

THIS INSTRUMENT WAS
PREPARED BY, AND UPON
RECORDING SHOULD BE
RETURNED TO:

Donald M. Warren, Esq.
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), made this 1st day of August, 2022, by **FOWL PLAY, INC.**, an Alabama corporation ("Borrower"), the mailing address of which is 2908 Pumphouse Road, Suite 150, Mountain Brook, Alabama 35243, in favor of **FIRSTBANK**, a Tennessee banking corporation ("Lender"), the mailing address of which is P. O. Box 1639, Lexington, Tennessee 38351.

WITNESSETH:

FOR VALUE RECEIVED, Borrower hereby grants, transfers, and assigns to Lender and its successors and assigns all right, title and interest of Borrower (if any) in and to (i) any and all leases now or hereafter in effect with respect to occupancy of any space located on the land more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"), (ii) any extensions, modifications or renewals of the leases described in (i) hereof, and any guarantees of the lessees' obligations thereunder (all of the leases described in (i) hereof, together with all such guarantees, modifications, extensions or renewals thereof, being hereinafter collectively referred to as the "Leases"), and (iii) any and all security deposits due and payable as damages and received by Borrower or any agent of Borrower in connection therewith, for the purpose of securing (a) payment of all principal, interest, fees, charges and expenses now or at any time hereafter due Lender pursuant to that certain Promissory Note from Borrower payable to the order of Lender of even date herewith in the principal sum of **TWO MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,650,000.00)** (as the same may hereafter be renewed, extended, modified, or amended, the "Note"), (b) payment of all obligations now or at any time hereafter due Lender pursuant to that certain Loan Agreement between Borrower and Lender of even date herewith (as the same may be amended, the "Loan Agreement"), (c) performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the Note, the Loan Agreement and other Loan Documents (as such term is defined in the Loan Agreement). *Capitalized terms or defined terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.* This Assignment is intended to be an absolute, present assignment from

Borrower to Lender. The rents, issues and profits of the Property are hereby assigned absolutely by Borrower to Lender, as set forth herein below.

ARTICLE 1
WARRANTIES AND COVENANTS

1.1 **Warranties of Borrower.** Borrower hereby warrants and represents to Lender as of the date hereof that:

(a) Borrower is the sole owner of landlord's interest under the Leases, is entitled to receive the rents, issues, profits and security deposits due and payable as damages under the Leases and from the Property, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred.

(b) Borrower has neither made nor permitted to be made any assignment other than this Assignment of any of its rights under the Leases to any person or entity.

(c) Borrower has not accepted rent under any of the Leases more than one (1) month in advance of its due date except for security deposits and related deposits.

(d) Borrower has not done any act or omitted to do any act which would prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.

(e) Borrower is not prohibited under any agreement with any other person or entity or under any judgment or decree from the execution and delivery of this Assignment or of the Leases, from the performance of each and every covenant of Borrower hereunder and each and every material covenant under the Leases, or from the meeting of each and every material condition contained herein or in the Leases.

(f) No action has been brought or threatened in writing which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations herein contained.

1.2 **Covenants of Borrower.** Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall (i) at the sole cost and expense of Borrower, diligently seek to enforce the performance and observance of each and every material covenant and condition of the Leases to be performed or observed by the lessees thereunder in accordance with commercially reasonable business practices for retail projects of similar size and location; and (ii) appear in and defend any action arising out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower thereunder, or of any of the lessees, sublessees or guarantors thereunder in accordance with commercially reasonable business practices for retail projects of similar size and location.

(b) Borrower shall not without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed), except as otherwise expressly

permitted in the Loan Agreement, (i) except in the ordinary course of business consistent with commercially reasonable business practices for retail projects of similar size and location, terminate or accept the surrender of any of the Leases relating to rental of apartment units or other rentable space; (ii) except in the ordinary course of business consistent with commercially reasonable business practices for retail projects of similar size and location, waive, or release the lessees from, the performance or observance of any material obligation or condition of the Leases; (iii) permit the prepayment of rents for more than one (1) month prior to the accrual thereof except for security deposits and related deposits; or (iv) except in the ordinary course of business consistent with commercially reasonable business practices for retail projects of similar size and location, give any consent to any assignment by any of the lessees of any of the Leases.

(c) Upon the occurrence and during the continuance of an Event of Default hereunder and written demand from Lender, Borrower authorizes and directs each and every present and future lessee or sublessee of rentable space under the Leases to pay rental under their Leases directly to Lender.

(d) Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases by reason of this Assignment, and Borrower agrees to indemnify and hold Lender harmless from and against any and all liability, loss (to the extent realized) or damage which Lender actually incurs under any of the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which are asserted against Lender by reason of an act of Lender under this Assignment or under any of the Leases, unless such act constitutes gross negligence or willful misconduct on the part of Lender or if such act arises after foreclosure or deed-in-lieu of foreclosure.

1.3 **Covenants of Lender.** Lender, by acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits of the Property, so long as there shall exist no Event of Default as hereinafter defined Borrower shall have the right (i) to collect, but not more than one (1) month prior to accrual (except security deposits and related deposits or except as otherwise approved in writing by Lender), all such rents, issues and profits from the Property and to retain, use and enjoy the same, and (ii) to the extent required by applicable law, to maintain the security deposits in a separate, identifiable account in a bank in which funds are federally insured acceptable to Lender.

