

This instrument prepared by:

Matthew S. Hale  
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Suite 400  
Birmingham, Alabama 35209  
(205) 870-0555

STATE OF ALABAMA        )

COUNTY OF SHELBY        )

### **SUBORDINATION AND INTERCREDITOR AGREEMENT**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (the "Agreement") is made as of the 29<sup>th</sup> day of March, 2024, by and between **SOUTHPOINT BANK**, the address of which is 3501 Grandview Parkway, Birmingham, AL 35243 (hereinafter referred to as the "Subordinate Creditor") and **SERVISFIRST BANK**, the address of which is 2500 Woodcrest Place, Birmingham, AL 35209 (hereinafter referred to as the "Senior Creditor").

#### **W I T N E S S E T H :**

WHEREAS, the Senior Creditor is the owner and holder of that certain Mortgage and Security Agreement ("Mortgage") dated March 29, 2024 and recorded under instrument number 20240402000090960, Probate Office of Shelby County, Alabama and executed by Attic Plus Storage IV, LLC (the "Borrower") (said "Mortgage"), covering certain real estate located in the County of Shelby and State of Alabama, as more particularly described on Exhibit A attached hereto and made a part hereof, together with all improvements located thereon (collectively the "Property"), and the note secured thereby (said note, and any extensions, modifications or substitutions thereof, being hereinafter referred to as the "Senior Note"), evidencing and securing a certain loan made by the Senior Creditor to the Borrower (the "Senior Loan"); and

WHEREAS, Attic Plus, a General Partnership ("Affiliated Borrower"), has executed and delivered to the Subordinate Creditor (i) a note, a copy of which is attached hereto as Exhibit B (said note, and any extensions, modifications or substitutions thereof, being hereinafter referred to as the "Subordinate Note"), in the principal sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00), and (ii) that certain Mortgage recorded under instrument number 20130813000328680, Probate Office of Shelby County, Alabama, a copy of which is attached hereto as Exhibit C (said mortgage and any extensions, modifications, substitutions and consolidations thereof, being hereinafter referred to as the "Subordinate Mortgage"), securing the

Subordinate Note, each evidencing and securing a certain subordinate loan made by the Subordinate Creditor to the Borrower (the "Subordinate Loan"); and

WHEREAS, the Subordinate Creditor has agreed to subordinate its lien to the lien of Senior Creditor; and

WHEREAS, the Senior Creditor, as a condition to its consent to the Subordinate Loan, has required the Borrower to procure the Subordinate Creditor's agreement to the covenants, representations and warranties hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Subordinate Creditor and the Senior Creditor hereby agree as follows:

1) The recitals hereinabove set forth are hereby incorporated by this reference herein.

2) The Subordinate Note, the Subordinate Mortgage, any other documents evidencing, securing, guaranteeing or otherwise executed in connection with the Subordinate Loan (collectively, together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the "Subordinate Loan Documents") and all advances made thereunder are hereby made or to be made, and shall continue to be, subject and subordinate in lien and in payment to the Senior Note, the Senior Mortgage and any other documents evidencing, securing, guaranteeing or otherwise executed in connection with the Senior Loan (collectively, together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the "Senior Loan Documents") and all advances made thereunder without regard to the application of such proceeds, together with all interest, prepayment premiums and all other sums due under the Senior Mortgage, and the note secured thereby. All of the terms, covenants and conditions of the Subordinate Note, the Subordinate Mortgage and the other Subordinate Loan Documents are hereby, and shall continue to be, subordinate to all of the terms, covenants and conditions of the Senior Note, the Senior Mortgage and the other Senior Loan Documents. The foregoing shall apply, notwithstanding the availability of other collateral to the Senior Creditor or the actual date and time of execution, delivery, recordation, filing or perfection of the Senior Mortgage or the Subordinate Mortgage, or the lien or priority of payment thereof.

