

PREPARED BY AND RETURN TO:  
Mitchell C. Fogel, Esq  
Fogel Law Group  
2500 N. Military Trail, Suite 200  
Boca Raton, Florida 33431  
File No.: 19-1571.39R



20200214000061760 1/10 \$1898.50  
Shelby Cnty Judge of Probate, AL  
02/14/2020 11:21:18 AM FILED/CERT

### **MORTGAGE AGREEMENT**

THIS MORTGAGE AGREEMENT ("Mortgage") dated February 20, 2020, by and between **Christopher Kelly, a single man** ("Guarantor" and/or "Mortgagor"), having an address at 3140 Brookhill Drive, Birmingham, AL 35242, and **Fountainhead SBF LLC** ("Mortgagee"), having an office at 3216 West Lake Mary Boulevard, Lake Mary, FL 32746.

### **WITNESSETH:**

WHEREAS, **CK Services, LLC, an Alabama limited liability company, Absolute Air, Inc., an Alabama corporation, and CKS Enterprises, LLC, an Alabama limited liability company** (individually and collectively, "Borrower"), is indebted to Mortgagee in the aggregate principal sum of **One Million Two Hundred Thirty-Three Thousand and No/100 Dollars (\$1,233,000.00)**, as evidenced by that certain promissory note of even date herewith ("Note"), executed by Borrower and delivered to Mortgagee, payable according to the terms therein provided; and

WHEREAS, Mortgagor, as the owner of or having an interest in Borrower and who benefits from Borrower's receipt of the proceeds of the Note, has unconditionally guaranteed Borrower's obligations under the Note and the other loan documents executed by Borrower in favor of Mortgagee, as provided in that certain Unconditional Guarantee of even date herewith in favor of Mortgagee ("Guarantee") and by this reference made a part hereof to the same extent as though set out in full herein; and

WHEREAS, to secure the performance and observance by Mortgagor of all the covenants and conditions in the Guarantee, the Note, and all obligations and indebtedness, whether now existing or hereafter arising, of Borrower and/or Mortgagor to Mortgagee, Mortgagor has executed this Mortgage.

NOW THIS INDENTURE WITNESSETH, to secure the performance and observance by Mortgagor of all the covenants and conditions in the Guarantee, and all obligations and indebtedness, whether now existing or hereafter arising, of Mortgagor to Mortgagee, and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of the sum of \$10.00 paid by Mortgagee to Mortgagor on or before the delivery of this Mortgage, and for other valuable considerations, the receipt of which is hereby acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever:

## THE MORTGAGED PROPERTY

BEING that certain real estate situated in Shelby County, State of Alabama, as more particularly described as follows:

**See Exhibit "A" attached hereto and made a part hereof.**

together with all structures and improvements now and hereafter located on the Property, and the fixtures attached thereto, and all rents, issues, proceeds and profits accruing and to accrue from the Property, all of which are included within the foregoing description, and the habendum hereof and together with all gas, steam, electric, water and other heating, cooking, refrigerating, plumbing, ventilating, irrigating and power extensions, appliances, fixtures and appurtenances including, without limitation, air-conditioning ducts, machinery and equipment, which are now or may hereafter pertain to or be used with, in or on the Property, though same be either detached or detachable, including all renewals, replacements and additions thereof; and together with all right, title and interest of Mortgagor in and to the minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter on, under or above the Property or any portion thereof; and together with any and all awards and payments (including interest thereon) and the right to receive same as a result of any and all rights of eminent domain, any and all condemnation proceedings, to the extent of all amounts which may be secured by this Mortgage as of the date of receipt by Mortgagee of any such award or payment; together with all of Mortgagor's rights to make any and all claims under each and every insurance policy covering Property. The Property and all of the foregoing are encumbered by this Mortgage and are collectively referred to herein as the "Mortgaged Property". The Guarantee, the Note, that certain Security Agreement of even date herewith by and between Borrower and Mortgagee, and this Mortgage are collectively referred to hereinafter as the "Loan Documents".

THIS MORTGAGE is given as security for Mortgagor's obligations under the Guarantee and the Note and, if Borrower performs, complies with and abides by all of the stipulations, agreements, conditions and covenants of each of the Loan Documents, then this Mortgage and the estate hereby created shall cease and be null and void.

