents actually received.

7. MORTGAGOR COVENANTS, REPRESENTS, AND WARRANTS that Mortgagor has good title to the Property, is lawfully seized of the Property hereby conveyed, and has the right to grant the convey the Property, that the Property is unencumbered, including as to personal property and fixtures, and that the Mortgagor forever will warrant and defend generally the title to the Property unto Mortgagee against all claims and demands of any and all persons whomsoever.

8. MORTGAGOR FURTHER COVENANTS AND AGREES as follow:

- (a) Payment. Mortgagor shall pay promptly when due all amounts payable under the Note and all amounts payable pursuant to any future advance or any other Obligation.
- (b) Charges. Mortgagor shall pay promptly when due all taxes, assessments and other charges, fines and impositions attributable to the Property or any leasehold payment or ground rent arising with respect to the Property. Alternatively, and at the option of the Mortgagee, such payments will be made to the appropriate payee by Mortgagee and Mortgagor will pay to Mortgagee, with each monthly installment due under the Note, a pro rata portion of such amount.
- (c) Liens. Mortgagor shall keep the Property free and clear of any liens or encumbrances.
- (d) Property Insurance. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Mortgagee may require and in such amounts and for such periods as Mortgagee may require. The insurer shall be chosen by Mortgagor subject to approval by Mortgagee. All insurance premiums shall be paid by Mortgagor to the insurer, provided, however, that at its option, Mortgagee may require that such payments be made to insurer by Mortgagee and that Mortgagor pay to Mortgagee, with each monthly installment due under the Note, a pro rata portion of the premiums. All insurance policies and renewals shall be in a form acceptable and shall include a standard mortgagee clause in favor of, and in a form acceptable to, Mortgagee. Mortgagee shall have the right to hold the policies and renewals thereof. Mortgagor shall furnish promptly to Mortgagee all renewal notices and all receipts of paid premiums. In the event of loss, Mortgagor shall give prompt notice to the insurer and Mortgagee. Mortgagee, at its option, may file and pursue and prosecute any claim for loss or damage to the Property as the authorized agent and attorney-in-fact of Mortgagor, which agency is coupled with an interest and is irrevocable by death or otherwise.

Unless Mortgagee shall decide otherwise, insurance proceeds shall be applied to restoration of the damaged Property, provided such restoration or repair is, in the sole judgment of Mortgagee, economically feasible and the security of this Mortgage is not impaired thereby. If, in the judgment of Mortgagee such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to outstanding Obligations in the order and manner that Mortgagee, in its sole discretion, may determine, with the excess, if any, to be paid to Mortgagor.

Any application of insurance proceeds to outstanding Obligations shall not extend or postpone the due date of any monthly installments or change the amount of such installments. If, pursuant to the exercise by Mortgagee of any remedies available to it upon default by Mortgagor, the Property is acquired by Mortgagee, all right, title and interest of Mortgagor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Mortgagee for application to outstanding Obligations in the order and manner that Mortgagee in its sole discretion may determine.

- (e) Maintenance of Property. Mortgagor agrees to keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any leasehold, declaration or covenant to which the Property is subject. Mortgagor shall comply with all statutes, ordinances and requirements of any governmental authority relating to the Property or any part thereof. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Property now or hereafter encumbered by this Mortgage which may be affected by any condemnation or similar proceeding. No part of the Property, including, without limitation, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property shall be removed, demolished or materially altered. Mortgagor shall complete within a reasonable time and pay for any building, structure or other improvement at any time in the process of construction on the Property. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant,

zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part hereof.

- (f) Protection of Mortgagee's Security. If Mortgagor fails to perform any of the covenants and agreements contained herein, or if any action or proceeding is commenced with respect to the Property, including without limitation, eminent domain, condemnation or descent, their Mortgagee, at its option, may make such appearances, disburse such sums and take such action as is necessary to protect its interest, including without limitation, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.
- (g) Inspection. From time to time Mortgagee may make or cause to be made on its behalf, entries upon and inspections of the Property.

9. CONDEMNATION. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, exercise of eminent domain, or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee. In the event of a partial or total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, being paid to Mortgagor. Any application of proceeds to the sums secured hereby shall not extend or postpone the due date of the monthly installments due under the Note or change the amount of such installments. Mortgagor shall execute and deliver to Mortgagee upon demand, any further instruments desired by Mortgagee to reaffirm, correct, or perfect the evidence of the Obligations or the legal security of Mortgagor to the Property.

10. TRANSFER OF PROPERTY. If all or any part of the Property or interest therein is leased, sold, conveyed or transferred by Mortgagor, or if the Property becomes subject to any voluntary or involuntary lien or encumbrance without Mortgagee's prior written approval, Mortgagee, at its option, may declare all sums secured by this Mortgage to be immediately due and payable. If Mortgagee chooses to exercise such option to accelerate, Mortgagee, may, without other notice or demand, invoke any and all remedies provided herein or available at law or in equity.

