

This instrument prepared by:
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1819 Fifth Avenue North
Birmingham, Alabama 35203-2104

STATE OF ALABAMA)
 ;
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (as it may be amended pursuant to the terms hereof, this “Mortgage”), made effective as of the 28th day of February, 2023, by and among NEWCO2, LLC, an Alabama limited liability company, who address is One Office Park Circle, Suite 300, Birmingham, Alabama 35223 (the “Borrower”), and COMMERCEONE BANK, an Alabama banking corporation (hereinafter called the “Lender”), Mortgagee, whose address is 2100 Southbridge Parkway, Suite 385, Birmingham, Alabama 35209.

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ARTICLE 9A OF THE UNIFORM COMMERCIAL CODE, CODE OF ALABAMA, 1975, AS AMENDED.

WITNESSETH:

WHEREAS, Lender has made or has agreed to make a loan to Borrower in the principal sum of Five Hundred Fifteen Thousand and 00/100 Dollars (\$515,000.00) (the “Loan”), to be evidenced by that certain Promissory Note of even date herewith, payable to Lender with interest thereon from Borrower as set forth therein (as the same may hereafter be amended, renewed, extended or modified, the “Note”). The terms and conditions of the Loan are more particularly set forth in the Loan Agreement dated of even date herewith by and between Borrower and Lender (said Construction Loan Agreement, as the same may hereafter be amended, renewed, extended or modified, being herein called the “Loan Agreement”; *Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Loan Agreement*).

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum outstanding from time to time, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in the Loan Documents and as hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, the following described land and real estate (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the “Mortgaged Property”) to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof (the “Land”).

(b) All non-vertical improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing (collectively, the "Improvements").

(c) Intentionally Deleted;

(d) All of Borrower's right, title and interest in and to those certain lease agreements between Borrower (or Borrower's predecessors in title) and any and all tenants and lessees of the Improvements, whether now existing or hereafter created (as so amended, individually, a "Lease" and collectively, the "Leases").

All of the foregoing shall be deemed real property and conveyed by this Mortgage.

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

(e) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing under the Leases, however, so long as an Event of Default (as hereinafter defined) does not exist, Borrower shall have the right to receive and retain the rents, issues, and profits thereof; and

(f) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all Lender expenses actually incurred, including costs and reasonable attorney's fees, on the indebtedness secured hereby in such manner as Lender elects, or at Lender's option, the entire amount or any part thereof so received may be released to Borrower.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Note, the Loan Documents and this Mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Note, the Loan Documents and this Mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, and all rights to obtain additional advances pursuant to the Loan Documents shall terminate and not

be reinstated, then this Mortgage and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate, and be void, but otherwise this Mortgage shall remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

1.1 **Performance of Note and Mortgage.** The Borrower will perform, observe and comply with all provisions hereof, of the Note secured hereby, the Loan Documents and all other documents from time to time executed by Borrower as security for the indebtedness secured hereby, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon as set forth in the Note and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage and the other Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in the Mortgaged Property and has good and absolute title hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit B hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever except liens in favor of Lender, including conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 **Monthly Tax Deposits.** If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the tenth (10th) day of each month, together with and in addition to the regular installment of interest only, until the Note is fully paid, an amount equal to one-twelfth (1/12th) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become delinquent, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges at least thirty (30) days before they become delinquent. Upon the occurrence and during the continuation of an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid by Borrower under this Section 1.3 remaining to the Borrower's credit.

1.4 **Other Taxes, Utilities and Liens.**

(a) Unless paid in accordance with Section 1.3 hereof, the Borrower will pay prior to delinquency, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property, this Mortgage or the Note, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing

authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property. Notwithstanding anything to the contrary herein, Borrower may dispute any of the foregoing and delay payment during the time such contest is pending provided (a) applicable law permits nonpayment during such contest, (b) Borrower notifies Lender in writing of such contest and conducts such contest with due diligence, (c) any attachment or other action against the Mortgaged Property is effectively stayed, and (d) Borrower provides a bond or other collateral satisfactory to Lender which, if Borrower is unsuccessful in such contest, would be sufficient to pay all amounts due, including any penalties and interest.

