

20220713000276430
07/13/2022 12:37:13 PM
MORT 1/24

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Banc of California, National Association
601 S. Figueroa St., Suite 2800
Los Angeles, CA 90017
Attention: Anthony Huitrado

1122974

SPACE ABOVE THE LINE FOR RECORDER'S USE

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS, AND FIXTURE FILING

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS, AND FIXTURE FILING (this "Mortgage") is entered into at Santa Ana, California, as of July 1, 2022, among Birmingham Holdings, LLC, a Nevada limited liability company, with an address of 3790 Paradise Road, Suite 250, Las Vegas, NV 89169 (the "Mortgagor") for the use and benefit of BANC OF CALIFORNIA, NATIONAL ASSOCIATION, with an address of 3 MacArthur Place, Santa Ana, CA 92707 (the "Mortgagee"), and the Mortgagee.

The real property which is the subject matter of this Mortgage has the following address: **5429 Highway 280 East, Birmingham, AL 35242** (the "Address").

See Exhibit "A" attached hereto and made a part thereof.

NOTICE: THE OBLIGATIONS SECURED HEREBY PROVIDE FOR PERIODIC INCREASES AND/OR DECREASES IN THE APPLICABLE INTEREST RATE AND ACCRUAL OF INTEREST WHICH MAY RESULT IN INCREASES IN THE PRINCIPAL BALANCE ABOVE THE FACE PRINCIPAL AMOUNT OF THE APPLICABLE NOTE(S).

THIS MORTGAGE CONSTITUTES A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-91-502(c), CODE OF ALABAMA 1975, AS AMENDED, AND COVERS GOODS WHICH ARE, OR ARE TO BECOME, FIXTURES ON THE REAL PROPERTY DESCRIBED ON EXHIBIT A, ATTACHED HERETO AND MADE A PART HEREOF.

1. MORTGAGE, OBLIGATIONS AND FUTURE ADVANCES.

1.1 Mortgage. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Mortgagee and its successors and assigns, WITH MORTGAGE

COVENANTS and WITH POWER OF SALE, all of Mortgagor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined).

1.2 Security Interest in Property. As continuing security for the Obligations the Mortgagor hereby pledges, assigns and grants to the Mortgagee, and its successors and assigns, a security interest in any of the Property (as hereinafter defined) constituting personal property or fixtures. This Mortgage is and shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code as enacted in the State of Alabama (the "Uniform Commercial Code") as to any and all personal property and fixtures and as to all such property the Mortgagee shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code covering any Property which now is or later may become a fixture.

1.3 Collateral Assignment of Leases and Rents. The Mortgagor hereby irrevocably and unconditionally assigns to the Mortgagee, and its successors and assigns, as collateral security for the Obligations all of the Mortgagor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Mortgagor shall have a license, revocable by the Mortgagee, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Mortgagee exercises its rights and remedies to collect such rents as set forth herein. Mortgagor hereby irrevocably authorizes and directs the Tenants (as defined in the Loan Agreement) under all Leases to pay all amounts owing to Mortgagor thereunder to Mortgagee following receipt of any written notice from Mortgagee that states that an Event of Default remains uncured and that all such amounts are to be paid to Mortgagee. Mortgagor further authorizes and directs all such Tenants to pay all such amounts to Mortgagee, or its designees, without any right or obligation to inquire as to the validity of Mortgagee's notice and regardless of the fact that Mortgagor has notified any such Tenants that Mortgagee's notice is invalid or has directed any such Tenants not to pay such amounts to Mortgagee. All rents collected by the Mortgagee or its receiver shall be applied first to payment of the costs of management of the Property and of collection of rents, including, but not limited to, costs and expenses of any receivership and attorneys' fees incurred by the Mortgagee in connection with the receivership, and then to the Note (in such order as Mortgagee may determine) and any other obligations secured by this Mortgage. The Mortgagee and the receiver shall be liable to account only for those rents actually received.

1.4 Conditions to Grant. The Mortgagee shall have and hold the above granted Property; provided, however, the conveyances, grants and assignments contained in this Mortgage are made upon the express condition that, if Mortgagor shall irrevocably pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Mortgage, shall pay and perform all other Obligations as set forth in this Mortgage and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Mortgage shall be appropriately reconveyed, released and discharged.

1.5 Property. The term "Property," as used in this Mortgage, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon situated on that certain real property, as more particularly described in Exhibit A attached hereto, together with: (i) all buildings and improvements now or hereafter located on said Property; (ii) all right, title and interest of Mortgagor in *and* to all streets, roads and public places (opened or proposed), all easements, rights-of-way (public or private), rights of ingress and egress, tenements, hereditaments and appurtenances, now or hereafter used in connection with the land, and all air space over the land; (iii) all proceeds, including without limitation, insurance proceeds, unearned premiums, awards, refunds and claims arising on account of any damage to or taking of the property herein described, or alteration or decrease of value of the Property, and all causes of action and recoveries for any loss and diminution in value of such property; and all deposits made by Mortgagor with third parties in connection with the development of the land and refunds received by the Mortgagor with respect to payments made in connection with the development of the land; (iv) all interest, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the property described herein, including without limitation remainders, reversions, transferable entitlements and development rights, usage rights (including without limitation drainage, horticultural, mineral, mining, water, oil, gas, and any other rights to produce or share in production), privileges and royalties; (v) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street (open or proposed) adjoining the land described herein, any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with such land, and any development agreements relative to such land; (vi) all the estate, interest, right and title and other claim or demand which Mortgagor now has or may hereafter acquire against anyone with respect to any damage to all or any part of the property described herein, including without limitation, damage arising from any defect in or with respect to the design or construction of all or any part of the improvements and damage resulting therefrom; (vii) all deposits or other security or advance payments including rental payments made by or on behalf of Mortgagor to others with respect to (a) insurance policies relating to all or any part of the property, (b) utility service for all or any part thereof, (c) cleaning, maintenance, repair or similar services for all or any part of such property, (d) refuse removal or sewer service for all or any part of such property, (e) rental of equipment, if any, used in the operation by Mortgagor of all or any part of such property, and (f) parking or similar services or rights afforded to all or any part of such property; (viii) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ix) all judgments, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (x) all of the rights and benefits of the Mortgagor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, and including all guaranties, supporting obligations, letters of credit and letter of credit rights guaranteeing or supporting any such lease or tenancy, but specifically excluding all duties or obligations of the Mortgagor of any kind arising thereunder (the "Leases"); (xi) all contracts, permits and licenses respecting the use, operation or maintenance of the Property; and (xii) all instruments, investment property, deposit accounts, accounts, contract rights, general intangibles, and other intangible property, and rights now or hereafter relating to the foregoing property, or the operation thereof, or used in connection therewith. The foregoing listing is intended only to be descriptive of the property encumbered

hereby, and not exclusive or all inclusive. It is the intent of Mortgagor to encumber hereby all property located or to be located upon the Property.

