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**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND  
LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

**FROM**

**BROADWAY & PRESTON, LLC**

**TO**

**SOUTHERN STATES BANK**

This instrument prepared by:  
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100 Washington Street  
Huntsville, Alabama 35801  
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## MORTGAGE

THIS MORTGAGE is made on this the 30<sup>th</sup> day of December 2021, between BROADWAY & PRESTON, LLC, an Alabama limited liability company, whose address is 1116 Jefferson Street South, Suite 204, Huntsville Alabama 35801, (the "Mortgagor"), and SOUTHERN STATES BANK, an Alabama banking corporation, whose address is 415-H Church Street NW, Suite 100, Huntsville, Alabama 35801 (the "Mortgagee").

### Recitals

The Mortgagor has executed and delivered to the Mortgagee a Promissory Note in the amount of One Million and 00/100 Dollars (\$1,000,000.00) (the "Note"), in which the Mortgagor promises to pay to the Mortgagee said sums, in lawful money of the United States, advanced or to be advanced by the Mortgagee to the Mortgagor, with interest on the principal sum at the rate and times, in the manner, and according to the terms and conditions specified in the Note and the Loan Agreement, as defined below. The \$1,000,000.00 lent to the Mortgagor under the Note, or such sums that may be advanced from time to time, under the Note shall be referred to as the "Loan" and any outstanding balances, including fees and expenses, may be referred to as "Indebtedness." This Mortgage also secures the Mortgagor's obligations under the Loan Agreement and that certain (whether one or more and whether existing or executed in connection with this mortgage) guaranty ("Guaranty") executed by the guarantors (whether one or more, the "Guarantor") in favor of the Mortgagee on even date herewith.

NOW, THEREFORE, in consideration of the indebtedness, as security for payment to the Mortgagee of the principal with interest, as well as all other sums provided for in the Note, the Loan Agreement, and in this Mortgage, in accordance with their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage, the Loan Agreement, the Guaranty, and in the Note (which, along with all other documents or instruments relating to the Loan, shall be referred to collectively as the "Loan Documents"), the Mortgagor grants, conveys, and mortgages to the Mortgagee all the real estate described in Exhibit "A" attached to and made a part of this Mortgage;

TOGETHER WITH the following, which shall be referred to collectively with the real estate described in Exhibit "A" as the "Mortgaged Property":

- (1) Any and all buildings and improvements erected or subsequently erected on the property (the "Improvements");
- (2) Any and all fixtures, appliances, machinery, equipment, and other articles of personal property at any time installed in, attached to, or situated in or on the real estate or the buildings and improvements to be erected on the real estate, or to be used or intended to be used in connection with the real estate or in the operation of the buildings, improvements, plants, businesses, or dwellings on the real estate, whether or not the personal property is or shall be affixed to the real estate;
- (3) All building materials, fixtures, building machinery, and building equipment delivered to the site of the real estate during the course of, or in connection with, construction of the buildings and Improvements;
- (4) Any and all tenements, hereditaments, and appurtenances belonging or in any way pertaining to the real estate or any part of the real estate mortgaged or intended to be mortgaged under this Mortgage;
- (5) All streets, alleys, passages, ways, and water courses; all easements and covenants now existing or subsequently created for the benefit of the Mortgagor or any future owner or tenant of the mortgaged real estate over ground adjoining the mortgaged real estate; and all rights to enforce the maintenance of such accesses and rights;
- (6) All other rights, liberties, and privileges; all reversions, remainders, income, rents, issues, and profits arising from them; and all the estate, right, title, interest, property, possession, claim, and demand, at law or in equity, of the Mortgagor in and to the real estate or any part of it; and

- (7) The proceeds and replacements of any of the foregoing;

