


THIS INSTRUMENT PREPARED BY:  
Oakworth Capital Bank-Traci Langston  
850 Shades Creek Parkway  
Ste 200  
Birmingham, AL 35209

AFTER RECORDING RETURN TO:  
Oakworth Capital Bank - Traci Langston  
850 Shades Creek Parkway  
Ste 200  
Birmingham, AL 35209

  
20200630000268840 1/7 \$41.00  
Shelby Cnty Judge of Probate, AL  
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## **SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE**

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE ("Agreement") is made on June 1, 2020, between Spreadrite, LLC, an Alabama Limited Liability Company whose address is 4855 Overton Road, Birmingham, Alabama 35210 ("Tenant") and Oakworth Capital Bank whose address is 850 Shades Creek Parkway, Ste 200, Birmingham, Alabama 35209 ("Lender"), which is organized and existing under the laws of the State of Alabama. Spreadrite-Pelham, LLC, an Alabama Limited Liability Company, a non-individual entity, whose address is 4855 Overton Rd, Birmingham, Alabama 35210 ("Landlord") is the fee owner of the following described real property:

Address: 125 Commerce Dr, Pelham, Alabama 35124

Legal Description: See attached Exhibit A (Legal Description)

("Property"). The Landlord has given a security interest in the Property to Lender pursuant to an instrument dated June 1, 2020 ("Security Instrument"). Pursuant to a lease ("Lease") by and between Tenant and Landlord, Tenant leases a portion of the structure located upon the Property and more commonly described as Lease between Spreadrite, LLC and Spreadrite-Pelham, LLC dated 6/1/2020 . ("Premises").

### **The parties to this Agreement hereby agree as follows:**

**SUBORDINATION.** Except as otherwise provided in this Agreement, the Lease, and all rights of the Tenant under the Lease and to the Property, including without limitation any option to purchase or otherwise acquire title to the Property, are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Security Instrument, and to the rights and interest of the Lender and its successors and assigns, as fully and with the same effect as if the Security Instrument had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Property by Tenant, or its predecessors in interest.

**NON-DISTURBANCE.** Until the Security Instrument is satisfied and released, Lender agrees that so long as the Tenant is not in default (beyond any period given the Tenant under the Lease to cure such default) in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, the Lender will not join the Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless required to foreclose the Security Interest, and then only for such purpose and not for the purpose of terminating the Lease.

Lender further agrees that the Tenant's possession of the Property and the Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with the Lease, shall not be diminished or interfered with by the Lender, and the Tenant's occupancy of the Property shall not be disturbed by the Lender.

**ATTORNNMENT.** If the interest of the Landlord shall be transferred to and owned by the Lender by reason of foreclosure of the Security Instrument or other proceedings brought in lieu of or pursuant to a foreclosure, or in any other manner, and the Lender succeeds to the interest of the Landlord under the Lease, the Tenant shall be bound to the Lender under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals of the Lease, with the same force and effect as if the Lender were originally the landlord under the Lease. The Tenant hereby attorns to the Lender as its Landlord, such attornment to be automatically effective immediately upon the Lender's succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto. The respective rights and obligations of the Tenant and the Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals hereto, shall be and are the same as now set forth in the Lease, the terms of which are hereby fully incorporated herein by reference and made a part of this Agreement.

**LENDER NOT BOUND BY CERTAIN ACTS OF LANDLORD.** If the Lender shall succeed to the interest of the Landlord under the Lease, the Lender shall not be: (a) liable for any act or omission of Landlord; (b) subject to any offsets or defenses which the Tenant might have against the Landlord; (c) bound by any rent or additional rent which the Tenant might have paid for more than the then current installment; nor (d) bound by any amendment or modification of the Lease made without the Lender's consent.

#### TENANT ESTOPPEL CERTIFICATE

**TENANT REPRESENTATIONS AND WARRANTIES.** Tenant, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

**Rent Payment.** The minimum rent payment currently payable per annum under the terms of the Lease is \$ 96,000. Payment in full has been tendered for all Lease payments through N/A.