3) In addition, without limiting the foregoing, the Subordinate Creditor agrees that all rights of the Subordinate Creditor under the Subordinate Mortgage or any of the other Subordinate Loan Documents in and to the Property and the proceeds thereof (including, without limitation, assignments of leases and rents, issues and profits and the rights with respect to insurance proceeds and condemnation awards) shall be expressly subject and subordinate:

(a) to the rights of the Senior Creditor in and to the Property and the proceeds thereof (including assignments of leases and rents, issues and profits and rights with



respect to insurance proceeds and condemnation awards) on the terms set forth in the Senior Mortgage and the other Senior Loan Documents; and

(b) to any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage and the Senior Loan Documents.

4) The Subordinate Creditor hereby represents and warrants that (a) it is now the owner and holder of the Subordinate Note and the Subordinate Mortgage; (b) the Subordinate Note and the Subordinate Mortgage are now in full force and effect; (c) the Subordinate Note and the Subordinate Mortgage have not been modified or amended; (d) the Borrower is not in default in the observance and/or performance of any of the obligations under the Subordinate Note or the Subordinate Mortgage required to be observed and performed by the Borrower; (e) no event has occurred, which, with the passing of time or the giving of notice or both would constitute a default thereunder; (f) all payments due in connection with the Subordinate Loan to and including the date hereof, have been paid in full; (g) the principal balance of the Subordinate Note is \$106,036.72; (h) interest on the principal balance is 9 % per annum; (i) the Subordinate Note has a maturity date of 12/20/2025 and no scheduled monthly payments under the Subordinate Note have been prepaid.

5) The Subordinate Creditor hereby agrees that so long as any sum shall remain outstanding on the Senior Mortgage:

(a) The Subordinate Creditor shall simultaneously send to the Senior Creditor notices of all defaults under the Subordinate Mortgage and copies of all notices required to be delivered to the Affiliated Borrower under the Subordinate Mortgage. Notice under the Subordinate Mortgage shall not be deemed effective until such notice has been received by the Senior Creditor. The Senior Creditor shall have the right, but shall not have the obligation, (i) to cure any such defaults within thirty (30) days after the expiration of the applicable grace period permitted to the Affiliated Borrower thereunder, if any, or (ii) as to any such defaults which are incapable of being cured with reasonable effort within any such grace or cure period, within fifteen (15) days after the Senior Creditor has received notice thereof, to give the Subordinate Creditor written notice of its intention to cure any such default and thereafter diligently proceed to commence, and expeditiously and continuously proceed to complete, such cure. Nothing contained in this Agreement shall be deemed or construed to require the Senior Creditor to commence or continue to prosecute any such cure to completion or prevent the Senior Creditor from discontinuing such cure;

(b) The Senior Creditor shall simultaneously send to the Subordinate Creditor notices of all defaults under the Senior Mortgage and copies of all notices required to be delivered to the Borrower under the Senior Mortgage. Notice under the Senior Mortgage shall not be deemed effective until such notice has been received by the Subordinate Creditor. The Subordinate Creditor shall have the right, but shall not have the obligation, (i) to cure any such defaults within thirty (30) days after the expiration of the applicable grace period permitted to the Borrower thereunder, if

any, or (ii) as to any such defaults which are incapable of being cured with reasonable effort within any such grace or cure period, within fifteen (15) days after the Subordinate Creditor has received notice thereof, to give the Senior Creditor written notice of its intention to cure any such default and thereafter diligently proceed to commence, and expeditiously and continuously proceed to complete, such cure. Nothing contained in this Agreement shall be deemed or construed to require the Subordinate Creditor to commence or continue to prosecute any such cure to completion or prevent the Subordinate Creditor from discontinuing such cure;

(c) The Subordinate Creditor shall not, without the prior written consent of the Senior Creditor, accelerate the indebtedness secured by the Subordinate Mortgage against the Property or commence any action to foreclose the Subordinate Mortgage against the Property or take any other Enforcement Action;

The term "Enforcement Action" shall mean, with respect to the Subordinate Loan, the acceleration of all or any part of the Subordinate Loan, any foreclosures proceeding, the exercise of any power of sale, the acceptance by the Subordinate Creditor of a deed or assignment in lieu of foreclosure, the obtaining of a receiver, the seeking of default interest, the taking of possession or control of the Property, the suing on the Subordinate Note or any guaranty in favor of the Subordinate Creditor, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against the Property;

(d) The Subordinate Creditor shall not pledge, assign, hypothecate, transfer, convey or sell the Subordinate Mortgage or any interest in the Subordinate Mortgage or modify, waive or amend any of the terms or provisions of the Subordinate Mortgage, without the prior written consent of the Senior Creditor.

