

This Instrument was prepared by and upon  
recording return to:

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Potomac Law Group, PLLC  
1717 Pennsylvania Avenue, NW, Suite 1025  
Washington, DC 20006

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT**

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**made by and between**

**GREEN MXB, LLC**, a Delaware limited liability company

(Mortgagor)

in favor of

**CAPITAL ONE, NATIONAL ASSOCIATION, ACTING IN ITS CAPACITY AS  
ADMINISTRATIVE AGENT**

(Mortgagee)

Dated: As of November 1, 2023

Property Locations:

8361 Hwy 31 N/PO Box 135, Calera, AL 35040

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(Attention Shelby County Clerk: This instrument covers goods that are or will be fixtures on the real property described herein. It is to be recorded as a real estate mortgage and indexed as both a real estate mortgage and a fixture filing in accordance with the provisions of Section 7-9A-502(c) of the Code of Alabama. The maximum amount of principal indebtedness secured by this Mortgage or which under any contingency may be secured by this mortgage is \$55,800,000.00.)

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (this “*Mortgage*”), made as of November 1, 2023, by **GREEN MXB, LLC**, a Delaware limited liability company, having an address at 305 A Equipment Court, Lawrenceville, Georgia 30046 (“*Mortgagor*”), to **CAPITAL ONE, NATIONAL ASSOCIATION**, acting in its capacity as administrative agent for the Lenders (as hereinafter defined) (in such capacity, together with its successors and assigns, hereinafter referred to as “*Mortgagee*”), having an address at 1680 Capital One Drive, 13<sup>th</sup> Floor, McLean, Virginia 22102.

**WHEREAS**, Mortgagor, GREEN MXB OPERATING, LLC, a Delaware limited liability company, GREEN MXB HOLDINGS, LLC, a Delaware limited liability company (collectively, “*Borrowers*”), Mortgagee and certain lenders party thereto from time to time (the “*Lenders*”) have entered into a Loan Agreement dated of even date herewith (as amended, modified, restated, consolidated or supplemented from time to time, the “*Loan Agreement*”) pursuant to which the Lenders are making a secured loan to Mortgagor in the aggregate original principal amount of Fifty-five Million Eight Hundred Thousand and No/100 Dollars (\$55,800,000.00) (the “*Loan*”). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by one or more promissory notes, each dated as of the date hereof, made by Borrowers to the respective order of the Lenders in the aggregate principal amount of the Loan (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, individually or collectively as the context requires, the “*Notes*”).

**NOW, THEREFORE**, to secure Mortgagor’s payment of the Debt, the Notes and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Notes, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the “*Loan Documents*”), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the “*Bankruptcy Code*”), (ii) the costs and expenses of enforcing any provision of any Loan Document and (iii) all amounts payable by Mortgagor under any Secured Swap Agreement (all such sums being hereinafter collectively referred to as the “*Debt*”), Mortgagor hereby IRREVOCABLY GRANTS, BARGAINS, PLEDGES, ASSIGNS, WARRANTS, SELLS, TRANSFERS AND CONVEYS IN FEE SIMPLE, WITH POWER OF SALE, and grants a security interest in, to and in favor of Mortgagee on behalf of the Lenders, of all of Mortgagor’s right, title and interest in and to the land described in Exhibit A attached hereto (collectively, the “*Premises*”), and the buildings, structures, fixtures and other improvements now or hereafter located thereon, to the extent of Mortgagor’s interest therein (collectively, the “*Improvements*”).

**TOGETHER WITH:** all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the “*Mortgaged Property*”):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures);

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements and other agreements or arrangements heretofore or hereafter entered into (written or oral) affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter referred to individually as a “*Lease*” and collectively, as the “*Leases*”) and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, in whole or in part, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the “*Rents*”), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all refunds, rebates or credits in connection with any and all reductions in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any application or proceeding for reduction;

(h) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the “*UCC*”), and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the “*Intangibles*”); and

(i) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee and its successors and assigns, forever, subject to the provisions, terms and conditions of this Mortgage.

**PROVIDED, HOWEVER**, these presents are upon the express condition that, if Mortgagor shall well and truly pay in full (in immediately available funds) the Debt to Mortgagee and the Lenders at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void (provided, however, that Mortgagor’s obligation to indemnify and hold harmless



Mortgagee and the Lenders pursuant to the provisions hereof (and all other terms hereof that expressly survive termination) shall survive any such cessation or termination);

**AND** Mortgagor represents and warrants to and covenants and agrees with Mortgagee and the Lenders, as follows:

## **PART I - GENERAL PROVISIONS**

**1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, (ii) agrees that the Proceeds of insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement; and (iii) forever warrants and defends the title to the Mortgaged Property unto Mortgagee against the claims of all Persons whomsoever in accordance with the terms of the Loan Agreement.