**Lease Term.** The term of the Lease has commenced and will terminate on 6/2/2027 subject to any renewal or cancellation rights specified in the Lease. Except as specifically provided in the Lease, Tenant does not have an option or right to renew or cancel the Lease, to lease additional space in the Premises, nor to purchase any part of the Premises.

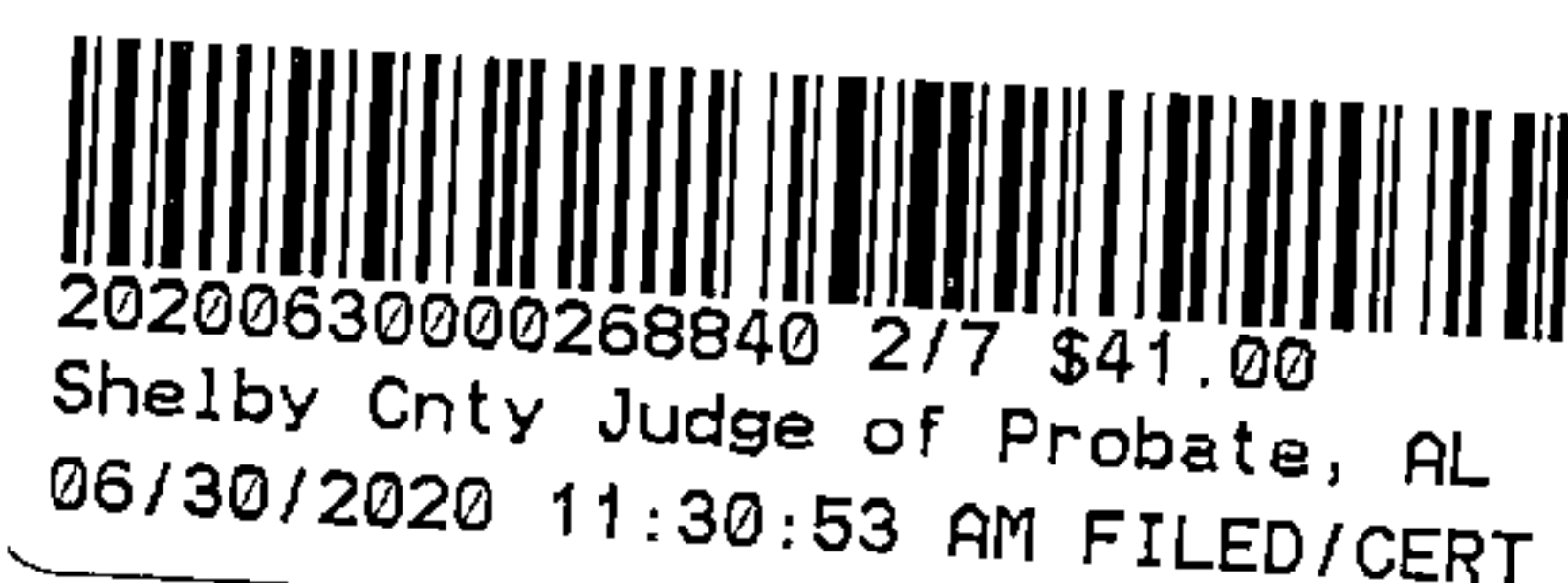
**Security Deposit.** As required by the terms of the Lease, Tenant has paid to Landlord a security deposit in the amount of N/A which is to be applied by Landlord or returned to the Tenant in accordance with the terms of the Lease. Tenant agrees and consents that Lender will have no responsibility or liability for any security deposit, except where the security deposit has been actually received by Lender.

**Complete Lease Attached.** Tenant hereby warrants that as of June 1, 2020 a true, correct and complete copy of the Lease including all amendments modifications thereof is attached to this Agreement. The Lease constitutes the entire agreement between the Tenant and Landlord with respect to the Premises, has not been modified, changed, altered, or amended other than as attached to this Agreement. The terms of the Lease remain in full force and effect.

**Improvements.** As of the date this Agreement is executed, all contributions required to be paid by Landlord for improvements to the Premises have been paid in full. Landlord has fully performed all obligations with respect to Tenant improvements on the Premises and Tenant has accepted the Premises as is, subject only to those conditions specifically enumerated in the Lease.

