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ASSIGN 1/9

**STATE OF ALABAMA
COUNTY OF SHELBY**

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Troutman Pepper Hamilton Sanders LLP
301 South College Street, Suite 3400
Charlotte, NC 28202
Attention: Keith Mrochek

ASSIGNMENT OF LEASES AND RENTS

This **ASSIGNMENT OF LEASES AND RENTS** (this “Assignment”) is made as of January 24, 2023, by and from **PROJECT CAPRICORN FUND V LLC**, a Delaware limited liability company having an address of 30 North LaSalle Street, Suite 4140, Chicago, Illinois 60602 (“Borrower”), to and for the benefit of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, its successors and assigns, as administrative agent (“Agent”) for itself and the other Lenders (as hereinafter defined), with an address of 222 South Riverside Plaza, 29th Floor, Chicago, IL 60606.

RECITALS:

A. Borrower is the owner of certain real property located in Morgan County, State of Alabama, more particularly described in **Exhibit A** attached hereto (“Property”).

B. Pursuant to that certain Loan Agreement of even date herewith (together with all renewals, amendments, modifications, increases and extensions thereof, the “Loan Agreement”) by and among Borrower, Project Capricorn Spring TX LLC, Project Capricorn Haltom City TX LLC, Project Capricorn Hurst TX LLC, Project Capricorn Huntsville TX LLC, Project Capricorn Denton TX LLC, Project Capricorn Port Arthur TX LLC, and Project Capricorn Carrollton TX LLC (each a Delaware limited liability company and collectively, the “Other Borrowers” and together with Mortgagor, collectively, the “Debtors”), Agent and those certain other financial institutions that are or may become, from time to time, parties thereto (collectively with their respective successors and assigns, the “Lenders”), the Lenders have agreed to make a loan to Debtors in the maximum principal amount of \$117,675,000.00 (the “Loan”). The Loan is evidenced by certain Promissory Notes of even date herewith from Debtors payable to the order of each Lender in the original aggregate principal amount of \$117,675,000.00 (together with all renewals, amendments, modifications, increases and extensions thereof, the “Notes”).

C. The Loan is secured by (i) the Security Instruments (as defined in the Loan Agreement), and (ii) certain other documents evidencing or securing the Loan (together with the Notes, the Loan Agreement and the Security Instrument, as amended, modified, replaced or restated from time to time, the “Loan Documents”).

D. Borrower is required as a condition to the making of the Loan to transfer and assign to Agent all of Borrower’s right, title and interest in, to and under the Leases and Rents (as defined below).

AGREEMENT:

NOW, THEREFORE, as an inducement for the making of the Loan, Borrower hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement. As used herein, the following terms shall have the following meanings:

“Event of Default” means (i) any default hereunder, after the expiration of any cure periods expressly provided for herein, and (ii) an Event of Default, as defined in the Loan Agreement.

“Leases” shall have the meaning set forth in the Security Instruments.

“Lessees” shall mean the tenants now or hereafter occupying space within any Individual Property pursuant to a Lease.

“Rents” shall have the meaning set forth in the Security Instruments.

2. **Assignment.** As security for the payment and performance of the Obligations, Borrower hereby absolutely and unconditionally transfers, sets over and assigns to Agent all present and future right, title and interest of Borrower in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Borrower under any of the Leases and all other rights and interests of Borrower under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Borrower to Agent, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Borrower shall have a license to collect the Rents accruing under the Leases as they become due (“License”), but not in advance, and to enforce the Leases. The License may terminate as set forth in Section 8 hereof upon the occurrence of an Event of Default. Borrower covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Agent’s Rights Upon Lessee Bankruptcy.** Upon the occurrence and continuance of an Event of Default (other than an Event of Default which Agent has waived in writing or for which Agent has accepted a cure in writing, in either case in its sole discretion), and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Agent shall have, and is hereby assigned by Borrower, all of the rights which would otherwise inure to the benefit of Borrower in such proceedings, including, without limitation, the right to seek “adequate protection” of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Agent in writing, Agent’s exercise of any of the rights provided herein shall preclude Borrower from the pursuit and

benefit thereof without any further action or proceeding of any nature. Agent, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

5. **Default of Borrower.**

(a) **Remedies.** Upon the occurrence and continuance of an Event of Default (other than an Event of Default which Agent has waived in writing or for which Agent has accepted a cure in writing, in either case in its sole discretion), Borrower's License to collect Rents shall immediately cease and terminate, unless Agent shall otherwise notify Borrower in writing that such License is not being terminated by Agent. Subject to the terms and conditions of the Loan Agreement, Agent shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act to the fullest extent permitted by applicable law and Borrower hereby waives any right to assert that any such entry constitutes a trespass. In furtherance thereof, Agent shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Agent, promptly upon the occurrence and continuance any Event of Default (other than an Event of Default which Agent has waived in writing or for which Agent has accepted a cure in writing, in either case in its sole discretion): (a) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder together with interest on all security deposits to the extent required to be paid under the Leases or by applicable law; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Agent will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Upon the occurrence and continuance of an Event of Default (other than an Event of Default which Agent has waived in writing or for which Agent has accepted a cure in writing, in either case in its sole discretion), and in all cases to the extent not prohibited by Applicable Laws, Agent shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

(b) **Notice to Lessee.** Borrower hereby irrevocably authorizes each Lessee, upon demand and notice from Agent of the occurrence of an Event of Default, to pay all Rents under the Leases to Agent. Borrower agrees that each Lessee shall have the right to rely upon any notice from Agent directing such Lessee to pay all Rents to Agent, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no claim against any Lessee for any Rents paid by Lessee to Agent.