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

(c) The Borrower shall pay promptly all charges for labor and materials benefitting the Mortgage Property and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, provided that Borrower shall have thirty (30) days after receipt of actual notice of the filing against the Mortgaged Property of any lien, statement of lien, or suit to enforce a lien to either (i) cause the same to be discharged and released as a lien against the Mortgaged Property, or (ii) to furnish a good and sufficient bond, surety or other security satisfactory to Lender.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.5 **Insurance.** (a) The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require (not to exceed the replacement value), insuring the Mortgaged Property against losses typically insured under policies of all-risk insurance, and against such other insurable hazards, casualties and contingencies as the Lender may reasonably require, including, but not limited to, loss or damage from wind, fire, ice, earthquake and subsidence. If the Mortgaged Property is located in a flood zone then Borrower shall maintain flood insurance on the Mortgaged Property. After construction of the Mortgaged Property, Borrower will also provide and maintain business income insurance in the amount of twelve (12) months anticipated expenses typically incurred during a period of business interruption, including debt service payments. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. Unless paid in accordance with Section 1.5(c) hereof, the Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) So long as no Event of Default exists, Borrower shall be entitled to settle any claim relating to a single event causing loss if the total loss is \$250,000 or less, and shall have the right to

retain such proceeds of insurance in that event to be applied to the extent necessary as required by Section 1.7 hereof. Except as so provided, the Lender is hereby authorized and empowered, at Lender's option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses actually incurred by Lender in the collection or handling of said funds, the Lender may apply the net proceeds, at Lender's option, either toward restoring the Mortgaged Property, or as a credit on any portion of the indebtedness secured hereby as selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to restore the Mortgaged Property or for any other purpose or object satisfactory to the Lender without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the tenth (10th) day of each month, together with and in addition to the regular installment of interest only and monthly tax deposit (as required by Section 1.3 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12th) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence and during the continuation of an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid by Borrower under this Section 1.5(c) remaining to the Borrower's credit.

1.6 **Condemnation.** If all or any part of the Mortgaged Property shall be damaged or permanently taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof) (other than an insubstantial taking of unimproved portions of the Mortgaged Property which does not in Lender's reasonable judgment materially affect access to or use of the Mortgaged Property as it is then presently being used), the entire indebtedness secured hereby shall, at the option of the Lender, become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at Lender's option, to commence, appear in and prosecute, in Lender's own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all of Lender's expenses actually incurred in the collection or handling of said funds, including reasonable attorney's fees, may release any moneys so received by Lender without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.7 **Care of the Property.**

(a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any material physical waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Intentionally Deleted.

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

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours, subject to the rights of tenants.

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

1.8 **Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do after the expiration of any applicable notice and cure period, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.9 **Leases Affecting Mortgaged Property.** Except for the Leases entered into in the ordinary course of business of Borrower, the Borrower will not enter into any lease (as lessor) or management agreement affecting the Mortgaged Property or any part thereof without Lender's prior written consent. Each such lease or management agreement must be subordinate to Lender's interest in the Mortgaged Property. Borrower will upon request cause any manager under a management agreement affecting the Mortgaged Property to execute and deliver to Lender a subordination agreement acceptable to Lender.

1.10 **Appraisals.** Lender may obtain appraisals of the Mortgaged Property in accordance with Section 8.18 of the Loan Agreement.

1.11 **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this Mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be payable on demand, shall bear interest from and after Lender's written demand for payment at a rate equal to the interest rate then borne by the Note, unless such amounts are paid within thirty (30) days from such written demand, in which case no interest shall be due and payable thereon, and shall be secured by the lien of this Mortgage.

