

Prepared by, and when recorded return to:
Baker Findley
Maynard Nexsen PC
1901 Sixth Avenue North, Suite 1700
Birmingham, AL 35203
Tele: 205.254.1000

STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the “Declaration”) is made as of the 21st day of December, 2023 (the “Effective Date”), by **CAHABA POINTE, LLC**, an Alabama limited liability company, having its principal place of business at 2530 Watkins Road, Birmingham, AL 35223 (“Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of those certain parcels of real property located in Shelby County, Alabama, as shown on the site plan attached hereto as **Exhibit “A”** (hereinafter referred to as the “Site Plan”) which shows those certain four (4) parcels further described on **Exhibit “B”** (the “Parcels”);

WHEREAS, Declarant (as defined below) intends to provide for the development of a commercial project on the Parcels (the “Project”);

WHEREAS, Declarant desires to establish and create certain covenants, easements, rights, obligations and restrictions to facilitate the development and operation of the Parcels.

NOW, THEREFORE, Declarant hereby declares that the Parcels shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged or otherwise encumbered subject to the following covenants, easements, rights and restrictions:

ARTICLE 1. DEFINITIONS

1.1 **Building**. When reference is made herein to a “Building” on the Parcels, such reference shall be deemed to refer to the building(s) constructed from time to time on the Parcels.

1.2 **Common Area**. “Common Area” shall mean the following areas within the Parcels (as the same may then-currently exist) which are intended for non-exclusive use by the Occupants

(as defined below) of the Parcels as the same are depicted on the Site Plan: (i) all roadways and driveways shown on the Site Plan; and (ii) all sidewalks and walkways shown on the Site Plan.

1.3 Governmental Requirements. “Governmental Requirements” means all applicable laws, statutes, codes, rules, regulations, ordinances, judicial decisions or devices as presently existing or enacted by any governmental unit or agency exercising jurisdiction over the Project.

1.4 Occupant. “Occupant” shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or government entity, including any Owner, from time to time entitled to the use and occupancy of any portion of a Building in the Project by virtue of ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement.

1.5 Owner. “Owner” shall mean, as of any time, each fee simple title owner of any Parcel at such time.

1.6 Permittees. “Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants and other persons who have business with the Project insofar as their activities relate to the intended use of the Project.

1.7 Parcel 1. “Parcel 1” shall mean Parcel 1, as shown on the Site Plan and described on **Exhibit “B”**.

1.8 Parcel 1 Owner. “Parcel 1 Owner” shall mean the Owner of Parcel 1.

1.9 Parcel 2. “Parcel 2” shall mean Parcel 2, as shown on the Site Plan and described on **Exhibit “B”**.

1.10 Parcel 2 Owner. “Parcel 2 Owner” shall mean the Owner of Parcel 2.

1.11 Parcel 3. “Parcel 3” shall mean Parcel 3, as shown on the Site Plan and described on **Exhibit “B”**.

1.10 Parcel 3 Owner. “Parcel 3 Owner” shall mean the Owner of Parcel 3.

1.11 Parcel 4. “Parcel 4” shall mean Parcel 4, as shown on the Site Plan and described on **Exhibit “B”**.

1.10 Parcel 4 Owner. “Parcel 4 Owner” shall mean the Owner of Parcel 4.

1.11 Square Footage Cap. “Square Footage Cap” shall mean the following:

Parcel	Square Footage Cap
Parcel 1	2,335
Parcel 2	5,250

Parcel 3	2,900
Parcel 4	N/A

ARTICLE 2. EASEMENTS

2.1 Access. Declarant hereby establishes, grants, creates and reserves for the benefit of, and as appurtenances to, each Parcel and for the benefit of the Owner of each Parcel from time to time and their respective Permittees, with respect to, and as a burden upon, the Parcels, perpetual non-exclusive rights, privileges, easements and reservations for the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curbs, aisles, walkways, and sidewalks from time to time located within the Project. Such easement rights shall be subject to the other provisions contained in this Declaration. Notwithstanding anything contained in this Declaration and subject to the other provisions contained in this Declaration, Declarant shall have the right (upon receiving written consent from the then current Owner of any Parcel, such consent not to be unreasonably withheld), but not the obligation, to erect stop signs, directional signs and any other parking or traffic signage and to establish reasonable rules and regulations with respect to all or any portion of the Project, including, without limitation, speed limits. Further, each Owner agrees to act reasonably and in good faith to adopt further reasonable rules and regulations to address any future matters or problems which may be experienced in connection with the operation of the Project. Further, each Owner grants Parcel 4 Owner a perpetual, exclusive easement across such portion of the Southern Access Road (as defined herein) located upon each Owner's Parcel for the purpose of performing Parcel 4 Owner's repair and maintenance obligations with respect thereto as described herein.

2.2 Parking. For the avoidance of doubt, Section 2.1 hereof shall not create non-exclusive easements to park passenger vehicles within parking spaces on throughout the Project and each Owner and/or Occupant's right to parking spaces shall be limited to its right to use parking spaces located upon its Parcel.

2.3 Utilities. Declarant hereby establishes, grants, creates and reserves for the benefit of, and as appurtenances to, each Parcel and for the benefit of the Owner of each Parcel from time to time and their respective Permittees, with respect to, and as a burden upon, the Parcels, a perpetual non-exclusive easement in, to, over, under and across the Common Areas for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, septic systems, water and gas mains, electric power lines, telephone lines, and other underground utility lines (collectively, the "Utility Lines") to serve the facilities located on each Parcel in the locations shown on the utility plan attached hereto as **Exhibit "C"** attached hereto and made a part hereof (the "Utility Plan"). The location of any Utility Lines other than as shown on the Utility Plan shall be subject to the approval of the granting Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Declarant further hereby establishes, grants, creates and reserves for the benefit of, and as appurtenances to, each Parcel and for the benefit of the Owner of each Parcel from time to time and their respective Permittees, with respect to, and as a burden upon, the Parcels, a perpetual non-exclusive easement to permit storm water runoff from each Parcel to pass across adjacent Parcels as necessary to tie into and to discharge into the storm water drainage lines and retention system as the same are more particularly shown on the Utility Plan (the "Storm Water System"). The

Parcel 4 Owner shall be solely responsible for maintaining, repairing, insuring, cleaning and replacing the Storm Water System in good working order and repair.