(c) **Assignment of Defaulting Borrower's Interest in Lease.** Subject to the terms and conditions of the Loan Documents, Agent shall have the right to assign Borrower's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such Agent shall not be liable to account to Borrower for the Rents thereafter accruing.

(d) **No Waiver.** Agent's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Agent's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Agent has under the Loan Agreement, the Notes, the Security Instrument and any of the other Loan Documents or otherwise available at law or in equity. Agent's rights and remedies hereunder may be exercised as often as Agent deems expedient.

(e) **Costs and Expenses.** The reasonable, documented out-of-pocket costs and expenses (including any receiver's fees and fees) incurred by Agent pursuant to the powers contained in this Assignment shall be reimbursed by Borrower to Agent within ten (10) days of written demand by Agent and shall, if not paid within such period, bear interest at the Default Rate. Agent shall not be liable to account to Borrower for any action taken pursuant hereto, other than to account for any Rents actually received by Agent.

6. **Power of Attorney.** In furtherance of the purposes of this Assignment, Borrower hereby appoints Agent as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Agent at any time after the occurrence and continuance of an Event of Default, and in the name of Borrower or Agent, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Agent may reasonably deem necessary in connection with the exercise of any right or remedy or any other action taken by Agent under this Assignment.

7. **No Mortgagee in Possession; No Other Liability.** The acceptance by Agent of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Agent, be deemed or construed to: (a) constitute Agent as a mortgagee in possession nor place any responsibility upon Agent for the care, control, management or repair of the Property, nor shall it operate to make Agent responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Agent to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Agent to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Agent to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by Lessees and not assigned and delivered to Agent. Agent shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

8. **Termination of Assignment.** Agent shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Security Instrument is released in whole or in part.

9. **Miscellaneous.**

(a) **Conflicts.** In the event of any conflict between the terms and provisions of Section Error! Reference source not found. of this Assignment and the terms and provisions of the Loan

Agreement, the terms and provisions of the Loan Agreement shall govern and control in all instances. In the event of a conflict between the terms and provisions of Section 2 or Section 3 of this Assignment and the terms and provisions of the Security Instruments, the terms and provisions of the Security Instruments shall govern and control.

(b) Severability. If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

(c) Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

(d) Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

(e) Notices. All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

(f) Modification. No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Agent's prior written consent.

(g) Governing Law. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

(h) Successors and Assigns; Gender; Joint and Several Liability. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Notes and the Security Instrument, subject in all events to the provisions of the Security Instrument regarding transfers of the Property by Borrower. In this Assignment,

whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Borrower, all obligations of each Borrower hereunder shall be joint and several.

(i) Expenses. Borrower shall pay on demand all costs and expenses incurred by Agent in connection with the review of Leases, including reasonable fees and expenses of Agent's outside counsel.

10. **WAIVER OF JURY TRIAL**. BORROWER AND AGENT, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

11. **JURISDICTION AND VENUE**. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF AGENT OR ANY LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH AGENT OR SUCH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT OR ANY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THE LOAN AGREEMENT. BORROWER WAIVES ANY CLAIM THAT ANY SUCH JURISDICTION SET FORTH ABOVE IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY AGENT OR ANY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT OR SUCH LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND


BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Borrower has caused this Assignment to be duly executed as of the day and year first above written.

BORROWER:

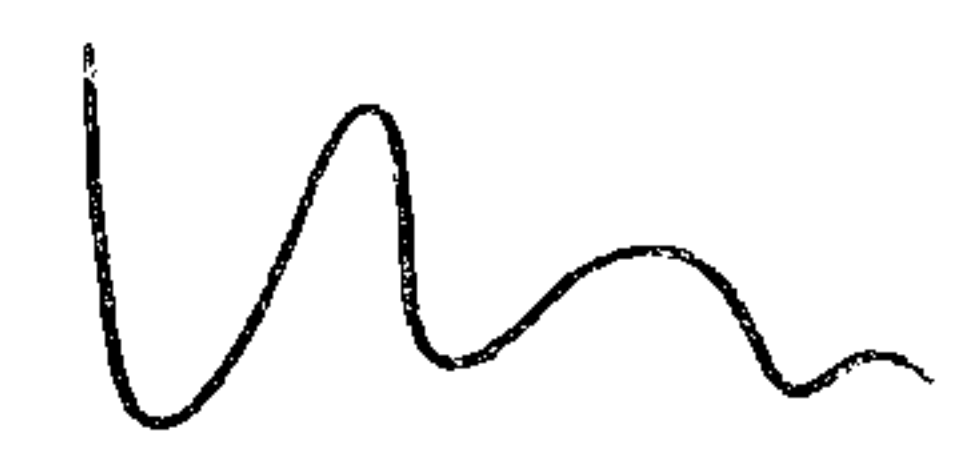
PROJECT CAPRICORN FUND V LLC, a
Delaware limited liability company

