



20140806000243680 1/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

NOTE TO RECORDER/CLERK:

THIS MORTGAGE IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502(C) OF THE CODE OF ALABAMA OF 1975 AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR, AS DEBTOR, AND LENDER, AS SECURED PARTY.

THIS MORTGAGE SECURES A MAXIMUM PRINCIPAL INDEBTEDNESS IN THE AGGREGATE AMOUNT OF \$1,116,124.00, PLUS INTEREST AND COSTS OF COLLECTION, FOR RECORDING TAX PURPOSES.

Prepared By and After Recording Please Return To:

Edwin A. Tate, Esq.
Seacrest, Karesh, Tate & Bicknese, LLP
56 Perimeter Center East
Suite 450
Atlanta, Georgia 30346

AFTER RECORDING RETURN TO:

METROPOLITAN TITLE AGENCY, INC.
1820 The Exchange, Suite 550
Atlanta, Georgia 30339
Phone: 770-933-0073
FAX: 770-933-0233

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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (this "*Mortgage*") is made as of July 1, 2014, by 700 RIDGEVIEW, LLC, a Georgia limited liability company ("*Grantor*"), as mortgagor, in favor of FIDELITY BANK ("*Lender*"), as mortgagee.

W I T N E S S E T H:

That for and in consideration of the sum of ONE HUNDRED AND NO/100THS DOLLARS (\$100.00) and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure indebtedness of Grantor, and other obligations of Grantor hereinafter set forth, Grantor 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 Grantor 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 "*Property*") to-wit:

(1) The fee simple estate in and to the tract(s) or parcel(s) of land more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "*Land*").

AL-9481
1 of 2

(2) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all of Grantor's interest in all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to the Property and all other furnishings, furniture, fixtures, machinery and equipment of every kind and nature whatsoever now or hereafter owned by Grantor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Property, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, and all the right, title and interest of Grantor in any such fixtures, machinery and equipment subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Grantor or on behalf of Grantor; and all machinery, equipment and fixtures constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage. The location of the above described collateral is also the location of the Land.

(3) All of Grantor's interest in all building materials, fixtures, building machinery and building equipment delivered on site to the real estate during the course of, or in connection with, construction of the buildings and improvements.

(4) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof or appurtenant to the title to the Land, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor.

(5) All income, rents, issues, profits, and revenues of the Property from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Grantor of, in and to the same.

TOGETHER WITH all and singular the rights, tenements, hereditaments, members and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Property hereinabove mentioned or which hereafter shall in any way belong, relate or be

appurtenant thereto, whether now owned or hereafter acquired by Grantor, including but not limited to, all rents, profits, issues and revenues of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving only the right to Grantor to collect the same for its own account so long as Grantor is not in default hereunder.

TOGETHER WITH Grantor's interest in any and all leases, tenant contracts and rental agreements and other contracts, licenses and permits (all of which are sometimes hereinafter referred to as the "**Leases**") now or hereafter affecting or in any manner relating to the Property, or any part thereof, together with all of Grantor's rights and powers thereunder to cancel, accept the surrender of or materially modify any of the terms thereof without Lender's prior written consent. Grantor agrees to execute and deliver such other instruments as Lender may require evidencing the assignment of the Leases.

TOGETHER WITH all of the rents, tenant reimbursements, incomes, issues and profits which shall hereafter become due to or be paid to, Grantor for the use of the Property or any part thereof, all rents, tenant reimbursements, incomes, issues and profits arising under the Leases or any thereof, and all unrefunded security and other deposits (hereinafter referred to as the "**Deposits**") paid to anyone in connection with the occupancy of the Property or any part thereof (all of which are sometimes hereinafter referred to as the "**Rents**"), reserving to Grantor a license to collect the Rents and to hold the Deposits which license shall terminate automatically without notice upon the occurrence of an Event of Default, as hereinafter defined, and upon the occurrence of an Event of Default, Lender shall be entitled to the Rents and Deposits without the necessity of Lender's taking any action whatsoever, and the Rents and Deposits shall thereupon be deemed cash collateral for all purposes, including without limitation for purposes of Section 363 of Title 11 of the United States Code, as the same may be amended. Grantor agrees to execute and deliver such other instruments as Lender may require evidencing the assignment of the Rents.

