

**THIS INSTRUMENT PREPARED BY:**

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**STATE OF ALABAMA**  
**COUNTY OF SHELBY**

**MORTGAGE AND  
ASSIGNMENT OF RENTS AND LEASES**

**THIS INDENTURE** made this 19th day of April, 2022, by **HEATHER BROOKS and MICHAEL L. BROOKS**, having an address at 336 Stonegate Dr, Birmingham, AL 35242 (individually and collectively hereinafter called the "Mortgagor," whether one or more), as mortgagor, in favor of and for the benefit of **SOUTHPOINT BANK**, an Alabama banking corporation, having an address at 3501 Grandview Parkway, Birmingham, Alabama 35243 (hereinafter the said mortgagee and any subsequent holder of the Mortgage are referred to as the "Lender" or "Mortgagee" whether one or more), as mortgagee.

**WITNESSETH:**

**WHEREAS, HUNTSVILLE EWC, LLC, d/b/a EUROPEAN WAX CENTER**, an Alabama limited liability company, (the "Borrower") is justly indebted to Lender for a loan in the original principal sum of Four Hundred Twenty-Nine Thousand and Five Hundred No/100 Dollars (\$429,500.00) (hereinafter sometimes referred to for convenience as the "Loan") as evidenced by a Note dated April 19, 2022, in said principal amount (together with all amendments, extensions, modifications, renewals, refinancings and consolidations thereof or thereto hereinafter referred to for convenience as the "Note"); and

**WHEREAS**, pursuant to separate Unconditional Guarantees executed by each Mortgagor in favor of Lender (each singularly a "Guarantee" and collectively the "Guarantees"), each Mortgagor has guaranteed payment of the Loan and the Note on the terms stated in their respective Guarantees; and

**WHEREAS**, the parties desire to secure the Loan, the Note and the Guarantees.

**NOW, THEREFORE**, the Mortgagor, in consideration of the premises and the making of the Loan above-mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancing of same, and any charges herein incurred by Lender on account of Mortgagor, including but not limited to attorneys' fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, each Guarantee, and set forth in all other documents evidencing, securing or executed in connection with the Loan (together with the Guarantees, the Note and this Mortgage, the "Loan Documents"), does hereby give, grant, bargain, sell, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm unto the Lender, its successors and assigns, **WITH THE POWER OF SALE**, the following described land, real estate, estates, leasehold estates, buildings, improvements, and fixtures (hereinafter sometimes referred to as the "Mortgaged Property") to wit:

(a) All that tract or parcel or parcels of land and estates particularly described in **Exhibit A** attached hereto and made a part hereof (the "Land"), which currently has a property address of **336 Stonegate Dr, Birmingham, AL 35242**; and

(b) All buildings, structures, fixtures, including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the Mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently

installed as part of the realty), and improvements of every nature whatsoever now or hereafter situated on the Land; however, if the Land is, at any time during the term of the Loan evidenced by the Note, located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Improvements are limited to only those items specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended); and

(c) Together with all easements, rights of way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on any of the Land or under or above the same or any part or parcel thereof, and all estates, leases, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to:

(i) All rents, royalties, income, profits, issues and revenues of the Mortgaged Property from time to time accruing (the "Rents"), including, but not limited to, the Rents arising or issuing from all leases, tenancies, licenses, subleases or any other use or occupancy agreement now existing or hereafter created covering all or any part of the Mortgaged Property (the "Leases"), all of which Leases and Rents are hereby assigned to the Lender by the Mortgagor (and the Mortgagor agrees to execute and deliver to the Lender, on demand, such assignments and instruments as the Lender may require to implement, confirm, maintain and continue the assignment hereunder); reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the Rents; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights or appurtenances thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf of and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein;

**PROVIDED, HOWEVER**, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Lender all amounts due under the Note and the Guarantees, including, without limitation, the principal and interest payable in respect to 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 Lender on account of Mortgagor, including, but not limited to, attorney's fees, and shall keep, perform and observe (or cause to be kept, performed and observed) all and singular the covenants, conditions and agreements in this Mortgage, in the Guarantees, in the Note, and in the other Loan Documents, without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

