

THIS INSTRUMENT PREPARED BY:
Virginia S. Boliek
Law Office of Virginia Boliek, LLC
1301 Panorama Drive
Birmingham, AL 35216

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04/05/2019 01:47:08 PM
MORT 1/9

RESIDENTIAL MORTGAGE

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGORS: **Herman C. Yarbrough and Jo Anne Yarbrough, Trustees, or their successors in trust, under The Yarbrough Living Trust dated August 9, 2016, and any amendments thereto**

MORTGAGEE: **Valley National Bank, a national banking association**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Yarbrough Auto Solutions Corp, Inc., dba Alloy Wheel Repair Solutions, an Alabama corporation, Herman Yarbrough, Jr., a resident of the State of Alabama (who is one and the same person as Herman C. Yarbrough), and Christopher Yarbrough, a resident of the State of Alabama (collectively, the "Borrower") are justly indebted to Valley National Bank, a national banking association (the "Lender"), pursuant to the terms of that certain Note from Borrower in favor of Lender dated of even date herewith ("Note"), in the original principal amount of FOUR HUNDRED TWENTY-SIX THOUSAND AND NO/100 DOLLARS (\$426,000.00) (the "Loan"); and

WHEREAS, the Note is guaranteed by that certain Unconditional Limited Guarantee of even date herewith executed by Herman C. Yarbrough and Jo Anne Yarbrough, as Trustees of the Yarbrough Living Trust dated August 9, 2016, a revocable trust ("Trust Guarantee"); and

WHEREAS, the Borrower, the Mortgagors, the other Guarantors, and Lender entered into that certain Commercial Loan and Security Agreement of even date herewith (the "Loan Agreement") to secure the Note and the other Obligations described therein;

WHEREAS, Christopher T. Yarbrough (who is one and the same person as Christopher Yarbrough) and Chasalee A. Yarbrough (who is one and the same person as Chasalee Yarbrough) ("Chasalee"), husband and wife, executed a Residential Mortgage (the "Norwich Circle Mortgage") of even date herewith in favor of Lender to secure the Note and the Unconditional Limited Guarantee of even date herewith made by Chasalee in favor of Lender;

WHEREAS, it is desired by the Mortgagors, to secure the following by this Mortgage (hereinafter collectively referred to as the "Obligations"):

(a) the obligations under the Note, including, but not limited to, the obligation to pay the principal of and interest on the Note and all late charges and other sums due or to become due under the Note and all reasonable attorneys' fees ("Attorneys' Fees") and other costs of collection in accordance with the terms thereof;

(b) the obligations under Trust Guarantee;

(c) all obligations secured by the Norwich Circle Mortgage and the Loan Agreement and any amounts expended or advanced by Lender under this Mortgage, the Norwich Circle Mortgage, the Loan Agreement, or the other Loan Documents or otherwise with respect to the care or preservation of the Mortgaged Property hereunder or under the Norwich Circle Mortgage or the Collateral under the Loan Agreement, the exercise of Lender's rights hereunder, under the Norwich Circle Mortgage, the Loan Agreement, or under any of the other Loan Documents or the enforcement of the Loan Documents; and

(d) all renewals, extensions and modifications of the Loan, and all refinancings of any part of the Loan.

WHEREAS, Lender would not make the Loan to the Borrower but for this Mortgage.

NOW, THEREFORE, for and in consideration of Lender making the Loan and to secure the prompt payment and performance of the Obligations, Mortgagors do hereby irrevocably CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Lender, and the successors and assigns of Lender, **with the power of sale**, all of Mortgagors' right, title and interest in and to the following described land and interests in land, estates, easements, rights, improvements, fixtures, and appurtenances, including replacements and additions thereto (hereinafter referred to collectively as the "Mortgaged Property"):

1. All those certain tracts, pieces or parcels of land, and interests in the land, more particularly described on Exhibit A attached hereto and made a part hereof (the "Land");

2. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures now or hereafter owned by Mortgagors, and now or hereafter attached or affixed to the Land; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition thereof;

3. 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 the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part

thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagors; and

4. All leases, rents, issues, profits, revenues and proceeds of and from the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds, and all proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagors of, in and to the same.