## COVENANTS OF MORTGAGOR

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. MORTGAGOR hereby covenants, warrants, represents to and agrees:

A. That Mortgagor has full power and lawful right to convey the Mortgaged Property; that Mortgagor will make such further assurances to perfect the title to the Mortgaged Property in Mortgagee as may reasonably be required; that Mortgagor does hereby warrant Mortgagor's title to Mortgaged Property and will defend same against the lawful claims of all persons whomsoever; and that the Mortgaged Property is free and clear of all encumbrances, except taxes for the current year, that certain Mortgage in favor of Franklin American Mortgage Company in the original principal amount of \$265,000.00, which was recorded in the Official Records of Shelby County, Alabama as File Number 20131004000399380, and that certain Mortgage in favor of Iberia Bank in the original principal amount of \$48,000.00, which was recorded in the Official Records of Shelby County, Alabama as File Number 20131004000399390.

B. To make all payments of principal, interest and other sums of money payable by virtue of the Loan Documents on the days such payments come due and payable.



C. To comply with all obligations including, but not limited to, making payments of taxes, assessments, levies, liabilities, liens for public improvements, and encumbrances of every nature (collectively, "Obligations") in connection with the ownership and use of the Mortgaged Property before same become delinquent. If the Obligations (or any of them) are not completed and/or paid prior to the time same can be completed and/or paid without penalty, Mortgagee may, at its option, at any time complete and/or pay the Obligations (or any of them) without waiving or affecting any right of Mortgagee under the Loan Documents and every expense and cost incurred or payment so made shall bear interest from the date thereof at the maximum rate permitted by applicable law until reimbursement thereof to Mortgagee.

D. Not to permit, commit or suffer any waste, impairment, abandonment or deterioration of the Mortgaged Property, and/or any part thereof, and no building or other improvement on or hereafter located upon the Mortgaged Property shall be removed, demolished or altered without the prior written consent of Mortgagee. Mortgagee may, at its option, make repairs or remedy any waste, and all sums expended by the Mortgagee in connection therewith shall be immediately due and payable upon Mortgagee's demand therefor and shall bear interest from the date thereof at the maximum rate permitted by applicable law until fully paid to Mortgagee.

E. To pay upon demand any and all costs, charges, and expenses including, without limitation, reasonable attorneys' and paralegals' fees through all trial and appellate levels and post-judgment proceedings (regardless of whether litigation occurs,) incurred or paid at any time by Mortgagee arising out of Mortgagee's collection of the indebtedness due under the Loan Documents, Mortgagee's enforcement of its rights under any of the Loan Documents, and/or the failure of Mortgagor to timely perform, comply with and abide by all of the stipulations, agreements, obligations, conditions and covenants of the Loan Documents, and every such payment shall bear interest from the date of Mortgagee's demand therefor at the maximum rate permitted by applicable law until paid.

F. The occurrence of any one or more of the following shall be an "Event of Default" under the Loan Documents: (a) the failure of Borrower and/or Mortgagor to promptly and fully pay each sum of money due and owing pursuant to the Loan Documents when due; (b) Borrower and/or Mortgagor's failure to duly perform and comply with any of the stipulations, agreements, obligations, conditions and covenants contained in the Loan Documents; (c) Guarantor's failure to duly perform and comply with any of the stipulations, agreements, obligations, conditions and covenants contained in any of the Loan Documents; (d) the rendering by any court of last resort of a decision that an undertaking by Borrower and/or Mortgagor as herein provided to pay any tax assessment, levy, liability, obligation or encumbrance is legally inoperative or cannot be enforced; (e) any of the representations and warranties of Mortgagor contained in any of the Loan Documents shall be inaccurate in any manner; (f) the passage of any law changing in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose or the manner of collection of such tax so as to affect this Mortgage or the debt secured hereby; (g) Borrower obtaining any additional financing secured by the Mortgaged Property, or any part thereof, or otherwise encumbering the Mortgaged Property, or any part thereof; (h) the death or incapacity of any of Guarantor; (i) the existence or entry of any judgment or lien against Guarantor; or (j) the conveyance, transfer, assignment, mortgage, pledge or other alienation of Mortgagor's interest in the Mortgaged Property, or any part thereof, to another party or parties without the prior written consent of Mortgagee. Upon the occurrence of any Event of Default, Mortgagee, at its option and without further notice, demand or present for payment to Mortgagor, may declare immediately due and payable all sums outstanding which are due and payable under the Loan Documents, together with all accrued and unpaid interest thereon, as fully and completely as if all such sums were originally stipulated to be paid to Mortgagee on such day; furthermore, without notice of demand to Mortgagor or any other party obligated under the Loan Documents, Mortgagee may initiate and present a proceeding at law or in equity as if all monies secured hereby had matured prior to the institution of such suit and, this Mortgage may thereupon be foreclosed for the whole of Mortgagor's obligations secured hereby and



