

This Instrument Prepared By:

Gill Ragon Owen, P.A.
c/o Heartsill Ragon III
425 West Capitol Ave., Suite 3800
Little Rock, Arkansas 72201

Recording Requested By:

Simmons Bank
Attn: David Stogsdill
P.O. Box 7009,
Pine Bluff, Arkansas 71611

Loan Number: 70018718

This Assignment is given as additional security for the Note, which is also secured by a Mortgage, Security Agreement and Assignment of Rents on which the recording tax has already been paid. The amount secured by said Mortgage and Security Agreement shall not exceed \$7,675,000.00, fees, costs, charges, and other liabilities of every possible nature, whether now existing or accruing hereafter incurred by Lender (as defined below) at any one time.

ABSOLUTE ASSIGNMENT OF RENTS

THIS ABSOLUTE ASSIGNMENT OF RENTS (the "**Assignment**") is entered into as of August 1, 2024, by and between TEMPUS CALERA, LLC, an Arkansas limited liability company ("**Assignor**"), to and in favor of SIMMONS BANK, an Arkansas chartered bank ("**Assignee**"), which has an address of P.O. Box 7009, Pine Bluff, Arkansas 71611.

WHEREAS, Assignor has executed and delivered to Assignee that certain Secured Promissory Note (hereinafter, together with all amendments thereto, and modifications, renewals and extensions thereof, called the "**Note**") of even date herewith, and being in the principal amount of \$7,675,000.00; and

WHEREAS, as security for the Note, Assignor has executed and delivered to Assignee a Mortgage and Security Agreement, an Indemnification Agreement and a Secured Loan Agreement, each of even date herewith (and all other documents referenced therein or otherwise pertaining to this transaction together with each amendment thereto and modification thereof, collectively, the "**Credit Agreement**") which encumbers that real property as is more fully described on **EXHIBIT A** attached hereto (collectively, the "**Mortgaged Property**") and which otherwise sets forth the manner in which principal under the Note shall be disbursed; and

WHEREAS, as further security for the Note, Assignee is requiring that Assignor assign all of Assignor's right, title and interest in, to and under all leases, contracts, agreements, permits and rents associated with Assignor's operation and ownership of the Mortgaged Property; and

WHEREAS, all capitalized terms not specifically defined herein shall have the meanings given to them in the Secured Loan Agreement executed by Assignor as of an even date herewith (hereinafter, together with all amendments thereto, and modifications, renewals and extensions thereof, called the "**Secured Loan Agreement**");

NOW, THEREFORE, in order to secure the payment of the principal of, and interest on, the Note and to secure the performance and observance by Assignor of every covenant and condition contained herein, in the Note and in the Credit Agreement and in consideration of the agreement of Assignee to loan to Assignor the principal sum evidenced by the Note, and to secure the Debt (as defined below), Assignor, intending to be legally bound hereby, covenants and agrees as follows:

1. Assignment of Leases, Rents, Contracts, Permits and Agreements. Assignor does hereby sell, assign, transfer, convey and set over unto Assignee, its successors and assigns, absolutely, completely and unconditionally, all of the right, title and interest of Assignor in, to and under all contracts and agreements relating to the Mortgaged Property and all proceeds and cash flows relating thereto including without limitation the following described contracts and agreements (collectively, the "**Contracts**"):

- (a) Any and all leases or agreements for the use or occupancy of the whole or any part of the Mortgaged Property, whether such leases and agreements are now or at any time hereafter existing (collectively, the "**Leases**"), together with all amendments and supplements to and renewals and extensions of the Leases at any time made;
- (b) All rents, earnings, issues, income and profits arising from the Mortgaged Property and/or from said Leases and all other sums due or to become due under and pursuant thereto, including but not limited to security deposits, pet deposits, prepaid rent or other monies paid to or deposited with Assignor pursuant to the Leases;
- (c) Any and all proceeds payable under any policy of insurance covering loss of rents for any cause;
- (d) Any and all rights, powers, privileges, options and other benefits of Assignor under and any proceeds payable pursuant to any management contract pertaining to the operation, administration and management of the Mortgaged Property;
- (e) All service contracts, maintenance contracts and other contracts or agreements of every nature that affect or pertain to the administration, operation or management of the Mortgaged Property;