**2. Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, on behalf of the Lenders, all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment, and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee or any Lender to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee or any Lender. Nevertheless, subject to the terms of this Section 2, Mortgagee grants to Mortgagor (on behalf of the Lenders) a revocable license to collect the Rents subject to the requirements of the Loan Agreement. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee (on behalf of the Lenders) shall immediately be entitled to possession of all Rents in the applicable deposit account with the Deposit Bank (including all subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagor hereby grants and assigns to Mortgagee (on behalf of the Lenders) the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

(c) From and after any revocation of the license granted pursuant to Section 2(a) hereof, Mortgagee shall, at its option and in addition to its other rights and remedies provided in this Mortgage and the other Loan Documents and/or at law or in equity, have the immediate and

continuing right, power, and authority, either personally or by agent without bringing any foreclosure or other action or proceeding, or by a receiver appointed by a court and without the necessity of taking possession of the Mortgaged Property in its own name, and without the need for any other authorization or action by Mortgagor or Mortgagee, to take any or all of the following actions:

(i) Notify any tenant or other Person that Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee.

(ii) Settle, compromise, release, extend the time of payment for, and make allowances, adjustments, and discounts of, any Rents or other obligations in, to, and under Leases.

(iii) Lease all or any part of the Mortgaged Property and/or modify, amend, renew, or terminate any Leases.

(iv) Perform any and all obligations of Mortgagor under Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

**3. Use of Mortgaged Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or (iii) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

**4. Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that (i) Mortgagee and the Lenders have examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee and the Lenders will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Debt, and (iii) Mortgagee and the Lenders have a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee and the Lenders can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(b) Neither Mortgagee nor any Lender shall be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer in violation of this Section 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) regardless of whether voluntary or not. Any

Transfer made in contravention of this Section 4 shall (at the option of Mortgagee) be null and void and of no force and effect. Mortgagor agrees to bear, and shall pay or reimburse Mortgagee and the Lenders on demand for, all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee and the Lenders in connection with the review, approval and documentation of any Permitted Transfer.

**5. Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee or any Lender is advised by its counsel that the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or such Lender or unenforceable, or would provide the basis for a defense of usury, then Mortgagee shall have the option, by notice of not less than sixty (60) days, upon the written instruction of the Required Lenders, to declare the Debt immediately due and payable.

**6. No Credits on Account of the Debt.** Mortgagor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than ninety (90) days, upon the written instruction of the Required Lenders, to declare the Debt immediately due and payable.

**7. Further Acts, Etc.** Mortgagor shall, at its sole cost, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right held by Mortgagor necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this Section.

**8. Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee



and the Lenders in, the Mortgaged Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, the Lenders and their respective successors and assigns against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage or arising in connection with Mortgagor's failure to pay any such taxes.

**9. Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee (on behalf of, and for the account of, the Lenders) may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, pay and/or perform any obligations of Mortgagor that have given rise to a Default, in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee (on behalf of the Lenders) is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee (or, to the extent Mortgagee has been reimbursed by the Lenders, the Lenders) upon demand.

**10. Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion (subject, as between Mortgagee and the Lenders, to the terms of Article 10 of the Loan Agreement), without impairing or otherwise affecting the other rights and remedies of Mortgagee and the Lenders:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a foreclosure action in accordance with applicable law in effect on the date foreclosure is commenced, or take any other action as may be allowed, at law or in equity, for the enforcement of the Debt and realization on the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to foreclose upon) or any other security afforded by the Loan Documents. In the case of a judicial proceeding, Mortgagee may proceed to final judgment and execution for the amount of the Debt owed as of the date of the judgment, together with all costs of suit, reasonable attorneys' fees, and interest on the judgment at the maximum rate permitted by law from the date of the judgment until paid. If Mortgagee is the purchaser at the foreclosure sale of the Mortgaged Property, in lieu of paying cash, Mortgagee may make



settlement for all or a portion of the purchase price by crediting the net sale proceeds (after deducting costs and expenses, including reasonable attorneys' fees and expenses) against the Debt;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

(vi) to the extent permitted by law, recover judgment on the Notes either before, during or after any proceeding for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor or of any Person liable for the payment of the Debt;

(viii) enforce Mortgagee's and the Lenders' interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and thereupon Mortgagee (on behalf of, and for the account of, the Lenders) may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, the Lenders and their counsel, agents and employees;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and

occupation of any portion of the Mortgaged Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; and/or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

In any action to foreclose this Mortgage, at the election of Mortgagee, the Mortgaged Property or any part thereof may be sold together or separately, in one sale or separate sales, in one parcel and as an entirety, or in such parcels, manner, or order as Mortgagee in its sole discretion may elect, and one or more exercises of the rights and powers herein granted shall not extinguish or exhaust Mortgagee's rights and powers hereunder unless the entire Mortgaged Property is sold or the Debt is paid in full.

(b) The proceeds of any sale made under or by virtue of this Section 10, together with any other sums which then may be held by Mortgagee (for its own account and for the account of the Lenders) under this Mortgage, whether under the provisions of this Section 10 or otherwise, shall be applied by Mortgagee (on behalf of the Lenders) to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper (subject, as between Mortgagee and the Lenders, to the terms of Article 10 of the Loan Agreement).

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold, without any representation or warranty on the part of Mortgagee or any Lender. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor coupled with an interest, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more Persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Section 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all Persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Section 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee (on behalf of the Lenders) is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee or the Lenders hereunder, but such liens, rights, powers and remedies of Mortgagee and the Lenders shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee or the Lenders.

