

This instrument prepared by:

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45451

STATE OF ALABAMA)

SHELBY COUNTY)



20210406000171210 1/9 \$47.00
Shelby Cnty Judge of Probate, AL
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MORTGAGE MODIFICATION AGREEMENT

THIS MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of the 15th day of March, 2021, by and between **Newcastle Construction, Inc.**, an Alabama corporation (the "Mortgagor"), and **ServisFirst Bank**, an Alabama banking corporation (the "Mortgagee").

Recitals

A. Mortgagor previously obtained a loan in the principal amount of \$7,000,000 as evidenced by a revolving promissory note, dated February 8, 2021 made by Mortgagor in favor Mortgagee (the "Note").

B. The Note is secured by that certain Mortgage, Security Agreement and Assignment of Rents and Leases dated as of February 8, 2021 made by Mortgagor in favor of Mortgagee, and recorded as Instrument Number 2021015998, in the Office of the Judge of Probate of Jefferson County, Alabama, also recorded in Mortgage Book 2021, page 9586, in the Office of the Judge of Probate of St. Clair County, Alabama and also recorded as Instrument No. 20210209000067130, in the Office of the Judge of Probate of Shelby County, Alabama (as amended, modified or restated, the "Mortgage"). Capitalized terms used herein and not defined shall have the meaning assigned to them in the Mortgage.

C. The Mortgagor is the owner of the real property located in Jefferson County, Shelby County and St. Clair County, Alabama, which is legally described on Exhibit A attached to the Mortgage (the "Original Property"). The Mortgagor has this day agreed to grant to the Mortgagee a mortgage on additional property owned by Mortgagor more particularly described on Schedule A attached hereto (the "Additional Real Estate").

D. The Mortgagor and Mortgagee have agreed that the terms of the Mortgage be renewed and amended as described herein, and that the Mortgage, as renewed and amended hereby, shall secure the Note. The Mortgagor acknowledges that the execution of this Agreement confers a real and substantial benefit upon Mortgagor and further acknowledges that it is supported by good and valuable consideration.



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Agreement

NOW, THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the recitals hereinabove set forth which are an integral part of this Agreement and not mere recitals thereto, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound agree as follows:

1. Recitals. The foregoing recitals are true and correct.

2. Grant of Mortgage on Additional Property. NOW, THEREFORE, in consideration of the Recitals and to secure the payment of the Debt, the Mortgagor does hereby mortgage, grant, bargain, sell and convey unto the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through H, both inclusive, and does grant to the Mortgagee a security interest in said property and interests in property:

A. The Additional Real Estate described on Schedule A attached hereto and made a part hereof (the "Additional Real Estate") and all improvements, structures, buildings, appurtenances, and fixtures now or hereafter situated thereon (the "Additional Improvements").

B. All (i) streets, roads, alleys, permits, easements, licenses, rights-of-way, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Additional Real Estate or the Additional Improvements; (ii) strips or gores between the Additional Real Estate and abutting or adjacent properties; (iii) options to purchase the Additional Real Estate or the Additional Improvements or any portion thereof or interest herein, and any greater estate in the Additional Real Estate or Additional Improvements; (iv) water, water rights (whether riparian, appropriative or otherwise and whether or not appurtenant) and water stock, timber, crops and mineral interests on or pertaining to the Additional Real Estate; (v) development rights and credits and air rights and (vi) other contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Additional Real Estate or the Additional Improvements.

C. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Additional Real Estate or the Additional Improvements with respect to which the Mortgagor is the lessor, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Additional Real Estate or the Additional Improvements (all such leases, subleases, agreements and tenancies heretofore mentioned, being hereinafter collectively referred to as the "Additional Leases");

(ii) Any and all guaranties of the lessee's and any sublessee's performance under any of the Additional Leases;

(iii) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Additional Leases or from or out of the Additional Real Estate or any of the



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Additional Improvements, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Additional Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Additional Real Estate or the Additional Improvements, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Additional Leases or against any subtenants or occupants of the Additional Real Estate or any of the Additional Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Additional Rents;" provided, however, so long as no Event of Default has occurred, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Additional Rents (but not prior to accrual thereof); and

(iv) Any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Additional Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the Mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment.