- (f) All construction contracts, construction inspection and management contracts and architectural contracts pertaining to the construction of any and all improvements to the Mortgaged Property;
- (g) To the extent assignable, all governmental permits or licenses of every nature which pertain to the operation, management and administration of the Mortgaged Property including, without limitation, all certificates of need or similar governmental authority associated with the operation of assisted living or related facilities;
- (h) Any and all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases, or as a party to the Contracts, including, but not by way of limitation:
 - (1) The immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, moneys, deposits and security payable or receivable under the Leases or the Contracts or pursuant to any of the provisions thereof whether as rent or otherwise;
 - (2) The right to pursue and collect any claim in bankruptcy proceedings of any tenant;
 - (3) The right to accept or reject any offer made by a tenant pursuant to its Lease to purchase the Mortgaged Property or any part thereof and any other property subject to the Leases, as therein provided and to perform all other necessary or appropriate acts with respect to such purchases as agent and attorney-in-fact for Assignor;
 - (4) The right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default under any Lease or Contract, as Assignor might have taken, including the right to commence, conduct and consummate proceedings at law or in equity as shall be permitted under any provision of any lease or by law;
 - (5) To do any and all other things whatsoever which the Assignor is or may become entitled to do under or by virtue of the Leases, the Contracts or any of them; and
- (i) All sale and purchase contracts, property management contracts, and other agreements of every nature which pertain to the operation of that business that is located on the Mortgaged Property.

2. Assignment Given for Security. This Assignment is made and given as security for payment in full of all of the Debt, and shall remain in full force and effect until (a) the payment in full of all principal, and interest on the Note and the performance in full of all other Obligations (as defined in the Secured Loan Agreement) and (b) the express written release of this Assignment of record by an instrument executed by Assignee. The terms and conditions of this Assignment are cumulative to, and not in substitution of, the terms and conditions of the Secured Loan Agreement and the terms and conditions hereof shall prevail in the event of any inconsistency. The term “**Debt**” as used herein means:

- (a) the payment of the Note and all other Obligations;
- (b) the repayment to the Assignee of all reimbursable expense at any time accruing to such Assignee under the provisions hereof; and
- (c) the payment of all future and additional indebtedness, direct or indirect, created after the date of this Assignment, which may be owing by Assignor to Assignee at any time prior to the payment in full with interest of the Debt or the enforcement of this Assignment therefor (the event occurring first to be controlling); such additional indebtedness to be secured hereby regardless of whether it shall be predicated upon future loans or advances hereafter made by the Assignee, or obligations hereafter acquired by such Assignee, through assignment or subrogation or otherwise, or shall represent indirect obligations (created after the date of this Assignment), based upon any endorsements, guaranties or suretyship; and it is agreed that this Assignment shall stand as security for all such future and additional indebtedness, whether it be incurred for any business purpose that was related or wholly unrelated to the purpose of the original loan, or whether it was incurred for some personal or non-business purpose, or for any other purpose related or unrelated, or similar or dissimilar, to the purpose of the original loan; provided, however, the maximum amount of all indebtedness outstanding at any one time secured hereby by this Assignment shall not exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Assignee, including court costs, and reasonable attorneys’ fees.

3. No Assumption of Liability. Nothing herein shall be interpreted as constituting or comprising an assumption by Assignee of any of the Assignor's liabilities or obligations of any nature as may be set forth under the Contracts. Such obligations can and will only be assumed by Assignee upon Assignee's written confirmation of such.

