

*This instrument prepared by
and when recorded return to:*
William C. ("Beau") Byrd, II, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203

STATE OF ALABAMA)

COUNTY OF SHELBY)

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "**Assignment**"), dated as of the 1st day of March, 2023, is by **COLONIAL FIREPLACE CO., INC.**, an Alabama corporation ("**Borrower**"), whose mailing address is 400 Hillwood Park South, Alabaster, Alabama 35007 in favor of **SOUTHPOINT BANK**, an Alabama banking corporation ("**Lender**"), whose address is 3501 Grandview Parkway, Birmingham, Alabama 35243, Attention: John Sivley.

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender for borrowed money in the principal sum of Three Hundred Forty Thousand and 00/100 Dollars (\$340,000.00) (the "**Loan**"), as evidenced by that certain Promissory Note of even date herewith from Borrower to Lender, with interest thereon (as the same may hereafter be renewed, extended or modified, the "**Note**"); and

WHEREAS, the Note evidences proceeds which are to be advanced by Lender to Borrower pursuant to a Loan Agreement to be entered into of even date herewith (the "**Loan Agreement**"); and

WHEREAS, the Loan is secured, in part, by a Mortgage and Security Agreement of even date herewith from Borrower to Lender (the "**Security Instrument**") encumbering the real property described in Exhibit A attached hereto, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "**Property**") (the Security Instrument, together with this Assignment, the Note, the Loan Agreement, any amendments, modifications and replacements hereof or thereof, and all other documents now or hereafter evidencing or securing the Note and all certificates, documents and instruments now or hereafter executed by Borrower in favor of Lender, are collectively referred to herein as the "**Loan Documents**"); and

WHEREAS, as a condition precedent to making the Loan, Lender has required that Borrower execute this Assignment as additional security for the Loan.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged,

and to secure the payment of the Note and any and all renewals, extensions, modifications and replacements thereof, and to assure performance of the agreements contained herein and in the Loan Documents, Borrower hereby absolutely assigns to Lender (to the fullest extent assignable), Borrower's right, title and interest (if any) in:

(a) Any and all Lease Agreements entered into between Borrower, as lessor, and various parties, as lessee, copies of which will be provided to Lender upon execution, together with any other oral and written leases and other agreements for the use or occupancy of all or any part of the Property made or agreed to by any person or entity (including, without limitation of the foregoing, Borrower and Lender under the powers granted herein), and any and all amendments, extensions, renewals, modifications and replacements thereof, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "**Leases**");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent, which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property (collectively the "**Rents**");

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages, which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "**Damages**");

(d) Any guarantees of any lessee's obligations under the Leases (the "**Guaranties**");

(e) All rights, powers, privileges, options and other benefits (collectively the "**Rights**") of Borrower under the Leases, upon default by Borrower hereunder, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases; and

(vi) the right to exercise any option required or permitted.

And Borrower authorizes Lender:

(a) to manage the Property and let and relet the Property, or any part thereof according to Lender's own discretion;

(b) to prosecute or defend any suits in connection with the Property in the name of any or all of Lender or Borrower as it may consider desirable;

(c) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;

(d) to make such repairs to the Property as Lender may deem reasonably advisable; and

(e) to do anything in or about the Property that Lender may deem reasonably advisable or that Borrower has the right or power to do.

TO HAVE AND TO HOLD unto Lender, its successors and assigns, forever, subject however to the terms and conditions herein set forth.

PROVIDED, HOWEVER, that, although this Assignment constitutes a present assignment of the foregoing Leases, Rights, Rents, Guaranties, Damages, interests and privileges, Borrower shall have the right and license to collect and use all rentals due under the Leases, and, subject to the covenants and restrictions on Borrower contained in Article I and the other paragraphs of this instrument, to exercise the rights and privileges herein, provided, however, that such license shall be revoked during the pendency of an Event of Default (as herein defined).

AND Borrower covenants and agrees with Lender as follows:

ARTICLE I

1.01 **No Other Assignment.** Borrower warrants, represents and covenants that (a) it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the Rents due or to become due thereunder, (b) there has been no previous, and, without Lender's prior written consent as to form and substance, Borrower will permit no future, assignment (as collateral or otherwise) of Borrower's right, title and interest in any of the Leases, (c) the Leases are in full force and effect in accordance with their terms and have not been altered, modified or amended in any manner whatsoever, except as otherwise disclosed to Lender, (d) to the best of Borrower's knowledge as of the date hereof, the lessees are not in default under the Leases and have no defenses, setoffs or counterclaims against the lessor under the Leases, (e) no rent reserved in the Leases has been assigned or anticipated, and (f) no rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Lender by Borrower.

