

This instrument prepared by,
and after recording return to:

Norman M. Orr, Esq.
Burr & Forman LLP
420 N. 20th Street, Suite 3400
Birmingham, Alabama 35203

STATE OF ALABAMA

SHELBY COUNTY)

MORTGAGE AND SECURITY AGREEMENT

THIS **MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage") is dated and is effective as of November 28th, 2023, by **DMS REALTY HOLDINGS LLC**, an Alabama limited liability company, whose address is 273 Cahaba Valley Parkway, Pelham, Alabama 35124 (the "**Mortgagor**"), in favor of **DAR HOLDINGS, LLC**, an Alabama limited liability company, whose address is 4012 Old Leeds Circle, Birmingham, Alabama 35213 (together with its successors or assigns, the "**Mortgagee**").

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING AS DEFINED IN SECTION 7-9A-102(a)(40) OF THE CODE OF ALABAMA.

THIS MORTGAGE IS SECOND IN PRIORITY AND SUBORDINATE TO THAT CERTAIN MORTGAGE AND SECURITY AGREEMENT DATED JUNE 16, 2022 MADE BY MORTGAGOR IN FAVOR OF OAKWORTH CAPITAL BANK AND RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA AS INSTRUMENT NO. 20220617000243470.

RECITALS:

WHEREAS, Mortgagor has requested that Mortgagee make a loan to Mortgagor in the original principal amount of \$430,000.00 (the "**Loan**"), as evidenced by that certain Promissory Note of even date herewith executed by Mortgagor and payable to Mortgagee in the amount of the Loan (the "**Note**").

WHEREAS, Mortgagor has agreed, incurring said indebtedness, that this Mortgage should be given to secure (i) the prompt payment thereof according to the tenor and effect of the Note, and all renewals, extensions and modifications thereof, and all refinancings of any part of the indebtedness evidenced by the Note, and interest thereon, and any and all other additional indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, whether evidenced by the Note or otherwise, and any renewals, extensions and modifications thereof, whether incurred or given as maker, endorser, guarantor or otherwise, and interest thereon (all such indebtedness, together with interest thereon, collectively, the "**Indebtedness**"), and (ii)

compliance by Mortgagor with the covenants, agreements and requirements of this Mortgage, the Note and any other instrument or agreement secured by this Mortgage (together with the Indebtedness, collectively the "**Loan Obligations**").

NOW THEREFORE, for and in consideration of the Loan Obligations, and to secure the prompt payment of the same, including future advances, Mortgagor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Mortgagee, its successors and assigns, and grant to Mortgagee a security interest in, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, all whether now owned or hereafter acquired, and including replacements, additions, accessions, substitutions and products thereto (collectively, the "**Mortgaged Property**"):

(a) All the tract(s) or parcel(s) of land located in Shelby County, Alabama, as are more particularly described in Exhibit A attached hereto and incorporated herein (the "**Land**");

(b) means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Land, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land, or any part thereof, now or hereafter;

(c) all furniture, fixtures and equipment located on, attached to or used or useful in connection with the Land ("**Furniture**", "**Fixtures**" and "**Equipment**") that is owned by Mortgagor, including, but not limited to, tables, chairs, booths, televisions, carpeting, telephones, desks, machinery, cash registers, computers, lamps, glassware, flatware and restaurant and kitchen equipment; provided, however, that with respect to Equipment that is leased and not owned, Mortgagor's leasehold interest only therein, together with any options to purchase any of said items and any additional or greater rights with respect to such items hereafter acquired;

(d) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land ("**Improvements**"), including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, air conditioning equipment, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, signs, landscaping, and parking areas, which are or shall be attached to the Land or said buildings, structures or Improvements;

(e) all accounts (including accounts receivable) arising from the operation of the Mortgaged Property ("**Accounts**"), including but not limited to, rights to payment for goods sold or leased or for services rendered, not evidenced by an instrument;

(f) all license agreements, operating contracts, and all management, service, employment, supply and maintenance contracts and agreements, and any other agreements, licenses or contracts of any nature whatsoever now or hereafter obtained or entered into by

