

THIS INSTRUMENT PREPARED BY:

Kelly Thrasher Fox, Esq.
Hand Arendall Harrison Sale LLC
1801 Fifth Avenue North, Suite 400
Birmingham, AL 35203
205-502-0122

423-225000241L4

STATE OF ALABAMA:
COUNTY OF SHELBY:

FIRST AMENDMENT TO TRI-PARTY AGREEMENT

THIS FIRST AMENDMENT TO TRI-PARTY AGREEMENT (this “Amendment”) is made and entered into by and among Green Rock 2019 Strategic Fund, LLC, a Delaware limited liability company (“Lender”), D.R. Horton, Inc. – Birmingham, an Alabama corporation (“Horton”), and TCG Chelsea Acres, LLC, a Delaware limited liability company (“Borrower”), as of September 21, 2023 (the “Effective Date”).

Recitals:

A. Lender, Horton, and Borrower (collectively, the “Parties” and each a “Party”) entered into that certain Tri-Party Agreement (the “Agreement”) dated July 31, 2020, and recorded at Instrument Number 20200803000325750 in the Office of the Judge of Probate of Shelby County, Alabama (the “Public Records”).

B. As of the Effective Date, 72 Lots have been sold by Borrower to Horton under the Lot Contract and \$361,388.16 of the Earnest Money was credited against the purchase price paid by Horton to Borrower at such closing, resulting in a balance of the Earnest Money of \$1,942,461.84.

C. The Parties now desire to amend the Agreement.

Amendment:

1. Capitalized Terms. Capitalized terms used herein unless otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

2. Recitals. The foregoing recitals are true and correct in all material respects and form an integral part of this Amendment, the same as if said recitals were included in the numbered paragraphs hereof.

3. Amendment of Recital E. The last sentence of Recital E is hereby deleted in its entirety and the following is inserted in lieu thereof:

Horton has requested that Lender, and Lender has agreed to, notify Horton in the event of a default under the Loan Agreement, the Note, the Mortgage or any other document executed in connection with the Loan (the "Loan Documents"), which is not cured by Borrower within any applicable notice and cure period set forth in the Loan Documents (a "Loan Default") and to give Horton various rights with respect to the Property, the Loan and the Loan Documents on the terms and conditions hereof.

4. Changes in Loan Payoff Procedure. Sections 1(c), 4 and 6(e) are hereby deleted from the Agreement. All references in the Agreement to a "payoff" of the Loan shall be changed to a "pay down" on the Loan. Section 3 of the Lot Contract shall not be amended nor shall any purchase price thereunder be reduced unless, in any case, Lender's written consent thereto is first obtained.

5. Amendment of Section 3. Section 3 is hereby deleted in its entirety and the following is inserted in lieu thereof:

3. **Loan Paydown.** Lender and Borrower agree that, if a Loan Default occurs or a default occurs under the Lot Contract or the Horton Mortgage, Horton will have the right, but not the obligation, to pay down the Loan in accordance with the following:

(a) **Terms of Loan Paydown.** If Horton is entitled to pay down the Loan and elects to do so in its sole discretion, then upon Borrower's conveyance of the Property to Horton pursuant to Section 3(b) below, Horton shall pay to Lender an amount equal to the lesser of (i) the outstanding principal balance of the Note plus all unpaid accrued interest owed to Lender at such time under the Note plus the amount of any Protective Advances that have not been added to the principal balance of the Note, or (ii) \$9,712,309.20, which amount shall be automatically reduced at each closing between Borrower and Horton conducted under the Lot Contract in an amount equal to 50% of the gross purchase price paid by Horton to Borrower at such closing; provided, that such gross purchase price shall be calculated in accordance with Section 3 of the Lot Contract. Upon such payment, Lender will release the Property from the Mortgage and all other liens, security interests and assignments securing the Loan.

