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Tax/Parcel ID #03-4-19-0-001-003.007

MORTGAGE

OPEN-END MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE SECURES FUTURE ADVANCES

**NOTICE: THIS DOCUMENT SECURES A VARIABLE INTEREST RATE NOTE AND
CONTAINS PROVISIONS FOR INCREASES UNDER CERTAIN CIRCUMSTANCES IN THE
PRINCIPAL BALANCE OF THE INDEBTEDNESS SECURED HEREBY**

THIS MORTGAGE is made on 12/17/10, by and between **John R. Graham and Laura M. Graham**, husband and wife, with an address of 2134 Brook Highland Ridge, Birmingham, Alabama 35242 (the "Mortgagor"), and **The Bancorp Bank**, with an address of 409 Silverside Road, Suite 105, Wilmington, DE 19809 (the "Mortgagee").

RECITALS

Mortgagee, has agreed, pursuant to a Loan Agreement of even date herewith (the "Loan Agreement"), and subject to the terms set forth therein, to make a loan to Health Choice Enterprises, Inc. (the "Borrower") in an aggregate amount of **One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00)** (the "Loan") which is being guaranteed by Mortgagor (the "Guarantee"), the Loan Agreement and Guarantee constituting the consideration for this Mortgage.

Borrower has duly executed a promissory note of even date herewith (the "Note") to evidence the terms of repayment of the Loan with interest at the rate or rates established from time to time in accordance with the terms set forth therein, which Note has been delivered by Borrower to the Mortgagee (the Mortgagee and any assignee or other lawful owner of the Note being hereinafter sometimes called "Mortgagee"). Mortgagor has duly executed the Guarantee to support the obligations of the Borrower to repay the Loan. All references herein to the Note and the obligations arising thereunder shall be deemed to include the Guarantee and all obligations arising under the Guarantee.

All things necessary to make the Note the valid, binding and legal obligation of Mortgagor, and to make this Mortgage a valid, binding and legal instrument for the security of the Note in accordance with its terms, have been duly performed, and the execution and delivery of the Note and this Mortgage by Mortgagor have been in all respects duly authorized.

It has been agreed that the repayment of the Loan with interest, according to the terms of the Note and any alterations, modifications, substitutions, extensions or renewals thereof, as well as the performance of the other covenants, terms and conditions herein, should be secured by the execution of this Mortgage, which also shall secure payment by Mortgagor of all costs and expenses incurred in respect to the Loan, including reasonable attorney's fees as is hereinafter provided.

NOW, THEREFORE, WITNESSETH: in consideration of the premises and of other good and valuable considerations, the receipt of which is hereby acknowledged, Mortgagor mortgages, grants, assigns, conveys and transfers unto the Mortgagee, its successor or successors and assigns, in fee simple, WITH MORTGAGE COVENANTS, all that land situate in **Shelby County, Alabama, being commonly known as 2134 Brook Highland Ridge, Birmingham, Tax/Parcel ID #03-4-19-0-001-003.007 and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land")** and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repair, replacements and improvements now or hereafter located thereon (hereinafter sometimes called the "Improvements").

TOGETHER with all the walks, fences, shrubbery, driveways, fixtures, equipment, machinery, apparatus, fittings, building materials and other articles of personal property of every kind and nature whatsoever, now or hereafter ordered for eventual delivery to the Land (whether or not delivered thereto), and all such as are now or hereafter located in or upon any interest or estate in the Land or any part thereof and used or usable in connection with any present or future operation of the Land now owned or hereafter acquired by Mortgagor, including, without limiting the generality of the foregoing, all heating, lighting, laundry, clothes washing, clothes drying, incinerating and power equipment, engines, pipes, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire-prevention, fire-extinguishing, refrigerating, ventilating, and communications apparatus, television sets, radio systems, recording systems, computer equipment, air-cooling and air-conditioning apparatus, elevators, escalators, shades, awnings, draperies, curtains, fans, furniture, furnishings, carpeting, linoleum and other floor coverings, screens, storm doors and windows, stoves, gas and electric ranges, refrigerators, garbage disposals, sump pumps, dishwashers, washers, dryers, attached cabinets, partitions, ducts and compressors, landscaping, swimming pools, lawn and garden equipment, security systems and including all equipment installed or to be installed or used or usable in the operation of the building or buildings or appurtenant facilities erected or to be erected in or upon the Land; it being understood that all of the aforesaid shall be deemed to be fixtures and part of the Land, but whether or not of the nature of fixtures they shall be deemed and shall constitute part of the security for the indebtedness herein mentioned and shall be covered by this Mortgage excluding, however, only personal property owned by any tenant actually occupying all or part of the premises. Disposition of any of the aforesaid or of any interest therein is prohibited; however, if any disposition is made in violation hereof, the Mortgagee shall have a security interest in the proceeds therefrom to the fullest extent permitted by the laws of Alabama; and

TOGETHER with all and singular the rights, alleys, ways, waters, easements, tenements, privileges, advantages, accessions, hereditaments and appurtenances belonging or in any way appertaining to the Land and other property described herein, and the reversions and remainders, earnings, revenues, rents, issues and profits thereof and including any right, title, interest or estate hereafter acquired by Mortgagor in the Land and other property described herein; and

TOGETHER with all the right, title and interest (but not the obligations) of Mortgagor, present and future, in and to all present and future accounts, contract rights (including all fees and other obligations set forth in the Mortgagee's commitment to make the Loan), general intangibles, chattel paper, documents and instruments including but not limited to licenses, construction contracts, service contracts, utility contracts, options, permits, public works agreements, bonds, deposits and payments thereunder, relating or appertaining to the Land and other property described herein and its development, occupancy and use; and

TOGETHER with any right to payment or for services rendered, whether or not yet earned by performance, arising from the operation of the improvements or any other facility on the Land, including, without limitation, (1) all accounts arising from the operation of the improvements and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof, and (2) all rights to payment from any consumer credit/charge card organization or entity, including, without limitation, payments arising from the use of the American Express Card, Visa Card, Carte Blanche Card, MasterCard, Diner's Club, or any other credit card, including those now existing or hereinafter created or any substitution therefor and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof; and

TOGETHER with all of the rents, royalties, revenues, income, proceeds, profits and other benefits paid or payable by parties to the leases for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying the Land, the Improvements, and other property securing the indebtedness, or any portion thereof. As used in this Mortgage, the word "leases" includes any and all leases, subleases, licenses, concessions, reservations, accounts, permits, contracts, and other agreements (oral or written, now or hereafter in effect) which grant a possessory interest or right of occupancy in and to, or the right to use, or affect all or part of the Land, the improvements, and other property securing the indebtedness, or any portion thereof; and

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

TOGETHER with all proceeds derived from any taking by condemnation or eminent domain proceedings or transfer in place or in anticipation thereof of all or any part of the property described in these granting clauses;

TO HAVE AND TO HOLD the Land with Improvements thereupon and all the rights, easements, profits and appurtenances and other property described above (all of which is hereinafter sometimes called the "Property") belonging unto and to the use of the Mortgagee, and its successor or successors and assigns, in fee simple forever;

