

SBA Loan # 51901091-04

Bank Loan # 5548600

PREPARED BY AND WHEN RECORDED RETURN TO:

Jason E. Gilmore, Esq.  
Gordon, Dana & Gilmore, LLC  
600 University Park Place, Ste. 100  
Birmingham, AL 35209

STATE OF ALABAMA

COUNTY OF JEFFERSON  
COUNTY OF SHELBY

#### ACCOMMODATION ASSIGNMENT OF LEASES AND RENTS

This Assignment is made this 2nd day of October, 2023 is executed by Duell Property Holdings, LLC, an Alabama limited liability company, as to Parcel I described herein, whose address is 3100 Bowling Drive, Suite 2, Birmingham, AL 35242 and Troy Duell, also known as Troy Ficken Duell and wife, Martha Brooks Duell, as to Parcels II, III, IV-A, and IV-B described herein, whose address is 4700 Caldwell Mill Road, Birmingham, AL 35243 (herein collectively called "Assignor") in favor of Millennial Bank, whose mailing address is P.O. Box 380456, Birmingham, AL 35238 (herein called "Assignee").

#### RECITALS

Assignor has executed and delivered to Assignee Guaranties ("Guaranties") of the \$3,700,000.00 indebtedness of **Centurion Labs, LLC**, (the "Borrower") evidenced by a promissory note of even date herewith in the principal amount of \$3,700,000.00 (herein called the "Note").

As an accommodation to Borrower and to secure payment and performance of the Guaranties, Assignor has executed and delivered to Assignee a Mortgage of even date herewith (herein, together with all future amendments and supplements thereto, called the "Mortgage"), covering certain properties (herein called the "Mortgaged Properties") which, among other things, includes the real estate described herein and the buildings, improvements, and fixtures now or hereafter located thereon located in Jefferson and Shelby County, Alabama, as described on Exhibit "A" attached hereto and made a part hereof.

Assignee, as a condition to making the loan evidenced by the Note and guaranteed by the Guaranties, has required the execution of this Assignment.

ACCORDINGLY, in consideration of the premises and in further consideration of the sum of One Dollar paid by Assignee to Assignor, the receipt of which is hereby acknowledged, Assignor does hereby grant, transfer and assign to Assignee all of the right, title and interest of Assignor in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Properties, (all of which, together with any and all extensions, modifications and renewals thereof, are hereinafter collectively referred to as the "Leases" and each of which is referred to as a "Lease"), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Properties (all of which are hereinafter collectively referred to as "Rents"), whether the Rents accrue before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing:

- (a) Payment of performance under the Guaranties and all other sums secured by the

- Mortgage or this Assignment; and
- (b) Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein and in the Mortgage.

ASSIGNOR WARRANTS AND COVENANTS that it is and will remain the absolute owner of the Leases and Rents free and clear of all liens and encumbrances other than the lien granted herein and the interest of Millennial Bank as to Parcel I; that it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any person; that it has the right under applicable law, under the Leases and otherwise, to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

Assignor further covenants and agrees with Assignee as follows:

1. **Performance of Leases.** Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Properties. Assignor will give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from the tenant thereunder, and will also at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant thereunder. Assignor will not lease or otherwise permit the use of all or any portion of the Mortgaged Properties for rent that is below the fair market rent for such property.

2. **Collection of Rents.** Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Properties for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

3. **Protecting the Security of This Assignment.** Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then Assignee, but without obligation to do so and without releasing the Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor will pay immediately upon demand all sums expended by Assignee under the authority of this Agreement, together with interest thereon at the rate stated in the Note, and the same shall be added to said indebtedness and shall be secured hereby and by the Mortgage.

4. **Present Assignment.** This Assignment shall constitute a perfected, absolute and present assignment, provided that Assignor shall have the right to collect, but not prior to accrual (except as permitted by paragraph 2 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under the Mortgage or Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Mortgage but are paid thereafter shall be paid to Assignee.

5. **Survival of Obligation to Comply with Mortgage and This Assignment.** This Assignment is given as security in addition to the Mortgage. Assignor covenants and agrees to observe and comply with



all terms and conditions contained in the Mortgage and in this Assignment and to preclude any Event of Default from occurring under the Mortgage. All of Assignor's obligations under the Mortgage and this Assignment shall survive foreclosure of the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Mortgage and this Assignment and to preclude any Event of Default from occurring under the Mortgage throughout any period of redemption after foreclosure of the Mortgage.