1.02 **Management.** At all times until this Assignment is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or

constructive possession of the Property, Borrower shall use all reasonable effort to cause the Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Borrower shall not, within the exercise of all reasonable efforts, permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Subject to Borrower's sound business judgment exercised in good faith, Borrower shall not (a) terminate or alter, modify, amend or change in any material manner any of the terms of any of the Leases or the Guaranties, (b) give any consent, concession or waiver under any of the Leases, (c) exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Property, or accept the surrender thereof, (d) consent to any assignment or subletting under any of the Leases, or (e) convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, all without the prior written consent of Lender, which consent will not be unreasonably withheld or delayed. Borrower shall not make any other assignment of any interest in the Leases to the Rents accruing from such Leases or from the Property, or subordinate any of the Leases or any security deed, mortgage or other encumbrance, or permit (within the exercise of all reasonable effort), consent or agree to such subordination without the prior written consent of Lender, which consent will not be unreasonably withheld. Subject to Borrower's sound business judgment exercised in good faith, Borrower shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender reasonably requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly. Borrower shall, but only at the discretion of Lender, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Property. Borrower shall execute and deliver, at the reasonable written request of Lender, all such further assurances and assignments as Lender from time to time shall require.

1.03 **Lease Execution.** So long as no Event of Default (as herein defined) has occurred and is continuing, Borrower shall be permitted to negotiate and to execute new Leases, and amend, modify and extend existing Leases.

1.04 **Notice of Lessor's Default.** Borrower shall cause notice to be given to Lender of any notice of default by the lessor under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

1.05 **Lender to be Creditor of Lessee.** To the extent permitted by law, Lender shall be deemed to be the creditor of each lessee in the Leases with respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Borrower hereby assigns to Lender any and all Damages and any and all monies received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them

in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

ARTICLE II

2.01 **Defaults.** The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder.

2.02 **Exercise of This Assignment.**

(a) Lender may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default beyond any applicable notice and/or grace periods and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such Event of Default.

(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Borrower such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender, from time to time upon the occurrence of any Event of Default under this Assignment, which such Event of Default is continuing, shall have all the rights granted hereby.

2.03 **Nature of Remedies.** No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. Said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Borrower or the Property, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

2.04 **Application of Rents.** Lender shall have the power to apply the Rents and Damages, in such order as Lender may reasonably determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note or by the other Loan Documents, including without limitation the payment of all advances and reasonable expenses incurred by Lender under the Security Instrument and all reasonable expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

2.05 **Limitation of Lender's Obligations.** Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment.

Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Property other than for damages arising from Lender's gross negligence or willful misconduct. Lender shall not be liable to any lessee under the Leases for the return of any security deposit made under any Lease of any portion of the Property unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making Lender a mortgagee in possession of the Property or any part thereof.

2.06 **Reimbursement.** Borrower shall reimburse, indemnify and hold harmless Lender for and from any and all reasonable expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment, except for any such expenses, losses, damages or liabilities caused by Lender's gross negligence or willful misconduct, or any of the Leases, or reasonable expenses, losses, damages and liabilities incurred in exercising any of the rights granted in this Assignment other than for Lender's gross negligence or willful misconduct. Any and all amounts due to Lender under this Section 2.06 shall be immediately due and payable following written notice to Borrower and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

2.07 **Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Lender is rightfully entitled to such rent.

ARTICLE III

3.01 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

3.02 **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Assignment, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Assignment unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.03 **Severability; Complete Agreement.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Assignment, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence and memoranda

relating to the subject matter hereof, and this Assignment may not be amended except by a writing signed by the parties hereto.

3.04 **Modification of Loan Terms.** If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified or replaced, or if any security for the Loan is released, Borrower and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender.

3.05 **Notices.** Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notices as set forth in the Loan Agreement.

3.06 **Termination.** The recording of a satisfaction of the Security Instrument executed by Borrower to Lender as security for the Loan by Lender shall terminate this Assignment.