2.5 Restrictions. The easements granted by this Article 2 shall be subject to the covenants and restrictions set forth in this Declaration.

2.6 Unimpeded Access. The Owners covenant that at all times free access between each Parcel located on the Project and the remainder of the Project will not be impeded and will be maintained. Except as specifically depicted on the Site Plan or as may be approved in writing by Declarant, no fence, division, partition, rail or obstruction of any type or kind shall ever be placed, kept permitted or maintained between the legal lots comprising the Project or between any subsequent division thereof or upon or along any of the common property lines of any property lines of any portion thereof, except within the confines of a Building, and except as may be required at any time and from time to time in connection with the construction, maintenance and repair of the Common Area.

2.7 Use by Permittees. The use of all easements provided for in this Article, and the use of the entire Common Area will, in each instance, be nonexclusive, and for the use and benefit of all Permittees, except as otherwise provided herein.

2.8 Monument Sign. The Declarant hereby establishes, grants, creates and reserves for the benefit of, and as appurtenances to Parcel 3 and for the benefit of the Owner of each other Parcel from time to time and their respective Occupants, an easement for the sole purposes of affixing such Owner or Occupant's identification panels on the monument sign located on Parcel 3, as shown on the Site Plan. Prior to the installation or replacement of such panel, such Owner shall provide the Declarant with signage plans (including method of connection to the Monument Sign) and the Declarant shall have approved of such signage plane, such approval not to be unreasonably withheld, delayed or conditioned. This Section shall not provide any Owner which it benefits the right to perform any construction activities with respect to the Monument Sign other than as expressly set forth herein. Parcel 3 Owner shall be responsible for all structural repairs and maintenance of the Monument Sign other than as set forth herein. Parcel 3 Owner shall maintain the Monument Sign in good condition and repair.

ARTICLE 3. IMPROVEMENTS

3.1 Parking and Access Drives. No Owner and/or Occupant of a Parcel shall materially alter, entirely and permanently eliminate or substantially relocate any driveways, sidewalks (other than sidewalks adjacent to the perimeter of a building) or curb cuts within its Parcel without the prior written consent of a majority of the other Owners in the Project, which consent shall not be unreasonably withheld. In no event (except as a result of condemnation) shall any parking spaces be eliminated or (other than Permitted Traffic Alterations) any changes to traffic circulation and flow patterns be made except upon the unanimous written consent of the other Owners. The term "Permitted Traffic Alterations" shall mean modifications to drive-through lanes and parking spaces located entirely within a Parcel in order to better facilitate business operations on such Parcel; provided however, that Permitted Traffic Alterations shall not include any modifications

to curb cuts, entrances, exits, directional movements or any other modifications that would materially impact traffic circulation and flow on any other Parcel.

ARTICLE 4. MAINTENANCE AND REPAIR

4.1

(a) Maintenance and Repair of the Common Areas. Notwithstanding anything to the contrary herein, the Parcel 4 Owner shall be solely responsible for maintaining, repairing, insuring, cleaning and replacing that certain shared access roadway as shown on the Site Plan (the "Southern Access Road") in a first class manner and shall promptly repair any damage thereto. Other than the Southern Access Road, each Owner shall maintain and repair (or caused to be maintained and repaired) all Common Areas located from time to time within its Parcel and keep the Common Areas in good condition and repair, clean, free of rubbish and other hazard to persons using the Common Area and properly lighted. Any unimproved Common Area shall be kept dust and litter-free, and shall be landscaped with grass and ground cover. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first-class developments of comparable size in the Birmingham, Alabama metropolitan area and in compliance with Governmental Requirements and the provisions of this Declaration. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Project as a whole. The foregoing obligations shall include the maintenance and repair of the Utility Lines that serve multiple Parcels. The Owners of the Parcels served by such Utility Lines shall mutually agree on the repair and replacement of such Utility Lines.

(b) Maintenance and repair obligations of each Owner described herein with respect to its respective Parcel, including but not limited to the Common Area on each's respective Parcel, and in the case of the Parcel 4 Owner, with respect to Southern Access Road and the Common Areas upon Parcel 4, shall include, but shall not be limited to, the following:

i. Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or the use of the Common Areas by persons intending to conduct business with the occupants of the Project.

ii. Sign and Markers. Excluding the Monument Sign, placing, cleaning, keeping in repair, replacing and repainting any appropriate directional signs or markers, including any handicapped parking signs.

iii. Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including lamps, ballasts and lenses.

iv. Obstructions. Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the terms of this Declaration.

v. Sidewalks and Roadways. Maintaining, cleaning and replacing all sidewalks and roadways, including those adjacent and contiguous with Buildings located within

the Project. Sidewalks shall be cleaned and swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area. Notwithstanding anything to the contrary herein, the Parcel 4 Owner shall be solely responsible for any and all maintenance, cleaning, replacements and repairs of the Southern Access Road.

vi. Landscaping. Maintaining, irrigating and replacing landscaping and keeping landscape irrigation systems in good condition and repair.