- D. All building and construction materials and supplies, inventory, equipment, fixtures, systems, machinery, furniture, furnishings, goods, tools, apparatus and fittings of every kind or character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with, the complete and proper planning, development, use, occupancy or operation of the Additional Real Estate and Additional Improvements, or acquired (whether delivered to the Additional Real Estate or elsewhere) for use or installation in or on the Additional Real Estate or the Additional Improvements, wherever the same may be located, which are now or hereafter attached to or situated in, on or about the Additional Real Estate and the Additional Improvements, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building and construction materials and supplies, equipment and fixtures of every kind and character used or useful in connection with the Additional Improvements, and all renewals and replacements of, substitutions for and additions to any of the foregoing.
- E. All (i) plans and specifications for any Additional Improvements, (ii) the Mortgagor's rights, but not liability for any breach by the Mortgagor, under all commitments (including any commitments for financing to pay any of the Debt), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government-sponsored program or entity), interest rate protection agreements, contracts and agreements for the design, construction, renovation, operation or inspection of the



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Additional Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill, software and symbols) related to the Additional Real Estate or the Additional Improvements or Additional Personal Property (hereafter defined) or the operation thereof, (iii) deposits and deposit accounts arising from or relating to any transactions related to the Additional Real Estate or the Additional Improvements or Additional Personal Property (including the Mortgagor's right in tenants' security deposits, deposits with respect to utility services to the Additional Real Estate, and any deposits, deposit accounts or reserves hereunder or under any other Loan Document (as defined in the Loan Agreement) for taxes, insurance or otherwise), (iv) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (whether tangible or electronic) arising from or by virtue of any transactions related to the Additional Real Estate or Additional Improvements, (v) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Additional Real Estate and Additional Improvements, (vi) as-extracted collateral produced from or allocated to the Additional Real Estate, including oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom and the proceeds thereof, and (vii) engineering, accounting, title, legal and other technical or business data concerning the Additional Real Estate and Additional Improvements, including software, which are in the possession of the Mortgagor or in which the Mortgagor can otherwise grant a security interest.

- F. All (i) accounts and proceeds (whether cash or non-cash and including payment intangibles), of or arising from the properties, rights, titles and interests referred to hereinabove, including the proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance, present and future (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government-sponsored program or entity), payable because of a loss sustained to all or part of the Additional Real Estate or Additional Improvements (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, proceeds arising out of any damage thereto, including any and all commercial tort claims, (ii) letter-of-credit rights (whether or not the letter of credit is evidenced by writing) the Mortgagor now has or hereafter acquires relating to the properties, rights, title and interests referred to herein, (iii) commercial tort claims the Mortgagor now has or hereafter acquires relating to the properties, rights, title and interests referred to herein, and (iv) other interests of every kind and character which the Mortgagor now has or hereafter acquires in, or for the benefit of the properties, rights, titles and interests referred to hereinabove and all property used or useful in connection therewith, including rights of ingress and egress and remainders, reversions and reversionary rights or interests.
- G. Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Mortgagee, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.



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- H. All proceeds and products of, additions and accretions to, substitutions and replacements for, and changes in any of the property referred to in Granting Clauses A through G hereinabove.

(All of the property and interests in property described in the foregoing Granting Clauses A through H, both inclusive, are herein sometimes collectively called the "Additional Property". The personal property described in Granting Clauses D, E and F and all other personal property covered by this Mortgage are herein sometimes collectively called the "Additional Personal Property".)

SUBJECT, HOWEVER, to the Permitted Encumbrances (as defined in the Loan Agreement).

To have and to hold the Additional Property unto the Mortgagee, its successors and assigns forever.

3. Modification of Mortgage. The "Real Estate" and the "Additional Real Estate" shall be referred to in the Mortgage as the "Real Estate". Exhibit A to the Mortgage is hereby amended to add Schedule A attached hereto and made a part hereof. The "Improvements" and the "Additional Improvements" shall be referred to in the Mortgage as the "Improvements". The "Leases" and the "Additional Leases" shall be referred to in the Mortgage as the "Leases". The "Rents" and the "Additional Rents" shall be referred to in the Mortgage as the "Rents". The "Property" and the "Additional Property" shall be referred to in the Mortgage as the "Property".

4. No Novation. It is the intent of the parties hereto that the transaction contemplated hereby shall not be a novation of the loan previously made by the Mortgagee to the Mortgagor and will not affect the lien priority of the Mortgage.

5. Ratification. The Mortgagor ratifies and confirms the lien and security interests of the Mortgage upon and in any and all property, real, personal or mixed, tangible or intangible, now or hereafter encumbered by the Mortgage and grants to the Mortgagee the benefit of a lien upon and security interest in all such property as security for the indebtedness evidenced by the Note.