ALSO TOGETHER WITH any and all awards made to the present and subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for taking or damaging by eminent domain of all or any part of the Mortgaged Property or any easement in the property. The Mortgagor assigns such awards to the Mortgagee, who is authorized to collect and receive the proceeds of any awards from the authorities, to give proper receipts and acquittances for those awards, and to apply them (after deduction of attorneys' fees and other costs incurred in connection with collecting the funds) toward the payment of the amount owing on account of this Mortgage and the accompanying Note, even though the amount owing may not then be due and payable. The Mortgagor agrees to make, execute, and deliver, on request, any and all assignments and other instruments sufficient for the purpose of assigning the awards to the Mortgagee, free, clear, and discharged of any and all encumbrances. The Mortgagor further agrees to give the Mortgagee immediate notice of the actual or threatened commencement of any proceedings in the nature of eminent domain affecting all or any part of the Mortgaged Property and will deliver to the Mortgagee copies of any papers served on the Mortgagor in connection with any such proceedings. No settlement for the damages sustained shall be made by the Mortgagor without the Mortgagee's prior written approval. Approval shall not be unreasonably withheld.

TO HAVE AND TO HOLD for its own use forever, the Mortgagee is granted, under this Mortgage, the interests and rights in the Mortgaged Property as described above;

PROVIDED ALWAYS, and this Mortgage is executed on the express condition that, if the Mortgagor pays to the Mortgagee the principal sum of the Note, the interest, and all other sums that are secured by this Mortgage and that are payable by the Mortgagor to the Mortgagee, in accordance with the provisions of the Note, Loan Agreement, and this Mortgage, at the times and in the manner specified, and without deduction, fraud, or delay, and if the Mortgagor performs and complies with all the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage, the Note, the Loan Agreement, and the Guaranty, then this Mortgage and the estate granted by it shall cease and become null and void, except for the provisions which explicitly survive the satisfaction of this Mortgage, if any.

As part of the consideration for the indebtedness secured hereby and to protect the security of this Mortgage, THE MORTGAGOR COVENANTS and agrees as follows:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

#### 1.01. Status of Collateral.

The Mortgagor represents and warrants to the Mortgagee as follows:

- (a) The Mortgagor has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, charges, and all other conditions except ad valorem taxes not yet due and payable, restrictions and easements of record.
- (b) The Collateral is free from all defects which would materially interfere with the value of the Collateral and is constructed in compliance with all laws, ordinances, covenants, conditions, restrictions, and reservations including, without limitation, zoning ordinances affecting the Mortgaged Property.
- (c) There are presently in effect all material licenses, certificates of occupancy and permits as may be required for the present and proposed operation and use of the Collateral.
- (d) All proper "corporate" approvals have been obtained to authorize the execution of all Loan Documents.



(e) To the best of the Mortgagor's knowledge after due inquiry, no material structural defects or dangerous conditions exist with respect to any Improvements.

**1.02 Survival of Representations and Warranties.** The Mortgagor covenants and agrees with the Mortgagee that all representations and warranties of the Mortgagor contained in the Loan Documents shall be true at the time of the execution of each of the Loan Documents, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

## ARTICLE II

### COVENANTS OF MORTGAGOR

**2.01. Payment and Performance.** The Mortgagor shall pay to the Mortgagee, in accordance with the terms of the Note, the Loan Agreement, and this Mortgage, the principal, interest, and other sums, and shall perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Note, the Loan Agreement, and this Mortgage.

**2.02. Maintenance of Mortgaged Property.** The Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property. The Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on the Mortgaged Property without the prior written consent of the Mortgagee.

**2.03. Insurance.** The Mortgagor shall, upon the request of the Mortgagee, procure for, deliver to, and maintain for or cause to be procured for, delivered to and maintained for, the benefit of the Mortgagee during the term of this Mortgage, original paid up insurance companies acceptable to the Mortgagee and in amounts, form and substance and with expiration dates acceptable to the Mortgagee against such insurable hazards as the Mortgagee may reasonably require and as are, from time to time, insured against for properties of similar character and location.