4.2 Maintenance and Repair of the Buildings. The maintenance and repair of all Buildings included within each Parcel shall be the sole responsibility of the Owner of such Parcel. All Buildings located thereon shall at all times be maintained, operated, restored and repaired such that the same are at all times in a safe and sightly, first class condition consistent with the standards of the Project and any other requirements of this Declaration and in compliance with all Governmental Requirements, including rebuilding and restoring (or razing) the Building and other improvements located on its Parcel in the event said Building and/or improvements are damaged or destroyed by casualty or condemnation. All trash and garbage from the operation of business upon any Parcel shall be stored in adequate containers, which containers shall be located so that they are not visible from the parking areas located in front of the Building located on such Parcel, and areas near trash containers shall be maintained in a clean, neat and safe condition. Each Owner shall cause the regular removal of trash from its Parcel in accordance with Governmental Requirements or as specifically directed by Declarant. Decorative screening and/or landscaping shall be approved by Declarant prior to installation and thereafter installed by the respective Owners so as to obscure from public view all trash receptacles, trash compactors, HVAC units, and service areas on the Parcels. Declarant shall have no responsibility or liability for the operation, restoration, maintenance and repair of any Buildings located within the exterior boundary of any Parcel unless Declarant is the Owner of such Parcel in which case Declarant shall perform (or cause to be performed by the Occupant of such Parcel), all obligations set forth herein; provided, however, that if an Owner of a Parcel fails to properly perform its obligations as set forth in this Section 4.2, then Declarant and any other non-defaulting Owner shall have the right, but not the obligation, to perform such work, and charge and lien the defaulting Owner, for the full cost thereof all in accordance with the provisions for default set forth in this Declaration.

4.3 Utility Lines. Each Owner shall service, maintain, repair and replace, and pay the cost of any fees or charges in connection with the Utility Lines located on its Parcel but only to the extent that such Utility Lines exclusively service the improvements on such Parcel. All such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to the Parcels as may be practicable under the circumstances, and any and all portions of the surface area of a grantor Owner's Parcel which may be excavated, damaged or otherwise disturbed as a result of such work shall be restored at the sole cost and expense of the Owner performing the work to essentially the same conditions as the same were in prior to the commencement of such work. To the extent that any Utility Line exclusively servicing any Parcel crosses another Owner's Parcel, such Utility Line shall be so maintained by the party served by the Utility Line, subject to the provisions of Section 2.2 hereof. Maintenance of any portion of any Utility Lines serving more than one Parcel shall be performed as described in Section 4.1.

4.4 Restoration of Common Area. In the event of any damage or destruction to the Common Area on any Parcel, whether insured or uninsured, the Owner with respect to such Parcel

shall restore, repair or rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction.

4.5. Restoration of Buildings. In the event of drainage to or destruction of the Building(s) on an Owner's Parcel, such Owner may, but shall not be obligated to, restore and reconstruct such Building(s) within such Owner's Parcel. In the event an Owner so elects, such Owner shall restore and reconstruct such Building(s) to at least as good a condition as it or they were in immediately prior to such damage or destruction.

4.6. Clearing of Premises. Whenever an Owner elects not to restore, repair or rebuild its Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, and as soon as reasonably possible, shall raze such Building(s) or such part thereof as has or have been damaged or destroyed, clear the premises of all debris, and all areas not restored to their original use shall, at the expense of such Owner, be leveled, cleared and improved with, at the option of the Owner of such Parcel, either landscaping or parking area, of like standard and design as the Common Area of the Project.

4.7 Restrictions. In addition to any other applicable provisions of this Declaration, unless otherwise consented to in writing by Declarant and the Owners, the following requirements, limitations and restrictions shall be applicable to the Parcels:

(a) The square footage of any Building constructed on any Parcel shall not exceed the Square Footage Cap for such Parcel.

(b) In addition, throughout the term of this Declaration, no more than one (1) Building shall be constructed on a Parcel.

(c) No Owner may subdivide or resubdivide any Parcel without the prior written approval of all other Owners.

4.8 Prohibited Uses. Without the prior written consent of each Owner, which consent may be granted or withheld in the sole discretion of each Owner, no portion of the Parcels shall be used for:

(a) the sale of automotive services including any car wash, car rental, repair services, gas station, service station or any facility storing or selling gasoline or diesel fuel in or from tanks, automobile repair shop or service station;

(b) an assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation, any dumping, disposal, incineration or reduction of garbage or refuse (other than in enclosed receptacles intended for such use);

(c) storage (other than as an incidental use);

(d) a laundromat, a commercial laundry or dry cleaning plant, except that facilities for drop off and pick up of clothing cleaned at another location shall be permitted;

- (e) a mortuary or funeral establishment, for the sale of coffins or caskets;
- (f) a pawn shop; flea market; swap meet; junk yard; and any use that permits a pest infestation without prompt action to eliminate the infestation;
- (g) auditorium, meeting hall, church, library, house of worship or other place of public assembly;
- (h) any adult entertainment facility;
- (i) any establishment which sells or displays pornographic materials;
- (j) a so-called “head” shop;
- (k) check cashing facility (not including a bank branch);
- (l) any facility related to the occult services, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets;
- (m) For so long as Chipotle Mexican Grill of Colorado, LLC, a Colorado limited liability company, or its assigns is the Occupant of Parcel 1, no Parcel other than Parcel 1 shall be used for the sale of sale of burritos, Mexican wraps, fajitas and tacos, provided that the foregoing shall not limit the sale of breakfast wraps, breakfast burritos, or breakfast tacos; and
- (n) For so long as FirstBank, a Tennessee banking corporation, or its assigns is the Occupant of Parcel 2, no Parcel other than Parcel 3 shall be used for the operation of a bank, credit union and similar financial institution.