**AND** the Mortgagor further represents, warrants, covenants and agrees with the Lender as follows:

**ARTICLE I**

**1.01 Performance of Mortgage, Guarantees, Note and Loan Documents.** The Mortgagor will perform, observe and comply with all provisions hereof. Any Mortgagor who is a party thereto will fully perform, observe and comply with the Guarantees and the other Loan Documents. Mortgagor will duly and punctually pay to the Lender the sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

**1.02 Warranty of Title.** Mortgagor hereby warrants that, subject to any exceptions shown on Exhibit A, (the "**Permitted Exceptions**"), it is lawfully seized of an indefeasible estate in fee simple in the Land hereby mortgaged, or is lawfully seized of such other estate or interest as is shown on Exhibit A hereto, and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

**1.03 Environmental Matters.** Mortgagor represents, warrants, and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or material defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.) the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative order;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property; and

(e) Mortgagor shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Section 1.03, or of any notice of other claim relating to the environmental condition of the Mortgaged Property, or of its discovery of any matter which

would make the representations, warranties, and/or covenants herein to be inaccurate or misleading in any respect.

Mortgagor hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Section 1.03, (ii) Mortgagor's failure to perform any obligations of this Section 1.03, (iii) Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events.

**1.04 Taxes, Utilities and Liens.**

(a) The Mortgagor will pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Mortgagor promptly shall pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date thereof, or in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

(d) If required or requested by Lender at any time after a default under any Loan Documents, Mortgagor shall pay to Lender, in addition to each regular installment of principal and interest, an amount sufficient to pay the estimated annual amount due for taxes on the Mortgaged Property. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Mortgagor agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, and any of the Loan Documents (subject, however, as hereinafter provided, to the provisions of any applicable law, rule or regulation). Notwithstanding the foregoing, in no event will Mortgagor be required to pay an amount pursuant to this Section 1.04 (either alone or in conjunction with amounts required for the payment of insurance under Section 1.05) which is in excess of the maximum amount allowed by any law, rule or regulation which is applicable to this Mortgage (including, without limitation, the Real Estate Settlement Procedures Act and rules and regulations thereunder (including, without limitation, provisions therein requiring that maximum escrow payments and cushions be calculated on an aggregate or composite basis), if such Act and the rules and regulations thereunder are applicable to this Mortgage), nor will the provisions of

this Section 1.04 be applied or enforced in a manner which would be contrary to any law, rule or regulation applicable to this Mortgage.

**1.05 Insurance.**

(a) The Mortgagor will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage, at no expense to Lender, insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require, including, without limitation, any such insurance required under the provisions of any other Loan Document. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

Specifically, Mortgagor shall at all times maintain in full force and effect a general liability insurance policy with limits of liability for bodily injury and property damage acceptable to Lender and naming Lender as an additional insured.

(b) The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of to the Mortgagor and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Mortgagor's or the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Mortgagor to be used to repair such improvements, or to build new improvements in their place or for any other purpose satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required or requested by the Lender at any time after an Event of Default, the Mortgagor shall pay to Lender, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Section 1.04 hereof, an amount sufficient to pay the estimated annual amount due for insurance to be maintained on the Mortgaged Property. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Mortgagor with Lender pursuant to this Section 1.05 to enable the Lender to pay such insurance premiums when due. Such sums may be applied by Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, and any of the Loan Documents (subject, however, as hereinafter provided, to the provisions of any applicable law, rule or regulation). Notwithstanding the foregoing, in no event will Mortgagor be required to pay an amount pursuant to this Section 1.05 (either alone or in conjunction with amounts required for the payment of taxes under Section 1.04) which is in excess of the maximum amount allowed by any law, rule or regulation which is applicable to this Mortgage (including, without limitation, the Real Estate Settlement Procedures Act and rules and regulations thereunder (including, without limitation, provisions therein

requiring that maximum escrow payments and cushions be calculated on an aggregate or composite basis), if such Act and the rules and regulations thereunder are applicable to this Mortgage), nor will the provisions of this Section 1.05 be applied or enforced in a manner which would be contrary to any law, rule or regulation applicable to this Mortgage .