**2.04. Taxes and Other Charges.**

(a) The Mortgagor shall pay, when due and payable and before interest or penalties accrue, all taxes, assessments, water and sewer rents, and other charges or claims that may be assessed, levied, or filed at any time against the Mortgagor, against all or any part of the Mortgaged Property, or against the interest of the Mortgagee in the Mortgaged Property; or that, by any present or future law, may have priority over the indebtedness secured by this Mortgage either in lien or in distribution out of the proceeds of any judicial sale. The Mortgagor shall produce receipts for payment of these amounts to the Mortgagee not later than the payment dates.

(b) 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 mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if the Mortgagor fails to pay such additional taxes, or if the Mortgagor is prohibited from paying such taxes, or if the Mortgagee in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Mortgagee.

**2.05. Installments for Insurance, Taxes, and Other Charges.** Intentionally Omitted.

**2.06. Condemnation.**

(a) Mortgagor's Responsibilities: Proceedings. The Mortgagor, immediately upon obtaining knowledge thereof, shall notify the Mortgagee of any pending or threatened proceedings for the condemnation of any of the Mortgaged Property or of the exercise of any right of eminent domain with respect thereto, or any other pending or threatened proceedings arising out of injury or damage to any of the Mortgaged Property. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time shall execute and deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation. The Mortgagor shall, at the Mortgagor's expense, diligently prosecute any such proceedings, deliver to the Mortgagee copies of all papers served in connection therewith and consult and cooperate with the Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the Mortgagor without the Mortgagee's consent, not to be unreasonably withheld.

(b) Mortgagee's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be paid to the Mortgagee. The Mortgagor authorizes the Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

**2.07. Inspections.** The Mortgagee, and any persons authorized by the Mortgagee, shall have the right at any time, on reasonable notice to the Mortgagor, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

**2.08. Defaults and Right to Remedy.** The Mortgagee, at its option and without notice to the Mortgagor, shall have the right to make any payment or expenditure that the Mortgagor should have made, or that the Mortgagee deems advisable, to protect the security of this Mortgage or the Mortgaged Property, if the Mortgagor fails to pay taxes, assessments, water and sewer charges, other claims for which liens may be attached to the Mortgaged Property (except in case of contest), or insurance premiums; fails to make necessary repairs; permits waste; or otherwise fails to comply with its obligations under this Mortgage, the Note, the Loan Agreement, or any other document executed in connection with this Mortgage. Any payment by the Mortgagee shall be without prejudice to any of the Mortgagee's rights or remedies under this Mortgage, at law, or in equity. All sums, as well as costs, advanced by the Mortgagee pursuant to this Mortgage, shall be due immediately from the Mortgagor to the Mortgagee, shall be secured by this Mortgage, and shall bear interest at two (2) percent annually in excess of the rate otherwise provided in the Note from the date of payment by the Mortgagee until the date of repayment.

**2.09. Sale, Lease or Transfer, Etc.**

(a) Real Property. Except for Permitted Encumbrances and the sale of lots within the subdivision on the Mortgaged Property (as further set forth in the Loan Agreement), the Mortgagor shall not sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Mortgaged Property or any interest therein; contract with any person for any of the foregoing; or subject any of the Mortgaged Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) Equity Interest in Mortgagor. The Mortgagor (if a partnership, limited liability company or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Mortgagor, or any other transaction whereby the legal or beneficial ownership of the Mortgagor is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Mortgagor, the merger or consolidation of the Mortgagor with any other person, or the participation by the Mortgagor in a statutory share exchange with any other person, shall be treated as a transfer of the Mortgaged Property for purposes of this Section.



**2.10. Estoppel Affidavits.** The Mortgagor within ten (10) days after written request from the Mortgagee shall furnish a written statement, duly acknowledge, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

### ARTICLE III

#### ASSIGNMENTS OF RENTS AND LEASES

**3.01. Assignment.** The Mortgagor, in consideration of the Mortgagee's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by the Mortgagee on account of the 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 and in the other Loan Documents, does hereby sell assign and transfer unto the Mortgagee all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on Exhibit "B" to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention of the parties to the Mortgage, and the Mortgagor does hereby appoint irrevocable the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease, or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

**3.02. Prepayment of Rent.** The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or the Mortgagee of the Mortgaged Property.