1.6 Obligations. The term "Obligation(s)," as used in this Mortgage, shall mean (a) The performance of the obligations contained herein and the payment of \$4,150,000.00 with interest thereon and all other amounts payable according to the terms of that certain Commercial Loan Agreement of even date herewith made between Mortgagor and Mortgagee (the "Loan Agreement"), and that certain promissory note of even date herewith made by Mortgagor, payable to Mortgagee or order, and any and all extensions, renewals, modifications or replacements thereof, whether the same be in greater or lesser amounts (the "Note"), which Note may provide for one or more of the following: (i) a variable rate of interest; (ii) a balloon payment at maturity; or (iii) deferral of a portion of accrued interest under certain circumstances with interest so deferred added to the unpaid principal balance of the Note and secured hereby; (b) the repayment of any and all sums advanced or expenditures made by Mortgagee subsequent to the execution of this Mortgage for the maintenance or preservation of the Property or advanced or expended by Mortgagee pursuant to any provision of this Mortgage subsequent to its execution, together with interest thereon; and (c) all other obligations and amounts now or hereafter owing by Mortgagor to Mortgagee under this Mortgage, the Loan Agreement, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the loan evidenced by the Note and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Mortgage does not and shall not in any event be deemed to, secure the obligations owing to Mortgagee under: (a) any environmental indemnity agreement (the "Indemnity Agreement") executed in connection with such loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of such loan.

2. **REPRESENTATIONS, WARRANTIES, COVENANTS.**

2.1 Representations and Warranties. The Mortgagor represents and warrants that:

(a) This Mortgage has been duly executed and delivered by the Mortgagor and is the legal, valid and binding obligation of the Mortgagor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;

(b) The Mortgagor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than the "Permitted Encumbrances" (as defined in the Loan Agreement);

(c) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Mortgagee; and

(d) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

2.2 Recording; Further Assurances. The Mortgagor covenants that it shall, at its sole cost and expense, cause this Mortgage, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Mortgagee in the Property and the rights of the Mortgagee under this Mortgage. Mortgagor will from time to time execute and deliver to the Mortgagee such documents, and take or cause to be taken, all such other or further action, as the Mortgagee may request in order to effect and confirm or vest more securely in the Mortgagee all rights contemplated by this Mortgage (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Mortgagee the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Mortgagor authorizes the Mortgagee to file financing statements, continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Mortgagee may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as defined in this Mortgage and which contain any other information required by the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor; Mortgagor also authorizes the Mortgagee to file financing statements describing any agricultural liens or other statutory liens held by the Mortgagee. Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. In addition, Mortgagor shall at any time and from time to time, take such steps as the Mortgagee may reasonably request for the Mortgagee (i) to obtain an acknowledgment, in form and substance satisfactory to the Mortgagee, of any bailee having possession of any of the Property that the bailee holds such Property for the Mortgagee, and (ii) otherwise to insure the continued perfection and priority of the Mortgagee's security interest in any of the Property and the preservation of its rights therein. Mortgagor hereby appoints the Mortgagee as its agent and attorney-in-fact for the purpose of executing and filing all documents, instruments and agreement required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Mortgage terminates in accordance with its terms, all Obligations are paid in full and the Property is reconveyed from the lien of this Mortgage.

2.3 Restrictions on the Mortgagor. The Mortgagor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Mortgagee in each instance:

(a) Transfer all or any part, whether directly or indirectly, of any legal or beneficial interest in the Mortgagor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Mortgage. For purposes of this Section 2.3(a) "Transfer" shall mean the conveyance of the Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest (other than pursuant to leases in the ordinary course of business), lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of an interest in the Property. If Mortgagor is a corporation, partnership or

limited liability company, transfer also includes any change in ownership of twenty percent (20%) or more of the voting stock, partnership interests or limited liability company interests, as the case may be, of Mortgagor or any controlling or management interest in such entity or change in manager of an entity, even if the change in ownership is less than twenty percent (20%). Mortgagee's approval shall not be unreasonably withheld.

(b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or

(c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Mortgagor further agrees to give the Mortgagee prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Mortgagor agrees to defend its title to the Property and the Mortgagee's interest therein against the claims of all persons and, unless the Mortgagee requests otherwise, to appear in and diligently contest, at the Mortgagor's sole cost and expense, any action or proceeding that purports to affect the Mortgagor's title to the Property or the priority or validity of this Mortgage or the Mortgagee's interest hereunder.

2.4 Insurance. Mortgagor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Mortgagee may require (the "Insurance Requirements"). All policies regarding such insurance shall be issued by companies reputable and licensed and otherwise acceptable to the Mortgagee, provide deductible amounts acceptable to the Mortgagee, name the Mortgagee as mortgagee, loss payee and additional insured, provide that no cancellation or material modification of such policies shall occur without at least thirty (30) days prior written notice to the Mortgagee, and shall otherwise comply with the Insurance Requirements. The Mortgagor will furnish to the Mortgagee upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Mortgagee.

2.5 Operation of Property. The Mortgagor covenants and agrees as follows:

(a) The Mortgagor will not permit the Property to be used for any unlawful or improper purpose (including without limitation the manufacturing, distribution, production of pornography or marijuana). Mortgagor will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Mortgagor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Mortgagee of (i) any violation of

any such law, ordinance or regulation by the Mortgagor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

(b) Mortgagor shall not receive or collect any rents from any present or future Tenant of the Property or any part thereof in advance in excess of one (1) month's rent. Mortgagor shall promptly deposit and maintain all security deposits and other deposits received by Mortgagor from Tenants in a segregated trust account in a federally insured institution.

(c) Mortgagor shall perform its obligations under the Leases in all material respects. Mortgagor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Mortgagee and the Mortgagee's agents, employees and representatives, at such reasonable times as the Mortgagee may request, to enter and inspect the Property and such books and records; and

(d) Mortgagor will at all times keep the Property in good and first-rate repair and condition, reasonable wear and tear excepted (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

(e) Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the nature of the occupancy for which the Property was intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of said property without Mortgagee's prior written consent.

(f) Neither Mortgagor nor any Tenant or other person shall remove, demolish or make a structural alteration of any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind or except as otherwise provided in the Loan Agreement.

2.6 Payments. The Mortgagor covenants to pay when due: all Federal, state, municipal, real property and other taxes, insurance premiums, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges relating to the Property, this Mortgage or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or any interest therein. Upon the occurrence and during the continuance of an Event of Default by Mortgagor, and if and when requested by the Mortgagee, the Mortgagor shall deposit from time to time with the Mortgagee sums determined by the Mortgagee to be sufficient to pay when due the amounts referred to in this Section. Mortgagee shall not be liable for interest on any such tax and insurance deposits and may commingle the same with its general funds, and such deposits shall create a debtor-creditor relationship and not that of a trust. Mortgagor shall procure and deliver to Mortgagee, in advance, statements for such charges. Payments from said account for such purposes may be made by Mortgagee at Mortgagee's discretion, even though subsequent owners of the property described herein may benefit thereby.