**No Bankruptcy.** There are no actions, whether voluntary or otherwise, pending against the Tenant or any other party responsible for payment of the Tenant's obligations under the Lease pursuant to the bankruptcy or insolvency laws of the United States or the law of state.

**No Default.** Tenant affirms that to the best of his/her knowledge and belief, no party to the Lease is in default under the terms of the Lease. To the best knowledge of the Tenant, no event has occurred which,





with the giving of notice or passage of time, or both, would constitute such a default. The interest of the Tenant in the Lease has not been assigned or encumbered. The Tenant is not entitled to any credit against any rent or other charge or rent concession under the Lease except as set forth in the Lease. No rental payments have been made more than one month in advance.

**No Hazardous or Toxic Waste.** Tenant represents and warrants that it has not used, generated, released, discharged, stored or disposed of any hazardous waste, toxic substances or related materials (collectively, "Hazardous Materials") on, under, in or about the Premises, or transported any Hazardous Materials to or from the Premises, other than Hazardous Materials used in the ordinary and commercially reasonable course of the Tenant's business in compliance with all applicable laws. The term "Hazardous Materials" shall mean: (a) any "hazardous substance" as such term is presently defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) and any regulations promulgated thereunder ("CERCLA"); (b) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" for purposes of CERCLA; and (c) any additional substances or materials which are now or hereafter defined as "hazardous substances," "hazardous waste," "toxic substances" or "toxic waste" under any other federal law or under any state, county, municipal or other law applicable to the Premises or under any regulations promulgated pursuant thereto.

**Acknowledgment.** Tenant hereby acknowledges that Landlord intends to encumber the Property with a real estate security instrument in favor of Lender. Tenant further acknowledges the right of Landlord, Lender and any and all of Landlord's present and future lenders to rely upon the statements and representations of the Tenant contained in this Agreement and further acknowledges that any loan secured by this, and any future, real estate security instruments will be made and entered into in material reliance on this Agreement.

**NOTICES AND WAIVER OF NOTICE.** Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Agreement unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Landlord and Tenant waive notice of Lender's acceptance of this Agreement, defenses based on suretyship, any defense arising from any election by Landlord or Tenant under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other notice.

**LENDER'S RIGHTS AND REMEDIES.** The rights and remedies of the Lender under this Agreement are cumulative, and are not in lieu of, but are in addition to all other rights and remedies which Lender has under this Agreement and the Security Instrument.

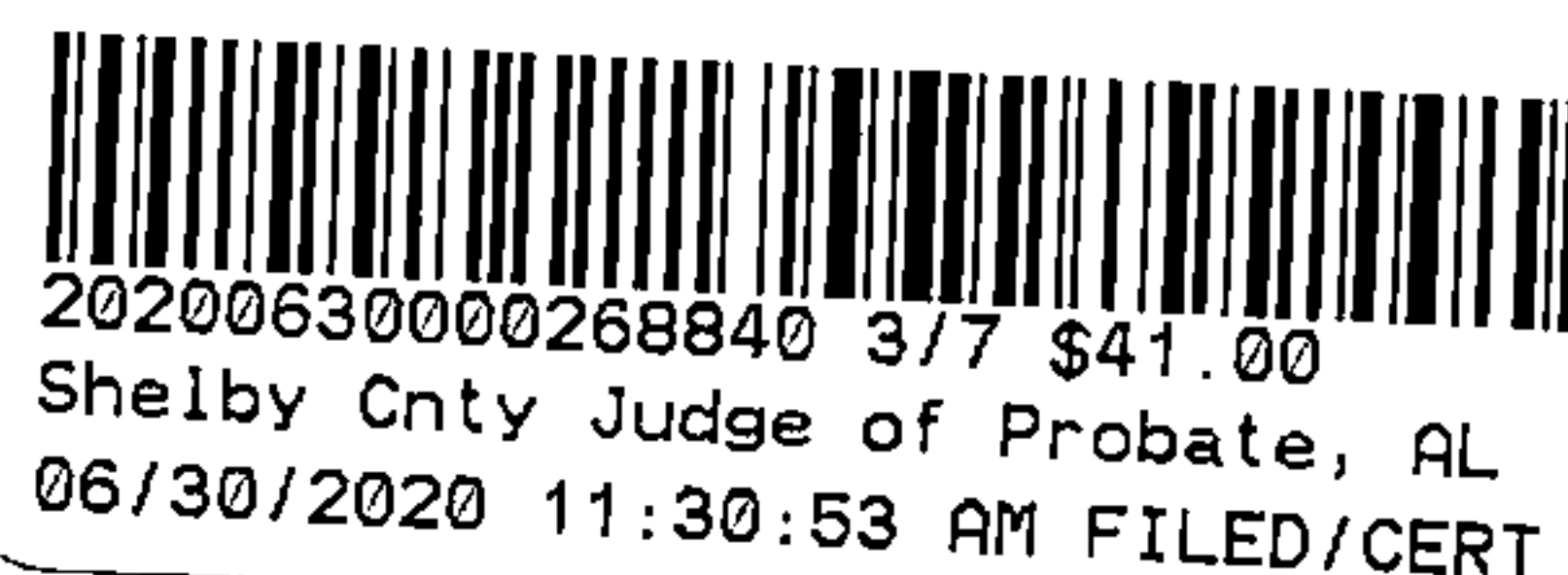
**SUCCESSORS AND ASSIGNS.** All covenants and agreements contained in this Agreement shall bind, and the rights hereunder shall inure to the respective successors and assigns of the Lender, Landlord, and Tenant.

**ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY.** This Agreement shall constitute the entire agreement between Lender, Landlord, and Tenant. Any modification of this Agreement shall be binding only if placed in writing and signed by the Lender, Landlord, and Tenant. The invalidity of any provision of this Agreement shall not affect the validity of any other provision.

**PARAGRAPH HEADINGS; SINGULAR AND PLURAL TERMS.** The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to interpret this Assignment. Whenever used, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

**GOVERNING LAW.** This Agreement will be governed by the laws of the State of Alabama including all proceedings arising from this Agreement.

**ORAL AGREEMENTS DISCLAIMER.** This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.



By signing this Agreement, the parties acknowledge reading, understanding, and agreeing to all its provisions.

Spreadrite-Pelham, LLC

Merrill H. Stewart Jr 6/1/2020  
By: Merrill H. Stewart, Jr. Date  
Its: Manager

**BUSINESS ACKNOWLEDGMENT**

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, \_\_\_\_\_, in and for said County and in said State, hereby certify that Merrill H. Stewart, Jr., Manager on behalf of Spreadrite-Pelham, LLC, an Alabama Limited Liability Company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his official capacity and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company.

Given under my hand this the 1<sup>st</sup> day of June, 2020.

My commission expires: 4/26/2022 Susan P. Thompson

Identification Number

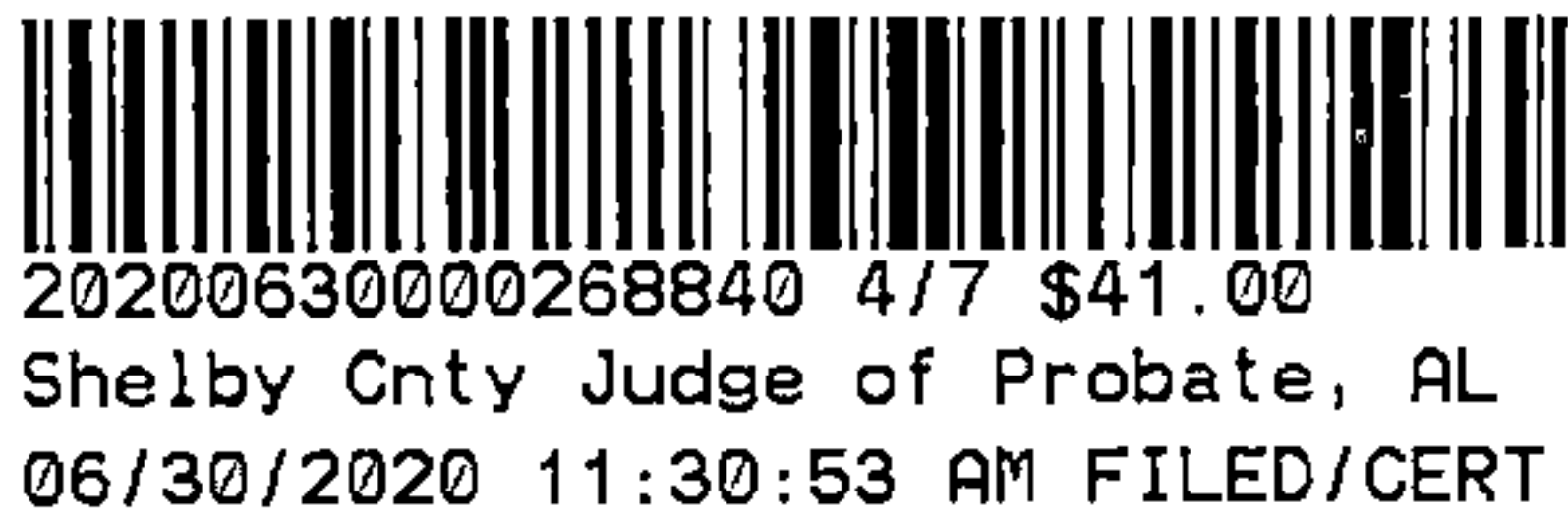
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**TENANT:**

Spreadrite, LLC

Merrill H. Stewart Jr  
By: Merrill H Stewart Jr Date 6/1/2020  
Its: Sole Member



**BUSINESS ACKNOWLEDGMENT**

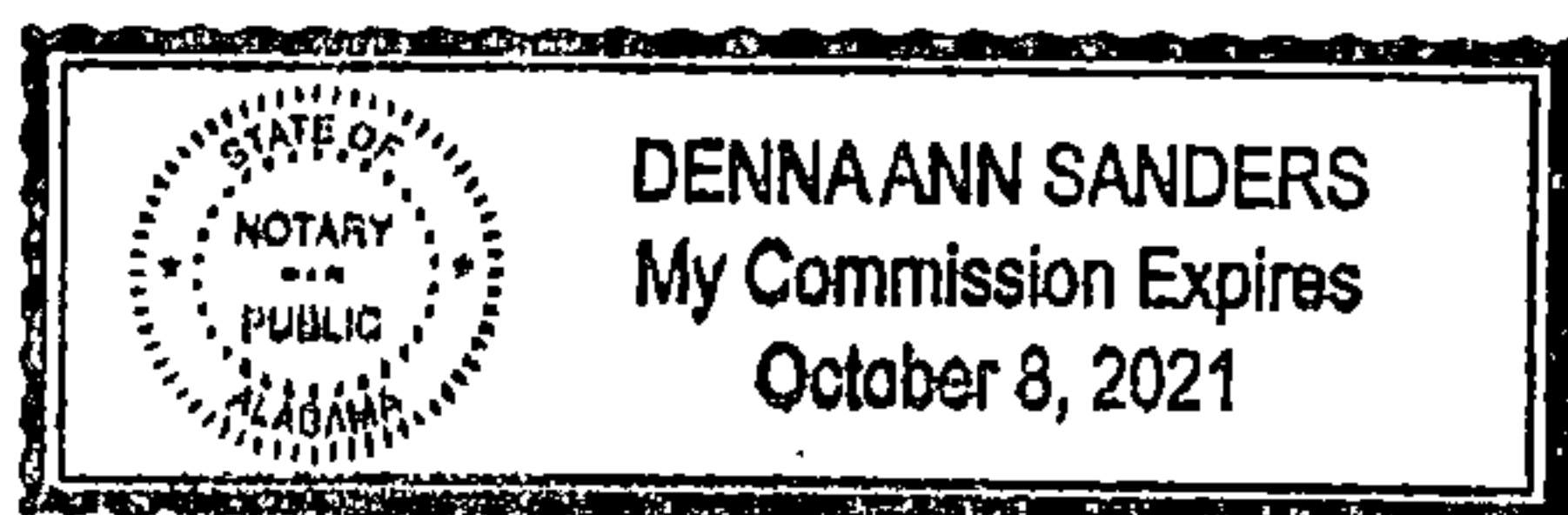
STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, \_\_\_\_\_, in and for said County and in said State, hereby certify that Merrill H Stewart Jr, Sole Member on behalf of Spreadrite, LLC, an Alabama Limited Liability Company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, in his/her official capacity and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company. Given under my hand this the 3rd day of June, 2020.