**3.03. Not Mortgagee in Possession; No Liability.** Nothing herein contained shall be construed as constituting the Mortgagee as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Mortgagee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by the Mortgagor.

**3.04. Present Assignment.** It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagor shall have the right to collect the rents so long as there exists no event of Default under this Mortgage, and provided further, that the Mortgagor's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by the Mortgagee.

**3.05. No Obligation of Mortgagee Under Leases.** The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Mortgagor shall and does hereby agree to indemnify

and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Mortgagee in connection with any one or more of said leases, subleases or agreements, the Mortgagor agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and attorneys' fees which shall be secured by the assignment hereunder and by this Mortgage.

**3.06. Instruction to Lessees.** The Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Mortgagee upon receipt of demand from said Mortgagee to pay the same.

**3.07. Default (Assignment).** Upon the occurrence of any Event of Default, as described in Paragraph 5.01 of this Mortgage, then, in addition to right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, the Mortgagee shall have all rights and remedies set forth in Article V or elsewhere in this Mortgage.

**3.08. Leases Affecting Mortgaged Property.** The Mortgagor shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by the Mortgagee, the Mortgagor shall furnish the Mortgagee with executed copies of all leases now or hereafter created on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of the Mortgagee. The Mortgagor shall not accept payment of rent more than one (1) month in advance without the express written consent of the Mortgagee. If requested by the Mortgagee, the Mortgagor shall execute and deliver to the Mortgagee, as additional security, such other documents as may be requested by the Mortgagee to evidence further the assignment to the Mortgagee hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Mortgagor shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Mortgagee.

#### ARTICLE IV

##### SECURITY AGREEMENT

**4.01. INTENTIONALLY OMITTED.**

#### ARTICLE V

##### DEFAULT AND REMEDIES

**5.01. Events of Default.** Any one or more of the following shall constitute an "Event of Default":

- (a) The failure of the Mortgagor to pay an installment of principal or interest, or any other sum, on the date it is due under any Note, any Loan Agreement, or this Mortgage.
- (b) The Mortgagor's or the Guarantor's nonperformance of or noncompliance with any of the other agreements, conditions, covenants, provisions, or stipulations contained in any Note, in this Mortgage, any Loan Agreement, any Guaranty, or in any other document executed in connection with this Mortgage.
- (c) The entry of a decree or order for relief by a court that has jurisdiction of the Mortgaged Property in respect to the Mortgagor in an involuntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the appointment of a receiver,



liquidator, assignee, custodian, trustee, sequestrator, or similar official for any substantial part of the Mortgagor's property; or the ordering of the winding-up or liquidation of the Mortgagor's affairs.

(d) The commencement by either the Mortgagor or any Guarantor of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the consent by the Mortgagor to the appointment of, or the taking of possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official for any substantial part of the Mortgagor's property; the making by either the Mortgagor or any Guarantor of any assignment for the benefit of creditors; or the failure of either the Mortgagor or a Guarantor generally to pay its debts as they become due.

(e) The failure, within forty-five (45) days after the entry of a final judgment for the payment of money that is rendered against the Mortgagor.

(f) In the event the Mortgagor herein sells, transfers or conveys the real estate described herein other than as allowed by the Loan Documents.

(g) In the event the Mortgagor or any Guarantor breaches any other obligation they may have to the Mortgagee, including, but not limited to, all previously incurred indebtedness to the Mortgagee for the pre-existing mortgages on the Property, if any.

(h) The death or dissolution of any Guarantor.

