

# 500.00

This instrument prepared by:

Matthew S. Hale  
Wallace, Jordan, Ratliff & Brandt, L.L.C.  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209

20181210000429540 1/9 \$39.50  
Shelby Cnty Judge of Probate, AL  
12/10/2018 11:42:22 AM FILED/CERT

**EASEMENT AGREEMENT**

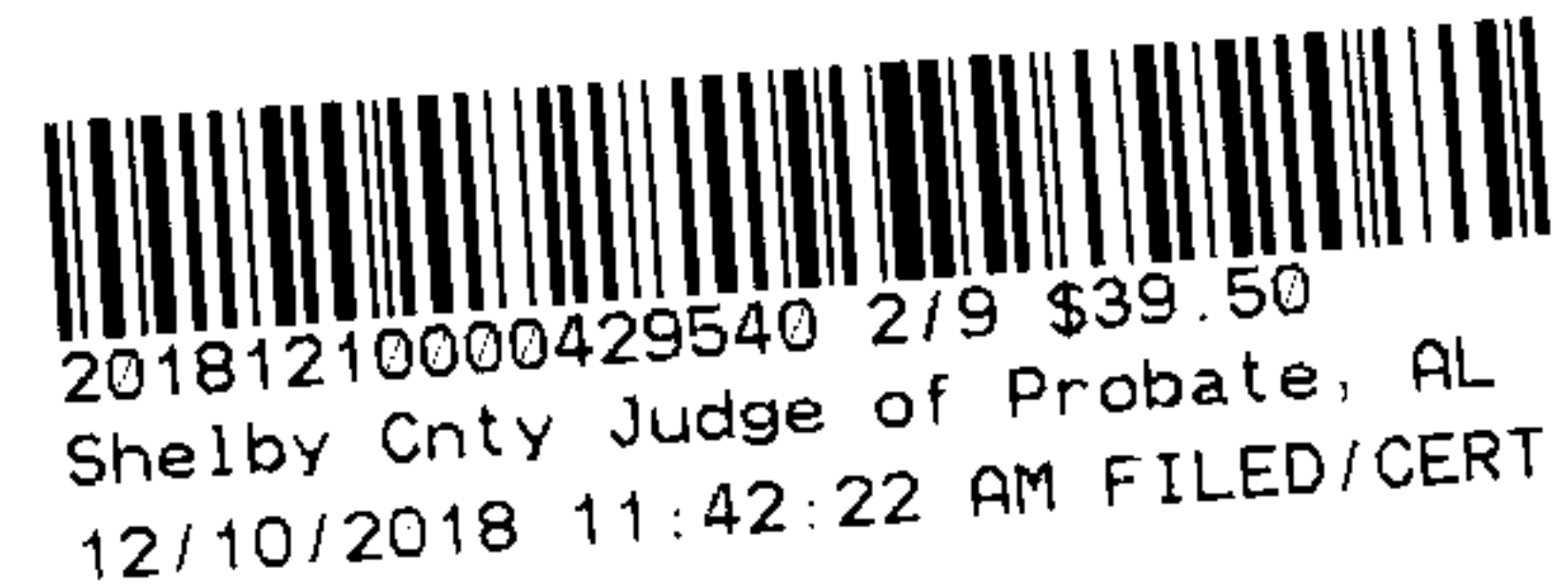
THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this 15<sup>th</sup> day of Oct, 2018, by and between CMK Investment Properties, LLC, an Alabama limited liability company ("Parcel A Owner") and MGW Properties, LLC, an Alabama limited liability company ("Parcel B Owner", together with Parcel A Owner, the "Owners" and each an "Owner").

**RECITALS**

- A. Parcel A Owner is the owner of that certain real property situated in Jefferson County, State of Alabama, located at 7354 Cahaba Valley Road, Birmingham, Alabama 35242 ("Parcel A").
- B. Parcel B Owner is the owner of that certain real property situated in Jefferson County, State of Alabama, located at 7364 Cahaba Valley Road, Birmingham, Alabama 35242 ("Parcel B").
- C. Parcel B Owner has requested that Parcel A Owner grant an easement over the "Easement Area" shown on Exhibit A for Parcel B Owner to connect electric utility, water, and gas lines to existing connections located on Parcel A to obtain electric, water, and gas service at Parcel B, and to establish certain covenants, conditions and restrictions with respect to Parcel A, for the benefit and complement of Parcel B and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, Parcel A Owner grants to Parcel B Owner, its successors and assigns, the easements, rights, and privileges described and granted herein:

- 1. Grant of Easement over Parcel A. Parcel A Owner grants, conveys, establishes, and creates for the benefit of, and as an appurtenance to, Parcel B, and for the benefit of Parcel B Owner and all employees and contractors of Parcel B Owner, a nonexclusive, perpetual easement for reasonable access, ingress, and egress, over, and across the Easement Area for construction and maintenance for Parcel B Owner to connect to Parcel A Owner's existing water, electrical, and gas lines.
- 2. Maintenance. Parcel B Owner shall perform, at its own expense, any maintenance necessary for the utility connections and lines installed in the Easement Area for the benefit of Parcel B. If the surface of any part of Parcel A is disturbed by the construction or maintenance of



the Easement area at any time, Parcel B Owner shall restore the surface to the condition in which it was found before such construction or maintenance was undertaken.

3. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B.
4. **Standard of Care; Surrender.** Parcel B Owner shall perform its work in the Easement Area with care and in such a manner as to cause the least interference with the Easement Area and with the use and enjoyment thereof by Parcel A Owner and others lawfully present thereon. Parcel B Owner shall not bring, store, generate or treat hazardous wastes or substances, or petroleum products upon the Easement Area or any portion thereof. Parcel B Owner, its officers, employees, agents general contractor and the general contractor's subcontractors, materialmen and suppliers shall, at all times, keep the Easement Area free from any and all debris and trash brought upon the Easement Area by them except for trash properly maintained in enclosed containers. If the surface of any part of Parcel A is disturbed by the construction, Parcel B Owner shall restore the surface to the condition in which it was found before such construction was undertaken. After construction is completed, Parcel B Owner shall remove all machinery, tools, equipment, vehicles, materials and debris resulting from or used in connection with the construction or Parcel B Owner's use of the Easement Area.
5. **Insurance; Indemnification.** Parcel B Owner agrees to require all contractors to maintain at all times commercial general liability insurance (in an amount not less than \$1,000,000.00 per occurrence), specifically including coverage against claims for bodily injury, death and property damage, which insurance shall cover claims based on use and occupancy of the Easement Area and shall name Parcel A Owner as an additional insured. Parcel B Owner shall furnish Parcel A Owner with evidence of such coverage before commencing any use or occupancy of the Easement Area, and upon request from time to time thereafter. Parcel B Owner shall indemnify, defend and hold harmless Parcel A Owner from and against any and all claims, demands, losses, damages, costs and expenses (including but not limited to court costs, penalties and reasonable attorneys' fees), judgments, liabilities and causes of action of any nature whatsoever resulting from or relating to the use of the Easement Area, exercise or failure to exercise its rights or obligations under this Agreement by Parcel B Owner or its agents, contractors, invitees or other persons or entities for whom Parcel B Owner is legally responsible, or the acts or omissions of Parcel B Owner or its agents, contractors, invitees or other persons or entities for whom Parcel B Owner is legally responsible. The foregoing indemnity shall survive expiration or earlier termination of this Agreement or the easement rights granted herein.
6. **Miscellaneous.**
  - 6.1. **Amendment.** The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Jefferson County, Alabama.

6.2. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

6.3. Governing Law. The laws of the State of Alabama govern this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

6.4. Estoppel Certificates. Each Owner, within twenty (20) day of its receipt of a written request from the other Owner, shall from time to time provide the requesting Owner a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