4. Warranties and Representations. Assignor warrants and represents to Assignee and Assignee's successors and assigns that:

- (a) Assignor has good right and authority to make and enter into this Assignment;

- (b) Assignor has not heretofore alienated, assigned, pledged or otherwise disposed of or encumbered the Contracts or any portions thereof, or any of the sums due or to become due thereunder or otherwise assigned hereunder;
- (c) Assignor has not performed any acts or executed any other instruments which might prevent Assignee from deriving the full benefits of any of the terms and conditions of this Assignment or which would limit Assignee in enjoying such benefits;
- (d) Assignor has not accepted, anticipated or collected any income or benefits due or to become due under the Contracts for any period subsequent to the date of this agreement;
- (e) Assignor has not executed or granted any amendment or modification of any of the Contracts, either orally or in writing, which would modify the provisions of the Contracts in that form as has been previously submitted to Assignee;
- (f) There is no default under any Contract now existing, and no event has occurred and is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any Contract.

5. Protective Covenants. Assignor hereby covenants and agrees:

- (a) Promptly to observe, perform and discharge the obligations and conditions of this Assignment and all other obligations and agreements as contained in the Note and in all other documents executed in connection therewith or otherwise pertaining thereto;
- (b) To enforce the performance of each and every obligation, term, covenant, condition and agreement to be performed by the obligors under all Contracts;
- (c) To appear in and defend any action or proceeding arising under or in any manner connected with the Contracts, or the obligations, duties or liabilities of Assignor under the Contracts and upon request by Assignee, to do so in the name of and on behalf of the Assignee, but at the expense of the Assignor;
- (d) Not to cancel or accept the surrender of any Contract except in the ordinary course of business;
- (e) Not to reduce any payment obligations due under any Contract except in the ordinary course of business or accept payments under any Contract more than one month in advance of their due dates, provided however, this covenant shall not apply to payments received in connection with lease terminations or modifications;

- (f) Not to change, amend, alter or modify any Contract or any term or provision thereof, or grant any concession in connection therewith except in the ordinary course of business;
- (g) Not to consent to the release of any obligations owed by any party or guarantor of the Contracts except in the ordinary course of business;
- (h) Not to assign, pledge, encumber or otherwise transfer any Contract or Assignor's rights thereunder except to Assignee;
- (i) To execute any other documents as may be reasonably required by Assignee in furtherance of the goals and intentions of this Assignment.

6. Further Assurance. Assignor also covenants and agrees that Assignor will, upon the request of Assignee, execute and deliver to Assignee such further reasonable instruments and do and perform such other reasonable acts and things as Assignee may deem reasonably necessary or appropriate to make this Assignment and the various covenants of Assignor herein contained effective and to more effectively vest in and secure to Assignee the sums due or hereafter to become due under the Leases or the Contracts. This covenant and agreement shall include, without limitation, the execution of such additional assignments as shall be deemed reasonably necessary by Assignee to effectively vest in and secure to Assignee all rents, income and profits from any and all Leases or the Contracts. Assignor further agrees that it will, from time to time, upon demand therefor, deliver to Assignee an executed counterpart of each and every Lease or Contract then pertaining to all or any portion of the Mortgaged Property.

7. Events of Default. The occurrence of an Event of Default, as defined in the Credit Agreement, shall constitute an Event of Default hereunder.

8. Power of Attorney. Assignor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and any successor to the interest of said tenants, from and after an Event of Default, upon demand and notice from Assignee of Assignee's right to receive the rents and other amounts under such Leases, to pay to Assignee the rents and other amounts due or to become due under the Leases, and said tenants shall have the right to rely upon such demand and notice from Assignee and shall pay such rents and other amounts to Assignee without any obligation or right to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such rents and other amounts, notwithstanding any notice from or claim of Assignor to the contrary. Assignor shall have no right to claim against any tenant for any such rents and other amounts so paid by a tenant to Assignee.

Notwithstanding the foregoing provisions which shall be construed as making and establishing a present and absolute transfer and assignment of the Leases and the rents, earnings, issues, income and profits arising therefrom, so long as no Event of Default shall exist under the Note, this Assignment, or the Secured Loan Agreement and so long as no event shall

exist which by lapse of time or service or notice, or both, has or would become an Event of Default thereunder or hereunder, Assignor shall have the right and license to occupy the Mortgaged Property as landlord or otherwise and to collect, use, and enjoy the rents, issues and profits and other sums payable under and by virtue of any Lease assigned hereby, but, as to such rents, issues and profits and other sums, only as the same become due under the provisions of such Lease, to enforce the covenants of the Leases and otherwise conduct its everyday business activities as Landlord of the Mortgaged Property.