BUT for and upon the uses, intents and purposes hereinafter mentioned, that is to say for the benefit and security of Mortgagee and for the enforcement of the payment of all sums secured hereby (hereinafter sometimes called the "Indebtedness") and the compliance with the terms, covenants and conditions, in the Note, in the Loan Agreement and in this Mortgage, expressed or implied;

SUBJECT, HOWEVER, to the liens and rights of the holders of the contracts and instruments secured by any instruments that may be described in Exhibit B to this Mortgage (the "Permitted Encumbrances");

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee all sums secured hereby in the manner stipulated in the Note, the Loan Agreement and this Mortgage, then and in such case, the estate, right, title and interest of the Mortgagee in the Property shall cease, determine and become void, and upon proof being given to the satisfaction of the Mortgagee that the Note has been paid or satisfied, in accordance with its terms and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by the Mortgagee and of any other sums as in this Mortgage provided, the Mortgagee shall at the expense of Mortgagor, release and discharge this Mortgage of record, and shall transfer and deliver up to Mortgagor any property at the time subject to this Mortgage which may be then in their possession, provided the Mortgagee hereunder shall be entitled to a reasonable fee for the release and reconveyance of the Property or any partial release and reconveyance;

AND THIS MORTGAGE FURTHER WITNESSETH, that Mortgagor (jointly and severally if more than one) has covenanted and agreed and does hereby covenant and agree with the Mortgagee as follows:

ARTICLE 1. DEFINITIONS

1.1 **Definitions.** All capitalized terms used herein and not otherwise defined shall have the respective meanings set forth or referred to in the Loan Agreement.

ARTICLE 2. COVENANTS AND AGREEMENTS OF MORTGAGOR

2.1 **Incorporation of Covenants, Conditions and Agreements.** All the covenants, conditions and agreements contained in the Loan Agreement, the Note, and the other Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2.2 **Title to the Property.** Mortgagor covenants that at the time of the execution and delivery of this Mortgage it has good title to all of the property described in the granting clauses of this Mortgage as being presently granted, assigned, conveyed and transferred hereunder, free and clear of all liens and encumbrances except for the Permitted Encumbrances; Mortgagor hereby does and will forever warrant generally and defend the title to the Property, and every part thereof, whether now owned or hereafter acquired, unto the Mortgagee and its successor or successors in the trust and assigns, against all claims and demands by any person or entity whatsoever; Mortgagor covenants that Mortgagor shall comply with all the terms, covenants and conditions of all agreements and instruments, recorded and unrecorded, affecting the Property; Mortgagor covenants that it has good right and lawful authority to mortgage, give, grant, pledge, assign and convey the Property in the manner and form herein provided.

2.3 **Further Assurances.** At any and all times Mortgagor shall furnish and record all and every such further assurances as may be requisite or as the Mortgagee shall reasonably require for the better assuring and confirming unto the Mortgagee the estate and property hereby granted, assigned, conveyed or transferred, or intended so to be whether now owned or hereafter acquired; Mortgagor shall bear all expenses, charges and taxes in connection therewith.

2.4 **Escrow for Taxes.** To better secure the covenant to pay taxes and fees in the Loan Agreement, Mortgagor agrees that, if Holder so requests, Mortgagor shall deposit with Holder on the day of each month on which a payment of interest is due under the Note, beginning with the month following such request, one-twelfth of the annual taxes next due as estimated by Holder, plus one-twelfth of the annual fire, hazard and other insurance premiums as required herein, such deposit to be held by Holder, without interest, to pay said taxes and premiums. If payments of interest are due under the Note other than monthly, appropriate adjustment shall be made in the amount of the aforesaid periodic deposits.

Any amounts deposited pursuant to the provisions of this Section shall not be, nor be deemed to be, trust funds, nor shall they operate to curtail or reduce the indebtedness secured hereby, and all such amounts may be commingled with the general funds of the depositor and be deposited with Mortgagee or at an institution designated by Mortgagee. Mortgagee shall not be responsible for the solvency of such institution, provided it is insured by the Federal Deposit Insurance Corporation or other regulatory agency at the time of designation. If at any time Mortgagee shall determine that the amount then on deposit shall be insufficient to pay an obligation in full, Mortgagor shall immediately after demand deposit with Mortgagee the amount of the deficiency determined by Mortgagee. Nothing contained in this Section shall be deemed to affect any right or remedy of Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the rate provided for in the Note, to the indebtedness secured hereby.

2.5 **Change in Tax Law.** In the event of the passage after date of this Mortgage of any law changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust, or the manner of collection of any such taxation so as to affect this Mortgage, Mortgagee may give thirty (30) days' written notice to Mortgagor requiring the payment of the indebtedness secured hereby. If such notice

be given, the indebtedness secured hereby shall become due and payable at the expiration of said thirty (30) days; *provided, however*, that such requirement of payment shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to Mortgagee, and if Mortgagor in fact pays such tax prior to the date upon which payment is required by such notice.

2.6 Activities on the Property. Mortgagor shall not suffer any act to be done or any conditions to exist on the Property or any part thereof or any thing or article to be brought thereon (i) which may cause structural injury to the improvements on the Land; or (ii) which would cause the value or usefulness of the Property or any part thereof to diminish (ordinary wear and tear excepted); or (iii) which may be dangerous, unless safeguarded as required by law; or (iv) which may in fact or in law, constitute a nuisance, public or private; or (v) which may void or make voidable any insurance then in force or required by the terms of this Mortgage, the Loan Agreement to be in force.

2.7 Additional Insurance. If required by the Mortgagee, in addition to the provisions of and to the extent not so provided by the Loan Agreement, Mortgagor shall at all times maintain during the entire term of this Mortgage the following insurance, in form and substance satisfactory to Mortgagee:

(a) *Workers' Compensation.* During any construction, repair, restoration or replacement of improvements on the Land, Mortgagor shall cause all contractors and subcontractors (including Mortgagor if it acts as a contractor) to obtain and keep in effect workers' compensation insurance to the full extent required by applicable law and also which shall cover all employees of each contractor and subcontractor; upon demand, Mortgagor shall provide evidence satisfactory to Mortgagee that it is complying with this covenant.

All insurance for loss or damage shall provide that losses, if any, shall be payable to Mortgagee, as its interest may appear. Mortgagor will pay the premiums for all insurance and deliver to Mortgagee the policies of insurance or duplicates thereof, or other evidence satisfactory to Mortgagee of such insurance coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Mortgagee, that (i) it will give Mortgagee thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (ii) the coverage of Mortgagee shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions of such insurance policy or policies. The proceeds of such insurance shall be applied, at Mortgagee's option, toward the replacement, restoration or repair of the Property which may be lost, stolen or destroyed or damaged or toward payment of any indebtedness of Mortgagor to Mortgagee.

2.8 Additional Advances. If Mortgagor shall fail to perform any of the covenants or satisfy any of the conditions contained herein, Mortgagee may make advances or payments towards performance or satisfaction of the same but shall be under no obligation so to do; and all sums so advanced or paid shall be at once repayable by Mortgagor and shall bear interest at the Default Rate from the date the same shall become due and payable until the date paid, and all sums so advanced or paid, with interest as aforesaid, shall become a part of the indebtedness secured hereby; but no such advance or payment shall relieve Mortgagor from any default hereunder. If Mortgagor shall fail to perform any of the covenants or satisfy any of the conditions contained herein, Mortgagee may use any funds of Mortgagor towards performance or satisfaction of the same but shall be under no obligation so to do; and no such use of funds shall relieve Mortgagor from any default hereunder.