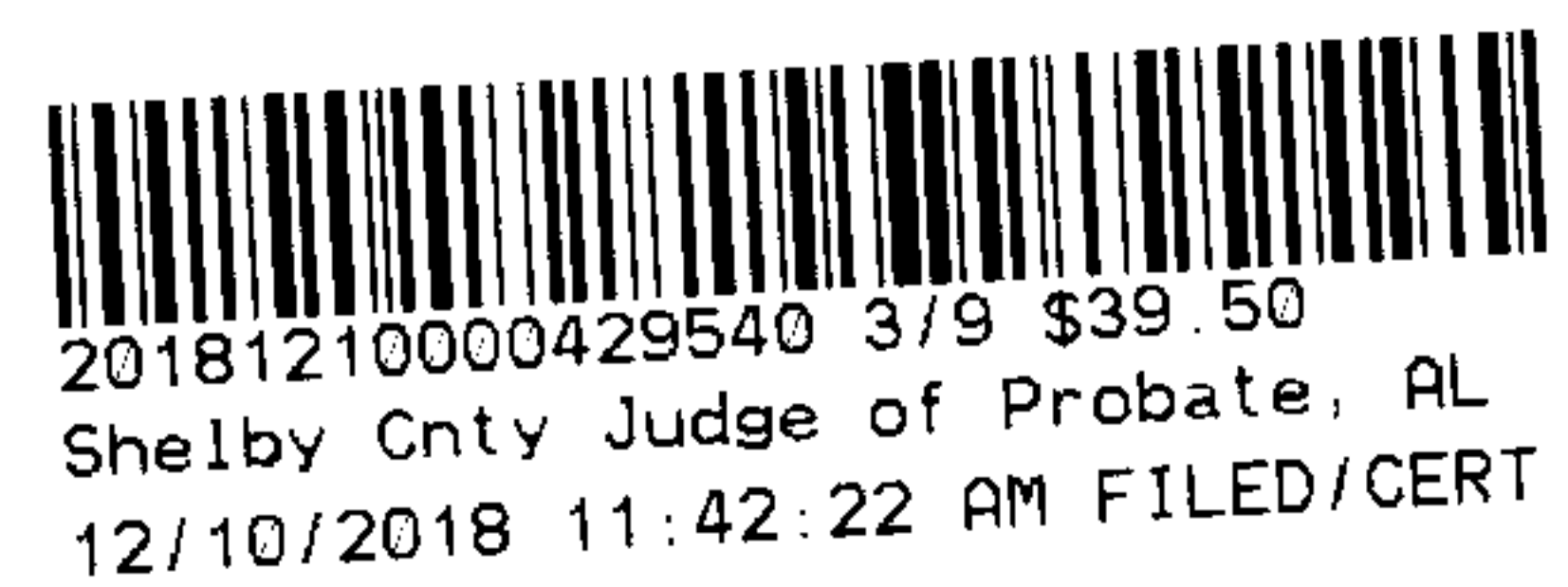
6.5. Joinder By Mortgagees. The Owner of Parcel A agrees to cause any lender possessing a mortgage on Parcel A at the time of execution and recording of this Agreement to execute the Joinder attached hereto as Exhibit "B" solely to evidence their consent to the terms and provisions of this Agreement and their agreement that the terms and provisions of this Agreement shall survive and continue upon and after any foreclosure of their mortgage on Parcel A or the acquisition of title to Parcel A by such lender or another third party.

6.6. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses are as follows:

Parcel A Owner: CMK Investment Properties, LLC  
Attention: Brian Kornowicz  
3290 Carisbrooke Ln.  
Hoover, AL 35226

Parcel B Owner: MGW Properties, LLC  
Attention: Mark Watkins  
1086 Country Club Circle  
Hoover, AL 35244

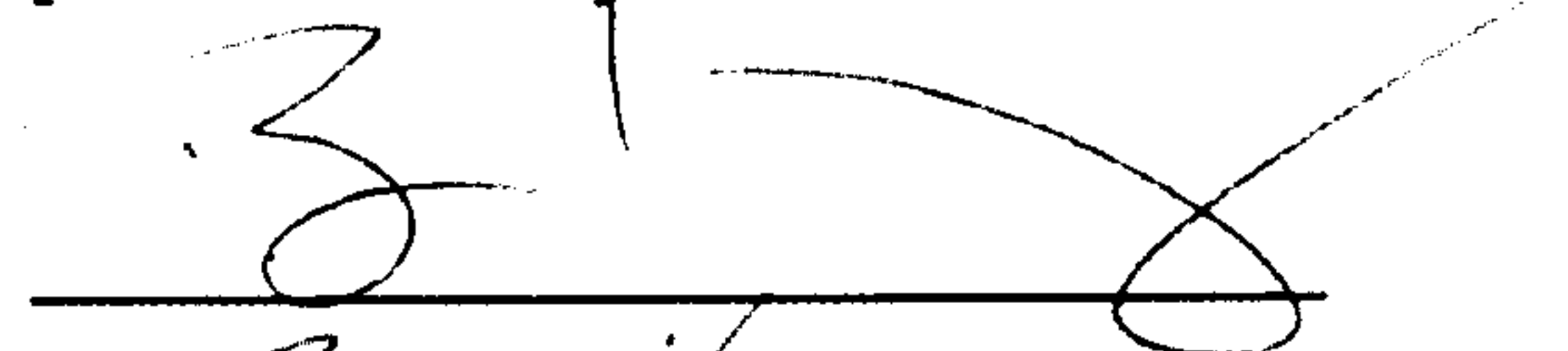
[Signatures appear on the following pages.]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CMK Investment Properties, LLC,  
an Alabama limited liability company

[Parcel A Owner]



By: Brian Kornowicz

Its: sole member

STATE OF Alabama

COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Brian Kornowicz whose name as sole member of CMK INVESTMENT PROPERTIES, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he/she, as such sole member and with full authority, executed the same voluntarily for and as the act of such limited liability company.