Mortgagor with respect to the acquisition, construction, renovation, expansion, ownership, occupancy, use, operation, maintenance and administration of the Mortgaged Property;

(g) all general intangibles and other intangible personal property arising out of or connected with the Land ("**General Intangibles**") (other than Accounts, Rents, Instruments, Inventory, Money and Permits), including, without limitation, things in action, contract rights and other rights to payment of money;

(h) all licenses, permits, certificates, approvals, authorizations and registrations obtained from any governmental or quasi-governmental authority ("**Permits**") and used or useful in connection with the ownership, operation, use or occupancy of the Land, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, liquor licenses and all such other permits, licenses and rights (to the extent assignable);

(i) all monies, cash, rights to deposit or savings accounts or other items of legal tender ("**Money**") obtained from or for use in connection with the operation of the Land;

(j) all instruments, chattel paper, documents or other writings obtained from or in connection with the operation of the Land ("**Instruments**") (including, without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files relating thereto);

(k) all inventory from time to time used on the Land ("**Inventory**"), including, but not limited to, food, beverages, other comestibles, soap, paper supplies and all other such goods, wares and merchandise held for sale to or for consumption or use by guests of the Land, including all such goods that are returned or repossessed;

(l) all rent and other payments of whatever nature from time to time payable pursuant to any lease of the Land or Improvements, or any part thereof ("**Rent**");

(m) Equipment, Inventory, and General Intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (collectively, "**Personalty**"), including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land;

(n) all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property ("**Leases**"), and all modifications, extensions or renewals thereof;

(o) all chattel paper, as such term is defined in the UCC ("**Chattel Paper**"), including, without limitation, all record or records (including, without limitation, electronic chattel paper) which evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods; all Supporting Obligations with respect thereto; any returned, rejected or repossessed goods and software covered by any such record or records and all proceeds (in any form including, without limitation, accounts, contract rights, documents, chattel paper, instruments and general intangibles) of such returned, rejected or repossessed goods; and all proceeds (cash proceeds and noncash proceeds) of the foregoing.

(p) all supporting obligations; as such term is defined in the UCC ("**Supporting Obligations**"), including, without limitation, all letter-of-credit rights, secondary obligations, or obligations of a secondary obligor, or secondary obligations that support the payment or performance of an Account, Chattel Paper, a document, a General Intangible, an Instrument, or Investment Property;

(q) all investment property, as such term is defined in the UCC ("**Investment Property**"), including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts, or commodity accounts, and all proceeds (cash proceeds and noncash proceeds) of, and Supporting Obligations with respect to, the foregoing;

(r) all shares, options, warrants, general or limited partnership interests, membership interests, participations or other equivalents (regardless of how designated) in a corporation, limited liability company, partnership or any equivalent entity, whether voting or nonvoting, including, without limitation, common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended);

(s) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(t) all Imposition Deposits (as such term is defined herein);

(u) all refunds or rebates of Impositions (as such term is defined herein) by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Mortgage is dated);

(v) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(w) all renewals, replacements and proceeds of any of the foregoing and any substitutions therefor, whether now owned or hereafter acquired, and including replacements, additions, accessions, substitutions, and products, and all other property which is or hereafter may

become subject to a lien in favor of Mortgagee as security for any of the Loan Obligations (“Proceeds”).

TO HAVE AND TO HOLD, the Mortgaged Property unto Mortgagee and its successors and assigns forever,

AND, Mortgagor does covenant with Mortgagee that it is lawfully seized in fee simple and possessed of the Mortgaged Property, and has good right to convey the same; that, subject to the “Permitted Exceptions” listed on Exhibit B, the Mortgaged Property is free from all liens, charges, encumbrances, easements and restrictions whatsoever not herein specifically mentioned or of record in said Probate Office as of the date hereof; and that, subject only to exceptions herein specifically mentioned, Mortgagor does warrant and will defend the title to the same unto Mortgagee against the lawful claims of all persons whomsoever.

