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MORT 1/19

This mortgage is given as additional security for the hereafter described indebtedness, upon which mortgage recording tax in the amount of \$29,400 was paid upon recording of a mortgage recorded contemporaneously herewith. No additional mortgage recording tax is due in conjunction with the recording of this Mortgage.

THIS SECURITY 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

THIS MORTGAGE SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA (1975), AS AMENDED.

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Mortgage"), made as of the 1st day of August, 2022, by **FOWL PLAY, INC.**, an Alabama corporation, Mortgagor (hereinafter called "Borrower"), whose address is 2908 Pumphouse Road, Suite 150, Mountain Brook, Alabama 35243, in favor and for the benefit of **FIRSTBANK**, a Tennessee banking corporation, Mortgagee (hereinafter called "Lender"), whose address is P.O. Box 1639, Lexington, Tennessee 38351.

WITNESSETH:

WHEREAS, Lender has made or has agreed to make a loan (the "Loan") to Borrower in the principal sum of up to **TWO MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,650,000.00)**, to be evidenced by a certain Promissory Note of even date herewith, payable to Lender with interest thereon (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Lee Branch Note").

NOW, THEREFORE, the undersigned Borrower, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances, with the interest thereon, and any extensions or renewals of same, and further to secure the following:

(i) payment and performance of obligations evidenced by that certain Promissory Note from Borrower to Lender dated of even date herewith in the stated principal amount of \$2,650,000 (the "Helena Note");

(ii) payment and performance of obligations evidenced by that certain Promissory Note from Borrower to Lender dated of even date herewith in the stated principal amount of \$2,650,000 (the "Hwy. 150 Note");

(iii) payment and performance of obligations evidenced by that certain Promissory Note from Borrower to Lender dated of even date herewith in the stated principal amount of \$2,650,000 (the "Valleydale Note");

(iv) payment and performance of obligations evidenced by that certain Promissory Note from Chicken Scratch Holdings, Inc., an Alabama corporation ("CSHI") to Lender dated of even date herewith in the stated principal amount of \$5,000,000 (the "CSHI Term Note");

(v) payment and performance of obligations evidenced by that certain Promissory Note from CSHI to Lender dated of even date herewith in the stated principal amount of up to \$4,000,000 (the "CSHI Revolving Note" together with the Lee Branch Note, the Helena Note, the Hwy. 150 Note, the Valleydale Note and the CSHI Term Note, each a "Note" and collectively, the "Notes");

(vi) all other indebtedness, fees, premiums (if any), charges, and expenses from time to time owing to Lender pursuant to the Notes, this Mortgage, the Loan Agreement (hereinafter defined) and all other Loan Documents (as defined in the Loan Agreement);

(vii) the performance of the covenants, conditions, and agreements as hereinafter set forth and as set forth in the Loan Documents;

(viii) any and all other Obligations (as defined in the Loan Agreement); and

in consideration of the foregoing Borrower has bargained and sold and does hereby grant, bargain, sell, alien, remise, release, assign transfer, mortgage, hypothecate, pledge, deliver, set over, warrant, confirm and convey unto Lender, its successors and assigns, the following described interests of Borrower in land, real estate, buildings, improvements, fixtures, furniture, and other personal property now owned or hereafter acquired, INCLUDING POWER OF SALE (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted, is hereinafter sometimes referred to as the "Property") to-wit:

(a) All tract(s) or parcel(s) of land more particularly described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by Borrower and located in, on, or used or intended to be used in connection with or with the

operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing;

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the foregoing real property or such improvements whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, washers and dryers, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements;

(d) All licenses, permits, general intangibles, accounts, trade names, trademarks, contract rights and other intangible property, now owned by Borrower or hereafter acquired by Borrower, relating to the foregoing real property or the business now or hereafter conducted thereat; and

(e) Proceeds and products of all of the foregoing real and personal property.

To the fullest extent permitted by applicable law, all of the foregoing shall be deemed a part of the real property and may be foreclosed upon and sold upon the occurrence and during continuance of an Event of Default in accordance with the laws of the State of Alabama relating to mortgages of real estate.