TOGETHER WITH all cash and non-cash proceeds and all products of any of the foregoing items or types of property described 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 above.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, its successors and assigns, IN FEE SIMPLE forever; and Grantor covenants that Grantor is lawfully seized and possessed of the Premises and has good right to convey the same, that the same are unencumbered except for those matters (the "**Permitted Encumbrances**") expressly set forth in Exhibit B attached hereto and incorporated herein, and that Grantor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Encumbrances.

This Mortgage is given to secure the payment of the following described indebtedness and obligations (hereinafter referred to collectively as the "**Obligations**"):

(a) The indebtedness and other obligations evidenced by that certain Guaranty (hereinafter referred to as the "Guaranty" and to which Guaranty reference is hereby made for all purposes) dated of even date herewith, made by Grantor in favor of Lender with respect to any and all indebtedness of Café Restaurants Macon, LLC, f/k/a J. Christopher's Macon, LLC, a Georgia limited liability company (hereinafter referred to as "Borrower"), including, but not limited to, that certain Modification of Note (hereinafter referred to as the "Note" and to which Note reference is hereby made for all purposes) dated as of July 1, 2014, made by Borrower, payable to the order of Lender in the current principal face amount of \$1,116,124.00, together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by the Note with interest on the outstanding principal at the rates provided for in the Note, payable to Lender on demand or as otherwise provided in the Note;

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Any and all additional advances made by Lender to protect or preserve the Property or the security interest created hereby in the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Grantor's obligations hereunder or for any other purpose provided herein (whether or not the original Grantor remains the owner of the Property at the time of such advances);

(e) Any and all other obligations and indebtedness now or hereafter owing by Grantor to Lender under any rate swap, zero cost collar, or any other derivative contract or product entered into by and between Grantor, on one hand, and Lender or any affiliate of Lender, on the other hand, with such obligations and indebtedness by their terms being secured hereby; and

(f) Any and all other obligations and indebtedness now or hereafter owing by Grantor to Lender, howsoever created and howsoever evidenced.

This Mortgage, the Guaranty, the Note, and all documents, instruments, deeds and agreements now *or* hereinafter evidencing, securing, guaranteeing or otherwise relating to this Mortgage, the Guaranty, the Note, or the Obligations are collectively hereinafter referred to as the "**Loan Documents**." The terms "**Mortgage**," "**Guaranty**," "**Note**," and "**Loan Documents**" shall mean such agreements, documents and instruments as the same may from time to time be amended, modified, or supplemented by written agreement.

PROVIDED, HOWEVER, that these presents are upon the condition that, (a) if Grantor shall fully pay or cause to be fully paid to Lender the Obligations, including all charges incurred herein by Lender on account of Grantor, including, but not limited to, actual, reasonable attorneys' fees, and shall pay, keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Guaranty, in the Note, in the other Loan Documents, expressed to be kept, performed, and observed by or on the part of Grantor, all without fraud or delay, and (b) Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Note, any other Loan

Document or any other Obligations, then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void.

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

ARTICLE I

1.01 Performance and Payment of Obligations. Grantor will pay and perform its obligations under the Guaranty and the other Loan Documents to which it is a party according to the tenor thereof and the remainder of the Obligations promptly as the same shall become due.

1.02 Warranty of Title. Grantor hereby warrants that, except as may be otherwise 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, 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 Grantor 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 and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Obligations, but also future advances and any and all other obligations and liabilities, direct or contingent, of Borrower and Grantor 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 Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Note and the other Obligations 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 Taxes, Liens and Other Charges.

(a) Grantor shall pay, on or before the due date thereof or the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof, all taxes, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon, the Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as Lender may require.

(b) Grantor shall pay, on or before the due date thereof or the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with the remainder of the Obligations, this Mortgage or any other Loan Documents, excluding only state and federal taxes on the income earned by Lender. Grantor shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments, charges, expenses, costs, and fees as Lender may reasonably require.

(c) Grantor shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Property, as required pursuant to Section 1.05. Grantor shall submit to Lender such evidence of the due and punctual payment of all such premiums as Lender may reasonably require.

(d) Grantor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, incurred in the improvement, maintenance, operation and development of the Property, to be promptly paid, and will not suffer any mechanic's, materialman's, laborer's, statutory or other lien, including, but not limited to, any lien resulting from Grantor's failure to perform under subparagraphs 1.04(a) and (b) above, to be filed of record upon all or any part of the Property and not released (by payment, bonding or otherwise) within thirty (30) days after Grantor receives actual notice thereof, unless a shorter period for the release of any specific lien is provided elsewhere in this Mortgage.