(h) Mortgagee, and subject to the applicable terms of the Loan Agreement, the Lenders may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined in Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee or the Lenders to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee or any Lender of any payment after the occurrence of any Event of Default and no payment by Mortgagee or any Lender of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee or any Lender to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee and the Lenders in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee or the Lenders shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee and the Lenders in exercising its rights and remedies under this Section 10 (including attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee or the applicable Lender, with interest at the Default Rate for the period after notice from Mortgagee or the applicable Lender, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee and the Lenders under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee and the



Lenders may grant with respect to the Mortgaged Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

**11. Right of Entry.** Subject to the terms of any occupancy agreement affecting the Premises, in addition to any other rights or remedies granted under this Mortgage, Mortgagee, the Lenders and their respective agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the term of this Mortgage, following reasonable advance written notice to Mortgagor (which notice shall not be required while an Event of Default is continuing). The cost of such inspections or audits shall be borne by Mortgagor, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee or such Lender. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Notes and this Mortgage and shall bear interest thereafter at the Default Rate until paid.

**12. Fixture Filing.** To the extent permitted under applicable law, the filing or recording of this Mortgage is intended to and will constitute a fixture filing with respect to that portion of the Mortgaged Property which is or is to become fixtures. The "Secured Party" is Mortgagee and the "Debtor" is Mortgagor. The name, type of organization, jurisdiction of organization, and mailing addresses of the Secured Party and of the Debtor are set out in the preamble to this Mortgage. The land to which the fixtures are related is the Premises, and Mortgagor is the record owner of the Premises.

**13. Actions and Proceedings.** Mortgagee (on behalf of the Lenders) has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee (on behalf of the Lenders), in its sole discretion, decides should be brought to protect its or their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

**14. Marshaling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all Persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any Lender and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee and the Lenders of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee and the

Lenders under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee and the Lenders hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's and the Lenders' rights and remedies thereunder.

**15. Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

**16. Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

**17. Headings.** The Section headings in this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**18. Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

**19. Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "***Mortgagor***" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "***Mortgagee***" shall mean "Mortgagee and any successor administrative agent for the Lenders," the words "***Mortgaged Property***" shall include any portion of the Mortgaged Property and any interest therein, the word "***including***" means "including but not limited to" and the words "***attorneys' fees***" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee or any Lender in protecting its interest in the Mortgaged Property and enforcing its rights hereunder.

**20. Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part thereof.

**21. Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage to any successor administrative agent for the Lenders or to any assignee of the interests of all Lenders in and to the Debt, without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

**22. Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR (AND BY ITS ACCEPTANCE OF THIS MORTGAGE, MORTGAGEE) HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY

BY MORTGAGOR (AND BY ITS ACCEPTANCE OF THIS MORTGAGE, MORTGAGEE), AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF MORTGAGEE AND MORTGAGOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR AND/OR MORTGAGEE, AS APPLICABLE.

**23. Consents.** Any consent or approval by Mortgagee or any Lender in any single instance shall not be deemed or construed to be Mortgagee's or such Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee or any Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee or any Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee or any Lender pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee or any Lender a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of Persons (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such Persons.

**24. Reserved.**

**25. Other Mortgages; No Election of Remedies.**

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "***Other Mortgages***"), which cover or will hereafter cover other properties that are or may be located in various states (the "***Other Collateral***"). The Other Mortgages will also secure the Debt and the performance of the other covenants and agreements of Mortgagor set forth in the Loan Documents. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or any or all of the Other Mortgages against either the Mortgaged Property and/or any or all of the Other Collateral in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Mortgaged Property and/or the Other Collateral marshaled upon any foreclosure of this Mortgage or any Other Mortgage. The exercise of any one remedy shall not preclude the exercise, consecutively, concurrently or otherwise, of any other remedy.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Mortgagee and the Lenders in this Mortgage or the other Loan Documents, in the case of an Event of Default (i) Mortgagee, and subject to the terms of the Loan Agreement, the Lenders, shall have the right to pursue all of its rights and remedies under this Mortgage and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Mortgagee, in its sole and absolute



discretion, shall determine from time to time, (ii) neither Mortgagee nor the Lenders shall be required to either marshal assets, sell the Mortgaged Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any “one action” or “election of remedies” law or rule with respect to the Mortgaged Property and/or any Other Collateral, (iii) the exercise by Mortgagee and/or the Lenders of any remedies against any one item of Mortgaged Property and/or any Other Collateral will not impede Mortgagee or the Lenders from subsequently or simultaneously exercising remedies against any other item of Mortgaged Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Mortgagee and the Lenders herein shall remain in full force and effect until Mortgagee and the Lenders have exhausted all of their remedies against the Mortgaged Property and all Mortgaged Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Mortgagee and the Lenders may resort for the payment of the Debt to any security held by Mortgagee and the Lenders in such order and manner as Mortgagee, in its discretion, may elect and Mortgagee and the Lenders may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee or the Lenders thereafter to foreclose this Mortgage.

