

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of November, 2023, by and among **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (“**Seller**”), and **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (“**Buyer**”).

WITNESSETH:

1. Agreement to Sell and Purchase. For and in consideration of the Earnest Money, in hand paid by Buyer to Escrow Agent, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following:

(a) All that certain lot, tract or parcel of improved real estate more particularly described on **Exhibit “A”** attached hereto, together with all plants, shrubs and trees located thereon, and together with all rights, ways and easements appurtenant thereto (the “**Land**”);

(b) All buildings, structures and other improvements located on the Land and all fixtures attached or affixed, actually or constructively, to the Land or to any such buildings, structures or other improvements (the “**Improvements**”); and

(c) The goods, equipment, machinery, apparatus, fittings, furniture, furnishings and other personal property owned by Seller and located on the Land or within the Improvements and used in connection with the operation, management or maintenance of the Land or the Improvements, **subject, however,** to ordinary wear and tear between the Effective Date and the Closing Date (the “**Personalty**”); provided, however, Seller shall have the right to remove certain property identified by a written list agreed upon by Seller and Buyer and remove mutually agreed Improvements prior to or within ninety (90) days after Closing, and such removed personal property shall not be included in the Personalty conveyed herein. Without limiting the generality of the foregoing, Seller shall specifically have the right to remove any logos or other proprietary information, along with all information technology related systems belonging to Seller from the Land and Improvements, prior to or within ninety (90) days after Closing.

All of the matters described in this **paragraph 1** are herein collectively referred to as the “**Property**.”

2. Purchase Price; Method of Payment. The purchase price for the Property (the “**Purchase Price**”), shall be **FOUR MILLION FOUR HUNDRED NINETEEN THOUSAND AND NO/100 DOLLARS (\$4,419,000.00)**. The Purchase Price, subject to the prorations and adjustments herein described, shall be paid by Buyer to Seller at Closing as follows:

(a) **Four Hundred Forty-One Thousand Nine Hundred and No/100 Dollars**

(\$441,900.00) of the Purchase Price by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller; and

(b) **Three Million Nine Hundred Seventy-Seven Thousand One Hundred and No/100 Dollars (\$3,977,100.00)** of the Purchase Price by promissory note in the amount of \$3,977,100.00, in the form attached hereto as **Exhibit “I”** (the “**Note**”), payable to Seller. The Note shall be secured by a mortgage on the Property, in the form attached hereto as **Exhibit “J”** (the “**Mortgage**”). Buyer shall be responsible for all mortgage recording taxes and fees and for the cost of a mortgagee policy of title insurance in favor of Seller.

3. Earnest Money.

(a) Within three (3) business days following the date this Agreement is executed by the last of Seller and Buyer (the “**Effective Date**”), Buyer shall deliver to Butler Snow LLP, as escrow agent (“**Escrow Agent**”) the sum of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** (which sum is herein referred to as the “**Earnest Money**”).

(b) If Buyer fails to deliver the Earnest Money to Escrow Agent on or before the date herein required, then all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. All deposits by Buyer required pursuant to this **paragraph 3** shall be in the form of a wire transfer, payable to Escrow Agent, and no such deposit shall be deemed timely unless actually received by the date therefor set forth in this **paragraph 3**.

(c) Throughout the term of this Agreement, Escrow Agent shall hold and disburse the Earnest Money in accordance with the terms and conditions of this Agreement, including, without limitation, the terms and conditions set forth on **Exhibit “B”** attached hereto, and hold the Earnest Money in a national bank whose depositors are insured by the Federal Deposit Insurance Corporation or other financial institutions located in Huntsville, Alabama which are reasonably acceptable to Buyer.

(d) On the Closing Date, the Earnest Money shall be paid and released to Seller in escrow. Seller shall hold the Earnest Money in escrow pursuant to an Escrow Agreement in the form attached hereto as **Exhibit “K”** (the “**Escrow Agreement**”), executed and delivered by Buyer and Seller at Closing. Provided no event of default has occurred and is continuing under the Note or Mortgage, the Earnest Money shall be credited against the last payment coming due under the Note.

4. Closing.

(a) **Closing.** The closing of the purchase and sale of the Property (“**Closing**”), shall be held through the escrow services of Escrow Agent, at such time and on such date (the “**Closing Date**”) as may be specified by written notice from Buyer to Seller not less than **five (5) days** prior thereto; **provided, however**, that the Closing Date shall be on or before **November 30, 2023** (the “**Final Closing Date**”) and, if Buyer shall fail to give notice designating the Closing Date, the Closing Date shall take place through the escrow services of Escrow Agent on the Final Closing Date.

(b) **Closing Condition.** This Agreement is contingent upon the approval of this Agreement by the City Council for the City of Madison, Alabama (the “**Contingency**”). In the event the Contingency is not satisfied on or before November 17, 2023, either party may terminate

this Agreement upon written notice to the other party at any time prior to satisfaction of the Contingency. Buyer's execution of this Agreement shall be considered an acknowledgement by Buyer that the Contingency has been satisfied, and no further approval shall be required for the performance of Buyer's obligations herein.

5. Access and Inspection; Examination by Buyer.

(a) Between the Effective Date and the Closing Date, Buyer and Buyer's agents, employees, contractors, representatives and other designees (collectively, "**Buyer's Designees**") shall have the right upon advance written or telephone notice to Seller to enter the Property for the purposes of inspecting the Property, conducting soil tests and (subject to the below related to a phase II study) a Phase I environmental study, conducting surveys, mechanical and structural engineering studies, and conducting any other investigations, examinations, tests and inspections as Buyer may reasonably require to assess the condition of the Property; **provided, however**, that (i) any activities by or on behalf of Buyer, including, without limitation, the entry by Buyer or Buyer's Designees onto the Property, or the other activities of Buyer or Buyer's Designees with respect to the Property ("**Buyer's Activities**") shall not damage the Property in any manner whatsoever or disturb or interfere with the activities of Seller on the Property, or the rights or possession of any tenant of the Property, (ii) in the event the Property is altered or disturbed in any manner in connection with any Buyer's Activities, Buyer shall immediately return the Property to the condition existing prior to Buyer's Activities, and (iii) Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Seller as a result of, by reason of, or in connection with any Buyer's Activities. Notwithstanding any provision of this Agreement to the contrary, Buyer shall not have the right to undertake any environmental studies or testing beyond the scope of a standard "Phase I" evaluation without the prior written consent of Seller. Seller or its representative shall have the right to be present at the time of any review of the Property or any meeting with governmental officials.

(b) Buyer shall have until the date which is thirty (30) days after the Effective Date (the "**Due Diligence Date**"), to perform such investigations, examinations, tests and inspections as Buyer shall deem necessary or desirable to determine whether the Property is suitable and satisfactory to Buyer in its sole discretion. In the event Buyer shall determine that the Property is not suitable and satisfactory to Buyer, Buyer shall have the right to terminate this Agreement by: (i) giving written notice to Seller on or before the Due Diligence Date; and (ii) delivering to Seller, on or before Due Diligence Date, the items required by **subparagraph (d)** of this **paragraph 5** and **paragraph 17(a)** of this Agreement. In the event Buyer gives Seller the notice and delivers to Seller the items required by the immediately preceding sentence, then the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not terminate this Agreement in accordance with this **paragraph 5** on or before the Due Diligence Date, Buyer shall have no further right to terminate this Agreement pursuant to this **paragraph 5**.

(c) Intentionally omitted.

(d) Buyer acknowledges that Seller may deliver to Buyer certain documents and information in Seller's possession with regard to the Property to the extent in Seller's possession (the "**Due Diligence Materials**"). The Due Diligence Materials will be provided to Buyer without

any representation or warranty of any kind or nature whatsoever and are merely provided to Buyer for Buyer's informational purposes. Until Closing, Buyer and Buyer's Designees shall maintain all Due Diligence Materials as confidential information. If the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, Buyer shall immediately re-deliver to Seller all originals of the Due Diligence Materials in Buyer's possession.

6. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree:

(a) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property (the "**Taxes**"), for the year in which Closing occurs shall be prorated as of the Closing Date. In the event that Seller has heretofore protested or appealed, or, prior to the Closing Date, protests or appeals, the Taxes for the billing period in which Closing occurs, and such protest results in a reduction in the Taxes payable, Buyer shall reimburse Seller for its *pro rata* share of the amount of the Taxes so reduced.

(b) All utility charges for the Property (including, without limitation, telephone, water, storm and sanitary sewer, electricity, gas, garbage and waste removal) shall be prorated as of the Closing Date, transfer fees required with respect to any such utility shall be paid by or charged to Buyer, and Seller shall be credited with any deposits transferred to the account of Buyer.

(c) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, Seller shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent. In making the prorations required by this **paragraph 6**, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Buyer.

7. Title.

(a) For the purposes of this Agreement, "**good and marketable fee simple title**" shall mean such title as is insurable by a title insurance company licensed to do business in Alabama, under its most recent standard form of ALTA owner's policy of title insurance, at its standard rates, subject only to the following (the "**Permitted Exceptions**"): (i) the standard or printed exclusions in the form of owner's policy of title insurance referenced above; (ii) such matters as would be disclosed by a current and accurate survey and inspection of the Property; (iii) the lien for Taxes not due and payable on or before the Closing Date; (iv) zoning ordinances affecting the Property; (v) all easements, covenants, restrictions, reservations, rights-of-way and other similar matters of record as of the date of Seller's execution of this Agreement; (vi) the state of compliance

or non-compliance of the Property, as of the date of Seller's execution of this Agreement, with any laws, codes, ordinances, rules, regulations or private restrictive covenants applicable to or affecting the Property; **(vii)** the New ECR and ECR Amendment (defined herein); and **(viii)** all matters, if any, waived by Buyer pursuant to this **paragraph 7**.

(b) Buyer shall procure a commitment for title insurance ("**Title Commitment**") from Wilmer & Lee, P.A., 100 Washington Street, Huntsville, Alabama 35801 (the "**Title Company**") and Buyer shall have until seven (7) days prior to the Closing Date in which to give Seller written notice of any objections which render Seller's title less than good and marketable fee simple title. Buyer may reexamine title to the Property up to and including the Closing Date and give Seller written notice of any additional objections appearing of record subsequent to the effective date of the Title Commitment, but Buyer's failure to specify in its initial notice of title objections any objection appearing of record as of the effective date of such initial Title Commitment shall be deemed to be, and shall constitute, a waiver of any such objection, and such objection shall thereafter constitute a Permitted Exception under this Agreement; and, if Buyer shall fail so to examine title to the Property or to give Seller such initial notice of title objections, Buyer shall be deemed to have waived all objections appearing of record as of the Effective Date, and all such objections shall thereafter constitute Permitted Exceptions under this Agreement.

(c) Seller shall have no obligation to cure any of Buyer's title objections. Seller shall have until **noon (12:00 pm) CST on the Due Diligence Date**, in which to review Buyer's initial notice of title objections and, if Seller elects, in which to give Buyer written notice of any valid objections specified therein which Seller intends to attempt to satisfy. Seller's failure to provide such notice shall be deemed an election by Seller not to cure any of such title objections. If Seller notifies Buyer that it does not intend to cure any objection specified in Buyer's initial notice of title objections, or is deemed to have elected not to cure, and if Buyer thereafter does not elect to terminate this Agreement pursuant to **paragraph 5** hereof, Buyer shall be deemed to have waived such objections, and any such objections shall thereafter constitute Permitted Exceptions under this Agreement.

