

**CIG SSD LLC, CID SSD JWG LLC, CIG SSD EM LLC,  
CIG SSD FB LLC and CIG SSD RGM LLC**, individually and collectively, mortgagor  
(jointly and severally as tenants-in-common, individually and collectively as the context  
requires, Borrower)

to

**BANK OF MONTREAL**, as mortgagee  
(Lender)

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

Dated: As of March 30, 2022

Location: 38188 AL-25, Harperville, Alabama  
5300 Cahaba Valley Road, Birmingham, Alabama

County: Shelby

DOCUMENT PREPARED BY:

UPON RECORDATION PLEASE RETURN TO:

Winstead PC  
1415 Vantage Park Drive, Suite 450  
Charlotte, North Carolina 28203  
Attention: Sayer Nixon, Esq.

Servion Commercial Title  
500 Main Street, Suite 210  
New Brighton, MN 55112  
Attention: Melissa Boeshans

**Note to recording offices regarding amount of Mortgage Tax:** Mortgage tax in the amount of \$29,400.00 is due upon the indebtedness secured by this Security Instrument (the "Total Mortgage Privilege Tax"). The indebtedness secured by this Security Instrument is secured by real property located in Jefferson County, Shelby County, Chambers County and Russell County, Alabama (the "Alabama Property"). The value of the property located in Jefferson County constitutes 31% of the total value of the Alabama Property; value of the property located in Shelby County constitutes 22% of the total value of the Alabama Property; the value of the property located in Chambers County constitutes 31% of the total value of the Alabama Property; and the value of the real property located in Russell County, Alabama constitutes 16% of the total value of the Alabama Property. Accordingly, Mortgage Privilege Tax is being submitted as follows:

-Jefferson County, Alabama (31%): \$9,114.00  
-Shelby County, Alabama (22%): \$6,468.00  
-Chambers County, Alabama (31%): \$9,114.00  
-Russell County, Alabama (16%): \$4,704.00

Note that the indebtedness secured by this Security Instrument is also secured by properties in other states, and therefore Borrower intends to petition the Alabama Department of Revenue for a refund of a portion of the Total Mortgage Privilege Tax.

THIS SECURITY INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO THE CODE OF ALABAMA (1975), § 7-9A-502(c) AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of the 30<sup>th</sup> day of March, 2022 by **CIG SSD LLC, CIG SSD JWG LLC, CIG SSD EM LLC, CIG SSD FB LLC and CIG SSD RGM LLC**, each a Delaware limited liability company, each having its principal place of business at 150 Boush Street, Suite 300, Norfolk, Virginia 23510, individually and collectively, mortgagor (jointly and severally as tenants-in-common, individually and collectively as the context requires, "Borrower") to **BANK OF MONTREAL**, a Canadian Chartered bank acting through its Chicago Branch, having an address at c/o BMO Capital Markets Corp., 3 Times Square, New York, New York 10036, as mortgagee (together with its successors and/or assigns, "Lender").

#### RECITALS:

This Security Instrument is given to secure a loan (the "Loan") in the principal sum of NINETEEN MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$19,600,000.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be hereafter amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by the Note.

Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Loan Agreement and the other Loan Documents.

This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents dated the date hereof made by Borrower in favor of Lender delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Assignment of Leases"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

#### ARTICLE I. GRANTS OF SECURITY

Section 1.01. Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to, and grant a security interest to Lender and its successors and assigns in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):



(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and, to the extent assignable, development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, pads, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, mineral rights, air rights and development rights (to the extent assignable), and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above; notwithstanding the foregoing, Personal Property shall not include any property belonging to tenants under Leases, any property manager, or guests or invitees at the Property except to the extent that Borrower shall have any right or interest therein;

(f) Leases and Rents. All existing and future leases, subleases or subsubleases, lettings, licenses, concessions or other agreements made a part thereof (whether written or oral and whether now or hereafter in effect) affecting the use, enjoyment, or



occupancy of all or any part of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments, modifications or other agreements relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee, letter of credit or any other credit of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, and the right, title and interest of Borrower, its successors and assigns, therein, whether before or after the filing by or against Borrower of any petition for relief under Title 11 U.S.C.A. § 101 et seq. and the regulations adopted and promulgated thereto (as the same may be amended from time to time, the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees’ obligations thereunder (“**Lease Guaranties**”), cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, percentage rent, rent equivalents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including, without limitation, all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (collectively, the “**Rents**”) and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(l) Agreements. All Property Documents, agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any



Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(m) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Accounts. All Accounts, Account Collateral, reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, the Lockbox Account and the Cash Management Account, and all complete securities, investments, property and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(o) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Cause of Action"); and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable Legal Requirements, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures, collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.02. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that, to the fullest extent permitted by applicable Legal Requirements, this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.02 and the Loan Agreement, the Cash Management Agreement and Section 9.01(h) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.03. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests,

whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as herein defined) a security interest in the Personal Property, the Accounts, and the Account Collateral to the full extent that the Personal Property, the Accounts and the Account Collateral and such other property may be subject to the Uniform Commercial Code.

Section 1.04. Pledge of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Reserve Funds, the Accounts, Net Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

Section 1.05. Fixture Filing. This Security Instrument shall constitute a "fixture filing" for the purposes of the Uniform Commercial Code upon all of the Property which is or is to become "fixtures" (as that term is defined in the Uniform Commercial Code), upon being filed for record in the real estate records of the County wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Borrower) and Secured Party (Lender) as set forth in the first paragraph of this Security Instrument.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever.

WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note, the Loan Agreement, and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations (as herein defined) as set forth in this Security Instrument and shall well and truly abide by and comply with each covenant and condition set forth herein, in the Note and in the Loan Agreement, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE II. DEBT AND OBLIGATIONS SECURED

Section 2.01. Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.02. Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (collectively, the "Other Obligations"):



(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Documents and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Section 2.03. Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations.**"

### ARTICLE III. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.01. Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Security Instrument.

Section 3.02. Incorporation by Reference. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.03. Insurance. Borrower shall obtain and maintain, or cause to be maintained, insurance in full force and effect at all times with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.04. Payment of Taxes, Etc. Borrower shall pay all Taxes and Other Charges in accordance with the terms of the Loan Agreement.

Section 3.05. Maintenance and Use of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair in accordance with the terms of the Loan Agreement. Subject to the terms of the Loan Agreement, the Improvements and the Personal Property shall not be removed, demolished, materially altered or expanded (except for normal replacement of the Personal Property) without the consent of Lender. Subject to the terms of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Subject to the terms of the Loan Agreement, Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning



provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 3.06. Waste. Borrower shall not commit or suffer any intentional physical waste of the Property or make any change in the use of the Property which might be reasonably expected to materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might be reasonably expected to invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that might be reasonably expected to in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.07. Payment for Labor and Materials. Subject to the terms of the Loan Agreement, Borrower will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the Liens and the security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Encumbrances.

Section 3.08. Performance of Other Agreements. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

Section 3.09. Change of Name, Identity or Structure. Except as may be expressly permitted under the Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or corporate, partnership or other structure without first obtaining the prior written consent of Lender. Borrower hereby authorizes Lender, prior to or contemporaneously with the effective date of any such change, to file any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.10. Leases. Borrower shall not (and shall not permit any other applicable Person to) enter into any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.



#### ARTICLE IV. OBLIGATIONS AND RELIANCES

Section 4.01. Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.02. No Reliance on Lender. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.03. No Lender Obligations.

(a) Notwithstanding the provisions of Section 1.01(f), (l) and (m) or Section 1.02 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.04. Reliance. Borrower recognizes and acknowledges that in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (i) Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (ii) that such reliance existed on the part of Lender prior to the date hereof; (iii) that the warranties and representations are a material inducement to Lender in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents; and (iv) that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

#### ARTICLE V. FURTHER ASSURANCES

Section 5.01. Recording of Security Instrument, Etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security



interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Loan Agreement, this Security Instrument, the other Loan Documents, and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.02. Further Acts, Etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements; provided, that, same does not increase Borrower's obligations or diminish Borrower's rights hereunder, under any other Loan Document, or otherwise in any material respect. Borrower, promptly following written demand, will execute and deliver and hereby authorizes Lender to file one or more financing statements or execute in the name of Borrower to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property or any Collateral. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies in connection with the Loan available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.02. Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any Uniform Commercial Code jurisdiction financing statements (including amendments and continuations thereof) that indicate the Personal Property, the Accounts, and the Account Collateral as "all assets of the debtor" or words of similar effect.