ARTICLE 5. PARCEL OPERATIONS

5.1 Intentionally deleted.

5.2 Hazardous Materials.

(a) Limitations on Use. No Owner and/or Occupant of the Parcels shall use, or permit the use of Hazardous Materials on, about, under or in its Parcel, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws and Regulations. Each Owner and/or Occupant, as the case may be, shall indemnify, protect, defend and hold harmless the other Owners and/or Occupants from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Owner and/or Occupant, whether or not in the ordinary course of business.

(b) Definitions.

(i) “Hazardous Substances” means any “hazardous waste” or “hazardous substance,” as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations (as hereinafter defined), oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now or in the future subject to Governmental Requirements.

(ii) “Environmental Laws and Regulations” means any federal, state or local laws now or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Substance into the environment (including without limitation indoor air, ambient air, surface water, ground water or land), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. 9601 et seq., as amended, the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., as amended, the Clean Water Act, 33 U.S.C. 1251 et seq., as amended, the Clean Air Act, 42 U.S.C. 7401 et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., as amended, and comparable state laws, and any rules and regulations now or hereafter promulgated under any of such acts.

5.3 Real Estate Taxes. Each Owner shall pay, prior to any penalty attaching thereto, all real estate taxes, assessments and personal property taxes, if any, imposed upon the land and improvements and equipment located on its Parcel.

5.4 Maintenance Contribution. Each Owner shall reimburse the Owner of Parcel 4 such Owner’s Maintenance Contribution (as defined below) for the actual, reasonable and necessary out of pocket costs incurred by the Owner of Parcel 4 directly attributable to maintaining, repairing, insuring, cleaning and replacing the Storm Water System and the Southern Access Road. The Owner of Parcel 4 shall use its best efforts to minimize such costs in a manner consistent with good business practices and all such costs shall be based upon competitive charges for similar services and/or materials that are available in the general vicinity of the Project. The percentage of Maintenance Contribution for each Owner shall be as follows:

Parcel	Percentage of Maintenance Contribution
Parcel 1	19.70%
Parcel 2	27.16%
Parcel 3	16.42%
Parcel 4	36.72%

Each Owner’s Maintenance Contribution shall be paid within sixty (60) days of receipt of invoice therefor together with commercially reasonable supporting documentation evidencing such costs incurred by the Owner of Parcel 4 in connection with the Storm Water System and Southern Access Road, failing which, the Owner of Parcel 4 shall be entitled to all rights and remedies available under this Declaration for a default including, but not limited to, the right to file a lien against such

Parcel for the amount owed. In addition, if an Owner fails to pay such Maintenance Contribution when owed, the such Owner's Maintenance Contribution shall accrue interest at the rate described in Section 8.1 below from the date owed until the date paid in full.

ARTICLE 6. DEFAULT

6.1 Default.

(a) If the Owner of any Parcel fails to comply or fails to cause any Occupant of its Parcel to comply with any provision herein (a "Defaulting Owner"), then Declarant or any non-defaulting Owner may, at its option and upon ten (10) days' prior written notice to the Defaulting Owner, and in addition to any other remedies it may have at law or equity, proceed to perform such defaulted obligation on behalf of such Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the ten (10) day notice period (i) the Defaulting Owner cures the default, or (ii) if the default is a non-monetary default and cannot be reasonably cured within that time period, but the Defaulting Owner begins to cure such default within such time period and diligently pursues such action to completion. The ten (10) day notice period shall not be required if an emergency exists or if such default causes interference with the construction, operation or use of all or any portion of the Project which requires immediate attention; and in such event, the Declarant or non-defaulting Owner shall give whatever notice to the Defaulting Owner as is reasonable under the circumstances.

(b) Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse Declarant or the non-defaulting Owner for any sum reasonably expended by Declarant or such non-defaulting Owner due to the default of the Defaulting Owner, together with interest thereon and, if such reimbursement is not paid within said ten (10) days and collection is required, the reasonable costs of collection incurred by Declarant or such non-defaulting Owner. Further, the Defaulting Owner shall indemnify, defend and hold Declarant or the non-defaulting Owner, as applicable, harmless from and against any claim, demand, cause of action, charge, judgment, damage, liability, cost or expense arising out of such failure to comply with any term or provision of this Declaration or failure to cause any Occupant to comply with any term or provision of this Declaration.

(c) Any claim of Declarant or any non-defaulting Owner for reimbursement, together with interest accrued thereon and collection costs as aforesaid, shall be secured by an equitable charge and lien on the Outparcel of the Defaulting Owner and all improvements located thereon. Such lien shall be subordinate to any first security deed, mortgage or deed of trust affecting the Defaulting Owner's Parcel and to the interest of any party that has purchased the Parcel and leased it from the preceding Owner, or its affiliate or subsidiary, on a net lease basis with the lessee assuming all obligations (a sale-leasehold transaction), any purchaser at any foreclosure or trustees sale or deed in lieu of foreclosure under such first mortgagee or assign of such sale-leasehold lease shall take subject only to liens occurring pursuant to this subparagraph (c).

(d) In the event Declarant or any Owner shall institute any action or proceeding against another Owner relating to the provisions of this Declaration, or any default hereunder or to collect any amounts owing hereunder, or an arbitration proceeding is commenced by agreement of the parties to any dispute, then and in such event the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for all reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including reasonable and actual attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

6.2 Remedies Cumulative. Any remedies provided for in Section 6.1 are cumulative and shall be deemed additional to any and all other remedies to which Declarant or any Owner or Occupant may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant or condition is inadequate.