(c) Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may, at any time (in its sole and absolute discretion, but Mortgagee shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Notes, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Mortgagee to Mortgagor of any such written instrument of release, this Mortgage shall no longer secure such obligations of Mortgagor so released.

**26. Governing Law.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the Liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State in which the Mortgaged Property is located (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth above in this Section and to the fullest extent permitted by the law of such State, the law of the State of New York (without regard to conflict of law provisions thereof) shall govern all matters relating to this Mortgage and the other Loan Documents and all of the indebtedness or obligations arising hereunder or thereunder, in accordance with Section 11.5 of the Loan Agreement. All provisions of the Loan Agreement incorporated herein by reference shall be governed by, and construed in accordance with, the laws of the State of New York, as set forth in the governing law provision of the Loan Agreement.

**27. Variable Interest Rate.** The Loan secured by this Mortgage is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

**28. Right of Set Off.** In addition to any rights, remedies, or powers now or hereafter granted under applicable law and not by way of limitation of any such rights, Mortgagee is hereby authorized by Mortgagor at any time or from time to time, without notice to Mortgagor, any other obligor of the Debt or any other Person, any such notice being hereby expressly waived, to set-off any obligations or liabilities any time held or owing by Mortgagee to or for the credit or the account of Mortgagor or any other obligor of the Debt against the Debt and any other

obligations and liabilities of Mortgagor or any such obligor to Mortgagee, including, but not limited to, all claims of any nature or description arising out of or connected with this Mortgage, the Loan Agreement, or any other Loan Document, irrespective of whether or not Mortgagee has made any demand hereunder or has declared the Debt to be due and owing and although said obligations and liabilities, or any of them, may be contingent or not matured.

**29. No Merger.** In the event that Mortgagee's interest under this Mortgage and title to the Mortgaged Property or any estate therein shall become vested in the same Person, this Mortgage shall not merge in such title but shall continue as a valid lien on the Mortgaged Property for the amount secured hereby, unless expressly provided otherwise in writing executed by the Person in whom such interests, title, and estate are vested.

## PART II

### STATE-SPECIFIC PROVISIONS

**30. Conflicts with Part I.** In the event of any conflict between the provisions of this Part II and any provision of Part I, then the provisions of this Part II shall control.

**31. State Specific Provisions.**

(a) Fixture Filing. Article 12 is amended by adding the following:

“The fixture filing covers all goods that are or are to become affixed to the Mortgaged Property. The goods are described by item or type in the definition of Mortgaged Property. This Mortgage is signed by the debtor (Mortgagor) as a fixture filing. The mailing address of Mortgagee set out in the first paragraph is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of Mortgagor set out in the first paragraph is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section and in the definition of Mortgaged Property. The real estate to which the goods are or are to be affixed is described in Exhibit A.”

(b) Addresses and other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the UCC as enacted in the State of Alabama, for instruments to be filed as financing statements:

<b>(i) Name of Grantor (Debtor):</b>	GREEN MXB, LLC
<b>Address of Grantor:</b>	305 A Equipment Court Lawrenceville, GA 30046
<b>(ii) Name of Mortgagee (Secured Party):</b>	CAPITAL ONE, NATIONAL ASSOCIATION, as administrative agent

**Address of Mortgagee:**

1680 Capital One Drive, 13th  
Floor  
McLean, Virginia 22102

**(iii) Record Owner of Real Estate  
described on Exhibit A hereto:**

GREEN MXB, LLC

(c) Acceleration of Debt. If an Event of Default exists, Mortgagee shall have the right without further notice to Mortgagor (except any such notice as may be specifically required under the other Loan Documents) to declare all of the Debt immediately due and payable.

(d) Power of Sale. If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Premises to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in the county or counties in which the Premises to be sold is located. If there is Premises to be sold in more than one county, publication shall be made in all counties where the Premises to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Mortgagee may bid at any sale held under this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale, all or any part of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Debt shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(e) Foreclosure Deeds. To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.



(f) Multiple Sales. If an Event of Default exists, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt, and such sale, if so made, shall not affect the unmatured part of the Debt, but as to such unmatured part of the Debt this Mortgage shall remain in full force and effect as though no sale had been made under this Section. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Debt, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Debt without exhausting the power of foreclosure and the power to sell the Mortgaged Property for any other part of the Debt, whether matured at the time or subsequently maturing.

(g) Waiver of Certain Laws. Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Mortgaged Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Debt (commonly known as stay laws and redemption laws). Mortgagor also waives any and all rights Mortgagor may have to a hearing before any Governmental Authority prior to the exercise by Mortgagee of any of its rights or remedies under the Loan Documents and applicable law.

(h) Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, 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 secured hereby.

(i) Prerequisites of Sales. In case of any sale of the Mortgaged Property as authorized by this Section, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

(j) Defeasance. If Mortgagor shall well and truly pay and discharge all the Debt (including, without limitation, all extensions, renewals and increases of original indebtedness and all future advances) as the same shall become due and payable and shall in all things do and perform all acts and covenants by Mortgagor herein agreed to be done or performed in strict accordance with the tenor and effect thereof, and there is no outstanding commitment or agreement by the Lenders to make advances, incur obligations or otherwise give value under any agreement, including, without limitation, agreements providing for future advances, open-end, revolving or other lines of credit, or letters of credit, then and in that event only this conveyance and the security interest herein granted shall become null and void.