(d) Mortgagor agrees to furnish to Lender a flood insurance policy acceptable to Lender if the Land, or any portion thereof, is now or hereafter located in flood zone A or B or any other area where flood insurance is now or hereafter required by any applicable law, rule or regulation. Mortgagor further agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Land is located in a special flood hazard area, for the full unpaid principal balance of the Loan and any prior liens on the Mortgaged Property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the Loan. If the Loan is made in connection with the construction of improvements upon the Land, Mortgagor agrees to furnish to Lender an as-built survey of the Mortgaged Property within thirty (30) days after completion of the construction of the improvements to verify that no improvements are located within flood zone A or B and that flood insurance is not required.

**1.06 Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Lender, which after deducting therefrom all its expenses, including attorney's fees may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

**1.07 Care of Mortgaged Property.**

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will promptly restore the Mortgaged Property to the equivalent of its original

condition, regardless of whether or not there shall be any insurance proceeds therefore; provided, however, that if there are insurance proceeds, the Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Section 1.05, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender; provided, however, that if there are condemnation proceeds or awards, the Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Section 1.06 toward restoring the damaged improvements.

**1.08 Further Assurances; After Acquired Property.** At any time, and from time to time upon request by the Lender, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Mortgagor under the Note and this Mortgage, and, subject to any prior mortgage as may be included in the Permitted Exceptions that shall remain outstanding, the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

**1.09 Expenses.** The Mortgagor will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage or in any of the Loan Documents or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, or the Loan Documents, Mortgagor or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

**1.10 Performance by Lender of Defaults by Mortgagor.** If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, or of the other Loan Documents, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Mortgagor. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claims and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor for trespass or otherwise.

**1.11 Transfers of Interests in Mortgaged Property or Mortgagor.** The Mortgagor shall not sell, assign, mortgage, encumber, or otherwise convey the Mortgaged Property, or any interest therein, without obtaining the express written consent of the Lender prior to such conveyance. If Mortgagor should sell, assign, mortgage, encumber or convey all, or any part of, the Mortgaged Property, or any interest therein, without such consent by Lender, then, in such event, the entire balance of the indebtedness secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender. On sale or transfer of any equity or beneficial interests in Mortgagor (if Mortgagor is not a natural person or persons but is a corporation, partnership, limited liability company, trust or other legal entity), Lender may, in Lender's sole discretion, declare the entire balance of the indebtedness secured by this Mortgage and all accrued interest thereon (or such parts as Lender may elect) to be immediately due and payable.

## **ARTICLE II**

**2.01 Event of Default.** The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Mortgagor or the Borrower to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under any Guarantee, the Note, this Mortgage or under any other Loan Document; or

(b) Failure by the Mortgagor or the Borrower to duly observe any other covenant, condition or agreement of this Mortgage, of any Guarantee, of the Note, or of any of the Loan Documents; or

(c) The filing by the Mortgagor, the Borrower, or any guarantor of any indebtedness secured hereby of a voluntary petition in bankruptcy or the Mortgagor's or the Borrower's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor, the Borrower or any guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Mortgagor's or any guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Mortgagor or any guarantor or of all or any substantial part of the Mortgaged Property; or

(d) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against the Mortgagor, the Borrower, or any guarantor of any of the indebtedness secured hereby seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgement or decree remains unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor, the Borrower, or any guarantor or of all or any substantial part of the Mortgaged Property without the consent or acquiescence of the Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive); or

(e) The enforcement of any prior or junior lien or encumbrance on the Mortgaged Property or any part thereof or the failure to pay when due any amount owed under any note or other instrument secured by any prior or junior lien on the Mortgage Property or any part thereof; or

(f) The death, determination of incompetency, or dissolution of any Mortgagor, the Borrower or any guarantor of the Note or any other indebtedness secured hereby; or

(g) Any other event of default set forth in any of the Loan Documents.



**2.02 Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**2.03 Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, the Lender may, at its option and without demand, notice or delay, do one or more of the following:

(a) Declare the entire unpaid principal balance of the indebtedness secured by this Mortgage, together with all interest thereon, to be due and payable immediately.

(b) Either with or without entry or taking possession, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the Guarantee; (b) to foreclose this Mortgage; and (c) to pursue any other remedy available to Lender, all as the Lender may elect, and in each such action the Lender shall be entitled to all costs of suit and attorneys' fees.