TOGETHER with all Borrower's rights, title and interest in and to any easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(i) All leases, and all rents, profits, issues, and revenues of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created (each of which is referred to herein as a "Lease Agreement"), reserving to Borrower, however, prior to an Event of Default, Borrower's license to receive and retain the rents as they are due (but not more than one (1) month prior to accrual) (other than ordinary and standard deposits and fees);

(ii) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Property or any part thereof

under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Subject to the provisions hereof, Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Subject to the provisions hereof, Lender may apply to all such sums or any part thereof so received, after the payment of all its actual out-of-pocket expenses, including costs and reasonable attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released; and

(iii) All easements, licenses and other rights necessary or useful in the operation of the Property.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Notes, the Loan Agreement, this Mortgage and other Loan Documents, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Notes, the Loan Agreement, this Mortgage and other Loan Documents expressed to be kept, performed, and observed by and on the part of Borrower, all without fraud or delay, and any option or right of Borrower to obtain additional advances from Lender shall have terminated, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and Lender will then upon Borrower's written request file a satisfaction and release of this Mortgage, but this Mortgage shall otherwise remain in full force and effect.

AND Borrower represents and affirms to Lender that the recitals set forth above are true and correct and are incorporated herein by reference and further covenants and agrees with Lender as follows:

ARTICLE I

Section 1.01 **Payment and Performance of Notes and Mortgage.** Borrower will perform, observe and comply with all provisions hereof, of the Notes secured hereby and of the Loan Agreement and other Loan Documents, and will duly and punctually pay to Lender the sum of money expressed in the Notes with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, the Loan Agreement, the Loan Documents and any and all documents evidencing and securing any of the Notes, all without any deductions or credit for taxes or other similar charges paid by Borrower.

Section 1.02 **Warranty of Title.** Borrower is lawfully seized of an indefeasible estate in fee simple in the real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell,

convey and mortgage the same in the manner and form aforesaid; that, except for any lien for current year's taxes and assessments not yet delinquent, Contested Items (as defined in the Loan Agreement), and the covenants, easements and restrictions of record set forth in the title insurance policy issued to and approved by Lender in connection with and insuring this Mortgage (the "Permitted Encumbrances"), the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, except for the sale or disposition of equipment, machinery, goods, fixtures, furniture or other tangible personal property that is no longer useful in connection with the operation of the Property, provided that such obsolete property is promptly replaced by property of at least equal value and utility which is subject to Lender's Lien, prior to all other Liens other than Permitted Liens. Subject to the Permitted Encumbrances, Borrower shall, during the term of the Loan, warrant and defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 1.03 **Monthly Tax Deposits.** If either (a) an Event of Default exists or (b) Borrower at any time after the date hereof fails to pay taxes prior to delinquency unless such delinquency is a Contested Item, then, upon Lender's request, Borrower will pay to Lender on the first day of each month together with and in addition to the regular installment of principal (if any) and interest, until the Notes are fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon written demand of Lender, Borrower agrees to deliver, within thirty (30) days thereof, to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges when due. Upon the occurrence and during the continuance of an Event of Default, Lender may, at its option, apply any funds held by Lender under this Section to the reduction of the sums secured hereby in such order and manner as Lender shall determine.

Section 1.04 **Other Taxes, Utilities and Liens.**

(a) Borrower will pay or cause to be paid prior to delinquency and will promptly exhibit to Lender upon request receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Property or any part thereof, or upon the interest of Lender in the Property (other than any of the same for which provision has been made in Section 1.03 hereof), this Mortgage or the Notes, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Borrower or in respect of the Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Property. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith with any third party (other than Lender) any matter described in this Subsection (a) provided Lender receives prompt notice from Borrower of such contest, Borrower diligently pursues such contest, the construction and operation of the Improvements is not adversely affected in any material respect, Lender's interest in the Property is not in Lender's

reasonable opinion materially endangered by such contest and, at Lender's option and upon Lender's request, Borrower establishes and maintains adequate reserves with respect thereto satisfactory to Lender.