6. **Default; Remedies.** Upon the occurrence of any Event of Default specified in the Mortgage or upon the breach of any warranty or covenant in this Assignment, Assignee may, at its option, at any time:

- (a) in the name, place and stead of Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Properties or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Properties; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.
- (b) with or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give, notice to any or all tenants to pay all Rents under the Leases directly to the Assignee.
- (c) without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Properties, whether or not foreclosure proceedings have been commenced under the Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to paragraph 7, shall not cure or waive any Event of Default (or notice of default) under the Mortgage or invalidate any act done pursuant to such notice.

7. **Application of Rents, Profits and Income.** All Rents collected by Assignee or the receiver each month shall be applied as follows:

- (a) to payment of all reasonable fees of the receiver approved by the court;
- (b) to payment of all tenant security deposits then owing to tenants under any of the Leases pursuant to applicable law;
- (c) to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Properties, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
- (d) to payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;
- (e) to payment of expenses incurred for normal maintenance of the Mortgaged Properties;

- (f) if received prior to any foreclosure sale of the Mortgaged Properties, to Assignee for payment of the indebtedness secured by the Mortgage or this Assignment, but no such payment made after acceleration of the indebtedness shall affect such acceleration;
- (g) if received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Properties:
  - (1) if the purchaser at the foreclosure sale is not the Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment, second to the purchaser as a credit to the redemption price, but if the Mortgaged Properties is not redeemed, then to the purchaser of the Mortgaged Properties;
  - (2) if the purchaser at the foreclosure sale is the Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Properties is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 7 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

8. **No Liability for Assignee.** Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases. This Assignment shall not operate to place upon Assignee responsibility for the control, care, management or repair of the Mortgaged Properties or for carrying out of any of the terms and conditions of the Leases. Assignee shall not be responsible or liable for any waste committed on the Mortgaged Properties, for any dangerous or defective condition of the Mortgaged Properties, for any negligence in the management, upkeep, repair or control of said Mortgaged Properties or for failure to collect the Rents.

9. **Assignor's Indemnification.** Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, together with interest thereon at the rate stated in the Note, shall be secured hereby and by the Mortgage and Assignor shall reimburse the Assignee therefor immediately upon demand.

10. **Authorization to Tenant.** Upon notice from Assignee that it is exercising the remedy set forth in paragraph 6(b) of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Assignee is entitled to exercise its right hereunder, and to the extent such sums are paid to Assignee, Assignor agrees that the tenant shall have no further liability to Assignor for the same. The signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Properties. Checks for all or any part of the Rents



collected under this Assignment shall upon notice from Assignee be drawn to the executive order of Assignee.

11. **Satisfaction.** Upon the payment in full of all indebtedness secured hereby as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.

12. **Assignee an Attorney-In-Fact.** Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem appropriate to make this Assignment and any further assignment effective, including without limiting the generality of the foregoing, the right to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignor.

13. **Assignee Not a Mortgagee in Possession.** Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a mortgagee in possession.

14. **Specific Assignment of Leases.** Assignor will transfer and assign to Assignee, upon written notice by Assignee, any and all specific Leases that Assignee requests. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.

15. **Unenforceable Provisions Severable.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto, however, that this Assignment shall confer upon Assignee the fullest rights, remedies and benefits available pursuant to applicable law.

16. **Successors and Assigns.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

17. **Captions; Amendments; Notices.** The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Mortgagee under the Mortgage.

18. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Assignee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or

defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

IN WITNESS WHEREOF Assignor has executed this Assignment as of the day and year first-above written.

ASSIGNOR:

Duell Property Holdings, LLC

By:

Troy Duell, Sole Member

Troy Duell


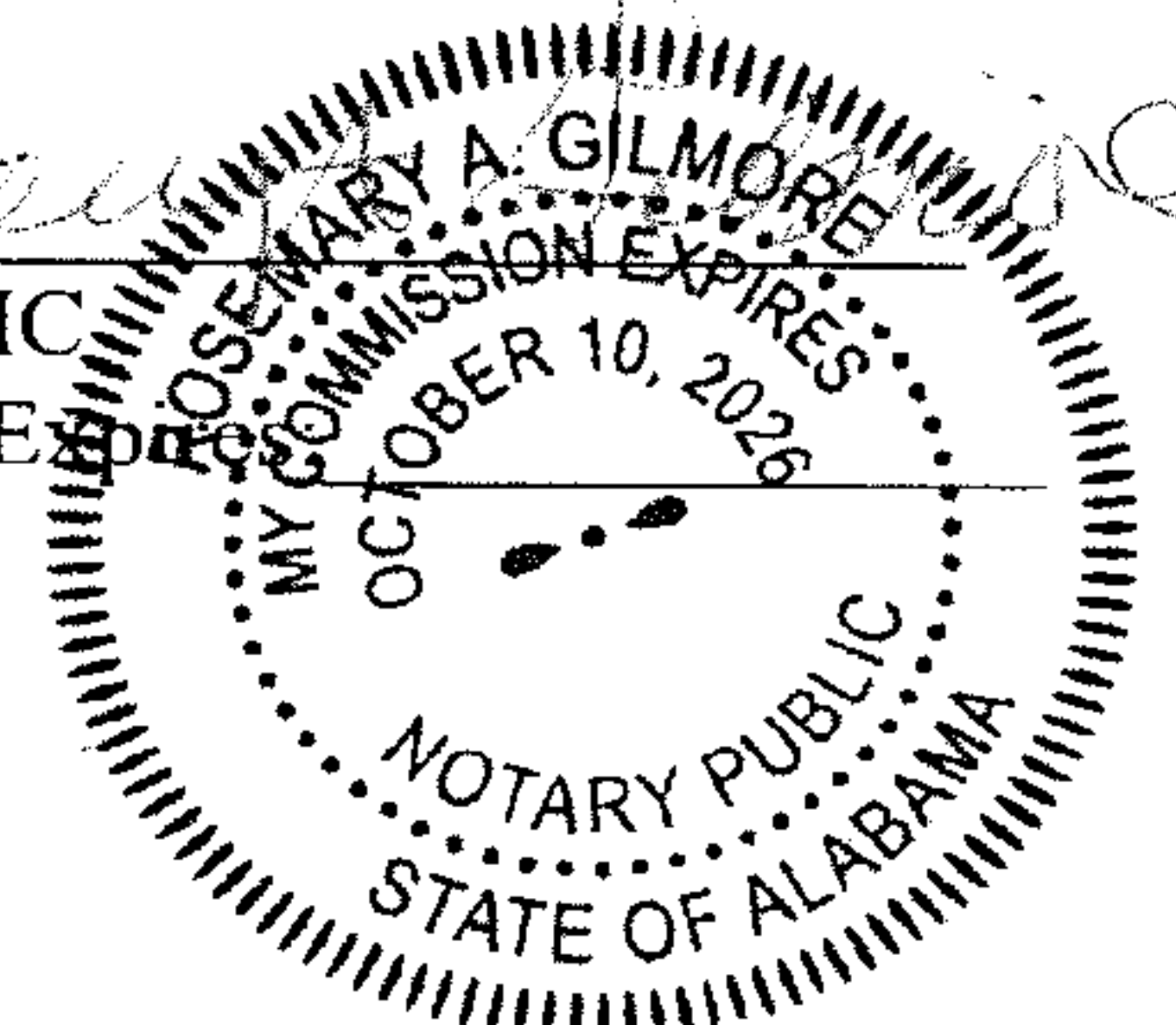
Martha Brooks Duell

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Troy Duell, whose name as Sole Member of Duell Property Holdings, LLC, an Alabama limited liability company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing and with full authority executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 2 day of October, 2023.