2.9 Condemnation Awards. Should the grade of any street be altered or all or any part of the Property be condemned or taken through eminent domain proceedings, all or such part of any award or proceeds derived therefrom, as Mortgagee in its sole discretion may determine in writing, shall be paid to Mortgagee and applied to the payment of the indebtedness secured hereby (in such manner or combination thereof, including inverse order of maturity of installments of principal, if any, as Mortgagee may, in its sole discretion, elect) and all such proceeds are hereby assigned to Mortgagee.

2.10 Costs of Defending and Enforcing the Lien. Mortgagor shall pay all costs, charges and expenses, including appraisals, title examinations, and reasonable attorney's fees, which Mortgagee may incur in defending or enforcing the validity or priority of the legal operation and effect of this Mortgage, or any term, covenant or condition hereof, or in collecting any sum secured hereby, or in protecting the security of Mortgagee including without limitation being a party in any condemnation, bankruptcy or administrative proceedings, or, if an Event of Default shall occur, in administering and executing the trust hereby created and performing their powers, privileges and duties hereunder. Mortgagee may make advances or payments for such purposes but all advances or payments made by Mortgagee for such purposes shall be repayable immediately by Mortgagor and shall bear interest at the Default Rate from the date the same shall become due and payable until the date paid, and any such sum or sums with interest as aforesaid shall become a part of the indebtedness secured hereby; but no such advance or payment shall relieve Mortgagor from any default hereunder.

2.11 Modification of Terms; No Novation. Mortgagee may at any time, and from time to time, extend the time for payment of the indebtedness secured hereby, or any part thereof, or interest thereon, and waive, modify or amend any of the terms, covenants or conditions in the Note, in the Guarantee, in this Mortgage or in any other Loan Document, in whole or in part, either at the request of Mortgagor or of any person having an interest in the Property, accept one or more notes in replacement or substitution of the Note, consent to the release of all or any part of the Property from the legal operation and effect of this Mortgage, take or release other security, release any party primarily or secondarily liable on the Note or hereunder or on such other security, grant extensions, renewals or indulgences therein or herein, apply to the payment of the principal and interest and premium, if any, of the indebtedness secured hereby any part or all of the proceeds obtained by sale or otherwise as provided herein, without resort or regard to other security, or resort to any one or more of the securities or remedies which Mortgagee may have and which in its absolute discretion it may pursue for the payment of all or any part of the indebtedness secured hereby, in such order and in such manner as it may determine, all without in any way releasing Mortgagor or any party secondarily liable from any of the terms, covenants or conditions of the Note, the Guarantee, this Mortgage, or any other Loan Document, or relieving the unreleased Property from the legal operation and effect of this Mortgage for all amounts owing under the Note, the Loan Agreement and this Mortgage. Mortgagee and Mortgagor recognize and agree that the provisions of this Mortgage, the Note, the Guarantee, and any other Loan Document may be modified by them or their successors or assigns at any time before or after default (which modification may involve increasing the rate of interest in the Note, agreeing that other charges should be paid, or modifying any other provision in any such instruments). Mortgagee may extend the time of payment, may agree to alter the terms of payment of the indebtedness, and may grant partial releases of any portion of the property included herein. No such modification by Mortgagee and Mortgagor nor any such action by Mortgagee or the Mortgagor referred to above shall be a substitution or novation of the original indebtedness or instruments evidencing or securing the same, but shall be considered a possible occurrence within the original contemplation of the parties.

2.12 Governmental Action Affecting the Property. Mortgagor agrees that in the event of the enactment of any law or ordinance, the promulgation of any zoning or other governmental regulation, or the rendition of any judicial decree restricting or affecting the use of the Property or rezoning the area wherein the same shall be situate which Mortgagee reasonably believes adversely affects the Property, Mortgagee may, upon at least sixty (60) days written notice to Mortgagor, require payment of the indebtedness secured hereby at such time as may be stipulated in such notice, and the whole of the indebtedness secured hereby, shall thereupon become due and payable.

ARTICLE 3. EVENTS OF DEFAULT

The occurrence of one or more of the following events (herein called an "Event of Default") shall constitute and be an Event of Default:

3.1 Default under Loan Documents. The occurrence and continuance of an Event of Default under the Loan Agreement, the Note or any other Loan Document shall constitute an Event of Default hereunder. In the event Mortgagee consents to an encumbrance on the Property, a default under the terms of any document creating such an encumbrance shall be a default hereunder.

3.2 **Additional Insurance Obligations.** Mortgagor fails to promptly perform or comply with any of the terms and conditions set forth in subsection 2.7 and such failure continues for ten (10) days after notice from Mortgagee to Mortgagor.

3.3 **Material Obligations.** Mortgagor fails to perform or observe any of its material obligations under this Mortgage and such failure shall continue for a period of thirty (30) days after Mortgagee gives Mortgagor written notice thereof.

3.4 **Judgment.** Unless adequately covered by insurance in the reasonable opinion of Mortgagee, the entry of a final judgment for the payment of money involving more than \$10,000.00 against Mortgagor or any guarantor of the Loan and the failure of Mortgagor or any guarantor of the Loan to cause the same to be discharged or bonded off to the satisfaction of Mortgagee within sixty (60) days from the date the order, decree or process under which or pursuant to which such judgment was entered.

3.5 **Transfer of the Property.** If all or any part of the Property or any interest in the Property is sold, transferred, assigned, conveyed or otherwise disposed of, either outright or as security for an indebtedness, or if there is any change in the ownership of Mortgagor, without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, declare all the indebtedness secured by this Mortgage to be immediately due and payable and Mortgagee may exercise any or all of the remedies provided in Paragraph 4 hereunder.

ARTICLE 4. REMEDIES

4.1 **Remedies-Acceleration.** If one or more of the Events of Default shall occur, Mortgagee may, at its option, declare the entire unpaid principal amount of the Note (if not already due and payable) to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in the Note, in the Guarantee, in the Loan Agreement or in this Mortgage to the contrary notwithstanding; and in the event of any sale of all or any part of the Property, whether made under the power of sale herein granted, assent to a decree or through judicial proceedings, such unpaid principal amount shall automatically and without notice become so due and payable. If Mortgagee exercises Mortgagee's option to declare the entire unpaid principal amount of the Note to be due and payable, Mortgagor covenants to pay immediately the full amount of the indebtedness secured hereby even though foreclosure or other court proceedings to collect the indebtedness have not been commenced. Acceleration of maturity, once declared by Mortgagee, may at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not rescind or affect in any way such acceleration of maturity.

