

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Merchants NE, LLC
7400 East Crestline Circle, Suite 250
Greenwood Village, CO 80111

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

BY

KATIE&CO INVESTMENTS LLC, An Alabama Limited Liability Company,
AS MORTGAGOR

TO

MERCHANTS NE, LLC, a Colorado limited liability company
AS MORTGAGEE,

TO SECURE A PROMISSORY NOTE

In the amount of \$190,500.00

Dated: July 26, 2023

**THIS MORTGAGE SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING,
PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA 1975, AS AMENDED.**

**THIS MORTGAGE IS A CONSTRUCTION MORTGAGE AS DEFINED IN SECTION
7-9A-334(h), CODE OF ALABAMA, 1975, AS AMENDED, AND SECURES, AMONG
OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION
OF AN IMPROVEMENT ON LAND.**

**THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS
\$190,500.00**

*Mortgage, Security Agreement and Financing Statement (Alabama)***MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS AND FIXTURE FILING**

1. **Parties and Effective Date.** This Mortgage, Security Agreement, Assignment of Leases, Rents and Profits and Fixture Filing (the “**Mortgage**”), is made by to KATIE&CO INVESTMENTS LLC, AN ALABAMA LIMITED LIABILITY COMPANY (“**Mortgagor**,” whether one or more, the same being the “**Debtor**” for the purposes of the Fixture Filing), having an address at 600 Boulevard South Southwest, Suite 104J, Huntsville, AL 35802, to MERCHANTS NE, LLC, a Colorado limited liability company, having an address at 7400 E. Crestline Circle, Suite 250, Greenwood Village, CO 80111 (“**Mortgagee**” the same being the “**Secured Party**” for the purposes of the Fixture Filing).

2. **Mortgage.** To secure the payment of One Hundred Ninety Thousand Five Hundred Dollars and No Cents (\$190,500.00, together with interest thereon, due in accordance with the terms of the Promissory Note of even date herewith made by Mortgagor (together with all amendments, modifications and renewals, the “**Note**”), the final payment of which is due on July 19, 2024 (the “**Maturity Date**”), which Note the Mortgagor has executed and delivered to the Mortgagee, and any amendments, extensions, modifications or renewals thereof; the payment of any amounts due to Mortgagee pursuant to Sections 8.H. and 10.A. of this Mortgage and any amendments, extensions, modifications or renewals thereof; and the payment of any amounts due to Mortgagee under the terms of the Credit Agreement between Mortgagor and Mortgagee dated as of the date of this Mortgage and any amendments, extensions, modifications or renewals thereof (the “**Credit Agreement**”) and any and all other documents evidencing or securing the Note (collectively, and together with all modifications and amendments thereto, the “**Loan Documents**”); and the payment and performance of all future advances and readvances that may subsequently be made by Mortgagee to Mortgagor with respect to any of the foregoing; provided, however, and notwithstanding the foregoing provisions of this Section, this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Mortgagee is prohibited by the laws of the State of Alabama from obtaining a lien on real estate nor shall such provisions create an obligation on the part of Mortgagee to make future advances or readvances to Mortgagor, and other obligations that the then record owner of the Mortgaged Premises (as defined herein) may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Mortgage, provided that the maximum of all indebtedness outstanding at any one time secured hereby shall not exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorneys’ fees; and protective advances for the payment of taxes, insurance, assessments and repairs, at Mortgagee’s sole option; the Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm to the Mortgagee, its successors and assigns, the all rights to the land legally described on the attached Exhibit A-1 (the “**Land**”); all buildings, fixtures and improvements now or hereafter erected or located on the Land (the “**Improvements**”); the Mortgagor’s interest in all leases, rents and profits affecting the Land; all hereditaments and appurtenances belonging or in any way appertaining to the Land; and all the estate, rights and interests of the Mortgagor including all homestead and dower rights and all

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inchoate and contingent rights in and to said Land (collectively, the “**Mortgaged Premises**”) to have and to hold the Mortgaged Premises unto the Mortgagee, its successors and assigns forever; provided that if the Mortgagor shall pay unto the Mortgagee, its successors or assigns, the principal and interest due under the Note at the time and in the manner provided for in the Note and shall perform each and every one of the Mortgagor’s covenants under this Mortgage, then this Mortgage and the estate hereby granted shall cease, determine and become void. TO THE EXTENT, IF ANY, PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED, OR CAPITALIZED.