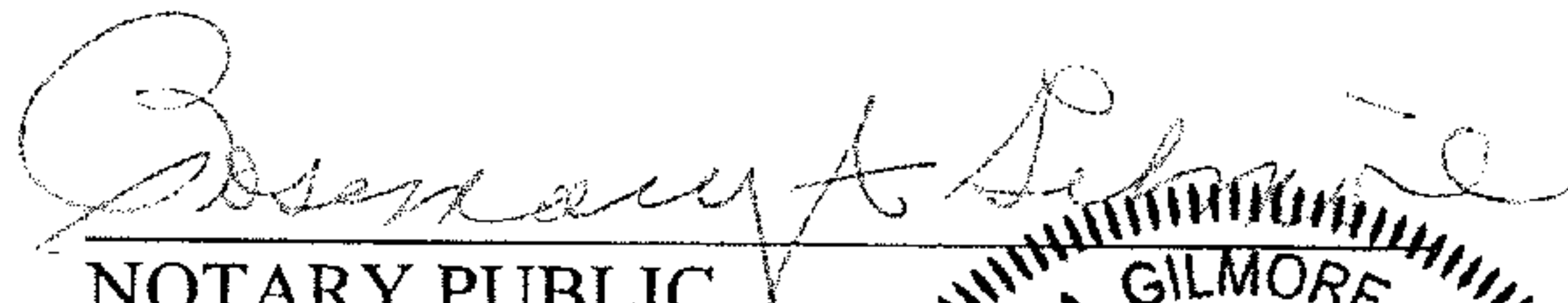
  
NOTARY PUBLIC  
My Commission Expires OCTOBER 10, 2026  


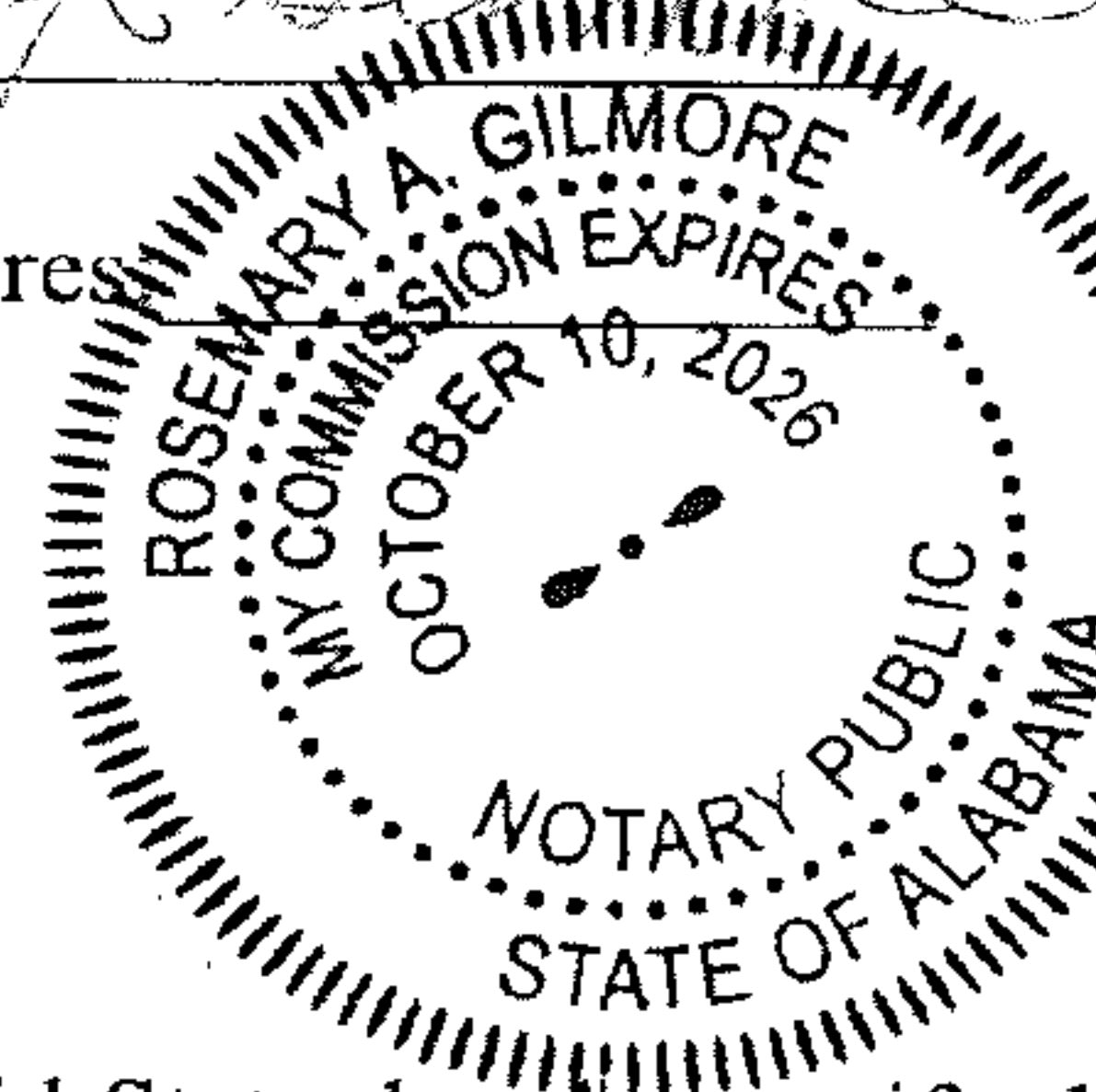
STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Troy Duell, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2 day of October, 2023.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