Mortgagor shall promptly pay all of Mortgagee's costs in connection with such proceeding(s), regardless of whether a suit, occurs, and including, without limitation, reasonable attorneys and paralegals fees through all trial and appellate levels and post-judgment proceedings. Notwithstanding anything to the contrary herein, Mortgagee, at its sole option, may foreclose only as to the sum(s) past due without injury to this Mortgage or the displacement or payment of the remaining of the lien hereof, and at such foreclosure sale the Mortgaged Property shall be sold subject to all remaining items of indebtedness and Mortgagee may again foreclose in the same manner as often as there may be any sum(s) past due. Upon any such acceleration, any interest reserved, paid or to be paid in excess of the maximum rate of interest permitted by law shall be abated, or if previously reserved or paid, shall be credited against the aggregate sum of principal so accelerated.

G. That all of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property are hereby assigned to Mortgagee as further security for the payment of the indebtedness secured by the Loan Documents; provided, however, that permission is hereby given to Mortgagor, so long as no Event of Default has occurred under any of the Loan Documents, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income, and other benefits as same become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of an Event of Default, to all rents, royalties, issues, profits, revenue, income and other benefits arising from the ownership and/or operation of the Mortgaged Property, regardless of whether Mortgagee takes possession of the Mortgaged Property. Upon any Event of Default, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property shall terminate and Mortgagor shall have no rights to reinstate same. The exercise of rights under this Paragraph 1.G. and the application of such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness secured by the Loan Documents shall not cure or waive any Event of Default or be deemed to validate any act in violation of the terms of the Loan Documents, but shall be cumulative and in addition to all the rights and remedies to which Mortgagee is entitled.

H. That Mortgagor hereby grants, transfers and assigns to Mortgagee all of Mortgagor's right, title and interest in, under and to all leases whether now existing or hereinafter entered into, covering all or any portion of the Mortgaged Property, together with any and all extensions and renewals thereof, for the payment of the indebtedness secured by the Loan Documents. This assignment is a present and irrevocable assignment and is made for the purpose of securing the payment of all sums and indebtedness due under the Loan Documents and secured by this Mortgage and the performance of and compliance with all obligations of Mortgagor under the Loan Documents. This assignment shall not be deemed to impose any obligations and/or liabilities on Mortgagee as to any such lease and Mortgagor hereby agrees to comply fully with each and every such lease. No other instrument or documents need be executed by Mortgagor to effect the foregoing assignment; provided, however, that Mortgagor hereby agrees, to execute any such document within five (5) days of Mortgagee's request therefor. Notwithstanding the foregoing, so long as there shall exist no Event of Default under the Note or this Mortgage or any default under the performance of any obligation, covenant or agreement under any lease affecting the Mortgage Property (or any portion thereof), Mortgagor shall have the license to collect, upon but not prior to accrual, all rents, issues and profits from the use and/or operation of the Mortgaged Property and to obtain, use and enjoy same.

I. That if any action or proceeding shall be commenced by any person other than Mortgagee, to which Mortgagee is made a party or in which Mortgagee determines that it is in Mortgagee's best interest for Mortgagee to participate or to uphold the lien of this Mortgage, then all sums paid by Mortgagee for the expense of any such action, or proceeding, (including, without limitation, reasonable attorneys and paralegals fees through all trial and appellate levels and post-judgment proceedings) shall be paid by Mortgagor promptly upon demand therefor by Mortgagee and, until paid, interest shall accrue thereon at the highest rate allowed by law.



J. That Mortgagor, immediately upon obtaining knowledge of the institution of any eminent domain or condemnation proceeding which can result in a permanent and/or temporary taking of the Mortgaged Property, or any portion thereof, will notify Mortgagee of the existence of such proceeding. Mortgagee may, at its sole option, participate in any such proceedings to the extent it desires and Mortgagor, promptly upon Mortgagee's demand, will deliver to Mortgagee all instruments requested by Mortgagee to permit such participation. Mortgagor hereby agrees that, in the event of such eminent domain or condemnation proceedings, the award or compensation paid by the authority taking the Mortgaged Property is hereby assigned to and shall be paid directly to Mortgagee. In any such eminent domain or condemnation proceedings where Mortgagee shall participate, Mortgagee shall be represented by counsel selected by Mortgagee and all of Mortgagee's expenses and costs in connection therewith shall be promptly paid by Mortgagor upon Mortgagee's request therefor and interest shall accrue thereon at the highest rate allowed by law until paid. The proceeds of any award or compensation so received shall, at the option of Mortgagee, either: (i) be applied first to all charges then outstanding due Mortgagee under the Loan Documents, except for accrued interest on the principal balance outstanding and the principal balance outstanding, second (if any remaining) to accrued interest on the principal outstanding, and third (if any remaining) to the prepayment of the outstanding principal balance of the Note; or (ii) be paid over to Mortgagor for restoration of the Mortgaged Property. Any amounts applied to the reduction of the principal indebtedness due pursuant to the Note shall be applied to future installments of principal in the inverse order of the maturity thereof.