Assignment of Rents and Profits.

A. As additional collateral and further security for the Secured Obligations, Mortgagor does hereby assign to Mortgagee, Mortgagor's interest in and rights under any and all ground leases, leases, tenant contracts, rental agreements, franchise agreements, management contracts, contracts for the sale of the Mortgaged Premises or any site within the Mortgaged Premises and other contracts, licenses and permits now or hereafter affecting the Mortgaged Premises, or any part thereof, together with all of the rents, issues, and profits now due and which may hereafter become due thereunder, and Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as hereafter may be requested by Mortgagee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Mortgagee to any lease, tenant contract, rental agreement, franchise agreement, management contract, sales contract or other contract, license or permit, or to impose upon Mortgagee any obligation with respect thereto. Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder.

B. Mortgagor shall not execute an assignment of the rents, issues or profits, or any part thereof, from the Mortgaged Premises unless Mortgagee shall first consent to such assignment, which consent may be given or denied in Mortgagee's sole discretion, and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Mortgage and any assignment executed pursuant hereto.

C. Mortgagor shall furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a sworn statement setting forth the names of all lessees and tenants of the Mortgaged Premises, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements.

D. Mortgagor shall submit to Mortgagee, within ten (10) days of its receipt thereof, copies of all leases executed and options exercised with respect to the Mortgaged Premises.

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E. Each future lease, tenant contract or rental agreement pertaining to the Mortgaged Premises, or any part thereof, shall provide that in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee or tenant thereunder will, upon request of Mortgagee or any other person or entity succeeding to the interest of Mortgagee as a result of such enforcement, automatically become the lessee or tenant of Mortgagee or said successor in interest, without change in the terms or other provisions of said lease, tenant contract or rental agreement. Mortgagor shall cause the foregoing requirement to be satisfied by the execution by such tenants of subordination and attornment agreements satisfactory to Mortgagee.

4. **Security Agreement.** As additional security for Mortgagor's performance of the Secured Obligations, Mortgagor hereby grants to Mortgagee a security interest in all building materials, equipment and fixtures Mortgagor now owns or subsequently acquires (including, but not limited to, all engines, boilers, elevators, machinery, heating apparatus, electrical equipment, air conditioning equipment, water and gas fixtures, plumbing, communication devices, stoves, refrigerators, carpeting, shades, awnings, screens, storm sashes and blinds but excluding the trade fixtures of any tenant of Mortgagor) and now or hereafter located or intended to be located on and used in connection with the operation of the Mortgaged Premises of whatsoever type or nature, including all replacements, repairs and substitutions thereto and proceeds thereof. Mortgagor hereby covenants and agrees that upon the occurrence of an Event of Default hereunder, Mortgagee may, in addition to any other remedy provided for herein or which it may have at law or equity, exercise all rights granted to it under the Uniform Commercial Code enacted in the state wherein the Land is situated (the "UCC").

5. **Fixture Filing.** The filing of this Mortgage shall constitute a filing of a financing statement in the office wherein it is filed and a photographic or other reproduction of this document may also be filed as a financing statement.

Name and Address of Debtor(s):

KATIE&CO INVESTMENTS LLC, An
Alabama Limited Liability Company
600 Boulevard South Southwest, Suite 104J,
Huntsville, AL 35802

Name and Address of Secured Party:

MERCHANTS NE, LLC,
7400 E. Crestline Circle #250
Greenwood Village, CO 80111

Description of the types (or items) of
property covered by this financing
statement:

All building materials, equipment, fixtures
(including, but not limited to, all engines,
boilers, elevators, machinery, heating
apparatus, electrical equipment, air
conditioning equipment, water and gas
fixtures, plumbing, communication devices,
stoves, refrigerators, carpeting, shades,

