

Upon recording return to:

SDH Alabama LLC
Attn: Daniel Sutherlin
110 Village Trail, Suite 215
Woodstock, GA 30188

INTERCREDITOR AGREEMENT

This Intercreditor Agreement ("Agreement") is made as of January 31, 2023, by NOBLEBANK AND TRUST, an Alabama banking corporation ("Lender"), SDH ALABAMA LLC f/k/a SDH BIRMINGHAM LLC, a Georgia limited liability company ("Purchaser"), and TORTORIGI DEVELOPMENT, LLC, an Alabama limited liability company ("Borrower").

A. Borrower has requested Lender make a loan to Borrower in the amount of \$2,500,000.00 (the "Loan") for the development of 66 lots located in Harper's Creek, Phase 2, subdivision, Farmingdale Road, City of Harpersville, Shelby County, Alabama, as more particularly described on the attached Exhibit "A" (the "Property"), as evidenced by a Promissory Note dated December 27, 2022 ("Note") and other loan documents (collectively and as modified, consolidated, renewed, extended, substituted or replaced, the "Loan Documents"), and secured by a mortgage, assignment of rents and leases and security agreement (the "First Mortgage") dated therewith and recorded in Instrument No. 20230120000016720 of the Probate Office of Shelby County, Alabama, encumbering the Property.

B. Purchaser has delivered an earnest money deposit to Borrower in the amount of \$334,368.00 ("Subordinate Debt") pursuant to that certain Lot Purchase Agreement dated on or around November 5, 2020, as may be amended or otherwise modified following the date hereof (as amended, the "Contract").

C. The obligations of Borrower pursuant to the Contract are secured by a Mortgage dated November 20, 2020, recorded December 1, 2020, as Instrument No. 20201201000548020 in the Probate Office of Shelby County, Alabama ("Second Mortgage") encumbering the Property. The Second Mortgage and any other documents that evidence the Subordinate Debt are collectively, the "Subordinate Transaction Documents."

D. As inducement for and in consideration of Lender agreeing to make the Loan to Borrower secured by the First Mortgage, Lender has requested that Borrower and Purchaser enter into this Agreement and among other things subordinate the Second Mortgage and Subordinate Debt to that of the First Mortgage and Loan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Affirmation of Recitals.** The parties hereto acknowledge and agree that the recitals set forth above are true and correct to the best of their knowledge, information, and belief, and the parties acknowledge that these representations are material terms of this Agreement.

2. Representations.

a. By Lender. Lender represents and warrants to Purchaser and Borrower, to the best of its knowledge only, that:

i. As of the date hereof, no default or event of default, or any facts or circumstances which with the passage of time or giving of notice or both could result in the occurrence of a default or event of default, exist under the Loan Documents.

ii. Lender has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement.

iii. All action on the part of Lender that is required for the authorization, execution, delivery, and performance of this Agreement has been duly and effectively taken.

iv. This Agreement has been duly executed and delivered by Lender and constitutes the legal, valid and binding obligation of Lender, enforceable against Lender in accordance with the terms hereof, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the enforcement of creditors' rights and remedies generally, and (B) is subject to general principles of equity.

b. By Borrower. Borrower represents and warrants to Lender and Purchaser, to the best of its knowledge only, that:

i. As of the date hereof, no default or event of default, or any facts or circumstances which, with the passage of time, or the giving of notice, or both, will result in the occurrence of a default or event of default, exist under the Loan Documents.

ii. Borrower has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement.

iii. All action on the part of Borrower that is required for the authorization, execution, delivery and performance of this Agreement has been duly and effectively taken.

iv. This Agreement has been duly executed and delivered by Borrower and constitutes the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with the terms hereof, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights and remedies generally, and (B) is subject to general principles of equity.

c. By Purchaser. Purchaser represents and warrants to Lender and Borrower, to the best of its knowledge only, that:

i. Purchaser has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement.

ii. All action on the part of Purchaser that is required for the authorization, execution, delivery and performance of this Agreement has been duly and effectively taken.

iii. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with the terms thereof, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights and remedies generally, and (B) is subject to general principles of equity.