(d) Seller shall have until the Closing Date to satisfy all valid objections which Seller has agreed to cure hereunder, and, if Seller fails to so satisfy any such valid objections, then, at the option of Buyer, and as its sole and exclusive alternatives and remedies, Buyer may either: **(i)** terminate this Agreement in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; or **(ii)** waive such satisfaction and performance and elect to consummate the purchase and sale of the Property, in which event all unsatisfied objections shall constitute Permitted Exceptions under this Agreement.

8. Survey; Subdivision. Buyer, at Buyer's option, shall have the right to cause a surveyor selected by Buyer properly licensed under the laws of the State of Alabama to prepare a current and accurate survey of the Property (the "**Survey**").

9. Wellness Center Staffing: Buyer will provide experienced administrative support staff at the wellness center as soon as practicable after Closing. Seller acknowledges that City is an equal opportunity employer subject to public service employment laws and ordinances, and the City shall follow its current hiring procedures in the consideration and selection of job applicants. City agrees to inform current Seller employees who work at the Property of any job openings at the Property.

10. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Escrow Agent the following documents and instruments, duly executed by or on behalf of Seller:

(i) a Statutory Warranty Deed, in recordable form, in substantially the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit "C", conveying the Land and the Improvements to Buyer (the "**Deed**");

(ii) a Bill of Sale, in substantially the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit "D", conveying Seller's interest in the Personalty;

(iii) an Assignment, in substantially the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit "E", whereby Seller transfers and assigns to Buyer all of Seller's right, title and interest in, to and under any permits, warranties, or other intangible property related to the ownership and operation of the Property, and whereby Buyer assumes and agrees to perform the duties and obligations of the owner of the Property arising from and after the Closing Date (which assignment shall be accepted and executed by Buyer);

(iv) a Seller's Affidavit, in the form of, and on the terms and conditions reasonably required by Title Company to delete the pre-printed standard exceptions (other than the mineral rights exception) from the owner's policy of title insurance being issued to Buyer with respect to the Property;

(v) a Certificate and Affidavit of Non-Foreign Status, in the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit "F";

(vi) a completed 1099-S request for taxpayer identification number and certification, and acknowledgment; and

(vii) the New ECR, in substantially the form set forth in the attached Exhibit "G", and the ECR Amendment.

(b) Seller shall deliver to Escrow Agent the following items, if the same have not been theretofore delivered by Seller to Buyer:

(i) Evidence in form and substance reasonably satisfactory to Title Company that Seller has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property, and that any and all actions required to authorize and approve the execution of and entry into this Agreement by Seller, the performance by Seller of all of Seller's duties and obligations under this Agreement, and the execution and delivery by Seller of all documents and other items to be executed and delivered to Buyer at Closing, have been accomplished; and

(ii) If and to the extent in Seller's possession, (A) the originals of warranties and guaranties with respect to the Property and certificates, licenses, permits, authorizations, consents and approvals of any governmental authority previously issued in connection with the Property; and (B) copies of books, records and correspondence pertinent to the continued use, occupancy and operation of the Property.

(c) Buyer shall pay the cash portion of the Purchase Price to Escrow Agent in escrow. Buyer shall further deliver the following items to Escrow Agent in escrow: the original executed Note, Mortgage, and Escrow Agreement, and any other documents or information reasonably required by the Title Company to issue a policy of title insurance to Seller for the Mortgage. Buyer shall further deliver in escrow counterpart signatures to the documents listed in **paragraph 10(a)**, to the extent applicable.

(d) Upon Escrow Agent's receipt of all items required by this **paragraph 10** and satisfaction of all other conditions to Closing set forth herein, Seller and Buyer shall authorize and direct Escrow Agent to (i) record the Deed, the Mortgage, the New ECR, and the ECR Amendment in the Office of the Judge of Probate in Madison County, Alabama, (ii) disburse the Purchase Price to Seller in accordance with a closing statement approved by Buyer and Seller setting forth the prorations and adjustments required by this Agreement, and (iii) deliver originals of the items listed in **paragraph 10(a)**, and (b) to Buyer, and deliver originals of the Note, Mortgage and Escrow Agreement to Seller.

11. Costs of Closing. Seller shall bear and pay one half (1/2) of the state transfer tax and recording fees payable in connection with the Deed and Seller's attorneys' fees. All other costs and expenses of this transaction (including, without limitation, one half (1/2) of the state transfer tax and recording fees payable in connection with the Deed, mortgage recording tax, any other recording costs, the costs of the surveyor, all financing costs, the premiums for any policy of title insurance and for any endorsements thereto and Buyer's attorneys' fees) shall be borne and paid by Buyer.

12. Disclaimer of Warranties; Seller's Representations.

(a) Seller does hereby represent to Buyer the following:

(i) Seller is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Alabama.

(ii) There are no actions, suits or proceedings pending or, to Seller's knowledge, threatened against, by or affecting Seller which affect title to the Property or which question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(iii) The execution of and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement are consistent with and not in violation of, any contract, agreement or other instrument to which Seller is a party, any judicial order or judgment of any nature by which Seller is bound, or the operating agreement of Seller.

(iv) All company action has been or shall be taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed and delivered by Seller on the

Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation for the purchase and sale of the Property as contemplated by and provided for in this Agreement.

(v) Seller has not entered into any lease or other agreement for the use, occupancy or possession of the Property which will remain in effect after Closing with respect to all or any portion of the Property.

(vi) Seller has not entered into any management, maintenance, service or other contracts with respect to the Property which will remain in effect after Closing.

Notwithstanding the foregoing provisions of this **paragraph 12(a)**, it is expressly acknowledged and agreed that, if Buyer shall actually discover prior to Closing that any of the representations set forth in this **paragraph 12(a)** were untrue when made, or have become untrue prior to the Closing, then, if Buyer shall proceed with the consummation of the purchase and sale of the Property pursuant to this Agreement, Buyer shall be deemed to have waived any claim of breach which Buyer may have against Seller with respect to any such representation set forth herein.

(b) Further notwithstanding the foregoing provisions of this **paragraph 12**, and notwithstanding any other term or provision of this Agreement, neither the foregoing representations of Seller nor any other representation or covenant of Seller under this Agreement shall extend to, and there are in all events excluded therefrom, any matter described in or disclosed by any of the Due Diligence Materials.

(c) Wherever in this Agreement there is any reference to the "knowledge" of Seller or to any "notice" having been "received" by Seller, in any variation of such references, such references: (i) shall mean only the actual knowledge of, or notice actually received personally by Denise Bates; (ii) shall not mean or include any imputed or constructive knowledge of Denise Bates, or any notice constructively received by Denise Bates; (iii) shall not include any actual, imputed or constructive knowledge of any officer, agent, employee or affiliate of Denise Bates or Seller, or any other person or entity, or any notice actually or constructively received by any officer, agent, employee or affiliate of Denise Bates or Seller, or any other person or entity; and (iv) shall not be deemed to imply that Denise Bates or any other person or entity has undertaken, or has any duty or obligation to undertake, any investigation or inquiry with respect to the subject matter thereof.

(d) EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER SHALL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN SELLER'S STATUTORY WARRANTY OF TITLE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR

TOXIC, HAZARDOUS OR REGULATED SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (COLLECTIVELY, THE “**DISCLAIMED MATTERS**”). BUYER AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, WITH RESPECT TO THE PROPERTY, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMED MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER’S INSPECTIONS AND INVESTIGATIONS. SUCH INSPECTIONS AND INVESTIGATIONS OF BUYER SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION OF THE PROPERTY WOULD SHOW, PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN SELLER’S STATUTORY WARRANTY OF TITLE SET FORTH IN THE DEED, SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY “AS IS”, “WHERE IS”, AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS **PARAGRAPH 12(d)**, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL PROTECTION, POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA. THE TERMS AND CONDITIONS OF THIS **PARAGRAPH 12(d)** SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING DATE, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL SET FORTH IN THIS AGREEMENT.

13. Possession at Closing. Subject to the terms of the New ECR, Seller shall surrender possession of the Property to Buyer on the Closing Date, subject to the Permitted Exceptions.

14. Remedies.

(a) If the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement, the Earnest Money shall be delivered to and retained by Seller as Seller’s full liquidated damages for such default. The parties acknowledge that Seller’s actual damages in the event of a default by Buyer will be difficult to ascertain, that such liquidated damages represent the parties’ best estimate of such damages, and that Seller and Buyer believe such liquidated damages are a reasonable estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of a default. Such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Buyer, and Seller hereby waives and releases any right to sue Buyer for specific performance of this Agreement or to prove that

Seller's actual damages exceed the amount which is herein provided to Seller as full liquidated damages; **provided, however**, that the foregoing liquidated damages shall not apply to any duty, obligation, liability or responsibility which Buyer may have under the indemnification provisions of **paragraphs 5, 9 and 18** of this Agreement, as to which Seller shall have all rights and remedies provided for or allowed by law or in equity.

(b) If the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement, the Earnest Money shall be refunded to Buyer promptly upon request, and Buyer, as its sole and exclusive remedies, may exercise the following additional rights and remedies: (i) in the event of any default by Seller, Buyer shall have the right to terminate this Agreement, in which event all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; and (ii) Buyer shall have the right to sue Seller for specific performance of this Agreement. Seller shall have no other liability to Buyer under this Agreement. In no event shall Buyer have the right to recover from Seller any special or consequential damages.

15. Damage or Destruction.

(a) If any portion of the Improvements is damaged or destroyed by casualty prior to Closing, Seller shall give Buyer prompt written notice thereof. If any portion of the Improvements is damaged or destroyed by casualty on or before the Due Diligence Date, and Buyer shall not elect to terminate this Agreement pursuant to **paragraph 5** hereof, then Buyer shall have no right to terminate this Agreement by reason of such damage or destruction. If any portion of the Improvements is damaged or destroyed by casualty after the Due Diligence Date and prior to Closing, and the cost of repair of such damage or destruction is reasonably estimated to exceed \$10,000, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice to Seller on or before the date **ten (10) days** after the date upon which Seller gives Buyer written notice of such casualty, in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. In the event of lesser damage or destruction after the Due Diligence Date, Buyer shall have no right to terminate this Agreement by reason of such damage or destruction.

(b) If any portion of the Improvements is damaged or destroyed by casualty prior to Closing and the purchase and sale of the Property contemplated by this Agreement is thereafter actually consummated: (i) the Purchase Price shall be reduced by the total of any insurance proceeds actually received by Seller on or before the Closing Date with respect to such casualty and not expended by Seller prior to Closing for the repair or restoration of the Improvements; and (ii) at Closing, Seller shall assign to Buyer all rights of Seller in and to any insurance proceeds payable thereafter by reason of such casualty.

16. Condemnation.

(a) In the event of commencement of eminent domain proceedings respecting any portion of the Property prior to Closing, Seller shall give Buyer prompt written notice thereof. If all or any part of the Property is taken by eminent domain proceedings, or if there is the commencement or bona fide threat of the commencement of any such proceedings, on or before the Due Diligence Date, and Buyer shall not elect to terminate this Agreement pursuant to

paragraph 5 hereof, subject to **paragraph 16(b)** below, Buyer shall have no right to terminate this Agreement by reason of such taking. If all or any material part of the Property is taken by eminent domain proceedings after the Due Diligence Date, and prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice to Seller on or before the date **ten (10) days** after the date upon which Seller gives Buyer written notice of such taking, in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. In the event of a taking of less than all or a material part of the Property after the Due Diligence Date, Buyer shall have no right to terminate this Agreement by reason of such taking. To the extent permitted by law, Buyer agrees to not institute eminent domain proceedings against the Property prior to Closing.