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awnings, screens, storm sashes and blinds) now or hereafter located on and used in connection with the operation of the Mortgaged Premises of whatsoever type or nature whether now owned or hereafter acquired by Mortgagor, including all replacements, repairs and substitutions thereto and proceeds thereof. All leases, licenses, concessions and occupancy agreements of the Property now or hereafter entered into and all the rents, royalties, issues, profits, revenue, income and other benefits of the Property now or hereafter arising from the use or enjoyment of all or any portion thereof or from any such lease, license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the personal property located on or used in connection with the Property, and all cash or securities deposited to secure performance by tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms;

i.

All rights of every kind and nature held by or belonging to Mortgagor as declarant under any common interest community of any kind located on the Property, whether now in existence or created hereafter, including, without limitation, all special declarant rights set forth under 515B of the Minnesota Common Interest Ownership Act and all other or greater rights and interests of every nature in the Land and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Mortgagor.

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Description of real estate to which all
or part of the collateral is attached or
upon which it is located:

See attached on Exhibit A-1

6. **Mortgagor Covenants.** Mortgagor makes the following covenants and agreements with Mortgagee:

A. To warrant the title to the Mortgaged Premises subject only to Permitted Encumbrances as set forth on the attached **Exhibit "B"**;

B. To pay the indebtedness as herein provided;

C. To pay all taxes;

D. To keep the Improvements insured against fire for an amount equal to the full replacement cost of the Improvements but in no event less than the unpaid balance of the Note and against other risks of loss all as described in Section 7B below for the protection of the Mortgagee; and

E. That the Mortgaged Premises shall be kept in repair and no waste shall be committed.

7. **Additional Covenants and Agreements of Mortgagor.** The Mortgagor makes the following additional covenants and agreements with the Mortgagee:

A. Mortgagor hereby assigns any award of damages in condemnation or payments in consideration of a conveyance in lieu of condemnation Mortgagee receives for injury to or the taking of all or any part of Mortgagor's interest in the Mortgaged Premises to the Mortgagee, and Mortgagor authorizes the Mortgagee to apply the proceeds of this assignment first to the payment of amounts Mortgagee is obligated to pay Mortgagee pursuant to Sections 7H and 9A of this Mortgage, second to the payment of accrued interest due under the Note and third to the payment of principal amounts outstanding on the Note. If the principal amount is payable in installments, Mortgagee shall apply the proceeds, after payment of accrued interest, to said installments in the inverse order of their maturity. Mortgagee agrees that Mortgagee shall first apply any separate damages or payments Mortgagee receives for injury to or a taking of Mortgagee's interest in the Mortgaged Premises to the payment of the amounts described above in the order described above.

B. As of the date hereof and at least annually, Mortgagor shall deliver to Mortgagee insurance certificates, satisfactory to Mortgagee, evidencing the Mortgagor has in place a policy or policies of insurance that provide:

i. Property Insurance insuring the Improvements against loss or damage by fire and other hazards and contingencies insurable under an "all risk" form of policy in an amount equal to the lesser of the full replacement cost of

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Improvements or the full insurable value of the Improvements but in no event less than the amount outstanding under the Note. The Property Insurance Policy may provide a deductible in an amount reasonably acceptable to the Mortgagee. The policy shall name Mortgagee as a mortgagee and loss payee in accordance with the so-called "standard mortgagee clause" and shall be endorsed to:

- a. remove any and all co-insurance provisions or requirements from the policy; and
 - b. provide affirmative coverage for losses occasioned by the enforcement of any ordinance or law regulating the construction, repair, demolition and condemnation of any structure or building notwithstanding any exclusionary language contained within the policy itself.
- ii. Liability insurance equivalent to or greater than the insurance provided under the Insurance Services Office, Inc. 1986 Commercial General Liability Coverage Forms. This insurance shall be on an occurrence basis, and Mortgagor shall maintain, at all times, coverage limits acceptable to the Mortgagee. The policy of liability insurance shall name Mortgagee as an additional insured thereunder; and
- iii. Endorsements requiring the insurer to give Mortgagee thirty (30) days' written notice of any termination, cancellation, non-renewal or material change in the coverage provided by such policy or policies.