The Mortgaged Property constitutes the homestead of the Mortgagors.

TO HAVE AND TO HOLD the above granted premises unto the Lender forever; and for the purpose of further securing the payment of the Loan and the Obligations, the Mortgagors agree to pay all taxes, or assessments, when legally imposed upon the Mortgaged Property, and should default be made in the payment of same, the Lender has the option of paying off the same; and to further secure the Obligations, the Mortgagors agree to keep the improvements on the Mortgaged Property insured against loss or damage by fire, lightning and tornado or similar disasters for the reasonable insurable value thereof, including liability insurance in such amounts as may from time to time be reasonably required by Lender with respect to personal injury or death to any one or more persons or damage to property, all with companies satisfactory to the Lender, with loss, if any, payable to the Lender as mortgagee, and promptly to deliver the policies, or any renewals of the policies to the Lender; and if the Mortgagors fail to keep the Mortgaged Property insured as above specified, or fails to deliver the insurance policies to the Lender then the Lender has the option of insuring the Mortgaged Property for said sum for the benefit of the Lender, the policy, if collected, to be credited on the Obligations, less cost of collecting same; all amounts so expended by the Lender for taxes or insurance, as Lender, additional to the debt hereby specifically secured, shall be covered by this Mortgage, and bear interest from the date of payment by the Lender at the rate provided in the Note and be at once due and payable.

Upon condition however, that if the Loan and the Obligations are paid in full and Mortgagors reimburse the Lender for any amounts Lender may have expended for taxes, assessments and insurance, and the interest thereon, then this conveyance to be null and void, but should default be made in the payment of any sum expended by the Lender or should the Obligations hereby secured, or any part thereof or the interest thereon remain unpaid at maturity, or should the interest of the Lender in the Mortgaged Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, or if any statement of lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen without regard to form and contents of such statement and without regard to the existence or nonexistence of the debt or any part thereof or of the lien on which such statement is based, or if any other "Event of Default" (as hereinafter defined) shall occur then in any one of said events, the whole of the Obligations shall at once become due and payable and this Mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the Lender shall be authorized to take possession of the premises hereby conveyed and, with or without first taking possession, after giving 21 days' notice by publishing

once a week for three consecutive weeks, the time, place and terms of sale, in some newspaper published in said County and State, to sell the same in lots or parcels, or en masse, as Lender may deem best in front of the Court House door in said County, at public outcry, to the highest bidder for cash and apply the proceeds of said sale, First, to the expense of advertising, selling and conveying, including reasonable attorneys' fees; Second, to the payment of any amounts that may have been expended, or that it may be necessary then to expend in paying insurance, taxes, or other encumbrances, with interest thereon; Third, to the payment of the Obligations in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale, and Fourth, the remainder if any, to be turned over to the Mortgagors, and the Mortgagors further agree that the Lender may bid at said sale and purchase the Mortgaged Property, if the highest bidder therefor, as though a stranger hereto, and the person acting as auctioneer at such sale is hereby authorized and empowered to execute a deed to the purchaser thereof in the name of the Mortgagors by such auctioneer as agent, or attorney in fact, and the Mortgagors further agree to pay reasonable attorneys' fees to the Lender for the foreclosure of this Mortgage, should the same be so foreclosed, the fee to be a part of the debt hereby secured.

It is expressly understood that the word "Lender" wherever used in this mortgage refers to the person, or to the persons or to the corporation named as grantee or grantees in the granting clause herein.

Any estate or interest herein conveyed to the Lender, or any right or power granted to the Lender in or by this Mortgage is hereby expressly conveyed and granted to the heirs, and agents, and assigns, of the Lender, or to the successors and agents and assigns of the Lender, if a corporation.