(b) If all or any part of the Property is taken by eminent domain proceedings prior to Closing and the purchase and sale of the Property contemplated by this Agreement is thereafter actually consummated: (i) the Purchase Price shall be reduced by the total of any awards or other proceeds actually received by Seller on or before the Closing Date with respect to any taking and not expended by Seller prior to Closing for the repair or restoration of the Property; and (ii) at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds payable thereafter by reason of such taking.

(c) For purposes of this **paragraph 16**, a taking shall be deemed to be of a "material" part of the Property only if such taking involves the taking of more than ten percent (10%) of the Land.

17. Ownership of Information; Confidentiality Obligation.

(a) If the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, Buyer shall immediately deliver to Seller, at Buyer's cost and expense: a copy of all reports, studies, surveys, site plans and other written or graphic material of any kind or nature whatsoever generated, collected, prepared or compiled in connection with such investigations, examinations, tests or inspections concerning the physical condition of the Property.

(b) The parties will maintain the confidentiality of this Agreement to the extent allowed by federal and state law and any and all reports prepared upon inspection of the Property but only to the extent as the law governing public disclosures allows.

(c) All studies, data, reports, analyses, writings and communications, including, without limitation, any environmental reports, shall be generated by any consultant for the use of Buyer's and Seller's attorneys and, to the fullest extent permitted by law and to the extent the law governing public disclosures allows, shall be the work product of both Buyer's and Seller's respective attorneys and shall constitute confidential attorney/client communications, and each party shall use its best efforts to ensure that such confidence and privilege is maintained. If the purchase and sale of the Property is consummated, any public statements relating thereto within twelve (12) months of the date hereof, must be first approved by Seller, which approval shall not be unreasonably withheld, conditioned or delayed.

18. Broker and Commission. All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have

been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker. Seller and Buyer warrant and represent to each other that Seller and Buyer have not entered into any agreement or arrangement and have not received services from any broker or broker's employees or independent contractors which would give rise to any claim of lien or lien against the Property, and there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications. Seller and Buyer shall and do each hereby indemnify, defend and hold harmless each of the others from and against the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property.

19. Survival. The provisions of **paragraphs 9, 12(d) and 20** of this Agreement, the provisions of **clauses (i), (ii) and (iii)** of **paragraph 5(a)** of this Agreement, and the indemnification provisions of **paragraph 18** of this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the Deed and the payment of the Purchase Price. The provisions of **paragraphs 6 and 12(a)-(c)** of this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the Deed and the payment of the Purchase Price for a period of twelve (12) months following the Closing Date. Notwithstanding anything to the contrary set forth in this Agreement, the provisions of **paragraphs 5(d) and 17** of this Agreement, the provisions of **clauses (i), (ii) and (iii)** of **paragraph 5(a)** of this Agreement, and the indemnification provisions of **paragraph 18** of this Agreement shall also survive any termination of this Agreement in accordance with its terms.

20. Seller's Tax Deferred Exchange. Seller may convey the Property or any portion thereof or interest therein as part of one or more Internal Revenue Code Section 1031 Tax Deferred Exchanges for its benefit. In such event, Seller shall be assigning all contract rights and obligations hereunder to a qualified intermediary, as a part of, and in furtherance of, such tax deferred exchange. Buyer agrees to assist and cooperate in any such exchange, and Buyer further agrees to execute any and all documents as are reasonably necessary in connection with any such exchange. Buyer shall not be obligated to incur any cost or expense in connection with any such exchange, other than that which Buyer elects to incur to have its counsel review the documents and instruments incident thereto. As part of any such exchange, Seller shall convey the real property described herein directly to Buyer and Buyer shall not be obligated to acquire or convey any other property as part of any such exchange.

21. Easements, Covenants and Restrictions Agreement. Seller and Buyer previously entered into and recorded an Easements, Covenants and Restrictions Agreement dated December 29, 2022 recorded in Deed Book 2022, Page 59116 which addressed, among other things, certain shared utilities between the Property and the adjacent land currently owned by Buyer. Seller and Buyer agree to enter into an amendment to such agreement at Closing which reasonably addresses such shared utilities (the "**ECR Amendment**"), and releases Seller from any further liability related thereto. Furthermore, at Closing, the parties shall execute and record a new restrictive covenant agreement which encumbers the Property and runs with the Land (the "**New ECR**"), in substantially the form set forth as **Exhibit "H"** attached hereto. The New ECR shall provide that **(i)** Buyer shall initially use, maintain and operate the Property as a fitness center open to the public, and shall continue to use the Property for such purpose so long as Seller or any of Seller's affiliates own, lease or control property adjacent to or within one (1) mile of the Property

(such period referred to herein as the “**Restricted Period**”), provided Buyer may convert part of the Improvements for use as a community center as long as it also remains used as a fitness center; *(ii)* Seller, and Seller’s affiliates, shall have an ingress and egress easement for pedestrian and vehicular access over the drive aisles and driveways, as the same may exist from time to time on the Property; *(iii)* in no event shall the Property or any portion thereof be used for any of the prohibited uses set forth on attached **Exhibit “G”**; and *(iv)* during the Restricted Period, Seller and Seller’s affiliates and their respective employees and agents shall have the right to use, access and enjoy the facilities located on the Property, to be further defined in the New ECR. From the date of Closing until the later to occur of (x) October 1, 2028, or (y) the date the Note is paid in full, such use of the fitness facility by Seller and Seller’s affiliates shall be at no charge; thereafter, such use shall be at the same charge as the general public. As used in this paragraph, Seller’s affiliates shall include, without limitation, Hexagon, Intergraph Corporation, and Hexagon US Federal, Inc.

22. General Provisions.

(a) Notices. Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below their respective executions hereof, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by email to the email address for each party set forth below their respective executions hereof, or to such other email addresses as are specified by written notice given in accordance herewith, provided that a copy of any notice sent by email shall be simultaneously sent via one of the other methods set forth above. All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by email shall be deemed given on the date of email transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or email address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of email transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

(b) Email as Writing. The parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of an email transmittal shall be deemed to be “written” and a “writing” for all purposes of this Agreement.

(c) Assignment. This Agreement may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller, and any such assignment without the consent of Seller shall be null and void and of no force or effect. Subject to the foregoing, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller, and their respective legal representatives, successors and permitted assigns.

(d) Headings. The use of headings, captions and numbers in this Agreement is solely

for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

(e) **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(f) **Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(g) **Pronouns.** Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(h) **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(i) **Non-Waiver.** Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(j) **Seller Liability.** Any party seeking to enforce any duty, obligation, liability or responsibility of Seller arising under this Agreement or any document or instrument executed or delivered in connection with the transactions contemplated hereby shall rely on and look solely to the assets of Seller as if Seller were a corporation adequately capitalized for all purposes, and the members were shareholders, and no member or members shall be: (i) liable or responsible for any such duty, obligation, liability or responsibility; or (ii) have any obligation, enforceable by or for the benefit of any party described above, to make contributions of capital or any other contributions to Seller to pay or satisfy any such duty, obligation, liability or responsibility. No recourse shall be sought, and no action shall be taken, against any member or members of Seller, or against any member, officer, director or shareholder of any member of Seller or against any member of any member of Seller, or against any of the assets of any of the foregoing parties, for the payment or satisfaction of any such duty, obligation, liability or responsibility.

(k) **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day

which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date and shall include the period of time through and including such specified day or date.

(l) **Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Alabama.

(m) **Entire Agreement; Modification.** This Agreement supersedes all prior discussions and agreements among Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding among Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer. To the extent allowed by law, Buyer agrees that the Mayor of the City of Madison, Alabama (the "Mayor") may enter into immaterial modifications to this Agreement on Buyer's behalf without being required to obtain additional City Council approval, and such modifications shall be binding on Buyer. The Mayor is hereby authorized to enter into immaterial modifications on behalf of Buyer as the Mayor, in his reasonable discretion, deems necessary or desirable. As used in the foregoing sentence, "immaterial modifications" shall mean any modifications which do not (i) increase the Purchase Price, or (ii) extend the Closing for more than one (1) year.

(n) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(o) **Attorney's Fees.** In the event of any litigation between Buyer and Seller arising under or in connection with this Agreement the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees) incurred by the prevailing party.

(p) **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

(q) **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.

(r) **No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

(s) **No Lien.** This Agreement is not and shall not be deemed or considered to convey

or be an interest in or lien against the Property.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute, seal and deliver this Purchase and Sale Agreement, all effective as of the day and year first written above.

SELLER:

**INTERGRAPH IMPROVED PROPERTIES,
LLC**, a Delaware limited liability company

By: _____

Name: Anthony P. Zana

Its: Authorized Signatory

Initial address for notices:

305 Intergraph Way

Madison, Alabama 35758

Attention: Anthony P. Zana

Telephone Number: (256) 730-2362

Email: tony.zana@hexagon.com

Date of Seller's Execution: November, ____ 2023

[SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT]

BUYER:

CITY OF MADISON, ALABAMA, an Alabama
municipal corporation

By: _____

Name: Paul Finley

Its: Mayor

Initial address for notices:

100 Hughes Road

Madison, AL 35758

Attention: Steve Smith

Telephone Number: 256-772-5600

Email: steve.smith@madisonal.gov

Date of Buyer's Execution: November ____, 2023

Escrow Agent executes this Agreement to acknowledge and agree to hold and disburse the Earnest Money in accordance with the terms and provisions of this Agreement.

ESCROW AGENT:

**FIDELITY NATIONAL TITLE INSURANCE
COMPANY**

By: Butler Snow LLP

Its: Agent

By: _____

Name: Allie Tucker

Title: Authorized Signatory

Initial address for notices:

Butler Snow LLP

200 West Side Square, Suite 100

Huntsville, AL 35801

Attn: Leslie Sharpe

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 4 of Hexagon Park Phase I, a Resubdivision of Lot 1 of Intergraph North campus as recorded in Document Number 20150722000398750 and a resubdivision of Lot 1 of Madison Business Park Phase II as recorded in Document Number 20071212000866030 as shown on the map or plat thereof recorded at Plat Book 2022, Page 492 in the Office of the Judge of Probate in Madison County, Alabama.

EXHIBIT "B"

ESCROW PROVISIONS

1. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, including, without limitation (i) any action taken or omitted upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this agreement; or (ii) any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this agreement. Escrow Agent may rely upon any instrument, pursuant to clause (ii) in the preceding sentence, as being duly executed, valid and effective, and as containing accurate information and genuine signatures.

2. Notwithstanding anything in this agreement to the contrary, in the event of a dispute between Seller and Buyer arising prior to or at the time of the delivery or other disposition of the Earnest Money by Escrow Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Buyer shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in the following paragraph.