Section 5.03. Changes in Tax, Debt Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, other than taxes measured by the gross or net income of Lender, Borrower will pay the tax, with interest and penalties thereon, if any, subject to Borrower's right to contest such taxes as expressly provided in the Loan Agreement. If the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then



Lender shall have the option, exercisable by written notice of not less than ninety (90) days to declare the Debt immediately due and payable, provided however, that no prepayment premium or penalty shall be due in connection with the repayment of the Debt.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable, provided, however, that no prepayment premium or penalty shall be due in connection with the repayment of the Debt.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Loan Agreement, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.04. Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Documents, Borrower will issue, in lieu thereof, a replacement Note or other Loan Documents, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Documents in the same principal amount thereof and otherwise of like tenor.

## **ARTICLE VI. DUE ON SALE/ENCUMBRANCE**

Section 6.01. Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and 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 Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.02. No Sale/Encumbrance. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.



**ARTICLE VII.  
PREPAYMENT**

Section 7.01. Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

**ARTICLE VIII.  
RIGHTS AND REMEDIES**

Section 8.01. Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property and any other Collateral for the Loan, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable Legal Requirements provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by any applicable Legal Requirements, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by applicable Legal Requirements;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement, or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, Guarantor or of any Person liable for the payment of the Debt;

(h) subject to applicable Legal Requirements, the license granted to Borrower under Section 1.02 hereof shall automatically be revoked and Lender may enter into or upon the Property, subject to the rights of tenants pursuant to Leases, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the Rents and other receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all out-of-pocket expenses (including reasonable attorneys' fees) actually incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of any Collateral (including, without limitation, the Personal Property) or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, the Accounts, and the Account Collateral (including without limitation, the Personal Property), and (ii) request Borrower at its expense to assemble the Personal Property, the Accounts, and the Account Collateral, including without limitation, the Personal Property, and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property, the Accounts, and the Account Collateral, including without limitation, the Personal Property, sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Accounts and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument, the Loan Agreement, or any other Loan Documents to the payment of the following items in any order in its sole discretion:

(i) Taxes and Other Charges;



- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; or
- (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(m) foreclose by power of sale or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 8.02 of this Security Instrument or to any deficiency under this Security Instrument;

(n) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 8.02 of this Security Instrument or to any deficiency under this Security Instrument; or

(o) pursue such other remedies as Lender may have under applicable Legal Requirements.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 8.02. Application of Proceeds. Upon the occurrence and during the continuance of any Event of Default, the purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 8.03. Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such

purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided below, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default shall bear interest at the Default Rate for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender and shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 8.04. Actions and Proceedings. Subject to the terms and conditions of the Loan Agreement, during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of any Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 8.05. Recovery of Sums Required to be Paid. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

Section 8.06. Other Rights, Etc.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or Guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The



rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.07. Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.08. Right of Entry. Subject to the terms of the Loan Agreement and subject to the rights of tenants under Leases, upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.09. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, and the performance and discharge of the Obligations.

Section 8.10. Bankruptcy.

(a) Upon the occurrence and during the continuance of any Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) Business Days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the



preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## ARTICLE IX. INDEMNIFICATIONS

Section 9.01. General Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, the Security Instrument or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement or the provisions of the Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with Borrower, Guarantor, any indemnitor and/or any partner, joint venture or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) any failure of the Property to be in compliance with any Legal Requirements; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (i) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument, the Note, the Loan Agreement or any of the other Loan Documents; (j) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (k) the enforcement by any Indemnified Party of the provisions of this Article 9; (l) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document, or (m) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. Any amounts payable to Lender by reason of the application of this Section 9.01 shall become immediately due and payable and shall bear interest at the Default Rate from the date out-of-pocket loss or damage actually incurred is sustained by Lender until paid.

Section 9.02. Mortgage and/or Intangible Tax. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified



Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Loan Agreement, the Note or any other Loan Document.

Section 9.03. Environmental Indemnity. Simultaneously with this Security Instrument, Borrower and Guarantor have executed and delivered the Environmental Indemnity.