(b) **Conveyance of Property.** If Horton elects to pay down the Loan in accordance with the foregoing, then Borrower shall convey the Property to Horton concurrently with Horton's payment on the Loan and as a condition to such payment by Horton. Such conveyance shall be made by Statutory Warranty Deed, in form and substance acceptable to Horton, subject only to the Permitted Exceptions (as defined in the Lot Contract), but free and clear of all liens and security interests. Such conveyance shall include, for no additional consideration, any and all rights, powers, privileges, options or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to or which otherwise benefit the Property including, without limitation, the Development Rights (as defined in

the Horton Mortgage) and all personal property and fixtures secured by the Horton Mortgage. Concurrently with such conveyance, Borrower shall pay to Horton any amounts paid by Horton to cure or attempt to cure a Loan Default and any reasonable out-of-pocket expenses incurred by Horton to cure or attempt to cure any Loan Default.

(c) **Effect of Paydown.** If Horton elects to pay down the Loan, Horton shall not be deemed to have assumed any of Borrower's obligations under the Loan Documents, and Horton shall have no liability or obligation to Lender under the Loan Documents or otherwise (including, without limitation, any obligations remaining under the Loan Documents).

(d) **Loan Information.** Upon request by Horton following a Loan Default, Lender shall inform Horton of the amounts which would be payable under clause (a) above as of such date.

6. **Miscellaneous.**

a. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama.

b. **Paragraph Headings.** The paragraph headings herein have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

c. **Multiple Counterparts.** This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

d. **Recording of Amendment.** The Parties acknowledge and agree that this Agreement shall be recorded in the Public Records.

e. **Continued Effectiveness.** All of the applicable terms, conditions and provisions of the Agreement, as hereby supplemented and amended, are in all respects hereby ratified and reaffirmed, and the Agreement and this Amendment shall be read, taken, and construed as one and the same instrument. References in the Agreement and all exhibits thereto shall be deemed to be references to the Agreement as amended by this Amendment. In no way limiting the foregoing, the Agreement and the Horton Mortgage remain in full force and effect in all respects.

f. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THIS AMENDMENT NOR ANY FURTHER AMENDMENT OF THE AGREEMENT SHALL BE A VALID AND ENFORCEABLE OBLIGATION OF HORTON UNLESS THIS AMENDMENT OR SUCH FURTHER AMENDMENT IS EXECUTED BY EITHER ONE OF DONALD R. HORTON, DAVID V. AULD, MICHAEL J. MURRAY, BILL WHEAT, PAUL ROMANOWSKI OR SCOTT WHITEHURST, EACH AN OFFICER OF HORTON, IN HIS REPRESENTATIVE CAPACITY.

EXECUTED in duplicate counterparts, each of which shall be deemed an original.

Lender:

GREEN ROCK 2019 STRATEGIC FUND, LLC,
a Delaware limited liability Company

By: 

