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THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Stacy H. Krumin, Esquire  
Squire Patton Boggs (US) LLP  
201 North Franklin Street  
Suite 2100  
Tampa, Florida 33602

### **MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT (this "**Mortgage**") is effective as of the 20th day of April, 2020, by UAP-JAMBOREE, LLC, a California limited liability company ("**Mortgagor**"), whose address is 4699 Jamboree Road, Newport Beach, California 92660, as party of the first part, in favor of and for the benefit of TRUIST BANK, a North Carolina banking corporation (hereinafter called the "**Mortgagee**") whose address is 400 N. Tampa Street, 25<sup>th</sup> Floor, Tampa, FL 33602 (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

### **RECITALS**

A. Reference is made to the Loan Agreement dated as of even date herewith (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), between Mortgagor as the Borrower and Mortgagee as the Lender. Capitalized terms used but not defined herein have the meanings given to them in the Loan Agreement.

B. Pursuant to the Loan Agreement, Mortgagee has agreed to make a loan available to Mortgagor in the aggregate principal amount of Eleven Million Two Hundred Thousand and No/100 Dollars (\$11,200,000.00) (the "**Loan**"), which is evidenced by a Promissory Note of even date herewith by Mortgagor to Mortgagee (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Note**").

C. The obligation of the Mortgagee to make the Loan is conditioned upon, among other things, the execution and delivery by Mortgagor of this Mortgage in the form hereof to secure all amounts due and owing by Mortgagor to Mortgagee under the Note and all Obligations.

### **ARTICLE I.**

THAT, in order to secure the payment of the amounts due and owing by Mortgagor to Mortgagee under the Note and all Obligations, and to secure the performance and observance by the Mortgagor of each and every term, covenant, agreement, and condition contained in the Note, this Mortgage and in all of the other Loan Documents, whether now or at any time hereafter existing, and in consideration of the acceptance by the Mortgagee of the Note and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor prior to the execution and delivery hereof to the Mortgagee, the Mortgagor does hereby mortgage, grant, bargain, sell, alien, remise, release, convey and confirm unto the Mortgagee with POWER OF SALE AND RIGHT OF ENTRY AND

Loan No.: 9700376542-00001

POSSESSION as provided below all of Mortgagor's present and future estate, right, title, and interest in and to the following, which are collectively referred to as the "**Mortgaged Property**":

(a) that certain real property situated in the County of Shelby, State of Alabama, which is described in Exhibit "A" attached hereto and made a part hereof. Hereinafter said real estate, buildings, improvements (including improvements to be made hereafter), fixtures hereinbelow described and located on said real estate are sometimes collectively referred to as the "**Premises**" and including (i) all present and future title, interests, estates and rights of Mortgagor in and to lands lying in streets, alleys and roads adjoining the Land; together with (ii) all easements, rights, rights of way, streets, ways, alleys, sewer lines, water lines and all estates, rights, titles, interests, privileges, hereditaments, access rights and appurtenances whatsoever in any way relating to 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 or reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor in and to the same; together with (iii) all buildings, structures, improvements, privileges and appurtenances belonging thereto now existing or hereafter constructed on the Land (the "**Improvements**");

(b) all of the Mortgagor's (i) electrical fixtures, heaters, space heaters, engines and machinery, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air conditioning, plumbing and heating fixtures, refrigerating plants, dishwashers and appurtenances, and all building materials and equipment now or hereafter delivered to the Premises and installed or intended to be installed therein; (ii) such other goods (as defined in the UCC), furnishings and equipment now or hereafter delivered to the Premises and installed or intended to be installed therein; and (iii) all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof or arising from or otherwise related to the Premises, including, without limitation, all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, including all such items as defined in the UCC, now owned or hereafter acquired by the Mortgagor and now or hereafter affixed to, placed upon, used in connection with the Premises (all of the items of property described in clauses (i), (ii) and (iii) above are hereinafter collectively referred to as the "**Personalty**"), all of which Personalty, to the greatest extent permitted under applicable law, shall be deemed to be "fixtures" (as defined in the UCC) relating to the Land (the "**Fixtures**") and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them;