(b) Borrower will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien to remain outstanding upon any of the Property beyond forty-five (45) days after any such lien is filed against the Property. Within such forty-five (45) day period Borrower will either satisfy such lien or bond the lien in such manner as to remove it as an encumbrance on the Property or provide title insurance affirmatively insuring Lender against any loss or damage resulting from such lien.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely Lender, such taxes or other sums as may then become due shall promptly be paid by Borrower to the fullest extent permitted by law. In the event that the payment of such taxes or other sums by Borrower shall be in any manner limited or prohibited, then the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall become due and payable forthwith at the option of Lender upon ninety (90) days written notice to Borrower.

Section 1.05 **Insurance.** Borrower will procure or cause the procurement of, and deliver to, and maintain for the benefit of Lender insurance policies as required by the Loan Agreement. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee. Any proceeds of insurance shall be applied in accordance with the terms of the Loan Agreement. If either (a) an Event of Default exists or (b) Borrower at any time after the date hereof fails to pay insurance premiums prior to delinquency, then, upon Lender's request, Borrower will pay to Lender on each scheduled payment date under the Notes, together with and in addition to the regular installment of principal (if any) and interest and monthly tax deposit (as required by Section 1.03 hereof) until the Notes are fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon written demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such insurance premiums when due. Upon the occurrence and during the continuance of an Event of Default, Lender may, at its option, apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount paid in accordance herewith remaining to Borrower's credit.

Section 1.06 **Condemnation.** If all or a substantial portion of the Property shall be damaged or permanently taken through condemnation (which term when used in this Mortgage

shall include any damage or permanent taking by any governmental authority, and any transfer by private sale in lieu thereof), such that in Lender's reasonable opinion the use, access or value of the Property may be materially impaired, then the outstanding principal amount of the Notes, all interest thereon and any other Obligations shall at Lender's option and upon thirty (30) days' written notice (except as provided below) become due and payable and Lender may immediately terminate Borrower's right to further advances of the Loan. Lender shall be entitled to all compensation, awards, and other payments or relief therefor, all of which shall be promptly delivered to Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith; except that so long as no Event of Default exists, Lender will not adjust or compromise any such claim without the written consent of Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require. In the event the entire Land is taken or so much thereof that restoration will in the opinion of Lender cost in excess of \$100,000, or in the event restoration costs will not exceed said amount but the conditions of the next sentence are not satisfied, all condemnation proceeds shall, at the option of Lender, be applied to the Notes (first to expenses, then interest, and then principal) and the Notes and all other amounts secured hereby shall, at the option of Lender, become immediately due and payable. Notwithstanding any provisions of this Section to the contrary if (i) the entire Land is not taken and, in the opinion of Lender, the Land and improvements thereon can be restored to a value and having the same number of rentable units as prior to such taking for a cost not to exceed \$100,000; (ii) in the opinion of Lender the Land and improvements thereon as restored will produce sufficient revenue to repay the Notes; (iii) provision satisfactory to Lender is made for making all payments due on the Notes during restoration; (iv) Lender receives evidence reasonably satisfactory to it and its counsel the Land and improvements thereon as restored will comply with all local zoning ordinances and building restrictions; (v) Borrower covenants to make the necessary repairs and restoration and provides all additional funds necessary therefor; and (vi) no Event of Default exists (beyond any applicable cure period), then Lender will make said award (less expenses incurred in collecting the same) available to Borrower for the purpose of such repair and restoration, disbursement of proceeds to be in accordance with Lender's standard construction disbursement procedures. Any excess of the proceeds of the award over the cost of repair and restoration shall be applied as a prepayment of the outstanding principal amount of the Notes and then to other Obligations owing by Borrower to Lender.

Section 1.07 **Care of the Property.**

(a) Borrower will preserve and maintain the Property in good condition and repair, reasonable wear and tear, casualty and acts of God excepted (provided in the case of casualty or acts of God the provisions of Section 1.07(f) will apply), and will not commit or suffer (to the extent within Borrower's reasonable control) any waste and will not do or suffer (to the extent within Borrower's reasonable control) to be done anything which will increase the risk of fire or other hazard to the Property or any part thereof.