11. DEFAULT; REMEDIES. Any one or more of the following events will constitute a default (a "Default"):

- (a) any person or party obligated on any of the Obligations, including, without limitation, the Note, fails to make when due any payment thereunder, or
- (b) any person or party obligated on any of the Obligations or under this Mortgage fails to perform any other obligation to Mortgagee under any of the Obligations or under any other agreement, instrument, document or deed, including this Mortgage, to which Mortgagee and such person are parties, whether or not there are other parties, or
- (c) Mortgagee deems itself insecure about the ability of any person or party obligated on any of the Obligations to repay said Obligation, or
- (d) any person or party obligated on any of the Obligations or under this Mortgage files or has filed against it a petition or filing under any present or future federal or state insolvency, bankruptcy, reorganization, composition, or debtor relief law, including, without limitation, the Bankruptcy Code, or
- (e) any person obligated on any of the Obligations dies, or
- (f) breach of any term or provision of this Mortgage or any other Loan Document.

Upon a Default, Mortgagee, at its option, may declare all outstanding principal sums and all earned interest and other charges secured upon this Mortgage to be immediately due and payable, without further notice or demand which are hereby waived and may invoke the power of sale herein granted and any other remedies permitted by applicable law or in equity.

Upon a Default, Mortgagee may, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give to Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;
- (c) The right to require Mortgagor, upon request of Mortgagee, to assemble and make the Collateral available to Mortgagee at a place reasonably convenient to Mortgagor and Mortgagee; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Mortgagee upon a Default, Mortgagor does hereby irrevocably appoint Mortgagee attorney-in-fact for Mortgagor, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Mortgagor could do, and to sell, assign, and transfer any collateral to Mortgagee or any other party.

Upon a Default, Mortgagor shall, upon the demand of Mortgagee, immediately surrender possession of the Property to Mortgagee, and if and to the extent permitted by law, the Mortgagee or its agents may enter and take and maintain possession of all the Property, together with all the documents, books, records, papers and accounts of the Mortgagor or the then owner of the Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

Upon a Default, Mortgagee may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of this paragraph shall further apply with respect to Mortgagee's enforcement of rights or interests in the Collateral.

The proceeds of any foreclosure sale or any sale hereunder shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Mortgagee;

(c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

The powers and agencies granted herein are coupled with an interest, are irrevocable by death or otherwise, and are cumulative to the remedies for collection of said indebtedness provided by law.

At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

12. **WAIVER OF HOMESTEAD RIGHTS.** Grantor waives for himself and his family and assigns to Grantee as security for all of the Obligations all homestead rights and rights under which Property is or may be declared exempt from levy by Grantee. Grantee hereby is appointed attorney-in-fact for Grantor to claim any such homestead or exemption right and to receive any property otherwise belonging to Grantor to be applied toward satisfaction of such Obligations.

13. **NON-WAIVER.** Any extension granted by Mortgagee to Mortgagor of the time for payments or modification of the amount of payment of any of the Obligations shall not operate to release in any manner any liability of Mortgagor or its successors. Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise available at law or in equity shall not be a waiver of, or preclude the exercise of, any such right or remedy. Payment of insurance premiums, taxes, or other amounts by Mortgagee to protect the Property or to protect its secured position therein shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

14. **NOTICE.** Except as prescribed otherwise by applicable laws, any notice provided for in this Mortgage shall be given by mailing such notice by certified mail, return receipt requested, addressed to Mortgagor or Mortgagee, respectively, as follow:

Mortgagee: FIDELITY BANK
P. O. BOX 105075
ATLANTA, GA 30348

Mortgagor:
SCOTCH HOMES & LAND DEVELOPMENT GROUP, INC.
Attn: Wayne J. Scotch, Jr., President
997 Willow Branch Trail
Chelsea, AL 35043

15. **REMEDIES CUMULATIVE.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or available at law, or in equity, and may be exercised concurrently, independently or successively.

16. **GOVERNING LAW.** This Mortgage shall be governed by and construed and enforced according to the laws of the State of Alabama, except if there shall be any provision of federal law applicable to any portion of the Deed, which federal law provision shall control. In the event that any provision or clause of this Mortgage or the Note conflict with applicable law, such conflict shall not affect other provisions of this Mortgage, or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared



20180305000069690 5/6 \$492.00
Shelby Cnty Judge of Probate, AL
03/05/2018 09:39:31 AM FILED/CERT