(b) Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the recording of another mortgage in favor of Lender affecting the Property, this Assignment shall become and be void and of no further effect.

ARTICLE 2 **DEFAULT**

2.1 **Event of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) The failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment after thirty (30) days written notice from Lender;

(b) The failure by Borrower to cause to be true and not misleading in any material respect any warranty of Borrower contained herein which would have a materially adverse effect on the Borrower, the Loan or the Property; or

(c) The occurrence of any "Event of Default" under any of the Loan Documents (it being understood and agreed that an "Event of Default" commences upon the expiration of any grace or cure periods permitted the Borrower under the applicable Loan Documents).

2.2 Remedies. Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind (except as may be provided in any of the Loan Documents or applicable law), exercise any or all of the following remedies:

(a) Declare any part or all of the indebtedness evidenced by the Loan Documents to be due and payable, whereupon the same shall become immediately due and payable;

(b) Exercise all rights of Borrower pursuant to the Leases;

(c) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases or collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new Leases on the Property on any terms and conditions deemed reasonably desirable by Lender and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the indebtedness secured by the Loan Documents, shall bear interest from the incurrence thereof at the Default Rate specified in the Note, and shall be due and payable on demand;

(d) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its reasonable discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein; or

(e) Collect the rents, issues and profits and any other sums due under the Leases with respect to the Property, and apply the same in such order as Lender in its sole discretion may elect to pay (i) all out-of-pocket costs and expenses, including reasonable attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all out-of-pocket costs and expenses, including reasonable and actual attorneys' fees, in the collection of any or all of the indebtedness secured by the Loan Documents, including all out-of-pocket costs, expenses and reasonable attorneys' fees in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents; and (iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the indebtedness

secured by the Loan Documents; then this Assignment and all rights of Lender hereunder shall cease and terminate.

The exercise of any remedies by Lender and the collection of the rents and the application thereof as aforesaid, shall in no way operate to cure or waive any Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Lender under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security, provided, however, Lender acknowledges that if the Event of Default is cured prior to Lender exercising remedies hereunder, Lender shall have no right to exercise any remedy unless there is a subsequent Event of Default that remains uncured at the expiration of any applicable cure period. Lender shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and to the extent permitted by applicable law, with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and to the extent permitted by applicable law, shall have the full right to enter upon, take possession of, use and operate all or any portion of the Property which Lender in its reasonable discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any lessee under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Lender by Borrower.

ARTICLE 3 **GENERAL PROVISIONS**

3.1 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the legal representatives, successors and assigns of Borrower or Lender. Notwithstanding the foregoing, nothing herein shall be construed as consent by Lender to any assignment by Borrower.

3.2 **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.3 **Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.4 **Applicable Law.** This Assignment shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.5 **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No tenant or subtenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that

Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.6 **No Oral Modifications.** Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.7 **Cumulative Remedies.** Subject to any applicable grace or cure periods, the remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.8 **Cross-Default.** An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.

3.9 **Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed necessary by Lender, any and all such other and further assignments, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues, profits and security deposits from the Property, so long as Borrower shall incur no additional liabilities or obligations and none of the economic or other terms of the Loan Documents are amended. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.10 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made and be deemed given in accordance with the provisions relating to notice set forth in the Loan Agreement.

3.11 **Modifications, etc.** Borrower hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Borrower except as otherwise set forth in the Loan Documents, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Loan Documents; extend

or renew the Note or any other of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or any other of the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, or any other of the Loan Documents; or take or fail to take any action of any type whatsoever, and no such action with Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

3.12 **Execution; Counterparts.** This Assignment may be issued, executed and then delivered via facsimile transmission, by sending PDF or other copies hereof via email or other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of the counterparts of which taken together shall constitute one and the same agreement, and (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence.

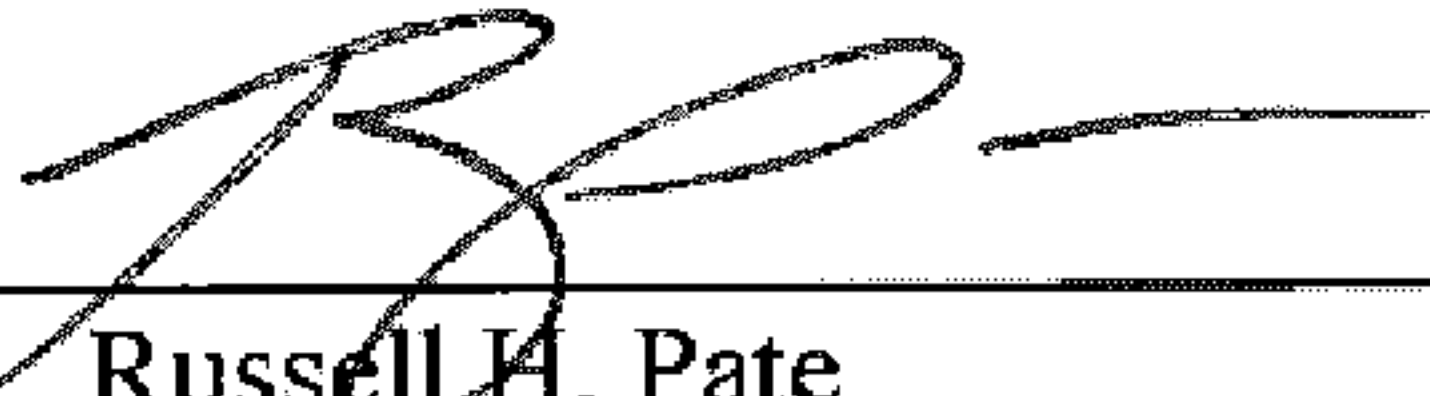
3.13 **WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER AND LENDER IRREVOCABLY TO WAIVE THEIR RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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IN WITNESS WHEREOF, the Borrower has caused this Assignment to be properly executed and delivered on the day and year first above written.