1.05 Insurance.

(a) Grantor will keep its properties continuously insured against such risks as are customarily insured against by businesses of like size and type engaged in the same or similar operations including, without limiting the generality of any other covenant contained herein or in the Loan Documents:

(i) casualty insurance on its tangible property in an amount not less than the full insurable value thereof, against loss or damage by theft, fire and lightning and other hazards ordinarily included under uniform broad form standard extended coverage policies, limited only as may be provided in the standard broad form of extended coverage endorsement at the time in use in the State of Alabama;

(ii) general comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about its tangible property (such coverage to include provisions waiving subrogation against Lender) in amounts not less than \$1,000,000 with respect to bodily injury to any one person, \$1,000,000 with respect to bodily injury to two or more persons in any one accident and \$1,000,000 with respect to property damage resulting from any one occurrence;

(iii) liability insurance with respect to the operation of its facilities under the workers compensation laws of the State of Alabama;

(iv) business interruption insurance (rental loss) in an amount not less than Grantor's debt service on its Obligations, real estate taxes and insurance premiums, each for a period of at least twelve (12) months; and

(v) if at any time the Property is in an area that has been identified by the Secretary of Housing and Urban Development as having special flood and mud slide hazards, Grantor shall purchase and maintain a flood insurance policy satisfactory to Lender; provided, however, that the insurance so required may be provided by blanket policies now or hereafter maintained by Grantor;

(vi) standard fire insurance with extended coverage endorsement including vandalism and malicious mischief coverage, without co-insurance, in an amount equal to at least 100% of the replacement cost of the improvements on the Property; and

(vii) boiler and machinery insurance to cover the sudden and accidental breakdown of specific types of equipment, including but not limited to boilers, heating and ventilating systems, refrigeration equipment, air conditioning units, pumps, compressors, motors, blowers, generators and transformers, located on the Property.


(b) (i) Each insurance policy obtained in satisfaction of the requirements of this Section shall meet the following conditions:

A. Lender shall have the right to approve each and every insurance carrier and policy. All policies shall be in the amounts, form and content (including mortgagee clauses) and issued by such companies as are reasonably acceptable to Lender. All such companies must be licensed by the Insurance Commissioner of Alabama. Each company must have a rating of A- or better (Excellent or Superior), and Class IX or better, in A.M. Best's Insurance Reports.

B. All such policies shall be in such form and have such provisions (including, without limitation, the loss payable clause, the waiver of subrogation clause, the deductible amount, if any, and, the standard mortgagee endorsement clause), as are generally considered standard provisions for the type of insurance involved and are acceptable in all respects to Lender and, except for liability insurance, all above-referenced insurance policies shall contain a standard mortgagee clause naming "FIDELITY BANK, its successors and assigns" as first mortgagee, which states that the insurance coverage shall not be affected by any act or neglect of Grantor or owner of the Property.

C. All such policies shall prohibit cancellation or substantial modification, termination or lapse in coverage by the insurer without at least ten (10) days, prior written notice to Lender.

D. All such policies shall provide that losses thereunder, prior to the occurrence of an Event of Default (or event which, with notice or lapse of time or both would constitute an Event of Default) hereunder shall be adjusted with the insurer by Grantor at its expense on behalf of the insured parties and the decision of Grantor as to any adjustment shall be final and conclusive.


20140806000243680 7/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

E. Without limiting the generality of foregoing, all insurance policies carried on the Property shall name Lender and Grantor as loss payee and a party insured thereunder, as their interests may appear.

F. All applicable policies must be maintained during the term of the Note and all annual policy renewals must be forwarded to Lender at the address first above written or such other address as designated by Lender from time to time.

(ii) Prior to expiration of any such policy, Grantor shall furnish Lender with evidence satisfactory to Lender that the policy or certificate has been renewed or replaced or is no longer required by the Loan Documents.

(iii) Grantor agrees that Lender may, at its discretion, require escrows for insurance premiums after any Default or Event of Default.

(iv) Prior to an Event of Default, Grantor shall be permitted to use the net proceeds of any insurance award for the rebuilding, repair or restoration of the Property so long as such proceeds are held in an escrow account with Lender and Lender consents to such use of such proceeds. The proceeds from any business interruption insurance award shall be first applied to payment of any shortfall in debt service on the Obligations and then for any other legal purpose provided, that, Grantor shall reserve sufficient amounts to pay future debt service on the Obligations if Grantor's business is affected in a materially adverse manner.