3. Agreements.

a. From and after the date hereof: (a) the First Mortgage shall have priority over the Second Mortgage; and (b) the Second Mortgage shall be and at all times remain, subject, inferior, and subordinate to the First Mortgage.

b. The priorities of the mortgages established, altered, or specified hereinabove shall be applicable, irrespective of the time or order of attachment, perfection, or recordation thereof, the method of perfection, the time or order of filing of mortgages or taking of possession, or the giving of or failure to give notice; provided, however, that the subordinations and relative priorities set forth herein are expressly conditioned upon the due and proper perfection, recordation, and the nonavoidability by a bankruptcy trustee, of any mortgage interest which have been accorded priority pursuant hereto; and provided, further, however, that if any mortgage interest to which any other interest has been subordinated pursuant hereto is not now perfected or recorded, or hereafter ceases to be perfected or recorded, or is avoidable by a bankruptcy trustee for any reason, then, the subordination specified herein with respect to such interests shall, to the extent not perfected, recorded, or avoidable, as the case may be, not be effective.

c. The relative priorities of any interests which are not established, altered, or specified herein shall exist and continue in accordance with the applicable provisions of law.

d. Neither Lender nor Purchaser shall contest the validity, perfection, priority or enforceability of any lien or mortgage granted to the other. The Lender and Purchaser agree to cooperate in the defense of any action contesting the validity, perfection, priority or enforceability of such liens or mortgage.

e. Lender shall not make any advances which are secured by the First Mortgage in excess of the amount of the Note and may not re-advance principal previously repaid by Borrower, except advances provided for under covenants of the Loan Documents relating to the operation and/or protection, preservation and maintenance of the Property, including, without limitation, repairs, taxes, insurance, appraisals, environmental assessments, legal fees and other expenses of collection or defense of the Loans.

f. Any provision in the First Mortgage that purports to secure "other indebtedness" that is in addition to the indebtedness evidenced by the Note or that purports to cross-default or cross-collateralize the Note with other obligations of the Borrower, or its principals shall be ineffective as against Purchaser.

g. Purchaser agrees that Lender may (i) amend or modify the Loans (subject to the provisions below in this Subsection), (ii) renew the Loans or grant extensions of the time for payment or performance of Borrower's obligations under the Loans, (iii) make compromises, including releases of collateral or adjustments in collection thereof, and (iv) make settlements with Borrower, without affecting the agreements of Purchaser. Purchaser waives any and all right to affect the method or challenge the appropriateness of any action by Lender with respect to the Property or the Loans unless Lender's action is a default of this Agreement. The foregoing notwithstanding, Lender shall not amend or modify the Loan Documents in any way that has the effect of (1) increasing the Loans in excess of the amount of the Note and any protective advances secured by the First Mortgage or in any way that extends additional credit to

Borrower secured by the First Mortgage, or (2) modifying the maturity date of the Loans to a date earlier than the maturity date set forth in the Note.

h. Lender shall not sell, assign, transfer, pledge, or give a security interest in the Loan Documents except whereby the terms thereof such transfer is made expressly subject to this Agreement.

i. Borrower contemplates selling the Lots to Purchaser. No later than each closing of the sale of one or more Lots from Borrower to Purchaser, Lender shall deliver to the settlement agent for such closing an executed original of release or partial release of the First Mortgage for the Lot(s) that are the subject of such closing and shall authorize the settlement agent to record such release when the settlement agent is prepared to transmit to Lender the payoff sum for each such release not to exceed the purchase price paid by Purchaser for said Lot pursuant to the Contract (the "Release Fee") in connection with the Lot(s) being transferred to Purchaser at the closing.