**5.02. Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan) secured hereby (or such parts as the Mortgagee may elect) with interest accrued thereon (or such parts as the Mortgagee may elect) shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

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

(a) If an Event of Default shall have occurred and be continuing, 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 or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking possession, the Mortgagee, as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by the Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, presently and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by the Mortgagee) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by the Mortgagee) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be in its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or an portion thereof selected by the Mortgagee), including those past



due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 2.05, if any; third to the payment of any other sums required to be paid by the Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**5.04. Receiver.**

(a) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) The Mortgagor shall pay to Mortgagee upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 5.04; and all such expenses shall be secured by this Mortgage.

**5.05. Power of Sale.** At the option of said Mortgagee, this Mortgage may be foreclosed as now provided by law in case of past due Mortgages; and the Mortgagee shall be authorized to take possession of the Mortgaged Property hereby conveyed, and after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the County wherein said property is located, to sell the same in front of the Courthouse door of the County wherein said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the Mortgagor.

And the undersigned further agrees that said Mortgagee, its successors, or assigns, may bid at any sale had under the terms of this Mortgage, and purchase the Mortgaged Property if the highest bidder thereof; and the undersigned further agrees to pay a reasonable attorney's fee to said Mortgagee, its successors or assigns for the foreclosure of this Mortgage, either under the power of sale contained herein or by virtue of the decree of any court of competent jurisdiction, said fee to be a part of the debt herein secured, and the purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

In the event of a sale hereunder, the Mortgagee, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the undersigned a good and sufficient deed to the property sold.

**5.06. Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to 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 under the Note, any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute.

## ARTICLE VI

### ADDITIONAL PROVISIONS

**6.01. Notices.** All notices permitted or required under this Mortgage or the Note shall be in writing, and shall be personally delivered, or sent by registered or certified mail, postage prepaid, and addressed to the addressee, at the address set forth above or at such other address as the addressee may designate in writing from time to time.

**6.02. Amendment.** This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

**6.03. Parties Bound.** This Mortgage shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. For purposes of this Mortgage, as well as the other Loan Documents, the neuter gender shall include the masculine and the feminine, the singular shall include the plural, and the plural shall include the singular, as the context may require.

**6.04. Interest Rate.** Notwithstanding any provision contained in this Mortgage or in the Note, the Mortgagor's liability for interest shall not exceed the limits now imposed by the applicable usury law. If any clause in the Note or this Mortgage requires interest payments in excess of the highest rate permitted by the applicable usury law, the clause in question shall be deemed to require payment at the highest interest rate allowed by the applicable usury law.

**6.05. Captions.** The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction, or effect.

**6.06. Financial Statements.** As long as the debt secured by this Mortgage remains unpaid in whole or in part, the Mortgagor covenants to furnish each year to the Mortgagee statements that shall set forth the annual income and expenses relating to the Mortgaged Property and a balance sheet for the Mortgagor. If required by Mortgagee, these statements and the balance sheet shall be: audited; prepared by a public accountant who is satisfactory to the Mortgagee; compiled in such detail as the Mortgagee may reasonably require; and be due as reasonably requested by the Mortgagee. The Mortgagor also covenants to furnish tax returns each year to the Mortgagee.

**6.07. Waiver.** The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default.

**6.08. Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note and in the other Loan Documents, shall be in no way affected, prejudiced or disturbed thereby.

**6.09. Conflict in Loan Documents.** In the event of conflict in the terms of any provision in this Mortgage, the Note, or any of the other Loan Documents, the terms of the provision most favorable to the Mortgagee shall apply.

**6.10. Loan Documents.** Wherever reference is made herein to this Mortgage, the Note, or the other Loan Documents, such reference shall include all renewals, extensions, modifications and refinancings thereof.

**6.11. Definitions.** Any capitalized term not defined in the Mortgage shall be assigned the meaning defined elsewhere in the Loan Documents.