(c) In Lender's sole and absolute discretion: (i) collect any or all of the Rents, including any Rents past due and unpaid, (ii) perform any obligation or exercise any right or remedy of the Lender under any Lease, or (iii) enforce any obligation of any tenant of any of the Mortgaged Property. The Lender may exercise any right under this subsection (c), whether or not the Lender shall have entered into possession of any of the Mortgaged Property, and nothing herein contained shall be construed as constituting the Lender a "mortgagee in possession", unless the Lender shall have entered into and shall continue to be in actual possession of the Mortgaged Property. The Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Mortgaged Property to pay all Rents directly to the Lender and to perform all other obligations of that tenant for the direct benefit of the Lender, as if the Lender were the landlord under the Lease with that tenant, immediately upon receipt of a demand by the Lender to make such payment or perform such obligations.

**2.04 Power of Sale.** If an Event of Default shall have occurred, then, at the option of Lender, this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and the Lender may sell the Mortgaged 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 Mortgaged 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, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Mortgaged 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 Lender may elect.

**2.05 Application of Proceeds.** The proceeds of any foreclosure sale pursuant to this Mortgage shall be applied as follows: The Lender shall apply the proceeds of any foreclosure sale of, or other disposition or realization upon, or Rents or profits from, the Mortgaged Property, as follows:

(a) First, to the expenses of making the sale, including, a reasonable attorney's 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, which Lender 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 Loan Documents;

(c) Third, to the payment and satisfaction of the indebtedness secured hereby with interest to date of sale, whether or not all of such indebtedness be then due;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of sale, after deducting any expense of ascertaining who is such owner, or as may otherwise be provided by law.

**2.06 Lender's Option on Foreclosure.** At the option of the Lender, 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 Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged 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 Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**2.07 Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

**2.08 Delay or Omission No Waiver.** No delay or omission of the Lender or any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, and the Loan Documents, to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

**2.09 No Waiver of One Default to Affect Another.** No waiver of any default hereunder or under the Loan Documents shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, or in the Loan Documents; (d) release any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, or the Loan Documents; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consent to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, any Guarantee, or any of the Loan Documents of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by the operation of law or otherwise of all or any part of the Mortgaged Property, the Lender without notice to any person, corporation or other entity (except as may be required by applicable law) is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

**2.10 Discontinuance of Proceedings--Positions of Parties, Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such

proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

**2.11 Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power, or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note or the Loan Documents or now or hereafter existing at law or in equity or by statute.

### **ARTICLE III**

**3.01 Heirs, Successors and Assigns Included in Parties.** Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

**3.02 Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit otherwise affect any of the terms hereof.

**3.03 Gender.** Whenever the context so requires, the masculine includes the feminine and neuter, and the singular includes the plural, and vice versa.

**3.04 Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must be in writing and will be effective upon receipt. Notices may be given in any manner to which the parties may separately agree, including electronic mail. Without limiting the foregoing, first-class mail, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. Regardless of the manner in which provided, Notices may be sent to a party's address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this section.

**3.04 Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note or in the Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note or the Loan Documents shall be in on way affected, prejudiced or disturbed thereby.

**3.05 Conflict in Loan Documents.** In the event of conflict in the terms of any provision in this Mortgage, the Note or the Loan Documents the terms of the provision most favorable to the Lender shall apply.

**3.06 Instrument Under Seal.** 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.

**3.07 Adjustable Rate of Interest.** Mortgagor understands and agrees that the interest rate on the indebtedness secured hereby may fluctuate or change as provided in the Note.

**3.08 Household Goods.** Notwithstanding anything herein to the contrary, it is specifically understood and agreed that no security interest is granted in or shall attach to (i) "household goods" of any Mortgagor who is a "consumer" (as those terms are defined in applicable federal regulations governing unfair

and deceptive trade practices), other than a purchase money security interest, if and to the extent prohibited by Regulation AA of the Federal Reserve Board, 12 C.F.R. § 227 or (ii) any other portion of the collateral herein to the extent such security interest is prohibited by or would constitute a violation of any applicable law, rule, or regulation.