The company or companies providing the insurance described in this Section 7B shall be financially responsible insurers licensed to do business in Alabama and shall have a current A.M. Best Company rating of A.

C. Mortgagor hereby assigns Mortgagor's interest in the proceeds of any insurance payable by reason of loss or damages to the Improvements to the Mortgagee subject to Mortgagor's rights exercisable by written notice to Mortgagee given within ninety (90) days after the occurrence of loss or damage to the Improvements, to deposit the insurance proceeds in an escrow account with a title insurance company reasonably acceptable to Mortgagor and Mortgagee (the "Escrow Agent") pursuant to a disbursing agreement reasonably acceptable to Mortgagor, Mortgagee and Mortgagor's tenant, if any as may be required in Mortgagor's lease with tenant (the "Disbursing Agreement") and to use the proceeds of the insurance provided for in Section 7B or to make such proceeds available for Mortgagor's tenant to use to the extent necessary to repair, restore or replace the Improvements to their condition immediately prior to said loss as may be required in Mortgagor's lease with tenant; provided Mortgagor meets all of the following conditions:

- i. There are sufficient sums available to complete the repair, restoration or replacement, which sums can be composed of a combination of any of the following items: (a) the insurance proceeds deposited with the Escrow

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Agent pursuant to the Disbursing Agreement; (b) cash deposited by Mortgagor or Mortgagor's tenant with the Escrow Agent; and (c) other security satisfactory to Mortgagee deposited by Mortgagor with such Escrow Agent. All such funds on deposit with such title insurance company shall be invested by such title insurance company as directed by Mortgagor, Mortgagee and Mortgagor's tenant, if any.

ii. If the work is structural or if the cost of the work, as estimated by Mortgagor, exceeds Twenty-five Thousand and no/100 Dollars (\$25,000.00), the plans and specifications for such work will be subject to Mortgagee's approval (which approval will not be unreasonably withheld).

iii. Mortgagor, Mortgagee and the Disbursing Agent shall have entered into an agreement in form and substance reasonably acceptable to Mortgagee whereby all payments to be made by the Disbursing Agent will be based upon lien waivers and completion certificates reasonably satisfactory to such title insurance company (in accordance with their custom) to insure that Mortgagee will continue to have full title insurance including, without limitation, mechanics' lien insurance, during and after the construction period.

If Mortgagor does not give Mortgagee written notice of Mortgagor's exercise of Mortgagor's right to deposit the insurance proceeds in an escrow account with the Escrow Agent within ninety (90) days after the occurrence of the loss or damage; if Mortgagor provides such notice but does not commence the repair, restoration or replacement of the Improvements within six months of the occurrence of the loss or damage; or does not complete the repair, restoration or replacement of the Improvements within 18 months after the occurrence of the loss or damage; Mortgagor authorizes Mortgagee to apply the proceeds of the insurance first to the payment of amounts Mortgagor owes Mortgagee pursuant to Sections 7H and 9A of this Mortgage, second to the payment of any outstanding interest due on the Note and third to the payment of any principal amount outstanding under the Note. If a principal amount is payable in installments, the proceeds shall be applied to said installments in the inverse order of their maturity.

D. Mortgagor will hold and apply tenants' security deposits, if any, as required by applicable law.

E. Mortgagor will keep and perform the covenants of lessor under any leases covering the Mortgaged Premises and the covenants of a lessor and a licensor pursuant to applicable law.

F. Mortgagor has made no assignment (except to Mortgagee) of any leases, rents or profits from the Mortgaged Premises, and Mortgagor will not accept any prepayment of more than one month in advance under any leases of all or any part of the Mortgaged Premises.

G. Mortgagor will promptly pay when due all charges for utilities or other services to the Mortgaged Premises, except for those utilities and services which are the tenants' obligations to pay, including, but not limited to, electricity, water, gas,

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telephone, sanitary sewer and trash and garbage removal supplied and upon request of Mortgagee provide evidence of such payment.

