


THIS INSTRUMENT PREPARED  
BY AND RETURN TO:

Stacy H. Krumin, Esq.  
Squire Patton Boggs (US) LLP  
201 N. Franklin St., Suite 2100  
Tampa, Florida 33602

  
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Shelby Cnty Judge of Probate, AL  
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### ASSIGNMENT OF LEASES AND RENTS

THIS ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the ~~20th~~ day of April, 2018, by BOOS- OR HELENA, LLC, A FLORIDA LIMITED LIABILITY COMPANY, having its principal place of business at 410 Park Place Blvd., Suite 100, Clearwater, FL 33759 ("Assignor") to MUTUAL OF OMAHA BANK, a federally chartered bank, with an address of 5401 W. Kennedy Blvd., Tampa, Florida 33609, Attn: Christie Wilder ("Assignee").

### WITNESSETH:

THAT Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby grants, transfers and absolutely and unconditionally assigns to Assignee the entire lessor's interest in and to all current and future leases and other agreements (including, without limitation, lease guaranties), at, affecting the use, enjoyment or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit A hereto, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property") (including any use or occupancy arrangements created pursuant to Section 365(h) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Property), together with any extension or renewal of the same;

The leases and other agreements (including, without limitation, lease guaranties) described above together with all other present and future leases and present and future agreements and any extension or renewal of the same are hereinafter collectively referred to as the "Leases," and those persons granted rights as tenants under such Leases are collectively referred to as "Lessees";

TOGETHER WITH all income, rents, issues, revenues and profits arising from the Leases and renewals thereof (and including, without limitation, all letters of credit, security and other deposits and proceeds thereof given as security for the performance of any tenant obligations under such Leases) and together with all income, rents, issues and profits, revenues and proceeds (including, but not limited to, all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Property and all claims as a creditor in connection with any of the foregoing) (hereinafter collectively referred to as the "Rents") and

all proceeds from the sale, cancellation, surrender or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Loan (as hereinafter defined).

THIS ASSIGNMENT is made in consideration of and to secure that certain loan (the "Loan") made by Assignee to Owner evidenced by that certain Loan Agreement by and between Owner and Assignee, dated as of the date hereof (the "Loan Agreement"), the Promissory Note made by Owner to Assignee, dated the date hereof, in the principal sum of One Million Two Hundred Twenty-Two Thousand and No/100 Dollars (\$1,222,000.00) (the "Note") and is secured by, *inter alia*, that certain Mortgage and Security Agreement given by Assignor to Assignee, dated as of the date hereof, encumbering the Property, to be recorded in the Public Records of Shelby County, Alabama (the "Mortgage") and shall also secure all Obligations. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

ASSIGNOR WARRANTS that (i) Assignor is the sole owner of the entire lessor's interest in the Leases; (ii) there are no leases or occupancy rights in and to the Property that have not been previously disclosed or provided to Assignee; (iii) the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as previously disclosed to Assignee; (iv) none of the Rents reserved in the Leases have been otherwise assigned or pledged or hypothecated (except as provided in the Mortgage); (v) Assignor has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property; and (vi) to Assignor's knowledge, there exist no offsets or defenses to the payment of any portion of the Rents.

ASSIGNOR COVENANTS with Assignee that Assignor shall not, without the prior written consent of Assignee, further assign the whole or any part of the Leases or the Rents.

ASSIGNOR FURTHER COVENANTS with Assignee that, with respect to each Lease, Assignor shall (a) observe and perform each and every material provision thereof on the lessor's part to be fulfilled or performed under each Lease and not do or permit to be done anything to impair the value of the Lease as security for the Loan, except as may otherwise be permitted hereunder, (b) execute and deliver, at the request of Assignee, all such further assurances, confirmations and assignments in connection with the Property as Assignee shall, from time to time, require and (c) upon request, furnish Assignee with executed copies of all Leases. Notwithstanding any other provision herein or in any other Loan Document to the contrary, Assignor shall have the right, without the consent of Assignee, to enter into any Lease or to modify, amend or waive the provision of, or to terminate, reduce rents under, accept the surrender of space under, or shorten the term of any Lease, or of any guaranty, letter of credit or other support with respect thereto, so long as such action does not have a material adverse effect on the value of the Property taken as a whole, provided that a termination of a Lease with a tenant who is in default beyond applicable notice and cure periods shall not be considered an action which has a material adverse effect on the value of the Property taken as a whole.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Present Assignment. Assignor does hereby absolutely and unconditionally assign to Assignee, Assignor's right, title and interest in all current and future Leases and Rents, it being intended by Assignor that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Such assignment to Assignee shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Assignee. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance satisfactory to Assignee, as may hereinafter