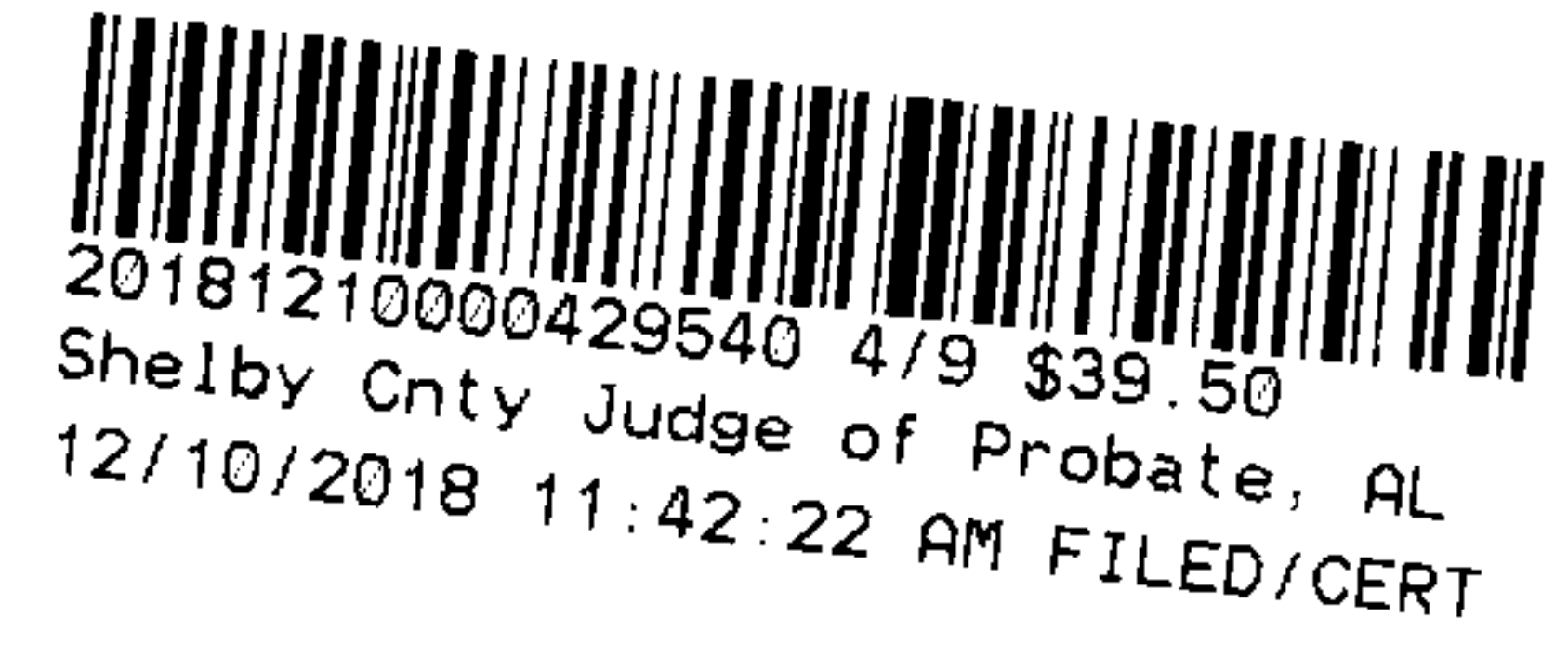
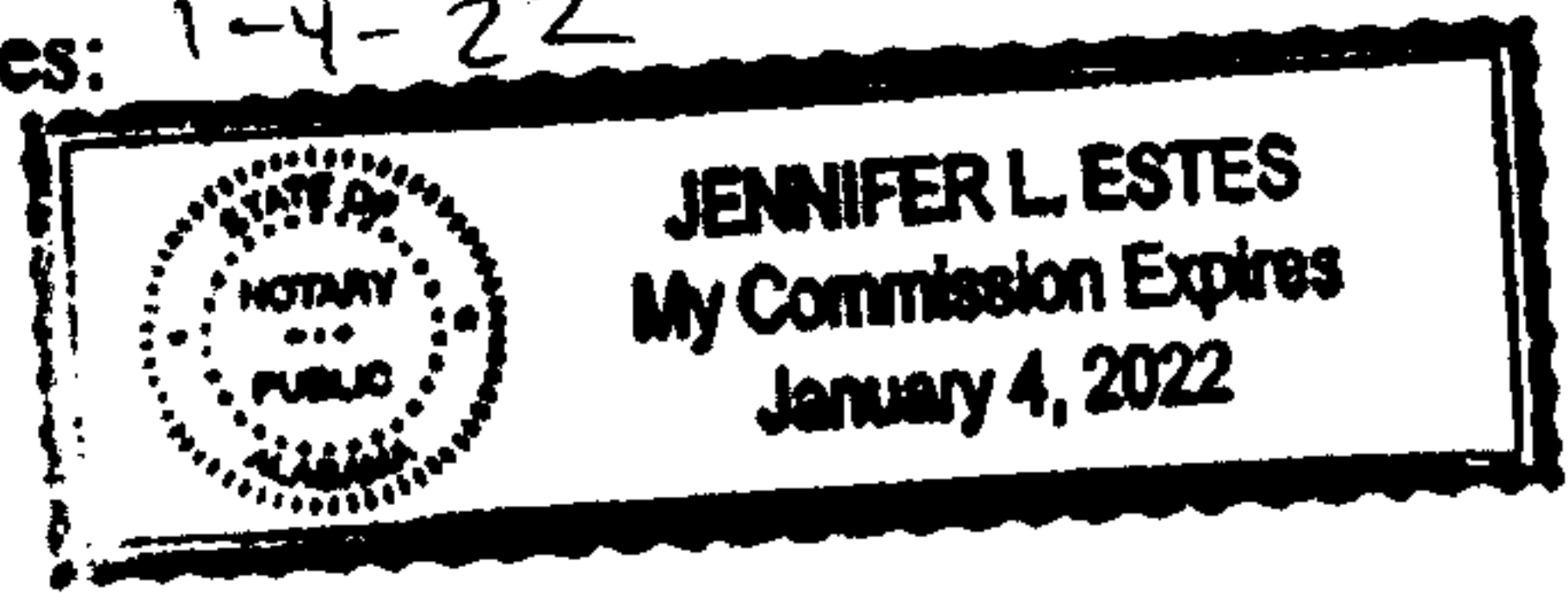
Given under my hand and official seal, this the 1<sup>st</sup> day of October, 2018.