ARTICLE 7. LIABILITY AND INDEMNIFICATION

7.1 Liability; Indemnification. Each Owner shall indemnify, defend, save and hold every other Owner of the Project harmless (except for loss or damage resulting from the tortious acts of such other parties) from and against any damages, liability actions, claims, and expenses (including attorneys' fees in a reasonable amount) in connection with (i) violation of Governmental Requirements, (ii) breach of any restrictive covenants encumbering the Parcels, and (iii) the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Parcel, or occasioned wholly or in part by any act or omission of said Owner or Permittee.

7.2 Liability Insurance. Each Owner shall maintain or cause to be maintained commercial general liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas by the Owner and its Permittees except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama and having a limit of Two Million Dollars (\$2,000,000.00) for each occurrence (which limit may be met by an umbrella policy). Each Owner shall maintain or cause to be maintained contractual liability insurance, naming the other Owner as an additional insured, endorsed to cover said Owner's agreement to indemnify as set out in Section 7.1. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. Notwithstanding the foregoing, any Owner or Occupant which maintains a net worth of not less than \$200,000,000.00, may satisfy its insurance obligations hereunder through a program of self-insurance. Each Owner shall, upon written request from the other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as hereinabove provided, as the case may be. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each

Owner hereby waives any rights of recovery against any other Owner and its Permittees for any damage or consequential loss covered by said policies, against which such Owner is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of the other Owner or its Permittees.

7.3 Blanket Insurance. Any insurance required to be carried pursuant to this Article VII may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Article VII in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Article VII which shall contain a location endorsement.

ARTICLE 8. MISCELLANEOUS

8.1 Interest. Wherever in this Declaration it is provided that any party is to pay to any other party a sum of money with interest, the amount of interest to be paid shall be calculated upon the sum advanced or due from the time advanced or due until the time paid at the lesser of:

- (a) The highest rate permitted by law to be paid on such type of obligation; or
- (b) The per annum rate equal to three percentage (3%) points in excess of the "prime rate" of interest from time to time publicly announced by CitiBank, N.A. or its successors or assigns or if CitiBank, N.A. ceases to exist, then the "prime rate" published by the Wall Street Journal.

8.2 Term. The easements contained in this Declaration shall be effective commencing on the date of recordation of this Declaration and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by unanimous consent of Declarant (if Declarant then owns fee simple title to all or any portion of the Project) and the Owners. The restrictions, covenants and conditions set forth in this Declaration shall be binding upon and enforceable against Owners or Occupants for a period of thirty (30) years from the date this Declaration is filed with the Office of the Judge of Probate of Shelby County, Alabama, after which time, such restrictions, covenants and conditions shall be automatically extended for successive periods of thirty (30) years each unless Declarant (if Declarant then owns fee simple title to all or any portion of the Project) and the Owners elect not to extend the restrictions, covenants and conditions set forth in this Declaration as evidenced by a written instrument recorded with the Office of the Judge of Probate of Shelby County, Alabama.

8.3 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Alabama.

8.4 Severability. In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

8.5 Amendments. This Declaration may be modified or amended only by the recordation with the Office of the Judge of Probate of Shelby County, Alabama, of a written instrument setting forth such modification or amendment and executed by Declarant.

8.6 Covenants Run with the Land. The terms of this Declaration and all easements established by this Declaration shall constitute covenants running with, and shall be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration and all easements established by this Declaration shall inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

8.7 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

8.8 Notices.

(a) All notices permitted hereunder shall be in writing and shall be deemed to have been properly given or served by the deposit of such notices with the United States Postal Service or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided. Each such notice shall be effective upon being deposited as aforesaid. Rejection of, the refusal to accept or the inability to deliver because of a change of address of which no notice was given shall not affect the effective date of or validity of such notice. Any Owner shall have the right from time to time and at any time until the termination hereof to change their respective addresses, and each shall have the right to specify its address to any other address within the United States of America.

So long as Cahaba Pointe, LLC, an Alabama limited liability company, is Declarant, each notice to Declarant shall be addressed as follows:

Cahaba Pointe, LLC
2530 Watkins Road
Birmingham, AL 35223
Attn: Allen Hawkins
E-mail Address: terraequities@gmail.com

With a copy to: Maynard Nexsen PC
1901 Sixth Avenue North
1700 Regions/Harbert Plaza
Birmingham, Alabama 35203
Attn: Baker Findley

(b) Address of Owners. Upon the sale of any Parcel, the new Owner of a Parcel may record a notice with the Office of the Judge of Probate of Shelby County, Alabama specifying the address to which any notices to such Owner are to be sent. Any such notice shall cross-reference this Declaration by the deed book and page number where this Declaration has been recorded. Unless and until such a notice is recorded, any notice to an Owner (other than to Declarant as long as Declarant remains an Owner) may be delivered by posting such notice on an entrance to any building that has been constructed on the particular Parcel, or, if no building has been constructed on the particular Parcel at such time as a notice is to be delivered, the notice may be posted on the Parcel.

(c) Change of Address. Any Owner may specify or change the place for service of notice by sending a notice to another Owner, which notice shall become effective ten (10) days after delivery thereof. All such notice addresses shall be within the continental United States.

8.9 Estoppel Certificates. Within not less than thirty (30) days after receipt of written request for the same, Declarant and each Owner shall deliver to any requesting Owner, a certificate stating whether or not, to the best knowledge of the signer, there is any default by any party in the performance of any obligations under this Declaration, and, if so, specifying each such default of which the signer shall have knowledge and stating whether or not, to the best knowledge of the signer, any event has occurred which with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event, it being intended that any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the party requesting the certificate and by others with whom such party may be dealing, regardless of independent investigation.

8.10 Incorporation of Exhibits. The following Exhibits are incorporated into and made a part of this Declaration: (i) Exhibit "A" – Site Plan; (ii) Exhibit "B" – Description of Parcels and (iii) Exhibit "C" – Utility Plan.