4. Defaults, Notice, and Cure Rights. The parties further agree that:

a. Promptly upon receipt thereof, Borrower shall provide Lender with copies of all written notices of default and notices of intent to exercise any remedies with respect to the Property under the Subordinate Transaction Documents which are sent to Borrower under the Subordinate Transaction Documents.

b. Lender shall provide Purchaser with copies of all written notices of default and notices of intent to exercise remedies under the Loan Documents which are sent to Borrower under the Loan Documents, simultaneously with the sending of such notices to Borrower.

c. Purchaser shall have the right, but not the obligation, to cure any curable default of Borrower under the Loan Documents on or before fifteen (15) days after the expiration of any applicable cure period provided for under the Loan Documents. Lender shall not accelerate any indebtedness or exercise any remedies under the Loan Documents unless such default remains uncured after written notice to Purchaser and expiration of the aforementioned fifteen (15) day cure period. Borrower shall be liable to Purchaser for all amounts Purchaser expends in satisfaction of any Borrower default under the Loan Documents (any such amount a "Default Advance"). Every Default Advance shall be deemed to have been protective advances under the Second Mortgage and secured by the Second Mortgage and any such Default Advance may be offset against the purchase price payable to Borrower at Closing, provided, however, that the Release Fee shall be due to Lender without regard to any such offset.

5. Sale of the Property to Purchaser.

a. If Lender becomes the owner of the Property or any portion thereof through exercise of its remedies under the Loan Documents, then so long as Purchaser is not in default under the Contract, Lender shall sell any portions of the Property that have been developed substantially in accordance with the Development Requirements (as defined in the Contract) to Purchaser in accordance with, and pursuant to the terms of, the Contract, at the times and for the purchase price stated in the Contract less the Earnest Money credit due under the Contract (the "Credit") and shall sell the remaining portion of the Property to the Purchaser for the remaining balance due under the Loans, provided, however, that, to the extent any other conditions to the Purchaser's obligation to acquire any of the Property under the Contract have not been met, then Purchaser may choose in its discretion not to acquire such Lots or other remaining portions of the Property.

b. Unless it elects in writing to “stand in the shoes” of the Borrower as “Seller” under the Contract, Lender: (i) shall not be subject to any other terms, conditions, liabilities or any other obligations of Borrower, as “Seller” as set forth under of the Contract, (ii) may require Purchaser to enter into Lender’s standard addendum for sale or other bank documentation that Lender customarily uses in similar foreclosure/sale situations, all to the reasonable satisfaction of the Lender and Purchaser, in the event Purchaser proceeds to acquire any portion of the Property from the Lender hereunder, and (iii) shall in no event have any obligation to develop or construct any improvements of any kind on the Property. Any sale of any portion of the Property by Lender to Purchaser shall be on an “AS IS” “WHERE IS” basis, without regard to any representations contained in the Contract or otherwise (unless Lender has elected in writing to assume the obligations of Borrower as Seller under the Contract), except for a limited warranty of title to the Property.

6. **Assignment of Declarant Rights to Purchaser.** If Lender becomes the owner of the Property or any portion thereof through exercise of its remedies under the Loan Documents, then so long as Purchaser is not in default under the Contract, and Purchaser chooses to acquire all completed Lots and all other portions of the Property pursuant to 6 (a) above, then upon written request by Purchaser, Lender and Borrower shall assign all of the Declarant’s rights under the Declaration (as defined in the Contract) to Purchaser.

7. **Controlling Agreements.** In the event of any conflict between the terms and conditions of this Agreement and the terms and provisions of the Loan Documents or the Subordinate Transaction Documents, the terms and provisions of this Agreement shall control.

8. **Standstill Provisions**

a. Without Lender’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, and until the Loans have been fully, finally and indefeasibly repaid, Purchaser shall not exercise any Enforcement Remedies (as hereinafter defined) under the Subordinate Transaction Documents for a period of one hundred twenty (120) days after receipt by Lender of a written notice of default by Borrower under the Subordinate Transaction Documents. The term “Enforcement Remedies” means any of the following: (i) solely with respect to the Property, exercising any power of sale, accepting a deed, assignment or conveyance in lieu of foreclosure, taking possession of any property or causing or taking action to cause a receiver, trustee or administrator to take possession or administer any such property; (ii) joining in or filing any involuntary petition in bankruptcy against Borrower; or (iii) exercising any assignment of rents with respect to the Property. The term Enforcement Remedies shall not include termination of the Contract, purchase of Lots under the Contract, including receipt of the Credit at each Lot closing, the acceleration of the Subordinate Debt, foreclosure of the lien of the Second Mortgage and exercise of the power of sale thereunder with respect to any property other than the Property, accrual of interest at a default rate, the imposition of (absent any action to collect) any late fee or penalty or the filing of a claim in bankruptcy if Purchaser then has a security interest in the Property of Borrower, or recovery of a Default Advance through a reduction in the Purchase Price to an amount not less than the Release Fee. If Purchaser violates the foregoing covenant, Borrower may interpose as a defense or plea the making of this Agreement, and Lender may intervene and interpose such defense or plea in its name or in the name of Borrower.