In the event of any default under the terms of this Mortgage, all or any part of the balance of said account may be applied to any part of the indebtedness hereby secured, and, in refunding any part of said account, Mortgagee may deal with whomever is represented to be the owner of said property at that time. The enforceability of the covenants relating to taxes and insurance premiums provided for herein shall not be affected hereby, except to the extent that said obligations have been actually met by compliance with this paragraph. The Mortgagor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Mortgagee's request, provides the Mortgagee with adequate cash security, in the Mortgagee's reasonable judgment, against the enforcement thereof. The Mortgagor shall furnish to the Mortgagee all payment receipts or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Mortgagor shall also furnish to the Mortgagee evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Mortgagee. If Mortgagor shall fail to pay any such sums, the Mortgagee may, but shall not be obligated to, advance such sums. Any sums so advanced by the Mortgagee shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Mortgage.

2.7 Notices; Notice of Default. The Mortgagor will deliver to the Mortgagee, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Mortgagor is in default in the performance or observance of any of the terms hereof or that the Mortgagor or any Tenant is in default of any terms of the Leases. The Mortgagor further agrees to deliver to the Mortgagee written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.8 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Mortgagor shall immediately give written notice to the Mortgagee, describing the nature and extent thereof. The Mortgagee may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Mortgagor shall immediately give to the Mortgagee copies of all notices, pleadings, determinations and other papers relating thereto. The Mortgagor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Mortgagor shall not settle any such claim without the Mortgagee's prior written consent. The Mortgagor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Mortgagee and immediately pay the same to the Mortgagee. The Mortgagor authorizes any award or settlement due in connection with a Taking to be paid directly to the Mortgagee in amounts not exceeding the Obligations. The Mortgagee may apply such amounts to the Obligations in such order as the Mortgagee may determine.

2.9 Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Mortgagee and, at the option of the Mortgagee, be applied to the Obligations in such order as the Mortgagee may determine; provided, however, that if the Mortgagee shall require repair of the Property, the Mortgagee may release all or any portion

of such proceeds to the Mortgagor for such purpose. Any insurance proceeds paid to the Mortgagor shall be held in trust for the Mortgagee and promptly paid to it.

3. CERTAIN RIGHTS OF THE MORTGAGEE.

3.1 Legal Proceedings. The Mortgagee shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Mortgagee's reasonable judgment, might affect the Property or any of the rights created or secured by this Mortgage. The Mortgagee shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Mortgagee shall have the right, at the Mortgagor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at any time following the occurrence and continuance of an Event of Default at such times as the Mortgagee deems necessary, or as may be required by applicable law, or its prevailing credit or underwriting policies. All costs and expenses incurred by Mortgagee in connection with any such inspection, appraisal, or assessment, shall be payable by Mortgagor upon demand and shall be secured by this Mortgage. All reports and other evidence and work papers relating to such inspections, appraisals, and assessments, shall be and remain the sole property of Mortgagee, and Mortgagor hereby waives any right which Mortgagor may have by agreement or by operation of law to receive an original or duplicate thereof. Any appraisal or assessment may, at Mortgagee's sole election, be relied upon by Mortgagee in taking any action Mortgagee deems to be necessary or appropriate in connection with the enforcement of its rights and exercise of remedies under or by virtue of this Mortgage, or under any obligation secured hereby, or under any separate obligation pertaining to the Property, or in connection with the protection, maintenance, preservation, remediation, restoration, or repair of the Property. Unless Mortgagee otherwise expressly declares in writing, neither said appraisal nor assessment shall constitute conclusive evidence of the value or condition of the Property or as a representation or warranty by Mortgagee as to the value or condition of the Property, and may not be used or relied upon by Mortgagor for any purpose.

3.3 Financial Statements. The Mortgagee shall have the right, at the Mortgagor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Mortgagee from the Mortgagor or any guarantor of any of the Obligations and the Mortgagor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Mortgagee.

4. DEFAULTS AND REMEDIES.

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:

- (a) Any regular monthly payment under the Note is not paid within ten (10) calendar days after such payment is due, or any other amount secured by this Mortgage (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Mortgagee when due;

(b) Mortgagor or any other party thereto (other than Mortgagee) shall fail to perform its obligations under any other covenant or agreement contained in this Mortgage, the Note, any other Loan Document or the Indemnity Agreement, which failure continues for a period of thirty (30) days after written notice of such failure by Mortgagee to Mortgagor, but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Mortgagee's judgment, absent immediate exercise by Mortgagee of a right or remedy under this Mortgage, the other Loan Documents or the Indemnity Agreement, result in harm to Mortgagee, impairment of the Note or this Mortgage or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such 30-day period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 2.3 or Section 2.4 of this Mortgage;

(c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;

(d) if any statement, representation or warranty heretofore, now or hereafter made by the Mortgagor or any guarantor of the Obligations in connection with this Mortgage or in any supporting financial statement of the Mortgagor or any guarantor of the Obligations shall be determined by the Mortgagee to have been false or misleading in any material respect when made;

(e) if the Mortgagor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(f) if the Mortgagor or any guarantor of the Obligations is an individual, the death or mental incapacity of the Mortgagor or any such guarantor, or if any guarantor of the Obligations is a partnership or limited liability company, the death or mental incapacity of any general partner or member who is an individual that causes, or will cause, the dissolution of the partnership or limited liability company; provided, that such event will not constitute an Event of Default if within 60 days after written request by Mortgagee, (i) one or more other persons or entities agree to become replacement guarantors (and/or replacement general partner or member) for the decedent and executes a guaranty in form and content acceptable to Mortgagee if required pursuant to (iii) below, (ii) the remaining Guarantors reaffirm their respective Guaranties by executing and delivering to Mortgagee a written reaffirmation of each such Guaranty in form and content acceptable to Mortgagee, and (iii) such replacement guarantor and remaining Guarantors collectively have the credit standing and financial resources, which satisfies the Mortgagee's then current underwriting and credit standards, as determined by Mortgagee in its sole and absolute discretion;

(g) the institution by or against the Mortgagor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 et seq. or any other law in which the Mortgagor or any guarantor of the Obligations is alleged to be

insolvent or unable to pay its debts as they mature, or the making by the Mortgagor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Mortgagor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(h) Intentionally Deleted;

(i) a judgment or judgments for the payment of money shall be rendered against the Mortgagor or any guarantor of the Obligations in excess of \$100,000.00 in the aggregate, and any such judgment shall remain unsatisfied and in effect for any period of 30 consecutive days without a stay of execution; provided, however, such thirty (30) consecutive day period shall be extended by an additional thirty (30) consecutive days (i.e. for a total of sixty (60) consecutive days) for any such judgment that is covered by any insurance maintained by Mortgagor or Guarantor (as applicable);