Upon the occurrence of an Event of Default hereunder or under the Credit Agreement or under the Note, Assignee, at its option, shall have the complete right, power and authority to do any or all of the following, subject to applicable law:

- (a) To terminate the right and license granted to Assignor in the paragraph immediately preceding and thereafter, without notice to Assignor and without taking possession of the Mortgaged Property, to demand, collect and receive and sue for the rents, proceeds and other sums payable under the Leases and the Contracts and, after deducting all necessary and proper costs and expenses (including attorneys' fees) of collection as determined by Assignee, to apply the net proceeds thereof upon any indebtedness secured hereby;
- (b) To declare all sums secured hereby immediately due and payable, and, at its option, to exercise all of the rights and remedies contained herein, in the Note and in the Credit Agreement;
- (c) Without regard to the adequacy of the security, with or without process of law, personally or by agent or attorney, or under the Credit Agreement, or by a receiver to be appointed by court, then and thereafter to enter upon, take and maintain possession of and operate the Mortgaged Property, or any part thereof, together with all documents, books, records, papers, and accounts relating thereto and hold, operate, manage and control the Mortgaged Property, or any part thereof, as fully and to the same extent as Assignor could do if in possession and in such event, without limitation and at the expense of Assignor, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Mortgaged Property, or any part thereof, as Assignee deems judicious, and pay taxes, assessments and proper charges on the Mortgaged Property, or any part thereof, and insure and reinsure the same, and lease the Mortgaged Property, or any part thereof, for such times and on such terms as Assignee deems desirable, including leases for terms expiring beyond the maturity of the indebtedness evidenced by the Credit Agreement, and cancel any lease or sublease for any cause or on any ground which would entitle Assignor to cancel the same.

- (d) To terminate any management contract or any other contract or agreement between Assignor and the manager of all or any portion of the Mortgaged Property.

Should Assignee exercise the rights granted herein upon the occurrence of an Event of Default hereunder or under the Note or Credit Agreement, then Assignee may, at its option, credit the net amount of income which Assignee may receive by virtue of this Assignment and from the Mortgaged Property to any and all amounts due or owing to Assignee under the terms and provisions of the Note, this Assignment and the Credit Agreement, which net income shall include (a) the just and reasonable compensation for the services of Assignee, its attorneys and agents in connection with the operation, management and control of the Mortgaged Property and the conduct of the business thereof, and (b) such further sums as may be sufficient to indemnify Assignee from and against any liability, loss or damage on account of any matter or thing done in good faith relating to the Mortgaged property, leases or contracts pursuant to the rights and powers of Assignee hereunder. The balance of such net income shall be released to or upon the order of Assignor. The manner of the application of such net income and the item that shall be credited shall be within the sole discretion of Assignee.

The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, neither prior to entry upon and taking possession of the Mortgaged Property by Assignee nor thereafter, be deemed or construed to constitute Assignee as a mortgagee in possession or in any event to impose any obligation whatsoever upon Assignee to appear in or defend any action or proceeding relating to the Leases, the Contracts or the Mortgaged Property, or to take any action hereunder, or to expend any money or incur any expenses, or perform or discharge any obligation, duty or liability under the Leases or the Contracts, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any tenant and not assigned and delivered to Assignee or render Assignee liable in any way for any injury or damage to person or property sustained by any person, firm or corporation in or about the Mortgaged Property.

Assignor agrees that neither the collection of rents and the application thereof as provided for herein nor the entry upon and taking of possession of the Mortgaged Property, or any part thereof, by Assignee shall cure or waive any default or waive, modify or affect any notice of default under the Note or the Credit Agreement, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time upon any subsequent default.