If all or any part of the Mortgage Property or any interest therein is sold or transferred by Mortgagors without Lender's prior written consent (a "Prohibited Transfer"), Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Mortgagors' notice of acceleration which notice shall provide a period of not less than 30 days from the date the notice is mailed within which Mortgagors may pay the sum declared due. If Mortgagors fails to pay such sum prior to the expiration of such period, Lender may, without further notice or demand on Lender, invoke any remedies or rights available to the Lender as contained herein as relates to default of payment of money indebtedness due or any and all other remedies available by law.

In addition to the foregoing, any of the following shall constitute an "Event of Default":

- (a) Failure to pay when due any interest, principal, late charge or other amount under the Note, the Guarantees or with respect to any of the Obligations;
- (b) a Default or Event of Default as defined in the Loan Agreement, the Norwich Mortgage, or any other Loan Document;
- (c) the insolvency of or filing by Mortgagors of a voluntary or involuntary petition seeking protection under any State or Federal bankruptcy statute;
- (d) the adjudication of a Mortgagor as bankrupt or insolvent;

- (e) a final judgment or judgments for the payment of money in excess of an aggregate of \$10,000.00 shall be rendered against any Mortgagor and the same shall remain undischarged for a period of 90 days during which execution shall not be effectively stayed;
- (f) if any Mortgagor shall fail to pay or discharge, before they become delinquent, all taxes, assessments and governmental charges or levies imposed upon the Mortgagor or its properties or income, except to the extent any such taxes or charges are being contested in good faith by appropriate proceedings, diligently conducted;
- (g) an event of default under the terms of any other mortgage on the Mortgaged Property; or
- (h) Death of a Mortgagor; or
- (i) The occurrence of a Prohibited Transfer or any further encumbrance of the Mortgaged Property, or any part thereof, without the prior written consent of Lender.

The Mortgagors covenant and agree that the Mortgaged Property is in compliance, and Mortgagors shall in the future comply and cause the Mortgaged Property to comply, with all applicable federal, state and local environmental laws, ordinances, and regulations (collectively, the "Environmental Laws"). There are no pending claims or threats of pending claims against Mortgagors or the Mortgaged Property by private, governmental or administrative authorities relating to environmental impairment, or Environmental Laws. Mortgagors shall not use the Mortgaged Property in a manner which will result in any non-complying disposal or release of any solid waste, hazardous waste, hazardous substance, or other contaminant (all as defined in the Environmental Laws) (collectively, "Hazardous Materials") in, on or under the Mortgaged Property, and covenants and agrees to keep, or cause the Mortgaged Property to be kept, free of any non-complying Hazardous Materials. The Lender from time to time may inspect, test and sample the Mortgaged Property for compliance with Environmental Laws and may add the cost of same to the principal balance of the indebtedness secured hereby. Mortgagors agree that Lender, in its sole discretion, may submit a copy of any environmental report or test results to federal and state environmental agencies, or any other governmental agency having regulatory control over the Mortgaged Property. In response to the presence of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property at any time, Mortgagors shall immediately take, at Mortgagors' sole expense, all remedial action required by the Environmental Laws or any judgment, consent decree, settlement or compromise with respect to any claims in connection therewith. If Mortgagors fail to take such remedial action, Lender, in its sole discretion, may take such remedial action and add any and all costs in connection therewith to the principal balance of the indebtedness secured hereby. Mortgagors shall immediately notify Lender in writing of: (i) the discovery of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property; (ii) any knowledge by Mortgagors that the Mortgaged Property does not comply with any Environmental Laws; (iii) any Hazardous Materials claims or conditions; and (iv) the discovery by Mortgagors of any occurrence or condition on any real property adjoining the Mortgaged Property that is likely to cause the