## **ARTICLE X. WAIVERS**

Section 10.01. Waiver of Counterclaim. To the extent permitted by applicable Legal Requirements, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, the Loan Agreement, any of the other Loan Documents, or the Obligations.

Section 10.02. Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by applicable Legal Requirements, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Legal Requirements.

Section 10.03. Waiver of Notice. To the extent permitted by applicable Legal Requirements, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Lender to Borrower, and (b) with respect to matters for which Lender is required by any applicable Legal Requirements to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.04. Waiver of Statute of Limitations. To the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.05. Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and

determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly provided herein or in any of the other Loan Documents.

Section 10.06. Waiver of Foreclosure Defense. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Section 10.07. Survival. The indemnifications made pursuant to Sections 9.01 and 9.02 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property or the Loan (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

## **ARTICLE XI. EXCULPATION**

Section 11.01. Exculpation. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement and the other Loan Documents shall be limited as set forth in Section 9.4 of the Loan Agreement.

## **ARTICLE XII. SUBMISSION TO JURISDICTION**

Section 12.01. Submission to Jurisdiction. With respect to any claim or action arising hereunder or under the Note or the other Loan Documents, each of Borrower and by virtue of its acceptance of this Security Instrument, Lender (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York, New York, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Security Instrument brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing in this Security Instrument will be deemed to preclude Lender from bringing an action or proceeding with respect hereto in any other jurisdiction.



**ARTICLE XIII.  
APPLICABLE LAW**

Section 13.01. CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES), PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 13.02. Provisions Subject to Applicable Legal Requirements. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable Legal Requirements and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Legal Requirements.

**ARTICLE XIV.  
DEFINITIONS**

Section 14.01. General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note," shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees", "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 14.02. Headings, Etc. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**ARTICLE XV.  
MISCELLANEOUS PROVISIONS**

Section 15.01. No Oral Change. This Security Instrument and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement

in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.02. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns.

Section 15.03. Inapplicable Provisions. If any term, covenant or condition of this Security Instrument or any other Loan Document, is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument or the other Loan Documents, as the case may be, shall be construed without such provision.

Section 15.04. Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 15.05. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.06. Notices. All notices required or permitted under this Security Instrument shall be given and be effective in accordance with Section 10.6 of the Loan Agreement.

Section 15.07. Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger, except to the extent the same shall result solely from the gross negligence, willful misconduct or fraud of Lender or its agents. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

## **ARTICLE XVI. STATE SPECIFIC PROVISIONS**

Section 16.01. Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other provisions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.02. Judicial Proceedings; Right to Receiver. If an Event of Default exists, Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on the Property, to sue Borrower for damages on account of

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said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Lender shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Security Instrument, to the extent required by law), to the appointment by any competent court or tribunal, without notice to Borrower or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

Section 16.03. Power of Sale. If an Event of Default shall occur, this Security Instrument shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) under the power of sale which is hereby given to Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the land to be sold is located. If there is land to be sold in more than one county, publication shall be made in all counties where the land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at any sale held under this Security Instrument and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case 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 of the Property not previously sold shall have been sold or all the Debt shall have been paid in full and this Security Instrument shall have been terminated as provided herein.

Section 16.04. Foreclosure Deeds. To the extent permitted by applicable law, Borrower hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

Section 16.05. Multiple Sales. If an Event of Default shall occur, Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Security Instrument, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt, and such sale, if so made, shall not affect the unmatured part of the Debt, but as to such unmatured part of the Debt this Security Instrument shall remain in full force and effect as though no sale had been made. Several sales



may be made hereunder without exhausting the right of sale for any remaining part of the Debt, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting the power of foreclosure and the power to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

Section 16.06. Prerequisites of Sales. In case of any sale of the Property as authorized by this Security Instrument, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

## ARTICLE XVII. CROSS COLLATERALIZATION

Section 17.01. Cross Collateralization. Borrower acknowledges that the Debt is secured by this Security Instrument together with those additional Security Instruments given by Borrower and/or certain Affiliates of Borrower to Lender, together with their respective Assignments of Leases and other Loan Documents securing or evidencing the Debt, and encumbering the other Individual Properties, all as more specifically set forth in the Loan Agreement. Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Debt or the portion of the Debt allocated to the Property in the Loan Agreement, and the lien and the security interest created by the other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Debt then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the other Individual Properties are located in one or more States and counties, and therefore Lender shall be permitted to enforce payment of the Debt and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or the other Security Instruments and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or the other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the States or counties in which the Property or any other Individual Property is located. Neither the acceptance of this Security Instrument, the other Loan Documents or the other Security Instruments nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, this Security Instrument, the other Loan Documents, or any other Security Instruments through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Lender under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Debt in such order and priority as Lender shall determine, in its sole discretion, without regard to the Allocated Loan Amount for the Property or any other Individual Property or the appraised value of the Property or any Individual Property.