6. Acknowledgment of Mortgagor. The Mortgagor acknowledges by the execution hereof that Mortgagor has no actions, defenses, demands and/or claims of set-off or deduction whatsoever, against (i) the Mortgagee, (ii) the indebtedness evidenced by the Note and owed to the Mortgagee, or (iii) the Mortgage. Furthermore, the Mortgagor acknowledges that, to its knowledge, as of the date hereof, the Mortgagee has in no way defaulted or performed any act or omission under the Note, the Mortgage or the Loan Documents or any other agreements between the Mortgagor and the Mortgagee which would give rise to any action or actions, cause or causes of action, suits, debts, sums of money, damages, claims, costs, expenses and/or demands whatsoever, in law or in equity or otherwise, by the Mortgagor against the Mortgagee.


7. Indemnification. The Mortgagor indemnifies and agrees to defend and hold the Mortgagee harmless against any and all mortgage tax and other recording taxes, if any, imposed on the Mortgagee by virtue of its execution of this Agreement or its ownership of the Note or the Mortgage, including any and all penalties, interest and attorneys' fees incurred by the Mortgagee in connection therewith, and the Mortgagor agrees to pay any and all such taxes due hereunder within fifteen (15) days after receipt by Mortgagor of notice thereof. In the event of a failure by the Mortgagor to pay such taxes upon demand and should the Mortgagee elect to pay the same, the same shall be deemed an event of

default by the Mortgagor, and all such charges shall be secured by the lien of the Mortgage and shall bear interest at the default rate provided in the Increased Note from the date of advance by the Mortgagee until paid by the Mortgagor. The provisions of this paragraph shall survive repayment of the Note and the satisfaction of the Mortgage so long as a claim may be asserted by the State of Alabama or any of its agencies.

8. Binding Effect; Governing Law. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall be governed under the laws of the State of Alabama.

9. Ratification. Except as expressly modified hereby, the terms and conditions of the Mortgage and the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.


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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective the day and year first above written.

NEWCASTLE CONSTRUCTION, INC., an Alabama corporation

By: [Signature]
Name: Robin Trimm
Title: CFO

STATE OF ALABAMA)

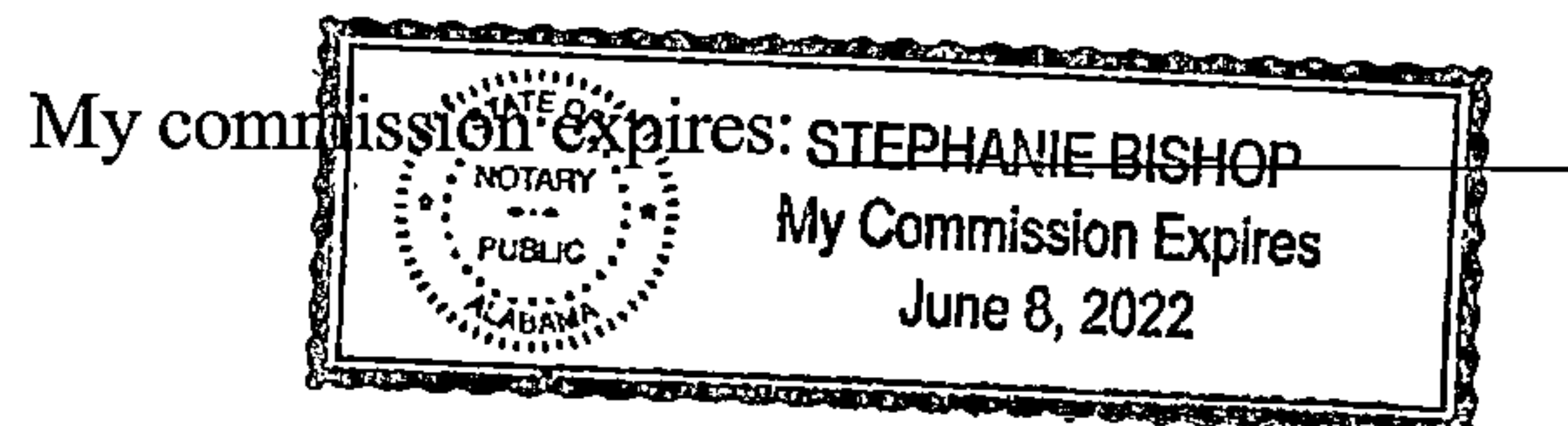
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robin Trimm, whose name as CFO of Newcastle Construction, Inc., an Alabama corporation, 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.


Given under my hand and official seal this the 15th day of March, 2021.