K. Within ten (10) days of Mortgagee's request for same, Mortgagor shall execute, in such form as shall be required by all charges then outstanding due Mortgagee under the Loan Documents (including, without limitation, accrued interest), except the principal balance of the Note outstanding (if any remaining, to Mortgagee, an estoppel certificate and waiver of defenses, duly acknowledged, setting forth the amount of principal and interest outstanding under the Note and the status of this Mortgage.

L. That Mortgagee may at any time, at its sole option, and without notice to any person, release any portion of the Mortgaged Property or any other collateral or any portion of any other collateral which may be held as security for the payment of the indebtedness hereby secured, either with or without any consideration for such release or releases, without in any manner affecting the liability of Mortgagor, all endorsers or guarantors, if any, and all other persons who are or shall be liable for the payment of said indebtedness, and without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage for the full amount of the indebtedness remaining unpaid, together with all interest and advances which shall become payable upon the entire portion of the Mortgaged Property which is not so released, and without in any manner affecting or impairing to any extent whatsoever any and all other collateral security which may be held by Mortgagee.

M. That Mortgagor shall faithfully and fully comply with and abide by each and every term, covenant and condition, of every other mortgage or security agreement which, upon Mortgagee's prior written consent (without obligating Mortgagee to consent thereto), may become superior or subordinate to the lien of this Mortgage, and never permit the same to go into default. A default or delinquency under any such mortgage shall automatically and immediately constitute an Event of Default under this Mortgage. Mortgagee may, without obligation and at its sole option, advance all sums necessary to keep such mortgage in good standing, and all sums so advanced, together with interest thereon at the highest rate permitted by law, shall be subject to the provisions of this Mortgage. Mortgagor shall not make any agreement with the holders of such mortgages, the effect of which agreement shall in any way modify, change, alter or extend any of the terms or conditions thereof, nor shall Mortgagor request or accept any future advances thereunder without the express prior written consent of Mortgagee.

N. That if Mortgagor fails to pay any charges or comply with any obligation required of Mortgagor under the Loan Documents within the time set forth for such payment or compliance, Mortgagee

shall have the right to pay such charge or comply with such obligation without waiving or affecting the option of Mortgagee to consider this Mortgage in default pursuant to Paragraph 1.F. hereof. Every such payment shall be deemed additional monies owed by Mortgagor to Mortgagee, shall be due and payable upon demand of Mortgagee therefor with interest thereon from the date of advance thereof until paid at the maximum rate permitted by applicable law and shall be secured by the lien of this Mortgage.

O. Notwithstanding anything to the contrary in this Mortgage, Mortgagor shall not further encumber nor permit the placement of any lien on the Mortgaged Property, or any part thereof, without the prior written consent of Mortgagee. Mortgagor's failure to comply with the obligations of this Paragraph 1.O. shall constitute an Event of Default under this Mortgage.

P. The transfer, assignment, conveyance, mortgage, pledge or other alienation of Mortgagor's interest in the Mortgaged Property, or any part thereof, to another party or parties without the prior written consent of Mortgagee, shall constitute an Event of Default under this Mortgage. Mortgagee may require prior to granting any such consent that the receiving party under any such transfer, assignment, conveyance or other alienation assume all of the obligations of Mortgagor under the Loan Documents, and Mortgagee may further set such conditions or require such actions that Mortgagee reasonably determines to be necessary to secure the payment of the Note and the performance of all the terms, conditions and obligations of the Loan Documents including, without limitation, the payment by Mortgagor of an assignment and assumption fee; provided, however, that in no event shall Mortgagor be released from the terms, conditions and obligations of the Loan Documents.