breach of the Environmental Laws as to the Mortgaged Property or any part thereof. Mortgagors shall defend, indemnify and hold Lender harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation costs of suit, reasonable attorney's fees, fees of expert witnesses, engineering fees, and costs of any environmental inspections, inquiries, audits, evaluations, assessments or other expenses) arising from or in connection with (i) the presence in, on or under the Mortgaged Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials in, on, under or from the Mortgaged Property; (ii) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to, during, or after the term hereof, and whether by Mortgagors or any predecessor in title of Mortgagors or any predecessor in title, or any third persons at any time occupying or present on the Mortgaged Property, in connection with the generation, manufacture, handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials in any time in, on or under the Mortgaged Property, or (iii) any breach of any representation, warranty or covenant under the terms of this Mortgage. The foregoing indemnity extends to the contamination of any property or natural resources arising in connection with Hazardous Materials, irrespective of whether activities were or will be undertaken in compliance with Environmental Laws or other applicable laws, regulations, codes and ordinances. Mortgagors shall not place any underground storage tanks or aboveground storage tanks on the Mortgaged Property without the prior written consent of Lender. Each Mortgagors covenant and agree to provide Lender with a copy of any and all correspondence, plans, specifications, reports, filings, and other documents relating to the Mortgaged Property submitted by Mortgagors to any federal or state environmental agency, or any other governmental agency having regulatory control over the Mortgaged Property, and further covenants and agrees to provide Lender with notice and a copy of any and all environmental inspections and test results conducted in, on, or under the Mortgaged Property. Any action taken by Lender pursuant hereto shall be solely for Lenders' benefit.

To the fullest extent allowed by law, which is now or hereafter existing, and after consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, the undersigned knowingly, voluntarily, and intentionally waive any right to a trial by jury with respect to any litigation based upon this transaction or this instrument, or arising out of, under, or in connection with any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledge that this provision is a material inducement for entering into this loan transaction by all parties.

Mortgagors agree that any suit, action or proceeding instituted against Mortgagors with respect to this Mortgage, the Note, the Guarantees, or any of the other Loan Documents may be brought at Lender's option in Jefferson County, Alabama or the county in which the Mortgaged Property is located. By its execution hereof, Mortgagors hereby irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of the forum or the jurisdiction of such court or from the execution of judgments resulting therefrom. Mortgagors hereby irrevocably accept and submit to the jurisdiction of the aforesaid court in any such suit, action or proceeding

Capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Loan Agreement.

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.

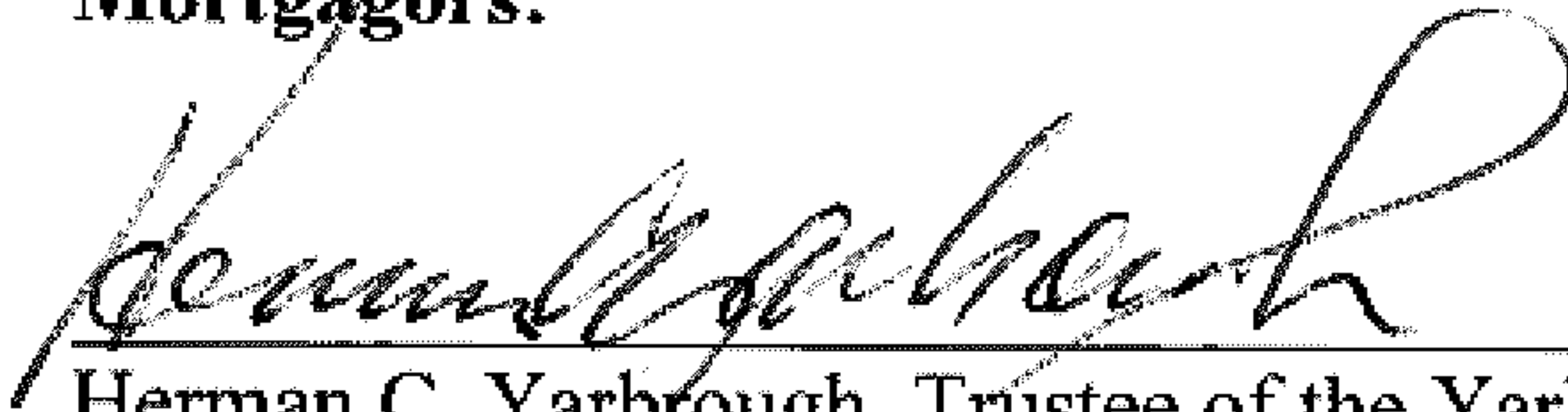
(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or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