4.2 **Power of Sale; Assent to Decree and Other Remedies.** If one or more of the Events of Default shall occur and whether or not Mortgagee shall have accelerated the maturity of the indebtedness pursuant to Section 4.1 hereof, Mortgagee, at its option, may:

(a) proceed by suit or suits at law or in equity or by any other appropriate remedy to protect and enforce the rights of Mortgagee whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or to enforce payment of the Note, of the Guarantee, or to foreclose this Mortgage, or to sell the Property under the judgment or decree of a court or courts of competent jurisdiction, or otherwise. Mortgagor, in accordance with any general or local laws or rules or regulations of Alabama relating to mortgages including any amendments thereof or supplements thereto which do not materially change or impair the remedy, does hereby declare and assent to the passage of a decree to sell the Property by the equity court having jurisdiction for the sale of the Property, subject to the terms of the decree of court, the same authority and power to sell on the terms and conditions herein set forth. This assent to decree shall not be exhausted in the event the proceeding is dismissed before the indebtedness secured hereby is paid in full;

(b) either with or without entering upon or taking possession of the Property, demand, collect and receive any or all revenues arising out of or in connection with the Property, including, without limitation, all rents;

(c) take possession and assemble such items of the Property as may be designated by Mortgagee and make them available to the Mortgagee at a place reasonably convenient to both parties to be designated by Mortgagee or the Mortgagee. Upon a default under this Mortgage, Mortgagee shall have the right to take possession of such items of the Property as Mortgagee may elect. In taking possession Mortgagee may proceed without judicial process if this can be done without breach of the peace. Mortgagee shall have the further right to remove such items of the Property as it may choose to any location or locations selected by Mortgagee, and Mortgagor shall pay the costs of such removal and for the storage and protection of such items immediately upon demand therefor. If Mortgagee elects to proceed under the Alabama Uniform Commercial Code to dispose of some of the Property, the Mortgagee shall give Mortgagor notice by certified mail, postage prepaid, return receipt requested, of the time and place of any public sale of any of such property or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to Mortgagor at least five (5) days before the time of the sale or other disposition, which provisions for notice Mortgagor and the Mortgagee agree are reasonable; *provided, however*, that nothing herein shall preclude Mortgagee from proceeding as to all the Property in accordance with the rights and remedies of Mortgagee in respect of the real property, as provided in the Alabama Uniform Commercial Code, as amended from time to time;

(d) either with or without taking possession of the property, sell, lease or otherwise dispose of the Property in its then condition or following such preparation as Mortgagee deems advisable;

(e) either with or without entering upon or taking possession of the Property and without assuming any obligations of Mortgagor, thereunder, exercise the rights of Mortgagor under, use or benefit from, any of the contracts, leases or intangible property;

(f) may enter and take possession of the Property and may exclude Mortgagor, its agents and servants, wholly therefrom, and having and holding the same, may use, operate, manage and control the Property or any part thereof, and upon every such entry Mortgagee, at the expense of Mortgagor and of the Property, from time to time may make all necessary or proper repairs, renewals, replacements and useful or required alterations, additions, betterments and improvements to and upon the Property as to it may seem judicious and pay all costs and expenses of so taking, holding and managing the same, including reasonable compensation to its employees and other agents (including, without limitation, attorney's fees and management and rental commissions) and any taxes, assessments and other charges prior to the legal operation and effect of this Mortgage which Mortgagee may deem it wise or desirable to pay, and in such case Mortgagee shall have the right to manage the Property and to carry on the business and exercise all rights and powers of Mortgagor, either in the name of Mortgagor, or otherwise, as Mortgagee shall deem advisable; and Mortgagee shall be entitled to collect and receive all rents thereof and therefrom. The taking of possession and collection of rents by Mortgagee shall not be construed to be an affirmation of any lease or acceptance of attornment with respect to any lease of all or any portion of the Property. After deducting the expenses of operating the Property and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, improvements and all payments which it may be required or may elect to make for taxes or other proper charges on the Property, or any part thereof, as well as just and reasonable compensation for all its employees and other agents (including, without limitation, attorney's fees and management and rental commissions) engaged and employed, the moneys arising as aforesaid shall be applied to the indebtedness secured hereby. Whenever all that is due upon the principal of and interest on the Note and under any of the terms of this Mortgage shall have been paid and all defaults made good, Mortgagee shall surrender possession to Mortgagor. The same right of entry, however, shall exist if any subsequent Event of Default shall occur. Mortgagee may, in person, by agent or by court-appointed receiver, enter upon, take possession of, and maintain full control of the Property in order to perform all acts necessary or appropriate to complete construction of the improvements and to maintain and operate the Property, including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or

termination of contracts providing for the construction, management or maintenance of the Property, all of such terms as Mortgagee, in its sole discretion, deems proper or appropriate;

(g) proceed by a suit or suits in law or in equity or by other appropriate proceeding to enforce payment of the Note and/or the Guarantee, or the performance of any term, covenant, condition or agreement of this Mortgage and Security Agreement or any of the other Loan Documents, or any other right, and to pursue any other remedy available to it, all as Mortgagee shall determine most effectual for such purposes;

(h) institute and maintain such suits and proceedings as Mortgagee may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage and Security Agreement, to preserve or protect its interest in the Property and the revenues arising out of or in connection with the Property, and to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that would impair the security hereunder or be prejudicial to the interest of Mortgagee;

(i) apply all or any portion of the Property, or the proceeds thereof, towards (but not necessarily in complete satisfaction of) the indebtedness;

(j) foreclose any and all rights or Mortgagor in and to the Property, whether by sale, entry or in any other manner provided for hereunder or under the laws of Alabama;

(k) in the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceeding affecting Mortgagor or the creditors or property of Mortgagor, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount of the indebtedness at the date of the institution of such proceedings and for any additional portion of the indebtedness accruing after such date;

(l) exercise of any right or remedy of mortgagee or secured party under the laws of Alabama.

4.3 Appointment of a Receiver. Until one or more of the Events of Default shall occur (but not thereafter), Mortgagor shall have possession of the Property and shall have the right to use and enjoy the same and to receive the rents thereof and therefrom. If one or more of the Events of Default shall occur, and without the requirement of any other showing, Mortgagee shall be entitled as a matter of right and to the extent permitted by law, without notice to Mortgagor, and without regard to the adequacy of the security, to the immediate appointment of a receiver of the Property and of the rents thereof and therefrom, in an ex parte proceeding with all such other powers as the court or courts making such appointment shall confer, and the rents thereof and therefrom are hereby assigned to Mortgagee as additional security under this Mortgage. Mortgagor shall deliver to the receiver appointed pursuant to the provisions of this Section, or to Mortgagee in the event of entry pursuant to the terms of the preceding Section, all original records, books, bank accounts, leases, agreements, security deposits of the tenants and all other materials relating to the operation of the Property.

4.4 Foreclosure Sale.

(a) If one or more of the Events of Default shall occur, the Mortgagee shall sell and in the case of default of any purchaser or purchasers shall resell all the Property as an entirety, or in such parcels and in such order as Mortgagee shall in writing request, or, in the absence of such request, as the Mortgagee may determine (Mortgagor hereby waiving for itself and for any person claiming by or through it application of the doctrine of marshalling of assets), at public auction at some convenient place or places in the jurisdiction in the state where the Property is situate, or in such other place or places as may be permitted by law, at such time, in such manner and upon such terms as the Mortgagee may fix and briefly specify in each notice of sale, which notice of sale shall state the time when, and the place where, the same is to be made, shall contain a brief general description of the property to be sold, and shall be sufficiently

given if published as frequently and in such publication as may be required by law, and Mortgagee may cause such further public advertisement to be made as they may deem advisable, and any such sale may be adjourned by the Mortgagee by announcement at the time and place appointed for such sale or for such adjourned sale, and, without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. If one or more leases are entered into or recorded subsequent to the recording of this Mortgage or are otherwise subordinate to this Mortgage, the Mortgagee shall sell, subject to any one or more of such tenancies that are designated and selected by Mortgagee.