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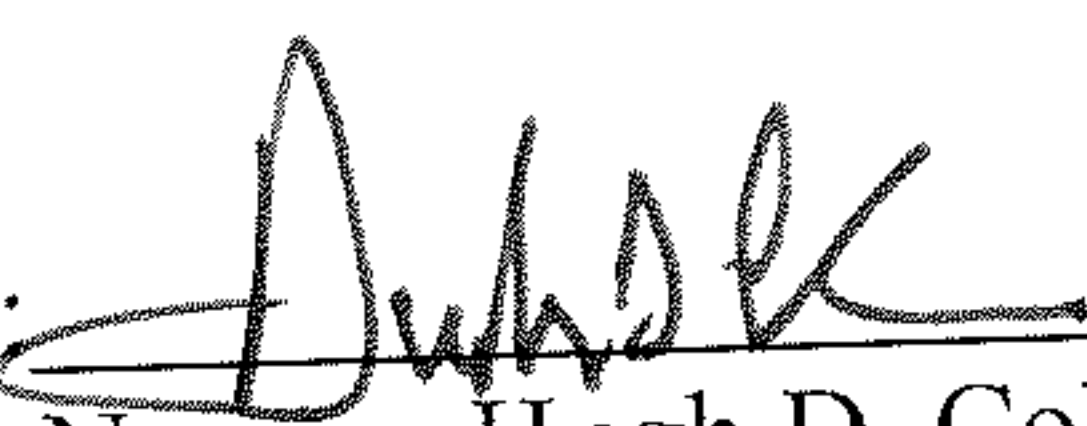
IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been duly executed by Borrower as of the day and year first above written.

**BORROWER:**

**CIG SSD LLC,**  
a Delaware limited liability company

By: CIG SSD MANAGER LLC,  
a Virginia limited liability company,  
its Manager

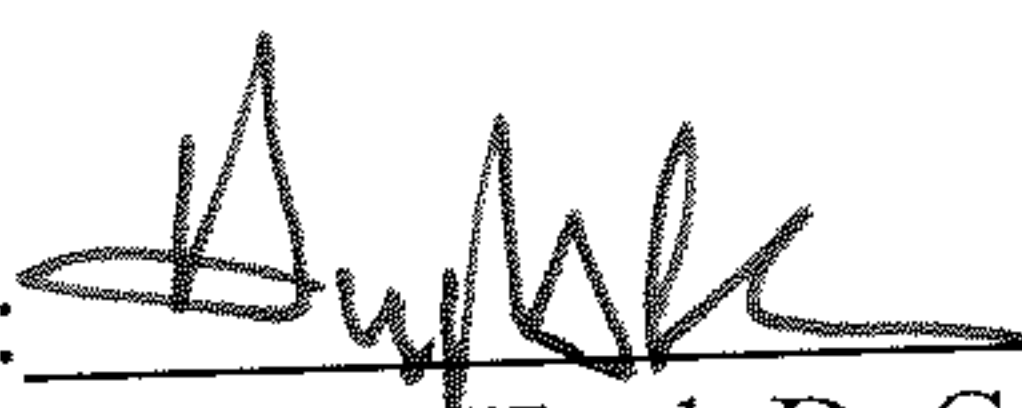
By: COHEN INVESTMENT GROUP  
CAPITAL LLC,  
a Virginia limited liability company,  
its Manager

By:   
Name: Hugh D. Cohen  
Title: Manager

**CIG SSD EM LLC,**  
a Delaware limited liability company

By: CIG SSD MANAGER LLC,  
a Virginia limited liability company,  
its Manager

By: COHEN INVESTMENT GROUP  
CAPITAL LLC,  
a Virginia limited liability company,  
its Manager