(c) to the extent assignable, all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto or which now or hereafter relate to, are derived from or used in connection with the Premises or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon, whether now owned or hereafter acquired by the Mortgagor including but not limited to the following (collectively, the "**Property Agreements**"): (i) all of the Mortgagor's sewer capacity rights, all other capacity rights, and the Mortgagor's rights under contracts, all building permits, D.O.T. driveway permits, and other permits, agreements, approvals, utility commitments, licenses and all other documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all contract rights, franchises, books, records, plans, specifications, franchise agreements, licenses, approvals, actions, telephone numbers, payments, fees, impact fees, prepaid tap fees, commitment fees, and



sums paid affecting the Premises; (ii) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect), which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Mortgaged Property, whether made before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the "**Leases**"); and (iii) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property or any part thereof (including, without limitation, all revenues all receivables, and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the Property or acquired from others, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under Title 11 U.S.C.A. § 101 et seq. (the "**Bankruptcy Code**") (the "**Rents**");

(d) all damages, payments and revenue of every kind that Mortgagor may be entitled to receive, from any person owning or acquiring a right to the oil, gas, or mineral rights and reservations of the Premises;

(e) all names by which the Premises may be operated or known, and all rights to carry on business under those names, and Mortgagor's interest in all trademarks, trade names and goodwill relating to the Land or the Improvements;

(f) all reserves, escrows or impounds required under the Loan Agreement or any of the other Loan Documents and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property;

(g) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, and all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Premises, the Fixtures or the Personalty (collectively, the "**Insurance and Condemnation Awards**");

(h) all property tax refunds payable with respect to the Mortgaged Property ("**Tax Refunds**");

(i) all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Land, and all conversions of the security constituted thereby; and

(j) all accessions, replacements and substitutions for any of the foregoing and all products and proceeds of the foregoing ("**Proceeds**").

TO HAVE AND TO HOLD the Mortgaged Property to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting non delinquent real estate taxes and assessments and

the Permitted Exceptions, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as may otherwise be expressly provided in the Loan Agreement and other Loan Documents, and as herein expressly provided.

PROVIDED ALWAYS that, if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note and all Obligations, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and the estate hereby created shall cease and be null and void.

## ARTICLE II.

The Mortgagor covenants with the Mortgagee as follows:

**2.1 Payment of Indebtedness and Performance of Obligations.** Mortgagor shall pay the Note according to the terms thereof and all other sums secured hereby promptly as the same shall become due and shall perform all Obligations, subject to and in accordance with the terms and provisions of the Loan Documents.

**2.2 Taxes, Liens and Other Charges.**

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes resulting in a tax imposed on Mortgagee in connection with the Loan, or Mortgagee's interest in the Mortgaged Property, the Mortgagor will promptly pay any such tax. If any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment, then Mortgagee shall have the option by written notice of not less than one hundred twenty (120) days to declare the Loan and all interest accrued thereon immediately due and payable, without payment of any premium or penalty; provided that Mortgagor shall be afforded the opportunity to resolve the issue to Mortgagee's reasonable satisfaction within such one hundred twenty (120) day period, in which event the acceleration of the Loan shall be rescinded by Mortgagee.

(b) The Mortgagor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Premises and all utility charges, whether public or private (subject to Mortgagor's right to contest same in accordance with this Mortgage and the Loan Agreement); and upon demand will furnish the Mortgagee receipted bills evidencing such payment.

(c) The Mortgagor will not suffer any mechanic's, materialmen's, laborer's, statutory or other lien (other than such inchoate liens securing payments not delinquent) which might or could be prior to or equal to the security interest and mortgage liens of this Mortgage to be created or to remain outstanding upon any part of the Premises for more than thirty (30) days (subject to Mortgagor's right to bond off or to contest same in accordance with this Mortgage and the Loan Agreement).

**2.3 Insurance.** The Mortgagor will keep all buildings and improvements whether now standing on the Premises or hereafter erected and all fixtures and personal property located in and on the Premises, continuously insured in such amounts as set forth in the Loan Agreement.



**2.4 Care of Premises.**

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, 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 Premises or any part thereof.

(b) Except as may be permitted by the Loan Agreement or other Loan Documents, and other than in the ordinary course of maintaining a retail project, Mortgagor will not remove or demolish nor alter the design or structural character of any building (now or hereafter erected), fixture or chattel which are part of the security or other part of the Premises without the prior written consent of the Mortgagee.