(b) Upon the completion of any sale and compliance with all the terms thereof, the Mortgagee shall execute and deliver to the purchaser or purchasers a good and sufficient deed of conveyance, assignment and transfer, lawfully conveying, assigning and transferring the property sold. Payment to the Mortgagee of the entire purchase money shall be full and sufficient discharge of any purchaser or purchasers of the property, sold as aforesaid, for the purchase money; and no such purchaser, or his representatives, successors or assigns, after paying such purchase money and receiving the deed shall be bound to see to the application of such purchase money.

(c) In the case of any sale of the Property or of any part thereof, whether under the power of sale herein granted, assent to decree or through other judicial proceedings, the purchase money, proceeds and avails thereof, together with any other sums which may then be held as security hereunder or be due under any of the provisions hereof as a part of the Property, shall be applied as follows:

FIRST, to pay all proper costs, charges, fees and expenses, including the fees and costs herein provided for and to pay the costs of appraisals of the Property and the costs of title examination; and to pay or repay to Mortgagee all moneys advanced by them or either of them for taxes, insurance or otherwise, with interest thereon as provided herein; and to pay all taxes due upon the Property at the time of sale; and to pay any other lien or encumbrance prior to the legal operation and effect of this Mortgage unless said sale is made subject to any such taxes or other lien or encumbrance; and to pay a counsel fee of One thousand Five hundred Dollars (\$1,500.00) for conducting the proceedings if without contest, but if legal services are rendered to Mortgagee in connection with any contested matter in the proceedings, then such additional counsel fees and expenses shall be allowed out of the proceeds of sale or sales as the court may deem proper; and to pay additional reasonable counsel fees, if any, incurred as a result of representing Mortgagee's interest in any proceedings on behalf of any Mortgagor before any United States Bankruptcy Court or similar State insolvency proceedings; and also to pay a commission to the auctioneer or other party making the sale equal to five percent (5%) of the gross sale price;

SECOND, to pay whatever may then remain unpaid under the Note and the interest thereon to the date of payment, whether the same shall be due or not, it being agreed that the Note shall, upon such sale being made before the maturity of the Note, be and become immediately due and payable at the election of Mortgagee and to pay all of the indebtedness secured hereby;

THIRD, to pay the remainder of said proceeds, if any, less the expense, if any, of obtaining possession, to Mortgagor or other party lawfully entitled to receive the same, upon the delivery and surrender of possession of the Property sold and conveyed and delivery of all records, books, bank accounts, leases, agreements, security deposits of the tenants and all other material relating to the operation of the Property to the said purchaser or purchasers.

(d) Immediately upon the filing or docketing of suit preliminary to a foreclosure sale of the Property, or any part thereof under this Mortgage, there shall be and become due and owing by Mortgagor, an auctioneer's commission on the total amount of the indebtedness secured hereby equal to two and one-half percent (2 ½%), and Mortgagee shall not be required to receive the principal and interest in satisfaction of the indebtedness secured hereby, but said sale may be proceeded with unless, prior to the

day appointed therefor, tender is made of said principal, interest, commissions and all expenses and costs incident to such sale and all other sums that are part of the indebtedness secured hereby.

(e) Mortgagee may bid and become the purchaser at any sale under this Mortgage. If Mortgagee is the purchaser at any such sale, Mortgagee may apply the outstanding indebtedness against all or any portion of the purchase price, including the deposit.

4.5 Collection of Revenues. In connection with the exercise by Mortgagee of the rights and remedies provided for in subsection 4.2(b) hereof:

(a) Mortgagee may notify any tenant, lessee or licensee of the Property, either in the name of the Mortgagee or Mortgagor, to make payment of Revenues directly to Mortgagee or Mortgagor's agents, may advise any person of Mortgagee's interest in and to the revenues arising out of or in connection with the Property and may collect directly from such tenants, lessees and licensees all amounts due on account of such revenues;

(b) At Mortgagee's request, Mortgagor will provide written notification to any or all tenants, lessees and licensees of the property concerning Mortgagee's interest in the revenues arising out of or in connection with the Property and will request that such tenants, lessees and licensees forward payment thereof directly to Lender;

(c) Mortgagor shall hold any proceeds and collections of any of the revenues arising out of or in connection with the Property in trust for Mortgagee and shall not commingle such proceeds or collections with any other funds of Mortgagor; and

(d) Mortgagor shall deliver all such proceeds to Mortgagee immediately upon the receipt thereof by Mortgagor in the identical form received, but duly endorsed or assigned on behalf of Mortgagor to Mortgagee.

4.6 Use and Occupation of Property. In connection with the exercise of Mortgagee's rights under subsection 4.2(f), Mortgagee may enter upon, occupy, and use all or any part of the Property and may exclude Mortgagor from the Land and the Improvements thereon or portion thereof as may have been so entered upon, occupied, or used. Mortgagee shall not be required to remove any personal Property from the Land and the Improvements upon Mortgagee's taking possession thereof, and may render any personal Property unusable to Mortgagor. In the event Mortgagor manages the Land and the improvements thereon in accordance with subsection 4.2(f) herein, Mortgagor shall pay to Mortgagee on demand a reasonable fee for the management thereof in addition to the indebtedness. Further, Mortgagee may construct such improvements on the Land or make such alterations, renovations, repairs, and replacements to the Improvements, as Mortgagee, in its sole discretion, deems proper or appropriate. The obligation of Mortgagor to pay such amounts and all expenses incurred by Mortgagee in the exercise of its rights hereunder shall be included in the indebtedness and shall accrue interest at the default rate of interest stated in the Note.

4.7 Partial Sales. Mortgagor agrees that in case Mortgagee, in the exercise of the power of sale contained herein or in the exercise of any other rights hereunder given, elects to sell in parts or parcels, said sales may be held from time to time and that the power shall not be exhausted until all of the Property not previously sold shall have been sold, notwithstanding that the proceeds of such sales exceed, or may exceed, the indebtedness.

4.8 Assembly of Property. Upon the occurrence of any Event of Default, Mortgagee may require Mortgagor to assemble the Property and make it available to Mortgagee, at Mortgagor's sole risk and expense, at a place or places to be designated by Mortgagee which are reasonably convenient to both Mortgagee and Mortgagor.