3. Buyer and Seller shall, and do hereby, jointly and severally indemnify, defend and hold Escrow Agent harmless from, against and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Escrow Agent by reason of, from or in connection with this agreement or any action taken or not taken by Escrow Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines or penalties, and amounts paid in compromise or settlement, incurred or sustained by Escrow Agent by reason of, in connection with or as a result of any claim, demand, action, suit, investigation or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

4. If Escrow Agent shall notify Seller and Buyer of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Buyer. If Seller and Buyer shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Buyer or by Escrow Agent, as the case may be, shall be a title insurance company, bank or trust company having trust powers in good standing and located in the Huntsville, Alabama, metropolitan area, and shall agree to be

bound by all the terms and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

5. The agency created in Escrow Agent hereby is coupled with an interest of Seller and Buyer and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Buyer. This agency shall not be revoked or terminated by reason of the death, incompetency, dissolution or liquidation of Seller or Buyer, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Buyer in the manner provided herein. In the event of the death, incompetency, dissolution or liquidation of Seller or Buyer, Escrow Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership or corporation believed by Escrow Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

EXHIBIT “C”

FORM OF STATUTORY WARRANTY DEED

THIS INSTRUMENT PREPARED BY:

Allie C. Tucker, Esq.
BUTLER SNOW LLP
200 West Side Square, Suite 100
Huntsville, AL 35801
(256)936-5611

STATE OF ALABAMA)
:
COUNTY OF MADISON)

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS,

THAT IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration to the undersigned grantor, **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (“**Grantor**”), in hand paid by CITY OF MADISON, ALABAMA, an Alabama municipal corporation (“**Grantee**”), the receipt of which is hereby acknowledged, Grantor does by these presents, grant, bargain, sell and convey unto Grantee all that tract or lot of land lying in the County of Madison, State of Alabama, and more particularly described on **Exhibit “A”**, attached hereto and incorporated herein by reference, subject, however, to the permitted exceptions described on **Exhibit “B”** attached hereto and incorporated herein by reference (the “**Permitted Exceptions**”).

TO HAVE AND TO HOLD, to the said Grantee, its successors and assigns, forever.

Pursuant to and in accordance with Section 40-22-1 of the Code of Alabama (1976), the following information is offered in lieu of submitting Form RT-1:

Grantee’s Address: _____
Grantor’s Address: _____
Property Address: _____
Purchase Price: \$ _____
Parcel No.: _____

And **GRANTOR** does for itself and for its successors and assigns covenant with the said **GRANTEE**, its successors and assigns, that it is lawfully seized in fee simple of said premises; that it is free from all encumbrances, unless otherwise noted above; that it has a good right to sell and convey the same as aforesaid; that it and its successors and assigns shall warrant and defend the same to the said **GRANTEE**, its successors and assigns forever, against the lawful claims of all persons, claiming by, through or under **GRANTOR** but no further.

IN WITNESS WHEREOF, Grantor has executed and sealed this indenture, and delivered this indenture to Grantee, all this _____ day of _____, 2023.

GRANTOR:

[add signature and notary acknowledgment]

EXHIBIT “D”

FORM OF BILL OF SALE

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

BILL OF SALE

FOR VALUE RECEIVED, INTERGRAPH IMPROVED PROPERTIES, LLC, a Delaware limited liability company (“**Seller**”), does hereby sell, transfer and convey unto **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (“**Buyer**”) (the words “**Seller**” and “**Buyer**” to include the neuter, masculine and feminine genders, and the singular and plural), all goods, equipment, machinery, apparatus, fittings, furniture, furnishings, inventories, supplies, spare parts, tools and other personal property of every kind (*i*) now located on all that tract or lot of land lying in the County of Madison, State of Alabama, and being more particularly described on **Exhibit “A”**, attached hereto and incorporated herein by reference, and (*ii*) used in connection with the operation or maintenance of the fitness center and related facilities situated on said land, including, without limitation, all property described on **Exhibit “B”**, attached hereto and incorporated herein by reference (collectively, the “**Property**”). Notwithstanding the foregoing, in no event shall the Property include (a) any logos or proprietary information of Seller or its affiliates, (b) any information technology systems, or (c) any of the personal property listed on attached **Exhibit “C”** (collectively, the “**Excluded Property**”). Buyer shall have no rights with respect to the Excluded Property, and Seller shall have the right to enter upon the aforementioned land and remove the Excluded Property therefrom for a period of ninety (90) days after the date hereof.

SELLER HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES AS TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY IMPLIED BY LAW.

IN WITNESS WHEREOF, Seller has caused its duly authorized representatives to execute, seal and deliver this bill of sale, all this ____ day of _____, 2023.

[add signature and notary acknowledgment]

EXHIBIT “E”

FORM OF ASSIGNMENT

STATE OF ALABAMA)
:
COUNTY OF MADISON)

ASSIGNMENT

THIS ASSIGNMENT is made this ___ day of _____, 2023, by and between **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (“**Assignor**”), and **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (“**Assignee**”). The words “Assignor” and “Assignee” include the neuter, masculine and feminine genders, and the singular and the plural.

W I T N E S S E T H:

WHEREAS, Assignor has on the date hereof conveyed unto Assignee certain real property and related personal property lying and being in Madison County, Alabama, more particularly described on **Exhibit “A”**, attached hereto and incorporated herein by reference (the “**Property**”); and

WHEREAS, in connection with the conveyance of the Property, Assignor and Assignee intend that certain related assets be assigned and transferred to Assignee.

NOW, THEREFORE, in consideration of the foregoing premises, the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Assignee to Assignor at and before the execution, sealing and delivery hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign and agree as follows:

1. Warranties and Guaranties. Assignor does hereby transfer, assign, convey and set over unto Assignee all of the right, title, interest, powers, privileges, benefits and options of Assignor, if any, in, to and under all guaranties, warranties and agreements from any contractors, subcontractors, vendors or suppliers regarding their performance, quality of workmanship or quality of materials supplied in connection with the construction, manufacture, development, installation, repair or operation of: **(i)** any and all buildings, structures and improvements located on the Property, **(ii)** any and all fixtures, fittings, equipment, machinery and apparatus affixed or attached, actually or constructively, to the Property, and **(iii)** any and all furniture, furnishings, personal property, trade fixtures and equipment located on or used in the operation or maintenance of the Property.

2. Permits. Assignor does hereby transfer, assign, convey and set over unto Assignee all of the right, title, interest, powers, privileges, benefits and options of Assignor, if any, in and to all certificates, licenses, permits, authorizations, consents and approvals from governmental authorities with respect to: **(i)** the design, development, construction and installation of any and all buildings, structures and improvements located on the Property, any and all fixtures, fittings, equipment, machinery and apparatus affixed or attached, actually or constructively, to the Property; any and all furniture, furnishings, personal property, trade fixtures and equipment located on or used in the operation or maintenance of the Property; **(ii)** vehicular ingress and egress to and from the Property; and **(iii)** the use, operation and occupancy of the Property.

3. Entitlements. Assignor does hereby transfer, assign, convey and set over unto Assignee all of the right, title and interest of Assignor, if any, in and to **(i)** any impact fee credits with, or impact fee payments to, any city, county or municipality in which the Property is located arising from any construction of improvements, or dedication or contribution of property by Assignor, or Assignor’s predecessor in title or interest, related to the Property, **(ii)** any development rights, allocations of development density or other similar rights to the extent allocated to or attributable to the Property, and **(iii)** any utility capacity allocated to or attributable to the Property,

whether the matters described in the preceding clauses (i), (ii) and (iii) arise under or pursuant to governmental requirements, administrative or formal action by governmental authorities, or agreements with governmental authorities or third parties (collectively, the “Entitlements”).

4. **No Representation.** This assignment is made without representation or warranty of any nature.

5. **Successors and Assigns.** This assignment shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective successors, legal representatives and assigns.

6. **Governing Law.** This assignment shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Alabama.

[add signature and notary acknowledgment]

EXHIBIT “F”

FORM OF CERTIFICATE AND AFFIDAVIT OF NON-FOREIGN STATUS

STATE OF ALABAMA)

COUNTY OF MADISON)

NON-FOREIGN AFFIDAVIT RE SALE OF REAL PROPERTY INTEREST

Before me, the undersigned Notary Public in and for said county and state, personally appeared _____, as _____ of **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company, who being by me first duly sworn, deposes and says, under penalty of perjury, as follows:

1. That INTERGRAPH IMPROVED PROPERTIES, LLC, a Delaware limited liability company (“Seller”) is selling to CITY OF MADISON, ALABAMA, an Alabama municipal corporation (“Purchaser”), certain real property located in the County of Madison, State of Alabama, and described on **Exhibit “A”** hereto; and that such sale constitutes a transfer of a “U.S. Real Property Interest” as that term is defined in the Foreign Investors Real Property Tax Act of 1980, as amended (“FIRPTA”).

2. That this declaration is made for the benefit of Purchaser, and to inform the United States Internal Revenue Service (“IRS”) that Purchaser has no duty to collect withholding taxes for Sellers pursuant to FIRPTA and hereby grants permission for Purchaser to file this Affidavit with the IRS pursuant to any present or future applicable laws or regulations.

3. That Seller intends to file a United States Income Tax Return with respect to the transfer of the real property described on **Exhibit “A”** hereto, and that Seller is one of the following:

- (a) [] not a foreign person [individuals]
- (b) [] a domestic U.S. corporation
- (c) [] a domestic U.S. partnership
- (d) [] a domestic U.S. trust
- (e) [] a domestic U.S. estate

(f) a domestic U.S. limited liability company

4. That Seller's [complete one]

(a) Social Security Number is: _____

(b) United States Taxpayer's Identification No. is: _____

5. That Seller will testify, declare or certify before any tribunal, agency, officer or person, in any case now pending or which may hereafter be instituted, to the truth of the facts hereinabove set forth.

[add signature and notary acknowledgment]

EXHIBIT “G”

PROHIBITED USES

1. Any use which is illegal, which constitutes a public or private nuisance, or any use which creates offensive odors, other than normal cooking odors, which are noticeable outside of the improvements.
2. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).
3. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are on the Property for ordinary business purposes).
4. Any central laundry, dry cleaning plant, or laundry facility, coin operated laundry, or laundromat.
5. Any automobile, boat, truck, trailer or R.V. sales, leasing, display or repair facility (other than a high-end car dealership or boat sales incident to other first-class business operations).
6. Any funeral parlor or mortuary.
7. Any adult bookstore or club featuring adult entertainment or other type “adult” establishment selling or exhibiting pornographic materials or paraphernalia for use with illicit drugs.
8. Any massage parlor not incident to a first-class full-service spa or hotel operation.
9. Any pawnshop, flea market, “second-hand”, “surplus”, “used clothing”, or “thrift” store or liquidation outlet, any tent sale, carnival, circus, amusement park, bingo parlor, or any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated or authorized by the appropriate governmental authority.
10. Any assisted living facility or nursing home.
11. Any residential use, including, without limitation, single family homes, townhomes, or multi-family developments.

EXHIBIT "H"

NEW ECR

THIS INSTRUMENT PREPARED BY:

Allie Tucker, Esq.
BUTLER SNOW LLP
200 South Side Square, Suite 100
Huntsville, AL 35801
(256) 936-5611

STATE OF ALABAMA)

COUNTY OF MADISON)

EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT

THIS EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT (this “Agreement”) is entered into this _____ day of November, 2023 (the “Effective Date”) by **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (herein referred to as “Declarant”) and **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (“Purchaser,” and together with Declarant the “parties,” and sometimes each individually as “party”).