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

(d) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours and upon five (5) days written notice.

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

**2.5 Further Assurances; Modifications.** At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder.

**2.6 Expenses.** In addition to the expenses described in subparagraph 3.5(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any action, legal proceeding or dispute of any kind in which the Mortgagee is a plaintiff or defendant, affecting the indebtedness secured hereby, this Mortgage or the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage (to the extent permitted by applicable law), any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

**2.7 Estoppel Affidavits.** The Mortgagor, upon ten (10) days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth to Mortgagor's knowledge the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not Mortgagor has any actual knowledge of any off-sets or defenses existing against such principal and interest.

**2.8 Subrogation.** The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

**2.9 Performance by Mortgagee of Defaults by Mortgagor.** If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the

procurement of insurance coverage and the delivery of the insurance policies required by the Loan Agreement; in the performance of any material covenant, term or condition of any leases affecting all or any part of the Premises; or in the performance or observance of any covenant, condition or term of this Mortgage and, in each of the foregoing cases, such default remains uncured beyond any applicable cure or grace period, then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagor in connection therewith, shall be secured hereby and shall be, upon demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the Default Rate set forth in the Note. Such interest shall accrue through the date paid notwithstanding any intervening judgment of foreclosure or sale. All such interest shall be part of the Obligations and shall be secured by this Mortgage. No such payment or performance shall be construed to be a cure of any default or Event of Default or constitute a waiver of any default or Event of Default. The Mortgagee shall be the sole but good faith judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises 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 other person in possession holding under the Mortgagor, except for damages or liabilities arising from the negligence or willful misconduct of Mortgagee, its contractors, employees, or agent. Notwithstanding anything to the contrary contained in this Mortgage, or the other Loan Documents, Mortgagor shall have the right to contest the validity, applicability, or amount of any such tax, lien, assessment, charge, claim, or premium, provided that (i) such contest is pursued by Mortgagor in good faith, (ii) Mortgagor is diligently prosecuting such contest, and (iii) such contest does not in the reasonable opinion of Mortgagee adversely impact the value of the Mortgaged Property.

**2.10 Condemnation.** If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), then any proceeds received shall be paid or applied as provided by the Loan Agreement.

### ARTICLE III.

**3.1 Due on Sale or Further Encumbrance Clause.** In determining whether or not to make the Loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor, or its partners or affiliates, is a business person or entity well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the Note secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates. Mortgagor further recognizes that any secondary or junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Property should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Property.



In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and of value of the Mortgaged Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any Transfer of title to the Mortgaged Property or any interest therein in violation of the provisions of the Loan Agreement shall be an Event of Default hereunder.

Any consent by the Mortgagee, or any waiver of an Event of Default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this Paragraph.

**3.2 Default.** A default shall have occurred hereunder upon the occurrence of any of the following: (i) upon the occurrence and during the continuance of any Event of Default (as that term is defined in the Loan Agreement); (ii) upon occurrence of an Event of Default, as otherwise defined herein; (iii) upon Mortgagor's failure to observe or perform any covenant, condition or term set forth in this Mortgage or when permitted under any of the other Loan Documents after the expiration of any applicable notice and cure period; (iv) upon the insolvency, bankruptcy, dissolution, death or incompetency of Mortgagor or guarantor thereof (subject to Mortgagor's right to provide a replacement guarantor under the Loan Agreement and to have an involuntary bankruptcy dismissed); or (v) upon the dissolution, termination of existence, merger or change in control of or in Mortgagor.

**3.3 Acceleration of Maturity.** If an Event of Default shall have occurred hereunder beyond any applicable notice and cure periods, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued, but unpaid, thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

**3.4 Right of Mortgagee to Enter and Take Possession.**

(a) If any default shall have occurred hereunder beyond any applicable grace or cure period, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property and if, and to the extent, permitted by law, the Mortgagee may enter and take possession of the Mortgaged Property and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its right pursuant to this subparagraph (a), Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Mortgaged Property.

(b) Whenever all such Event of Default have been cured and satisfied, the Mortgagee shall surrender possession of the Mortgaged Property to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 3.4(a) shall exist if any subsequent Event of Default shall occur beyond any applicable grace or cure period.