BORROWER:

FOWL PLAY, INC., an Alabama corporation

By: 
Russell H. Pate
Its President

STATE OF Alabama)
COUNTY OF Jefferson)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Russell H. Pate, whose name as President of **FOWL PLAY, INC.**, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 2nd day of Aug, 2022.



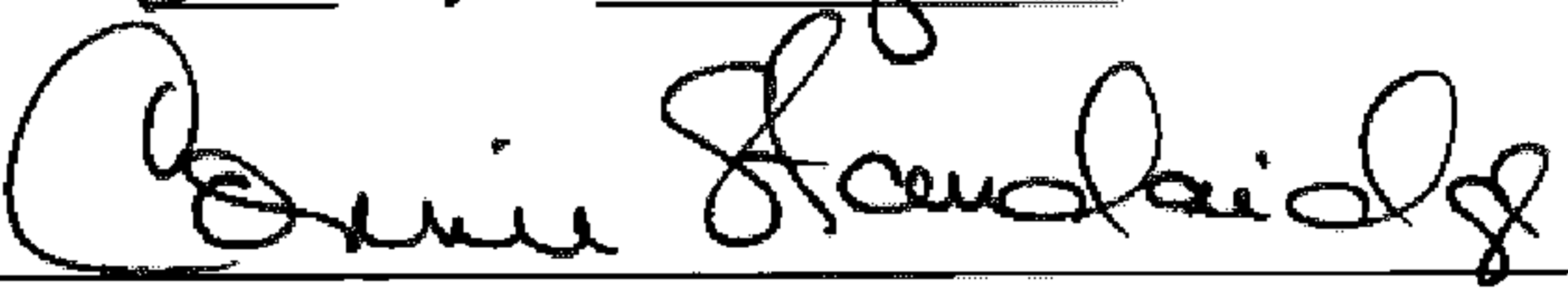

Notary Public
My Commission Expires: 7-19-26

EXHIBIT A

Legal Description

A parcel of land located in the Northwest 1/4 of the Southeast 1/4 and the Southwest 1/4 of the Northeast 1/4 of Section 21 Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southwest corner of Lot 2 Block 2, of Shelena Estates as recorded in Map Book 5, Page 25 in the Office of the Judge of Probate in Shelby County Alabama said point also being the Southeast corner of Lot 1 Block 2 of said subdivision; thence in a Northerly direction along the West line of said Lot 2, Block 2 of Shelena Estates said line also being the East line of said Lot 1, Block 2, of said subdivision a distance of 122.2 feet to the Northwest corner of said Lot 2, Block 2, of Shelena Estates said point also being the Northeast corner of Lot 1, Block 2, of said subdivision; thence 72 degrees 01 minutes 18 seconds right, in a Northeasterly direction, a distance of 691.95 feet to a point on the Northwest right-of-way line of Shelby County Highway 91, said point also being on a curve to the left, said curve having a radius of 988.80 feet and a central angle of 17 degrees 20 minutes 16 seconds, said point also being the point of beginning; thence 7 degrees 07 minutes 26 seconds left to tangent of said curve, thence along arc of said curve, in a Northeasterly direction along said right-of-way line a distance of 299.21 feet to end of said curve, said point being the intersection of the Northwest right-of-way line of Shelby County Highway 91, and the Southwest right-of-way line of Shelby County Highway 52; thence 90 degrees left measured from tangent of said curve, in a Northwesterly direction along the Southwest right-of-way line of Shelby County Highway 52, a distance of 8.27 feet; thence 39 degrees 51 minutes 20 seconds right, in a Northwesterly direction, along said right-of-way line a distance of 83.45 feet; thence 45 degrees 58 minutes 16 seconds left in a Northwesterly direction along said right-of-way line a distance of 40.0 feet; thence 70 degrees left in a southwesterly direction, a distance of 308.80 feet; thence 86 degrees 32 minutes 48 seconds left in a Southeasterly direction a distance of 148.0 feet to the point of beginning. According to survey of Allen Whitley, Reg. No. 3943, dated November 14, 1980.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/05/2022 01:38:12 PM
\$46.00 JOANN
20220805000307000

Allen S. Bayl