3.07 **Assignment.** This Assignment is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

3.08 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Assignment, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.09 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA (EXCLUDING THE CHOICE OF LAW RULES THEREOF). BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS ASSIGNMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

3.10 **Waiver of Jury Trial.** BORROWER 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 RELATED TO THIS ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS ASSIGNMENT WITH

ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, INCLUDING LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSEY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND BORROWER ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO MAKE THE LOAN TO BORROWER IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

3.11 **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.12 **Counterparts.** This Assignment may be executed in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

3.13 **Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, 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 Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the Rents and security deposits from the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

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

BORROWER:

COLONIAL FIREPLACE CO., INC.,
an Alabama corporation

By: *Kenneth M. Graves*
Name: *Kenneth M. Graves*
Its: *President*

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said State at Large, hereby certify that Kenneth M. Graves whose name as President of **COLONIAL FIREPLACE CO., INC.**, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such President and with full authority, executed the same for and as the act of said _____ of such corporation.

Given under my hand and official seal this 1st day of March, 2023.

[NOTARIAL SEAL]

Denna Ann Sanders
NOTARY PUBLIC
My Commission Expires: 10-8-2025

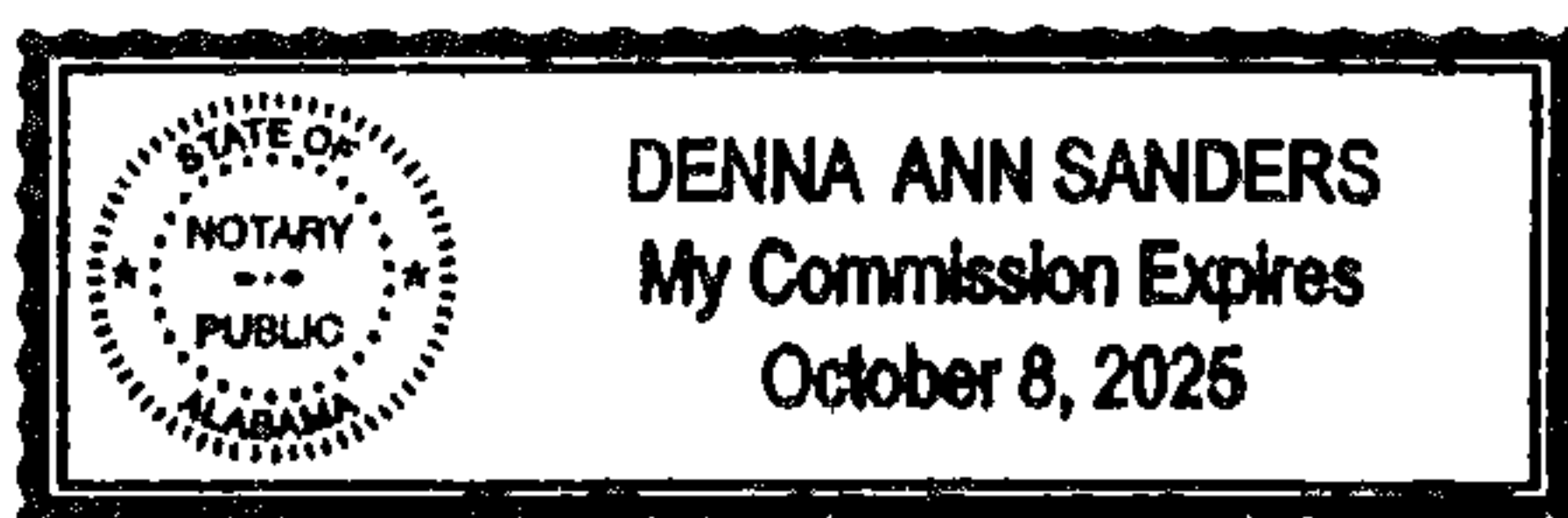


Exhibit A

LEGAL DESCRIPTION

A parcel of land in the East ½ of the East ½ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, described as follows:

Commence at the SE corner of the NE ¼ of the NE ¼ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama; thence South 88 degrees 19 minutes 37 seconds West a distance of 170.31 feet to the POINT OF BEGINNING; thence continue South 88 degrees 19 minutes 37 seconds West a distance of 314.18 feet to the easterly R.O.W. line of McCain Parkway; thence North 00 degrees 01 minutes 07 seconds West and along said R.O.W. line a distance of 139.41 feet; thence North 88 degrees 25 minutes 13 seconds East and leaving said R.O.W. line a distance of 310.67 feet; thence South 01 degrees 27 minutes 32 seconds East a distance of 138.85 feet to the POINT OF BEGINNING. According the the survey of Robert Shiflett, dated January 25, 2203.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/01/2023 02:15:36 PM
\$49.00 JOANN
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Allen S. Bayl