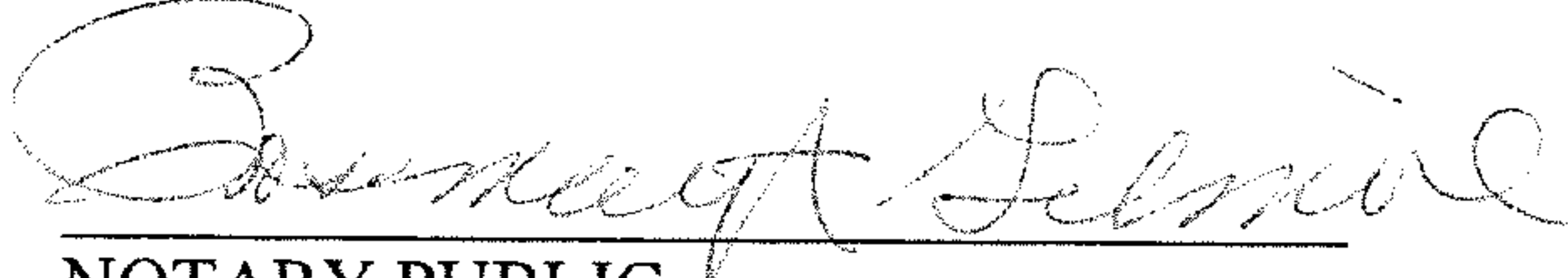


STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Martha Brooks Duell, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2 day of October, 2023.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