[SEAL]

Notary Public

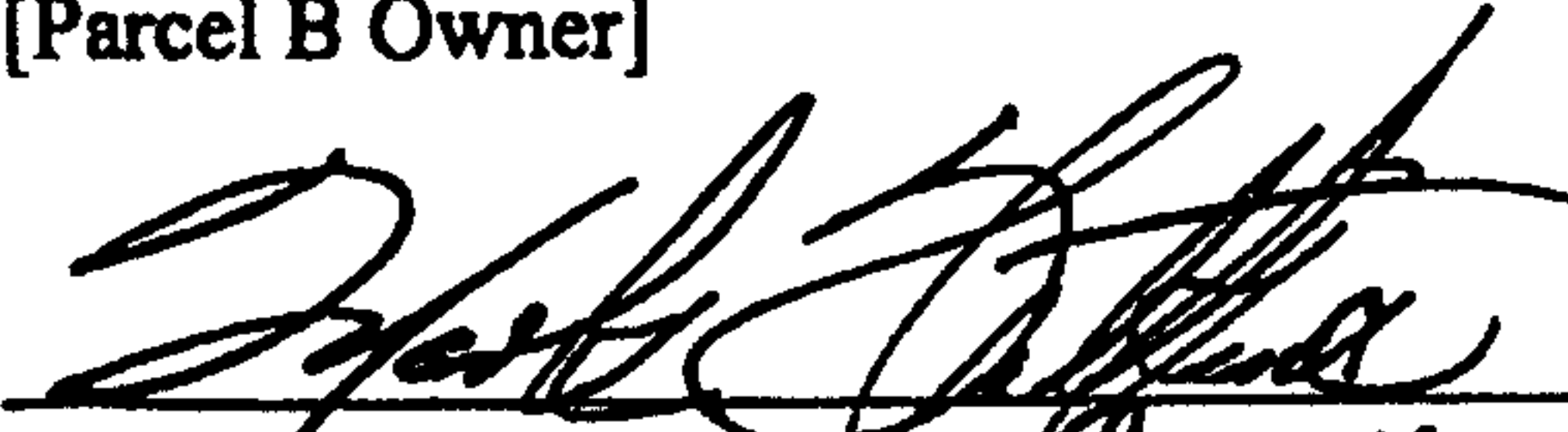


My Commission Expires: 1-4-22



MGW Properties, LLC,  
an Alabama limited liability company

[Parcel B Owner]

  
By: MARK WATKINS  
Its: MEMBER

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark Watkins, whose name as owner of MGW Properties, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he/she, as such member and with full authority, executed the same voluntarily for and as the act of such limited liability company.