**3.09 WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF; THE, KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF MORTGAGOR TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN MORTGAGOR AND) LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**3.10 Waiver of Homestead Exemption.** The Mortgaged Property is the homestead of the Mortgagor. To the extent permitted by law, each Mortgagor expressly waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the indebtedness secured by this Mortgage, or any part thereof.

**3.11 Joint and Several Obligations.** All obligations, liabilities, covenants, representations, warranties and agreements of the Mortgagor hereunder shall be joint and several. The term "Mortgagor" , wherever used herein, shall mean Heather Brooks and Michael Brooks, collectively, or each of them singularly.

**3.12 Special Choice of Law Provisions.** The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Mortgagor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Mortgagor, or defeat any claim of SBA with respect to this Loan.

(c) Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

**-Remainder of page intentionally left blank-**

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed and effective as of the day and year first above written.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

MORTGAGOR:

Heather Brooks  
Heather Brooks

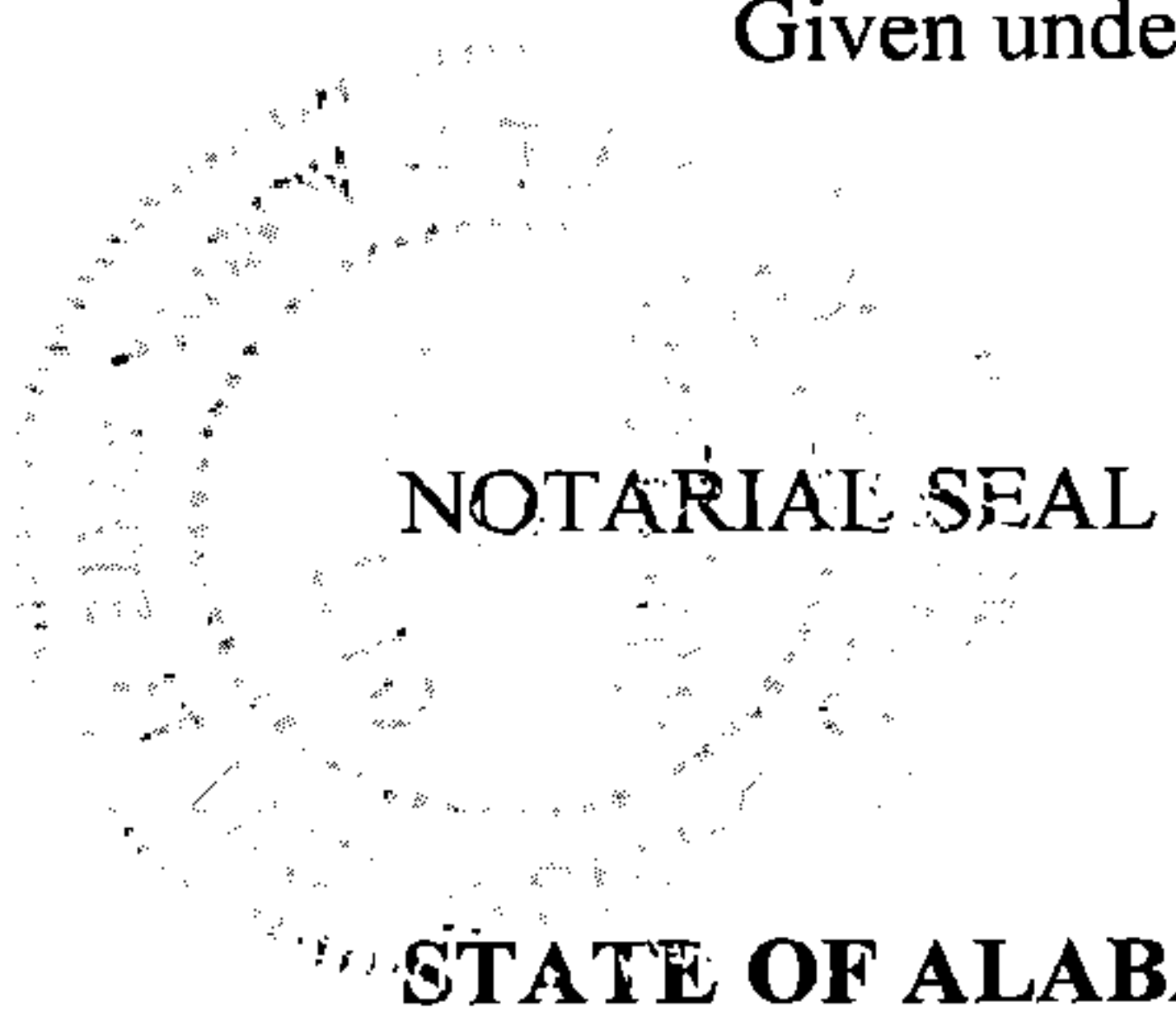
Michael L. Brooks  
Michael L. Brooks

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for the State of Alabama at Large, hereby certify that Heather Brooks, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this 19th day of April, 2022

[Signature]  
Notary Public MY COMMISSION EXPIRES 02/14/2023  
My Commission Expires: \_\_\_\_\_