Q. Mortgagor hereby agrees to keep the Mortgaged Property insured under policies of comprehensive liability, flood and casualty insurance placed with companies and agents in good standing, licensed to do business in the State of Alabama and approved by Mortgagee and such insurance shall be carried in amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence. Each and every such policy shall name Mortgagee as an insured thereunder and shall provide for notice to Mortgagee of termination of such policy(ies) not less than thirty (30) days before such termination. Mortgagor shall pay the premiums for any such insurance not later than fifteen (15) days before the same are due. Mortgagee shall have the right to retain or reinstate such policies in the event Mortgagor allows same to lapse or otherwise become ineffective or insufficient and all monies paid by Mortgagee in connection, therewith shall be immediately due and payable upon Mortgagee's demand therefor and until paid shall bear interest from the date thereof at the highest rate permitted by law. A copy of such policy or policies and any correspondence relating thereto shall be delivered to Mortgagee within five (5) days of the execution of this Mortgage.

R. That there are no, and Mortgagor will not permit nor suffer there to be, hazardous substances, as that term is defined in Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC §9601[14]), as amended, asbestos, radon, polychlorinated biphenyls, petroleum products, waste oil or other hazardous or toxic materials, wastes or other substances (collectively, "Toxic Substances") which have been spilled, deposited, disposed, released or transported in or on any part of the Mortgaged Property nor are there any substances or conditions in or on the Mortgaged Property that would support a claim or cause of action under common law or under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirement. Mortgagor shall keep and maintain the Mortgaged Property in compliance with all, and shall not cause or permit the Mortgaged Property to be in violation of any, Federal, state, and/or local laws, ordinances or regulations relative to Toxic Substances, nor shall Mortgagor use, generate, manufacture, store or dispose of, on, under or about the Mortgaged Property, nor transport to or from the Mortgaged Property, any Toxic Substances, nor shall Mortgagor permit any of the foregoing. Mortgagor shall immediately advise Mortgagee in writing of any and all proceedings, claims (or threats of claim) and any other governmental or regulatory actions of any nature as to the Mortgaged Property with respect to any Toxic Substance. Mortgagor hereby



indemnifies and agrees to hold Mortgagee harmless for any and all damages, liabilities, costs, judgments, obligations, orders and expenses, which Mortgagee may incur and/or suffer as a result of Mortgagor's failure to comply with its obligations under this Subparagraph 1.R.

S. Mortgagor shall not use the Mortgaged Property or allow the same to be used or occupied for any unlawful purpose or in violation of any Federal and/or state statute, law, rule, or regulation, any order, permit, certificate, license, ordinance or restrictive covenant now or hereafter covering or affecting the ownership, use or occupancy of the Mortgaged Property, nor suffer or permit any act to be done, any condition to exist or any article to be brought thereon which may be dangerous or which may thereby constitute a public or private nuisance and/or which may be a "Toxic Substance" (as hereinafter defined). Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless in connection with any and all costs, damages, claims, liabilities, expenses, judgments, orders and obligations which Mortgagee may suffer and/or incur as a result of Mortgagor's failure to comply with the provisions and obligations of this Paragraph 1.S.

T. Mortgagor hereby declares that the Mortgaged Property forms no part of any property owned, used or claimed by Mortgagor as exempted from forced sale under the laws of the State of Alabama and disclaims, waives and renounces any and all claims to exemption under any homestead laws.

2. This Mortgage shall be deemed a security agreement under the Uniform Commercial Code as adopted by and in effect in the State of Alabama and shall grant a security interest in all personal property of whatever kind or nature including, without limitation, all fixtures, contract rights, accounts receivables, equipment, general intangibles and other articles of personal property, whether now or hereafter acquired, and all renewals, replacements, substitutions and proceeds thereof which are located on or are used in connection with the operation, maintenance and upkeep of the Mortgaged Property. To the fullest extent permitted by law, all of the personal property located on the Mortgaged Property shall be deemed to be real property. This Mortgage and the provisions hereof shall be deemed to be self-operative, however Mortgagor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Mortgagee may require in order to impose the lien hereof more specifically upon any such property. Mortgagee shall have all rights and remedies of a secured party under the Uniform Commercial Code as enacted under the laws of the State of Alabama in addition to all rights and remedies specifically granted by the Loan Documents.

3. The Mortgaged Property, or any part thereof, to be sold pursuant to any court order obtained pursuant to any judicial proceeding under this Mortgage or pursuant to any right of Mortgagee to sell the Mortgaged Property may be sold in one (1) parcel as an entirety or in such parcels, in such manner and in such order as Mortgagee, in its sole discretion, may elect to the maximum extent permitted by law.

4. The rights and remedies of Mortgagee hereunder shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor, the Mortgaged Property, or any one or more, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by law. If Mortgagee elects at any time to proceed under any one right or remedy, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under the Loan Documents. The failure to exercise any right or remedy hereunder shall in no event be construed as a waiver or release of the Event of Default giving rise to such right or remedy, and shall not affect Mortgagor's obligations to pay the indebtedness and perform the obligations under and in accordance with the Loan Documents.