4.9 Power of Attorney. Upon the occurrence of any Event of Default, Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's true and lawful attorney in fact to take any

action with respect to the Property to preserve, protect, or realize upon Mortgagee's interest therein, each at the sole risk, cost and expense of Mortgagor, but for the sole benefit of Mortgagee. The rights and powers granted Mortgagee by the within appointment include, but are not limited to, the right and power to: (a) prosecute, defend, compromise, settle, or release any action relating to the Property; (b) endorse the name of Mortgagor in favor of Mortgagee upon any and all checks or other items constituting revenues arising out of or in connection with the Property; (c) sign and endorse the name of Mortgagor on, and to receive as secured party, any of the Property; (d) sign and file or record on behalf of Mortgagor any financing or other statement in order to perfect or protect Mortgagee's security interest; (e) enter into any contracts or agreements relative to, and to take all action deemed necessary in connection with, the construction of any improvements on the Land; (g) manage, operate, maintain or repair the Land and the improvements; and (h) exercise the rights of Mortgagor under any contracts, leases or intangible personal property. Mortgagee shall not be obligated to perform any of such acts or to exercise any of such powers, but if Mortgagee elects so to perform or exercise, Mortgagee shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Mortgagor except for Mortgagee's willful misconduct or gross negligence. All powers conferred upon Mortgagee by this Mortgage and Security Agreement, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of the Mortgagee.

ARTICLE 5. MISCELLANEOUS

5.1 **Mortgagee.** The Mortgagee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by them to be genuine and to have been signed by the party or parties purporting to sign the same. The Mortgagee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistake of law or fact, nor for anything which they may do or refrain from doing in good faith nor generally shall a Mortgagee have any accountability hereunder except for his own individual willful default.

5.2 **Estoppel Certificates.** Mortgagor, upon request, made either personally or by mail, shall, within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail, certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of the Note, the amount of principal and interest then owing on the Note and whether any offsets or defenses exist against the indebtedness secured hereby. At the request of Mortgagee, such certificate shall also contain a statement that Mortgagor knows of no Event of Default nor of any other default which, after notice or lapse of time or both, would constitute an Event of Default, which has occurred and remains uncured as of the date of such certificate, or, if any such Event of Default or other default has occurred and remains uncured as of the date of such certificate, then such certificate shall contain a statement specifying the nature thereof, the time for which the same has continued and the action which Mortgagor has taken or proposes to take with respect thereto.

5.3 **Subrogation.** This Mortgage and the Mortgagee, as additional security, are hereby subrogated to the lien or liens and to the rights of the owners and holders thereof of each and every mortgage, lien or other encumbrance on the Property, or any part thereof, or any claim or demand which is paid or satisfied, in whole or in part, out of the proceeds of the indebtedness secured hereby and the respective liens of said mortgages, liens and other encumbrances and claims and demands shall pass to and be held by the Mortgagee as additional security for the indebtedness to Mortgagee to the same extent that they would have been preserved and would have been passed to and been held by Mortgagee had they each been duly and regularly assigned, transferred, set over and delivered to Mortgagee by separate deed of assignment, notwithstanding the fact the same may be or may have been satisfied and cancelled of record, it being the intention of the parties hereto that the same will be satisfied and cancelled of record at or about the time they are paid or satisfied out of the proceeds of the Loan.

5.4 **Notices.** Unless specifically provided otherwise in this Mortgage or by law, any notice required or permitted by or in connection with this Mortgage shall be in writing and shall be made by facsimile or by hand delivery, by overnight delivery service, or by certified mail, unrestricted delivery, return receipt requested, postage prepaid, addressed to Mortgagee or Mortgagor at the appropriate address set forth above or to such other address as may be hereafter specified by written notice by Mortgagee or



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Mortgagor. Notice shall be considered given as of the date of the facsimile or the hand delivery, one (1) calendar day after delivery to the overnight delivery service, or three (3) calendar days after the date of mailing, independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish that notice was given as provided herein.

5.5 Legal Construction. This Mortgage shall be construed according to the laws of Alabama (excluding Alabama conflict of laws) and any court of competent jurisdiction of Alabama shall have jurisdiction in any proceeding instituted to enforce this Mortgage and any objections to venue are hereby waived.

5.6 Usury Limitations. No provision of this Mortgage shall require the payment or permit the collection of interest or other sum in excess of the maximum permitted by applicable law, including a judicial determination. If any excess of interest or other sum in such respect is herein provided for, or shall be adjudicated to be so provided for herein, neither Mortgagor nor its successors or assigns shall be obligated to pay such interest or other sum in excess of the amount permitted by applicable law, including a judicial determination, and the right to demand the payment of any such excess shall be and hereby is waived. The provisions of this Section shall control all other provisions of this Mortgage.

5.7 Recording. Mortgagor covenants and agrees to promptly cause all documents required by Mortgagee to be properly recorded or filed, including this Mortgage, and to pay all fees, taxes and expenses incident thereto. Mortgagor shall hold harmless and indemnify Mortgagee against any liability incurred by reason of the imposition of any fee, tax or charge on the making and recording of this Mortgage.

5.8 Rights of Mortgagee.

(a) *Rights Not Limited.* The rights, powers, privileges and discretions (hereinafter collectively called the "rights") specifically granted to the Mortgagee and those specifically granted to Mortgagee under this Mortgage are not in limitation of but in addition to those to which they are entitled under any general or local law relating to and mortgages in Alabama, now or hereafter existing.

(b) *Benefit to Successors and Assigns.* The rights to which Mortgagee may be entitled shall inure to the benefit of its successors and assigns.

(c) *Rights Cumulative.* All the rights of Mortgagee are cumulative and not alternative and may be enforced successively or concurrently.

5.9 No Waiver. Failure of Mortgagee to exercise any of their rights shall not impair any of their rights nor be deemed a waiver thereof, and no waiver of any of their rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the party waiving the right. The acceptance by Mortgagee of any partial payment after default or an Event of Default, with or without knowledge of the default or Event of Default, shall not be a waiver of the default or Event of Default unless Mortgagee shall specifically state in writing that the acceptance waives the default or Event of Default or states further conditions which must be satisfied to constitute such a waiver. The failure of Mortgagee to exercise the option for acceleration of maturity, foreclosure, or either, following an Event of Default or to exercise any other option or privilege granted to Mortgagee hereunder in any one or more instances, shall not constitute a waiver of any such default, but such option or privilege shall remain continuously in force.

5.10 Mutual Waiver of Jury Trial. Mortgagor and Mortgagee (by acceptance of this Mortgage) each, on behalf of itself and its successors and assigns, WAIVES to the fullest extent permitted by law all right to TRIAL BY JURY of any and all claims between them arising under this Mortgage, the Note, the Loan Agreement, or any other Loan Documents, and any and all claims arising under common law or under any statute of any state or the United States of America, whether any such claims be now existing or hereafter arising, now known or unknown. In making this waiver Mortgagee and Mortgagor acknowledge and agree that any and all claims made by Mortgagee and all claims made against Mortgagee shall be heard by a judge of a court of proper jurisdiction, and shall not be heard by a jury. Mortgagee and

Mortgagor acknowledge and agree that THIS WAIVER OF TRIAL BY JURY IS A MATERIAL ELEMENT OF THE CONSIDERATION FOR THIS TRANSACTION. Mortgagee and Mortgagor, with advice of counsel, each acknowledges that it is knowingly and voluntarily waiving a legal right by agreeing to this waiver provision.

5.11 **Waiver by Mortgagor.** Mortgagor waives, on behalf of itself and all persons now or hereafter interested in the Property, all rights under all appraisement, homestead, moratorium, valuation, redemption, exemption, stay, extension and marshalling statutes, laws or equities now or hereafter existing and agrees that no defense based on any thereof will be asserted in any action enforcing this Mortgage.