(k) Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

(l) Date of Mortgage. The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor on the date of the acknowledgement of Mortgagor's signature below, to be effective as of the date first above written.

**GREEN MXB, LLC**, a Delaware limited liability company

By: [Signature] (SEAL)  
Name: Marvin K. Hewatt  
Title: Manager

ACKNOWLEDGEMENT

STATE OF Georgia  
COUNTY OF Barrow

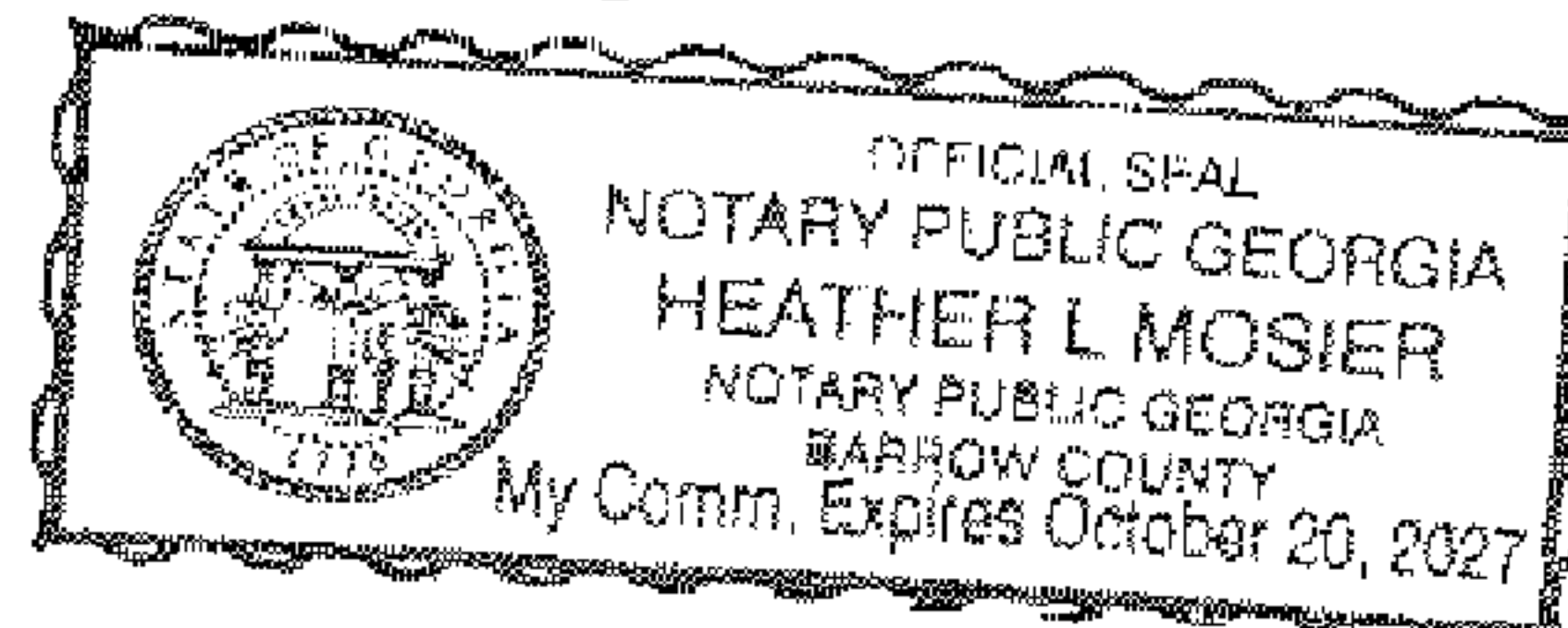
I, the undersigned, a notary public in and for said County in said State, hereby certify that **Marvin K. Hewatt**, whose name as Manager of **GREEN MXB, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such authorized signatory and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 25 day of October, 2023.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_



[SIGNATURE PAGE TO ALABAMA MORTGAGE-SHELBY COUNTY]



5361 Hwy 31 N, PO BOX 135  
Calera, AL 35040  
Store 5175  
Map/Parcel 28-5-21-4-401-035.000

**EXHIBIT A**

Legal Description

Parcel I:

All that tract or parcel of land lying and being in Lots 438 and 439 according to M. B. Dore's Map and survey of the Town of Calera, Shelby County, Alabama, and more particularly described as follows:

Beginning at the Northeasterly intersection of the Easterly right of Way of Montgomery Avenue (U.S. Highway 31) and the Northerly right of way line of Patton Avenue; thence running in a Northerly direction along the Easterly right of way line of Montgomery Avenue (U. S. Highway 31) a distance of 90 feet, more or less, to an iron pin on the lot line of Lots 438 and 437, said point being the point of beginning; thence continuing in a Northerly direction along the Easterly right of way of Montgomery Avenue (U. S. Highway 31) a distance of 120.0 feet to an iron pin, said iron pin being the Northwestern corner of Lot 439; thence running in an Easterly direction along the Northerly property line of Lot 439 and the Southerly right of way line of an alley a distance of 150.0 feet to an iron pin; thence running in a Southerly direction along the Easterly property line of Lots 439 and 438 a distance of 120.0 feet to an iron pin; thence running in a Westerly direction along the Southerly property line Lot 438 and the Northerly property line of Lot 437 a distance of 150.0 feet to an iron pin in the Easterly right of way line of Montgomery Avenue (U. S. Highway 31) and the point of beginning.