H. Mortgagor covenants and warrants to Mortgagee, its successors and assigns that Mortgagor will not use the Mortgaged Premises and will not allow other entities to use the Mortgaged Premises for or in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances. Mortgagor agrees to indemnify and reimburse the Mortgagee, its successors and assigns from any loss, damage or expense or cost (including costs incurred in connection with consultants and any required testing) incurred by Mortgagee after Mortgagee's commencement of proceedings to foreclose this Mortgage; after a third party commences or threatens to commence proceedings against Mortgagee because of the presence of Hazardous Substances on the Premises; or as a result of a breach of the above covenants and warranties, together with all reasonable attorneys' fees incurred in connection with the defense of any action by a third party against the Mortgagee arising out of the above. These covenants and warranties are continuing covenants and warranties for the benefit of the Mortgagee; any successors and assignees of the Mortgagee's interest in the Mortgaged Premises; and shall survive the foreclosure of this Mortgage. The total amount of all such indemnified loss, damage, expense or cost shall bear interest thereon at the rate of interest in effect on the Note and shall become so much additional indebtedness secured by this Mortgage and shall become immediately due and payable in full on demand of the Mortgagee, its successors and assigns. For purposes of this Mortgage, Hazardous Substances shall mean:

any substance designated pursuant to the Clean Water Act, Title 33 U.S.C. Section 1321, any element, compound, mixture, solution or substance designated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. Section 9602, any hazardous waste having the characteristics identified under or listed pursuant to the Solid Waste Disposal Act, Title 42, U.S.C. Section 6921, any toxic pollutant listed under Section 307(a) of the Clean Water Act, Title 33 U.S.C. Section 1317(a), any hazardous air pollutant listed under Section 112 of the Clean Air Act, Title 42 U.S.C. Section 7412, any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act, Title 15 U.S.C. Section 2606; provided to the extent that the laws of the State of Alabama establish a meaning for "Hazardous Substances" which is broader than that specified in the foregoing, such broader meaning shall apply. The term also includes, but is not limited to polychlorinated biphenyls, urea formaldehyde, asbestos or related substances.

I. Except for Permitted Encumbrances, the Mortgagor will keep the Mortgaged Premises free from all liens (other than liens for taxes and assessments not yet due and payable) and encumbrances of every nature whatsoever heretofore or hereafter arising and, upon written demand of the Mortgagee, the Mortgagor will pay and procure the release of any such lien or encumbrance.

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J. The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Premises unless the same is being diligently contested by the Mortgagor in good faith and by proper proceedings.

K. Subject to the rights of tenants at the Mortgaged Premises, the Mortgagor will permit the Mortgagee and its agents to enter, and to authorize others to enter, upon any or all of the Land, at any time and from time to time, during normal business hours, to inspect the Mortgaged Premises to perform or observe any covenants, conditions or terms hereunder which the Mortgagor shall fail to perform, meet or comply with, or for any other purpose in connection with the protection or preservation of the Mortgagee's security, without thereby becoming liable to the Mortgagor or any person in possession under this Mortgage.

L. At any time and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the reasonable opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of the Mortgagor hereunder and all other Secured Obligations. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee its agent and attorney in fact of the Mortgagor so to do.

8. **Events of Default.** Mortgagor agrees that the occurrence of any of the following shall constitute a default under this Mortgage (an "Event of Default"):

A. Mortgagor's failure to make any payment due under the terms of the Note;
or

B. Mortgagor's default in the performance of any other covenants or agreements contained in this Mortgage, the Note, the Credit Agreement or any other loan documents.

9. **Remedies.** Upon the occurrence of an Event of Default, Mortgagee may pursue the remedies set forth below or any other remedies available at law or in equity. Mortgagee may, at Mortgagee's option, pursue any or all of the remedies set forth in this Section individually, in any combination or combinations or in any sequence Mortgagee deems appropriate, to the full extent permitted by law.