**3.5 Appointment of a Receiver and Foreclosure.**

(a) If an Event of Default shall have occurred hereunder beyond any applicable notice and cure periods, then the whole debt secured by this Mortgage, with all interest accrued, but unpaid, thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Mortgage or by any other proper, legal or equitable procedure.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the Default Rate set forth in the Note, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Mortgaged Property not previously delivered to Mortgagee and in Mortgagor's possession or control.

**3.6 Discontinuance of Proceedings and Restoration of the Parties.** In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

**3.7 Remedies Cumulative.** No right, power or remedy conferred upon or reserved by the Mortgagee 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 now or hereafter existing at law or in equity or by statute.

**3.8 Stamp and Excise Tax.** It is contemplated that the Mortgagor will pay all applicable stamp or excise tax due with respect to this Mortgage, the Note, any Obligations, any loan or credit extended hereunder, or any security agreement, guaranty, the Loan Agreement or other document, the



Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this Paragraph will survive the repayment of indebtedness under the Note.

**3.9 Post-Judgment Costs and Expenses.** Wherever in this Mortgage or any of the other Loan Documents Mortgagee is entitled to be reimbursed for its fees, costs and/or expenses, including, without limitation, the fees, costs and/or expenses of its attorneys, such entitlement to reimbursement shall apply to all such fees, costs and/or expenses, whether incurred before or after judgment. This Mortgage shall secure, and the Obligations shall include, all such amounts

**3.10 Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first priority lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

**3.11 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except for matters for which this Mortgage, the Loan Agreement or Note specifically and expressly provide for the giving of notice, all notices of any default or Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

**3.12 Application of Proceeds.** Mortgagee shall have absolute discretion (subject to the terms of the other Loan Documents) as to the time of application of any proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property.

**3.13 Occupancy After Foreclosure.** Any sale of the Mortgaged Property or any part thereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**3.14 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article III, the assignment of the Rents and Leases under Article IV, the security interests granted under this Mortgage, nor any other remedies afforded to Mortgagee under this Mortgage or any of the other Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property.

**ARTICLE IV.**

**4.1 Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee. All covenants and agreements contained in this indenture by or on behalf of the Mortgagor shall be joint and several.

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

**4.3 Invalid Provisions to Affect No Others.** If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess of such maximum amount, Mortgagee shall apply such excess to the reduction of the unpaid principal amount due and pursuant hereto.

**4.4 Number and Gender.** Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

**ARTICLE V.**

**5.1 Notice.** Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, or by nationally recognized overnight courier service to the parties being given such notice at the following addresses:

Mortgagor:

UAP-JAMBOREE, LLC  
4699 Jamboree Road  
Newport Beach, CA 92660  
Attention: John E. Young  
Telephone: (714) 803-6983  
Email: jyoung@uapcompanies.com



*with a copy to:*

UNITED AMERICAN PROPERTIES, INC.  
4699 Jamboree Road  
Newport Beach, CA 92660  
Attention: Paul Roman, Esq.  
Telephone: (949) 756-8800 ext. 103  
Facsimile: (949) 756-8811

Mortgagee:

Truist Bank  
400 N. Tampa St., 25<sup>th</sup> Floor  
Tampa, Florida 33602  
Attention: Lisa Resnick  
Telephone: 813-314-5295

*with a copy to:*

Stacy H. Krumin, Esq.  
Squire Patton Boggs (US) LLP  
201 N. Franklin St., Suite 2100  
Tampa, Florida 33602  
Telephone: 813-202-1357  
Facsimile: 813-202-1313