8.11 Consents. Except as otherwise expressly provided in this Declaration, in the event that any Owner shall request Declarant's or any other Owner's consent or approval with regard to any matter requiring Declarant's or an Owner's consent or approval under this Declaration, and Declarant or an Owner shall fail to respond within thirty (30) days after Declarant's or Owner's receipt of such request, such consent or approval by Declarant or Owner shall be deemed to have been denied.

8.14 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Declaration.

8.15 Excuse for Non-Performance. Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot,

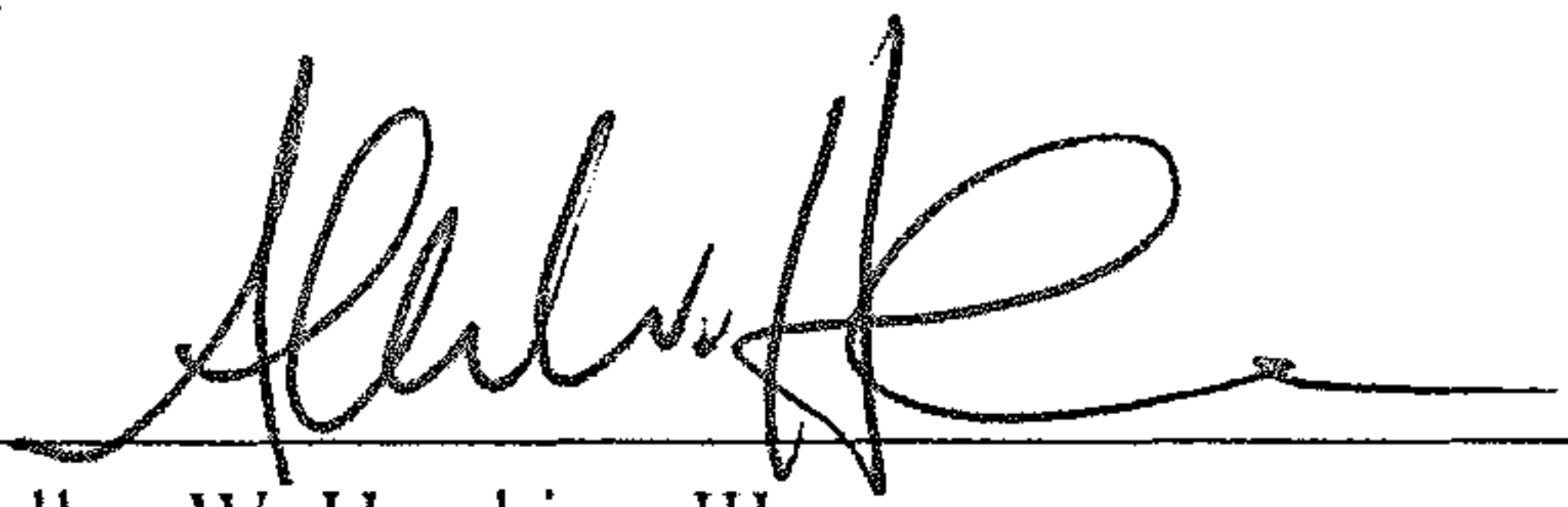
mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws, orders of governmental authority; inability to obtain governmental approvals or permits despite the exercise of due diligence and best efforts by an Owner or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds.

8.16 Eminent Domain. In the event any part of the Project, including the Common Area, shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken, and the other Owner (or Owners, as the case may be) shall not claim any portion of such award by virtue of any interests created by this Declaration. However, the other Owner (or Owners, as the case may be) may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by such Owner (or Owners, as the case may be) resulting from the severance of such area taken. The Owner whose property was so condemned shall promptly repair and restore in accordance with this Declaration the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to the condemnation without contribution from the other Owners.

[Signature page to follow.]

IN WITNESS WHEREOF, this Declaration has been executed under seal and delivered effective as of the day and year first above written.

CAHABA POINTE, LLC, an Alabama limited liability company

By: 

