

Execution Version

*PREPARED BY, AND AFTER RECORDING
RETURN TO:*

Joshua A. Marcus, Esq.
LendingOne, LLC
c/o Sourcepoint, Inc.
Attn: Team2
2330 Commerce Pk. Dr. NE, STE 2
Palm Bay, FL 32905

Space Above for Recorder's Use

ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (“Assignment”) is made effective as of June 28, 2023 by **ALABAMA AREA RENTAL PROPERTIES LLC**, a Delaware limited liability company, having an address of 790 Montclair Road, Suite 215, Birmingham, Alabama 35213 (“Assignor”) in favor of **LENDINGONE, LLC**, a Delaware limited liability company, having its principal place of business at 777 Yamato Road, Suite 510, Boca Raton, Florida 33431 (“Assignee”).

RECITALS:

A. This Agreement is made in connection with a loan in the principal sum of up to **FIFTY-THREE MILLION FOUR HUNDRED NINE THOUSAND and 00/100 Dollars (\$53,409,000)** (the “Loan”) made by Assignee to Assignor, as evidenced by that certain Commercial Promissory Note, dated as of the date hereof, made by Assignor to Assignee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “Note”).

B. The Loan is secured, in part, by those certain mortgages, deeds of trust, or security deeds, security agreements, and fixture filings, dated as of the date hereof, set forth on the Recordable Documents Schedule attached as Schedule 2 to the Portfolio Loan Agreement (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the “Security Instrument”) made by Assignor for the benefit of Assignee. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument.

C. As defined in the Note and Security Instrument, the Maturity Date of Loan is July 1, 2033.

D. Assignor desires to further secure the payment of the Indebtedness and the performance of all of its Obligations under the Note, the Security Instrument and the other Loan Documents.

E. This Assignment is given pursuant to the Note, and payment, fulfillment, and performance by Assignor of its obligations thereunder and under the other Loan Documents is secured hereby, and each and every term and provision of the Note and the Security Instrument, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Assignment.

NOW THEREFORE, in consideration of the making of the Loan by Assignee and the covenants, agreements, representations and warranties set forth in this Agreement:

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment.

1.1. Assignor unconditionally assigns to Assignee all of Assignor's right, title and interest in and to: (a) all rents, revenues, liquidated damages following defaults under the Leases, issues, profits, income and proceeds due or to become due from tenants of the projects located on the real properties more commonly known as the addresses set forth on the Property Schedule attached as Schedule 1, which is more particularly described on the attached Exhibit A (the real properties and projects, collectively, the "Property"), including rentals and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, rendering in, selling or otherwise enjoying the Property (collectively, the "Rents"); (b) all of Assignor's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the United States Bankruptcy Code (the "Bankruptcy Code"); and (c) any and all other rights of Assignor in and to the items set forth in subsections (a) through (b) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This Agreement is an absolute assignment to Assignee and not an assignment as security for the performance of the obligations under the Loan Documents (defined below), or any other Indebtedness, and such absolute assignment is presently and immediately effective. Notwithstanding the foregoing, the absolute assignment contained herein shall not itself reduce the obligations owing to Assignee under the Loan Documents unless and until Assignee actually receives the Rents and such Rents are applied by Assignee to such obligations pursuant to Section 4 below.

1.2. For purposes of this Agreement, "Leases" means all leases, subleases, occupancy agreements, licenses, concessions, rental contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Assignor of any petition of relief under the Bankruptcy Code) and all related security and other deposits. Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents. Assignor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Assignee for use in the payment of such sums. During the existence of an Event of Default, the license granted to Assignor herein shall be automatically revoked and Assignee shall immediately be entitled to possession of all Rents, whether or not Assignee enters upon or

takes control of the Property. Assignee is hereby granted and assigned by Assignor the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Assignee in its discretion shall deem proper. It is further the intent of Assignor and Assignee that the Rents hereby absolutely assigned are no longer, during the term of the Security Instrument, property of Assignor or property of any estate of Assignor as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Assignor.