(b) Except as otherwise expressly permitted herein or in the Loan Agreement, no buildings, fixtures, personal property, or other part of the Property shall be removed, demolished or substantially altered without the prior written consent of Lender, which consent

shall not be unreasonably withheld. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of similar functional utility, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Property or any part thereof is damaged by fire or any other cause, Borrower will give prompt written notice of the same to Lender.

(d) Lender is hereby authorized to enter upon and inspect the Property at any time during normal business hours with twenty-four (24) hours advance notice to Borrower.

(e) Borrower will comply as legally required with all present and future laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Property.

(f) If all or any part of the Property shall be damaged by fire, other casualty, or acts of God, Borrower will promptly restore the Property, or cause the Property to be restored, to the equivalent of its original condition, regardless of whether or not such insurance proceeds shall be sufficient for such purpose, provided Lender agrees to make net proceeds of insurance, if any, received by Lender available to Borrower for repair and restoration to the extent required by the Loan Agreement. If a part of the Property shall be physically damaged through condemnation, Borrower will restore promptly, repair or alter the remaining property or cause the remaining Property to be restored, repaired or altered, in a manner satisfactory to Lender regardless of whether or not such condemnation proceeds shall be sufficient for such purpose, provided Lender agrees to make net proceeds of condemnation, if any, received by Lender available to the extent required herein. The above obligations of Borrower shall not apply if Borrower pays the Obligations in full in lieu of such restoration, repair or alteration.

Section 1.08 **Further Assurances; After Acquired Property.** 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, to 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 reasonably required by Lender any and all such other and further mortgages, instruments of further assurance, certificates, financing statements and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Borrower under the Notes and this Mortgage, and the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, financing statements 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. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Property or any part thereof. This Mortgage may be filed in the public records as a fixture filing with Borrower as the debtor and Lender as the secured party.

Section 1.09 **Expenses.** Borrower will pay or reimburse Lender for all reasonable attorney's fees, costs, and expenses incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, in each such case affecting the Notes, this Mortgage, Borrower, or the Property, including, but not limited to, the foreclosure of this Mortgage, any condemnation action involving the Property, or any action to protect the security hereof; and any such amounts paid by Lender shall be payable ten (10) days following Lender's written demand, shall bear interest from and after the tenth (10th) day following written demand for payment by Lender at the Default Rate (as defined in the Lee Branch Note), and shall be secured by the lien of this Mortgage.

Section 1.10 **Performance by Lender of Defaults by Borrower.** If Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery to Lender of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then Lender, upon thirty (30) days' written notice to Borrower, at its option, may perform or observe the same, and all payments made for reasonable costs incurred by Lender in connection therewith, shall be secured hereby and shall be, promptly upon demand, repaid by Borrower to Lender, with interest thereon at a rate equal to the Default Rate. Lender shall, absent manifest error, be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower.

Section 1.11 **Books and Records.** Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Property. Borrower will furnish to Lender the financial statements and other information required by the Loan Agreement.

Section 1.12 **Estoppel Affidavits.** Borrower will, within ten (10) days after written request from Lender, furnish a written statement, duly acknowledged, stating whether or not there exists any offsets or defenses against the unpaid principal of, and interest on, the Notes, and setting forth the current unpaid principal and interest on the Notes (to the best of Borrower's knowledge), and such other matters as Lender may reasonably request.

Section 1.13 **DUE ON SALE OR ENCUMBRANCE.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and the owners of the beneficial interests in Borrower and Borrower's constituent entities in developing, owning and operating properties such as the Property in agreeing to make the Loan, and that