My commission expires: 10-8-21

Denma Ann Sanders

(Official Seal)



By signing this Agreement, Lender acknowledges reading, understanding and agreeing to all of its provisions.

Oakworth Capital Bank

By: James D Williams  
Its: Managing Director

Date

6/1/20



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**BUSINESS ACKNOWLEDGMENT**

STATE OF ALABAMA )  
 )  
COUNTY OF JEFFERSON )

I, LINDA KAY FREDERICK, NOTARY PUBLIC in and for said County and in said State, hereby certify that James D Williams, Managing Director of Oakworth Capital Bank, a(n) Alabama State Bank, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, in his or her official capacity and with full authority, executed the same voluntarily for and as the act of said State Bank.

Given under my hand this the 3rd day of June, 2020.

My commission expires: 12/20/22

Linda Kay Frederick

(Official Seal)



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## EXHIBIT A


Commence at the Southwest corner of the Northeast Quarter of the Southeast Quarter of section 13, Township 20 South, Range 3 West, Shelby County, Alabama, and run thence North 90 Degrees 00 Minutes 00 Seconds East along the South line of said quarter-quarter section a distance of 174.65 feet to a point on the Westerly right of way line of Interstate Highway No. 65 in a curve having a central angle of One Degree Forty Three Minutes Thirty-Five Seconds ( $1^{\circ} 43' 35''$ ) and a radius of 5,054.58 feet; thence run Northeasterly along the Westerly right of way line of I-65 along the arc of said curve an arc distance of 152.29 feet to the P.T. of a curve; thence run North 22 Degrees 53 Minutes 43 Seconds East along the Westerly property line (R.O.W. line) of Interstate 65 a distance of 217.07 feet to a found rebar corner and the point of beginning of the property being described; thence run North 22 Degrees 53 Minutes 43 Seconds East along said I-65 right of way a distance of 204.81 feet to a set rebar corner; thence run North 78 Degrees 28 Minutes 24 Seconds West a distance 441.10 feet to a set rebar corner on the East margin of Commerce Drive; thence run South 25 Degrees 19 Minutes 15 Seconds West along said margin of said drive a distance of 195.31 feet to a set rebar corner; thence run South 77 Degrees 02 Minutes 59 Seconds East a distance of 447.43 feet to the point of beginning.

THE ABOVE DESCRIBED PROPERTY IS ONE AND THE SAME AS THE PROPERTY DESCRIBED IN THE FOLLOWING AS-SURVEYED DESCRIPTION:

A parcel of land being situated in the Northeast quarter of the Southeast quarter of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama and being more particularly described as follows:

Begin at a found 1/2" rebar marking the Northeast corner of Lot 2 of Keystone Investments subdivision, as recorded in Map Book 34, Page 59 in the Office of the Judge of Probate Shelby County Alabama, said point lying on the West right of way of Interstate No. 65; thence leaving said lot line run North 22 degrees 58 minutes 02 seconds East along said right for a distance of 204.59 feet to a found 1/2" rebar; thence leaving said right of way run North 78 degrees 20 minutes 07 seconds West for a distance of 439.95 feet to a found 1/2" rebar, said point lying on the Easterly Right of Way of Commerce Drive; thence run South 25 degrees 29 minutes 26 seconds West along said Easterly Right of Way of Commerce Drive for a distance of 195.21 feet to a found 1/2" rebar, said point marking the Northwest corner of Lot 1 of said subdivision; thence leaving said Easterly Right of Way run South 76 degrees 54 minutes 56 seconds East along the North line of said subdivision for a distance of 446.64 feet to the Point of Beginning.

All lying and being situated in Shelby County, Alabama.

  
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