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

## ARTICLE VI.

**6.1 Future Advances.** This Mortgage shall also secure future or additional advances as may be made by Mortgagee at its option to Mortgagor, or its successors or assigns in title, for any purpose, provided that all such advances are made within five (5) years from the date of this Mortgage or within such lesser period of time as may be provided by law as a prerequisite for the sufficiency of actual notice or record notice of such optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration, to the same extent as if such future or additional advances were made on the date of the execution of this Mortgage. The total amount of indebtedness secured hereby may be decreased or increased from time to time, but the total unpaid balance so secured at any one time shall not exceed Twenty-Two Million Four Hundred Thousand and No/100 Dollars (\$22,400,000.00), plus interest thereon, and any disbursements made under this Mortgage for the payment of taxes, levies or insurance on the Property, with interest on such disbursements. The provisions of this paragraph apply regardless of whether any such advances are characterized as optional or obligatory, but nothing in this paragraph by itself shall obligate Mortgagee to make any additional advances hereunder. Mortgagor covenants and agrees with Mortgagee that: (i) Mortgagor waives and agrees not to assert any right to limit future advances under this Mortgage, and any such attempted limitation shall be null, void and of no force and effect; and (ii) an Event of Default shall automatically exist if (1) Mortgagor executes any instrument which would have the effect of impairing the priority of or limiting any future advances which might ever be made under this Mortgage, or (2) Mortgagor takes any action to intentionally impair the priority of any future advances which might ever be made under this Mortgage.

**6.2 Lien Priority.** The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date this Mortgage is recorded shall acquire

such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any Party in the Premises acquired subsequent to the date this Mortgage is recorded.

**6.3 Security Agreement.** This instrument also creates a security interest in favor of the Mortgagee under the Uniform Commercial Code of the State of Alabama, and Mortgagee shall also have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Alabama, and without limitation upon or in derogation of the rights and remedies created and accorded to the Mortgagee by this Mortgage pursuant to the common law or any other laws of the State of Alabama or any other jurisdiction, it being understood that the rights and remedies of Mortgagee under the Uniform Commercial Code of the State of Alabama shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Alabama or any other jurisdiction.

**6.4 No Merger.** Unless expressly provided otherwise, in the event that ownership of this Mortgage and title to the Mortgaged Property or any estate therein shall be vested in the same person or entity, this Mortgage shall not merge in such title, but shall continue as a valid lien on the Mortgaged Property for the amount secured hereby.

**6.5 Choice of Law.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State of Alabama (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth in this paragraph and to the fullest extent permitted by the law of the State of Alabama, the law of the State of Florida (without regard to conflict of law provisions thereof) shall govern all matters relating to this Mortgage and the other Loan Documents and all of the indebtedness or obligations arising hereunder or thereunder. All provisions of the Loan Agreement incorporated herein by reference shall be governed by, and construed in accordance with, the laws of the State of Florida.

**6.6 Binding Effect.** This Mortgage shall be binding upon and inure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

**6.7 Swap Contract.** Payment and performance of all obligations of Borrower under any Swap Contract with respect to which there is a writing evidencing the parties' agreement to said Swap Contract shall be secured by this Mortgage. "Swap Contract" means any document, instrument or agreement with Mortgagee, now existing or entered into in the future, relating to an interest rate swap transaction, forward rate transaction, interest rate cap, floor or collar transaction, any similar transaction, any option to enter into any of the foregoing, and any combination of the foregoing, which agreement may be oral or shall be in writing, including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedule or confirmation, each as amended from time to time.

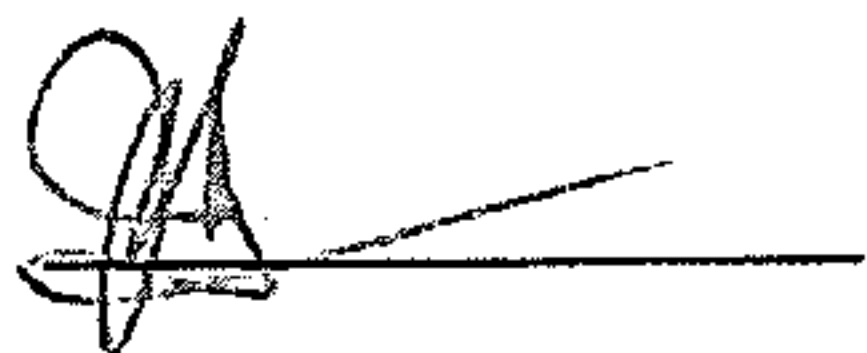
(a) Notwithstanding any provision to the contrary, the obligations secured hereby shall not include obligations arising under any Swap Contract to the extent that the grant of a lien hereunder to secure such Swap Contract would violate the Commodity Exchange Act by virtue of the Borrower's failure to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such grant of such lien becomes effective with respect to such Swap Contract. "Commodity Exchange Act" means 7 U.S.C. Section 1 et seq., as amended from time to time, any successor statute, and any rules, regulations and orders applicable thereto.