AND, this Mortgage is also a security agreement under the Uniform Commercial Code as in effect from time to time in the State of Alabama (the “UCC”) for any of the Mortgaged Property to the extent owned by Mortgagor, which, under applicable law, may be subject to a security interest under the UCC, whether acquired now or in the future, and all products and cash and non-cash Proceeds thereof (collectively, the “UCC Collateral”), and Mortgagor hereby grants to Mortgagee a security interest in the UCC Collateral. Mortgagor hereby authorizes Mortgagee to file financing statements, continuation statements and financing statement amendments, in such form as Mortgagee may require to perfect or continue the perfection of this security interest and Mortgagor agrees, if Mortgagee so requests, to execute and deliver to Mortgagee such financing statements, continuation statements and amendments. Mortgagor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Mortgagee may require. Without the prior express written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Mortgagee shall have the remedies of a secured party under the UCC, in addition to all remedies provided by this Mortgage or existing under applicable law. In exercising any remedies, Mortgagee may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Mortgagee’s other remedies hereunder and/or under applicable law. The terms “sign,” “signed” and “signatures” shall have their ordinary meanings except that, to the limited extent Mortgagee in an authenticated record expressly agrees otherwise from time to time in the exercise of its sole and absolute discretion, the terms may also include other methods used to authenticate. Without implying any limitation on the foregoing, with respect to the UCC Collateral that may be perfected by control, Mortgagor shall take such steps as Mortgagee may require in order that Mortgagee may have such control. To the extent that the proceeds of any of the Accounts are expected to become subject to the control of, or in the possession of, a party other than Mortgagor or Mortgagee, Mortgagor shall cause all such parties to execute and deliver on the date of this Mortgage and from time to time hereafter security documents, financing statements or other documents as requested by Mortgagee and as may be necessary to evidence and/or perfect the security interest of Mortgagee in those proceeds. Mortgagor agrees that a copy of a fully executed security agreement and/or financing statement shall be sufficient to satisfy for all purposes the requirements of a financing statement as set forth in Article 9 of the UCC. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor’s attorney-in-fact, with power of substitution, in the name of Mortgagee or in the name of Mortgagor or otherwise, for the use and benefit of Mortgagee, but at the cost and

expense of Mortgagor and without notice to Mortgagor, to execute and deliver any and all of the instruments and other documents and take any action which Mortgagee may require pursuant the foregoing provisions of this Section. Further, to the extent permitted by applicable laws, Mortgagee may file, without Mortgagor's signature, one or more financing statements or other notices disclosing Mortgagee's liens and other security interests. All financing statements and notices may describe Mortgagee's collateral as all assets or all personal property of Mortgagor. Mortgagor hereby ratifies and confirms the validity of any and all financing statements filed by Mortgagee prior to the date of this Mortgage.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions, and agreements:

1. Payment and Performance of Loan Obligations. Mortgagor shall pay and perform the Loan Obligations when and as they become due.

2. Maintenance of Mortgaged Property. Mortgagor shall keep the Mortgaged Property in good condition and repair, reasonable wear and tear expected; shall not permit nor perform any act which would in any way impair the value of the Mortgaged Property; shall not remove (other than replacements in the ordinary course of Mortgagor's business) any Fixture nor remove or demolish any building or Improvement located on the Land without the prior express written consent of Mortgagee; and shall neither permit nor intentionally commit waste of the Mortgaged Property.

3. Payment of Taxes. Mortgagor shall pay and discharge as the same become due (after giving effect to any applicable grace period, if any) all taxes and assessments that may accrue, be levied, or assessed upon the Mortgaged Property or any part thereof, which may be or become a lien prior to the lien of this Mortgage or have priority in payment to the Indebtedness, or upon Mortgagee's interest therein or upon this Mortgage or the Indebtedness or evidence of the Indebtedness, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee. Upon the passage of any law imposing the payment of the whole or any part thereof upon Mortgagee, or upon the rendering by any appellate court of competent jurisdiction that the undertaking by Mortgagor to pay such taxes is legally inoperative, then all Indebtedness hereby secured without deduction shall, at the option of Mortgagee, become due and payable upon ninety (90) days' written notice, notwithstanding anything contained in this Mortgage or any law heretofore or hereafter enacted. Mortgagor shall not suffer or permit any taxes or assessments on the Mortgaged Property to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments; and, further, shall furnish annually to Mortgagee, prior to the date when they would become delinquent, certificates or receipts of the proper officer showing full payment of all such taxes and assessments.