A. **Mortgagee's Right to Cure Mortgagor's Defaults, Mortgagor's Obligation to Reimburse Mortgagee for Costs of Cure and Mortgagor's Obligation to Reimburse Mortgagee for Attorneys' Fees.** If Mortgagor fails or refuses to perform any of the Secured Obligations, Mortgagee may, but shall have no obligation to, give Mortgagor notice of Mortgagor's failure to perform Mortgagor's obligations. If, after receiving such notice from Mortgagee, Mortgagor does not fully perform the obligation

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identified in the Mortgagee's notice and any obligations arising subsequent to the delivery of Mortgagee's notice within ten days, Mortgagee may, at Mortgagee's option, perform or engage third parties to perform the obligations of Mortgagor. If Mortgagee performs or engages third parties to perform obligations of Mortgagor pursuant to this Section, Mortgagor shall pay Mortgagee, upon demand, an amount equal to the sum of the costs and expenses which Mortgagee incurs in connection with Mortgagee's performance or engagement of third parties to perform the covenants of Mortgagor together with interest on such amount from the date Mortgagee incurs each such cost or expense through the date Mortgagor pays Mortgagee for such cost and expense at the rate of interest in effect on the Note. If Mortgagor fails or refuses to perform any of the Secured Obligations and Mortgagee incurs attorneys' fees or costs as result of or in connection with Mortgagor's failure or refusal to perform any Secured Obligations, Mortgagor shall reimburse Mortgagee for all reasonable attorneys' fees and costs which Mortgagee incurs together with interest on the amount of such attorneys' fees and costs from the date Mortgagee incurs such attorneys' fees or costs through the date Mortgagor reimburses Mortgagee for such attorneys' fees and costs at the rate of interest in effect on the Note.

B. **Mortgagee's Right to Accelerate Maturity of the Note.** Mortgagee may declare the entire Secured Obligations to be immediately due and payable in full without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

C. **Right to Enter and Take Possession.**

(i) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Premises and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Premises without the appointment of a receiver or an application therefor, and may exclude Mortgagor and their agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor;

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Premises or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Premises to Mortgagee. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including compensation to Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Obligations and shall be secured by this Mortgage;

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(iii) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Premises 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, personalty and other property; (ii) insure or keep the Mortgaged Premises insured; (iii) manage and operate the Mortgaged Premises and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the rents, issues, profits and revenues from the Mortgaged Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Premises (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; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Mortgagee may at its option pay; (E) other proper charges upon the Mortgaged Premises or any part thereof; and (F) the compensation, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the monies and proceeds so received by Mortgagee, first, to the payment of accrued interest; second, to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 9C to the contrary notwithstanding, Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Mortgagee of its rights under this Mortgage and Mortgagee shall be liable to account only for the rents, incomes, issues and profits actually received by Mortgagee;

(iv) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Mortgagee shall surrender possession of the Mortgaged Premises to Mortgagor, their heirs, successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

D. **Performance by Mortgagee.** If Mortgagor shall default in the payment, performance or observance of any term, covenant or condition of this Mortgage or Mortgagor shall default in the payment, performance or observance of any term, covenant or conditions of the Note or Credit Agreement, Mortgagee may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at five percent (5%) in excess of the rate provided in the Note or at the maximum rate from time to time allowed by

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applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor and Mortgagor to Mortgagee. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied, to pay, perform or observe any term, covenant, or condition.

E. **Receiver.** If any Event of Default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Premises and to collect and apply the rents, issues, profits and revenues thereof and, if approved by the court, to sell the Mortgaged Premises. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Mortgagor will pay unto Mortgagee upon demand all expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 9E, and any such amounts paid by Mortgagee shall be added to the Secured Obligations and shall be secured by this Mortgage.

F. **Enforcement.**

(i) If an Event of Default shall have occurred, then at the option of Mortgagee this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and Mortgagee, or its agent, may sell the Mortgaged Premises or any part of the Mortgaged Premises at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required. At any such sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Mortgaged Premises or any part of the Mortgaged Premises. Mortgagee shall have the right to enforce any of its remedies set forth herein without notice to Mortgagor, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Premises may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Premises is sold or the Secured Obligations is paid in full. If the Secured Obligations is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Mortgagee at its

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option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Mortgagee may determine.