1.12 **Performance by Lender of Defaults by Borrower.** If an Event of Default shall occur as a result of the Borrower failing to pay any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be payable on demand, shall bear interest from and after Lender's written demand for payment at a rate equal to the interest rate then borne by the Note, unless such amounts are paid within thirty (30) days from such written demand, in which case no interest shall be due and payable thereon, and shall be secured by the lien of this Mortgage. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Upon the occurrence and during the continuation of an Event of Default, the Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

ARTICLE II

2.1 **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall have the same meaning as set forth in the Loan Agreement.

2.2 **Acceleration of Maturity.** If an Event of Default shall have occurred and then be continuing, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable upon demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.3 **Right of Lender to Enter and Take Possession.**

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

(b) Upon every such entering upon or taking of possession of the Mortgaged Property by Lender, the Lender may hold, store, use, operate, manage, and control the Mortgaged

Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personality, and other property regarding the Mortgaged Property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the Mortgaged Property; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to Lender's best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property, including those past due as well as those accruing thereafter, and Lender, after deducting (A) all expenses of Lender's taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions related to the Mortgaged Property; (C) the cost of insurance required in Section 1.5 hereof; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.3 and 1.5 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) If an Event of Default shall exist, Lender may require that Borrower cause all of Borrower's accounts to be paid to one or more deposit accounts with Lender, or at Lender's option, with another financial institution approved by Lender (collectively, the "Default Accounts"). Borrower assigns and grants to Lender a security interest in, pledge of and right of setoff against all moneys from time to time held in the Default Accounts. If an Event of Default shall exist, Borrower agrees to promptly notify all of its account debtors to make payments to the Default Accounts upon Lender's request and as designated by Lender, and Borrower agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in the Default Accounts. If an Event of Default shall exist, Lender may cause moneys to be withdrawn from the Default Accounts and applied to the indebtedness secured hereby in such order as Lender may elect. Borrower appoints Lender as Borrower's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Borrower agrees to take in this Section 2.3(c).

(d) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 **Receiver.**

(a) If an Event of Default shall exist, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party liable for the payment of the indebtedness secured hereby, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) If a receiver is appointed pursuant to Section 2.4(a) hereof, the Borrower will pay to the Lender all expenses, including receiver's fees, reasonable attorney's fees and costs, and agent's compensation, actually incurred pursuant to the provisions contained in this Section 2.4; and all such expenses actually paid by the Lender shall be payable on demand, shall bear interest from and after Lender's written demand for payment at a rate equal to the interest rate then borne by the Note, unless such amounts are paid within thirty (30) days from such written demand, in which case no interest shall be due and payable thereon, and shall be secured by the lien of this Mortgage.

2.5 **Lender's Power of Enforcement.** If an Event of Default shall exist, the Lender may, either with or without entry or taking possession of the Mortgaged Property as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property as provided by law, and (c) to pursue any other remedy available to Lender, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of Lender's powers with respect to entry or taking possession, as the Lender may determine.

2.6 **Power of Sale.** If an Event of Default shall exist, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property if Lender is the highest bidder therefor. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering the Mortgaged Property in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.7 **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.6 hereof shall be applied as follows:

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

(b) Second, to the repayment of any money, with interest thereon at a rate equal to the rate borne by the Note, which Lender may have paid, or become liable to pay, or which it may then be necessary for Lender to pay for taxes, insurance, assessments or other charges, liens, or debts related to the Mortgaged Property as hereinabove provided;

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

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

2.8 **Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall,

among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants under Leases at the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

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

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

2.11 **Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender.** If an Event of Default exists, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid, together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Lender's agents and attorneys.

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

2.13 **No Waiver of One Default to Affect Another, etc.** No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing Event of Default or shall impair any rights, powers, or remedies consequent thereon. If the Lender:

- (a) grants forbearance or an extension of time for the payment of any sums secured hereby;
- (b) takes other or additional security for the payment of any sums secured hereby;
- (c) waives or does not exercise any right granted herein or in the Note or the other Loan Documents;

- (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note, this Mortgage or the other Loan Documents;
- (e) consents to the filing of any map, plat, or replat of the Mortgaged Property;
- (f) consents to the granting of any easement on the Mortgaged Property; or
- (g) makes or consents to any agreement subordinating the lien hereof,

any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantors; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this Mortgage be altered thereby.