Lender will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, if Borrower defaults in the repayment of the Obligations, and fails to cure its default within any applicable cure period, Lender can recover all or a portion of the Obligations by a sale of the Property. Therefore, Lender may, at Lender's option, declare all the Obligations immediately due and payable and invoke any rights and remedies permitted by this Mortgage and the other Loan Documents, in the event that, unless otherwise expressly permitted by the Loan Agreement, Borrower, without the prior written consent of Lender, which consent may be denied or granted by Lender in its sole discretion, sells, disposes, assigns, transfers, alienates, pledges, hypothecates, or encumbers in any manner or in any way, whether voluntary, involuntary, or by operation of law, the Property or any part thereof or any interest therein, including, without limitation, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof or any interest therein for a price to be paid in installments, (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space or unit lessee thereunder, (c) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to the Lease Agreements or any rents, except the assignment in favor of Lender as evidenced by this Mortgage or the other Loan Documents, and (d) any divestiture of Borrower's title to the Property or any part thereof or any interest therein in any manner or way, whether voluntary or involuntary, or any merger, consolidation, dissolution or syndication affecting Borrower. Lender will not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon the occurrence of any transfer described without Lender's prior written consent or as otherwise expressly permitted herein. This provision will apply to every such transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous transfer, except for those expressly allowed herein. Any transfer made in contravention of this Article shall be null and void and of no force and effect. Nothing in this Section shall refer to the Permitted Encumbrances or any permitted easements recorded after recording of this Mortgage or Permitted Transfers (as defined in the Loan Agreement).

ARTICLE II

Section 2.01 **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence of any one or more of the following events:

- (a) The failure by Borrower to pay any installment of principal or interest under the Lee Branch Note on or before the due date thereof;
- (b) An "Event of Default" under the terms of any of the Notes or other Loan Documents, after the passage of any applicable grace and/or cure periods, each of which is incorporated herein by reference as if set forth in full herein;
- (c) Any violation of Section 1.13 of this Mortgage; or

(d) Any failure by Borrower to perform any of its obligations under this Mortgage (other than as specified in (a), (b) or (c) above), as and when required which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, that if such failure is of the nature that it reasonably cannot be cured within such thirty (30) days, such cure period shall be extended for an additional period reasonably necessary to complete said cure (but in no event longer than an additional sixty (60) days), provided that Borrower shall commence to cure such failure within the initial thirty (30) days, and thereafter, shall diligently and in good faith prosecute said cure to completion.

The term "Event of Default" or "Events of Default" wherever used in the Mortgage shall mean that any required notice has been given and any applicable cure period has expired. Notwithstanding anything in this Section, Borrower shall have all rights of notice and cure as set forth in the Loan Agreement; provided, however, all requirements of notice shall be deemed eliminated if Lender is prevented from giving such notice by bankruptcy or other applicable law. The cure period, if any, shall then run from the occurrence of the event or condition of Default rather than from the date of notice.

Section 2.02 **Acceleration of Maturity.** If an Event of Default shall exist, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

Section 2.03 **Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall exist, Borrower, upon demand of Lender, shall forthwith surrender to Lender or its agents or representatives, as directed by Lender, the actual possession, and if and to the extent permitted by law, Lender or its agents or representatives may enter and take possession, of all the Property, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon each such entry upon and/or taking of possession by Lender or its agents or representatives, Lender or its agents or representatives may hold, store, use, operate, manage, and control the Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage; and Lender or its agents or representatives may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage

as Lender or its agents or representatives may determine to pay; (E) other proper charges upon the Property or any part thereof; and (F) the compensation, expenses, and disbursements of the attorneys and agents of Lender; shall apply the remainder of the moneys so received by Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, provided Lender elects to accept a cure if such cure is beyond the applicable cure period, Lender shall surrender possession of the Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall exist.

Section 2.04 **Receiver.**

(a) If an Event of Default shall exist, Lender, upon application to a court of competent jurisdiction and to the extent permitted by applicable law, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect the rents, profits, issues, and revenues thereof and, upon approval of the court having jurisdiction thereof, the right to sell the Property or any part thereof.

(b) Borrower will pay to Lender upon demand all actual out-of-pocket expenses, including reasonable receiver's fees, reasonable attorney's fees and costs, and reasonable agent's compensation, incurred pursuant to the provisions contained in this Section; and all such expenses shall be secured by this Mortgage.

Section 2.05 **Lender's Power of Sale.** If an Event of Default shall have occurred and be continuing, Lender may sell the Property (or any part thereof as Lender 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 is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect. 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, Borrower hereby waiving application of any doctrine of marshaling or like proceeding. The purchaser at any sale or sales shall be under no obligation to see to the proper application of the purchaser money. If Lender, 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 the Property not previously sold shall have been sold or all Obligations have been indefeasibly paid in full.