WITNESSETH:

WHEREAS, Declarant is the owner of certain land located in the City of Madison, Madison County, Alabama, and more particularly described on that certain Final Plat of Hexagon Park Phase I dated November 6, 2022, recorded in the Office of the Judge of Probate of Madison County, Alabama, in Plat Book 2022, Page 492 (the “Plat”) and attached hereto as **Exhibit “A”** and legally described in **Exhibit “B”** attached hereto (collectively, the “Intergraph Campus”); and

WHEREAS, Declarant intends to sell that portion of the Intergraph Campus designated as Lot 4 as shown on the Plat and legally described on **Exhibit “C”** attached hereto (such property is hereinafter referred to collectively as the “Property” or “Lot 4”; All Lots shown on the Plat other than Lots 2 and 4 are hereinafter collectively referred to as the “Retained Property” and described in **Exhibit “D”**);

WHEREAS, Purchaser intends to use the Property for a fitness center open to the public, and related uses;

WHEREAS, the parties desire to impose certain covenants, restrictions, easements and conditions on the development and use of the Property, as more particularly set out herein, for the benefit of the Property and the Retained Property; and

WHEREAS, Declarant and Purchaser desire to establish certain other agreements for the mutual benefit of the Retained Property and the Property, as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing premises and recitals and the following conditions and agreements, the parties do hereby impose the following easements, covenants and restrictions on the ownership, use and enjoyment of the Property and the Retained Property, in accordance with the following terms and conditions, and any successor, assignee, transferee or grantee or lessee of any interest in the Property, the Retained Property, or any portion thereof (whether by acceptance of a deed, a lease, a mortgage or any other instrument) shall be subject to the same.

Article 1

COVENANTS REGARDING DEVELOPMENT

The following terms and provisions shall be enforceable by Declarant or Purchaser (in accordance with this Agreement) against the Property or the Retained Property, as applicable, and any owner or occupant of any part thereof until the expiration of the Term (defined herein).

1.1 Improvements.

(a) The construction and development of any improvements on the Property, or the redevelopment of any existing improvements located thereon, must be designed, installed and completed in accordance (i) with all applicable laws, regulations, ordinances and building codes, including without limitation, applicable zoning ordinances and building codes; and (ii) all prior matters of record including without limitation this Agreement.

(b) No part of the building improvements situated on the Property shall be more than three (3) stories in height.

1.2 Construction Activities. With respect to the Property, and any portion thereof, construction activities thereon shall not unreasonably interfere with the business operations (including construction) being performed on any part of the Retained Property.

Article 2

RESTRICTED USES

Purchaser shall use the Property as a fitness center that is open to the public, and related uses thereto (the "Permitted Use") so long as any of Declarant's Affiliates (defined below), own, lease or control property adjacent to or within one mile of the boundary of the Property (the "Restricted Period"); provided, however, that, during the Restricted Period, Purchaser may use a portion of the Property as a community center as long as the remaining Property continues to be operated as a fitness center. After the end of the Restricted Period, Purchaser may use the Property for any and all public uses as determined by the City of Madison, Alabama, to be in the interests of the public and for the good and general welfare of the citizens of the City of Madison, Alabama, in accordance with its planning and zoning ordinances and regulations then in effect, provided any such use shall not violate the Restricted Uses. Without limiting the generality of the foregoing, during the Term of this Agreement, no portion of the Property shall be used, leased, operated or occupied as any of the restricted uses listed in **Exhibit "E"** attached hereto and incorporated herein by reference (the "Restricted Uses"). In addition to those restrictions, no part of the Property shall be owned or occupied by any party who is a competitor of Declarant or Declarant's Affiliates as of the date hereof. As used herein, "Declarant's Affiliates" shall include, without limitation, Intergraph Unimproved Properties, LLC, Intergraph Corporation, Hexagon, and Hexagon US Federal, Inc.

Article 3

MAINTENANCE

The Property, the Retained Property, and all improvements thereon shall be maintained by the owner thereof in a first-class condition and repair consistent with the standards of first-class municipal facilities and/or business facilities, as applicable, in a good, clean, neat and safe condition, and in

compliance with this Agreement and all laws, rules, regulations, orders and ordinances and the requirements of any governmental authority exercising jurisdiction thereof.

Article 4

TERM

The rights, obligations and liabilities created herein shall run with the land and shall be perpetual in nature (the "Term"), unless terminated in writing by all then owners of the Property and the Retained Property and recorded of record in the Office of the Judge of Probate of Madison County, Alabama.

Article 5

EASEMENTS

5.1 Cross Access Easement. Subject to the terms and conditions herein, Declarant hereby declares a perpetual non-exclusive easement for vehicular and pedestrian access, ingress and egress over and upon all drive aisles and rights of way now or hereafter located on the Property, for the use and benefit of all present and future owners of the Retained Property, and their respective successors, assigns, agents, employees, guests, tenants, invitees, contractors, customers, licensees and other similar and related parties.

In addition to the foregoing, during the Restricted Period, Declarant and Declarant's Affiliates and their respective employees shall have the right to use, access and enjoy the fitness center and any community center located on the Property. From the date hereof, until the later to occur of (i) the date that certain Promissory Note dated as of the date hereof from Purchaser in favor of Declarant in the principal amount of \$3,977,100.00 is paid in full, or (ii) October 1, 2028, such use by Declarant and Declarant's Affiliates shall be free of charge; thereafter, such use shall be subject to the same charge that the Declarant charges the general public. Upon request, each party hereby agrees to exercise a document reasonably acceptable to each party to further define the terms and conditions of Declarant's and Declarant's Affiliates continued use of the Property.

5.2 Indemnity. Each party agrees to indemnify, defend and hold harmless the other party and its respective partners, members, officers, shareholders, agents, lenders, successors and assigns from and against any and all claims, liabilities, demands, fines, suits, causes of action, judgments, damages, costs and expenses, including reasonable attorneys' fees and court costs, arising from or in connection with the use of the easements and rights created hereunder, except to the extent arising from the negligent act or omission of the party seeking indemnification. Notwithstanding the foregoing, Purchaser does not hereby waive any immunities that it may have or which exist under applicable laws limiting actions and/or damages against municipalities.

Article 6

ADDITIONAL COVENANTS

6.1 Retained Property. The parties acknowledge and agree that, except as otherwise specifically provided, nothing set forth herein shall be deemed to impose covenants and/or restrictions on the Retained Property and/or Declarant's use thereof.

Article 7

DEFAULT AND REMEDIES

7.1 Default. If the owner of the Property or the Retained Property fails to comply with any provision of this Agreement, then Declarant or Purchaser, as applicable, may, in its sole discretion but without any obligation to do so, upon sixty (60) days written notice to the defaulting party, proceed to cure the default (and shall have a license to do so) by the payment of money or the performance of some other action for the account of the defaulting party (as applicable). The foregoing right to cure shall not be exercised if within the sixty (60) day notice period (i) the defaulting party (as applicable) shall cure the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, if the defaulting party (as applicable) shall notify the non-defaulting party that it intends to cure and shall begin to cure such default with such time period and shall diligently pursue such action to completion. The sixty (60) day notice period shall not be required if, using reasonable judgment, the non-defaulting party deems that an emergency exists which requires immediate attention. In the event of such an emergency, whatever notice that is reasonable under the circumstances will be required.

7.2 Attorney's Fees. In the event either party shall institute any action or proceeding against the other party relating to the provisions of this Agreement, or to any default hereunder, or to collect any amounts owing hereunder, or an arbitration proceeding is commenced by agreement of the parties to any dispute, the unsuccessful party in such action or proceeding shall reimburse the successful party therein for costs and expenses incurred by the successful party in connection with such action or proceeding and any appeals therefrom, including reasonable attorneys' fees and court costs.

7.3 Remedies Cumulative. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity. Either party shall also have the right to restrain by injunction any violation or threatened violation by the owner of the Property or the Retained Property, as applicable, any of the terms, covenants, or conditions of this Agreement, and either party may obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. Notwithstanding the foregoing, Purchaser does not hereby waive any immunities that it may have or which exist under applicable laws limiting actions and/or damages against municipalities.

Article 8

MISCELLANEOUS

8.1 Binding Effect. The terms of this Agreement shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become parties hereunder. The use of the term "Purchaser" shall refer to the current record title holder of any portion of the Property and its successors and assigns with respect to the ownership of such parcel. The use of the term "Declarant" shall refer to the current record title holder of the Retained Property and its successors and assigns with respect to the ownership of such parcel.

8.2 Liability. The parties shall be liable for the performance of their respective obligations under this Agreement, and injunctive and other relief, including specific performance, shall be available to enforce such obligations. However, upon any sale or conveyance of the Retained Property or the Property (as the case may be) to a third party, the owner, as the case may be, who shall have sold its respective parcel, shall be forever released of any of its obligations hereunder (except for any obligation which shall have accrued at the time of such transfer), and such obligations arising thereafter shall be enforceable only against the party who shall acquire title to such respective parcel.

8.3 Singular and Plural. Whenever required by the context of this Agreement, the singular

shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

8.4 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

8.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order, shall in a no way effect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

8.6 Amendments. This Agreement may be amended by, and only by, a written agreement signed by all of the then current owners of the Retained Property and the Property (and mortgagee consents as applicable) and shall be effective only when recorded in the office of the Judge of Probate of Madison County, Alabama. No consent to the amendment of this Agreement shall ever be required of any person other than the foregoing parties, nor shall any person other than Declarant and Purchaser (and its respective successors and assigns) have any right to enforce any of the provisions hereof.

8.7 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Agreement.

8.8 Notices. Any notice or other instrument required or permitted to be given or delivered under the terms of this Agreement shall be deemed to have been given and delivered, upon receipt, when deposited with a nationally recognized overnight courier (prepaid by sender or billed to sender's account) or in the United States mail, postage prepaid, certified or registered, return receipt requested. Such notices may also be sent by personal delivery, in which case notice shall deemed delivered upon receipt. Any notice required or permitted to be given hereunder shall be deemed given and effective upon receipt thereof by the recipient thereto:

To Declarant: Intergraph Improved Properties, LLC
305 Intergraph Way
Madison, Alabama 35758
Attn: Ms. Denise Bates

With a copy to: Anthony P. Zana, Esq.
Intergraph Corporation
305 Intergraph Way
Madison, Alabama 35758

And a copy to: Butler Snow LLP
200 South Side Square, Suite 100
Huntsville, Alabama 35801
Attn: Allie Tucker, Esq.

To Purchaser: City of Madison
Legal Department
100 Hughes Road
Madison, Alabama 35758
Attn: Brian Kilgore

Email: brian.kilgore@madisonal.gov

With a copy to:

Attn: _____
Email: _____

A party’s address may be changed by written notice to the other interested party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

8.9 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall (i) entitle any party to cancel, rescind or, otherwise terminate this Agreement, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Retained Property or the Property. However, such limitation shall not affect in any manner any rights or remedies which a party may be hereunder by reason of any such breach.

8.10 Time. Time is of the essence of this Agreement.

8.11 Non-waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

8.12 Mortgage Subordination. Any mortgage, deed of trust, or deed to secure debt affecting any part of the Property or the Retained Property shall at all times be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage, deed of trust or deed to secure debt, or acquiring title by deed in lieu of foreclosure or trustee’s sale shall acquire title subject to all of the terms and provisions of this Agreement.

8.13 Applicable Law/Construction. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama, without regard to its conflict of law provisions.

8.14 Entire Agreement. This Agreement, including the Exhibits hereto, set forth the entire understanding and agreement regarding the above matters.

8.15 Force Majeure. References to “force majeure” hereinabove shall refer to delays due to strikes, riots, acts of God, governmental intervention or any other causes beyond the control of the owner of the Property and the Retained Property. Delays directly caused by the foregoing shall be excluded from the computations of deadlines in this Agreement.