Name: Chris Devine

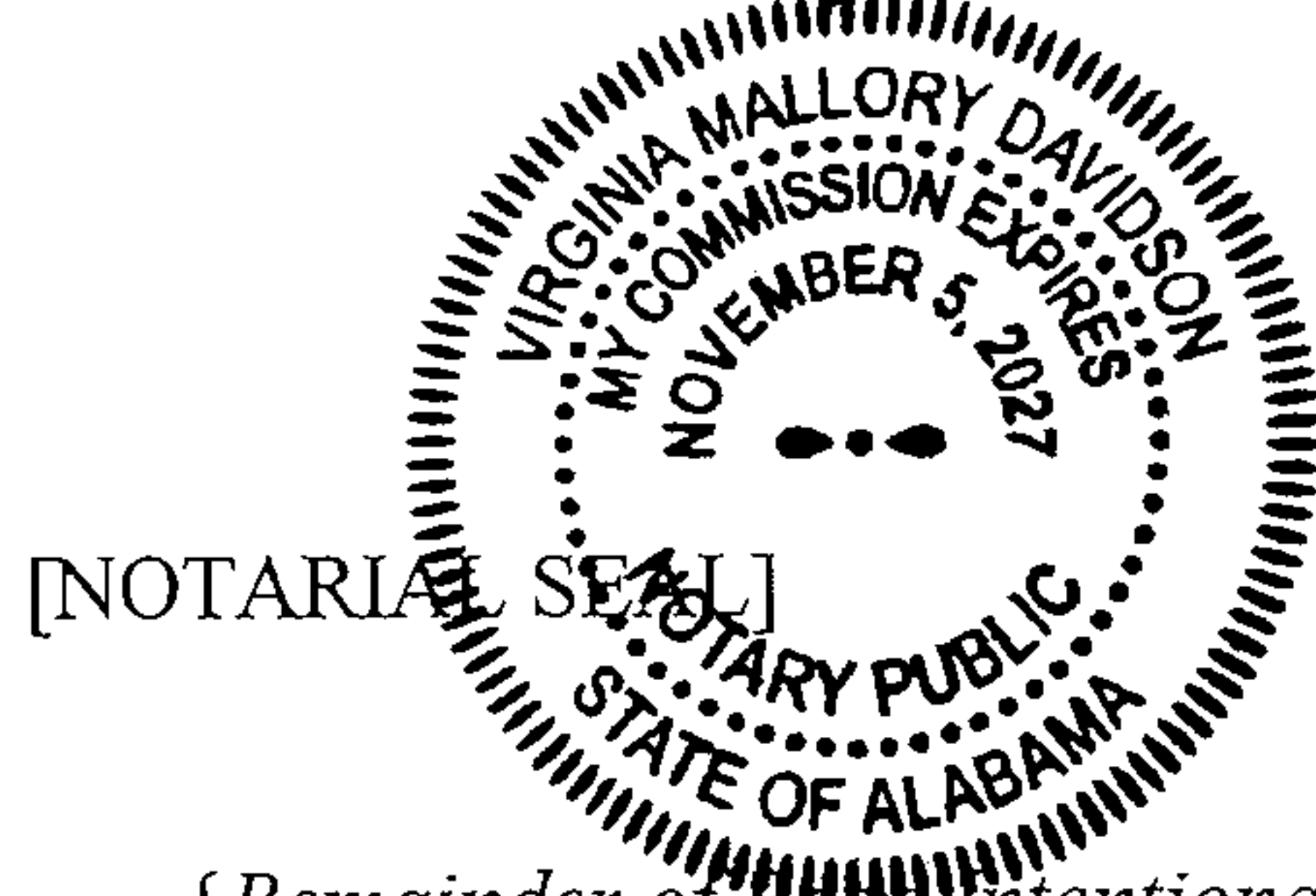
Its: Manager

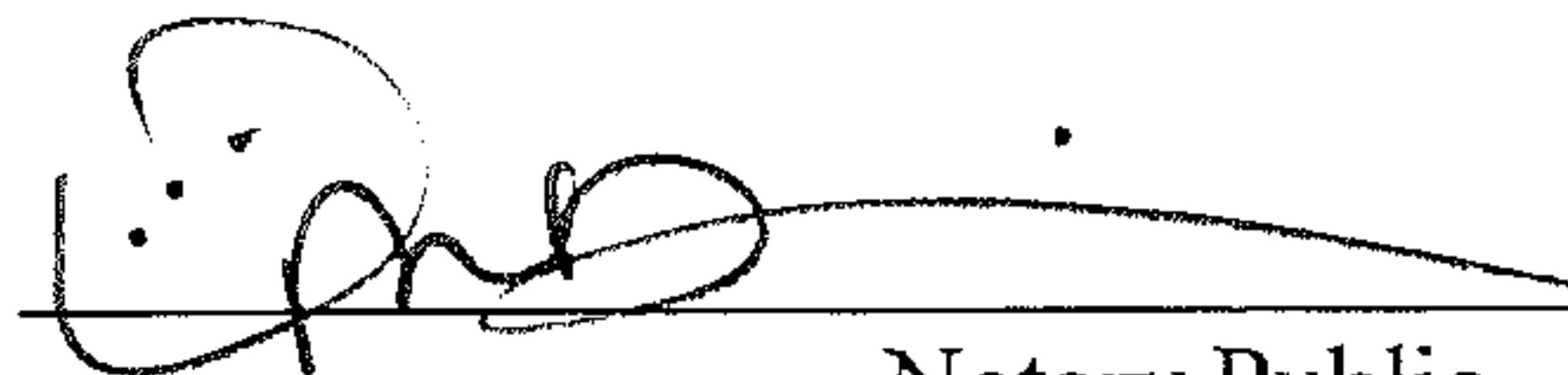
STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Chris Devine as the Manager for GREEN ROCK 2019 STRATEGIC FUND, LLC, a Delaware limited liability company, whose name 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 said conveyance, s/he has executed the same voluntarily for and as the act of said entity.