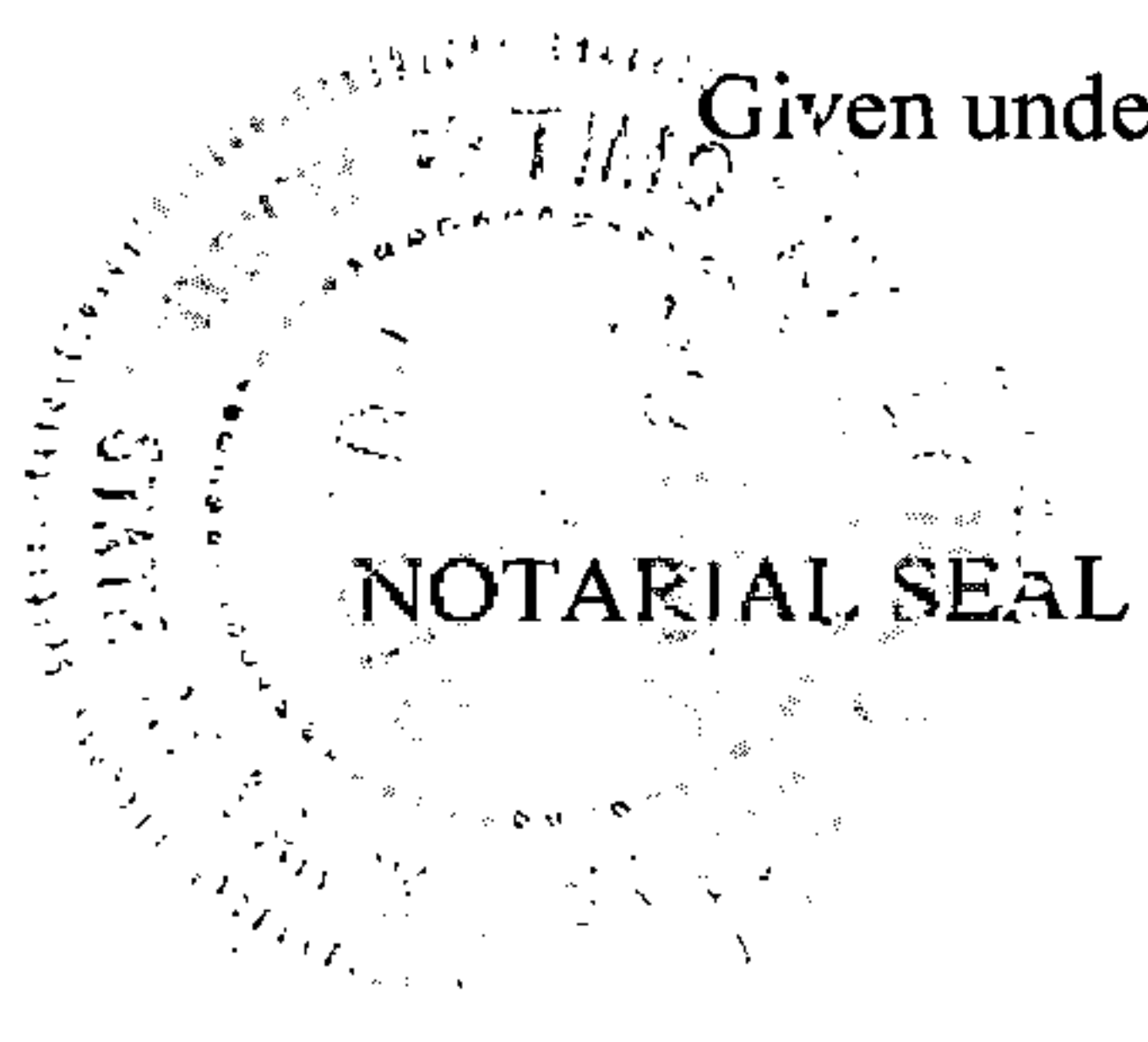


STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for the State of Alabama at Large, hereby certify that Michael L. Brooks, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 19th day of April, 2022.

[Signature]  
Notary Public MY COMMISSION EXPIRES 02/14/2023  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**  
**DESCRIPTION OF LAND**

**Lot 33, according to the Final Plat of the Residential, Private Subdivision Stonegate Realty Phase Two, as recorded in Map Book 31, pages 28A & B, in the Probate Office of Shelby County, Alabama.**

**THIS MORTGAGE IS MADE SUBJECT ONLY TO THE FOLLOWING:**

1. Taxes and assessments for the year 2022 and subsequent years, not yet due and payable.
2. Mortgage dated 06/29/15 from Heather Brooks and Mike Brooks to Mortgage Electronic Registration Systems, Inc., as nominee for Fairway Independent Mortgage Corporation, in the amount of \$843,750.00, filed for record 07/01/15 recorded in Instrument 20150701000221840, in the Probate Office of Shelby County, Alabama.
3. Easement(s) as shown by recorded map.
4. Restrictions as shown by recorded map.
5. Stonegate Farms Covenants Conditions and Restrictions, recorded in Instrument 2001-5954 and amended and restated in Instrument 2001-12016 and Amendment No. 1 as recorded in Instrument 200302240001111660, in the Probate Office of Shelby County, Alabama.
6. Articles of Incorporation of Stonegate Farms Property Owners' Association, Inc., recorded in Instrument 2001-5955, in the Probate Office of Shelby County, Alabama.