4. Liens. Mortgagor shall pay all debts, claims, or other charges that may become liens against the Mortgaged Property or any part thereof for repairs or improvements that may have been, or may hereafter be, made on the Mortgaged Property and shall not permit any lien or encumbrance of any kind which might become superior to the title of Mortgagee or the lien of this Mortgage to accrue or remain on the Mortgaged Property or any part thereof.

5. Insurance. Mortgagor shall keep the Mortgaged Property continuously insured and shall provide, maintain, and deliver to Mortgagee policies of fire and such other insurance as Mortgagee may from time to time require in amounts and issued by insurers satisfactory to Mortgagee, with loss, if any, payable to Mortgagee, as Mortgagee's interest may appear, and shall assign and deliver to Mortgagee with mortgage clauses satisfactory to Mortgagee all insurance policies of any kind or in any amount now or hereafter issued upon the Mortgaged Property. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand and receive all monies becoming payable thereunder and to assign absolutely all policies to any endorsee of the Note or to any grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness. In the event of loss under any of the policies of insurance herein referred to, the proceeds of such policy shall be paid by the insurer to Mortgagee who may, in Mortgagee's sole and absolute discretion, apply the same, wholly or partially, after deducting all costs of collection, including attorneys' fees, either as a payment on account of the Indebtedness, whether or not then due or payable, or toward the alteration, reconstruction, repair, or restoration of the Mortgaged Property either to the portion thereof by which said loss was sustained or any other portion thereof.

6. Pledge of Rents, Income and Profits. The Rents, income, and profits of all and every part of the Mortgaged Property are hereby specifically pledged to the payment of the Loan Obligations and the performance of all Loan Obligations. If an Event of Default shall occur and be continuing, Mortgagee shall have the right forthwith to enter into and upon the Mortgaged Property, take possession thereof, and collect said Rent, income, and profits with or without the appointment of a receiver. All such net income, after payment of collection, management, and attorneys' fees, shall be applied toward the payment of any advances made by Mortgagee or in reduction of the Indebtedness in such manner or proportion as Mortgagee may elect.

7. Failure to Insure. If Mortgagor fails to insure the Mortgaged Property, or to pay and furnish receipts for all taxes and assessments, or to pay debts, claims or other charges for repairs and improvements, or to keep the Mortgaged Property in good condition and repair, all as provided herein, Mortgagee may at its option procure such insurance, pay such taxes and assessments, redeem the Mortgaged Property from any tax sale, procure such receipts, or enter upon the Mortgaged Property and make such repairs as it may deem necessary; and Mortgagor shall immediately pay to Mortgagee all sums which Mortgagee shall have so paid, together with interest at the Default Rate from the date the same was paid, and for payment thereof, this Mortgage shall stand as security in like manner and effect as for the payment of the Loan Obligations; but the failure of Mortgagee to procure such insurance, to pay such taxes and assessments, to redeem any Mortgaged Property from any tax sale, or to make repairs shall in no way render Mortgagee liable to Mortgagor. If Mortgagee shall elect to advance insurance premiums, taxes, or assessments, or redeem from tax sale, the receipt of the insurance company or of the proper tax official shall be conclusive evidence of the amount, validity, and the fact of payment thereof.