Given under my hand and official seal this the 1 day of November, 2023.





Notary Public

My commission expires Nov. 5, 2027

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Horton:

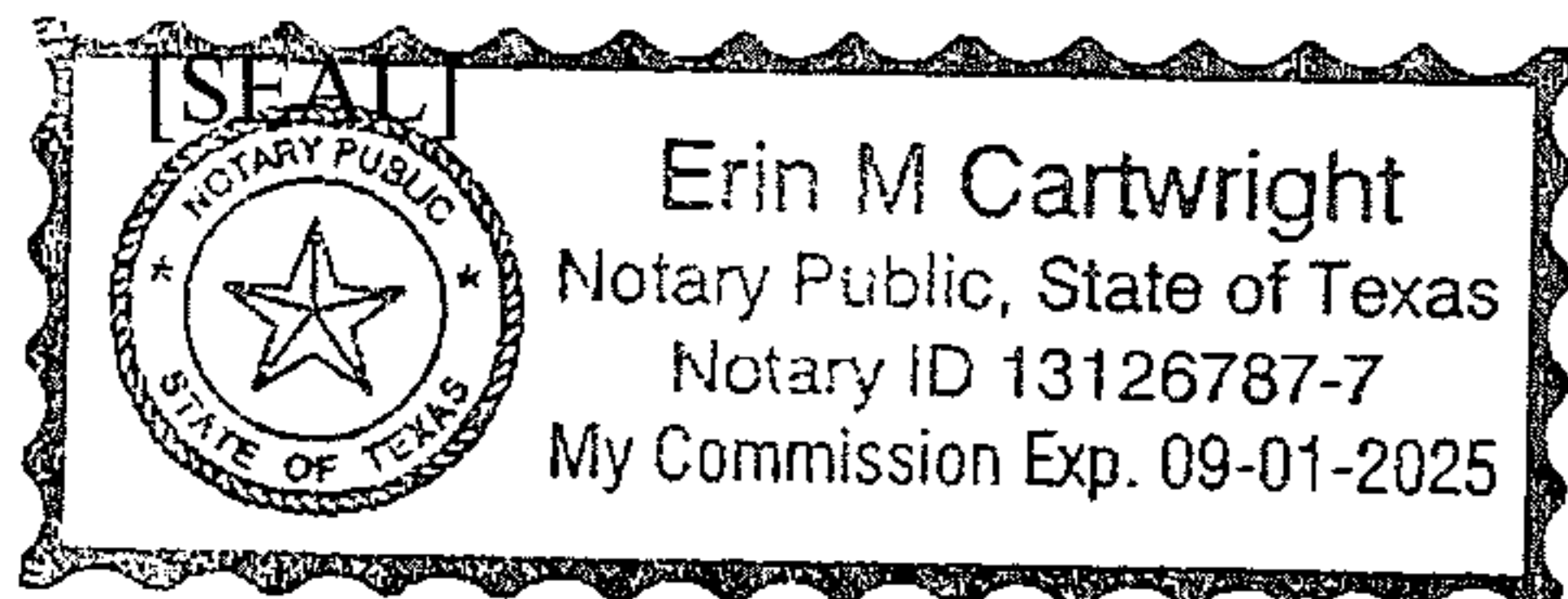
D.R. HORTON, INC. – BIRMINGHAM, an
Alabama corporation