b. Purchaser without Lender’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed, shall not file or cause to be filed against Borrower an involuntary petition under any Chapter of the United States Bankruptcy Code or any insolvency proceeding under any state law including, without limitation, an assignment for the benefit of creditor or a receivership proceeding (each of the foregoing is a “Bankruptcy Proceeding”). If Borrower becomes involved in a Bankruptcy Proceeding, Purchaser agrees not to take any action or file any papers without Lender’s consent and shall

not seek a stay under Section 105 of the United States Bankruptcy Code. Purchaser assigns, transfers and grants to Lender the right to file and prove its claims against Borrower in any Bankruptcy Proceeding, to vote said claims, and to receive all payments, dividends, or distributions in payment of such claims, until the full, final, and indefeasible payment of the Loans.

c. Notwithstanding anything to the contrary in this Agreement, Purchaser may exercise any rights and remedies as an unsecured creditor against Borrower in accordance with the terms of the Subordinate Transaction Documents and applicable law. Nothing in this Agreement shall prohibit the receipt by Purchaser of the Credit or any payments of interest and principal so long as such receipt is not the result of the exercise by Purchaser of rights or remedies as a secured creditor in respect of the Property.

9. **No Third-Party Beneficiary.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any party other than the parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereto; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns.

10. **Miscellaneous.**

a. Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected and/or impaired thereby.

b. Successors and Assigns. Whenever in this Agreement any party hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all rights, benefits, covenants, promises, and agreements in this Agreement by or on behalf of the respective parties hereto shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

c. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alabama applicable to contracts made and to be performed in such state without regard to its conflict of law provisions.

d. Counterparts. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all counterparts together constituting only one instrument.

e. Time is of the Essence. Time is of the essence of this Agreement.

f. Amendments. No amendment or waiver of any provision of this Agreement shall be effective except by an agreement in writing signed by all of the parties hereto or their respective successors and assigns. No delay on the part of Lender or Purchaser in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial waiver by either Lender or Purchaser of any right, power, or remedy preclude any further exercise thereof, or the exercise of any other right, power, or remedy.

g. Survival. This Agreement shall remain in full force and effect until payment in full of the Loans or the Subordinate Debt.

h. Notices. Notice required or permitted to be given hereunder shall be in writing and shall be hand-delivered, delivered by overnight courier, sent by electronic mail transmission (e-mail), or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at their respective addresses set forth below, or at such other addresses of which either party shall notify the other party in accordance with the provisions hereof, and shall be deemed given (i) if hand delivered, upon actual receipt by the addressee, (ii) if sent by overnight courier, upon delivery evidenced by such courier, (iii) if sent by e-mail, upon transmission, and (iv) if mailed, on the earlier of actual receipt or the 3rd business day after same is delivered to the U.S. Postal Service, properly addressed and with proper postage thereon. In order for a notice to Borrower to be effective, a copy of the notice must also be sent to Borrower's Counsel. In order for any notice to Purchaser to be effective, a copy of the notice must also be sent to Purchaser's Counsel.

Lender: NobleBank and Trust
361 Summit Blvd., Suite 100
Birmingham, Alabama 35243
Attn: Guy S. Hunt
Email: guy.hunt@noblebank.com

with copy to: Engel Hairston – Raulston Brown, PC
2130 Highland Ave. S., Suite 200
Birmingham, Alabama 35205
Attn: William C. Brown
Email: cbrown@ehrblaw.com

Borrower: Tortorigi Development, LLC
3801 Mary Taylor Road
Birmingham, Alabama 35235
Attn: Joseph J. Tortorigi
Email: jtortorigi@tortorigi.com

Purchaser: SDH Alabama LLC
8137 Helena Road, Suite 100
Pelham, AL 35124
Attn: Elizabeth Emshoff
Email: bemshoff@smithdouglas.com

with copy to: SDH Alabama, LLC
110 Village Trail, Suite 215
Woodstock, GA 30188
Attn: Nicole Swartz
Email: nswartz@smithdouglas.com

[SIGNATURES ON FOLLOWING PAGES]

[INTERCREDITOR AGREEMENT – LENDER’S SIGNATURE PAGES.]