8.16 Estoppel Statement. Upon the reasonable request of any party to this Agreement, any other party shall promptly execute and deliver, from time-to-time, a certificate confirming, if such then be the fact, that this instrument continues in full force and effect and unmodified (or, if modified, stating the modifications), and that the certifying party knows of no existing defaults by the other party, or if such default is known, specifying the same.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the undersigned caused this Agreement to be executed effective as of the day and year first above written.

DECLARANT:

**INTERGRAPH IMPROVED PROPERTIES,
LLC**, a Delaware limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

CITY OF MADISON, ALABAMA, an Alabama
municipal corporation

By: _____
Name: _____
Title: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County and State, hereby certify that _____, whose name as _____ of **INTERGRAPH IMPROVED PROPERTIES, 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 the instrument, (he/she) as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this _____ day of _____, 2023.

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County and State, hereby certify that _____, whose name as _____ of **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation, 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 instrument, (he/she) as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand this _____ day of _____, 2023.

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "A"

INTERGRAPH CAMPUS PLAT

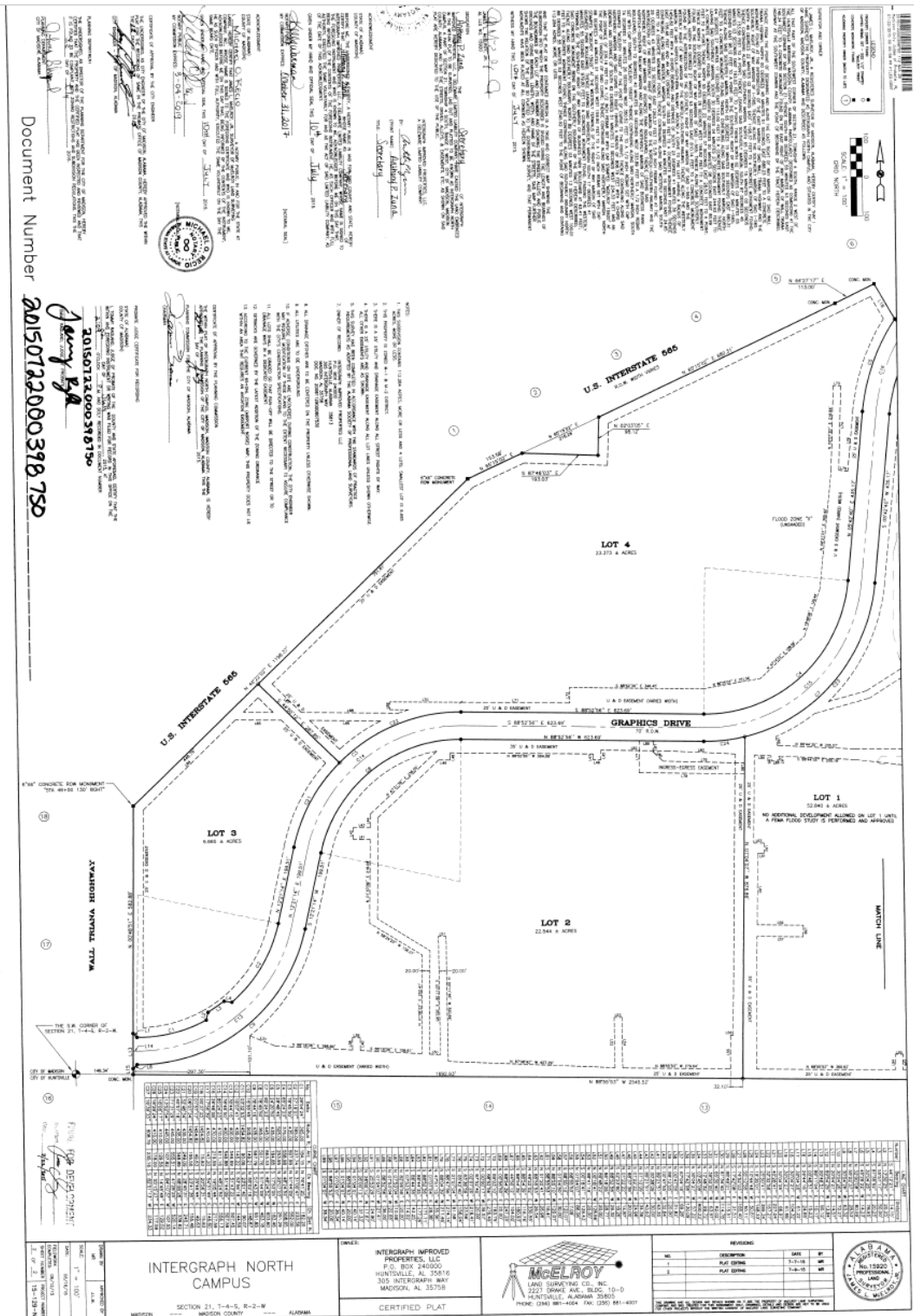


EXHIBIT "B"

**INTERGRAPH CAMPUS
LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Madison, State of Alabama, and is described as follows:

Lots 1, Lot 3, and Lot 4 as shown on that certain Certified Plat of Hexagon Park Phase I, a Resubdivision of Lot 1 of Intergraph North Campus as recorded in Document Number 20150722000398750 and a Resubdivision of Lot 1 of Madison Business Park Phase II as recorded in Document Number 20071212000866030, as recorded in Book 2022, Page 492-493, in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT "C"

**PROPERTY
LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Madison, State of Alabama, and is described as follows:

Lot 4, as shown on that certain Certified Plat of Hexagon Park Phase I, a Resubdivision of Lot 1 of Intergraph North Campus as recorded in Document Number 20150722000398750 and a Resubdivision of Lot 1 of Madison Business Park Phase II as recorded in Document Number 20071212000866030, as recorded in Book 2022, Page 492-493, in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT "D"

**RETAINED PROPERTY
LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Madison, State of Alabama, and is described as follows:

Lot 1 and Lot 3, as shown on that certain Certified Plat of Hexagon Park Phase I, a Resubdivision of Lot 1 of Intergraph North Campus as recorded in Document Number 20150722000398750 and a Resubdivision of Lot 1 of Madison Business Park Phase II as recorded in Document Number 20071212000866030, as recorded in Book 2022, Page 492-493, in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT “E”

RESTRICTED USES

1. Any use which is illegal, which constitutes a public or private nuisance, or any use which creates offensive odors, other than normal cooking odors, which are noticeable outside of the improvements.
2. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).
3. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are located on the Property for business purposes).
4. Any central laundry, dry cleaning plant, or laundry facility, coin operated laundry, or laundromat.
5. Any automobile, boat, truck, trailer or R.V. sales, leasing, display or repair facility (other than a high-end car dealership or boat sales incident to other first-class business operations).
6. Any funeral parlor or mortuary.
7. Any adult bookstore or club featuring adult entertainment or other type “adult” establishment selling or exhibiting pornographic materials or paraphernalia for use with illicit drugs.
8. Any massage parlor not incident to a first-class full-service spa or hotel operation.
9. Any pawnshop, flea market, “second-hand”, “surplus”, “used clothing”, or “thrift” store or liquidation outlet, any tent sale, carnival, circus, amusement park, bingo parlor, or shooting gallery, or any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated or authorized by the appropriate governmental authority.
10. Any assisted living facility or nursing home.
11. Any residential use, including, without limitation, single family homes, townhomes, or multi-family developments.

EXHIBIT "I"
PROMISSORY NOTE

PROMISSORY NOTE

\$3,977,100.00

November __, 2023
Huntsville, Alabama

FOR VALUE RECEIVED, the undersigned, **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (“Borrower”), hereby promises to pay to the order of **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (“Lender”; Lender and subsequent holder hereof being hereinafter referred to as “Holder”), without grace at its office at 305 Intergraph Way, Madison, Alabama 35758, or such other place as Holder may direct, in lawful money of the United States of America, with interest, charges and expenses, the principal amount of **THREE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$3,977,100.00)** (the “Loan”). Payment of principal and interest shall be in accordance with the following provisions:

1. **Payments.** Borrower promises to pay principal and interest on or before October 1st of each year in the total amount of \$795,420.00. The first such payment of principal and interest shall be due and payable on or before October 1, 2024. The balance of all outstanding principal and all accrued and unpaid interest on this Note and all charges hereunder and under the Loan Documents (as defined below) shall be due and payable on October 1, 2028 (the “Maturity Date”). In addition to any other amounts due to Lender as set out herein, any scheduled payment of principal and/or interest not received by Lender within ten (10) days of the date due shall accrue additional interest at the rate of eighteen percent (18%) per annum from the due date until the date paid.

Any payment date that would otherwise fall on a day which is not a Business Day shall be extended to the next succeeding Business Day, unless such Business Day falls in another financial quarter, in which case such payment date shall be on the next preceding Business Day. “Business Day” shall mean any day other than Saturday, Sunday, or other day on which commercial banks are authorized or obligated to close under the laws of the United States or Alabama.

2. **Interest.** The applicable interest rate during the term of this Note shall be two and a half percent (2.50%) per annum (the “Interest Rate”). Borrower and Lender acknowledge and agree that the total stated amount of this Note includes an annual interest rate equal to the Interest Rate such that accrued interest is included in the quarterly payments required to be made by Borrower under Section 1, and Borrower shall not be required to make interest payments in addition to the aforementioned quarterly payments.

3. **Loan Documents.** The indebtedness evidenced hereby is secured by (i) that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Borrower to Lender dated as of the date hereof (the “Mortgage”), (ii) that certain Escrow Agreement executed by Borrower and Lender dated as of the date hereof, and (iii) any and all other documents executed in connection with or securing this Note (collectively, the “Loan Documents”).

This Note is included in the indebtedness referred to in the Loan Documents and is entitled to the benefits of the Loan Documents, but neither this reference to the Loan Documents nor any provisions thereof shall affect or impair the absolute and unconditional obligation of Borrower to pay the principal of and interest on this Note when due.

4. **Prepayment.** Throughout the term of this Note, there shall be no prepayment penalty on any full or partial repayment, provided, however, prepayment in full shall mean Borrower has made all

Initial: _____

required principal and interest payments hereunder, totaling the amount of \$3,977,100.00, notwithstanding the fact that the interest applicable thereon may have not yet accrued at the time of such prepayment.