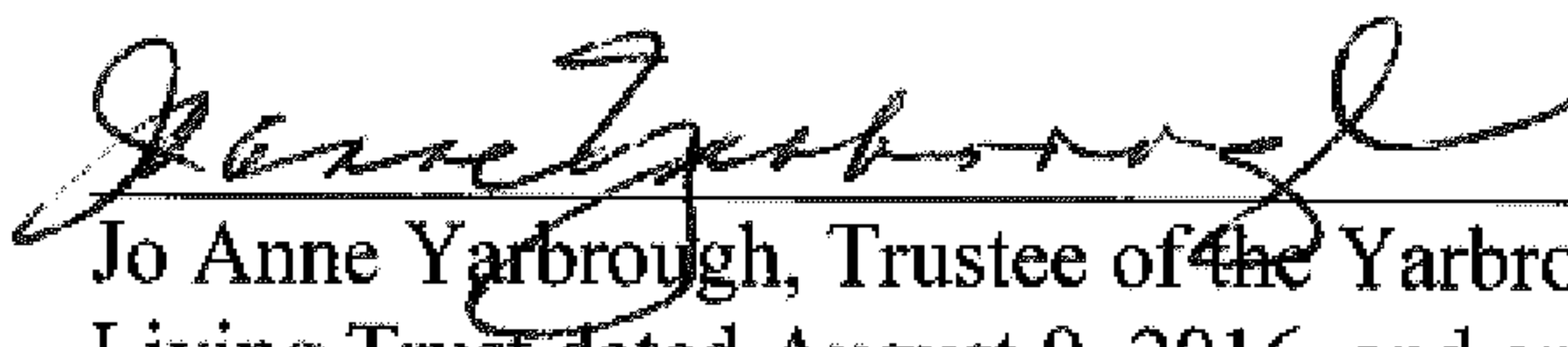
Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

[signatures and acknowledgment on following page]

IN WITNESS WHEREOF, the Mortgagors has caused this instrument to be executed on this 4th day of April, 2019.

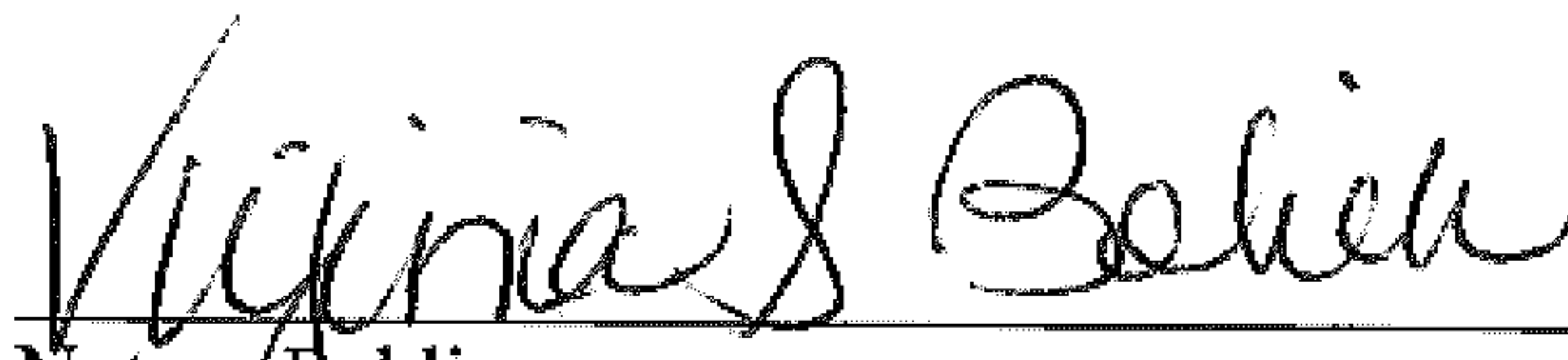
Mortgagors:


_____(SEAL)
Herman C. Yarbrough, Trustee of the Yarbrough
Living Trust dated August 9, 2016, and any
amendments thereto


_____(SEAL)
Jo Anne Yarbrough, Trustee of the Yarbrough
Living Trust dated August 9, 2016, and any
amendments thereto

I, the undersigned, a Notary Public, in and for the State of Alabama at Large, do hereby certify that Herman C. Yarbrough and Jo Anne Yarbrough, Trustees of the Yarbrough Living Trust dated August 9, 2016, and any amendments thereto, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office on this 4th day of April, 2019.



Notary Public

MY COMMISSION EXPIRES OCTOBER 14, 2019

My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT A

**LEGAL DESCRIPTION OF LAND
WITH EXCEPTIONS**

Property Address: 150 Indian Forest Trail, Pelham, AL 35124

Legal Description

Lot 16, according to the Resurvey of Lots 15 & 16, Block 3, Second Sector, Indian Forest Estates, as recorded in Map Book 6, Page 81, in the Probate Office of Shelby County, Alabama.

Subject to:

2019 ad valorem taxes and subsequent years, not yet due and payable

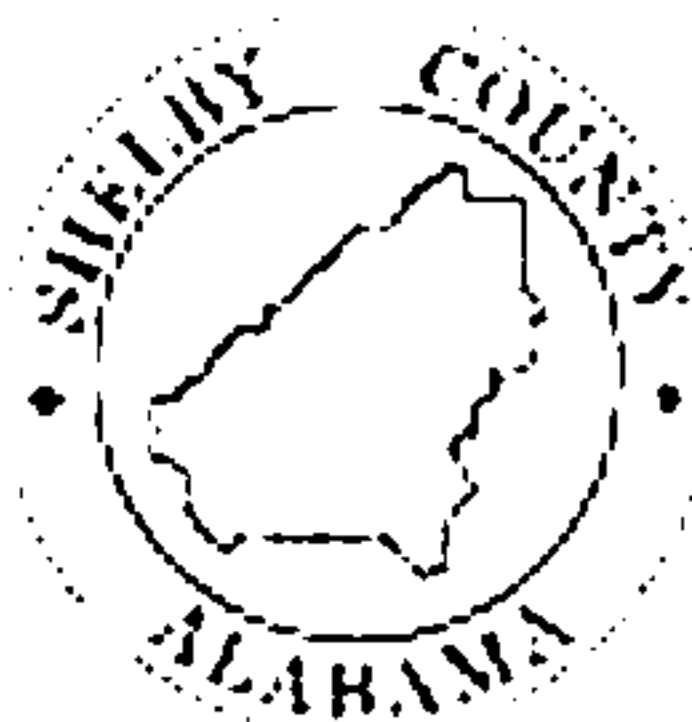
Future Advance Mortgage dated 06/09/06 from Herman C. Yarbrough and Joanne C. Yarbrough to Compass Bank, in the amount of \$38,000.00, filed for record 06/27/06 recorded in Instrument 20060627000307420, modification recorded in Instrument 20070706000317880, modification recorded in Instrument 20080730000307280 in the Probate Office of Shelby County, Alabama.

Right of Way granted to Alabama Power Company as recorded in Volume 286, page 613 in the Probate Office of Shelby County, Alabama.

Right of way to Southern Bell Telephone and Telegraph Company, as recorded in recorded in Volume 285, page 354, in the Probate Office of Shelby County, Alabama.

Restrictions appearing of record in Misc. Volume 7, page 141 and Misc. Volume 7, page 350, in the Probate Office of Shelby, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.

Agreement with Alabama Power Company recorded in Misc. Volume 7, Page 481, 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
04/05/2019 01:47:08 PM
\$679.00 CHERRY
20190405000111360

Allen S. Bezel