9. Rights Cumulative. The rights and remedies of Assignee hereunder are cumulative and not in lieu of, but are in addition to, any rights or remedies which Assignee shall have under the Note, the Credit Agreement or at law or in equity, and such rights and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any action taken hereunder. Such rights and remedies of Assignee may be exercised from time to time and as

often as such exercise is deemed expedient by Assignee in its absolute discretion, and the failure of Assignee to avail itself of any of the terms, provisions and conditions of this Assignment or any rights granted herein for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

The right of Assignee to collect and receive the rents assigned hereunder or to take possession of the Mortgaged Property, or to exercise any of the rights of powers herein granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien of the Credit Agreement, including any period allowed by law for the redemption of the Mortgaged Property after any foreclosure sale.

10. Indemnification. Assignor agrees to and does hereby indemnify and hold Assignee harmless of and from and against any and all liability, loss, damage or expense, which Assignee may or might incur under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases or the Contracts but for the exercising of Assignee's rights hereunder which acts constitute gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate provided for in the Note subsequent to default, shall be secured by this Assignment and by the Credit Agreement, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

11. Subordination of Management Contract. Assignor agrees to and does hereby subordinate to the debt service payable under and pursuant to the Note all fees that the Assignor or its affiliates, agents or employees may be entitled to receive in connection with the operation, management or administration of the Mortgaged Property. Assignor further agrees that should an Event of Default occur which is continuing, Assignee shall have the right, without cause or further compensation payable, to terminate Assignor's right to provide management, leasing, administrative or other services with respect to the Mortgaged Property.

12. Miscellaneous. This Assignment shall be assignable by Assignee and all representations, warranties, obligations, covenants, powers and rights herein contained shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

13. Severability. In the event that any one or more of the provisions contained in this Assignment or in any other loan document executed in connection herewith shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment or any other loan document executed in connection herewith, and in lieu of such invalid, illegal or unenforceable provision there shall be added automatically as part of this Assignment or any other loan

document executed in connection herewith a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and unenforceable thereafter.

14. CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS (WITHOUT REGARD TO CHOICE OF LAW OR CONFLICT OF LAWS RULES) AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF ARKANSAS, EXCEPT TO THE EXTENT THAT REAL AND PERSONAL PROPERTY LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, INCLUDING LAWS RELATING TO PERFECTION AND THE EFFECT OF PERFECTION AND NON-PERFECTION OF LIENS ON REAL AND PERSONAL PROPERTY, OR THE TRANSFER OF, AND EFFECT OF TRANSFER OF, SECURITY TITLE TO REAL PROPERTY LOCATED IN SUCH STATE, SHALL NECESSARILY APPLY TO THE EXERCISE OF ANY REMEDIES RELATING TO THE ENFORCEMENT OF THE SECURITY COVERED BY THIS AGREEMENT AND PROVIDED FURTHER, THE PARTIES EXPRESSLY CHOOSE THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED TO GOVERN THE EFFECTIVENESS OF THE GRANT AND CONVEYANCE OF THE LIEN AGAINST AND SECURITY TITLE TO THE PROPERTY.

*[The remainder of this page intentionally left blank;
signatures to this document appear on next page.]*

[Signature Page to Absolute Assignment of Rents]

This Absolute Assignment of Leases and Rents is entered into as of the date first referenced above.

ASSIGNOR:

TEMPUS CALERA, LLC

By: TEMPUS MANAGING GP, LLC, its
Manager

By: 
Isaac Smith, its Manager

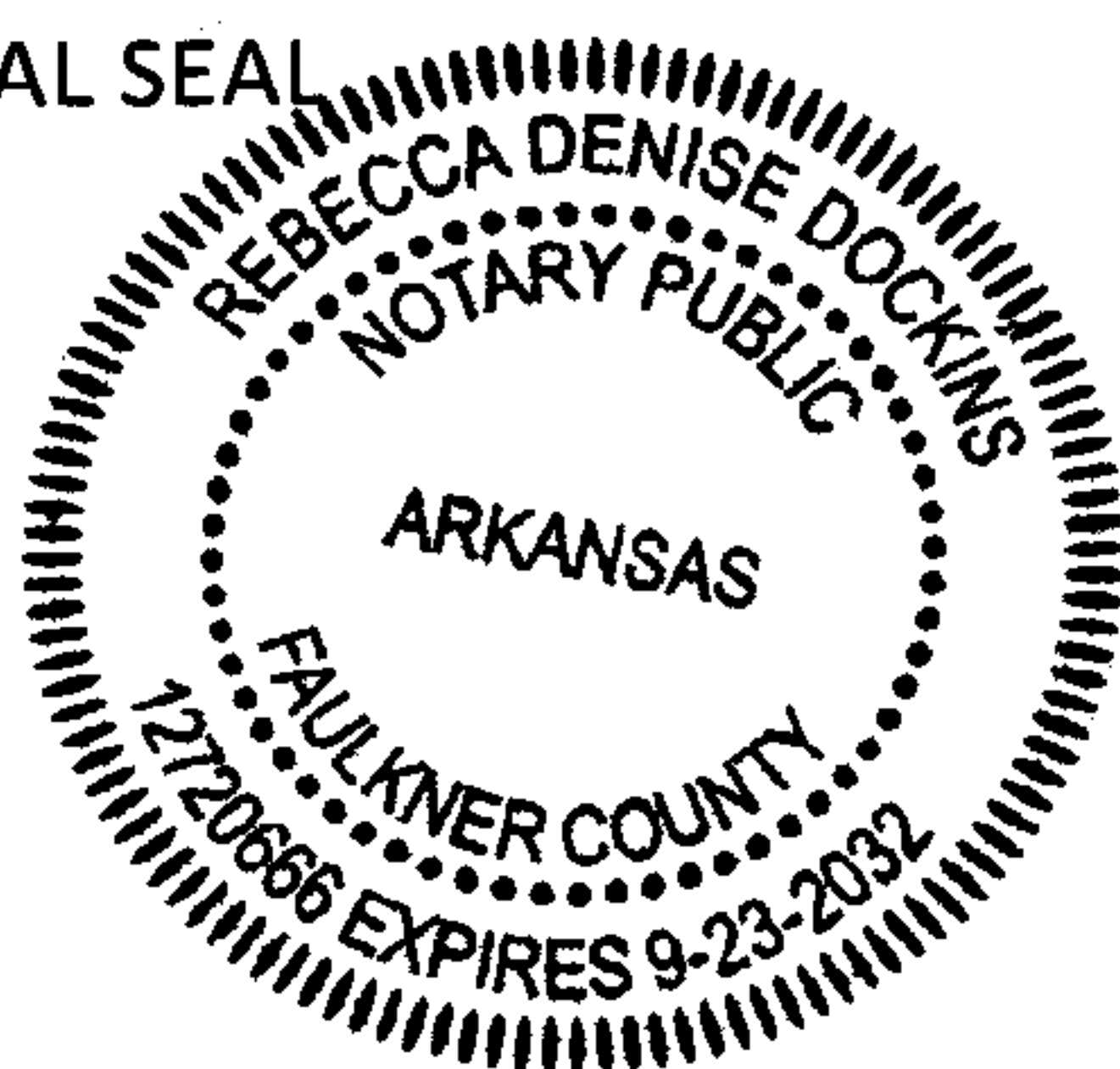
ACKNOWLEDGMENT

STATE OF Arkansas
COUNTY OF Faulkner

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ISAAC SMITH, whose name as the MANAGER of TEMPUS MANAGING GP, LLC, an Arkansas limited liability company, who is the MANAGER of TEMPUS CALERA, LLC, an Arkansas limited liability company (the "Company"), is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as of the act of said Company.

Given under my hand this 31st day of July, 2024.

NOTARIAL SEAL




Notary Public

My Commission Expires: 9-23-2032

EXHIBIT A

LEGAL DESCRIPTION OF MORTGAGED PROPERTY

Lot 2B, according to the Survey of Graham's Resurvey of Lot 2, Shelby Commerce Park, as recorded in Map Book [35, page 18], in the Probate Office of Shelby County, Alabama.



**Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/05/2024 08:06:04 AM
\$55.00 JOANN
20240805000241410
A-1**

Allen S. Bayl