Section 2.06 **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.05 shall be applied as provided by applicable law and, to the extent not inconsistent therewith, then as follows:

(a) First, to the expenses of making the sale, including reasonable attorney's fees and actual expenses for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at the Default Rate as set forth in the Lee Branch Note, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness secured hereby, including interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the persons or entities entitled to such balance under applicable law after deducting any expense of ascertaining who is so entitled to such balance.

Section 2.07 **Lender's Option on Foreclosure.** At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property.

Section 2.08 **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby.

Section 2.09 **Suits to Protect the Property.** Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Property and in the income, revenues, rents, and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

Section 2.10 **Borrower to Pay the Notes on Any Event of Default; Application of Moneys by Lender.** If an Event of Default exists, then, upon demand of Lender, Borrower will pay to Lender the whole amount due and payable under the Notes; and in case Borrower shall

fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with actual reasonable costs, which shall include the compensation, expenses, and disbursements of Lender's agents and attorneys.

Section 2.11 **Delay or Omission No Waiver.** No delay or omission of Lender or of any holder of any of the Notes to exercise any right, power, or remedy accruing upon any Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

Section 2.12 **No Waiver of One Default to Affect Another, etc.** No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing Event of Default or shall impair any rights, powers, or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in any of the Notes or in any other Loan Document; (d) releases any part of the Property from the lien of this Mortgage or otherwise changes any of the terms of the Notes, this Mortgage or any other Loan Document; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Notes, this Mortgage or any other Loan Document or otherwise of Borrower or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender, at its option, without notice to any person or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

Section 2.13 **Discontinuance of Proceedings - Position of Parties, Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Lender shall continue as if no such proceeding has been taken.

Section 2.14 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall

be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 2.15 **No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Notes, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

Section 2.16 **Release of Collateral, Effect on Subordinate Liens.** Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of Borrower under the Notes and/or this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this Section.

Section 2.17 **Other Collateral.** For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender as security for the Notes, in such order and manner as Lender may elect without affecting its remedies under this Mortgage, to the maximum extent permitted by the laws of the State of Alabama.

Section 2.18 **Waiver of Redemption, Notice, Marshalling, Etc.** Borrower hereby waives and releases, to the maximum extent permitted by the laws of the State of Alabama:

(a) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; and

(b) unless specifically required herein or in the Loan Documents, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise, of any option or remedy under the Notes or this Mortgage; and

(c) any right to have the Property marshaled; provided, that if any of the rights waived by Borrower in this Section affect or extend the time for sale of the said described Property, affect Lender's rights to enforce this Mortgage or affect Borrower's right to redeem, Lender shall have the right to elect to accept or reject the waiver of such right by Borrower, and such election may be made by Lender at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

ARTICLE III

Section 3.01 **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of its respective

successors and assigns, whether so expressed or not, provided nothing herein is intended to permit any transfer of the Property to the extent prohibited under this Mortgage or the Loan Agreement.

Section 3.02 **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

Section 3.03 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage, in the Notes or in any other Loan Document shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein, in the Notes and in all other Loan Documents shall in no way be affected, prejudiced, or disturbed thereby.

Section 3.04 **Lien on Personal Property.** This Mortgage creates a lien on and grants a security interest in the personal property of Borrower described herein which constitutes part of the Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens upon and security interests in personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as the “debtor” and Lender as the “secured party,” and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code or other law applicable to liens upon and security interests in personal property. Borrower confirms that Lender is authorized to file any financing statements describing Lender’s collateral as “all assets” or “all personal property” of Borrower or similar terminology.

Section 3.05 **Notices.** All notices to Borrower or Lender provided for herein, in other Loan Documents, or required by applicable law in any matter relating to the Loan, shall be given and deemed received in accordance with the provisions regarding notice as set forth in the Loan Agreement.