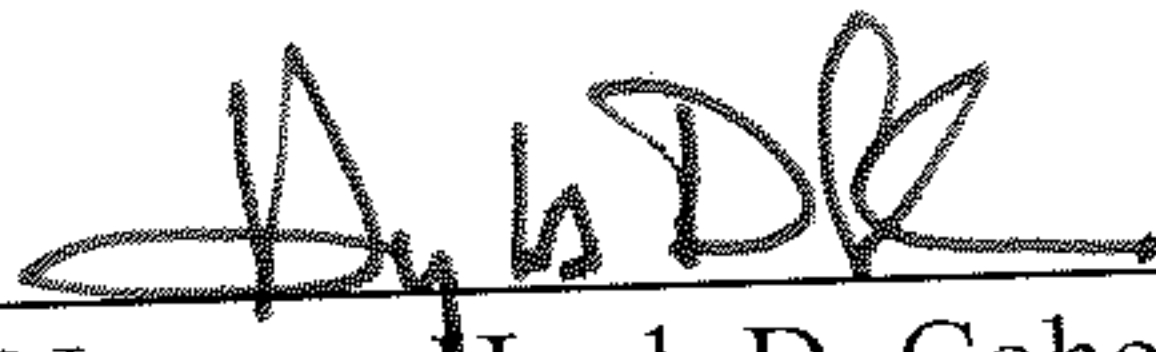
By:   
Name: Hugh D. Cohen  
Title: Manager



**CIG SSD FB LLC,**  
a Delaware limited liability company

By: CIG SSD MANAGER LLC,  
a Virginia limited liability company,  
its Manager

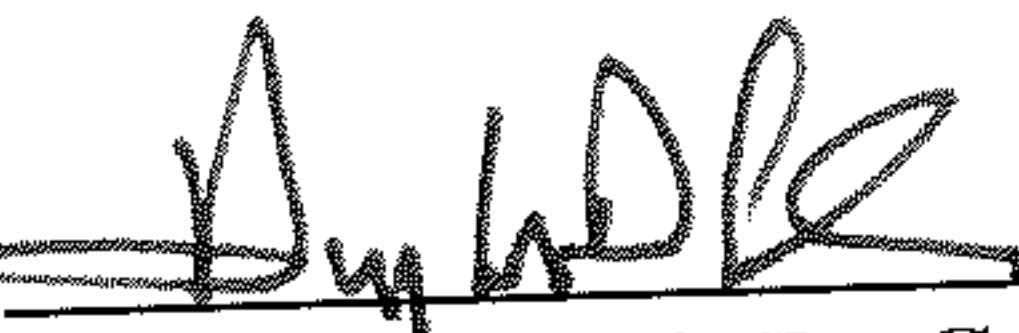
By: COHEN INVESTMENT GROUP  
CAPITAL LLC,  
a Virginia limited liability company,  
its Manager

By:   
Name: Hugh D. Cohen  
Title: Manager

**CIG SSD JWG LLC,**  
a Delaware limited liability company

By: CIG SSD MANAGER LLC,  
a Virginia limited liability company,  
its Manager

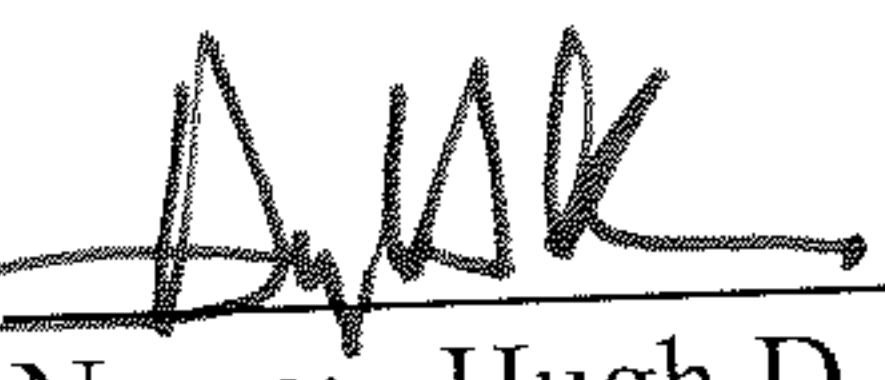
By: COHEN INVESTMENT GROUP  
CAPITAL LLC,  
a Virginia limited liability company,  
its Manager