Given under my hand and official seal, this the 20th day of September, 2018.

[SEAL]

Notary Public

Steve Farley

My Commission Expires: 8/13/22

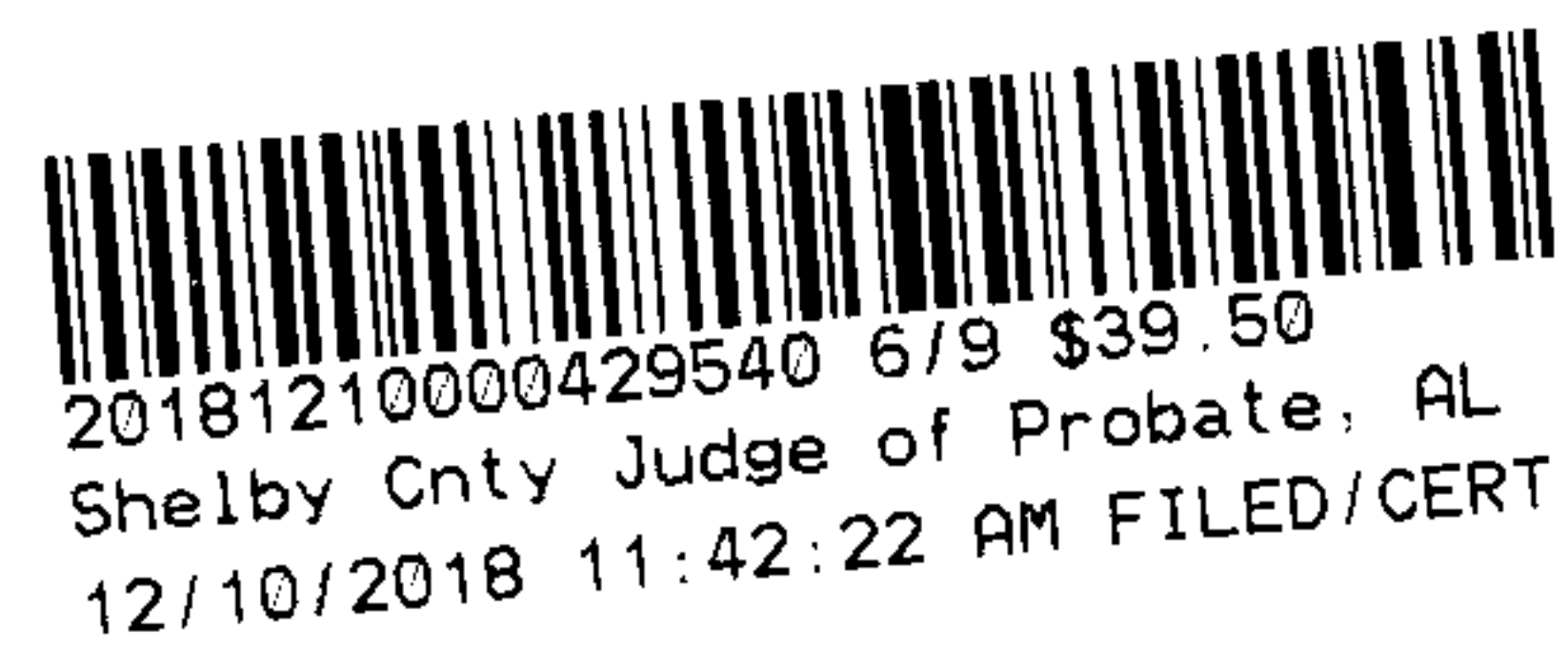


**EXHIBIT B**  
**JOINDER AND CONSENT OF MORTGAGEE**

Valley National Bank, a National banking corporation ("Mortgagee" or "Bank"), being the owner and holder of [list loan documents and recording information] ("Loan Documents");