5.12 **Secondary Market Cooperation.** Mortgagor acknowledges that Mortgagee may (a) sell this Mortgage, the Note and the other Loan Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Mortgage, the Note, the Guarantee and the other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Mortgagor shall cooperate in good faith with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any rating agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the rating agency and addressing such matters as the rating agency may require; provided, however, Mortgagor shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note, or (iv) any other material economic term of the Loan. Mortgagor shall provide such information and documents relating to Mortgagor, any guarantor of Mortgagor, the Property and any tenant of the Property as Mortgagee may reasonably request in connection with a Secondary Market Transaction. Mortgagee shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Mortgagor, any guarantor of Mortgagor, the Property and any tenant of the Property. Mortgagor acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents.

5.13 **Indemnification.** Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any lease. Mortgagor shall indemnify the Mortgagee for and save them harmless from any and all liability arising from any lease or assignment of a lease as security under this Mortgage. Mortgagee shall not have any responsibility for the control, care, management or repair of the Property or be liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee or any other person or entity. The obligations and liabilities of Mortgagor under this paragraph shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

5.14 **Binding Effect.** The terms and conditions agreed to by Mortgagor and the covenants of Mortgagor shall be binding upon the personal representatives, successors and assigns of Mortgagor and of each of them, but this provision does not waive any prohibition of assignment or any requirement of consent to an assignment under the other provisions of this Mortgage; any consent to an assignment shall not be consent to any further assignment, each of which must be specifically obtained in writing.

5.15 **Recitals.** The recitals of this Mortgage are incorporated herein and made a part hereof.

5.16 **Number and Gender.** Wherever used herein the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

5.17 **Time of Essence.** Time is of the essence of the obligations of Mortgagor in this Mortgage and each and every term, covenant and condition made herein by or applicable to Mortgagor.

5.18 **Captions.** The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge, or restrict any of the provisions hereof.

5.19. **Severability.** If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid, inoperative or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be valid, operative and enforceable to the greatest extent permitted by law.

5.20. **Execution of Counterparts.** This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same Mortgage.

5.21. **Security Agreement.** Mortgagor has executed this instrument as a Debtor under the Uniform Commercial Code of the state in which the Property is located. This Mortgage shall constitute and be a security agreement and financing statement under the laws of such state.

ARTICLE 6. ADDITIONAL COVENANTS

6.1 Leases of the Property.

6.1.1 **Compliance with Leases.** Mortgagor shall carry out all of its agreements and covenants as landlord contained in any leases (which word when used in this Mortgage shall include, without limitation, all agreements, licenses, contracts, reservations, accounts, and permits affecting all or any part of the Property) and not permit a lien or other encumbrance superior to such leases other than this Mortgage. No lease shall include any space, or grant to any tenant any right or interest in any area outside of the limits of the Property. Upon demand of Mortgagee, Mortgagor shall furnish Mortgagee an executed copy of each lease immediately upon its execution. All future leases shall be written on the standard form accepted by Mortgagee, with only such changes as Mortgagee shall have approved in writing or on a lease agreement approved by Mortgagee.

6.1.2 **Assignment of Leases.** Mortgagor hereby grants, conveys, assigns, and transfers unto the Mortgagee, for the benefit of Mortgagee, all the right, title, interest and privileges which Mortgagor has or may hereafter have in any and all of said leases now existing or hereafter made affecting all or a part of the Property, as said leases may have been or may from time to time be hereafter modified, extended or renewed with all the rents (which word when used in this Mortgage shall include, without limitation, all income and profits) due and becoming due therefrom and including without limitation the right of Mortgagee to inspect the leased areas and books and records of tenants. Mortgagor shall, upon written request by Mortgagee, execute assignments (in any form customarily used by Mortgagee) of any present or future leases, together with the rents due and becoming due therefrom, which affect in any way all or any part of the Property. No such assignment made or required hereby shall be construed as a consent by Mortgagee to any lease or to impose on Mortgagee any obligation with respect thereto. Mortgagor shall not make any other assignment, hypothecation or pledge of any rents under any lease of part or all of the Property. Mortgagor shall not, without the prior written approval of Mortgagee, cancel any of the leases, nor terminate or accept a surrender thereof, nor reduce the payment of rent thereunder, nor modify any of said leases, nor accept any prepayment of rent other than the usual prepayment as would result from the acceptance by landlord more than fifteen (15) days before the first day of each month for the ensuing month under leases approved by Mortgagee according to the terms of such leases. The covenants and restrictions of this subsection shall be deemed covenants and restrictions running with the land.

6.1.3 **Limitation on Subordinate Lienors.** Mortgagor covenants that Mortgagee of any subordinate lien shall have no right, and shall acquire no right, to terminate or modify any lease affecting the Property whether or not such lease is subordinate to the legal operation and effect of this Mortgage.



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6.1.4 Deposit of Rents. All payments, including security deposits, under any lease received by Mortgagor shall be deemed held by Mortgagor in trust for the payment of the indebtedness secured hereby. Mortgagor shall deposit in a non-interest bearing account or accounts with Mortgagee all payments (except security deposits made under residential leases, if any) made under all leases, which sums, subject to the rights of the tenants therein, may be used by Mortgagor in the ordinary course of Mortgagor's business to the extent permitted by law, until one or more of the Events of Default shall occur, but not thereafter.

6.1.5 Assignment of Bankruptcy Awards. Mortgagor hereby assigns to the Mortgagee any award made hereafter to it in any court procedure involving any of the tenants in any bankruptcy, insolvency or reorganization proceeding in any state or federal court and any and all payments by any tenant in lieu of rent.

6.1.6 Limitation of Liability under Leases. The Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any lease; and Mortgagor hereby agrees to indemnify the Mortgagee for and to save them harmless from, any and all liability arising from any lease, or this assignment thereof and this assignment shall not place the responsibility for the control, care, management or repair of the Property upon the Mortgagee, nor make said Mortgagee liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, agent, guest, or stranger.

6.1.7 Security Deposits. Mortgagor shall deposit in an account or accounts with Mortgagee or its designee, under the depository's standard program for such accounts, all security deposits made under residential leases which sums, subject to the rights of the tenants therein, may be used by Mortgagor in the ordinary course of Mortgagor's business to the extent permitted by law, until one or more of the Events of Default shall occur, but not thereafter. All such deposits shall be the continuing responsibility of Mortgagor, and Mortgagor shall comply with all applicable requirements of state and local law where the Property is located.

6.2 Environmental Covenants.

6.2.1 No Substances Present. Mortgagor hereby represents and warrants to Mortgagee that, after a due and diligent investigation, to the best of its knowledge, there are not now and have never been any materials or substances located on or near the Property that, under federal, state, or local law, statute, ordinance, or regulation, or administrative or court order or decree, or private agreement (collectively, the "Environmental Laws"), are regulated as to use, generation, collection, storage, treatment, or disposal (such materials or substances are hereinafter collectively referred to as "Substances"). The term "Substances" includes any materials or substances whose release or threatened release may pose a risk to human health or the environment or impairment of property values and shall also include without limitation (i) asbestos in any form, (ii) urea formaldehyde foam insulation, (iii) paint containing lead, (iv) transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls of 50 parts per million or more, and (v) petroleum in any form. Mortgagor further represents and warrants to Mortgagee that the Property is not now being used nor has it ever been used in the past for any activities involving the use, generation, collection, storage, treatment, or disposal of any Substances. Mortgagor will not place or permit to be placed any Substances on or near the Property except for those Substances that are typically used in the operation of Mortgagor's business provided the same are in appropriately small quantities and are stored, used, and disposed of properly; or Substances that are approved in writing by Mortgagee.