(e) To the extent any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, the Senior Loan or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

6) The Senior Creditor hereby consents to the encumbrance of the Property by the lien of the Subordinate Mortgage subject to the terms of this Agreement. This consent is limited to the Subordinate Mortgage described above and shall not be deemed (a) to be a consent to any future encumbrances or to any modification, renewal, extension or increase of the Subordinate Mortgage, (b) to be a waiver of any limitation on further encumbrances contained in the Senior Mortgage or any of the other Senior Loan Documents, (b) to be a waiver of the limitation on further encumbrances contained in the Senior Mortgage or any of the other Senior Loan Documents, (c) to be a consent to or waiver of any other term or condition of the Senior Mortgage



or any of the other Senior Loan Documents, or (d) to prejudice any right or rights which the Senior Creditor may now or in the future have under or in connection with the Senior Mortgage or any of the other Senior Loan Documents.

7) The Senior Creditor and the Subordinate Creditor shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms hereof.

8) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

9) Each party hereto acknowledges and agrees that, in the event either party fails to comply with its obligations hereunder, and no adequate remedy at law exists for such failure, the other party shall have the right to obtain specific performance of the obligations of such defaulting party, injunctive relief or such other equitable relief as may be available.

10) Any notice to be given under this Agreement shall be in writing and shall be deemed to be given when received by the party to whom it is addressed. Notices shall be in writing and sent by certified mail, hand delivery or by special courier (in each case, return receipt requested). Notices to the other party hereto shall be sent to the address first set forth herein or such other address or addressees as shall be designated by such party in a written notice to the other parties.

11) The parties hereto acknowledge that, at the time of the execution of this Agreement, the Subordinate Mortgage had not been recorded and, therefore, the recording information necessary to fill in the blanks in the recitals hereof was unavailable. The Subordinate Creditor hereby authorizes the Senior Creditor to insert appropriate recording information in the recitals prior to recording this Agreement.

12) In the event of any conflict between the provisions of this Agreement and the provisions of the Subordinate Mortgage or the Subordinate Mortgage Loan Documents the provisions of this Agreement shall prevail.

13) No person, including, without limitation, Borrower or Affiliated Borrower, other than the parties hereto and their successors and assigns as holders of the Senior Mortgage and the Subordinate Mortgage shall have any rights under this Agreement.

14) This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party hereto unless it is in writing and is signed by said party.

16) In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereto.

17) This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

18) This Agreement shall bind and inure to the benefit of the Senior Creditor and the Subordinate Creditor and their respective successors, permitted transferees and assigns.

[Signatures appear on the following page.]

15) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party hereto unless it is in writing and is signed by said party.

16) In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereto.

17) This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

18) This Agreement shall bind and inure to the benefit of the Senior Creditor and the Subordinate Creditor and their respective successors, permitted transferees and assigns.

[Signatures appear on the following page.]

**SUBORDINATE CREDITOR:**

**SOUTHPOINT BANK**

By: Howie Myers  
Howie Myers  
Its: EVP

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Howie Myers, whose name as EVP of Southpoint Bank, an Alabama banking corporation, is signed to the foregoing Subordination and Intercreditor Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