Said sale may be adjourned by Mortgagee, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(ii) In the event of any sale of the Mortgaged Premises as authorized by this Section 9(F), all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Secured Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(iii) If an Event of Default shall have occurred, Mortgagee may, in addition to and not in abrogation of the rights covered under Subparagraph (a) of this Section 9F, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy to pursue any other remedy available to it, all as Mortgagee in its sole discretion shall elect.

G. **Purchase by Mortgagee.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Premises under the power herein granted, Mortgagee may bid for, in the form of cash, cash equivalents, and/or cancellation of all or any part of the secured obligations, and purchase the Mortgaged Premises if the highest bidder therefor.

H. **Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Premises, the proceeds of said sale shall be applied: (a) first, to the expenses of such sale and of all proceedings in connection therewith, including fees and expenses of Mortgagee's attorneys; (b) then to the repayment of money, including interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may be necessary to pay for, including insurance premiums, liens, assessment, taxes and charges including utility charges advanced by Mortgagee, and interest thereon; (c) then to payment of the Secured Obligations and accrued interest thereon, in such order of priority as Mortgagee shall determine, in its sole discretion; and (d) finally the remainder, if any, shall be paid to such parties as are legally entitled to it, after deducting any expenses incurred in ascertaining the identity of such parties, or as may otherwise be provided by law.

I. **Mortgagor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) and all persons holding under Mortgagor shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such

Mortgage, Security Agreement and Financing Statement (Alabama)

sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

J. **Waiver of Appraisal, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

K. **Waiver of Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Premises as against the collection of the Secured Obligations, or any part thereof.

L. **Leases.** Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceeding instituted by Mortgagee to collect the sums secured hereby.

M. **Discontinuance of Proceedings.** In case Mortgagee shall have proceeded to enforce any right, power 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 Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

N. **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other 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, in equity or by statute.

O. **Waiver.**

(i) No delay or omission by Mortgagee to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Mortgagee may be

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exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

(ii) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability of any obligor under any one or more of the Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Premises or any part thereof or any maker, co-signer, endorser, surety or guarantor, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (i) grant a waiver or an extension of time for the payment of all or any portion of the Secured Obligations; (ii) take other or additional security for the payment of any of the Secured Obligations; (iii) waive or fail to exercise any right granted herein or in any one or more of the Loan Documents; (iv) release any part of the Mortgaged Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of any one or more of the Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Premises; (vi) consent to the granting of any easement or other right affecting the Mortgaged Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to any one or more of the Loan Documents, the Mortgaged Premises or any document or instrument evidencing, securing or in any way related to the Secured Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Premises, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Premises or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

P. **Suits to Protect the Mortgaged Premises.** Mortgagee shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Mortgaged Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other

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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 materially impair the security hereunder or be prejudicial to the interest of Mortgagee.

Q. **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

10. **Miscellaneous.** This Mortgage has been delivered in Arapahoe County, Colorado. Upon Lender's request, the venue of any legal action in connection with the Note or the Loan Documents shall be the Arapahoe County, Colorado District Court. The provisions of this Mortgage and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the internal laws of the State of Colorado, and to the extent they preempt such laws, the laws of the United States; provided, that the provisions of the laws of the jurisdiction in which the Land and any portion of the Mortgaged Premises that would constitute real property is located shall be applicable to the creation, perfection and enforcement of the liens created by this Mortgage. In the event that any provision or clause of this Mortgage, the Note or the Loan Documents conflicts with the law, such conflict shall not affect other provisions of this Mortgage, the Note or the Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage, Note and Loan Documents are declared to be severable.

11. **Future Advances.** This Mortgage secures the payment of the entire indebtedness secured hereby together with all future or additional advances (including optional and protective advances) made by Lender at its option to Borrower, or its successors in title, pursuant to the Loan Documents; provided, however, in no event shall the Lender be obligated to make any future advances or otherwise advance funds in excess of the face amount of the Note.