be requested by Assignee to further evidence and confirm said assignment. Nevertheless, subject to the terms of this Paragraph 1, Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents. Assignor shall hold the Rents or a portion thereof sufficient to discharge all current sums due on the Loan for use in the payment of such sums. Upon an Event of Default (as defined in the Loan Agreement), the license granted to Assignor herein shall be automatically revoked by Assignee and Assignee shall immediately be entitled to receive and apply all Rents, whether or not Assignee enters upon and takes control of the Property. Assignee is hereby granted and assigned by Assignor the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Loan in such priority and proportion as Assignee, in its discretion, shall deem proper.

2. Remedies of Assignee. Upon an Event of Default, Assignee may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Loan, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, enforce its interest in the Leases and Rents and take possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may be proper in Assignee's commercially reasonable judgment and may apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Loan, together with all costs and reasonable attorneys' fees. In addition to the rights which Assignee may have herein, upon the occurrence of an Event of Default, Assignee, at its option, may require Assignor to vacate and surrender possession of the Property to Assignee; or may apply for appointment of a receiver as a matter of right and without notice in accordance with the statutes and law made and provided for, which receivership the Assignor hereby consents to, who shall collect the Rents, manage the Property so as to prevent waste, execute Leases within or beyond the period of receivership, and perform the terms of this Assignment and apply the Rents as hereinafter provided; and in default thereof, Assignor may be evicted by summary proceedings or otherwise. The purchaser at any foreclosure sale, including the Assignee, shall have the right, at any time and without limitation, to advance money to any receiver appointed hereunder to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Property, and the sum so advanced, with interest at the Default Rate (as defined in the Note), shall be a part of the sum required to be paid to redeem from any foreclosure sale. For purposes of Paragraphs 1 and 2, Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, upon an Event of Default, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this Paragraph 2 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default by Assignor under the Note, the Mortgage, the Loan Agreement, the Leases, this Assignment or the Loan Documents.

3. No Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other



act or omission of Assignee in managing the Property after an Event of Default. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees to, indemnify Assignee for and hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and the Loan Documents and Assignor shall reimburse Assignee therefor promptly upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby, the Note, and the Mortgage and the Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any Hazardous Material (as defined in the Loan Agreement), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

4. Notice to Lessees. Assignor hereby authorizes and directs the Lessees named in the Leases or any other or future lessees or occupants of the Property upon receipt from Assignee of written notice to the effect that Assignee is then the holder of the Mortgage and that an Event of Default (as that term is defined in the Loan Agreement) exists thereunder or under this Assignment, the Note or the other Loan Documents to pay over to Assignee all Rents and to continue to do so until otherwise notified by Assignee.

5. Other Security. Assignee may take or release other security for the payment of the Loan, release any party primarily or secondarily liable therefor and apply any other security held by it to the reduction or satisfaction of the Loan without prejudice to any of its rights under this Assignment.

6. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Mortgage or the Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Loan and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

8. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Mortgage or Loan Agreement, the terms of the Mortgage or Loan Agreement shall prevail.

9. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against

whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

10. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeable in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "Property" shall include any portion of the Property and any interest therein, and the word "Loan" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Mortgage and all other sums due pursuant to the Note, the Mortgage, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