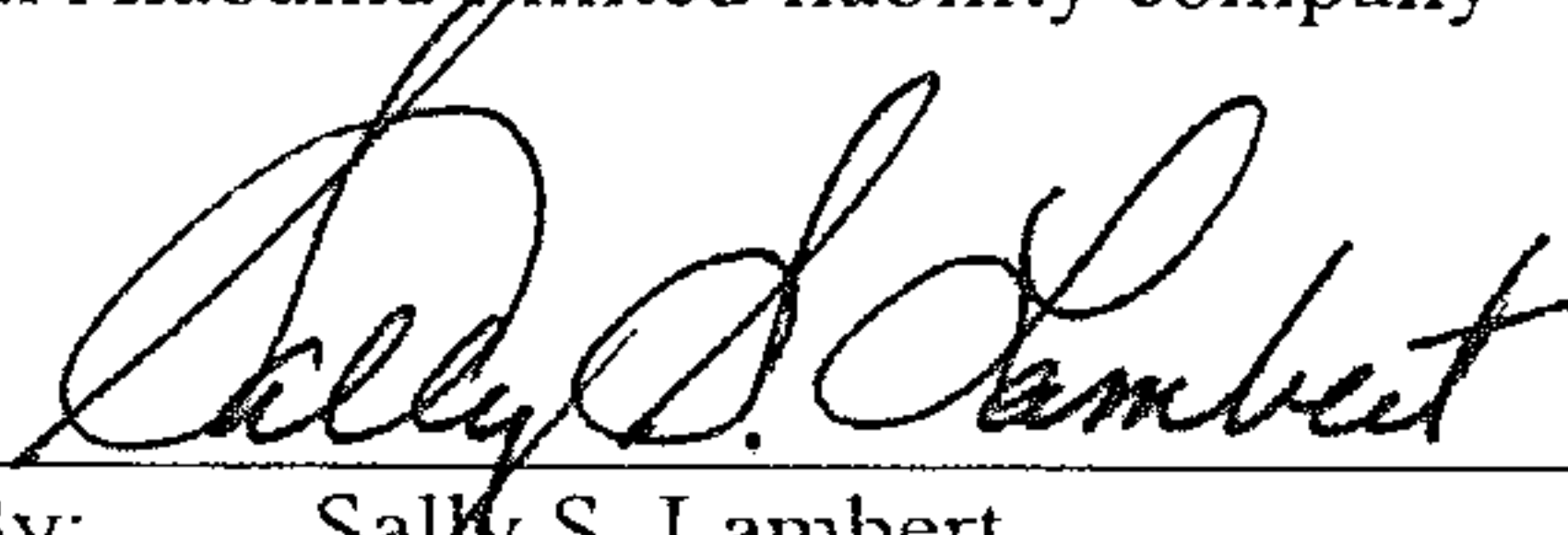


**6.12. Future Advances, Revolving and Open-End Loans, and Other Debts.** It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, being defined as any and all obligations and liabilities, direct or contingent, of the Mortgagor to the Mortgagee, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancing of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

**6.13. Construction Mortgage. INTENTIONALLY OMITTED.**

IN TESTIMONY WHEREOF, the undersigned, by and through its duly authorized managers, have caused this instrument to be executed on the day and year first above written.