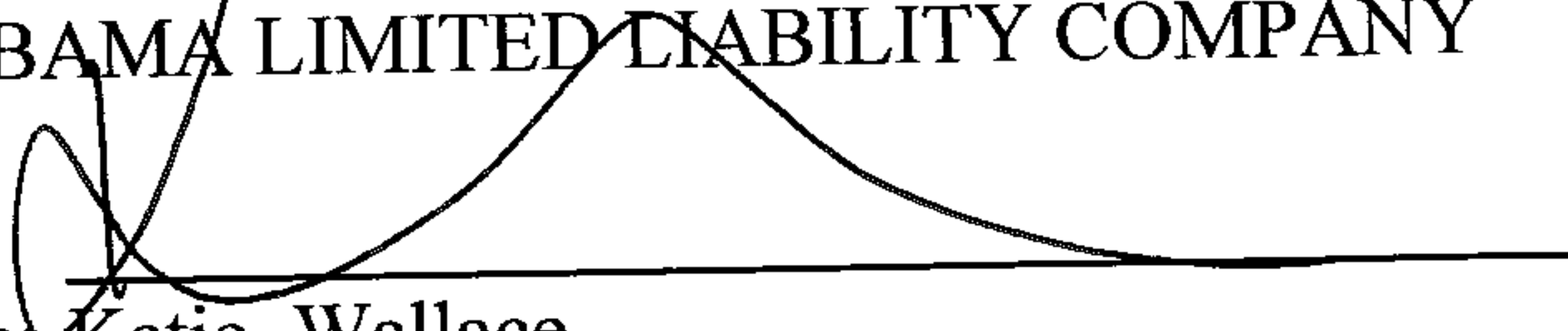
112. **Due on Sale or Encumbrance.** Except for such permitted sales and mortgages, in the event Mortgagor closes on the sale or conveyance of any interest in the Mortgaged Premises, or any part thereof, legal or equitable, or in the event Mortgagor mortgages, pledges or otherwise grants a security interest in the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee, Mortgagee may, at its election, declare the entire Indebtedness to be immediately due and payable, without notice to Mortgagor (which notice Mortgagor hereby expressly waives) and upon such declaration the entire Indebtedness shall be immediately due and payable, anything herein or in the Note to the contrary notwithstanding. Mortgagee may, without notice to Mortgagor, deal with any successor owner of all or any portion of the Mortgaged Premises in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor hereunder or upon the Indebtedness.

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IN WITNESS WHEREOF, Borrower has executed this Mortgage on the date set forth above.

GRANTOR:

KATIE&CO INVESTMENTS LLC, AN
ALABAMA LIMITED LIABILITY COMPANY

By: 

Name: Katie Wallace

Title: Member

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Katie Wallace, whose name as Member of KATIE&CO INVESTMENTS 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 such instrument, s/he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 28th day of July, 2023.



NOTARY PUBLIC

My Commission Expires:

7/1/25

[NOTARIAL SEAL]

Mortgage, Security Agreement and Financing Statement (Alabama)

EXHIBIT A-1

LOT 32, BLOCK 9, ACCORDING TO THE AMENDED MAP OF BERMUDA LAKE
ESTATES, SECOND SECTOR, AS RECORDED IN MAP BOOK 10, PAGE 88

and commonly known as 119 Dolphin Court, Alabaster, AL 35007

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EXHIBIT B

Permitted Encumbrances

- (i) Building and zoning laws, ordinances, state and federal regulations, provided the same do not adversely affect the use of the Property;
- (ii) Utility, drainage, and other easements of record, provided the same do not interfere with the use and location of present improvements, and do not render the title unmarketable;
- (iii) Real estate taxes and special assessments to be paid by Mortgagor pursuant hereto, if any;
- (iv) Reservation of any minerals or mineral rights to the State of Minnesota, if any; and
- (v) Any matters shown as exceptions on the policy of title insurance received by Mortgagee related to the Property.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/02/2023 11:54:49 AM
\$364.75 JOANN
20230802000232590

Allen S. Bayl