In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as Lender might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

2.15 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

3.1 **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of its respective successors and assigns, whether so expressed or not.

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

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

3.4 **Intentionally Deleted.**

3.5 **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the Loan to Borrower, that:

(a) All utility and sanitary sewage services necessary for the use of the Mortgaged Property and all roads necessary for the use of the Mortgaged Property are available pursuant to permanent private or public easements, which are not subject to the rights of any other persons which could interfere with Borrower's use thereof.

(b) To Borrower's actual knowledge, the Mortgaged Property complies with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters.

3.6 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Mortgage, or by applicable law, shall be given and be deemed effective as set forth in the Note or upon being (a) delivered in person, (b) deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by Federal Express or overnight U.S. Mail or other national overnight carrier, and addressed in each such case to the parties at their respective addresses set forth in the heading of this Mortgage or such other single address as either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).

3.7 **Future Advance Mortgage.** This Mortgage is a "Future Advance Mortgage". Lender, at its option, may make future advances to Borrower to be secured hereby, provided that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Documents. Such future advances, together with interest thereon, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances, or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Mortgaged Property.

3.8 **Waiver of Jury Trial.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE LOAN SECURED HEREBY, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS. BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER OR LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION,

SEEK TO ENFORCE THIS WAIVER OF THE JURY TRIAL PROVISION. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO MAKE THE LOAN IN PART BY THE PROVISIONS OF THIS PARAGRAPH.

3.9 Restoration and Repair of Property Damaged or Taken. Notwithstanding the provisions of Sections 1.5 and 1.6 hereof, Lender agrees that Lender shall make available to Borrower the net proceeds of insurance or condemnation (after payment of reasonable costs and expenses pursuant to Sections 1.5 and 1.6) for Borrower's repair or restoration of the Mortgaged Property upon the following terms and subject to Borrower's satisfaction of the following conditions, and, in the event Borrower is required by the terms of any tenant lease to restore Mortgaged Property damaged or taken, then Borrower shall fully satisfy the following conditions:

(a) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Default or Event of Default under this Mortgage or under any other Loan Document.

(b) The property, buildings, improvements and fixtures for which a loss or damage has resulted shall be capable of being restored to substantially their pre-existing condition and utility with a value equal to or greater than prior to such loss or damage, shall be capable of being completed prior to the maturity of the Note, and evidence thereof reasonably satisfactory to Lender shall have been provided to Lender.

(c) Within sixty (60) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose.

(d) Within ninety (90) days following the receipt of applicable insurance or condemnation proceeds, and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage;

(ii) if loss or damage exceeds \$100,000, fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications;

(iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause;

(iv) such additional funds as in Lender's reasonable opinion are necessary to complete the repair and restoration; and

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications.

(e) Lender may, at Borrower's expense, retain an independent inspecting engineer to review plans and specifications and completed construction and to certify all requests for disbursement.

(f) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of reconstructing those portions of the property for which a loss or damage has occurred.

(g) Borrower shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion.

(h) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures reasonably satisfactory to Lender.

(i) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest.

Notwithstanding anything to the contrary contained herein, any insurance proceeds received from a builder's risk policy during the Interest Period shall be applied to restoration of the Improvements provided no Default or Event of Default exists.