(b) "Swap Contract Default" means Borrower fails to make any payment, or perform any obligation, as and when due under any Swap Contract and such failure continues beyond any applicable notice and cure period provided in the Swap Contract. A Swap Contract Default shall constitute an Event of Default under this Mortgage.

**6.8 WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE, AFTER CONSULTING WITH COUNSEL OF THEIR OWN CHOOSING, HEREBY EXPRESSLY COVENANT AND AGREE: (I) NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDING IN ANY WAY RELATING TO OR CONCERNING THIS MORTGAGE, THE LOAN, THE LOAN DOCUMENTS OR ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY MORTGAGEE OR ITS AFFILIATES OR REPRESENTATIVES (COLLECTIVELY "LITIGATION"); AND (II) EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION TO THE FULL EXTENT PERMITTED BY LAW. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN AND IS KNOWINGLY AND VOLUNTARILY MADE BY THE MORTGAGOR AND MORTGAGEE, AND THIS WAIVER IS INTENDED TO AND DOES ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. THE MORTGAGEE IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT OR A COPY HEREOF CERTIFIED BY MORTGAGEE AS A TRUE AND CORRECT COPY, TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER OF ANY LITIGATION AS CONCLUSIVE EVIDENCE OF MORTGAGOR'S WAIVER OF THE RIGHT TO A JURY TRIAL. MORTGAGOR FURTHER CERTIFIES TO MORTGAGEE AND ACKNOWLEDGES THAT NO REPRESENTATIVE OR AGENT OF THE MORTGAGEE (INCLUDING, BUT NOT LIMITED TO MORTGAGEE'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE TO THE MORTGAGOR OR TO ANY AGENT OR REPRESENTATIVE OF MORTGAGOR (INCLUDING, BUT NOT LIMITED TO MORTGAGOR'S COUNSEL), THAT THE MORTGAGEE WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL.

Borrower's Initials:



## ARTICLE VII.

**7.1 Conflicts.** In the event of any conflict between the provisions of this Article 2 and any provision of this Mortgage, then the provisions of this Article 2 shall control.

**7.2 Additional Remedies.** In addition to the remedies set forth in this Mortgage, Mortgagee shall have the following additional remedies:

(a) Bring a court action at law or in equity to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or obligations secured by this Indenture, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Mortgagee's right to institute or maintain the other, provided that Mortgagee shall have only one payment and satisfaction of the Debt;

(b) Cause any or all of the Mortgaged Property to be sold under the power of sale granted hereby in any manner permitted by applicable law;

(c) Exercise any other right or remedy available under law or in equity or under the Loan Documents;

(d) Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the front or main door of the court house of the county where said Mortgaged Property, or a substantial and material part thereof, 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, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county (or all counties, if more than one) in which the Mortgaged Property is located (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks), and upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Any such sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Mortgagee may bid at said sale and purchase said 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 Mortgagee may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Mortgage only as to the Mortgaged Property sold, and if the Debt and all other sums secured hereby are not thereby satisfied in full, the other Mortgaged Property shall continue as security therefor and there may be a further foreclosure of this Mortgage, either by sale under power of sale or by judicial foreclosure.

**7.3** Mortgagee's Option on Foreclosure. At the option of Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event Mortgagee's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose the Mortgage in equity, Mortgagee 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 by Borrower to be a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**7.4** Waiver. Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Mortgagee may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Mortgagee selects. Mortgagee may offer the Mortgaged Property for sale and sell the Mortgaged Property as a whole without first offering it for sale in separate parcels or may offer the Mortgaged Property for sale and sell the Mortgaged Property in any other manner Mortgagee may elect in its sole discretion. One or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Mortgaged Property is sold or the Obligations and other indebtedness and obligations secured hereby are paid in full.