Section 3.06 **Loan Agreement.** The indebtedness secured hereby will be advanced to Borrower by Lender on or about the date hereof in accordance with a Loan Agreement dated of even date herewith (as the same may hereafter be amended, the “Loan Agreement”). The Loan Agreement is, by reference, herein incorporated to the same extent and effect as though set forth herein in full. In the event of a conflict between the terms of this Mortgage and the terms of the Loan Agreement, the Loan Agreement shall govern and prevail.

Section 3.07 **Future Advances.** A portion of the indebtedness secured by this Mortgage will be advanced to Borrower by Lender from time to time in accordance with the Loan Documents. **IT IS THE INTENT OF BORROWER AND LENDER THAT THIS MORTGAGE SECURE ALL FUTURE ADVANCES (INCLUDING OPTIONAL AND PROTECTIVE ADVANCES) MADE PURSUANT TO THE LOAN DOCUMENTS.** Each future advance shall be an integral part of the Obligations and shall be secured by the lien of this

Mortgage as fully and to the same extent as though the same were a part of the original indebtedness. However, nothing contained herein shall be deemed an obligation on the part of Lender to make any future advances.

Section 3.08 **Jurisdiction.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 3.09 **No Assumption or Assignment.** No sale, transfer, conveyance or encumbrance of the Property, or any interest therein (other than Permitted Encumbrances), shall be made or suffered without the prior written consent of Lender except for transfers expressly permitted in the Loan Agreement. Borrower agrees that, except as provided above, payment of the Obligations secured hereby may not be assumed by any future owners of the Property and that Lender may, at its option, declare all Obligations secured hereby due and payable in full upon any sale, transfer, conveyance or encumbrance of the Property, or any interest therein.

Section 3.10 **Execution; Counterparts.** This Mortgage 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.


Section 3.11 **Waiver of Jury Trial.** **TO THE 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 THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith 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 OR BOTH OF THEM MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

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

BORROWER:

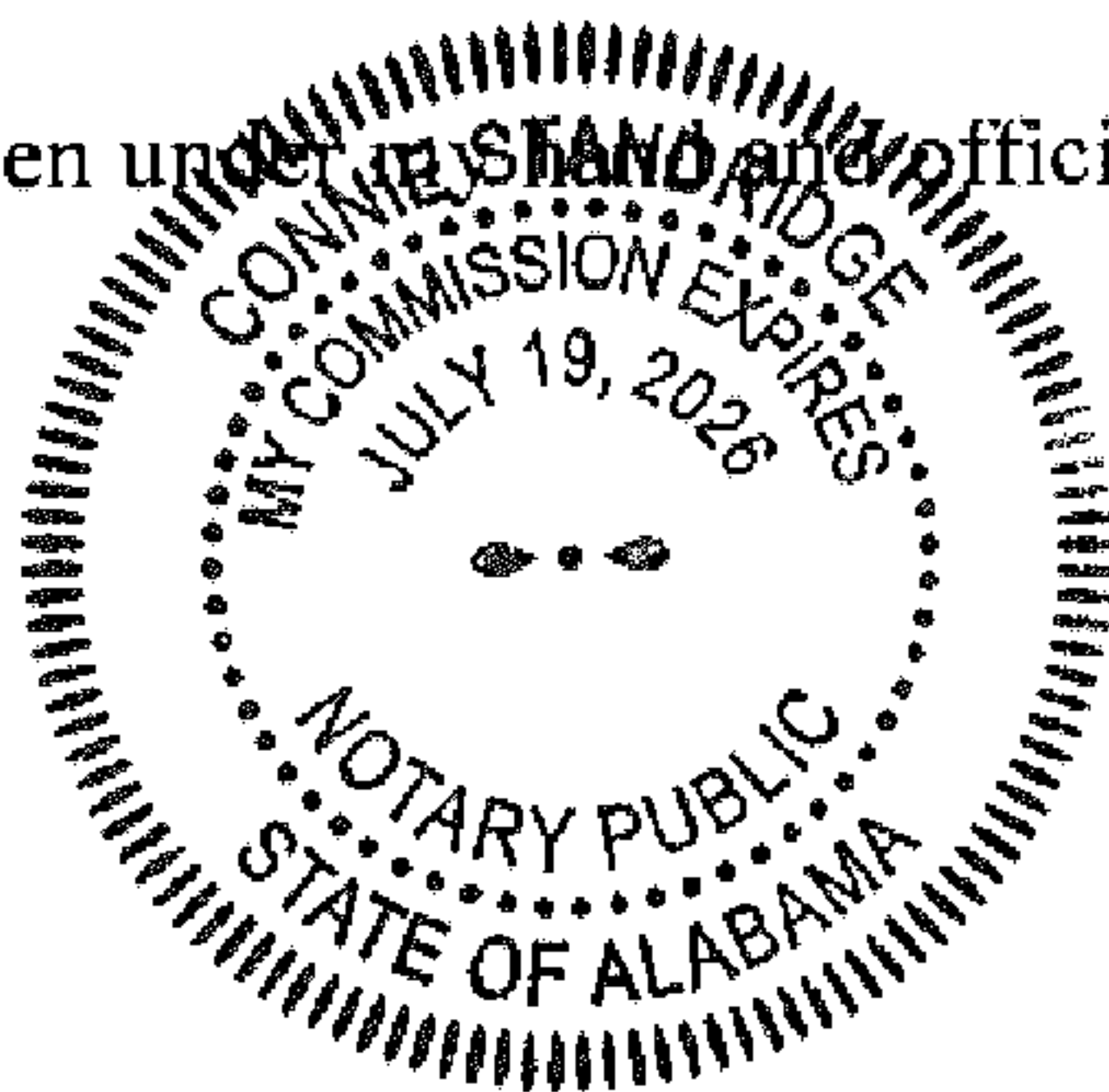
FOWL PLAY, INC., an Alabama corporation

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.



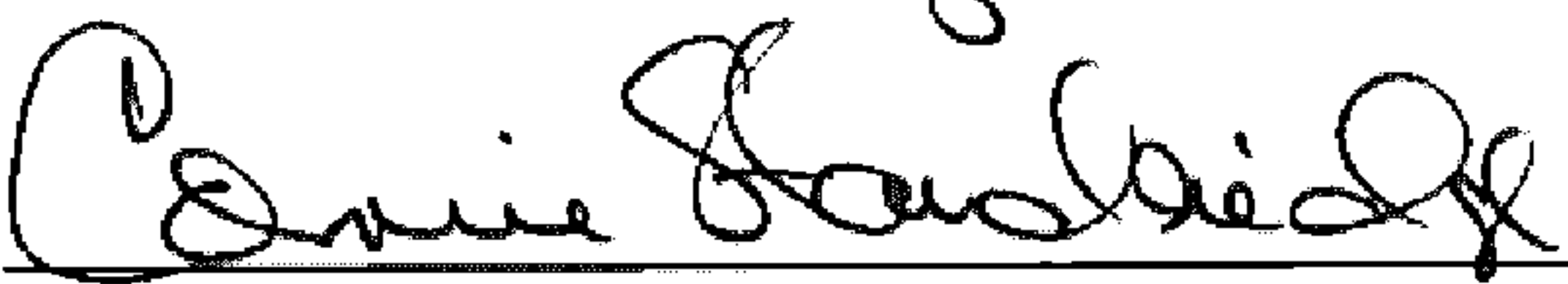

Notary Public
My Commission Expires: 7-19-26

EXHIBIT A

Legal Description

Parcel I:

Lot 4B, according to the re-subdivision of The Village at Lee Branch as recorded in Map Book 31, Page 130 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel II:

Together with all rights and easements that constitute a beneficial interest in real property as set out in the Reciprocal Easement Agreement with Covenants, Conditions and Restrictions as recorded in Inst. No. 20030701000412990 and amended in Inst. No. 20030827000569970 in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel III:

Together with all rights and easements that constitute a beneficial interest in real property as set out in the Declaration of Covenants, Conditions and Restrictions and Declaration of Easements as recorded in Inst. No. 20061025000527560, in the Office of the Judge of Probate of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/05/2022 01:38:13 PM
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Allen S. Bayl