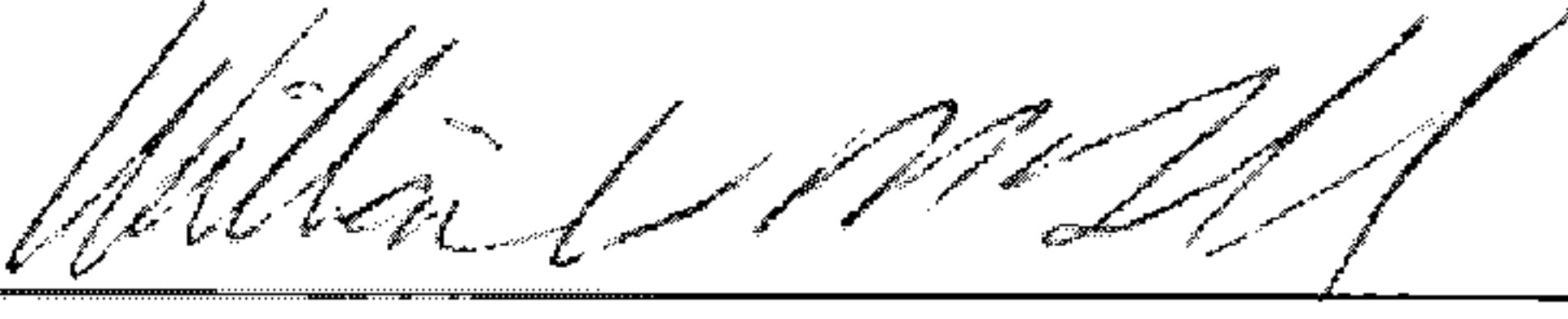
Without in any way limiting the foregoing terms of this Mortgage regarding the circumstances under which insurance proceeds must be made available to fund the costs of repair or restoration, in the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fail to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the Loan Obligations under the Note (principal, interest, and prepayment premium, if any) and other Loan Documents, in such order as Lender may elect, or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

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

BORROWER:


NEWCO2, LLC,
an Alabama limited liability company

By: 
Print Name: William W. McDonald, Jr.
Its: Manager

STATE OF Alabama)
Jefferson COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that William W. McDonald, Jr., whose name as Manager of NEWCo2, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 23rd day of February, 2023.


Notary Public

[NOTARIAL SEAL]

