

THIS INSTRUMENT PREPARED BY:
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Balch & Bingham LLP
P.O. Box 306
Birmingham, Alabama 35201-0306

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02/02/2021 08:35:45 AM
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Send Tax Notice To:
Rausch Coleman Homes Birmingham, LLC
4058 North College Avenue, Ste 300, Box 9
Fayetteville, AR 72703

STATE OF ALABAMA)

COUNTY OF SHELBY)

PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the undersigned, Rausch Coleman Homes Birmingham, LLC, an Alabama limited liability company (hereinafter called "Mortgagor"), is indebted to Birmingham LD, LLC, an Alabama limited liability company (hereinafter referred to as "Mortgagee," whether one or more) on a loan for the purchase of the Property (as defined below) mortgaged hereby in the sum of Seven Hundred Twenty-Two Thousand Seven Hundred Fifty-Six and 19/100 DOLLARS (\$722,756.19) principal, as evidenced by a promissory note of even date herewith, payable to Mortgagee with interest thereon, on demand or as otherwise provided therein (hereinafter "Note");

NOW, THEREFORE, the undersigned Mortgagor in consideration of making the loan above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals or modifications of same, and any and all charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, has bargained and sold and does hereby grant, bargain, sell and convey unto the said Mortgagee, its successors and assigns, the land described on **Exhibit A** attached hereto and made a part hereof (the "Land") and any related improvements, mobile homes, fixtures, easements and other appurtenances (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD the Property and all parts thereof unto the Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to attorneys' fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the Note, and in this Mortgage, expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties,

interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of the Note, or of any installment thereof, principal or interest, when due, or any renewals, extensions, or modifications thereof when due, or upon default in the performance of any of the covenants, conditions or agreements in the Note, or in this Mortgage, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Mortgagor, or any endorser, surety or guarantor of the Note file, or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law or relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all indebtedness, obligations, and liabilities secured hereby to be immediately due and payable, and the Mortgagors hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of the county or counties in which all or a portion of said Property is located, as Mortgagee may elect, subject to the provisions of any applicable law. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in the county or counties and state in which all or a portion of said Property is located. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagor, and all recitals made in any deed executed under this Mortgage shall be evidence of the facts therein recited.

The Mortgagors, their successors and assigns, hereby covenant with the Mortgagee, its successors and assigns, that they are seized of an indefeasible estate in fee simple in and to said Property, and that it will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, its successors and assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever may claim by through or under the Mortgagors.

The Mortgagors further expressly agree and covenant as follows:

1. The Mortgagors shall pay the Note and all installments of principal and interest thereon, when they respectively fall due.
2. The Mortgagors shall not commit or permit waste of the Property.
3. Mortgagor shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.
4. If it shall become necessary to employ an attorney to collect the debt or any of the indebtedness hereby secured, or any portion thereof, or to foreclose this Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceedings, then the said Mortgagors shall pay and allow reasonable attorneys' fee and litigation expenses.
5. The Mortgagors shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.
6. If the said Mortgagors fail to perform any of the duties herein specified, the Mortgagee may perform the same, including but not limited to payment of insurance premiums, taxes, liens and other charges.
7. The Mortgagee may advance to or on behalf of said Mortgagors such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property.
8. The Mortgagee shall have an additional lien upon said Property, secured by this Mortgage, for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 4 through 7 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate of eight percent (5%) per annum, and shall be immediately due and payable.
9. The Mortgagors shall not sell or otherwise transfer or dispose of the Property without the prior written consent of the Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all indebtedness, obligations, and liabilities secured hereby to be immediately due and payable.
10. Neither the Mortgagors nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any hazardous substance on, under, about or from the Property. Without otherwise limiting Mortgagor's covenants as provided herein, Mortgagor shall not use or permit the use of the Property as a land fill or dump, or store, burn or bury or permit the storage, burning or burying of any material or product which may result in contamination of the Property or the groundwater or which may require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or request or permit a change in zoning or land use classification, or cut or remove or suffer the cutting or removal of any trees or timber

from the Property. Nothing in this paragraph shall make Mortgagors accountable to or liable to Mortgagee for any contamination of the property existing on the effective date of this Mortgage.

At its sole cost and expense, Mortgagor shall comply with and shall cause all occupants of the Property to comply with all environmental laws with respect to the disposal of industrial refuse or waste, and/or the discharge, processing, manufacture, generation, treatment, removal, transportation, storage and handling of hazardous substances, and pay immediately when due the cost of removal of any such wastes or substances from, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations and orders.

Mortgagor shall not install or permit to be installed in or on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall further not install or permit the installation of any machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) on or in the Property.

Mortgagor hereby (i) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws; and (ii) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties, and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section 10 or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Property, or a breach or violation of any environmental laws on the Property, whether or not the same was or should have been known to Mortgagee. The provisions of this section 10 involving the obligation to indemnify shall survive the payment of the Note and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Mortgagor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Mortgagor will not remove, or grant to any other party the right to remove, any timber for commercial purposes (but Mortgagors shall have the right to remove any brush, trees and other material for purposes of improving the property), minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Mortgagee's prior written consent.

Mortgagors authorize Mortgagee and its agents to enter upon the Property to make such inspections and tests, at Mortgagee's expense, as Mortgagee may deem appropriate to determine compliance of the Property with this section 10. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person.

11. No elevated tanks of any kind shall be erected, placed or permitted on any part of the premises. No oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind shall be extracted from or produced or sold, at wholesale or retail, on any part of the premises. No husbandry, raising, keeping, buying, selling or trading of either animals or fowl shall be conducted, maintained or permitted on any part of the premises for commercial purposes, nor shall the premises be used as a hospital, clinic or kennel for animals. Nothing in

this paragraph shall prohibit Mortgagors from raising, keeping, buying selling or trading horses or pets on the Property.