Name: Allen W. Hawkins, III

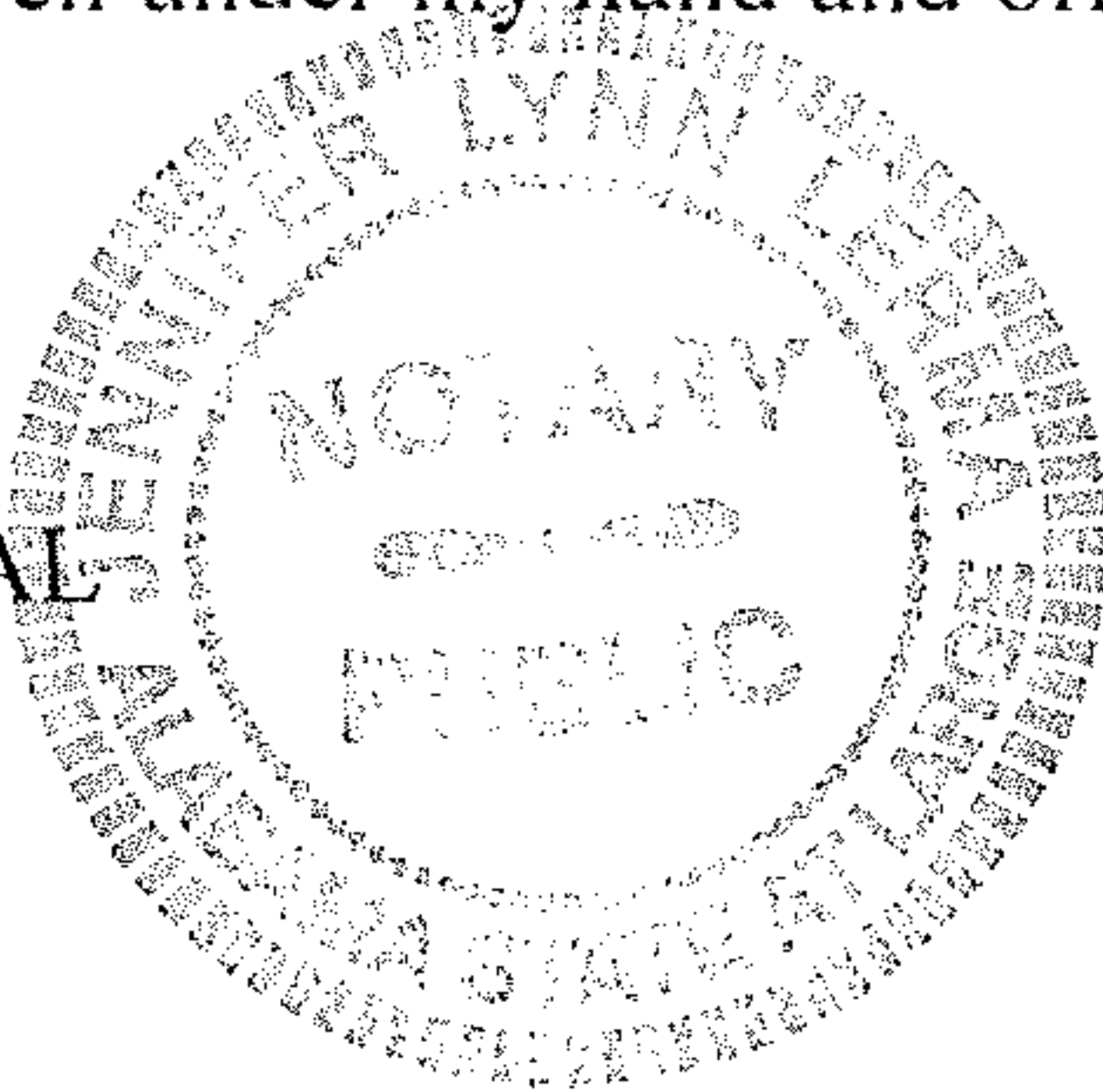
Title: Authorized Signatory

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Allen W. Hawkins, III, whose name as Authorized Signatory of Cahaba Pointe, 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 representative 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 18th day of December, 2023.