(c) Grantor does hereby transfer and assign to Lender all such insurance policies, and the proceeds thereof, and in the event of a loss, the proceeds collected may, whether or not an Event of Default exists, be used by Lender for application to the Obligations in such order and manner as Lender may elect. With respect to business interruption insurance relating to the Property, the net proceeds thereof received by Lender shall be held and applied by Lender, in Lender's discretion, whether or not an Event of Default exists, to the Obligations of Grantor. Any proceeds applied to the Obligations shall be applied, at the option of Lender, to the last installment or installments of principal coming due under the Note and, once repaid, to any other Obligations in such order as Lender may elect. Lender is hereby irrevocably appointed by Grantor as its attorney in fact to assign any such policy, in the event of the foreclosure of the Property under the powers granted herein or in the Loan Documents or a conveyance in lieu of any such foreclosure or sale under power.

1.06 Monthly Deposits. At the option of Lender, and only after written notice to Grantor after a Default or an Event of Default, and further to secure the payment of the taxes and assessments referred to in Section 1.04 and the premiums on the insurance referred to in Section 1.05, Grantor shall deposit with Lender, on the due date of each installment under the Note, such amounts as in the reasonable estimation of Lender shall be necessary to pay such charges as they become due; said deposits to be held by Lender, with interest, and free of any liens or claims on the part of Grantor or creditors of Grantor and as part of the security of Lender, and to be used by Lender to pay current taxes and assessments and insurance premiums on the Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender after such a Default or Event of Default and may be made even though such payments will benefit subsequent owners of the Property. Said

deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments in full as the same become payable, Grantor, upon written request of Lender after such a Default or Event of Default, will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments in full. Upon any Event of Default under this Mortgage, the Note, or any other Loan Documents, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Obligations in such manner as it may elect.

1.07 Condemnation. If all or any material portion (in excess of 10% of the value of the Property) of the Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, quasi- governmental authority, or any party having the power of condemnation and any transfer by private sale in lieu thereof), either temporarily or permanently, such that the Property can no longer be operated for its intended purposes, then the entire Obligations shall, at the option of Lender, become immediately due and payable. As used herein, a condemnation shall be deemed material if Lender determines, in its sole discretion, that the portion of the Property remaining after such condemnation is inadequate to secure the Obligations (after application of condemnation proceeds). Grantor, promptly upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action or proceeding for the taking through condemnation of the Property or any part thereof will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Grantor'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 Grantor to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including its reasonable attorney's fees, Lender may apply the net proceeds or any part thereof, at its sole option, (a) to the payment of the Obligations, whether or not due and in whatever order Lender elects, (b) to the repair and/or restoration of the Property and/or (c) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the lien of this Mortgage; and any balance of such monies then remaining shall be paid to Grantor or any other person or entity lawfully entitled thereto. Grantor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may reasonably require. If, prior to the receipt by Lender of such award or proceeds, the Property shall have been sold on foreclosure of this Mortgage, or under the power of sale herein granted, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Obligations following such sale, with legal interest thereon, whether or not a deficiency judgment on the Note or this Mortgage shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

20140806000243680 9/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

1.08 Care of Property.

(a) Grantor will keep the buildings, parking areas, roads and walkways, common areas, landscaping and all other improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Property.

(b) Grantor will not remove, demolish or materially alter the design or structural character of any building, fixture or other improvement now or hereafter constructed on the Land in any material respect without the prior written consent of Lender.

(c) If the Property or any part thereof is damaged by fire or any other cause, Grantor will give immediate written notice thereof to Lender.

(d) Upon reasonable prior notice to Grantor, Lender or its representative is hereby authorized to enter upon and inspect the Property at any time during normal business hours, subject to rights of tenants.

(e) Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof. If Grantor receives notice from any federal, state, or other governmental entity that the Property fail to comply with any applicable law, ordinance, rule, order or regulation, Grantor will promptly furnish a copy of such notice to Lender.