5. **Events of Default.** The occurrence of any of the following events shall constitute an event of default (each an “Event of Default”):

(a) Default in the payment of the principal of, interest on, or charges, expenses and other monetary obligations related to this Note as and when due and the failure to cure same within ten (10) days after written notice from Lender; provided, however, that Lender shall not be obligated to give more than one (1) such notice in any twelve (12) month period;

(b) Any representation or warranty made in this Note or in any of the Loan Documents shall prove to be false or misleading in any material respect as of the time made, and such false or misleading representation or warranty adversely impacts the ability of Borrower, in Lender’s reasonable judgment, to satisfy its payment obligations pursuant to this Note;

(c) The occurrence of such a material change or such a combination of otherwise immaterial changes in the condition or affairs (financial or otherwise) of Borrower, as in the opinion of Lender, impairs Lender’s security or increases its risk;

(d) Failure of Borrower or any other person or entity to observe any covenant or obligation contained in any of the Loan Documents or in any other instrument executed in connection with or securing this Note, including, but not limited to, the Mortgage;

(e) The occurrence or continuation of any default or event of default contained, specified or referenced in any of the Loan Documents or in any other document, agreement or instrument executed in connection with or securing this Note, including, but not limited to, the Mortgage, and the failure to cure same within any applicable notice and cure period specifically provided in any Loan Document;

(f) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of Borrower or any of Borrower’s properties or assets, (ii) fail or admit in writing Borrower’s inability to pay Borrower’s debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) suffer or permit an order for relief to be entered against Borrower in any bankruptcy proceeding, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against Borrower in any proceeding under any such law or statute, or if action shall be taken by Borrower for the purpose of effecting any of the foregoing;

(g) a petition shall be filed, without the application, approval or consent of Borrower in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of such Borrower or of all or a substantial part of the properties or assets of Borrower, or seeking any other relief under any law or statute of the type referred to in Section 6(f) against Borrower, or the appointment of a receiver, trustee, liquidator or other custodian of Borrower or of all or a substantial part of the properties or assets of Borrower, and such petition shall not have been stayed or dismissed within sixty (60) days after the filing thereof; or

(h) the occurrence of a default by Borrower under that certain Easements, Covenants and Restrictions Agreement, dated on or about the date hereof, between Borrower and Lender, and recorded in the Office of the Judge of Probate of Madison County, Alabama.

During the continuance of any Event of Default, Holder may, with or without notice to Borrower, declare this Note to be forthwith due and payable, as to principal and interest and related charges and expenses,

without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in any of the Loan Documents or in any other instrument executed in connection with or securing this Note to the contrary notwithstanding.

6. **Waivers.** Borrower and any endorser or guarantor of this Note hereby waive demand, presentment for payment, notice of dishonor, protest, and notice of protest and diligence in collection or bringing suit and agree that Holder may accept partial payment, or release or exchange security or collateral, without discharging or releasing any unreleased collateral or the obligations evidenced hereby. Borrower and each such endorser and guarantor further waive any and all rights of exemption, both as to personal and real property, under the constitution or laws of the United States, the State of Alabama, or any other state or jurisdiction. No failure of any Holder of this Note to accelerate the indebtedness evidenced hereby or to exercise any other right hereunder shall be construed as a novation or modification of this Note or a waiver of the Holder's right to thereafter insist upon strict compliance with the terms of this Note without prior notice of such intention being given to Borrower.

7. **Successors and Assigns.** Whenever in this Note any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, except that Borrower may not assign or transfer its obligations under this Note without the prior written consent of the Holder; and all obligations of Borrower under this Note shall bind Borrower's successors and assigns and shall inure to the benefit of the successors and assigns of the Holder.

8. **Separability Clause.** If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. **No Oral Agreements.** This Note is the final expression of the agreement between the parties hereto, and this Note may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Note and the other Loan Documents, and there is no unwritten oral agreement between the parties hereto in existence.

10. **Waiver and Election.** The exercise by the Holder of any option given under this Note or the Loan Documents shall not constitute a waiver of the right to exercise any other option. No failure or delay on the part of the Holder in exercising any right, power or remedy under this Note or the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of this Note, nor consent to any departure by Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of the Holder, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

11. **Attorneys' Fees and Costs.** Borrower agrees to pay reasonable attorneys' fees and costs actually incurred by Holder in collecting or attempting to collect this Note, whether by suit or otherwise.

12. **Applicable Law; Assigns.** Borrower agrees that this Note shall be governed by and construed under the internal laws of the State of Alabama (without regard to choice of law considerations), including, without limitation, applicable usury laws. This Note has been negotiated, and is being executed and delivered in the State of Alabama, or, if executed elsewhere, shall become effective upon Lender's receipt and acceptance of the executed original of this Note in the State of Alabama; provided, however, that Lender shall have no obligation to give, nor shall Borrower be entitled to receive, any notice of such acceptance for this Note to become a binding obligation of Borrower. It is intended, and Borrower and Lender specifically agree, that the laws of the State of Alabama governing interest shall apply to this Note and this transaction. Borrower hereby acknowledges that (i) the negotiation, execution, and delivery of this Note and the Loan Documents constitutes the transaction of business within the State of Alabama; (ii) any

cause of action arising under this Note and/or any of the Loan Documents will be a cause of action arising from such transaction of business; and (iii) Borrower understands, anticipates and foresees that any action for enforcement of this Note and/or any of the Loan Documents may be brought against Borrower, et al., in the State of Alabama. To the extent allowed by law, Borrower hereby submits to jurisdiction in the State of Alabama for any action or cause of action arising out of or in connection with this Note and/or any of the Loan Documents and waives any and all rights under the laws of any state or jurisdiction to object to jurisdiction or venue within Madison County, Alabama. Notwithstanding the foregoing, nothing contained in this paragraph shall prevent Lender from bringing any action or exercising any rights against Borrower, any security for this Note or any of Borrower's properties in any other county, state or jurisdiction. Initiating such action or proceeding or taking any such action in any other state or jurisdiction shall in no event constitute a waiver by Lender of any of the foregoing. As used herein, the terms "Borrower", "Lender" and "Holder" shall be deemed to include their respective successors, legal representatives and assigns, whether by voluntary action of the parties or by operation of law. This Note is given under the seal of all parties hereto, and it is intended that this Note shall constitute and have the effect of a sealed instrument according to law.

13. **Waiver of Jury Trial. BORROWER AND LENDER HEREBY (A) IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM OF ANY TYPE AS TO ANY MATTER ARISING DIRECTLY OR INDIRECTLY OUT OF OR WITH RESPECT TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH AND (B) AGREE THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS NOTE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED FOR AGREEMENT IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY OF ANY KIND WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

[Signature page to follow.]

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed, sealed and delivered effective as of the date first written above, even if actually executed on a different day as a matter of convenience only.

BORROWER:

CITY OF MADISON, ALABAMA, an Alabama municipal corporation

By: _____
Name: _____
Its: _____

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____, whose name as _____ of **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation, 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, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of municipal corporation.

Given under my hand this _____ day of _____, 2023.

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "J"
MORTGAGE

This Instrument Prepared By:
Allie Tucker, Esq.
Butler Snow LLP
200 Westside Square, Suite 100
Huntsville, AL 35801
Tel. (256) 936-5650

**FUTURE ADVANCE MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT
(ALABAMA)**

STATE OF ALABAMA)

COUNTY OF MADISON)

THIS INDENTURE (herein this “**Mortgage**”) made this ___ day of _____, 2023, between **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (hereinafter called “**Borrower**,” “**Mortgagor**” or “**Debtor**”, whether one or more), and **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (hereinafter called “**Lender**” or “**Mortgagee**”).

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

W I T N E S S E T H:

WHEREAS, Borrower is justly indebted to Lender on a loan (the “**Loan**”) in the principal sum of THREE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND ONE HUNDRED AND NO /100 DOLLARS (\$3,977,100.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated of even date herewith, payable to Lender with interest thereon (the “**Note**”) on demand or as otherwise provided in the Note; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise (herein “**Other Indebtedness**”).

NOW, THEREFORE, Borrower, in consideration of Lender’s making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys’ fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Note and such other documents are sometimes referred to herein as the “**Loan Documents**”), and as may be set forth in instruments evidencing or securing Other Indebtedness (the “**Other Indebtedness Instruments**”) has bargained and sold and does hereby grant, bargain, sell, alien and convey unto Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of Lender or hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the

“**Mortgaged Property**”) to-wit:

(a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the “**Land**”);

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the “**Improvements**”);

(c) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and reasonable attorneys’ fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;

(d) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), or (c) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), or (c) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if Borrower shall fully pay or cause to be fully paid to Lender the principal and interest payable with respect of the Loan and the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, reasonable attorneys’ fees, and shall pay any and all Other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of Borrower, all without fraud or delay, and (ii) Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document or any Other Indebtedness Instrument (including without limitation advances,

obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND Borrower further represents, warrants, covenants and agrees with Lender as follows:

ARTICLE GENERAL

1.01 Performance of Mortgage, Note and Loan Documents. Borrower shall perform, observe and comply with all provisions hereof, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, except for the matters set forth on **Exhibit B** hereto, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of Borrower to Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. During the continuance of an Event of Default, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by Lender in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

(a) Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same

for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) Borrower promptly shall pay and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Lender.

1.06 Insurance.

(a) Borrower shall procure for, deliver to, and maintain for the benefit of Lender during the term of this Mortgage insurance policies in such amounts as Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as Lender may require. The form of such policies and the companies issuing them shall be acceptable to Lender, and, unless otherwise agreed by Lender in writing, shall provide for coverage without coinsurance or deductibles. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to Lender, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) Lender hereby is authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to Lender instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said funds, Lender may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be liable to Borrower or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) During the continuance of an Event of Default, Borrower shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Borrower with Lender pursuant to this Paragraph 1.06 to enable Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any Other Indebtedness Instruments, Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by Lender in

writing, no application of insurance proceeds to the Loan, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require. Borrower promptly shall notify Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. Lender shall be entitled to retain, at the expense of Borrower, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to Borrower or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Twenty Thousand Dollars (\$20,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower shall give immediate written notice of the same to Lender.

(d) Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower promptly shall restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, Borrower shall not be required to restore the Mortgaged Property as aforesaid unless Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.06,

toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, Borrower promptly shall restore, repair or alter the remaining property in a manner satisfactory to Lender; provided, however, that if there are condemnation proceeds or awards, Borrower shall not be required to restore the Mortgaged Property as aforesaid unless Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.07, toward restoring the damaged improvements.

1.09 Further Assurances; After-Acquired Property.

(a) At any time, and from time to time, upon request by Lender, Borrower, at Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

(b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by Borrower by whatsoever means, including that in the event Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of Borrower or Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Borrower hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. Lender also shall have and hereby is granted a security interest in all monies, securities and other property of Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of Lender by or for the account of Borrower (including indebtedness due from Lender to Borrower, and any and all claims of Borrower against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as Lender may determine, any such monies, securities or other property held or controlled by Lender. No such application of funds shall, unless otherwise expressly agreed by Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. Borrower shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to

the approval of Lender. Borrower shall not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by Lender, Borrower shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. Borrower shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of Lender.

1.12 Expenses. Borrower shall pay or reimburse Lender for all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note, plus two percentage points (2%). Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower for trespass or otherwise.

1.14 Books and Records. Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of Lender, Borrower shall furnish to Lender (i) within ninety (90) days after the end of Borrower's fiscal year a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a Certified Public Accountant, and (ii) within ten (10) days after request therefor from Lender, a rent schedule of the Mortgaged Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.15 Estoppel Affidavits. Borrower within ten (10) days after written request from Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. Borrower shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property without obtaining the express written consent of Lender at least thirty (30) days prior to such conveyance. If Borrower should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Lender, then, in such event, the entire balance of the indebtedness

(including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of Lender.

1.17 Environmental and Compliance Matters. Borrower represents, warrants and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term “**Hazardous Materials**” includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“**CERCLA**”) (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act (“**RCRA**”) (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sections 2601, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (“**OSHA**”) pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

(e) Borrower promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, Borrower represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, (“**ADA**”) (42 U.S.C. Sections 12101, *et seq.*) and the Rehabilitation Act of 1973 (“**Rehabilitation Act**”) (29 U.S.C. Sections 749, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.