(j) subject to the right to contest granted to Mortgagor under Section 5.5 of the Loan Agreement, any lien (including mechanics lien) in an amount not to exceed \$50,000, which is not discharged, paid, or bonded promptly after the work is completed and if such lien is reflected on title to the Property, such lien has been released, shall be issued or levied on any of the property of the Mortgagor, and Mortgagor has not cured within 30 days;

(k) subject to the right to contest granted to Mortgagor under Section 5.5 of the Loan Agreement, any lien (including mechanics lien) in excess of \$50,000, levy, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Mortgagor;

(l) the termination or revocation of any guaranty of the Obligations;

(m) a Material Adverse Change (as defined in the Loan Agreement) shall have occurred and be continuing;

(n) the occurrence of (i) a default or an event of default on the part of Mortgagor under any document in excess of \$50,000 to which Mortgagor is a party and which relates to the ownership, occupancy, use, development or management of the Property; (ii) a default by Mortgagor in the payment of the principal or interest on any of their respective indebtedness for borrowed money in excess of \$50,000; (iii) a default by Mortgagor under any instrument or agreement under and subject to which any indebtedness for borrowed money in excess of \$50,000 has been issued or is secured, or an event has occurred, or will occur, which, with the lapse of time or the giving of notice or both, would constitute a default thereunder; (iv) a default or an event of default on the part of Guarantor under any document in excess of \$100,000 to which Guarantor is a party and which relates to the ownership, occupancy, use, development or management of the Property; (v) a default by Guarantor in the payment of the principal or interest on any of their respective indebtedness for borrowed money in excess of \$100,000; or (vi) a default by Guarantor under any instrument or agreement under and subject to which any indebtedness for borrowed money in excess of \$100,000 has been issued or is secured, or an event has occurred, or will occur,

which, with the lapse of time or the giving of notice or both, would constitute a default thereunder..

4.2 Remedies. Upon the occurrence of any Event of Default the Mortgagee may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any and all remedies, at law or in equity, including without limitation, any or all of the following remedies:

(a) Declare the Obligations immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Mortgagor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an Event of Default has occurred hereunder;

(b) Upon the occurrence of an Event of Default, Mortgagee shall be entitled to the appointment of a receiver for the Property, on an *ex parte* basis, without notice to Mortgagor or any other person or entity, in which event, Mortgagor hereby expressly consents to the appointment of such receiver, regardless of the adequacy of Mortgagee's security. Mortgagee, through a court appointed receiver, shall have the right to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property ("Rents"), the enforcement or fulfillment of any terms, condition or provision of any lease, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee as provided by law for so managing the Property. Such receiver, upon court approval, shall also have the right to sell the Property;

(c) The Rents shall (after payment of all costs and expenses incurred) be applied to the Obligations in such order as the Mortgagee determines, or in accordance with any applicable statute, and the Mortgagor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Mortgagee shall be liable to account only for such Rents actually received by the Mortgagee. Lessees under the Leases are hereby authorized and directed, following notice from the Mortgagee, to pay all amounts due the Mortgagor under the Leases to the Mortgagee, whereupon such lessees shall be relieved of any and all duty and obligation to the Mortgagor with respect to such payments so made;

(d) Mortgagee shall have the right to sell or offer for sell, pursuant to power of sale or otherwise, the Property (or such part or parts thereof or leasehold, subleasehold or other interest therein encumbered hereby as the Mortgagee may from time to time elect to sell) at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse of the county where said Property or a substantial and material part thereof, is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a legal description of the Property to be sold, by publication once a week for three (3) successive weeks prior to said sale in a newspaper

published in said county; provided, however, that (i) if the Property is located in more than one county, publication is to be made in all counties in which such Property is located and (ii) if no newspaper is published in a county where the Property is located, notice shall be in a newspaper in an adjoining county. Upon receipt of the consideration bid at said sale, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale in the form of cash, cash equivalents and/or cancellation of all or any part of the Obligations, or any combination thereof, and purchase said Property, or any part or parcel thereof, if the highest bidder therefor. At any sale, including any sale pursuant to power of sale, any part or parcels or all of the Property, real, personal or mixed, may be offered for sale in whole or in part for one total price, the proceeds of any such sale to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshaling or like proceeding. If the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the obligations secured by this Mortgage shall have been paid in full;

(e) Choose to dispose of some or all of the Property in any combination consisting of both real and personal property, together in one sale, public or private, to held in accordance with law and procedures applicable to real property, as permitted by the Uniform Commercial Code. Mortgagor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. Before any sale, Mortgagee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Mortgagee may sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Mortgagee shall not have any obligation to make demand on Mortgagor before any sale. From time to time in accordance with then applicable law, Mortgagee may postpone any sale by public announcement at the time and place noticed for that sale. Notwithstanding the foregoing, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the property offered for sale. At any sale, any person including Mortgagee may bid for and acquire the property or any part thereof to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under this Mortgage and all other Obligations in any order and proportion as Mortgagee in its sole discretion may choose. The foregoing procedures do not constitute the only procedures that may be commercially reasonable and, Mortgagee may choose, for example, if the Property consists of more than one parcel, to sell and dispose of such parcels in separate or combined sales in such order as Mortgagee may elect. The proceeds of any such disposition of Property shall not cure any Event of Default or reinstate any Obligations for purposes of Section 2924c of the California Civil Code. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together

in accordance with the Uniform Commercial Code, will sometimes be referred to as a "Trustee's Sale";

(f) In accordance with Section 736 of the California Code of Civil Procedure, Mortgagee may bring an action for breach of contract against Mortgagor for breach of any "environmental provision" (as such term is defined in such Section) made by Mortgagor herein or in any other Loan Document for the recovery of damages and/or the enforcement of the environmental provision. In accordance with the California Code of Civil Procedure, Section 726.5, Mortgagee may waive the security under this Mortgage with respect to any parcel of the Property that is "environmentally impaired" or is an "affected parcel" (as such terms are defined in such Section), and as to any personal property which is attached to such parcel, and thereafter exercise against Mortgagor, to the extent permitted by such Section, the rights and remedies of an unsecured creditor, including reduction of Mortgagee's claim against Mortgagor to judgment, and any other rights and remedies permitted by law. In the event Mortgagee elects, in accordance with the California Code of Civil Procedure, Section 726.5, to waive all or part of the security under this Mortgage and proceed against Mortgagor on an unsecured basis, the valuation of the real property, the determination of the environmentally impaired status of such security and any cause of action for money judgment shall, at the request of Mortgagee, be referred to a referee in accordance with the California Code of Civil Procedure, Section 638 et seq. Such referee shall be an M.A.I. appraiser selected by Mortgagee and approved by Mortgagor, which approval shall not be unreasonably withheld or delayed. The decision of such referee shall be binding upon both Mortgagee and Mortgagor and judgment upon the award rendered by such referee shall be entered in the court in which such proceeding was commenced in accordance with the California Code of Civil Procedure, Sections 644 and 645. Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with any proceeding under the California Code of Civil Procedure, Section 726.5;

(g) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Mortgagor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Mortgagor shall provide the Mortgagee or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Mortgagor from any responsibility therefor or given the Mortgagee "control" over the Property or cause the Mortgagee to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and

(h) Take such other actions or proceedings as the Mortgagee deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Mortgagor hereby waives any right to object to such appointment) and exercise of any of the Mortgagee's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

4.3 Due on Sale or Transfer. Mortgagee may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the Transfer (as defined in Section 2.3(a) above) without Mortgagee's prior written consent, of all or any part of the Property, or any interest in the Property.