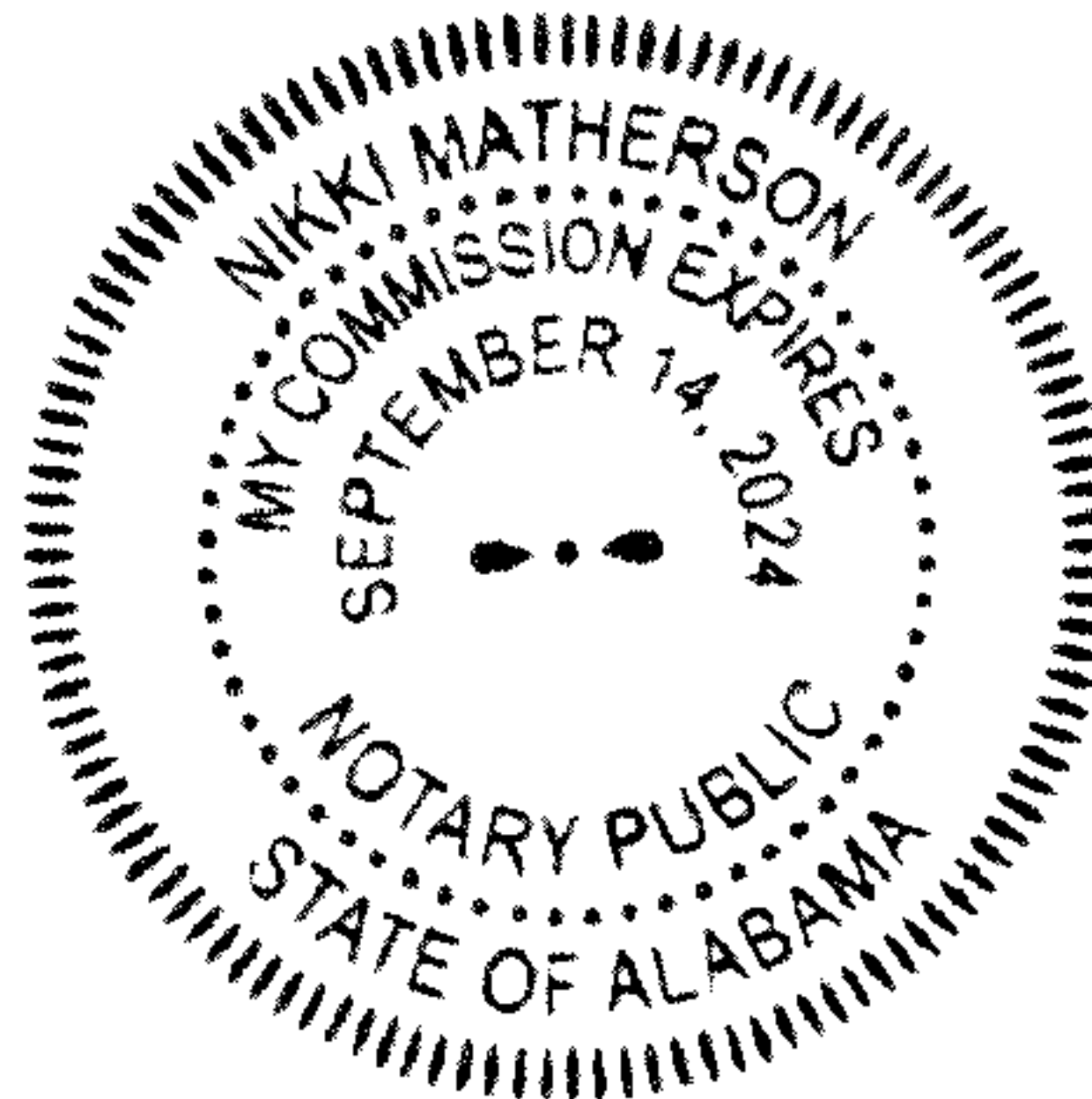
Given under my hand and official seal, this the 18<sup>th</sup> day of April, 2023.

Nikki Matherson  
Notary Public

Expires: \_\_\_\_\_

My

Commission





SENIOR CREDITOR:

SERVISFIRST BANK

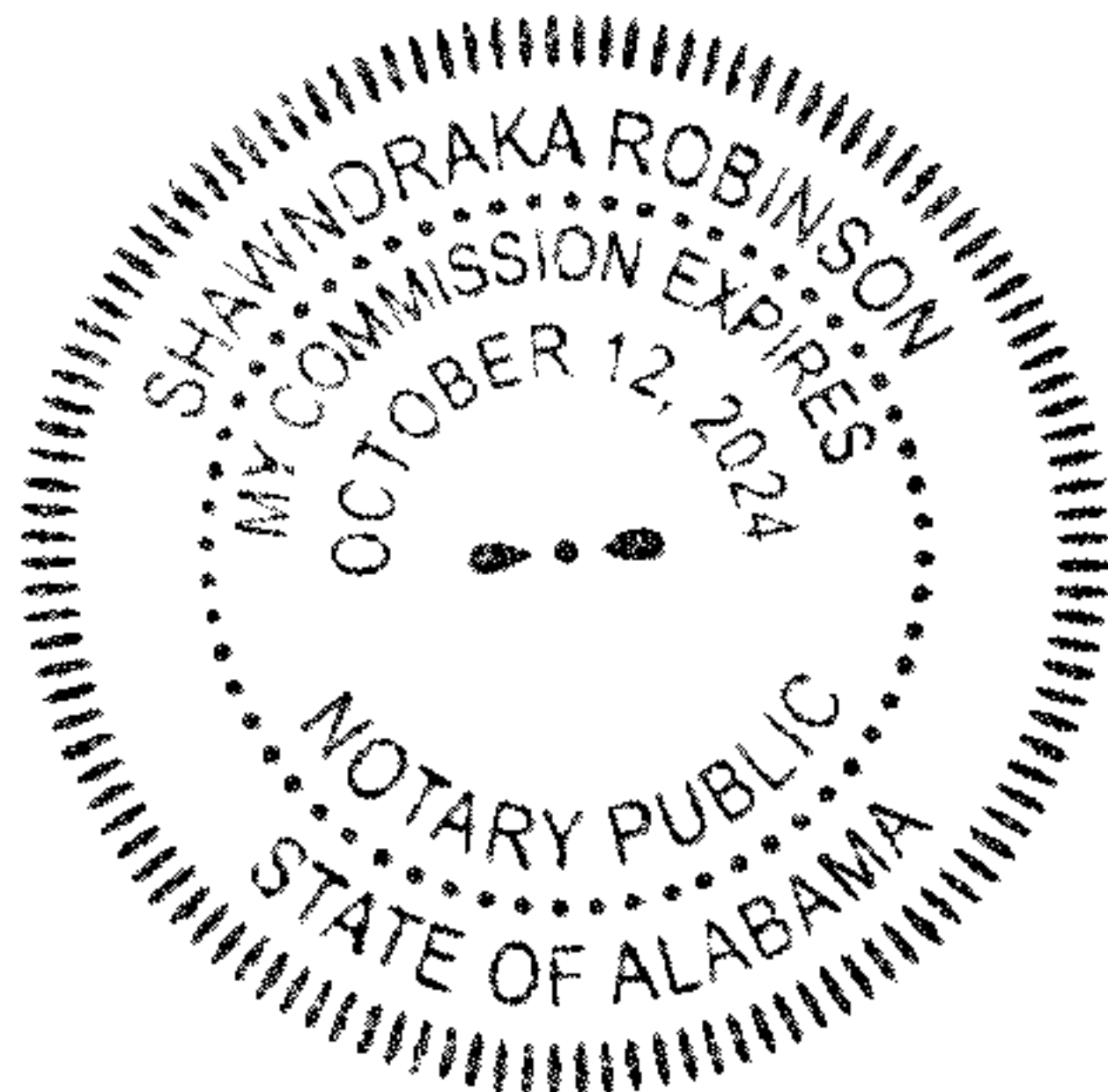
By: Christina Fanning  
Christina Fanning  
Its: First Vice President

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Christina Fanning, whose name as First Vice President of ServisFirst Bank, an Alabama banking corporation, is signed to the foregoing Subordination and Intercreditor Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, (s)he, 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 15<sup>th</sup> day of June, 2023.



Shawndra Robinson  
10/12/2024

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1-A, of the Map of a Resubdivision of Lots 1 & 2 of Highway 280 Attic Plus Storage Subdivision, as recorded in Map Book 56, Page 79, in the Office of the Judge of Probate of Shelby County, Alabama.



EXHIBIT "B"

NOTE

EXHIBIT "C"

MORTGAGE



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**04/03/2024 08:03:51 AM**  
**\$55.00 BRITTANI**  
**20240403000091020**

*Allie S. Bayl*