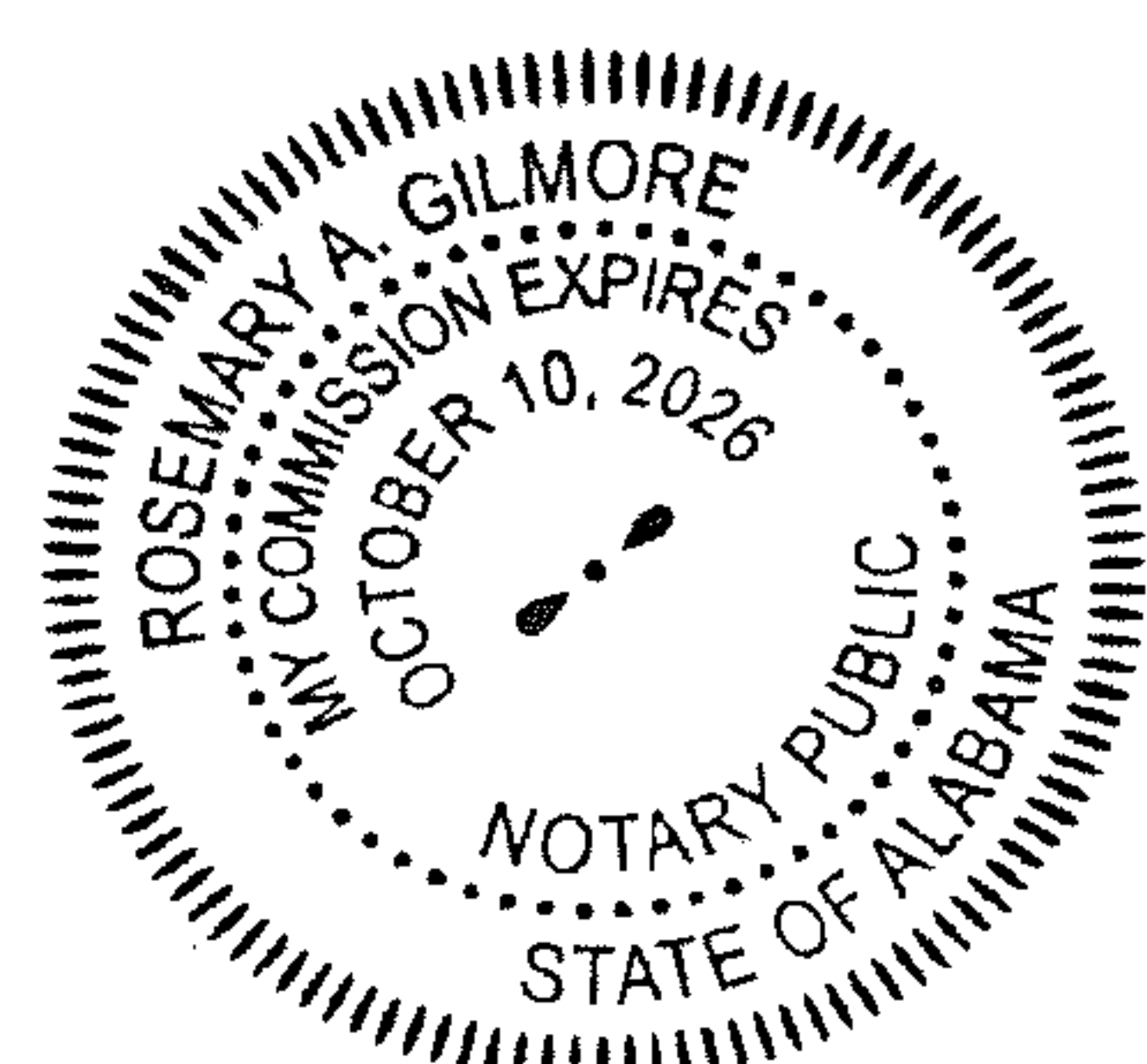




EXHIBIT "A"**Parcel I: (Duell Property Holdings, LLC) 3100 Bowling Drive, Birmingham, AL 35242**

Lot 2D, according to the Resurvey of Lot 2B-1 Sing Survey, as recorded in Map Book 46, page 11, in the Probate Office of Shelby County, Alabama.

**Parcel II: (Troy Duell and Martha Brooks Duell) 4700 Caldwell Mill Road, Birmingham, AL 35243**

A parcel of land situated in the NE 1/4 of the SW 1/4 of Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama and more particularly described as follows: Commence at the NE corner of said 1/4-1/4 section; thence in a Westerly direction along the North line of said 1/4-1/4 section a distance of 313.65 feet to a point in the Westerly right of way line of Caldwell Mill Road; thence 100°19' left, in a Southerly direction along said right of way, a distance of 86.76 feet to the beginning of a curve to the right, having a central angle of 5°37' and a radius of 1397.1 feet; thence in a Southerly direction along said curve and right of way a distance of 136.96 feet to end of said curve and the beginning of a curve to the left, having a central angle of 15° and a radius of 819.27 feet; thence in a Southerly direction along said curve and right of way, a distance of 214.40 feet to end of said curve and the beginning of a curve to the right, having a central angle of 61°59'45" and a radius of 285.51 feet; thence in a Southwesterly direction along said curve and right of way, a distance of 63.0 feet to the point of beginning; thence 102°50' to the right from chord of last described course, in a Westerly direction, a distance of 533 feet to the center of a creek, thence in a Southwesterly direction along center of said creek a distance of 178 feet, more or less; thence in an Easterly direction parallel to the North line of herein described parcel, a distance of 590 feet, more or less, to a point on the Westerly right of way of Caldwell Mill Road, thence in a Northerly direction along said right of way a distance of 163.64 feet to the point of beginning.

**Parcel III: (Troy Ficken Duell and Martha Brooks Duell) 1141 Salser Lane, Chelsea, AL 35043**

A parcel of land situated in the NW 1/4 of Section 1, Township 20 South, Range 1 West, Shelby County Alabama, being more particularly described as follows:

Begin at a 1/2" rebar at the SE corner of the NE 1/4 of the NW 1/4 of Section 1, Township 20 South, Range 1 West, Shelby County, Alabama; thence S 89°04'52" W along the south line of said 1/4 - 1/4 section and along the north line of lot 1 of Lennusa Family Subdivision as recorded in Map Book 39, Page 30 in the Office of the Judge of Probate in Shelby County, Alabama a distance of 70.84 feet to a 1/2" rebar capped EDG; thence N 51°34'47" W leaving said 1/4 - 1/4 line and Lot 1 a distance of 480.04 feet to a 1/2" rebar capped EDG; thence S 60°42'44" W a distance of 643.91 feet to a 1/2" rebar capped EDG on the south line of said 1/4 - 1/4 section and the north line of Lot 4 of Lennusa Family Subdivision; thence S 88°59'24" W along the south line of said 1/4 - 1/4 section and the north line of said Lot 4 a distance of 298.86 feet to a 5/8" rebar at the SE corner of the NW 1/4 of the NW 1/4 of said Section 1; thence S 88°56'18" W along the south line of said 1/4 - 1/4 section line a distance of 99.14 feet to the centerline of Little Creek; thence northerly long the centerline of Little Creek (having a chord bearing N 7°37'45" W and a chord distance of 1341.95 feet) a distance of 2654 feet more or less to the north line of the NW 1/4 of said Section 1; thence N 88°58'40" E along the north line of said



¼ a distance of 1592.89 feet to a ½" rebar capped SWH at the NE corner of the NE¼ of the NW¼ of said Section 1; thence S 0°20'38" W along the east line of said ¼ - ¼ section a distance of 1333.58 feet to the POINT OF BEGINNING.

According to the survey of Rodney Keith Cunningham, Alabama License Number 26013, dated the 9th day of April 2021.

ALSO, a strip of land, twenty-five (25) feet in width, located in the NW ¼ of the NE ¼, Section 1, Township 20 South, Range 1 West, Shelby County, Alabama, and lying twelve and one-half (12.5) feet either side of the following described line, more particularly described as follows:

Commence at the corner of the NW¼ of the NE¼, Section 1, Township 20 South, Range 1 West and run N 67°26'47" E for a distance of 111.88 feet, thence run N 78°08'40" E for a distance of 44.17 feet to the end of Salser Lane (Shelby County Road Number 447) and the point of ending.

**PARCEL IV-A: (Troy Ficken Duell and Martha Brooks Duell) 39197 Highway 25, Harpersville, AL 35078**

A parcel of land in the NE 1/4 of the NW 1/4 of Section 33, Township 19 South, Range 2 East, Shelby County, Alabama, described as follows:

Commence at the NE corner of the NE 1/4 of the NW 1/4 of Section 33, Township 19 South, Range 2 East; thence proceed South 2 degrees 48 minutes 46 seconds West for a distance of 834.5 feet to a point in the center of a ditch, said point being located on the West right of way line of Alabama Highway No. 25 and the point of beginning of said property. From this beginning point, proceed South 1 degree 00 minutes West along the West right of way line of said highway for a distance of 111.0 feet; thence proceed North 85 degrees 48 minutes West for a distance of 514.2 feet; thence proceed North 3 degrees 37 minutes West for a distance of 27.75 feet to a point in the center of a ditch; thence proceed North 70 degrees 38 minutes 56 seconds East along the center of said ditch for a distance of 275.6 feet; thence proceed North 89 degrees 23 minutes 45 seconds East along the center of said ditch for a distance of 179.34 feet; thence proceed South 58 degrees 10 minutes 56 seconds East along the center of said ditch for a distance of 90.8 feet to the point of beginning.

**PARCEL IV-B: (Troy Ficken Duell and Martha Brooks Duell) 39197 Highway 25, Harpersville, AL 35078**

Commence at the Northeast corner of the Northeast 1/4 of the Northwest 1/4 of Section 33, Township 19 South, Range 2 East, Shelby County, Alabama; thence proceed South 2 degrees 36 minutes West for a distance of 945.45 to the point of beginning. This point being located on the West right of way line of Alabama Highway No. 25. From this beginning point turn an angle of 1 degree 36 minutes to the left and proceed South 1 degree 00 minutes West along the West right of way line of said highway for a distance of 203.0 feet; thence proceed North 85 degrees 48 minutes West for a distance of 497.7 feet; thence proceed North 3 degrees 37 minutes West for a distance of 204.68 feet; thence proceed South 85 degrees 48 minutes East for a distance of 514.2 feet to the point of beginning.

The above described land is located in the Northeast 1/4 of the Northwest 1/4 of Section 33,  
Township 19 South, Range 2 East, Shelby County, Alabama.



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**10/11/2023 09:53:43 AM**  
**\$52.00 JOANN**  
**20231011000301800**

*Allie S. Bayl*