4.4 Additional Remedies. Mortgagee shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise.

The Mortgagor agrees and acknowledges that the acceptance by the Mortgagee of any payments from either the Mortgagor or any guarantor after the occurrence of any Event of Default, the exercise by the Mortgagee of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Mortgagee's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Mortgagee. The Mortgagor agrees and acknowledges that the Mortgagee, by making payments or incurring costs described herein, shall be subrogated to any right of the Mortgagor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Mortgagor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

4.5 Advances. If the Mortgagor fails to pay or perform any of its obligations respecting the Property, the Mortgagee may in its sole discretion do so without waiving or releasing Mortgagor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Mortgagee hereunder shall be, until reimbursed by the Mortgagor, part of the Obligations and secured by this Mortgage, and shall be due and payable to the Mortgagee, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

4.6 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Mortgagee might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Mortgagor further agrees that the Mortgagee may exercise any or all of its rights or remedies set forth herein without having to pay the Mortgagor any sums for use or occupancy of the Property.

4.7 Mortgagor's Waiver of Certain Rights. To the extent permitted by applicable law, the Mortgagor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

4.8 Transfer of Title. Upon the completion of any sale or sales of any Property, Mortgagee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

4.9 Effect of Sale. Any sale or sales made by virtue of or under this Mortgage, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Mortgagor in and to the property so sold, or any part thereof from, through or under Mortgagor, its successors and assigns. The receipt by Mortgagee of such purchase money shall be full and sufficient discharge to any third-party purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Mortgage, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

4.10 Reconveyance. Upon written request of the Mortgagee and surrender of this Mortgage and any Notes to Mortgagee for cancellation or endorsement, and upon payment of its fees and charges, Mortgagee shall reconvey, without warranty, all or any part of the Property then subject to this Mortgage. Any reconveyance, whether full or partial, shall be made to the person or persons legally entitled thereto, and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

5. MISCELLANEOUS.

5.1 Costs and Expenses. To the extent permitted by applicable law, the Mortgagor shall pay to the Mortgagee, on demand, all expenses (including reasonable attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Mortgagee in connection with the Mortgagee's interpretation, recordation of this Mortgage, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Mortgage and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Mortgagor at the highest rate set forth in any of the notes evidencing the Obligations. Any amounts owed by the Mortgagor hereunder shall be, until paid, part of the Obligations and secured by this Mortgage, and the Mortgagee shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Mortgagor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Limit on Interest. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage, any Note or any other Loan Document, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Mortgagee may, at its option (a) reduce the Obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the Obligations, and not to the

payment of interest, with the same force and effect as though Mortgagor had specifically designated such sums to be so applied to principal and Mortgagee had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Mortgage or any other Loan Document that is in excess of the applicable limit on interest. It is the intention of Mortgagor and Mortgagee that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this Section shall control every other provision of this Mortgage, and any provision of any other Loan Document in conflict with this Section.

5.3 Indemnification Regarding Leases. The Mortgagor hereby agrees to defend, and does hereby indemnify and hold the Mortgagee and each of its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnities arising from any undertakings on the part of the Mortgagee to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Mortgagee or any Indemnitee or make them liable for performance of any of the obligations of the Mortgagor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.4 Indemnification Regarding Hazardous Substances. The Mortgagor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Mortgagor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Mortgage and/or the repayment of all debts to the Mortgagee including repayment of all Obligations.

5.5 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Mortgage or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Mortgagor or other person or entity, then the Mortgagor shall indemnify, defend and hold each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Mortgagee in favor of the Mortgagor.

5.6 Waivers. The Mortgagor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Mortgagee in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are

hereinafter collectively referred to as “the Mortgagee’s rights and remedies”) hereunder shall constitute a waiver thereof; and no waiver by the Mortgagee of any default of the Mortgagor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Mortgagee, which consent makes explicit reference to this Mortgage. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Mortgagee and the Mortgagor at any time (whether before, during or after the effective date or term of this Mortgage) shall be construed as a waiver, modification or limitation of any of the Mortgagee’s rights and remedies under this Mortgage (nor shall anything in this Mortgage be construed as a waiver, modification or limitation of any of the Mortgagee’s rights and remedies under any such other agreement or transaction) but all the Mortgagee’s rights and remedies not only under the provisions of this Mortgage but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Mortgagee at such time or times and in such order of preference as the Mortgagee in its sole discretion may determine.

5.7 Joint and Several. If there is more than one Mortgagor, each of them shall be jointly and severally liable for payment and/or performance of all obligations secured by this Mortgage and the term “Mortgagor” shall include each as well as all of them.

5.8 Severability. If any provision of this Mortgage or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Mortgage (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.9 Complete Agreement. This Mortgage and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.10 Binding Effect of Agreement. This Mortgage shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Mortgagee shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Mortgagee may transfer and assign this Mortgage and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Mortgagee; and the Mortgagee shall then be relieved and discharged of any responsibility or liability with respect to this Mortgage and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Mortgage or the other Loan Documents.

5.11 Notices. Any notices under or pursuant to this Mortgage shall be furnished in accordance with the terms and provisions of the Loan Agreement.

5.12 Governing Law. This Mortgage shall be governed by the laws of the State of Alabama.

5.13 Reproductions. This Mortgage and all documents which have been or may be hereinafter furnished by the Mortgagor to the Mortgagee may be reproduced by the Mortgagee by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.14 Jurisdiction and Venue. The Mortgagor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California or Alabama, as elected by Mortgagee in its sole discretion, over any suit, action or proceeding arising out of or relating to this Mortgage. The Mortgagor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Mortgagor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Mortgagor's address set forth herein or such other address as has been provided in writing to the Mortgagee and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Mortgagor.

5.15 WAIVER OF RIGHT TO TRIAL BY JURY; JUDICIAL REFERENCE IN THE EVENT OF JURY TRIAL WAIVER UNENFORCEABILITY. MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (1) ARISING UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, EACH PARTY HERETO HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE. PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE, AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION

THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER AND THE AGREEMENTS CONTAINED HEREIN. THE PARTIES HERETO HEREBY AGREE THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH BOTH SIDES AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE THEIR RESPECTIVE LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN. ANY PARTY TO THIS MORTGAGE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY AND THE AGREEMENTS CONTAINED HEREIN REGARDING THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF THE INVALIDITY OF SUCH JURY TRIAL WAIVER.