By:   
Name: Hugh D. Cohen  
Title: Manager

**CIG SSD RGM LLC,**  
a Delaware limited liability company

By: CIG SSD MANAGER LLC,  
a Virginia limited liability company,  
its Manager

By: COHEN INVESTMENT GROUP  
CAPITAL LLC,  
a Virginia limited liability company,  
its Manager

By:   
Name: Hugh D. Cohen  
Title: Manager



ACKNOWLEDGMENTS

COMMONWEALTH OF VIRGINIA

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§  
§

CITY OF NORFOLK

The foregoing instrument was ACKNOWLEDGED before me on MARCH 24, 2022 by HUGH D. COHEN, as Manager of COHEN INVESTMENT GROUP CAPITAL LLC, a Virginia limited liability company, as Manager of CIG SSD MANAGER LLC, a Virginia limited liability company, as Manager of CIG SSD LLC, a Delaware limited liability company, on behalf of said limited liability company.

[S E A L]

My Commission Expires:

April 30, 2022

Benson L.H. Powell  
Notary Public, Commonwealth of Virginia

BENSON L.H. POWELL  
Printed Name of Notary Public



COMMONWEALTH OF VIRGINIA

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[S E A L]

My Commission Expires:

April 30, 2022

Benson L.H. Powell  
Notary Public, Commonwealth of Virginia

BENSON L.H. POWELL  
Printed Name of Notary Public



COMMONWEALTH OF VIRGINIA

§

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[S E A L]

My Commission Expires:

APRIL 30, 2022

Benson L. H. Powell

Notary Public, Commonwealth of Virginia

BENSON L. H. POWELL

Printed Name of Notary Public



COMMONWEALTH OF VIRGINIA

§

§

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[S E A L]

My Commission Expires:

APRIL 30, 2022

Benson L. H. Powell

Notary Public, Commonwealth of Virginia

BENSON L. H. POWELL

Printed Name of Notary Public





COMMONWEALTH OF VIRGINIA

§

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[S E A L]

My Commission Expires:

April 30 2022

Benson L. H. Powell

Notary Public, Commonwealth of Virginia

Benson L. H. Powell

Printed Name of Notary Public



EXHIBIT A  
Legal Description

Parcel I: 5400 Cahaba Valley Road, Birmingham, AL 35242 (Parcel ID: 10 5 22 0 002 074.000):

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

A parcel of land situated in the SE 1/4 of Section 22, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a point Where the East boundary of the NE 1/4 of the SE 1/4 of Section 22 intersects with the North right of way line of Alabama Highway No. 119, also known as Cahaba Valley Road; thence run in a Southwesterly direction along said right of way line for a distance of 423.30 feet to an iron pin found at the point of beginning; said point of beginning being on a curve to the right having a central angle of 3 degrees, 08 minutes, 29 seconds and a radius of 1869.87 feet; thence continue along said right of way line and also along the arc of said curve for a distance of 102.52 feet to an iron pin found; thence turn an angle to the right from the chord of last stated curve of 94 degrees, 32 minutes, 25 seconds and run in a Northwesterly direction for a distance of 147.93 feet to an iron pin found; thence turn an angle to the left of 93 degrees, 34 minutes, 49 seconds and run in a Northwesterly direction for a distance of 48.86 feet to an iron set; thence turn an angle to the right of 66 degrees, 56 minutes, 16 seconds and run in a Northwesterly direction for a distance of 390.34 feet to an iron pin set; thence turn an angle to the right of 31 degrees, 02 minutes, 54 seconds and run in a Northwesterly direction for a distance of 159.31 feet to a point in the centerline of Cahaba Valley Creek; thence run in a Southeasterly to Northeasterly direction along the centerline of said creek for a distance of 446.00 feet, more or less, to a point in the centerline of said creek; thence run in a Southerly direction for a distance of 765.00 feet to the point of beginning.