Parcel II:

All that tract or parcel of land lying and being in the Southwest one-quarter of the Northwest one-quarter of Section 25, Township 21 South, Range 1 West, situated in the City of Columbiana, Shelby County, Alabama, and more particularly described as follows:

Beginning at the intersection of the Southerly right of way line of East College Street (State Highway 25) and the Easterly right of way line of East Milner Street; thence running in an Easterly direction along the Southerly right of way line of East College Street (State Highway 25) a distance of 128.0 feet to the point of beginning; thence turn an angle of 93 degrees 00 minutes right running in a Southerly direction a distance of 196.40 feet to an iron pin; thence turn an angle of 93 degrees 00 minutes left running in an Easterly direction a distance of 100.0 feet to an iron pin; thence turn at an angle of 87 degrees 00 minutes left running in a Northerly direction a distance of 196.40 feet to an iron pin located in the Southerly right of Way line of East College Street (State Highway 25); thence turn an angle of 93 degrees 00 minutes left running in a Westerly direction along the Southerly right of way of East College Street (State Highway 25) a distance of 100.0 feet to an iron pin and the point of beginning.

Parcels I and II being known and described as follows, to wit:

Being a 0.413 acre tract or parcel of land out of Lots 438 and 439 according to M. B. Dore's Map and survey of the Town of Calera, Shelby County, Alabama, also being that same tract or parcel of land conveyed to Mapco Express, Inc. by deed recorded in Book 340 Page 635, Shelby County, Alabama, said 0.413 acre tract being more particularly described as follows;

COMMENCING at the intersection of the East right-of-way of Montgomery Avenue (U.S. Highway 31) and the North right-of-way line of 18th Avenue;

THENCE North 02 Deg. 49 Min. 26 Sec. East, along and with the East right-of-way line of Montgomery Avenue (U. S. Highway 31), for a distance of 90 feet, to a ½" Iron Rebar with cap stamped "CARP 00010LS" found for the intersection of the lot line of Lots 438 and 437, the Southwest corner of said Book 340 Page 635, the Northwest corner of that certain tract conveyed to Curtis Lee Cofer, Jr., recorded in Book 373, Page 405, Shelby County, Alabama, and being the POINT OF BEGINNING, also being the Southwest corner of the herein described tract;

THENCE North 02 Deg. 49 Min. 26 Sec. East, continuing along and with the East right-of-way line of Montgomery Avenue (U. S. Highway 31), for a distance of 120.00 feet, to a mag nail set for the intersection of the Northwest corner of said Book 340 Page 635, and the Southwest corner of that certain tract conveyed to Leif Milliron, recorded in Document Number 2020217000578720, Shelby County, Alabama, also being the Northwest corner of the herein described tract;

THENCE South 87 Deg. 31 Min. 56 Sec. East, along and with the South line of said Document Number 2020217000578720, for a distance of 150.00 feet, to a mag nail set for the intersection of the Northeast corner of said Book 340 Page 635, the Southeast corner of said Document Number 2020217000578720, also being in the West right-of-way line of a 16 foot Alley, also being the Northeast corner of the herein described tract;

THENCE South 02 Deg. 49 Min. 26 Sec. West, along and with the West right-of-way line of said 16 foot Alley, for a distance of 120.00 feet, to a mag nail set for the intersection of the Southeast corner of said Book 340 Page 635, the Northeast corner of said Book 373 Page 405, also being the Southeast corner of the herein described tract;

THENCE North 87 Deg. 31 Min. 56 Sec. West, along and with the North line of said Book 373 Page 405, for a distance of 150.00 feet, to the POINT OF BEGINNING, and containing 0.413 Acres of land.

## BEFORE THE ALABAMA DEPARTMENT OF REVENUE

In re:	)	A Proceeding Authorized
	)	by Section 40-22-2(8),
CAPITAL ONE,	)	<i>Code of Alabama</i> (1975)
NATIONAL ASSOCIATION,	)	
<i>acting in its capacity</i>	)	
<i>as administrative agent,</i>	)	
	)	
Petitioner.	)	

**MORTGAGE TAX ORDER**

CAPITAL ONE, NATIONAL ASSOCIATION, acting in its capacity as administrative agent (“***Petitioner***”), in its Petition dated October 24, 2023 (the “***Petition***”), has asked the Alabama Department of Revenue to fix and determine the amount of mortgage recording privilege tax due pursuant to Section 40-22-2(8), *Code of Alabama* (1975), as amended (the “***Code***”), for the privilege of recording the following (collectively, the “***Mortgages***”):