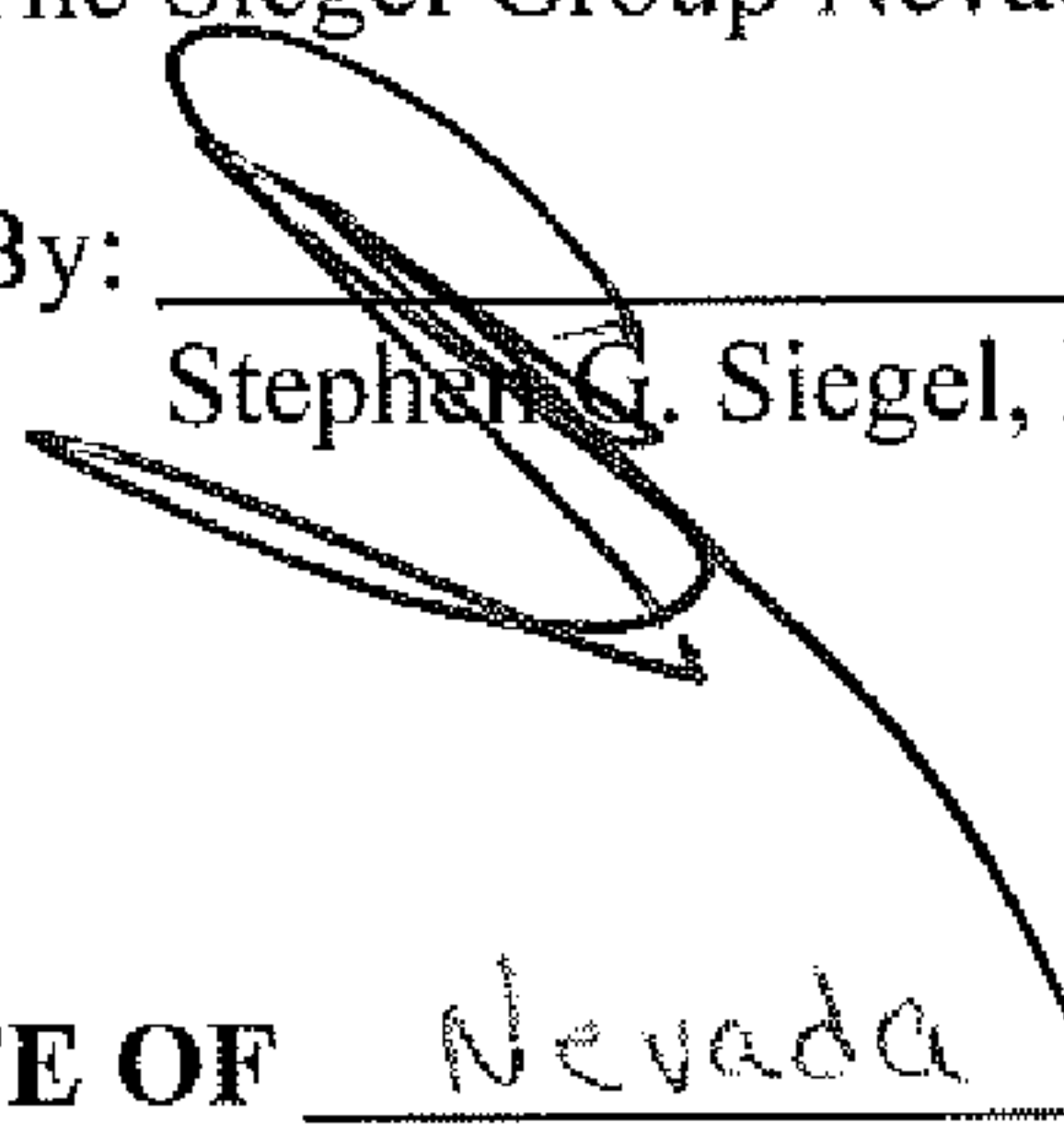
5.16 Counterparts. This Mortgage may be executed in counterparts, each of which will be deemed to be an original, but all of which together will be deemed to be one and the same instrument. The exchange of copies of this Mortgage and of executed signature pages by facsimile transmission or by electronic mail in "portable document format" (".pdf"), or by a combination of such means, will constitute effective execution and delivery of this Mortgage as to the parties and may be used in lieu of an original Mortgage for all purposes. Without limitation, "electronic signature" shall include DocuSign signature, faxed or emailed versions of an original signature or electronically scanned and transmitted versions of an original signature.

EXECUTED as of the date first above written.

MORTGAGOR:

Birmingham Holdings, LLC, a Nevada limited liability company

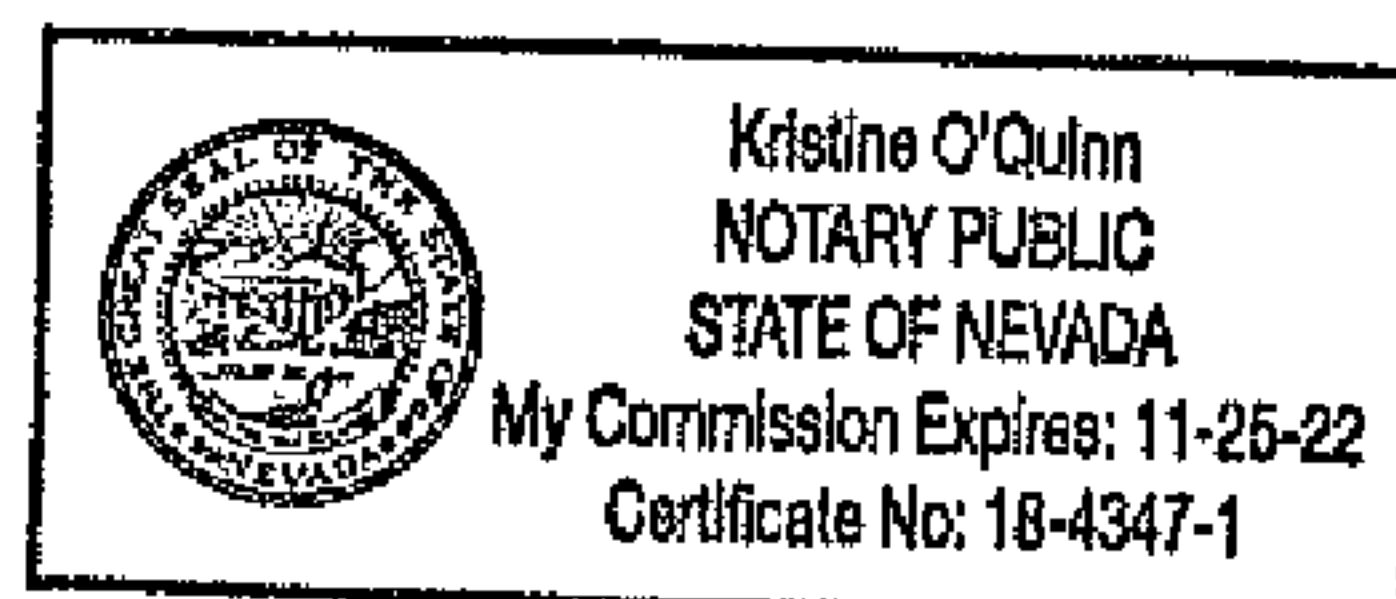
By: The Siegel Group Nevada, Inc., a Nevada corporation, Manager

By: 
Stephen G. Siegel, President

STATE OF Nevada)
COUNTY OF Clark)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Stephen G. Siegel, whose name as President of The Siegel Group Nevada, Inc., a Nevada corporation, the Manager of Birmingham Pelham Holdings, LLC, a Nevada 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation and limited liability company.