Said Property being known as 5300 Cahaba Valley Road, Birmingham, AL 35242; Parcel ID#10-5-22-0-002-074.000

ALSO:

Parcel II: 38188 AL-25, Harpersville, AL 35078 (Parcel ID: 17 2 04 0 000 001.001):

The following described property in the County of Shelby, State of Alabama, to-wit:

COMMENCE AT A FOUND CORNER REPRESENTING THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 20 SOUTH, RANGE 2 EAST, SHELBY COUNTY, ALABAMA AND RUN THENCE NORTH 89 DEGREES 55 MINUTES 56 SECONDS WEST ALONG THE NORTH LINE OF SAID QUARTER-QUARTER A DISTANCE OF 1560.55 FEET TO A STEEL REBAR CORNER AND THE POINT OF BEGINNING OF THE PROPERTY BEING



DESCRIBED; THENCE CONTINUE ALONG LAST DESCRIBED COURSE A DISTANCE OF 240.00 FEET TO A STEEL REBAR CORNER ON THE EAST MARGIN OF ALABAMA HIGHWAY NO. 25; THENCE RUN SOUTH 11 DEGREES 57 MINUTES 02 SECONDS EAST ALONG THE SAID EAST MARGIN OF SAID HIGHWAY 25 A DISTANCE OF 381.21 FEET TO THE P.C. OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 12 DEGREES 09 MINUTES 08 SECONDS AND A RADIUS OF 1990.00 FEET; THENCE CONTINUE ALONG THE ARC OF JUST DESCRIBED CURVE AN ARC DISTANCE OF 422.07 FEET TO A STEEL REBAR CORNER MARKING THE P. T. OF JUST DESCRIBED CURVE; THENCE RUN SOUTH 00 DEGREES 12 MINUTES 06 SECONDS WEST ALONG SAID MARGIN OF SAID HIGHWAY 25 A DISTANCE OF 0.76 FEET TO A STEEL REBAR CORNER; THENCE RUN NORTH 82 DEGREES 07 MINUTES 44 SECONDS EAST A DISTANCE OF 238.28 FEET TO A STEEL REBAR CORNER; THENCE RUN NORTH 08 DEGREES 50 MINUTES 01 SECONDS WEST A DISTANCE OF 768.99 FEET TO THE POINT OF BEGINNING.

Property Address:

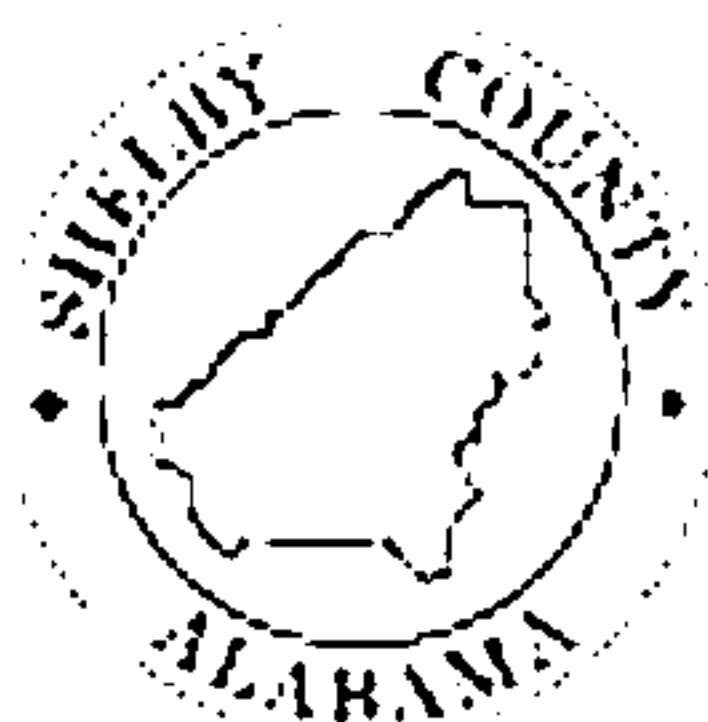
Parcel I: 5300 Cahaba Valley Road, Birmingham, AL 35242

Parcel II: 38188 AL-25, Harpersville, AL 35078;

Parcel ID:

Parcel I: 10 5 22 0 002 074.000

Parcel II: 17 2 04 0 000 001.001



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
09/15/2022 09:47:47 AM  
\$6589.00 BRITTANI  
20220915000357300

*Allen S. Bayl*