8. Deposits for Taxes, Insurance and Other Charges.

(a) Upon Mortgagee's request after an Event of Default, Mortgagor shall deposit with Mortgagee on the day monthly installments of principal and/or interest, or both, are due under the

Note (or on another day designated in writing by Mortgagee), until the Loan Obligations is paid in full, an additional amount sufficient to accumulate with Mortgagee the entire sum required to pay, when due (i) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as Mortgagee may require hereunder, (ii) the yearly taxes, and (iii) amounts for other charges and expenses which Mortgagee at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Mortgagee's interests, all as reasonably estimated from time to time by Mortgagee. The amounts deposited under the preceding sentence are collectively referred to in this Mortgage as the "**Imposition Deposits**". The obligations of Mortgagor for which the Imposition Deposits are required are collectively referred to in this Mortgage as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Mortgagee to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Mortgagee shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Mortgagee are held for the purpose of paying property taxes, insurance premiums and each other obligation of Mortgagor for which Imposition Deposits are required and shall make the same available for inspection by Mortgagor upon reasonable advance notice. Any waiver by Mortgagee of the requirement that Mortgagor remit Imposition Deposits to Mortgagee may be revoked by Mortgagee, in Mortgagee's discretion, so long as such Event of Default is continuing, upon notice to Mortgagor.

(b) Imposition Deposits shall be held by in an institution whose deposits or accounts are insured or guaranteed by a federal agency. Mortgagee shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions unless the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Mortgagee shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on the Imposition Deposits. Mortgagor hereby pledges and grants to Mortgagee a security interest in the Imposition Deposits as additional security for all of Mortgagor's obligations under this Mortgage and the Note. Any amounts deposited with Mortgagee under this Section 8 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Mortgagee for that purpose under Section 8(e).

(c) If Mortgagee exercises its right to require taxes or other Impositions to be escrowed, Mortgagor shall direct the applicable governmental authority to deliver the invoices and bills for all such taxes or Impositions to Mortgagee. If Mortgagee receives a bill or invoice for an Imposition, Mortgagee shall pay the Imposition from the Imposition Deposits held by Mortgagee. Mortgagee shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Mortgagee. Mortgagee may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Mortgagee, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition is less than the amount reasonably estimated by Mortgagee to be necessary, Mortgagor shall pay to Mortgagee the amount of the deficiency within fifteen (15) days after notice from Mortgagee.

(e) If an Event of Default has occurred and is continuing, Mortgagee may apply any Imposition Deposits, in any amounts and in any order as Mortgagee determines, in Mortgagee's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment and performance in full of the Loan Obligations, or upon curing all Events of Default, Mortgagee shall refund to Mortgagor any Imposition Deposits held by Mortgagee.

9. Costs and Expenses. Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses, and agents' and reasonable attorneys' fees, which Mortgagee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste; to establish or sustain the lien of this Mortgage or Mortgagee's priority, or to defend against liens, claims, rights, estates, easements, or restrictions, asserting priority to this Mortgage; in payment, settlement, discharge, or release of any asserted lien, claim, right, easement, or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage; for title insurance, abstract of title, or extension thereof; in connection with any suit to enforce or foreclose this Mortgage, or to recover any sums hereby secured, together with interest on all such sums at the Default Rate until paid, and for payment of such sums and interest this Mortgage shall stand as security in like manner and effect as for the payment of the said principal indebtedness.

10. Events of Default. The occurrence of any one or more of the following after any applicable notice or cure period shall constitute an "Event of Default" hereunder:

- (a) the occurrence of any "Event of Default" under the Note;
- (b) the failure of Mortgagor to properly and timely perform or observe any covenant or condition set forth in this Mortgage (other than that specified in subsection (a) of this Mortgage) which is not cured within any applicable cure period as set forth herein, or, if no cure period is specified therefor, is not cured within thirty (30) days of Mortgagee's written notice to Mortgagor of such failure.

11. Acceleration; Foreclosure; Power of Sale. Upon the occurrence and during the continuance of an Event of Default, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable and this Mortgage shall be subject to foreclosure; and Mortgagee shall have the right and is hereby authorized to enter upon and take possession of the Mortgaged Property, and after or without taking possession, to sell the same during the legal hours of sale, before the main entrance of the courthouse of Shelby County, Alabama, at public outcry for cash, after having given notice of the time, place, and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper of general circulation published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting said sale for Mortgagee is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefore. At said foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole or in parcels without first offering it in any other manner, or the Mortgaged Property may be offered for sale and sold in any other manner as Mortgagee may elect.