joins in and consents to the Easement Agreement (the "Agreement") dated \_\_\_\_\_ by and between CMK Investment Properties, LLC, an Alabama limited liability company, and MGW Properties, LLC, an Alabama limited liability company, and in connection therewith, the Bank hereby agrees that (i) in the event any proceedings are brought by Bank, its nominees, successors or assigns (collectively, the "Secured Party") in connection with or arising out of any foreclosure or other action to enforce payment of any amounts due to Bank as secured by the Loan Documents, or any part thereof, Bank agrees that the Secured Party shall not join MGW Properties, LLC, or any other Owner of Parcel B (as defined in the Agreement) as a party to any such action or proceedings in order to foreclose, terminate or alter, or attempt to foreclose, terminate or alter the Agreement or any provision thereof in connection therewith; and (ii) in the event Bank, its nominees, successors or assigns or any other party (collectively, the "Successor Owner") acquires title to or right of possession of all or any portion of the property described in and the subject of the Agreement pursuant to or in connection with the enforcement of the Loan Documents, including, but not limited to, through foreclosure, deed in lieu of foreclosure or otherwise, the Agreement and all of its terms, provisions, covenants and conditions shall remain in full force and effect, and each of Parcel A Owner and Parcel B Owner (all as defined in the Agreement) shall continue to have the benefit of all rights and be burdened by all obligations provided in the Agreement, it being expressly agreed that all of the terms, provisions, covenants and conditions of the Agreement shall survive and continue in full force and effect upon and after any foreclosure or other acquisition of title to Parcel A (as defined in the Agreement) by Bank, its nominees, successors, assigns or any other party.

*[Reminder of page intentionally left blank]*



IN WITNESS WHEREOF, the Bank has executed this Joinder And Consent of Mortgagee on this 28<sup>th</sup> day of September, 2018.

Valley National Bank

By: [Signature]

Title: FVP

Date: 9/28/18

STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John Meriwether, whose name as FVP of Valley National Bank, a National banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he/she, as such FVP and with full authority, executed the same voluntarily for and as the act of such state banking corporation.

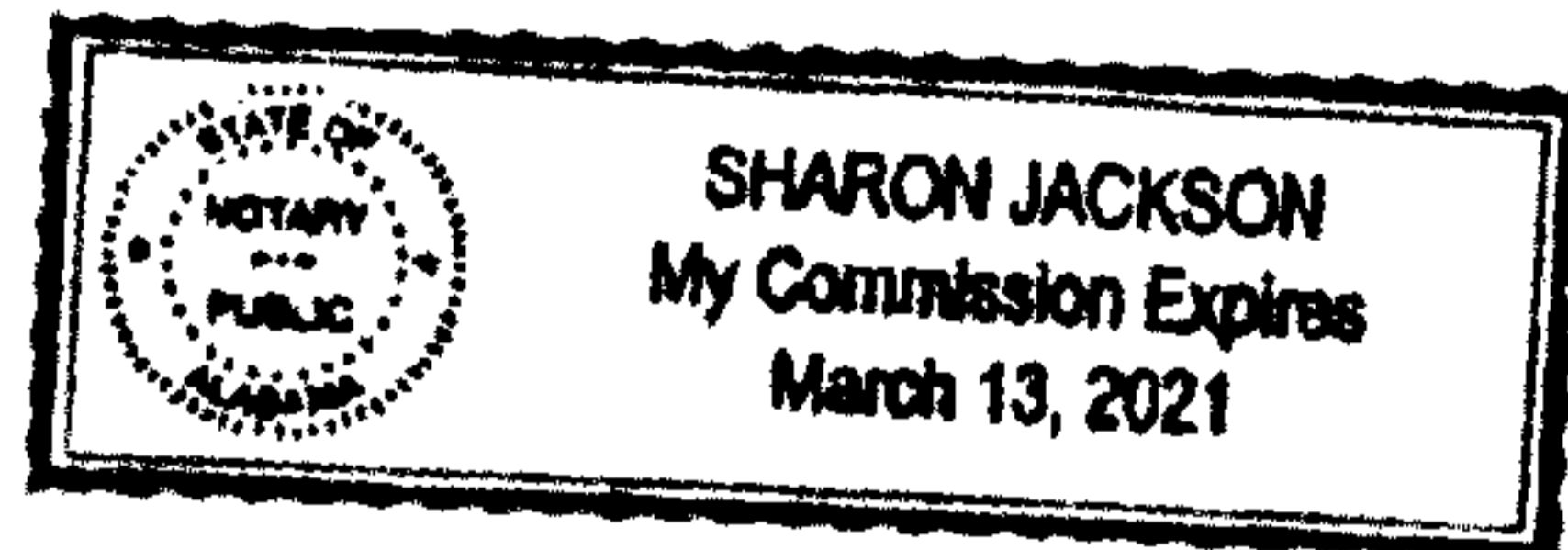
Given under my hand and official seal, this the 28<sup>th</sup> day of September, 2018.