My commission expires: 10-20-2024

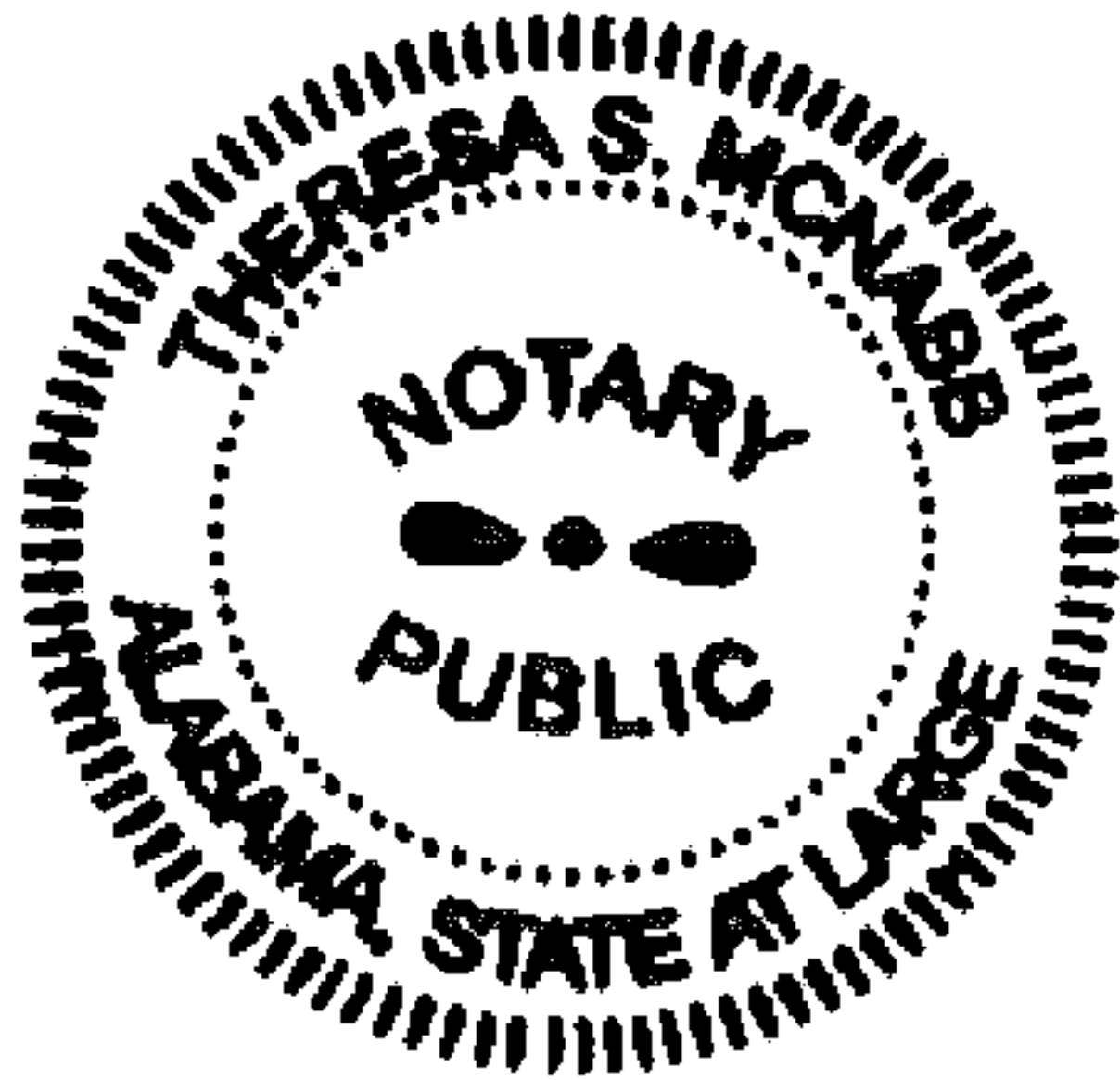


EXHIBIT A
LEGAL DESCRIPTION

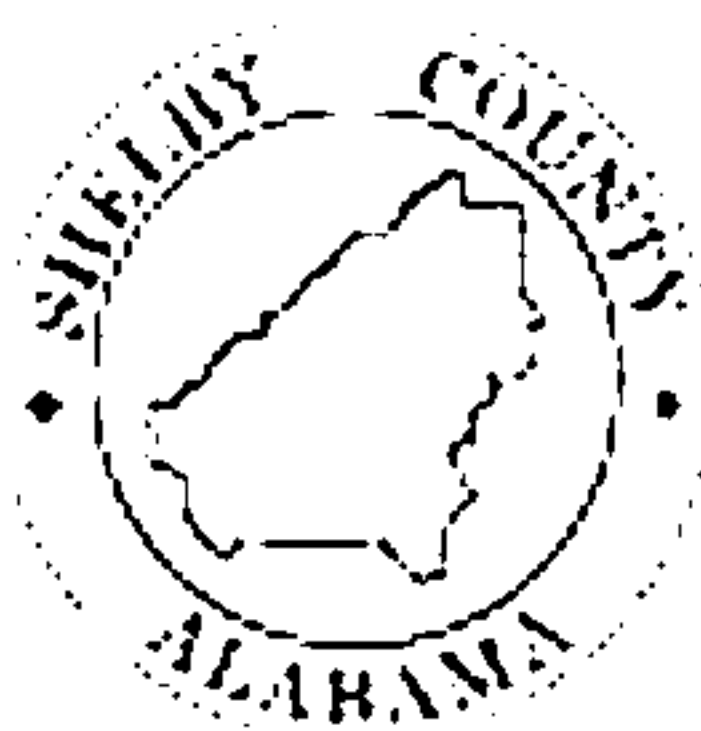
Lot 11, according to the Survey of Southpark, as recorded in Map Book 20, Page 100, in the Probate Office of Shelby County, Alabama.

EXHIBIT B
PERMITTED ENCUMBRANCES

1. General and special taxes or assessments for 2023 and subsequent years not yet due and payable.
2. All matters of record.

4860-2570-3503.1

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Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/01/2023 08:06:39 AM
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Alli S. Boyd