AFFIX SEAL




Notary Public

My commission expires: 9-15-2024

EXHIBIT A

Site Plan

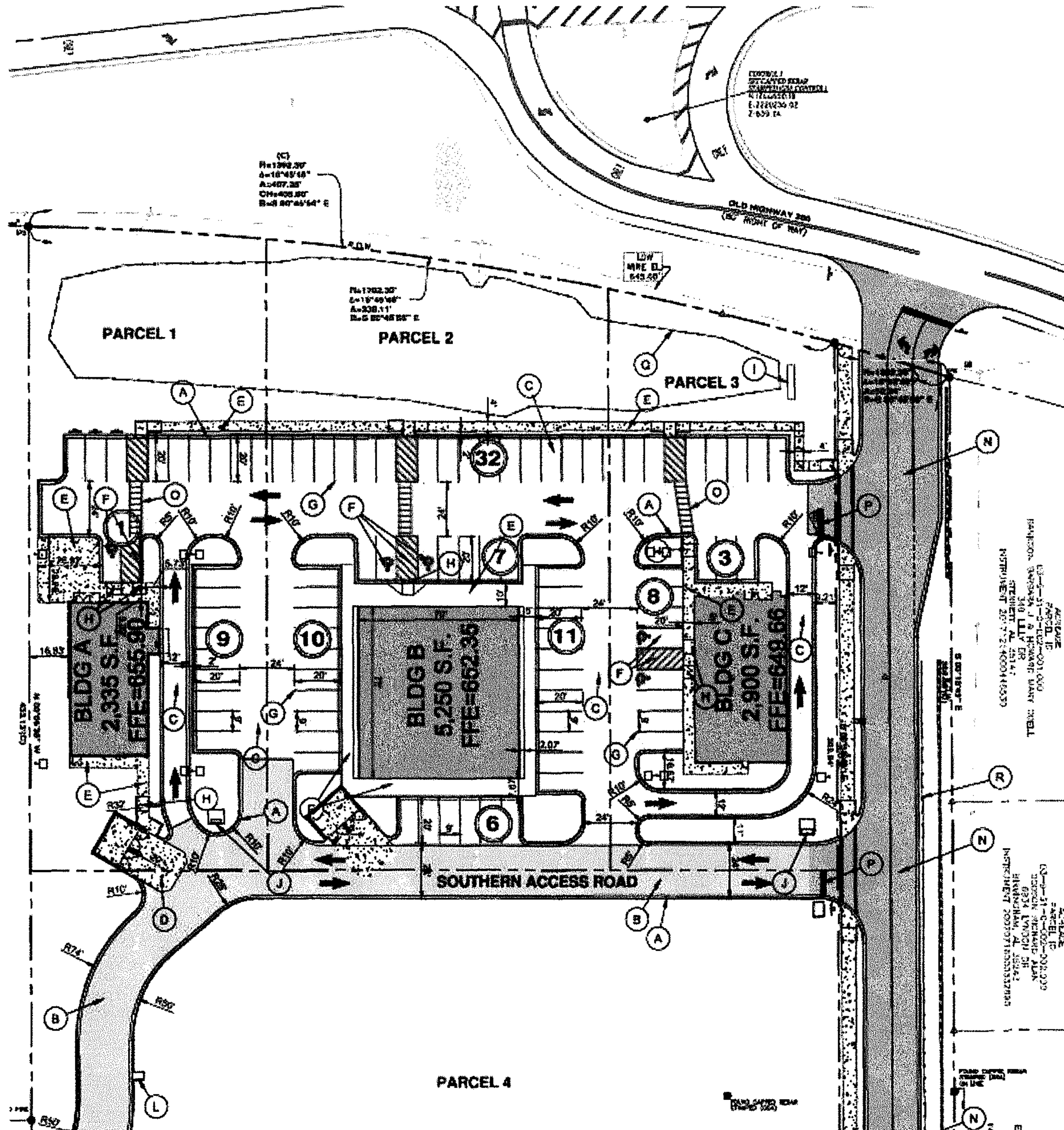


EXHIBIT B

Description of Parcels

LEGAL DESCRIPTION
PARCEL 1

Lot 1, according to the Survey of Cahaba Pointe Plat No. 2, as recorded in Plat Book 58, page 71, in the Probate Office of Shelby County, Alabama.

LEGAL DESCRIPTION
PARCEL 2

Lot 2, according to the Survey of Cahaba Pointe Plat No. 2, as recorded in Plat Book 58, page 71, in the Probate Office of Shelby County, Alabama.

LEGAL DESCRIPTION
PARCEL 3

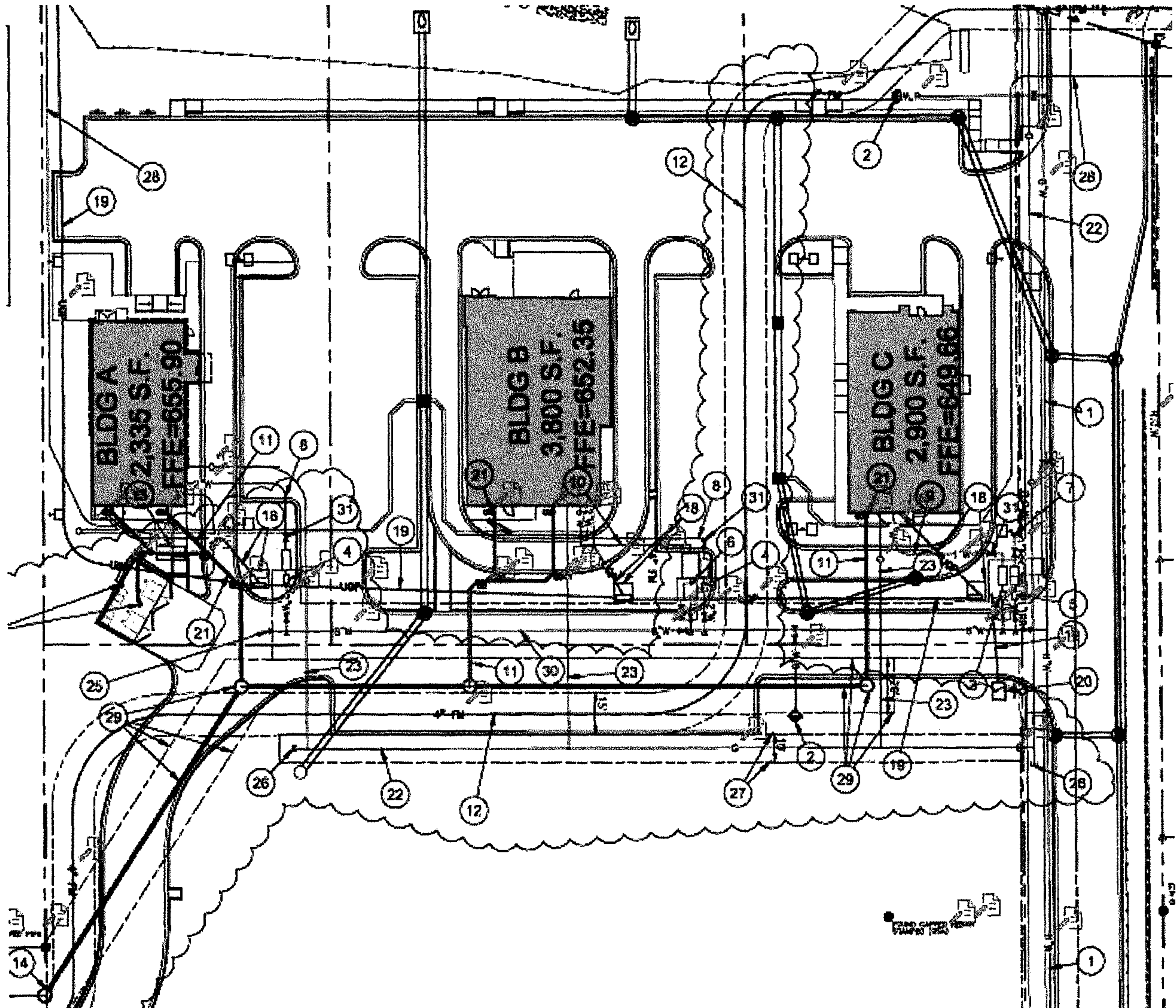
Lot 3, according to the Survey of Cahaba Pointe Plat No. 2, as recorded in Plat Book 58, page 71, in the Probate Office of Shelby County, Alabama.

LEGAL DESCRIPTION
PARCEL 4

Lot 4, according to the Survey of Cahaba Pointe Plat No. 2, as recorded in Plat Book 58, page 71, in the Probate Office of Shelby County, Alabama.

EXHIBIT C

Utility Plan



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
12/21/2023 02:43:02 PM
\$76.00 JOANN
20231221000367200

Allie S. Bayl