(f) Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Borrower agrees to and does hereby indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Borrower’s failure to perform any obligations of this Paragraph 1.17, (iii) Borrower’s or the Mortgaged Property’s failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or

placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Lender, Borrower shall and hereby does grant and convey to Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein “**Inspections**”), as Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to Lender, Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by Lender with respect to any Inspections which Lender may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Borrower, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement or Construction Loan Agreement executed by Borrower and Lender in connection with the Loan, or otherwise as permitted in writing by Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a “**Governmental Authority**” means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) “**Governmental Requirements**” means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Borrower, in consideration of Lender’s making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys’ fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto Lender all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged

Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Lender, and Borrower does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting Lender as “mortgagee in possession” in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

2.04 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Borrower’s right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

2.05 No Obligation of Lender Under Leases. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said leases, subleases or agreements, Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys’ fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys’ fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to Lender upon receipt of demand from said Lender to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph

4.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT

3.01 Grant of Security Interest. Borrower (the “debtor” for purposes of the Uniform Commercial Code), in consideration of Lender’s (the “secured party” for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys’ fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the “**Collateral**”).

3.02 Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Alabama Uniform Commercial Code (the “**Uniform Commercial Code**”) shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Borrower and Lender. At Lender’s request, Borrower will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable. Borrower authorizes Lender to prepare and to file financing statements covering the Collateral signed only by Lender and to sign Borrower’s signature to such financing statements in jurisdictions where Borrower’s signature is required. Borrower promises to pay to Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Borrower (Collateral). With respect to all of the Collateral, Borrower represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;
- (b) If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Note which Lender may disburse directly to the seller, contractor, or subcontractor;
- (c) All the Collateral will be kept at the address of Borrower shown in Paragraph 5.08(a) or, if not, at the real property described in **Exhibit A** hereto. Borrower promptly shall notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Borrower’s business, Borrower, its agents or employees, will not remove the Collateral from said location without the prior written consent of Lender;

(d) If certificates of title are issued or outstanding with respect to any of the Collateral, Borrower shall cause Lender's interest to be properly noted thereon; and

(e) Borrower's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to Lender. Borrower promptly shall advise Lender in writing of any change in Borrower's name.

3.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

3.06 No Obligation of Lender Under Assigned Contracts. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said contracts or agreements, Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

3.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term “Event of Default,” wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

(a) Failure by Borrower to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under the Note, this Mortgage or under any other Loan Document; or

(b) Failure by Borrower to duly observe any other covenant, condition or agreement of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, and the continuance of such failure for ten (10) days or more, or the occurrence of any other Event of Default under any of the other Loan Documents or Other Indebtedness Instruments,; or

(c) The filing by Borrower or any guarantor of any indebtedness secured hereby or of any of Borrower’s obligations hereunder, of a voluntary petition in bankruptcy or Borrower’s or any such guarantor’s adjudication as a bankrupt or insolvent, or the filing by Borrower or any such guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower’s or any such guarantor’s seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction or any order, judgment, or decree approving a petition filed against Borrower or any guarantor of any of the indebtedness secured hereby or of any of Borrower’s obligations hereunder, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, without the consent or acquiescence of Borrower and/or any such guarantor which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(e) The filing or enforcement of any other mortgage, lien or encumbrance on the Mortgaged Property or any part thereof, or of any interest or estate therein; or

(f) If any portion of the Mortgaged Property is a leasehold estate, the occurrence of a default under such lease or other instrument creating the estate.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or

such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of Borrower or then owner of the Mortgaged Property relating thereto, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender, as attorney-in-fact or agent of Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys so received by Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) Borrower shall pay to Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as Lender may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

(a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;

(b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;

(c) The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and

(d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Borrower does hereby irrevocably appoint Lender attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money,

Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

(c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

4.09 Lender's Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 Waiver of Exemption. Borrower 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 Borrower 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.

4.11 Suits to Protect the Mortgaged Property. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with

such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

4.12 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender. If default shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of Lender, Borrower shall pay to Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of Lender's agents and attorneys.

4.13 Delay or Omission No Waiver. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the other Loan Documents, or the Other Indebtedness Instruments of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings — Position of Parties Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to

their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

4.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

4.17 Notice of Defaults Under the Loan Documents and Other Credit Arrangements. Borrower shall give prompt notice to Lender of any defaults by Borrower under this Mortgage or any of the other Loan Documents, and of any notice of default received by Borrower under any other credit arrangement of Borrower.

ARTICLE V MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, Borrower shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of Lender.

5.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, in the other Loan Documents and in the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.06 Conflict in Loan Documents. In the event of conflict in the terms of any provision in this Mortgage, the Note, any of the other Loan Documents, or the Other Indebtedness Instruments, the terms of the provision most favorable to Lender shall apply.

5.07 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.

5.08 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

(a) **Name of Borrower (Debtor):** **CITY OF MADISON, ALABAMA**

Address of Borrower:

(b) **Name of Lender (Secured Party):** **INTERGRAPH IMPROVED PROPERTIES, LLC**

Address of Lender:

305 Intergraph Way
Madison, Alabama 35758
Attention: Anthony P. Zana

(c) **Record Owner of Real Estate described on Exhibit A hereto:** **CITY OF MADISON, ALABAMA**

5.09 Applicable Law. This Mortgage shall be governed by the laws of the State of Alabama.

5.10 Rider. Additional provisions of this Mortgage, if any, are set forth below or on a Rider attached hereto and made a part hereof.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

BORROWER (Mortgagor, Debtor):

CITY OF MADISON, ALABAMA, an Alabama municipal corporation

By: _____
Name: _____
Its: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, a notary public in and for said county in said state, hereby certify that _____, whose name as _____ of **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation, 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 such instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said corporation.

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

[Notarial Seal]

Notary Public
My Commission Expires: _____

EXHIBIT A

Description of Mortgaged Property

The Land referred to herein below is situated in the County of Madison, State of Alabama, and is described as follows:

Lot 4, as shown on that certain Certified Plat of Hexagon Park Phase I, a Resubdivision of Lot 1 of Intergraph North Campus as recorded in Document Number 20150722000398750 and a Resubdivision of Lot 1 of Madison Business Park Phase II as recorded in Document Number 20071212000866030, as recorded in Book 2022, Page 492-493, in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT B
Permitted Exceptions to Title

EXHIBIT "K"

ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made as of the ___ day of November, 2023, between **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (hereinafter referred to as “Borrower”), and **INTERGRAPH IMPROVED PROPERTIES, LLC**, a Delaware limited liability company (hereinafter referred to as “Lender”).

WITNESSETH:

WHEREAS, Borrower, as buyer, and Lender, as seller, entered into that certain Purchase and Sale Agreement dated November 13th, 2023, in connection with the purchase and sale of that certain real property and improvements known as Lot 4 of Hexagon Park Phase I, as more particularly described therein (the “Contract”);

WHEREAS, pursuant to the Contract, Borrower deposited Fifty Thousand and No/100 Dollars (\$50,000.00) as earnest money (the “Deposit”);

WHEREAS, the Borrower has requested and the Lender has agreed to provide a loan to the Borrower in the amount of Three Million Nine Hundred Seventy-Seven Thousand One Hundred and No/100 Dollars (\$3,977,100.00) to finance the Borrower’s acquisition of the property (the “Loan”), which is evidenced by that certain Promissory Note executed by Borrower in favor of Lender, dated of even date herewith, in the principal amount \$3,977,100.00 (as may be amended, restated and renewed from time to time, the “Note”);

WHEREAS, the parties intend for the Deposit to be credited against the last payment coming due by Borrower under the Note; and

WHEREAS, the parties desire and agree that Lender hold the Deposit in escrow in a non-interest bearing account pursuant to the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt of any sufficiency thereof, is duly acknowledged, the parties hereto agree as follows:

1. The Deposit. Lender shall hold the Deposit in a non-interest bearing account until the earlier to occur of (i) the maturity date of the Note, or (ii) an event of default by Borrower occurs and is continuing under the Note. Upon the occurrence of an event of default under the Note, Lender shall have the right, without obligation, in addition to any other rights or remedies available to Lender at law or in equity, to apply all or any portion of the Deposit to the outstanding balance due under the Note and/or the costs and expenses incurred by Lender in connection with Borrower’s default under the Note. In the event the Note matures, and Borrower is not then in default under the Note, Lender shall apply the Deposit as a credit against the last payment coming due under the Note.

2. Disputes. In the event that Lender determines in good faith that a bona fide dispute exists as to how the Deposit is supposed to be used, Lender, at its option, (a) may refuse to

comply with any claims or demands on it and continue to hold the Deposit until (i) Borrower and Lender agree in writing on the application of the Deposit, in which event Lender shall then release and deliver the Deposit in accordance with said agreement, or (ii) Lender receives a certified copy of a final non-appealable judgment of a court of competent jurisdiction directing the application of the Deposit, in which event Lender shall then apply the Deposit in accordance with said direction, or (b) may take such affirmative steps as Lender may elect in order to substitute another impartial party reasonably satisfactory to Borrower and Lender (whose consents to such substitution shall not be unreasonably withheld), to hold the Deposit, including, without limitation, the deposit thereof in a court of competent jurisdiction and the commencement of an action for interpleader, the costs thereof to be the joint and several obligation of Borrower and Lender.

3. Notices. All notices, demands, offers, elections or other communications required or permitted by this Escrow Agreement shall be in writing, shall be delivered personally, by certified United States mail, return receipt requested, or by nationally recognized commercial courier for next business day delivery, to the address set forth below for each party, or to such other addresses as are specified by written notice given in accordance herewith:

Borrower:

Lender:

Intergraph Improved Properties, LLC
305 Intergraph Way
Madison, Alabama 35758
Attn: Anthony P. Zana

4. No Third Party Beneficiaries. It is expressly agreed that this Escrow Agreement is for the sole benefit of the parties hereto and shall not be construed or deemed to be made for the benefit of any third party or parties.

5. Governing Law. This Escrow Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama.

6. Severability. If any provision of this Escrow Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Escrow Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

7. Entire Agreement. This Escrow Agreement, together with the Contract, Note and other loan documents, contains the entire understanding between the parties hereto with respect

to the subject matter hereof. No variations, modifications or changes hereof shall be binding upon any party hereto unless set forth in a document duly executed by all parties hereto.

8. Miscellaneous. Whenever used herein, the singular number shall include the plural, and the use of any gender shall include all genders. This Escrow Agreement shall be binding upon and enforceable between Borrower and Lender, their heirs, executors, administrators, legal representatives, successors, assigns or trustees. This Escrow Agreement may be executed in multiple original counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one and the same instrument.

9. WAIVER OF JURY TRIAL. EACH PARTY WAIVES THE RIGHT TO A JURY TRIAL OF ANY DISPUTE RELATING TO THIS ESCROW AGREEMENT.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned Borrower has caused this Escrow Agreement to be executed effective as of the date first set forth above.

CITY OF MADISON, ALABAMA

By: _____

Name: _____

Its: _____

STATE OF ALABAMA)

:

COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, as such manager and with full authority, being informed of the contents of such instrument, s/he executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand this ____ day of November, 2023.

[NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned Lender has caused this Escrow Agreement to be executed effective as of the date first set forth above.

**INTERGRAPH IMPROVED PROPERTIES,
LLC**, a Delaware limited liability company

By: _____

Name: _____

Its: _____

STATE OF ALABAMA)

:

COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **INTERGRAPH IMPROVED PROPERTIES, 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, as such manager and with full authority, being informed of the contents of such instrument, s/he executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this ____ day of November, 2023.

[NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____