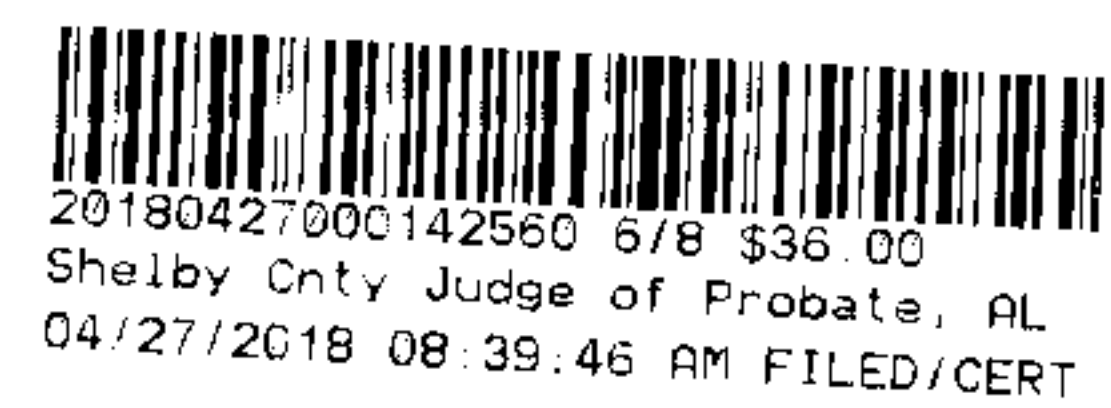
11. No Waiver. Assignee, pursuant to the powers and rights granted hereunder, shall not be deemed to have waived any of its rights and remedies under the Note, the Mortgage or any of the other Loan Documents. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by the Assignee to collect the indebtedness secured hereby or by the Mortgage or by any of the other Loan Documents and to enforce any other security therefor held by it, and to enforce any other rights or remedies that Assignee may have under applicable law, including, without limitation, those rights under the Alabama Statutes, and said rights and remedies may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor acknowledges this Assignment is primary in nature to the obligation evidenced and secured by the Note, the Mortgage and the other Loan Documents, and Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral or guaranty. However, nothing herein contained shall prevent Assignee from successively or concurrently, foreclosing on or selling the Property, or exercising any other right under any of the other Loan Documents. In no event shall reference to the Alabama Statutes diminish, alter, impair, or affect any other rights and remedies of Assignee, including but not limited to, the appointment of a receiver as provided herein, nor shall any provision in this Section 11 diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this Assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Assignor to Assignee, and shall be in addition to any rights arising under the Alabama Statutes. Further, except for the notices required hereunder, if any, Assignor waives any notice of default or demand for turnover of rents by Assignee, together with any rights under the Alabama Statutes to apply to a court to deposit the Rents into the registry of the court or such other depository as the court may designate. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment.

12. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

13. Duplicate Originals. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

14. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of Alabama.





15. Termination of Assignment. Upon payment in full of the Loan and all Obligations and the delivery and recording of a satisfaction or discharge of Mortgage duly executed by Assignee, this Assignment shall become null and be void and of no effect.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and any subsequent holder of the Mortgage and shall be binding upon Assignor, his heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

*[Signature pages to follow]*

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Shelby Cnty Judge of Probate: AL  
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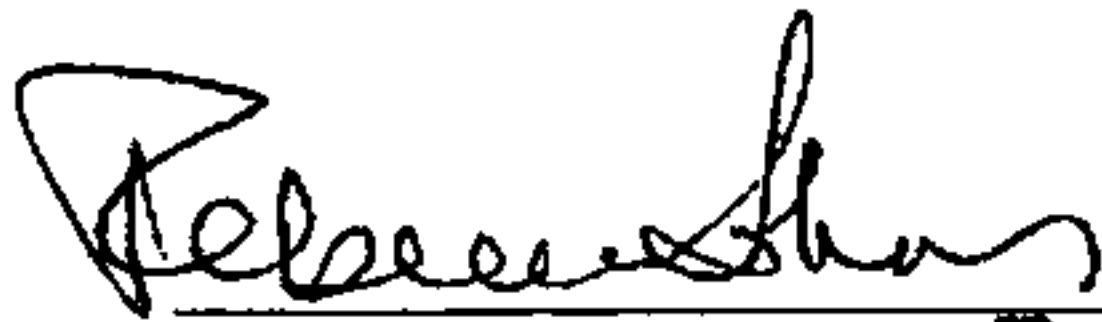
IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

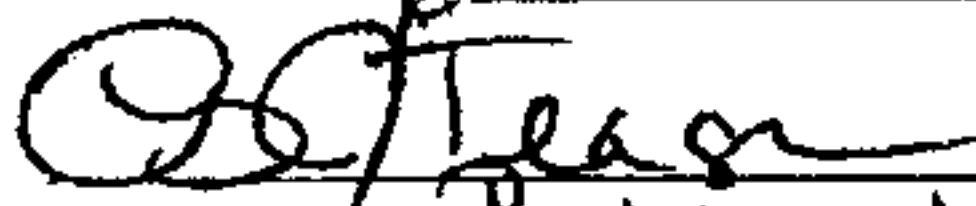
WITNESSES:


ASSIGNOR:

BOOS- OR HELENA, LLC,  
a Florida limited liability company

By: BOOS ALABAMA DEVELOPMENT, LLC

  
Print Name: Rebecca R. Johns

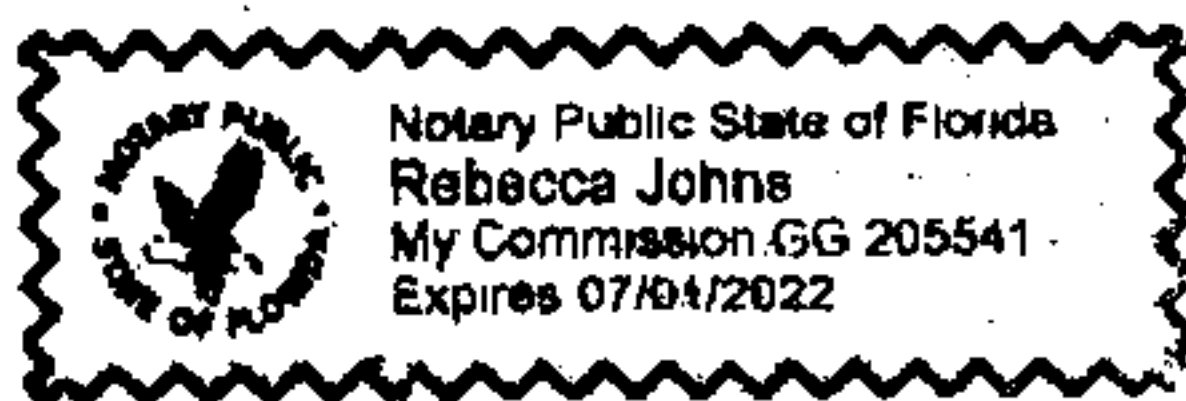
  
Print Name: Bobbie S. Tesger

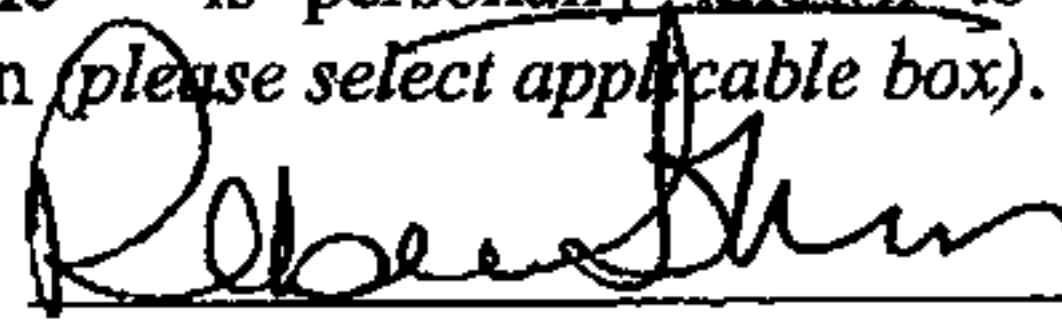
By:   
Name: Robert D. Boos  
Title: manager

STATE OF Florida  
COUNTY OF Pinellas

The foregoing Assignment of Leases and Rents was sworn to and acknowledged before me this 19 day of April, 2018, by Robert D. Boos, the manager of Boos Alabama Development, LLC, the manager of Boos OR Helena, LLC. He is personally known to me or has produced \_\_\_\_\_ as identification (please select applicable box).

SEAL



  
Print Name: \_\_\_\_\_  
Notary Public Rebecca R. Johns  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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Shelby Cnty Judge of Probate, AL  
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**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Lot 2, according to the Survey of Helena Market Subdivision, as recorded in Map Book 26, Page 20 in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge James W. Fuhrmeister, Probate Judge,  
County Clerk  
Shelby County, AL  
04/27/2018 08:39:46 AM  
\$36.00 CHERRY  
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A handwritten signature in black ink, appearing to read "J. W. Fuhrmeister", is written over the official text.