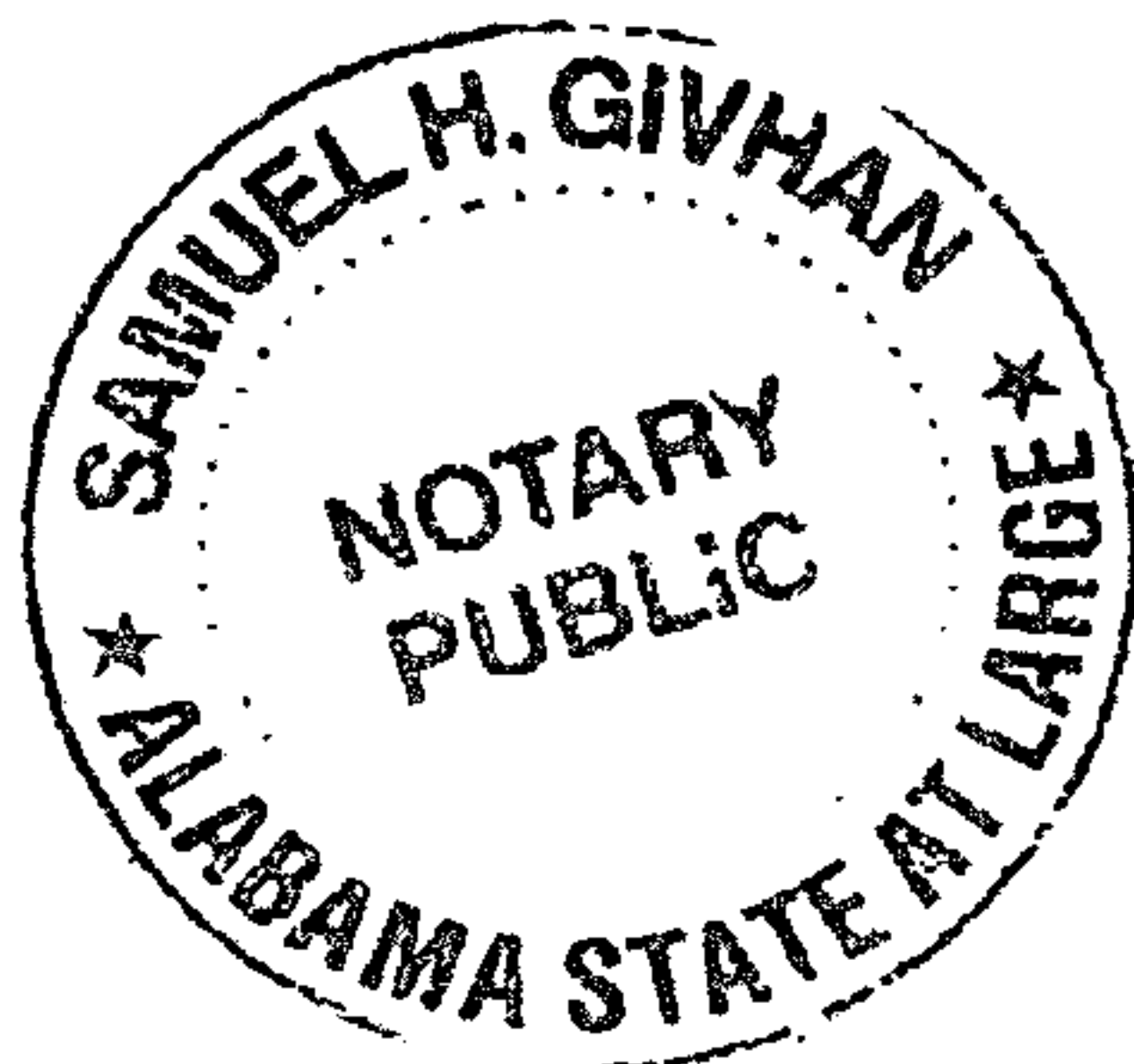
BROADWAY & PRESTON, LLC,  
an Alabama limited liability company

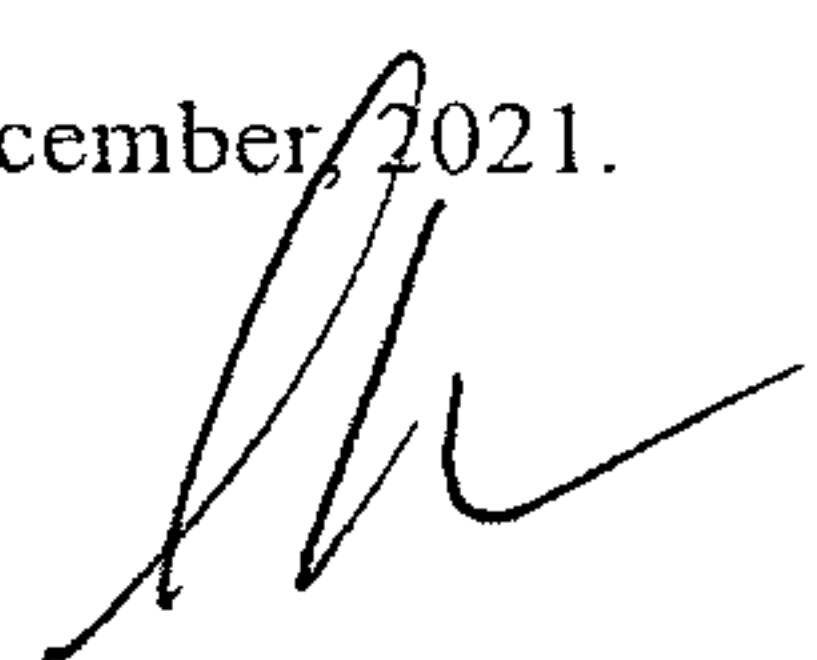
 (SEAL)  
By: Sally S. Lambert  
Its: Manager