(f) If all or any part of the Property shall be damaged by fire or other casualty, Grantor will promptly restore the Property to the equivalent of its original condition to the extent practical; and if a part of the Property shall be taken through condemnation, Grantor will promptly restore, repair or alter the remaining portions of the Property in a manner reasonably satisfactory to Lender. Grantor shall not be obligated to so restore, repair or alter unless in each instance Lender agrees to make available to Grantor (pursuant to procedures satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or alteration; provided, however, the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration, repair or alteration shall in no way relieve Grantor of its obligation to restore, repair or alter.

1.09 Further Assurances: After Acquired Property. At any time, and from time to time, upon request by Lender, Grantor will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, 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 necessary by Lender, any and all such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as to the Property as may, in the opinion of Lender, be reasonably necessary in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Grantor

under the Guaranty, this Mortgage and the other Loan Documents and (b) the security interest created by this Mortgage, whether now owned or hereafter acquired by Grantor; provided, that, however, any such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as to the Property, shall be in substantially the same form as the Loan Documents and shall not in any material way alter the terms of the Note or any of the other Loan Documents. The security title of this Mortgage and the security interest created hereby will automatically attach, without further act, to all after acquired property as described herein attached to and/or used in the operation of the Property or any part thereof.

1.10 Expenses. Grantor will pay or reimburse Lender, upon demand therefor, for all attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Obligations, this Mortgage or the interest created herein, or the Property, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Property or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the Obligations and shall be secured by this Mortgage.

1.11 Estoppel Affidavits. Grantor, upon ten (10) days prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Obligations secured hereby and whether or not any offsets or defenses exist against the Obligations, or any portion thereof, and, if such offsets or defenses exist, stating in reasonable detail the specific facts relating to each such offset or defense.

1.12 Subrogation. To the full extent of the Obligations, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every claim, demand and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Obligations, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Obligations, to the same extent they would have been preserved and would have been passed to and held by Lender, had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

1.13 Books, Records, Accounts and Annual Reports. Grantor shall keep and maintain or shall cause to be kept and maintained, at Grantor's cost and expense, proper and accurate books, records and accounts reflecting all items of income and expense of Grantor in connection with the Property as may be required. Lender, by its agents, accountants and attorneys, shall have the right from time to time to examine such books, records and accounts at the office of Grantor or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as Lender shall desire and to discuss Grantor's affairs, finances and accounts with Grantor and with the officers and principals of Grantor, at such reasonable times as may be requested by Lender.


1.14 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Mortgage or the Guaranty, at the time performance of such provision shall be due, shall involve transcending the limits of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or the Guaranty that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.14 shall control every other provision of this Mortgage and the Guaranty.

1.15 Conveyance of Property. Grantor hereby acknowledges to Lender that (a) the identity and expertise of Grantor were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Borrower of the indebtedness evidenced by the Note and (b) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Guaranty granted to Lender by this Mortgage. Grantor therefore covenants and agrees with Lender, as part of the consideration for the extending to Borrower of the indebtedness evidenced by the Note, that Grantor shall not further encumber, pledge, convey, transfer, assign or sell any or all of its interest in the Property without the prior written consent of Lender and, if Grantor shall violate this provision, the entire Obligations shall immediately and without further action on the part of the Lender become immediately due and payable.

1.16 Use of Property. Grantor shall not be permitted to alter or change the proposed use of the Property or to abandon the Property without the prior written consent of Lender.

1.17 Acquisition of Collateral. Grantor shall not acquire any portion of the personal property covered by this Mortgage subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Mortgage.

1.18 Rules, Regulations. Grantor hereby represents and warrants: (a) that Grantor shall comply with all laws, ordinances, rules, regulations, covenants, conditions, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, rules, regulations, covenants, conditions, and restrictions; and (b) that, to the best of Grantor's actual knowledge, the location, construction, occupancy, operation and actual or intended use of the Property do not violate any applicable law, ordinance, rule, regulation, covenant, condition or restriction affecting the Property. Grantor agrees to indemnify and hold Lender harmless from and against and shall reimburse Lender for, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising out of or in connection with the breach of any representation or warranty of Grantor set forth in this Section 1.18 and the failure of Grantor to perform any obligation herein required to be performed by Grantor.