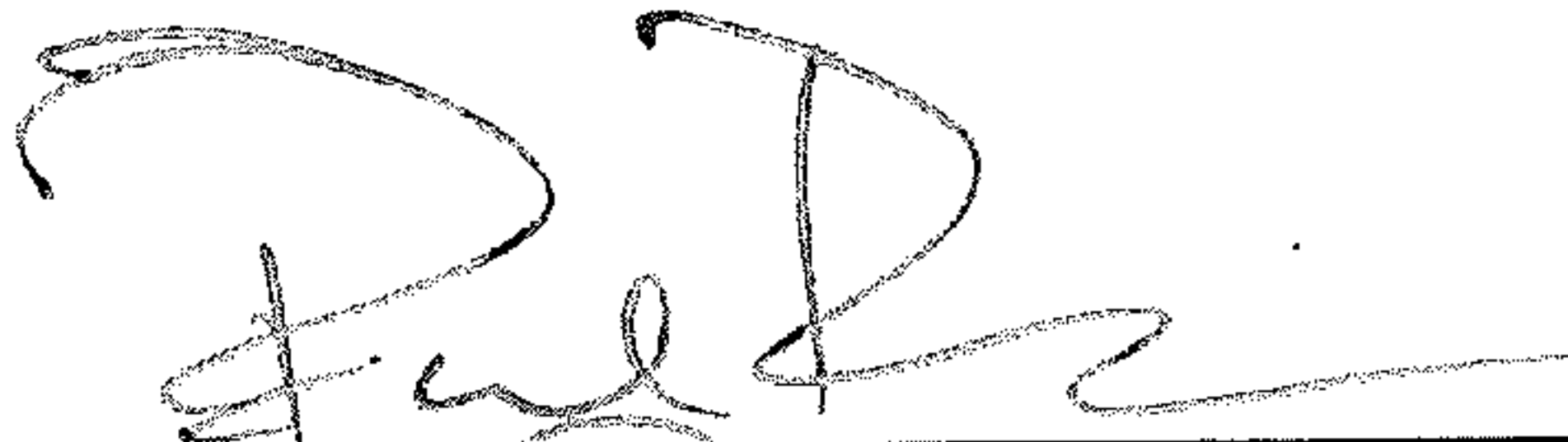
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IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, on the date set forth above.

ASSIGNOR:

UAP-JAMBOREE, LLC,  
a California limited liability company

  
Name: PAUL ROMAN

Signed:   
By: John E. Young  
Its: Sole Member

  
Name: MICHELE NIELSON

**Acknowledgement**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA )  
County of ORANGE )

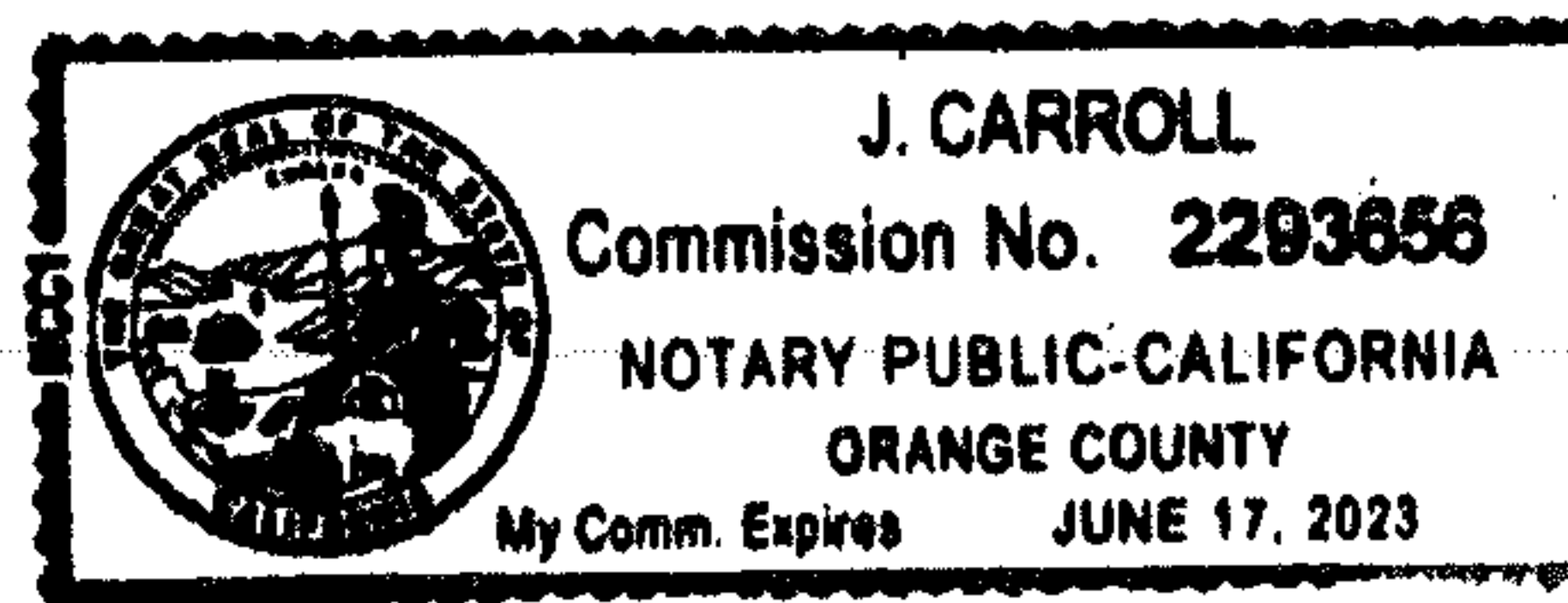
On 13<sup>th</sup> day of April, 2020, before me, J. CARROLL, a Notary Public, personally appeared John E. Young, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his/her/their authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