2. Rights of Assignee.

2.1. During an Event of Default, Assignee shall have the right, power and authority in accordance with applicable law to: (a) notify any person that all Rents are to be paid directly to Assignee, whether or not Assignee has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents; (c) enforce payment of Rents, prosecute any action or proceeding, and defend against any claim with respect to Rents; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Assignor under the Leases and exercise any and all rights of Assignor therein contained to the full extent of Assignor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver.

2.2. At Assignee's request during an Event of Default, Assignor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Assignor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Assignor, to comply with all demands of Assignee under this Agreement and to turn over to Assignee on demand all Rents which it receives. Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents. Assignor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Assignee for use in the payment of such sums. During an Event of Default, the license granted to Assignor herein shall be automatically revoked and Assignee shall immediately be entitled to possession of all Rents, whether or not Assignee enters upon or takes control of the Property. If the Event of Default is cured, as determined by Assignee in its sole and absolute discretion, the license granted to Assignor shall be reinstated. Assignee is hereby granted and assigned by Assignor the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Assignee in its discretion shall deem proper. It is further the intent of Assignor and Assignee that the Rents hereby absolutely assigned are no longer, during the term of the Security Instrument, property of Assignor or property of any estate of Assignor as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Assignor.

3. No Obligation or Liability. Notwithstanding Assignee's rights hereunder, Assignee shall not be obligated to perform, and Assignee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Assignee shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, except to the extent caused by the gross negligence, intentional or willful misconduct, fraud, by Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after an Event of Default (other than for gross negligence, intentional or willful misconduct, or fraud by Assignee its employees and agents).

Nothing herein contained shall be construed as constituting Assignee a “mortgagee in possession” or “debtor in possession” in the absence of the taking of actual possession of the Property by Assignee. Neither the acceptance by Assignee of this Agreement, nor the granting of any other right, power, privilege or authority in this Assignment, nor the exercise of any of the aforesaid, will at any time thereafter, obligate Assignee (a) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Property, (b) to take any action hereunder, (c) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (d) to assume any obligation or responsibility for any deposits which are not physically delivered to Assignee or (e) to assume any obligation or responsibility for any injury or damage to person or property sustained in or about the Property. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

4. **Right to Apply Rents.** At any time an Event of Default by Assignor exists, Assignee shall have the right, but not the obligation, to use and apply any Rents received by Assignee pursuant to the terms hereof in such order and such manner as Assignee may determine for:

4.1. **Enforcement or Defense.** The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Assignee hereunder, and collecting any Rents;

4.2. **Loan Payments.** Interest, principal or other amounts payable pursuant to the Note, Security Instrument and all other Loan Documents; and

4.3. **Operating Expenses.** Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges payable by Assignor under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys’ fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Assignee has established such reserves as it, in its sole and absolute discretion, deems necessary for the proper management of the Property, Assignee shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver.** The exercise or nonexercise by Assignee of the rights granted in this Agreement or the collection and application of Rents by Assignee or its agent shall not be a waiver of any default by Assignor under this Agreement or any other Loan Document. No action or failure to act by Assignee with respect to any obligations of Assignor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Assignee’s rights and privileges under this Agreement, or discharge, release or modify any of Assignor’s duties or obligations hereunder.

6. **Term.** This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Assignor under the Loan Documents are fully satisfied.

7. **Appointment.** Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, which appointment is coupled with an interest, to exercise any or all of the rights or powers described herein with the same force and effect as if exercised by Assignor, and Assignor ratifies and confirms any and all acts

done or omitted to be done by Assignee, its agents, servants, employees or attorneys in, to or about the Property.

8. **Liability of Assignee.** Assignee shall not in any way be liable to Assignor for any action or inaction of Assignee, its employees or agents under this Agreement (other than for gross negligence, intentional or willful misconduct, or fraud by Assignee, its employees and agents).