(1) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from Green MXB, LLC, a Delaware limited liability company (the “***Mortgagor***”), to Petitioner, to be recorded in the Office of the Judge of Probate of Montgomery County, Alabama (the “***Montgomery County Mortgage***”);

(2) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Calhoun County, Alabama (the “***Calhoun County Mortgage***”);

(3) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of St. Clair County, Alabama (the “***St. Clair County Mortgage***”);

(4) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Limestone County, Alabama (the “***Limestone County Mortgage***”);

(5) That certain Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Talladega County, Alabama (the “***Talladega County Leasehold Mortgage***”);

(6) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of DeKalb County, Alabama (the “***DeKalb County Mortgage***”);

(7) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Lauderdale County, Alabama (the “***Lauderdale County Mortgage***”);

(8) That certain Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Tallapoosa County, Alabama (the “*Tallapoosa County Leasehold Mortgage*”);

(9) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Tallapoosa County, Alabama (the “*Tallapoosa County Mortgage*”); and

(10) That certain Mortgage, Assignment of Leases and Rents and Security Agreement from the Mortgagor to Petitioner, to be recorded in the Office of the Judge of Probate of Shelby County, Alabama (the “*Shelby County Mortgage*”).

The Mortgages secure indebtedness and other obligations of the Mortgagor and/or affiliates thereof to the said Petitioner, as administrative agent for itself and such other financial institutions from time to time party to the Loan Agreement described in the Mortgages (collectively, the “*Obligations*”). In addition to the real property and fixtures and related collateral described in the Mortgages located within the State of Alabama, the Obligations are secured by mortgages, deeds of trust and/or other security instruments (collectively, the “*Other Security Documents*”) on additional real property, fixtures and related collateral located outside the State of Alabama.

Upon consideration of said Petition and evidence offered in support thereof, the Alabama Department of Revenue finds and determines as follows:

1. That the total maximum amount of the principal indebtedness of the Obligations secured by the Mortgages and the Other Security Documents is \$55,800,000.00 in the aggregate, consisting of loan facilities from Petitioner and certain other lenders to the Mortgagor and certain of its affiliates (the “*Indebtedness*”).

2. That Petitioner desires to pay recording tax on the Indebtedness allocable to the secured assets which are located in the State of Alabama.

3. That the total value of all of the real property, fixtures and related collateral conveyed to secure the Indebtedness and covered by the Mortgages and the Other Security Documents (both within and without the State of Alabama) is \$78,550,000.00.

4. That the total value of all of the real property, fixtures and related collateral located within the State of Alabama, and covered by the Mortgages is \$28,520,000.00.

5. That the relative property values of the properties lying within the State of Alabama are as follows:

COUNTY	VALUE	PERCENTAGE
Montgomery	\$10,150,000.00	35.59%
Calhoun	\$4,400,000.00	15.43%



St. Clair	\$2,000,000.00	7.01%
Limestone	\$2,050,000.00	7.19%
Talladega	\$1,970,000.00	6.91%
DeKalb	\$1,900,000.00	6.66%
Lauderdale	\$1,950,000.00	6.84%
Tallapoosa	\$2,500,000.00	8.77%
Shelby	\$1,600,000.00	5.60%
<b>TOTAL</b>	<b>\$28,520,000.00</b>	<b>100%</b>

6. That the amount of the Indebtedness to be secured by the Mortgages which is allocable to the State of Alabama pursuant to Section 40-22-2(8) and upon which mortgage privilege recording tax is due is \$20,260,980.00 (rounded up to \$20,261,000.00).

7. That Alabama mortgage filing privilege tax in the amount of \$30,391.50 is due to be paid upon recordation of the Mortgage in the Office of the Judge of Probate of the first county that the Mortgages are to be recorded in.

**IT IS ORDERED, THEREFORE,** as follows:

1. That the Judge of Probate of the first county shall collect mortgage recording privilege tax in the amount of \$30,391.50, and shall forward to the remaining counties, the recording tax percentage amounts due as set out in paragraph five. Also, any filing fees which may be due upon recordation shall be paid.


2. That no bond shall be required to be posted and no annual report shall be required to be filed pursuant to § 40-22-2(2), *Code of Alabama* (1975), as amended, and no additional mortgage recording privilege tax shall be payable unless and until the aggregate principal indebtedness of the Indebtedness secured by the Mortgages shall exceed \$55,800,000.00.

**DONE** this 26<sup>th</sup> day of October, 2023.

**STATE OF ALABAMA DEPARTMENT  
OF REVENUE**

By: Cameron Clark  
Secretary

By: Derrick Coleman  
Deputy Commissioner of Revenue

  
Legal Division

State of AL, Montgomery Co.  
I Certify this Instrument was Filed As  
REAL Book:06096 Page:972  
Inst Num: 32014679145  
On 03-06-2024 10:48:47 AM  
JC Love, III  
Judge of Probate  
Total Fees:\$68.50  
Total Tax:\$30,391.50  
Total:\$30,460.00

This Instrument was prepared by and upon  
recording return to:

Matthew S. Bergman, Esq.  
Potomac Law Group, PLLC  
1717 Pennsylvania Avenue, NW, Suite 1025  
Washington, DC 20006