12. Proceeds from Sale. The proceeds of said sale shall be applied: First, to the expense of advertising and selling, including reasonable attorneys' fees; second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay, for taxes, assessments insurance or other charges, liens, or debts as hereinabove provided; third, to the payment of the Indebtedness, with interest to date of sale; fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of the sale after deducting any expense of ascertaining who is such owner. If this Mortgage be foreclosed in a judicial proceeding, attorneys' fees and expenses incurred by Mortgagee in connection with such proceeding shall be paid out of the proceeds of the sale.

13. Waiver of Rights. Mortgagor waives all rights of exemption pertaining to real or personal property as to any Indebtedness, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the Indebtedness.

14. Holdover. After foreclosure of this Mortgage, Mortgagor shall become and be conclusively presumed to be a tenant at will of the purchaser at the foreclosure sale; provided, however, any such foreclosure shall be subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

15. Enforcement; Remedies Cumulative. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at its option, proceed to enforce its rights by action at law (including, without limitation, bringing suit to reduce any claim to judgment) suit in equity and other appropriate proceedings, including, without limitation, for specific performance of any covenant or condition contained in this Mortgage. All rights and remedies of Mortgagee hereunder and under the Note shall be cumulative and may be exercised successively or concurrently.

16. Not a Waiver. No delay or failure of Mortgagee to exercise any right or remedy herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any other option at any time.

17. Release of Mortgage. If Mortgagor shall well and truly pay and discharge all Indebtedness as it shall become due and payable and shall do and perform all Loan Obligations, then this conveyance shall be and become null and void.

18. Awards, Damages, etc. All awards of damages in connection with any condemnation for public use of or injury to any of said Mortgaged Property are hereby assigned and shall be paid to Mortgagee, who may apply the same to payment of the installments last due under the Note, and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

19. Terms. The terms "Mortgagor" wherever used herein, shall mean the party executing this Mortgage, and all the covenants, conditions, and agreements hereof shall bind Mortgagor, its successors and assigns, and shall inure to the benefit of and be available (jointly and severally if more than one) to Mortgagee, and to the successors and assigns of Mortgagee. The rights, options, powers, and remedies herein provided shall be cumulative and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.

20. Governing Law. This Mortgage shall be governed by and interpreted, construed and enforced according to the laws of the State of Alabama.

21. Waiver of Jury Trial. **EACH PARTY HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, THE NOTE, THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGEE AND/OR MORTGAGOR WITH RESPECT TO THIS MORTGAGE, THE NOTE OR THE LOAN IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT MORTGAGEE MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF MORTGAGEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND MORTGAGEE SHALL INSTEAD *BE* TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

MORTGAGOR:

DMS REALTY HOLDINGS LLC,
an Alabama limited liability company

By: 

Printed Name: Matthew Greer

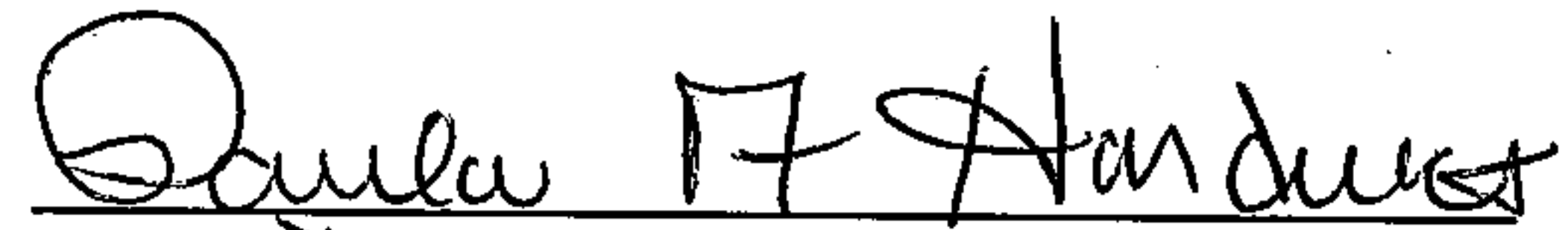
Its: Member

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Matthew Greer, whose name as Member of DMS Realty Holdings 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 said instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 10th day of November, 2023.