9. **Indemnification.** Assignor shall indemnify, defend and hold harmless Assignee from and against all liability, loss, damage, cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Assignee by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including reasonable attorneys' fees and expenses, INCLUDING LIABILITY, LOSS, DAMAGE, COST OR EXPENSE ARISING OR ALLEGED TO HAVE ARISEN FROM ASSIGNEE'S NEGLIGENCE OR STRICT LIABILITY, but excluding any claim arising from Assignee's gross negligence, intentional or willful misconduct, or fraud. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Assignor to Assignee at a rate equal to the Default Rate (as defined in the Note).

10. **Modification.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

11. **Bankruptcy.**

11.1. Upon or at any time after the occurrence of an Event of Default, Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

11.2. If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

12. **Authority.** Assignor represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property.

13. **Headings.** The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

14. **Notices.** Any notice required or permitted to be given under this Agreement shall be (a) in writing, (b) sent in the manner set forth in the Security Instrument, and (c) effective in accordance with the terms of the Security Instrument.

15. **Successors and Assigns.** This Agreement shall inure to the benefit of Assignee and its successors and assigns and shall be binding on Assignor and its successors and assigns.

16. **Severability.** If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons, entities, or circumstances other than those as to which it is held invalid, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. **Further Assurances.** Assignor shall execute and deliver to Assignee all instruments and do such further acts and things as Assignee may reasonably request which may be necessary or desirable to effect the purposes of this Agreement.

18. **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 (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION), 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 NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION) SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER.

19. **Jurisdiction.** AT ASSIGNEE'S ELECTION, TO BE ENTERED IN ITS SOLE DISCRETION, ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BORROWER OR ASSIGNEE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, AND ASSIGNOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

20. **Amendments.** This Agreement may not be altered, amended, waived, or modified in any way whatsoever except by a writing duly executed by the party to be charged therewith.

21. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor as of the date first above written.

ASSIGNOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS ASSIGNMENT WITHOUT CHARGE.

ASSIGNOR:

ALABAMA AREA RENTAL PROPERTIES LLC,
a Delaware limited liability company

By: **RTO I, LLC,**
an Alabama limited liability company

Its: **Manager**

By: _____

Name: **Robert F. Ashurst**

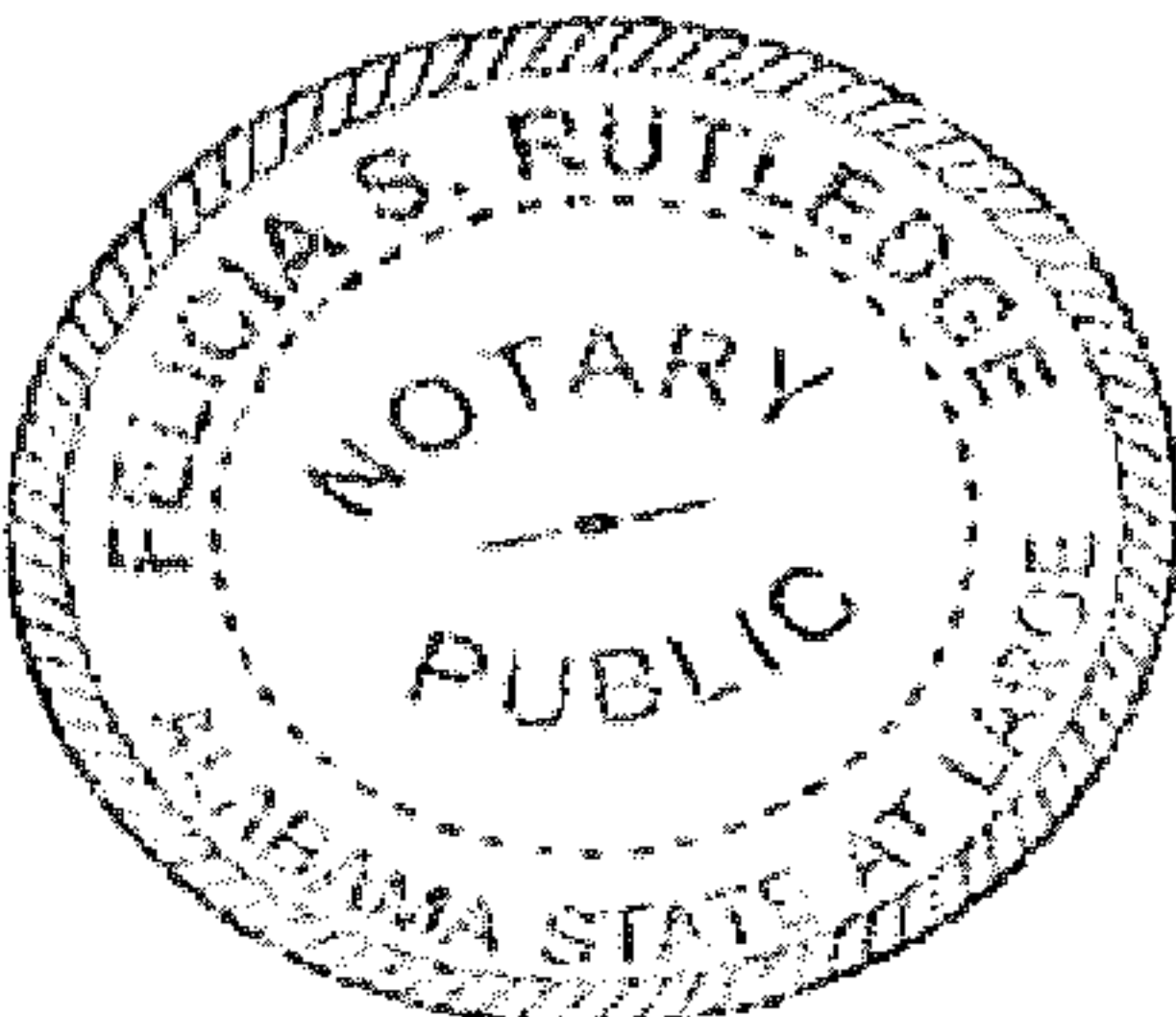
Title: **Manager**

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I Felicia Rutledge a Notary Public, in and for said County and State, hereby certify that Robert F. Ashurst, whose name as Manager of RTO I, LLC, an Alabama limited liability company, which is the manager of Alabama Area Rental Properties LLC, a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 27th day of June, 2023.

(NOTARY SEAL)



Felicia Rutledge

Notary Public Signature

Printed Name: Felicia S. Rutledge

My Commission Expires 12/12/2023

SCHEDULE 1

PROPERTY SCHEDULE

	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
1	2063 Roszburg Place	Calera	AL	35040
2	33 Lancaster Court	Calera	AL	35242
3	1115 Ridge Drive	Pelham	AL	35124
4	100 14th Street SW	Alabaster	AL	35007
5	600 Cahaba Manor Lane	Pelham	AL	35124

Execution Version

EXHIBIT A

PROPERTY DESCRIPTIONS

TRACT 520 - 100 14TH STREET SW ALABASTER AL 35007

COUNTY SHELBY

LEGAL DESCRIPTION: COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 34, TOWNSHIP 20 SOUTH, RANGE 3 WEST, AND RUN ALONG SAID 1/4-1/4 LINE NORTH 88 DEGREES 47 MINUTES EAST 315 FEET; THENCE NORTH 2 DEGREES WEST 449.5 FEET; THENCE SOUTH 88 DEGREES 47 MINUTES WEST 15 FEET; THENCE NORTH 2 DEGREES WEST 407 FEET TO THE POINT OF BEGINNING OF THE LOT HEREIN DESCRIBED; THENCE CONTINUE ALONG THE SAME SAID COURSE, IN THE SAME SAID COURSE, IN THE SAME DIRECTION, A DISTANCE OF 137 FEET TO THE SOUTH RIGHT OF WAY LINE OF THE ALABASTER AND HELENA ROAD; THENCE RUN IN A WESTERLY DIRECTION ALONG THE SOUTH BOUNDARY OF SAID RIGHT OF WAY LINE OF THE ALABASTER AND HELENA ROAD A DISTANCE OF 117 FEET; THENCE RUN IN A SOUTHERLY DIRECTION PARALLEL WITH THE EAST BOUNDARY OF THE LOT HEREIN DESCRIBED A DISTANCE OF 137 FEET TO A POINT; THENCE RUN IN AN EASTERLY DIRECTION TO THE POINT OF BEGINNING; BEING SITUATED IN SHELBY COUNTY, ALABAMA.