5. Upon the sale made under or by virtue of this Mortgage, whether made under a power of sale, by virtue of judicial proceeding or under a judgment or decree of foreclosure and sale, Mortgagee may, at its option, bid for and acquire the Mortgaged Property, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting the amount of Mortgagee's accepted bid upon the total indebtedness then



due under the Loan Documents.

6. If Mortgagee shall have proceeded to enforce any right under this Mortgage and such proceeding shall be discontinued or abandoned for any reason, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been commenced.

7. The Loan Documents shall be governed by and construed in accordance with the laws of the State of Alabama.

8. It is understood by and between the parties hereto, that time shall be of the essence with respect to Mortgagor's obligations pursuant to the Loan Documents.

9. This Mortgage shall bind and inure to the benefit of the successors and assigns of Mortgagee and, where permitted, Mortgagor.

10. This Mortgage may not be changed, modified, terminated or released orally, but only by written agreement, termination or release signed by the party who is the holder of this Mortgage at the time enforcement of any change, modification, termination or release is sought.

11. In the event any one or more of the provisions contained in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of the Loan Documents, and the Loan Documents shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

12. No waiver of any of the terms or provisions of this Mortgage shall be effective unless it is in writing and signed by the party who is the holder hereof at the time such waiver is being asserted and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

13. The terms and provisions of the Note are incorporated herein by reference.

14. **TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT EXECUTED IN CONJUNCTION THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTIONS OF OR BY MORTGAGOR OR MORTGAGEE. THE MORTGAGOR ACKNOWLEDGES THAT MORTGAGEE HAS BEEN INDUCED TO ENTER INTO THIS LOAN TRANSACTION, INCLUDING THIS MORTGAGE, BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS PARAGRAPH.**