Print: Paula F. Hardwick

My commission expires: 04.22.27

[AFFIX SEAL]

”

EXHIBIT A

LEGAL DESCRIPTION

Part of Block 1 of Cahaba Valley Park North, as recorded in Map Book 13, page 140, in the Probate Office of Shelby County, Alabama, more particularly described as follows:

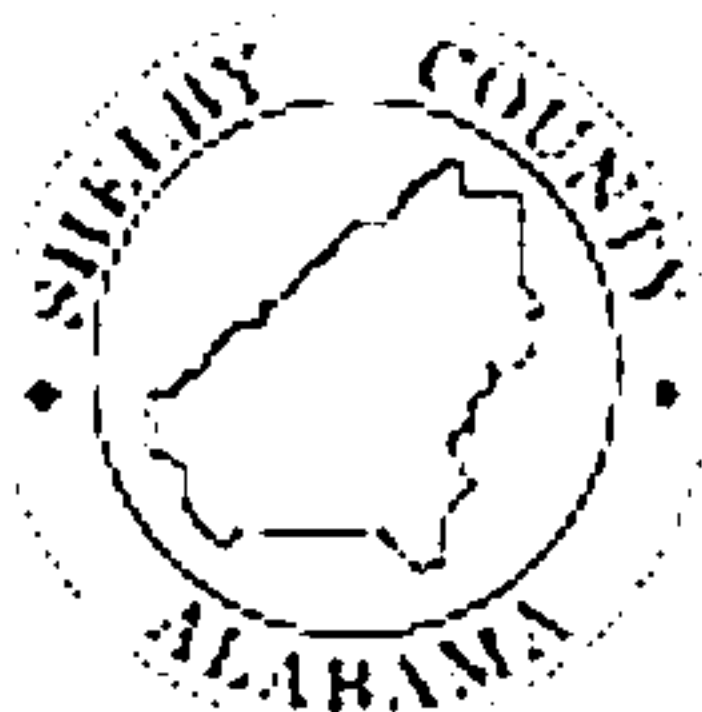
Commence at the SW corner of said Block 1, said point being on the Northerly right of way line of Alabama Highway 119 and run Northwesterly along the Northerly line of said Block 1 for 150.00 feet to the Point of Beginning; thence continue along the last stated course for 200.11 feet; thence 88°04.'00" right and run Northeasterly for 220.41 feet to a point on the Westerly right of way line of Cahaba Valley Parkway; thence 90°00'00" right and run Southeasterly along the Westerly right of way line of Cahaba Valley Parkway for 200.00 feet; thence 90°00'00" right and run Southwesterly for 227.16 feet to the Point of Beginning; being situated in Shelby County, Alabama.

Less and except any part of subject property lying within a road right of way.

EXHIBIT B

PERMITTED EXCEPTIONS

1. All taxes for the year 2023 and subsequent years, not yet due and payable.
2. Such state of facts as shown on record subdivision plat recorded in Map Book 13, page 140 Shelby County Records.
3. Easement(s) as shown by recorded map.
4. Flood Zones as reflected on the survey prepared by Rowland Jackins with Jackins, Butler & Adams, Inc., dated 5/10/2022.
5. Restrictions or Covenants appearing of record in Real 268, page 140; Real 290, page 386; Real 325, page 929; Instrument 1992-15856; Instrument 1993-25691 and Instrument 2000-15211, in the Probate Office of Shelby County, Alabama.
6. Transmission line permit to Alabama Power Company, recorded in Deed Book 101, page 520 and Deed Book 145, page 378, in the Probate Office of Shelby County, Alabama.
7. Easement to Alabama Power Company recorded in Real 292, page 618, in the Probate Office of Shelby County, Alabama.
8. That certain Mortgage and Security Agreement dated June 16, 2022 made by Mortgagor in favor of Oakworth Capital Bank and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument no. 20220617000243470.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
11/28/2023 12:20:35 PM
\$706.00 JOANN
20231128000344320

Allen S. Bayl