By: 
Name: Michael Reiter
Title: Authorized Representative

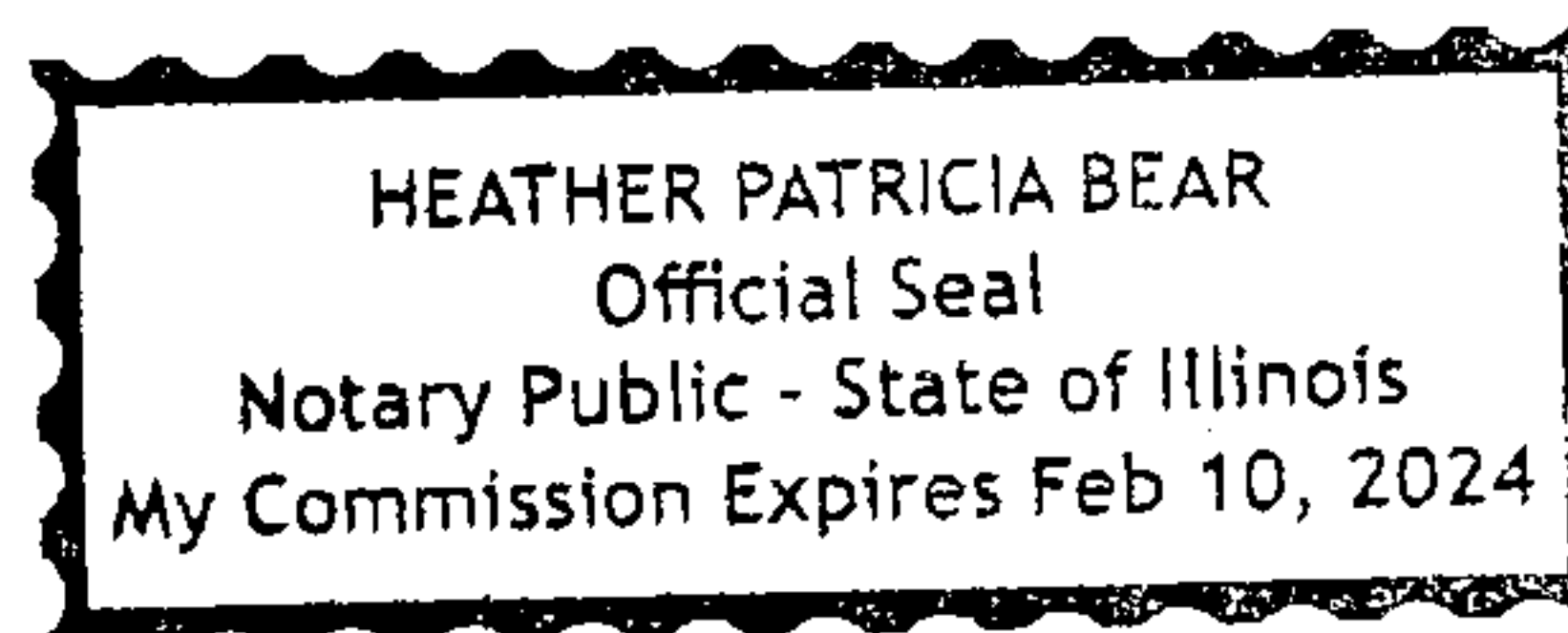
STATE OF Illinois)
) SS:
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that MICHAEL REITER, whose name as Authorized Representative of **PROJECT CAPRICORN FUND V LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 27 day of January, 2023.



NOTARY PUBLIC
[Seal]



Signature Page

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 4-A AND 4-B, ACCORDING TO THE SURVEY OF STONEHAVEN ADDITION TO PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 38, PAGE 22 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA. BEING A RESURVEY OF LOT 4 OF LOTS 3 AND 4 PELHAM PARKWAY COMMERCIAL SUBDIVISION RECORDED IN MAP BOOK 27, PAGE 86 SHELBY COUNTY, ALABAMA AND ACREAGE.

PARCEL 2:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT LOCATED ON LOT 2 AS SHOWN ON THE MAP AND SURVEY OF PELHAM PARKWAY NORTH COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 113 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 3:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 1, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 26, PAGE 116 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 4:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 2, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 44 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 5:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 3, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 86 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

For Informational Purposes Only:

Address: 3340 Pelham Parkway, Pelham, AL

Tax Number: 13-6-24-3-002-001.006 & 13-6-24-3-002-012.008



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
01/25/2023 03:30:50 PM
\$46.00 JOANN
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Allen S. Bayl