By: 
Name: **Bill W. Wheat**
Title: **Chief Financial Officer**

STATE OF Texas:
COUNTY OF Tarrant:

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Bill W. Wheat, whose name as CFO of D.R. Horton, Inc. – Birmingham, an Alabama corporation, 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 the instrument, he/she, 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 the 16 day of Nov., 2023.

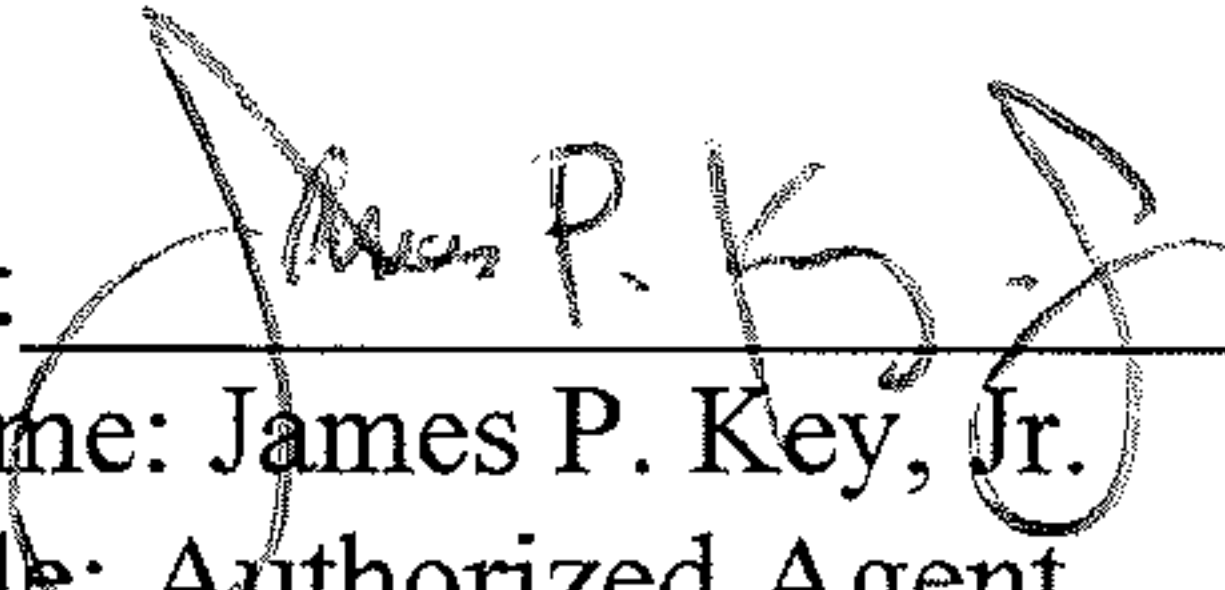



NOTARY PUBLIC
My Commission Expires: 09-01-2025

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Borrower:

TCG CHELSEA ACRES, LLC, a Delaware limited liability company

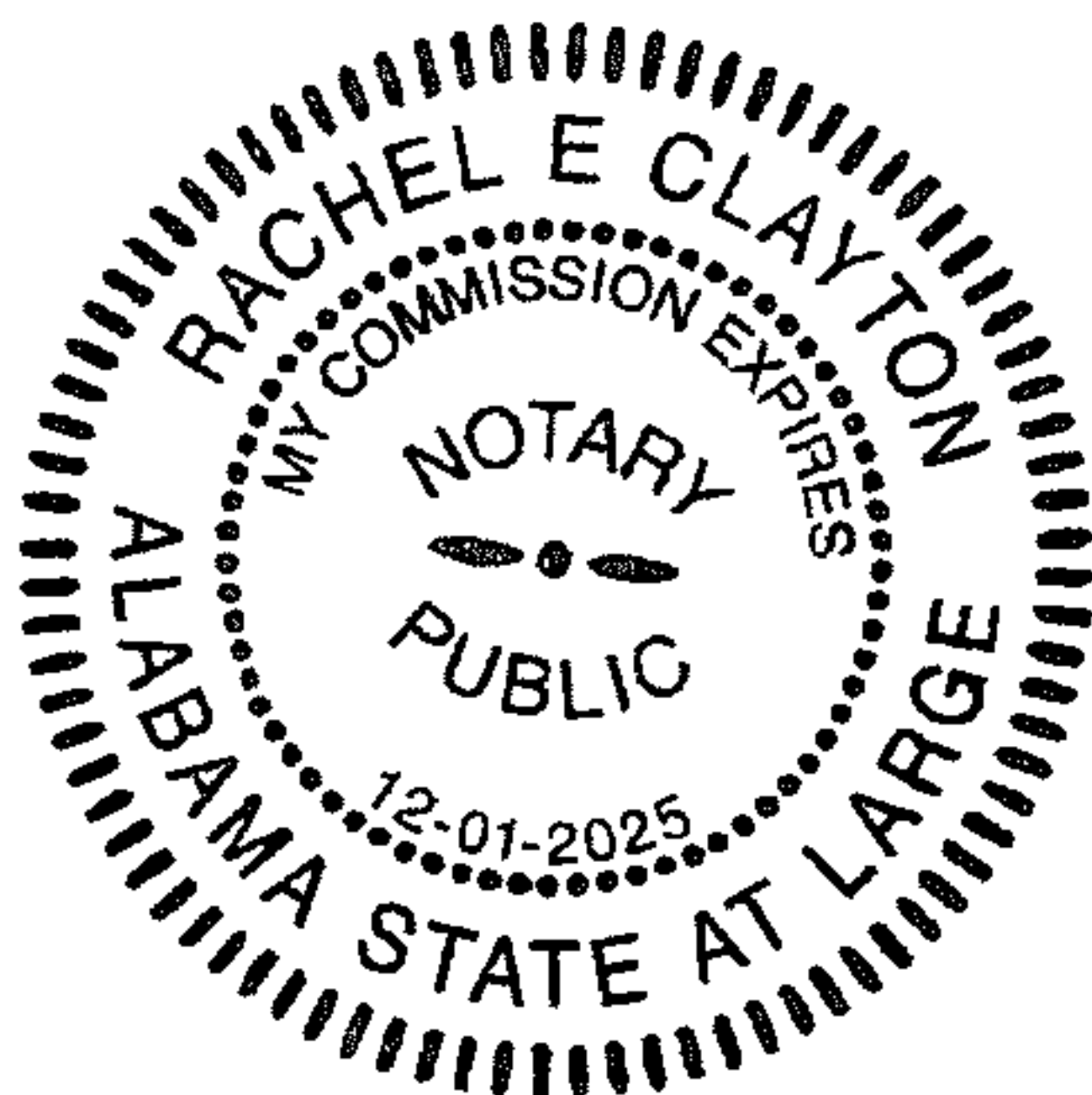
By: 
Name: James P. Key, Jr.
Title: Authorized Agent

STATE OF ALABAMA :
COUNTY OF Shelby :

I, the undersigned, Notary Public in and for said County in said State, hereby certify that James P. Key, Jr., whose name as Authorized Agent of TCG Chelsea Acres, LLC, a Delaware 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 the instrument, he/she, as such authorized agent and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 1 day of November, 2023.

[SEAL]



Rachel E Clayton
NOTARY PUBLIC
My Commission Expires: 12/01/2025



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
11/20/2023 10:54:28 AM
\$39.00 PAYGE
20231120000338770

Allie S. Bayl