6.2.2 Acting Upon Presence of Substances. Mortgagor hereby covenants and agrees that, if at any time (i) Substances are spilled, emitted, disposed, or leaked in any amount; or (ii) it is determined that there are Substances located on, in, or under the Property other than those of which Mortgagee has approved in writing or which are permitted to be used on the Property without Mortgagee's written approval pursuant to subsection 6.2.1 of this Section, Mortgagor shall immediately notify Mortgagee and any authorities required by law to be notified, and shall, within thirty (30) days thereafter or sooner if required by Mortgagee or any governmental authority, take or cause to be taken, at Mortgagor's

sole expense, such action as may be required by Mortgagee or any governmental authority. If Mortgagor shall fail to take such action, Mortgagee may make advances or payments towards performance or satisfaction of the same but shall be under no obligation so to do; and all sums so advanced or paid, including all sums advanced or paid in connection with any investigation or judicial or administrative proceeding relating thereto, including, without limitation, reasonable attorneys' fees, expert fees, fines, or other penalty payments, shall be at once repayable by Mortgagor and shall bear interest at the Default Rate, from the date advanced or paid by Mortgagee until the date paid by Mortgagor to Mortgagee, and all sums so advanced or paid, with interest as aforesaid, shall become a part of the indebtedness secured hereby.

6.2.3 Environmental Audits. Mortgagor, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee, at Mortgagor's expense, from time to time with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form, and content satisfactory to Mortgagee.

6.2.4 Environmental Notices. Mortgagor shall furnish to Mortgagee duplicate copies of all correspondence, notices, or reports it receives from any federal, state, or local agency or any other person regarding environmental matters or Substances at or near the Property, immediately upon Mortgagor's receipt thereof.

6.2.5 Condition of Property. Mortgagor hereby represents and warrants that there are no wells or septic tanks on the Property serving any other property; no wells or septic tanks on other property serving the Property; no burial grounds, archeological sites, or habitats of endangered or threatened species on the Property; and that no part of the Property is subject to tidal waters; has been designated as wetlands by any federal, state, or local law or governmental agency; or is located in a special flood hazard area.

6.2.6 Environmental Indemnity.

6.2.6.1 Mortgagor shall at all times indemnify and hold harmless Mortgagee against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Mortgagee, whether as beneficiary of this Mortgage, as mortgagee in possession, or as successor-in-interest to Mortgagor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Environmental Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(a) any discharge of Substances, the threat of a discharge of any Substances, or the presence of any Substances affecting the Property whether or not the same originates or emanates from the Property or any contiguous real estate including any loss of value of the Property as a result of any of the foregoing;

(b) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Environmental Laws;

(c) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Property; and/or

(d) any other environmental matter affecting the Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local environmental agency.

Mortgagor's obligations under this Agreement shall arise upon the discovery of the presence of any Substance, whether or not the Environmental Protection Agency, any other federal agency or any state or

local environmental agency has taken or threatened any action in connection with the presence of any Substances.

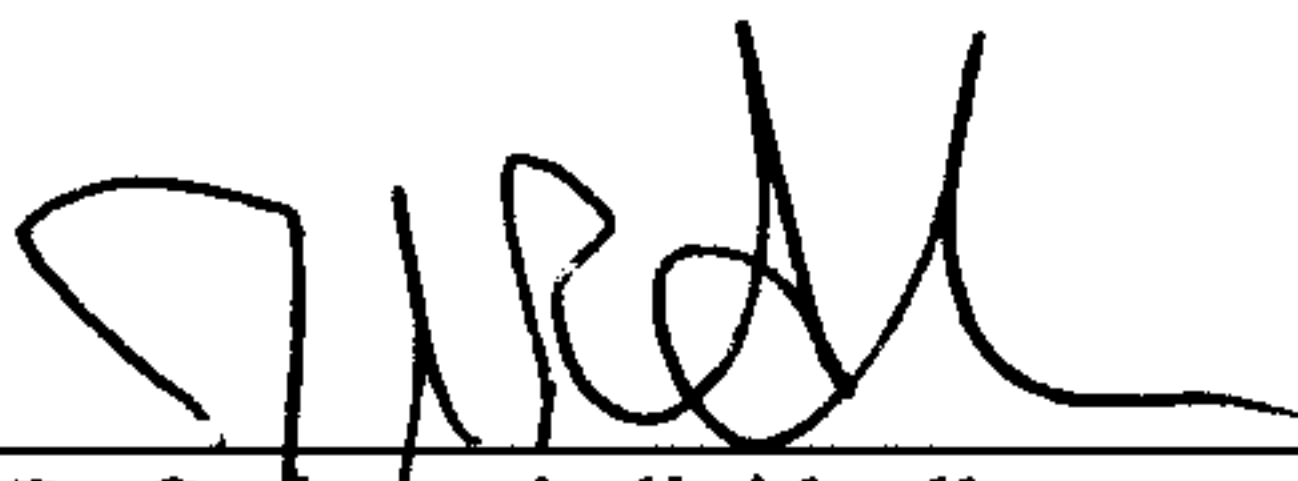
7. U.S. SMALL BUSINESS ADMINISTRATION PROVISION:

The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed on its behalf and its seal to be hereunto affixed as of the date first above written.


John R. Graham, individually

Laura M. Graham, individually

STATE OF ALABAMA)
COUNTY OF JEFFERSON

I, the undersigned, Notary Public, in and for said County in said State, hereby certify that Laura M. Graham whose name 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 executed the same voluntarily on the day the same bears date.

2010. Given under my hand and Official seal this 17th day of December.


Notary Public

My Commission Expires 8/31/12



20101228000434380 19/20 \$294.00
Shelby Cnty Judge of Probate, AL
12/28/2010 12:26:29 PM FILED/CERT

EXHIBIT A

PROPERTY DESCRIPTION

**LOT 2114, ACCORDING TO THE SURVEY OF BROOK HIGHLAND AND EDDLEMAN
COMMUNITY, 21ST SECTOR, PHASE II, AS RECORDED IN MAP BOOK 18, PAGE 129, IN
THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.**

TAX/PARCEL ID#03-4-19-0-001-003.007



20101228000434380 20/20 \$294.00
Shelby Cnty Judge of Probate, AL
12/28/2010 12:26:29 PM FILED/CERT

EXHIBIT B

PERMITTED ENCUMBRANCES

First Mortgage to CitiMortgage, Inc. dated 7/14/2004 and recorded 7/26/2004 as Instrument #20040726000414220 in the original principal amount of \$333,700.00.

Second Mortgage to Citibank Federal Savings Bank dated 8/1/2005 and recorded 8/16/2005 as Instrument #20050816000422260 in the original principal amount of \$150,000.00 and increased to \$243,500.00 by a Note and Mortgage Modification dated 9/4/2007 and recorded 12/11/2007 as Instrument #20071211000559660.