15. *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.*

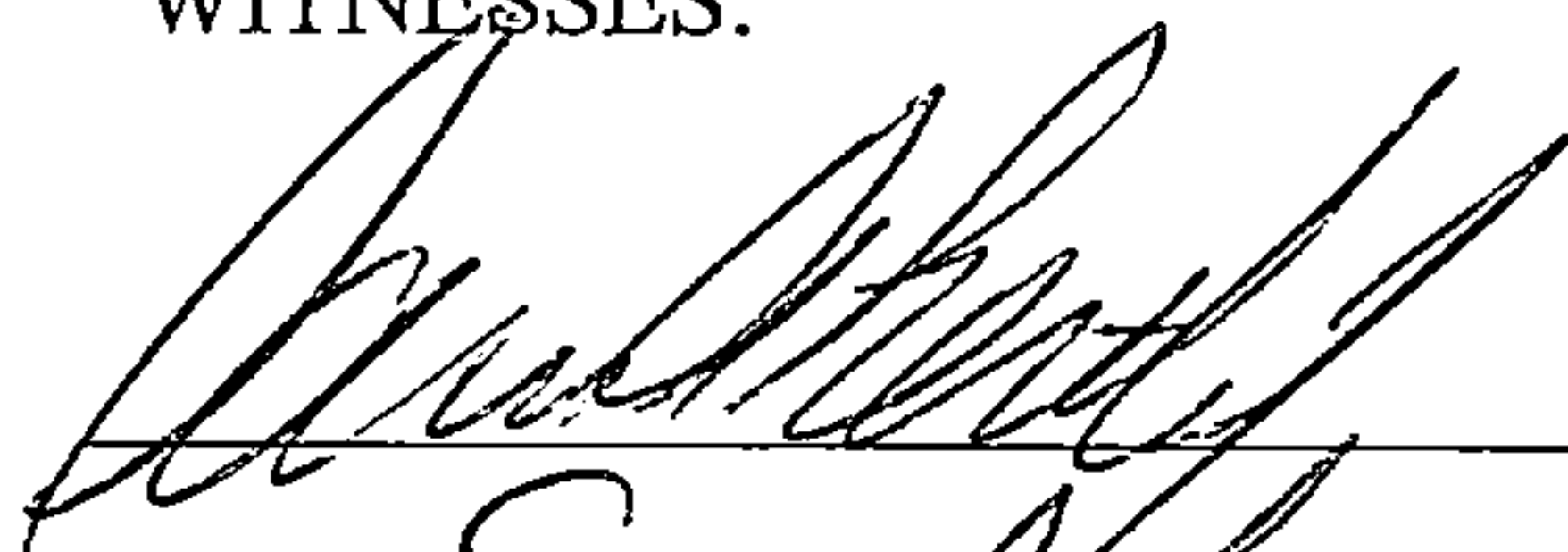


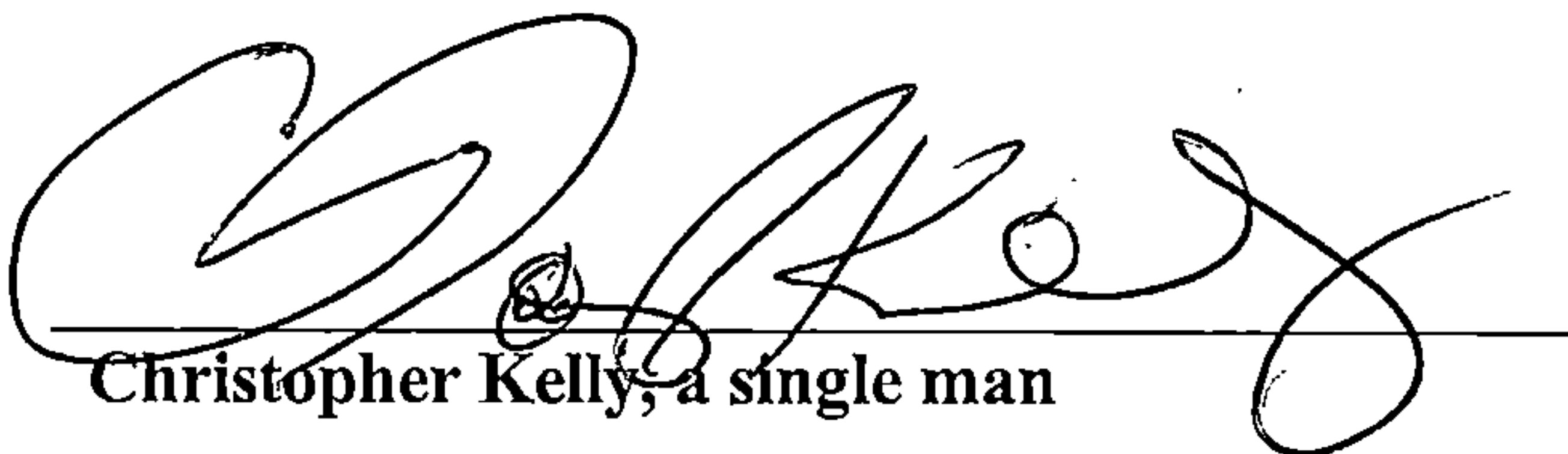
(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or 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.

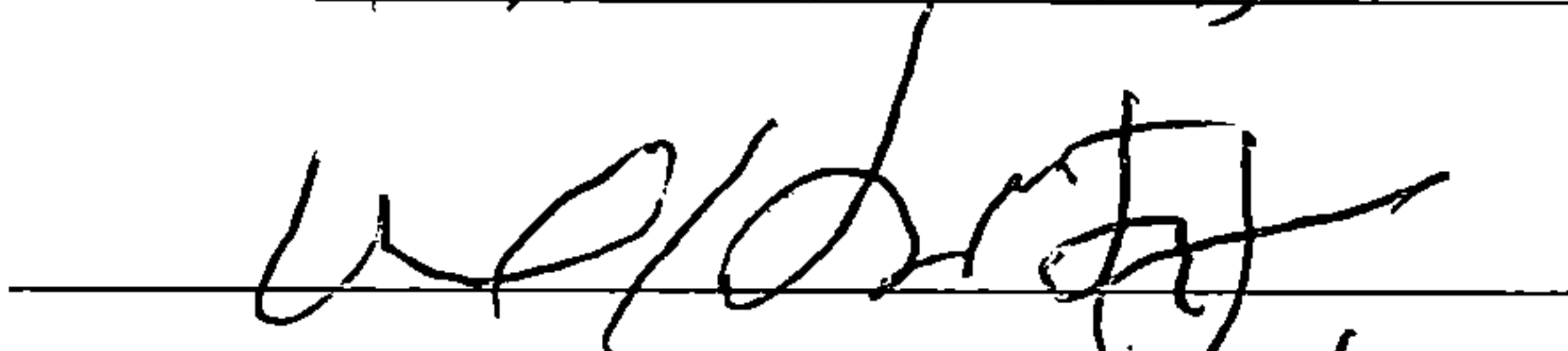
Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

WITNESSES:

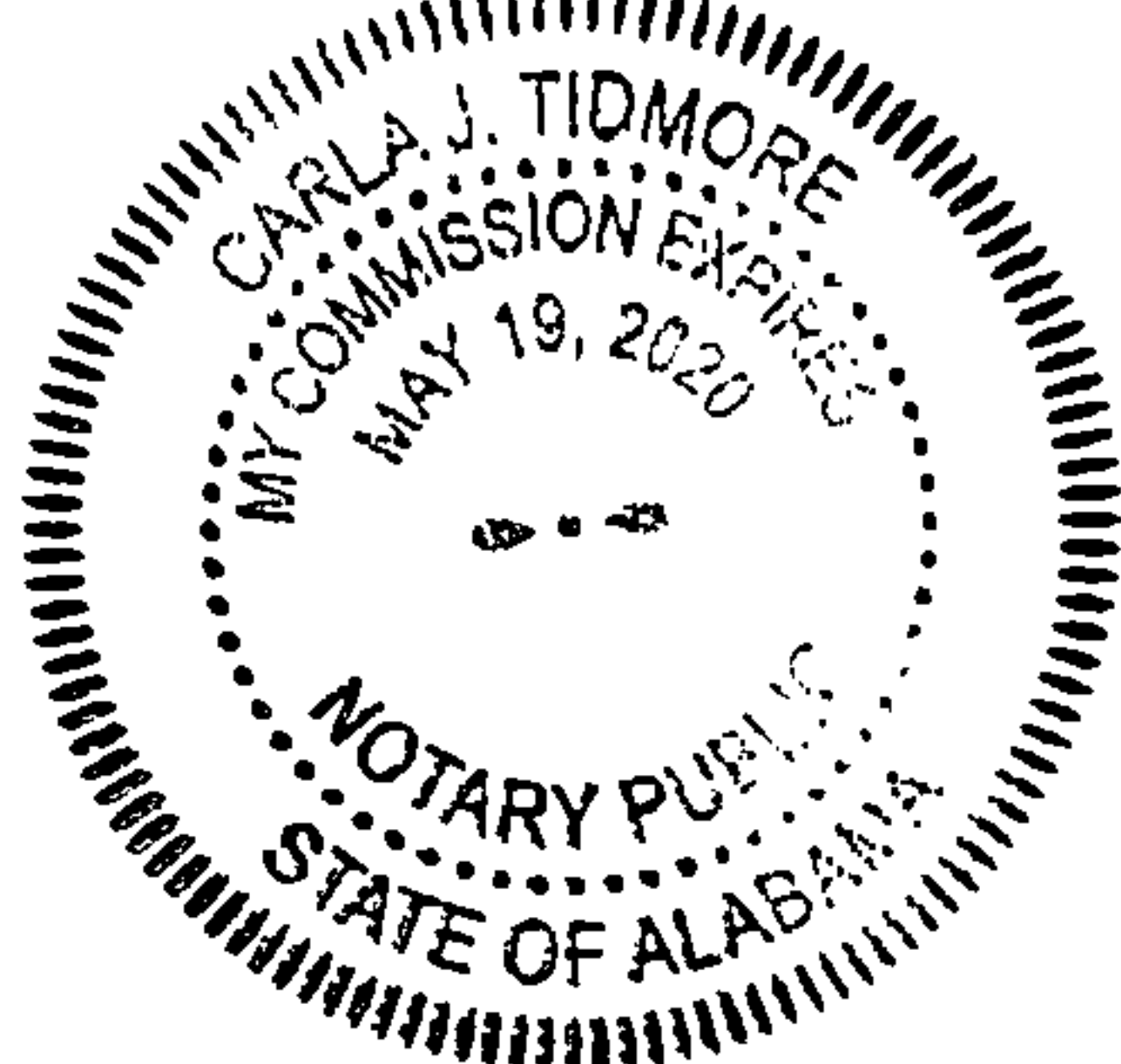
  
Name: Sam A. Henry, Jr.


  
Christopher Kelly, a single man

  
Name: William D. Hasty, Jr.

STATE OF ALABAMA )  
COUNTY OF Jefferson ) ss.:

The foregoing instrument was acknowledged before me this 12 day of February, 2020, by Christopher Kelly, individually, who is personally known to me or has produced a driver's license as identification.




  
Notary Public, State of Alabama  
My Commission Expires: 5-19-2020



**Exhibit "A"**

Lot 38, according to the Survey of Meadowbrook, 16<sup>th</sup> Sector, Phase II, as recorded in Map Book 9, page 144 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

  
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Shelby Cnty Judge of Probate, AL  
02/14/2020 11:21:18 AM FILED/CERT