PARCEL ID: 13 8 34 4 002 009.000

TRACT 521 - 1115 RIDGE DRIVE PELHAM AL 35124

COUNTY SHELBY

LEGAL DESCRIPTION: LOT 2, ACCORDING TO THE SURVEY OF CORRECTED SURVEY OF R. O. RAMER'S ADDITION TO LITTLE OAK RIDGE ESTATES, AS RECORDED IN MAP BOOK 11, PAGE 8, SHELBY COUNTY RECORDS.

PARCEL ID: 13 1 12 1 001 006.005

TRACT 522 - 2063 ROSSBURG PLACE CALERA AL 35040

COUNTY SHELBY

LEGAL DESCRIPTION: LOT 138, ACCORDING TO THE SURVEY OF ROSSBURG TOWNHOMES, AS RECORDED IN MAP BOOK 36, PAGE 18, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL ID: 28 3 05 0 009 038.000

TRACT 523 - 33 LANCASTER COURT CALERA AL 35242

COUNTY SHELBY

LEGAL DESCRIPTION: LOT 8, ACCORDING TO THE AMENDED MAP OF IVANHOE, AS RECORDED IN MAP BOOK 6, PAGE 10, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

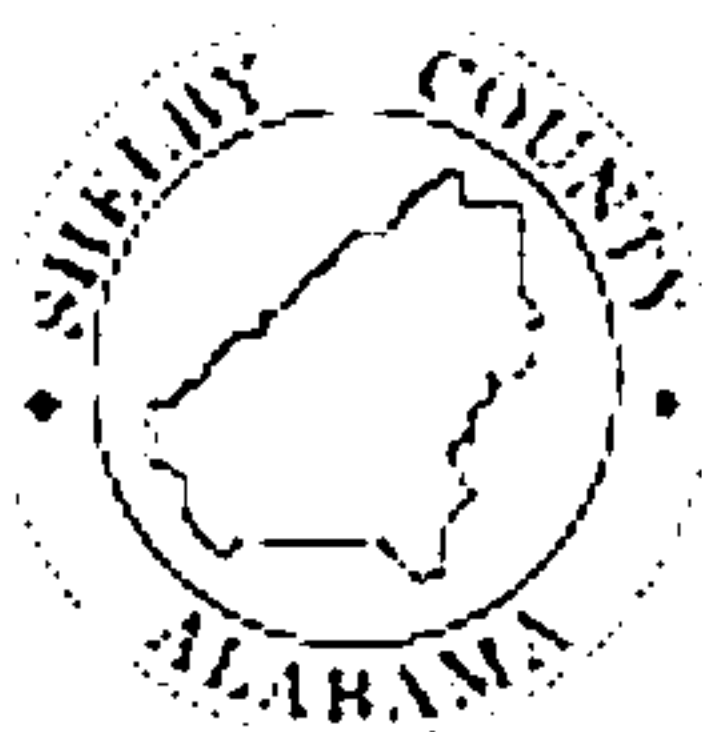
PARCEL ID: 28 3 05 0 001 054.000

TRACT 524 - 600 CAHABA MANOR LANE PELHAM AL 35124

COUNTY SHELBY

LEGAL DESCRIPTION: LOT 1, ACCORDING TO THE SURVEY OF CAHABA MANOR TOWN HOMES, THIRD ADDITION, AS RECORDED IN MAP BOOK 7, PAGE 158, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL ID: 13 1 12 2 004 011.000



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
07/10/2023 03:06:57 PM
\$49.00 BRITTANI
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Allen S. Bayl