IN WITNESS WHEREOF, the undersigned executed this Agreement as of the date first above written

LENDER:

**NOBLEBANK AND TRUST, an
Alabama banking corporation**

By: [Signature]
Print Name: Guy S. Hunt
Its: Vice President

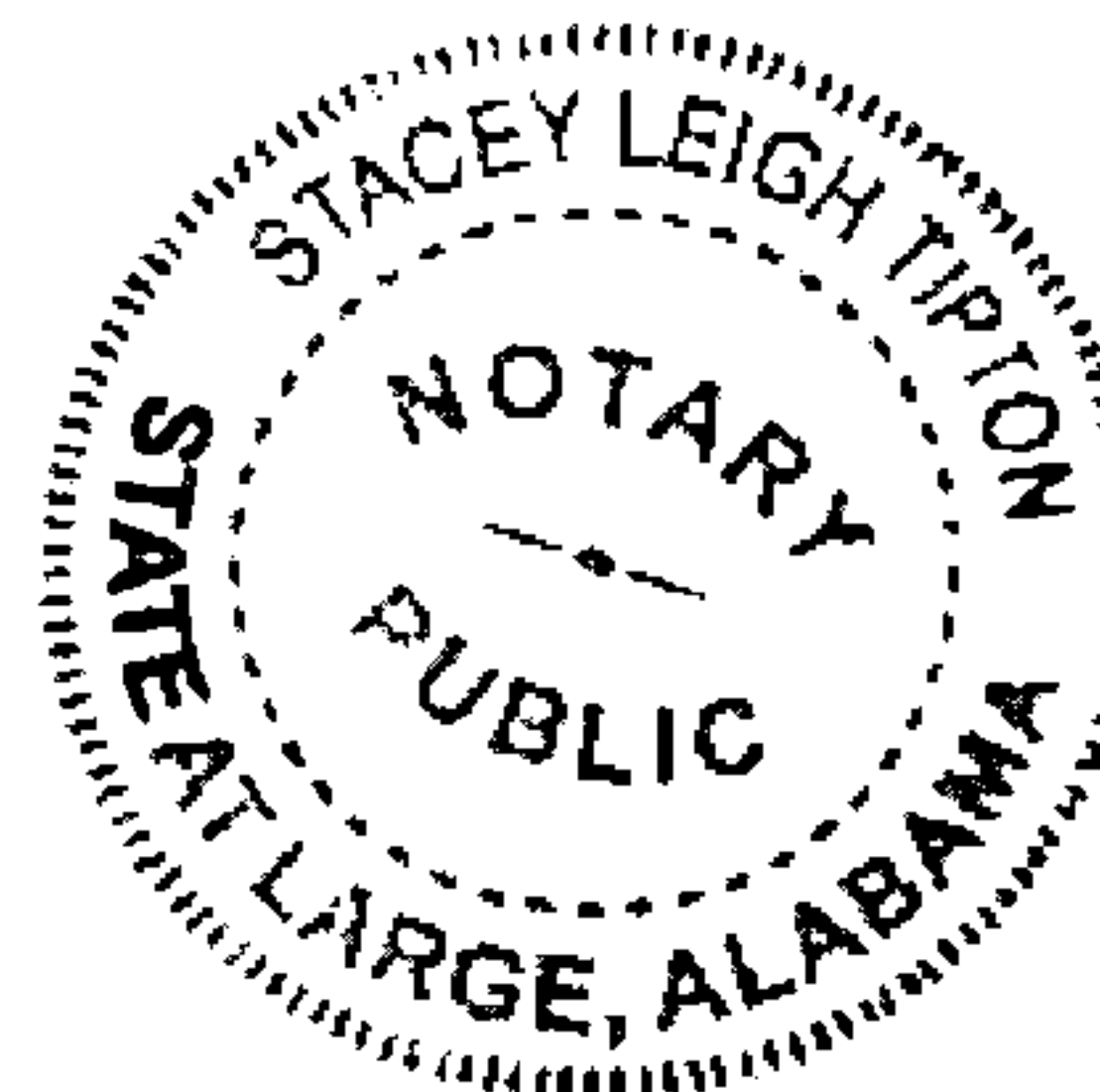
STATE OF ALABAMA)
)
JEFFERSON COUNTY)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Guy Hunt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the VP of the above named entity (the “Entity”), the bargainer, and that he/she as such officer or agent, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the Entity by him/herself as such officer or agent.