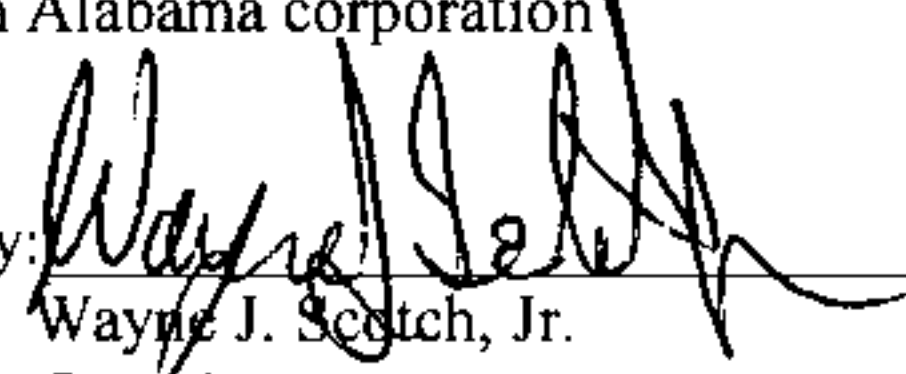
to be severable. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

17. WAIVER OF NOTICE OF FUTURE ADVANCES AND CONSENT TO RELEASE. If Mortgagor (or any of them) are not the maker of the Note, then each Mortgagor expressly (i) waives notice of any and all loans and/or advances made, from time to time during the continuance of this Mortgage, by the holder of the Note to the maker of the Note; and (ii) agree that the holder of the Note, from time to time, without notice to or further consent from Mortgagor, may grant extensions of time and other indulgences to and renew any obligations of (without regard to the number or length of such extensions or renewals) the maker of the Note or any other person liable thereon, Mortgagor further agrees that the holder of the Note, without notice or further consent of Mortgagor, may release or discharge any persons who are or may become liable for the payment of the Note or release or discharge any other collateral for the payment of this Note and that such release or discharge shall not alter, modify, release or limit the liability of Mortgagor (or any of them) hereunder or the validity and enforceability of this Mortgage.

18. SEVERABILITY. If any part of any provision of this Mortgage shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions or the remaining provisions.

IN WITNESS WHEREOF, this Mortgage has been duly executed and sealed by Mortgagor the day and year first above written.

MORTGAGOR:
SCOTCH HOMES & LAND DEVELOPMENT
GROUP, INC.
an Alabama corporation

By: 
Wayne J. Scotch, Jr.
Its: President

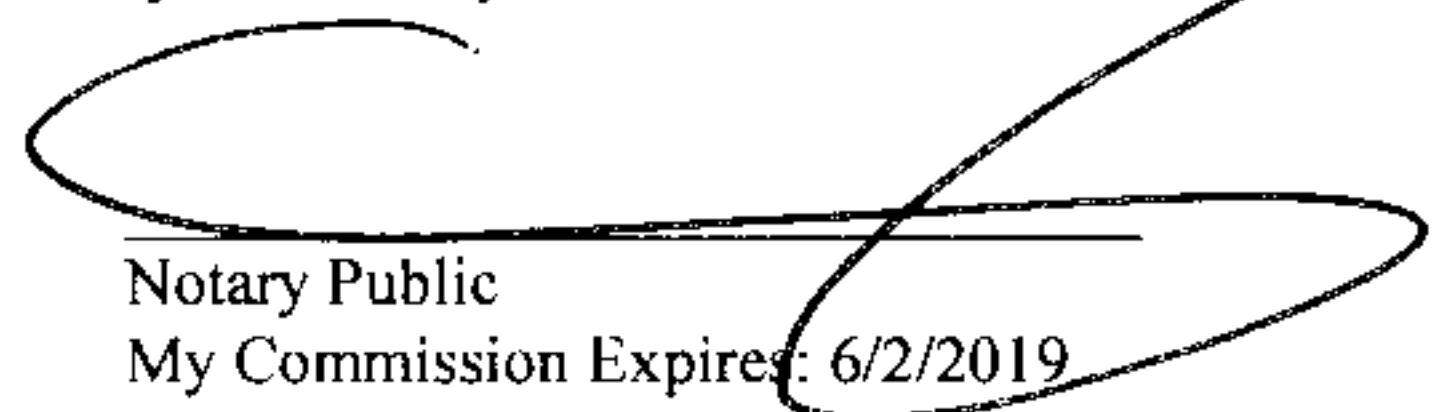
STATE OF ALABAMA)
COUNTY OF JEFFERSON)

The undersigned, Clayton T. Sweeney, a notary public in and for said county in said state, hereby certify that Wayne J. Scotch, Jr., whose name as President of Scotch Homes & Land Development, Group, 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 such instrument, he 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 23rd day of February, 2018.

(Notarial Seal)




Notary Public
My Commission Expires: 6/2/2019

THIS INSTRUMENT PREPARED BY:
Clayton T. Sweeney, Attorney At Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223

EXHIBIT "A"


20180305000069690 6/6 \$492.00
Shelby Cnty Judge of Probate: AL
03/05/2018 09:39:31 AM FILED/CERT

Lot 150, according to the Survey of Willow Branch Second Sector, as recorded in Map Book 48, Page 35, in the Probate Office of Shelby County, Alabama.