Given under my hand and official seal, this 5th day of July, 2022.





Notary Public
My Commission Expires: 11/25/2022

EXHIBIT "A"

Property Description

The Land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY ALABAMA; THENCE RUN NORTH 86 DEGREES 43 MINUTES 38 SECONDS EAST ALONG THE NORTH LINE OF SAID QUARTER-QUARTER SECTION LINE FOR A DISTANCE OF 333.88 FEET; THENCE SOUTH 71 DEGREES 31 MINUTES 13 SECONDS EAST FOR A DISTANCE OF 100.20 FEET; THENCE RUN SOUTH 23 DEGREES 59 MINUTES 16 SECONDS WEST FOR A DISTANCE OF 260.63 FEET; THENCE RUN SOUTH 71 DEGREES 19 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 261.47 FEET; THENCE RUN SOUTH 23 DEGREES 55 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 14.31 FEET; THENCE RUN SOUTH 71 DEGREES 24 MINUTES 36 SECONDS EAST FOR A DISTANCE OF 261.73 FEET TO A POINT; THENCE RUN SOUTH 24 DEGREES 50 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 130.00 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING; THENCE RUN SOUTH 24 DEGREES 50 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 97.62 FEET; THENCE RUN SOUTH 26 DEGREES 37 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 226.72 FEET TO THE CENTERLINE OF A CREEK AS SHOWN ON USW SUBDIVISION AND IS RECORDED IN MAP BOOK 14, PAGE 80 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA; THENCE RUN ALONG SAID CENTERLINE BY THE FOLLOWING DESCRIBED COURSES; THENCE RUN NORTH 35 DEGREES 50 MINUTES 17 SECONDS WEST FOR A DISTANCE OF 64.67 FEET; THENCE RUN NORTH 10 DEGREES 27 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 13.24 FEET; THENCE RUN NORTH 64 DEGREES 39 MINUTES 20 SECONDS EAST FOR A DISTANCE OF 10.39 FEET; THENCE RUN NORTH 63 DEGREES 17 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 10.75 FEET, THENCE RUN SOUTH 63 DEGREES 19 MINUTES 10 SECONDS WEST FOR A DISTANCE OF 10.92 FEET, THENCE RUN NORTH 73 DEGREES 35 MINUTES 54 SECONDS WEST FOR A DISTANCE OF 12.11 FEET; THENCE RUN NORTH 17 DEGREES 02 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 7.18 FEET; THENCE RUN NORTH 37 DEGREES 45 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 17.71 FEET; THENCE RUN NORTH 59 DEGREES 12 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 20.62 FEET; THENCE RUN NORTH 45 DEGREES 12 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 28.09 FEET; THENCE RUN NORTH 87 DEGREES 59 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 20.59 FEET; THENCE RUN NORTH 51 DEGREES 43 MINUTES 04 SECONDS WEST FOR A DISTANCE OF 26.76 FEET; THENCE RUN NORTH 24 DEGREES 40 MINUTES 36 SECONDS WEST FOR A DISTANCE OF 25.49 FEET; THENCE RUN NORTH 08 DEGREES 02 MINUTES 50 SECONDS EAST FOR A DISTANCE OF 12.43 FEET; THENCE RUN NORTH 82 DEGREES 00 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 26.34 FEET; THENCE RUN NORTH 32 DEGREES 40 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 22.77 FEET; THENCE RUN NORTH 60 DEGREES 33 MINUTES 04 SECONDS WEST FOR A DISTANCE OF 19.70 FEET; THENCE RUN SOUTH 78 DEGREES 46 MINUTES 47 SECONDS WEST FOR A DISTANCE