Witness my hand and seal the 31st day of January 2023.

[Signature]
Notary Public

My Commission Expires ~~My Commission Expires~~
01/27/2025



[INTERCREDITOR AGREEMENT - BORROWER'S SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned executed this Agreement as of the date first above written.

BORROWER:

**TORTORIGI DEVELOPMENT, LLC, an
Alabama limited liability company**

By: Joseph J. Tortorigi
Name: Joseph J. Tortorigi
Title: Manager

STATE OF ALABAMA)

Jefferson COUNTY)

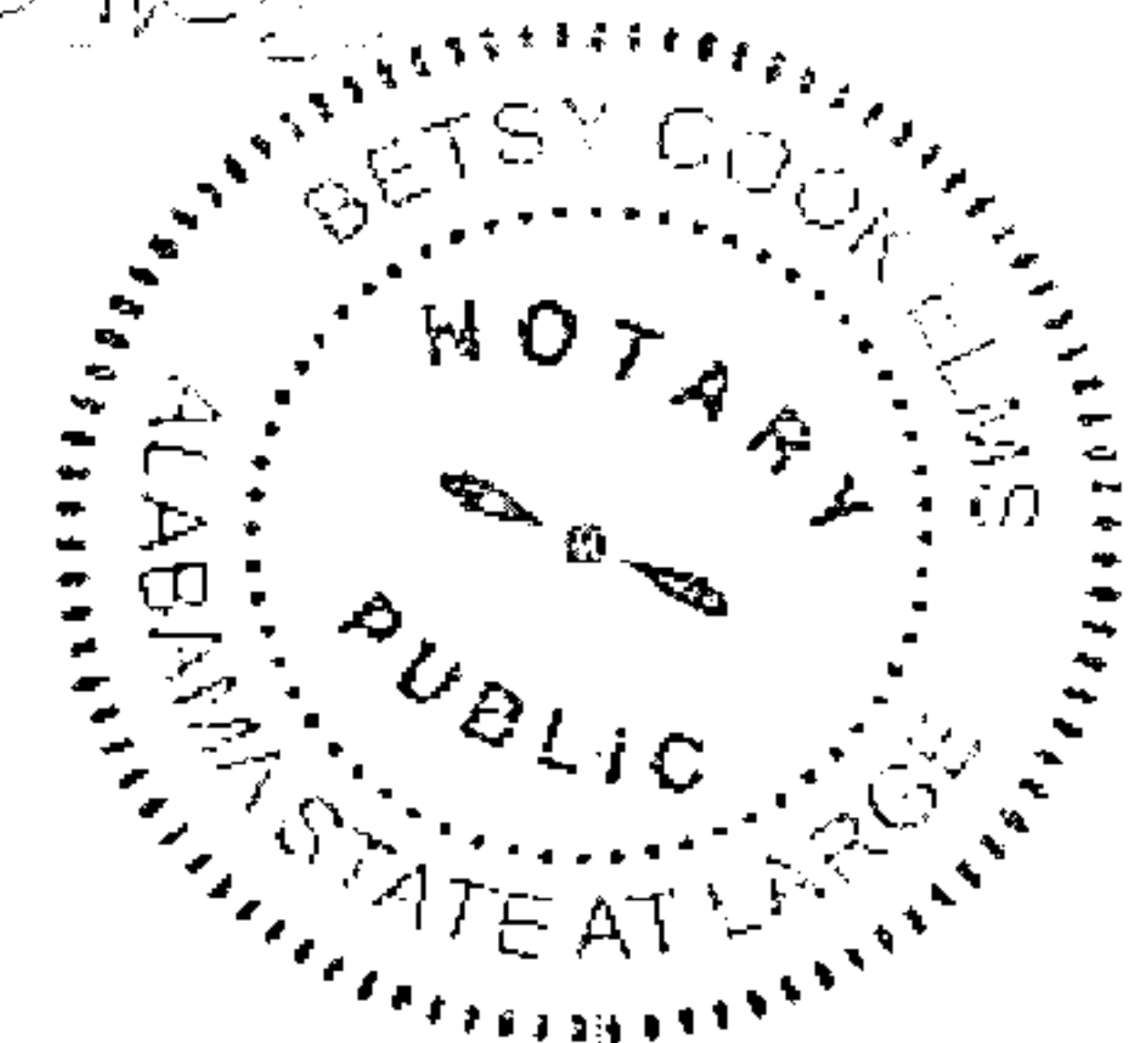
Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Joseph J. Tortorigi, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him to be the President of the above named entity (the "Entity"), the bargainer, and that he/she as such officer or agent, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the Entity by himself/herself as such officer or agent.