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT**

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**made by and between**

**GREEN MXB, LLC**, a Delaware limited liability company

(Mortgagor)

in favor of

**CAPITAL ONE, NATIONAL ASSOCIATION, ACTING IN ITS CAPACITY AS  
ADMINISTRATIVE AGENT**

(Mortgagee)

Dated: As of November 1, 2023

Property Locations:


7670 Vaughn Road, Montgomery, AL 36116  
5550 Atlanta Highway, Montgomery, AL 36117

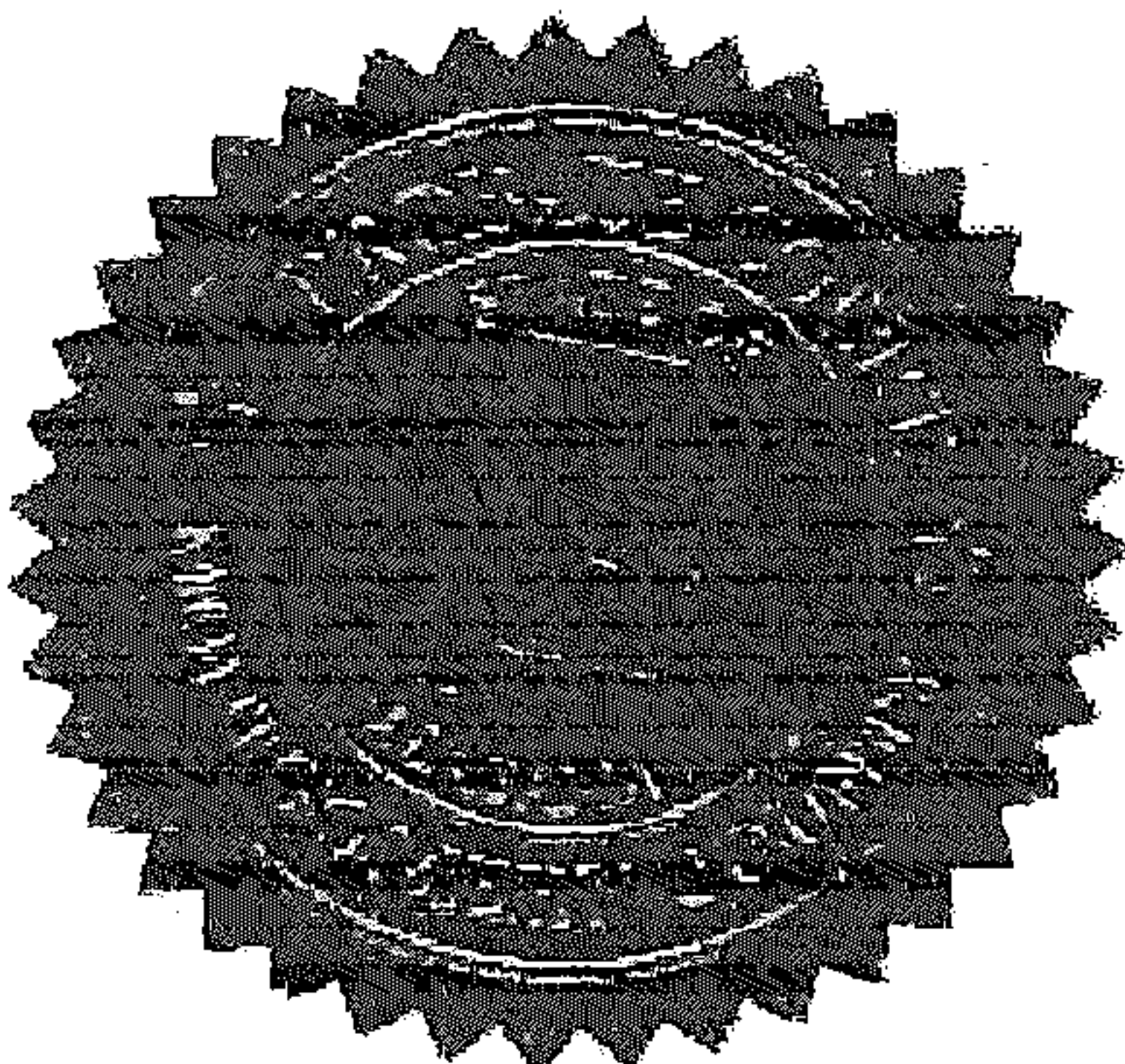
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J C LOVE, III  
JUDGE OF PROBATE  
101 SOUTH LAWRENCE STREET  
MONTGOMERY, ALABAMA 36104  
334-832-1249

I, J C Love, III, Judge of Probate of Montgomery County, does hereby certify that this office collected a total tax of \$30,391.50 for a mortgage **GREEN MXB, LLC to CAPITAL ONE, NATIONAL ASSOCIATION, ACTING IN ITS CAPACITY AS ADMINISTRATIVE AGENT** recorded in REAL Book 06096 Page 0972-996.

  
J C LOVE, III  
Judge of Probate



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
06/11/2024 01:08:34 PM  
\$101.00 JOANN  
20240611000173740

*Allen S. Bayl*