No part of the premises shall be used in whole or in part for the storage of rubbish, trash or garbage of any character whatsoever, or for the storage of any property or thing that will cause the premises or any part thereof to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any part of the premises that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property. Nothing in this paragraph shall make Mortgagors accountable to or liable to Mortgagee for any condition of the property existing on the effective date of this Mortgage.

12. The provisions of this Mortgage shall inure to and bind not only the parties hereto, but also their respective successors and assigns.

13. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Mortgage, or the Note, or any other instrument, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

14. All rights, powers and remedies of Mortgagee herein 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. In the event that any one or more of the terms or provisions of this Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

15. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

16. This mortgage is and shall constitute a fixture filing under Section 7-9A-502 of the Uniform Commercial Code of Alabama. The address of the secured party (the Mortgagee) from which information regarding the security interests granted hereby may be obtained and the mailing address for the debtors (the Mortgagors) are set forth below. For value received, the Mortgagors hereby grant to Mortgagee a security interest in and to all buildings, structures and improvements, mobile homes and any fixtures now or hereafter erected on, affixed to or situated on the Land or any structures or improvements thereon or thereto, together with any accessions thereto or replacements thereof and any proceeds of any of the foregoing.

IN WITNESS WHEREOF, said Mortgagor has caused this instrument to be executed effective as of the 21 day of January, 2021.

MORTGAGOR:

**RAUSCH COLEMAN HOMES
BIRMINGHAM, LLC**
an Alabama limited liability company

By: DCFV
Name: David C. Frye
Its: Manager

Mortgagors' Address: 4058 North College Avenue
Ste 300, Box 9
Fayetteville, AR 72703

Mortgagee's Address: 4058 North College Avenue
Ste 300, Box 9
Fayetteville, AR 72703

STATE OF ARKANSAS)

COUNTY OF WASHINGTON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David C. Frye whose name as the Manager of Rausch Coleman Homes Birmingham, LLC, 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, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 21 day of January, 2021.

Notary Public [Signature]
My commission expires: 4/13/25

[NOTARIAL SEAL]

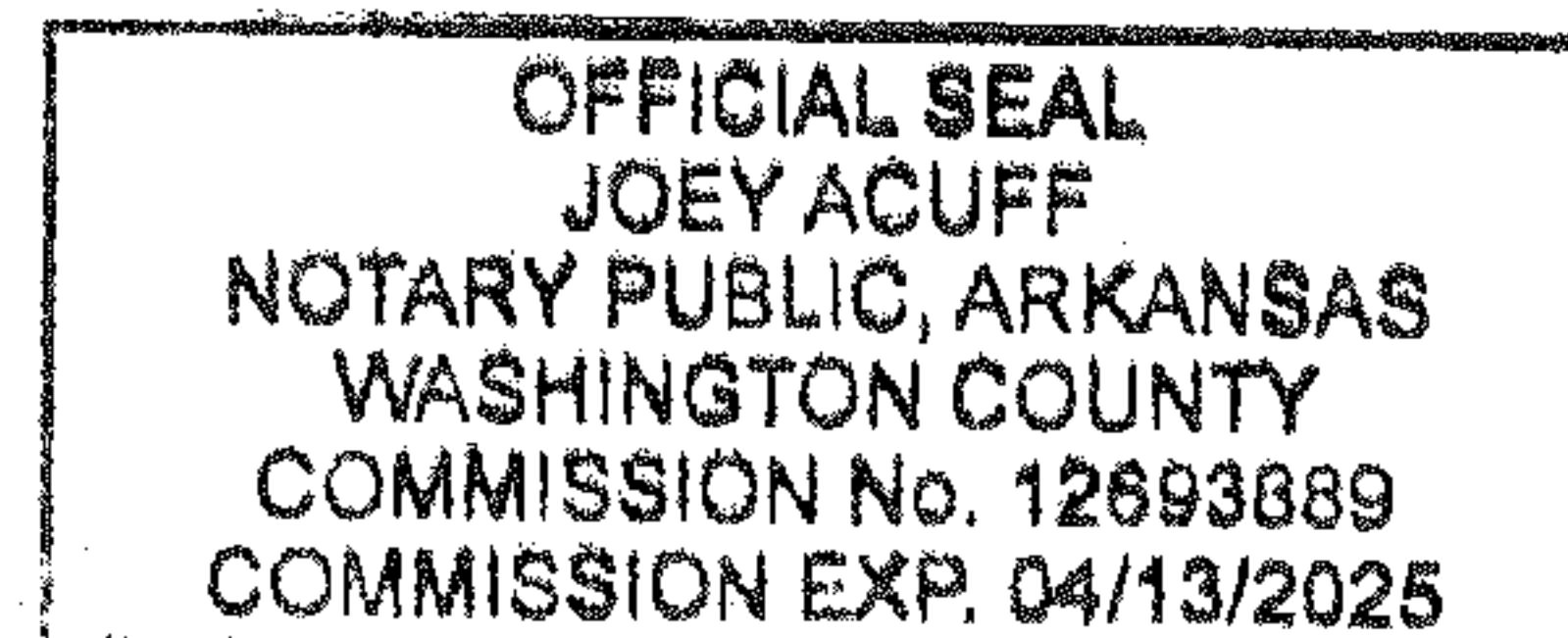


EXHIBIT A
LEGAL DESCRIPTION

The Land is described as follows:

RC - CAMDEN PARK PH 1 SEC 1

Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 125 and 126, according to the Final Plat of Camden Park, Phase One, Sector One, as recorded in Map Book 53, pages 65 A & B 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
02/02/2021 08:35:45 AM
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Allen S. Bayal