7. Easement for Alabama Power Company recorded in Deed Book 176, page 381; Deed Book 185, page 475; Real 15, page 899; Deed Book 148, page 18; Deed Book 182, page 326; Deed Book 184, page 172; Deed Book 138, page 307; Deed Book 240, page 444; Deed Book 321, page 269; Deed Book 331, page 840; Deed Book 310, page 991; Deed Book 242, page 148, Deed Book 180, page 35, Instrument 2002-8798, Instrument 2002-18715, Instrument 20021119000577440 and Instrument 20041002000000750 in the Probate Office of Shelby County, Alabama.
8. Agreement as set out in Instrument 1993-8112 and Amendment as recorded in Instrument 20051110000589330, in the Probate Office of Shelby County, Alabama.
9. Terms, conditions, reservations and restrictions contained in the agreement between "Smyer" and Shelby Lake Corporation, set out in Instrument 1993-8110 and Amendment as recorded in Instrument 20051110000589330, in the Probate Office of Shelby County, Alabama.
10. Easement and Use Restrictions Agreement recorded in Instrument 2001-02969, in the Probate Office of Shelby County, Alabama.
11. Option Agreement recorded in Instrument 2001-02970, in the Probate Office of Shelby County, Alabama.
12. Mineral and mining rights and rights incident thereto recorded in Instrument 2001-2967, in the Probate Office of Shelby County, Alabama.

13. Right of way to Water Works Board of the City of Birmingham, recorded in Instrument 20020718000335510 and Instrument 20030731000494840, in the Probate Office of Shelby County, Alabama.
14. Access Easement Agreement as recorded in Instrument 20051110000589320 and Instrument 20150528000176010, in the Probate Office of Shelby County, Alabama.
15. Covenants, Agreements, Mineral and mining rights and rights incident thereto and release of damages recorded in Instrument 20030321000172980, in the Probate Office of Shelby County, Alabama.
16. Easement to Alabama Power Company recorded in Instrument 20050805000398400, in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
04/21/2022 04:14:29 PM  
\$710.25 CHARITY  
20220421000164940

*Allie S. Bayl*