[Signature]
Notary Public

AFFIX SEAL



[signatures continue on following page]


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SERVISFIRST BANK

By: _____

Name: Clark Zinsmeister

Title: Vice President

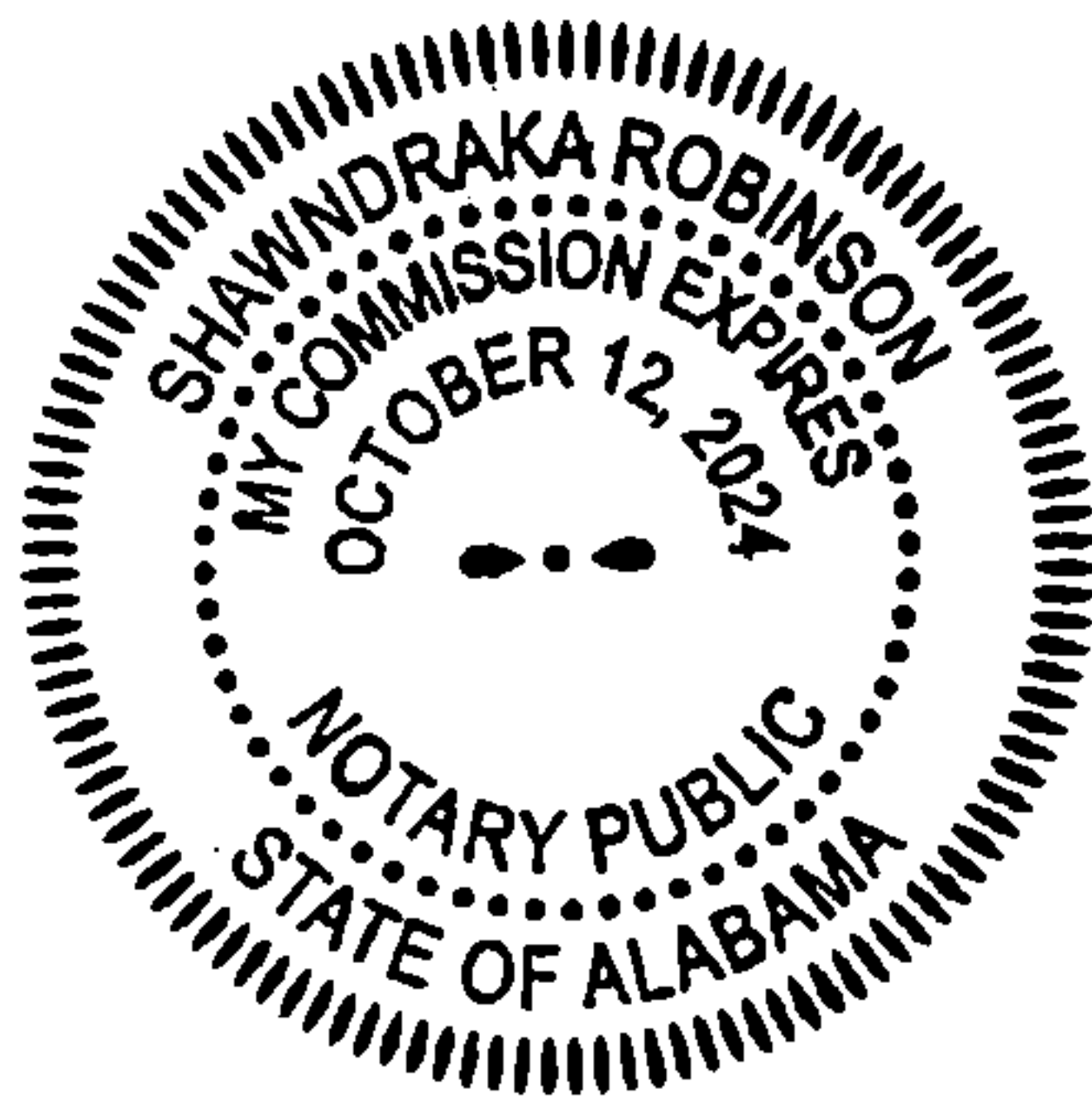
STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Clark Zinsmeister, whose name as Vice President of ServisFirst Bank, an Alabama banking corporation, 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said state bank.

Given under my hand and official seal this the 15th day of March, 2021.

AFFIX SEAL



Shawndraka Robinson
Notary Public

My commission expires: 10/12/2024



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SCHEDULE A

The Land is described as follows:

Lots A-59, A-61, A-95, A-112, A-113, A-114, and A-115, according to the Survey of Griffin Park at Eagle Point, Sector 1, Phase 3, as recorded in Map Book 53, Page 92, in the Probate Office of Shelby County, Alabama.



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