**EXHIBIT A**  
**Legal Description**

**FEE SIMPLE PARCEL:**

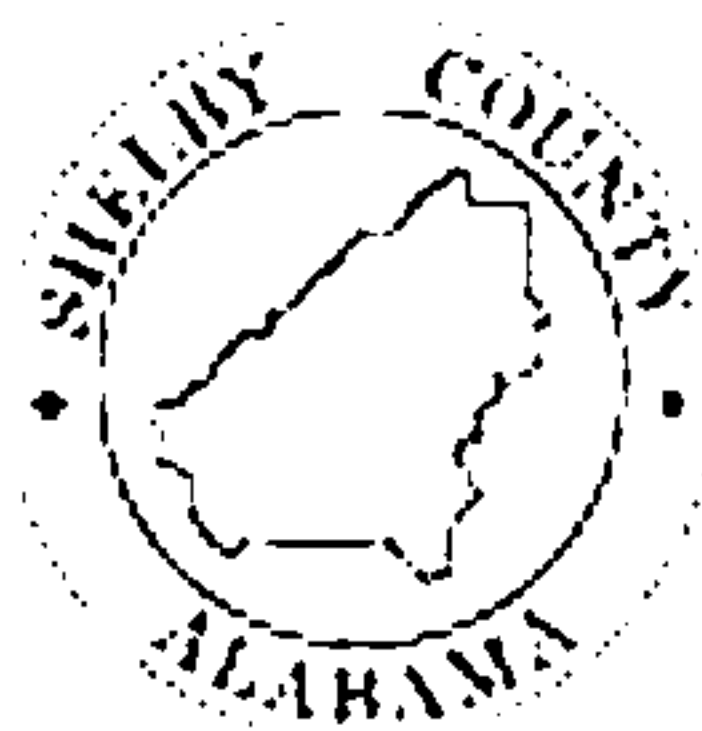
Lot 8, according to the Survey of Tattersall Park Resurvey No. 3, as recorded in Map Book 49, pages 81A and 81B, in the Probate Office of Shelby County, Alabama.

**EASEMENT PARCEL #1:**

TOGETHER WITH Easement for access, drainage and utilities under that certain Restrictive Use and Reciprocal Easement Agreement between EBSCO Industries, Inc., and Greystone Way, LLC, recorded in Instrument 20181102000389880, as amended by First Amendment to Restrictive Use and Reciprocal Easement Agreement recorded in Instrument 20200224000072060, in the Probate Office of Shelby County, Alabama.

**EASEMENT PARCEL #2:**

TOGETHER WITH drive easement as set out in Access Agreement by and between EBSCO Industries, Inc. and Greystone Way, LLC recorded in Instrument 20181102000389890, 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  
04/21/2020 02:57:45 PM  
\$16867.00 CHARITY  
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*Allen S. Bayl*