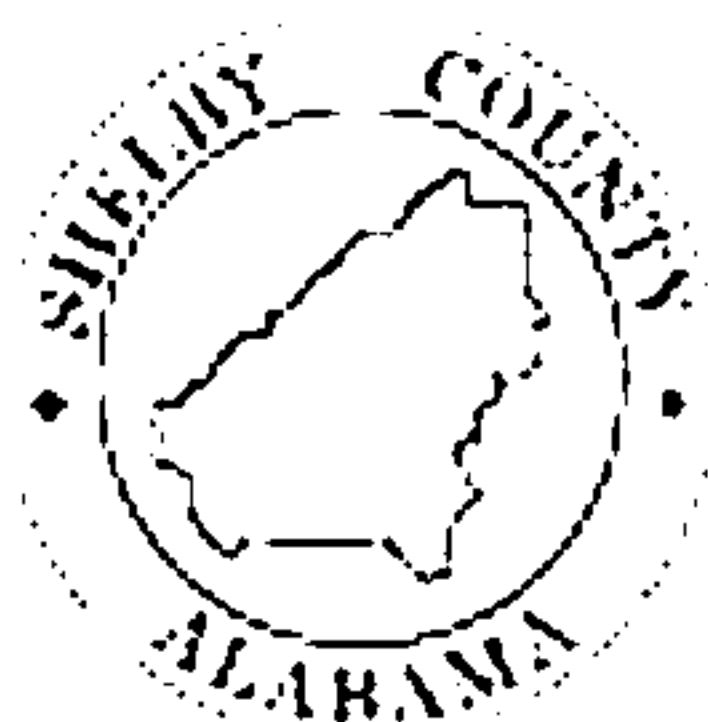
OF 12.33 FEET; THENCE RUN NORTH 44 DEGREES 56 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 20.92 FEET; THENCE RUN NORTH 88 DEGREES 15 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 11.94 FEET; THENCE RUN SOUTH 49 DEGREES 01 MINUTES 10 SECONDS WEST FOR A DISTANCE OF 23.71 FEET; THENCE RUN SOUTH 41 DEGREES 29 MINUTES 13 SECONDS WEST FOR A DISTANCE OF 29.53 FEET; THENCE RUN NORTH 59 DEGREES 21 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 16.97 FEET; THENCE RUN NORTH 54 DEGREES 34 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 30.16 FEET; THENCE RUN SOUTH 85 DEGREES 48 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 19.77 FEET; THENCE NORTH 17 DEGREES 06 MINUTES 24 SECONDS EAST FOR A DISTANCE OF 17.89 FEET; THENCE RUN NORTH 36 DEGREES 44 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 42.66 FEET; THENCE RUN NORTH 40 DEGREES 17 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 18.80 FEET; THENCE RUN NORTH 35 DEGREES 26 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 4.99 FEET AND THE END OF SAID CREEK CENTERLINE COURSE; THENCE RUN SOUTH 87 DEGREES 22 MINUTES 08 SECONDS WEST FOR A DISTANCE OF 85.62 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY NO. 280; THENCE RUN IN A NORTHWESTERLY DIRECTION ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY FOR A DISTANCE OF 16.99 FEET (SAID HIGHWAY RIGHT-OF-WAY LINE BEING SITUATED ON A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 00 DEGREES 19 MINUTES 51 SECONDS HAVING A RADIUS OF 2,944.79 FEET A CHORD OF 16.99 FEET AND A CHORD BEARING OF NORTH 21 DEGREES 36 MINUTES 19 SECONDS WEST; THENCE RUN NORTH 68 DEGREES 13 MINUTES 44 SECONDS EAST FOR A DISTANCE OF 30.00 FEET TO THE POINT OF COMMENCEMENT OF A CURVE TO THE LEFT; THENCE RUN IN A NORTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 116.72 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 50 DEGREES 45 MINUTES 00 SECONDS AND A RADIUS OF 131.77 FEET, A CHORD OF 112.94 FEET AND A CHORD BEARING OF NORTH 42 DEGREES 51 MINUTES 14 SECONDS EAST; THENCE RUN NORTH 17 DEGREES 28 MINUTES 44 SECONDS EAST ALONG THE TANGENT IF EXTENDED FROM SAID CURVE FOR A DISTANCE OF 153.42 FEET TO THE POINT OF COMMENCEMENT OF A CURVE TO THE RIGHT, SAID CURVE HAVING A LENGTH OF 2.00 FEET, A CENTRAL ANGLE OF 00 DEGREES 34 MINUTES 43 SECONDS AND RADIUS OF 198.00 FEET AND A CHORD BEARING OF NORTH 17 DEGREES 46 MINUTES 05 SECONDS EAST FOR A DISTANCE OF 2.00 FEET; THENCE RUN IN A SOUTHEASTERLY DIRECTION SOUTH 61 DEGREES 36 MINUTES 29 SECONDS EAST A DISTANCE OF 508.90 FEET TO THE POINT OF BEGINNING.

EASEMENT LEGAL:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST ONE- QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 86 DEGREES 43 MINUTES 38 SECONDS EAST ALONG THE NORTH LINE OF SAID QUARTER-QUARTER FOR A DISTANCE OF 333.88 FEET; THENCE RUN SOUTH 71 DEGREES 31 MINUTES 13 SECONDS EAST FOR A DISTANCE OF 100.20 FEET; THENCE RUN SOUTH 23 DEGREES 59 MINUTES 16 SECONDS WEST FOR A DISTANCE OF 260.63 FEET TO A POINT; THENCE RUN SOUTH 71 DEGREES 19 MINUTES 30 SECONDS EAST A DISTANCE OF

261.47 FEET TO A POINT; THENCE RUN 23 DEGREES 55 MINUTES 20 SECONDS WEST A DISTANCE OF 14.31 FEET TO A POINT; THENCE 71 DEGREES 24 MINUTES 36 SECONDS EAST A DISTANCE OF 261.73 FEET TO A POINT; THENCE SOUTH 24 DEGREES 50 MINUTES 46 SECONDS WEST A DISTANCE OF 130.00 FEET TO A POINT; THENCE RUN SOUTH 61 DEGREES 36 MINUTES 29 SECONDS EAST A DISTANCE OF 492.37 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING RUN ALONG A CURVE TO THE LEFT A DISTANCE OF 0.42 FEET, SAID CURVE HAVING A RADIUS OF 183.00, A CHORD OF 0.42 FEET AND A CHORD BEARING OF SOUTH 16 DEGREES 43 MINUTES 43 SECONDS WEST; THENCE RUN SOUTH 17 DEGREES 28 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 153.42 FEET TO THE POINT OF COMMENCEMENT OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 50 DEGREES, A RADIUS OF 146.77 FEET, A CHORD OF 125.79 AND A CHORD BEARING OF SOUTH 42 DEGREES 51 MINUTES 14 SECONDS WEST; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 130.00 FEET TO THE END OF SAID CURVE; THENCE RUN SOUTH 68 DEGREES 13 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 30.04 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280, SAID RIGHT OF WAY BEING SITUATED ON A CURVE TO THE LEFT AND HAVING A CENTRAL ANGLE OF 00 DEGREES 35 MINUTES 01 SECONDS, A RADIUS OF 2944.79 FEET, A CHORD OF 30.00 FEET AND A CHORD BEARING OF NORTH 21 DEGREES 46 MINUTES 15 SECONDS WEST; THENCE RUN ALONG THE ARC OF SAID CURVE AND THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280 FOR A DISTANCE OF 30.00 FEET; THENCE RUN NORTH 68 DEGREES 13 MINUTES 44 SECONDS EAST FOR A DISTANCE OF 30.04 FEET TO THE POINT OF COMMENCEMENT OF A CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 50 DEGREES 45 MINUTES, A RADIUS OF 116.77 FEET, A CHORD OF 100.08 FEET AND A CHORD BEARING OF NORTH 42 DEGREES 51 MINUTES 14 SECONDS EAST; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 103.43 FEET TO THE END OF SAID CURVE; THENCE RUN NORTH 17 DEGREES 28 MINUTES 44 SECONDS EAST FOR A DISTANCE OF 153.42 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 16 DEGREES 10 MINUTES 47 SECONDS, A RADIUS OF 213.00 FEET, A CHORD OF 59.95 FEET AND A CHORD BEARING OF NORTH 25 DEGREES 45 MINUTES 08 SECONDS EAST; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 60.15 FEET TO THE END OF SAID CURVE; THENCE RUN SOUTH 71 DEGREES 29 MINUTES 21 SECONDS EAST FOR A DISTANCE OF 29.61 FEET TO A POINT; THENCE RUN ALONG A CURVE TO THE LEFT A DISTANCE OF 59.33 FEET, SAID CURVE HAVING A RADIUS OF 183.00, A CHORD OF 59.07 FEET AND A CHORD BEARING OF SOUTH 26 DEGREES 04 MINUTES 59 SECONDS WEST TO A POINT; SAID POINT BEING THE POINT OF BEGINNING.

SITUATED IN SHELBY COUNTY, ALABAMA



Filed and Recorded
 Official Public Records
 Judge of Probate, Shelby County Alabama, County
 Clerk
 Shelby County, AL
 07/13/2022 12:37:13 PM
 \$6316.00 BRITTANI
 20220713000276430

Allen S. Bayl