Witness my hand and seal the 31 day of January 2023.

Poor Quality

Betsy Cook Ellis
Notary Public

My Commission Expires: 10 / 16 / 23




[INTERCREDITOR AGREEMENT -- PURCHASER'S SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned executed this Agreement as of the date first above written.

PURCHASER:

**SDH Alabama LLC,
a Georgia limited liability company**

By:

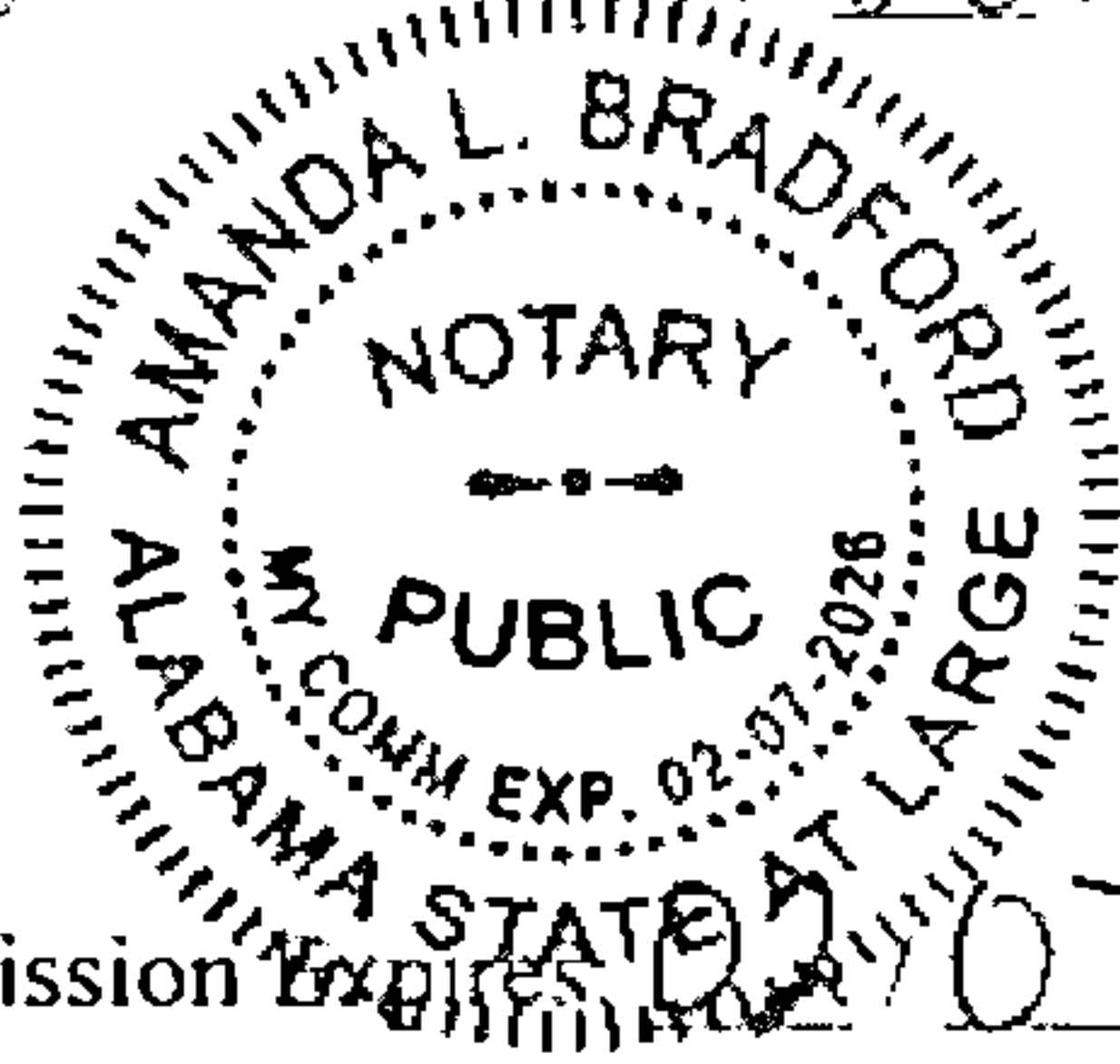

Elizabeth Emshoff, President

STATE OF ALABAMA)

Chilton COUNTY)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Elizabeth Emshoff, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged her to be the President of the above named entity (the "Entity"), the bargainer, and that she as such officer or agent, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the Entity by herself as such officer or agent.