[SEAL]

Notary Public

[Signature]

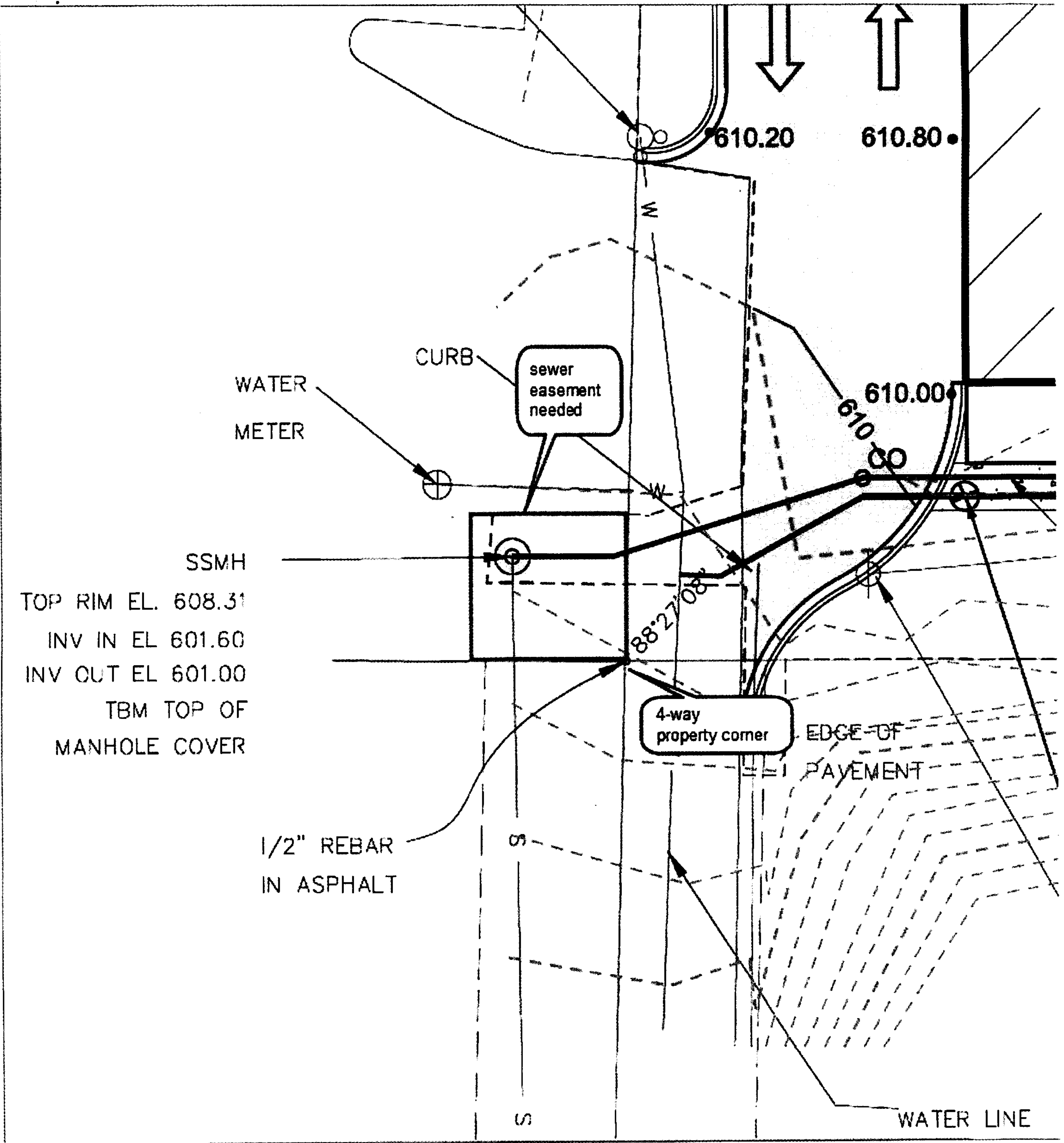
My Commission Expires: 3-13-2021



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