STATE OF ALABAMA )  
:  
COUNTY OF MADISON )

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, Sally S. Lambert, whose name as Manager of BROADWAY & PRESTON, LLC, an Alabama limited liability company 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, she, 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 and seal this the 30<sup>th</sup> of December, 2021.



  
Notary Public  
My Commission Expires: 2-22-23

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Parcel I:

Part of the SW 1/4 of the SW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From the SW corner of said Section 30, run in an Easterly direction along the South line of said section for a distance of 94.14 feet to an existing iron rebar being on the East right of way line of U.S. Highway #31 and being the Point of Beginning; thence continue in an Easterly direction along the South line of said section for a distance of 214.44 feet to an existing iron rebar; thence turn an angle to the left of 89°34'39" and run in a Northerly direction for a distance of 223.26 feet to an existing PK nail set on the South right of way line of Valleydale Road; thence turn an angle to the left of 100°48'21" and run in a Southwesterly direction along said South right of way line of Valleydale Road for a distance of 79.74 feet to an existing nail; thence turn an angle to the left of 33°50'29" and run in a Southwesterly direction for a distance of 181.0 feet to an existing old iron rebar being on the East right of way line of U.S. Highway #31; thence turn an angle to the left of 40°17'08" and run in a Southerly direction along the East right of way line of U.S. Highway #31 for a distance of 83.02 feet, more or less, to the Point of Beginning.

Parcel II:

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described by the following metes and bounds legal description, based on a Boundary Survey prepared by Walter Schoel Engineering Company, Inc. dated August 27, 1998, to wit:

Commence at the Northwest corner of the said Section 31 (also known as the Southwest corner of Section 30); run thence along the North boundary of said Section 31, North 90°00'00" East (assumed bearing) for a distance of 94.14 feet, to the Point of Beginning of the parcel herein described, said point also being a point on the Easterly right of way line of U.S. Highway #31; thence continue along said North boundary of Section 31, North 90°00'00" East for a distance of 214.44 feet; thence South 00°25'21" West for a distance of 90.00 feet; thence along a line lying 90.00 feet South of and parallel with the aforesaid North boundary of Section 31, North 90°00'00" West for a distance of 224.27 feet, to a point on the aforesaid Easterly right of way line of U.S. Highway #31, lying 100 feet Easterly of concentric with the centerline of said Highway, being a spiral angle of 4°30'; thence along said right of way, across the chord North 06°38'57" East for a distance of 90.61 feet, to the Point of Beginning.

Together with those certain rights granted for ingress/egress as set out in the Reciprocal Easement Agreement recorded in Instrument 1993-22435 in the Probate Office of Shelby County, Alabama.



**EXHIBIT B**

**LEASES**

All leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including that certain Ground Lease by and between Broadway & Preston, LLC, an Alabama limited liability company, as Landlord, and Circle K Stores, Inc., a Texas corporation, as Tenant, dated December 22, 2021.



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**01/04/2022 03:32:09 PM**  
**\$1558.00 JOANN**  
**20220104000003670**

*Allen S. Bayl*