Witness my hand and seal the 20 day of January 2023.



My Commission Expires

02/07/2024

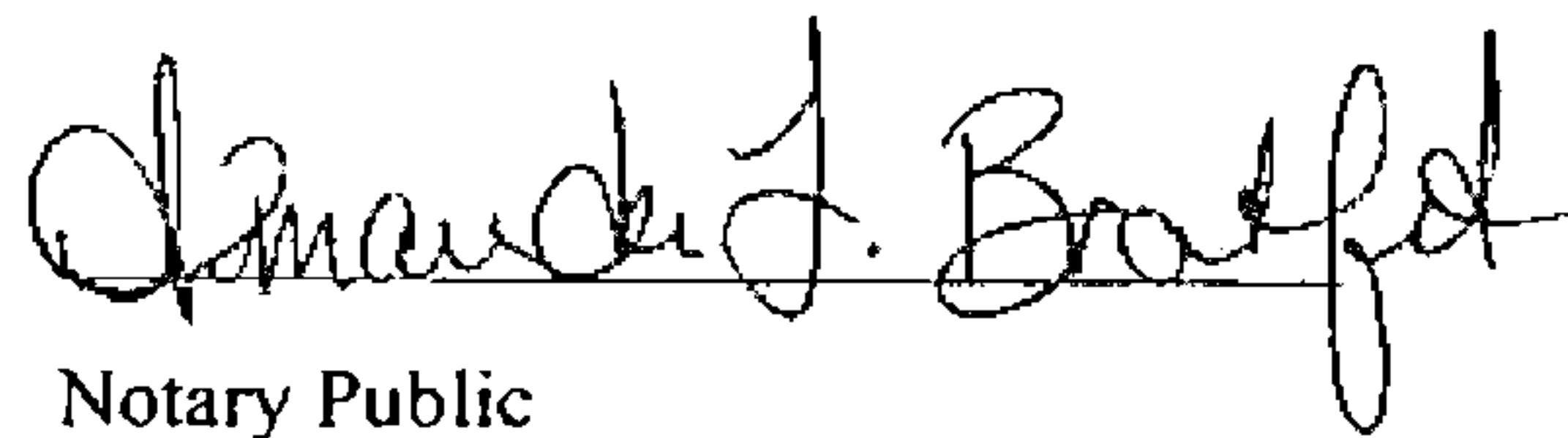

Notary Public

Exhibit A

Parcels 9 and 10, according to the Survey of Tanyard Branch Estates, as recorded in Map Book 30, Page 94, in the Office of the Judge of Probate of Shelby County, Alabama.

LESS AND EXCEPT:

Harpers Creek Subdivision Sector 1, as recorded in Map Book 56, Page 28, in the Office of the Judge of Probate of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/01/2023 01:32:58 PM
\$56.00 BRITTANI
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Allen S. Bayl