20140806000243680 12/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

1.19 Hazardous Waste and Substances: Environmental Indemnity.

(a) Grantor warrants and represents to Lender that except as set forth in any report provided to Lender (i) the Property is now, and at all times during Grantor's period of ownership will continue to be, in full compliance with all federal, state and local environmental laws, rules and regulations, as the same may be amended from time to time (the "**Environmental Laws**"), including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq, and the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Public Law No. 99-499, 100 Stat. 1613; (ii) (A) there are no hazardous materials, substances, or wastes (as such terms are defined under any Environmental Laws), including without limitation, any materials containing asbestos (collectively "**Hazardous Substances**") located on, in or under the Property or used in connection therewith, or (B) Grantor has fully disclosed to Lender in writing the existence, extent and nature of any such Hazardous Substances which Grantor is legally authorized and empowered to maintain on, in or under the Property or use in connection therewith, and Grantor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and are in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals; and (iii) no governmental authority or administrative agency has notified Grantor of any violation of the Environmental Laws. Grantor further warrants, represents and agrees that it will transmit to Lender copies of any citations, orders, notices or other material governmental or other communication received with respect to any Hazardous Substances affecting the Property and of all responses by Grantor to such notices. Grantor further warrants, represents and agrees that it will promptly notify Lender of any change in the nature or extent of any Hazardous Substances maintained on, in or under the Property or used in connection therewith, and allow no change in the use or operation of the Property that would materially increase the risk of violation of the Environmental Laws without the express prior written approval of Lender.

(b) Grantor shall indemnify and hold Lender, its officers, directors, agents, employees, affiliates and representatives (individually, an "**Indemnified Party**," and collectively, the "**Indemnified Parties**") harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up and response costs), judgments, and expenses (including attorneys', consultants', or experts' fees and expenses) of every kind and nature suffered by or asserted against Lender as a direct or indirect result of any warranty or representation made by Grantor in the preceding paragraph being or becoming false or untrue in any material respect or as a result of any requirement under any Environmental Laws which requires the elimination or removal of any Hazardous Substances or other substances regulated pursuant to any environmental laws, rules, or regulations of any governmental authority or agency having jurisdiction of the Property. Any payments required to be made hereunder shall become due on demand.

ARTICLE II

2.01 Definitions. 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.

2.02 Grant of Security Interest. Grantor (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 loans as aforesaid to Borrower 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 Grantor, including but not limited to actual, reasonable attorneys' fees, and any and all other Obligations, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Guaranty and the other Loan Documents, does hereby assign and grant to Lender title to and a security interest in the Property, the security interest in and disposition of which is governed by the Uniform Commercial Code (the "*Collateral*").

2.03 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 Grantor and Lender. At Lender's request, Grantor 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. Grantor authorizes Lender to prepare and to file financing statements covering the Collateral signed only by Lender and to sign Grantor's signature to such financing statements in jurisdictions where Grantor's signature is required. Grantor 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.

2.04 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.

2.05 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 Property, and Grantor 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, Grantor 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 Grantor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

ARTICLE III

3.01 Defaults. The terms "*Event of Default*" or "*Events of Defaults*," wherever used in this Mortgage, shall mean any one or more of the following events (and the terms "*Default*" and "*Defaults*" shall mean any event(s) or condition(s) which, with the passage of time or the giving of notice, or both, shall constitute an Event of Default or Events of Default):

- (a) Failure by Grantor to pay the Obligations when due and payable;
- (b) Failure by Grantor to duly and timely observe or perform any other term, covenant, condition or agreement in this Mortgage and the same is not cured by Grantor within thirty (30) days of the occurrence thereof;
- (c) The occurrence of an event of default under (and as defined in) the Guaranty, the Note or any of the other Loan Documents after expiration of any applicable grace periods provided therein, if any; or
- (d) Any warranty or representation of Grantor contained in this Mortgage proves to be untrue or misleading in any material respect.

3.02 Acceleration of Maturity. If an Event of Default shall have occurred then the entire Obligations shall, at the option of Lender, immediately become due and payable without notice, except as specifically provided herein and in the Loan Documents, time being of the essence of this Mortgage; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

3.03 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Grantor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property and if, and to the extent, permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property without the appointment of a receiver, or an application therefor, and may exclude Grantor and its agents and employees wholly therefrom, and may have joint access with Grantor to the books, papers and accounts of Grantor relating to the Property.

(b) Subject to the terms and conditions of Section 3.03(a) herein, if Grantor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Grantor to deliver immediate possession of the Property to Lender, and Grantor hereby specifically covenants and agrees that Grantor will not oppose, contest or otherwise hinder or delay Lender in any action or proceeding by Lender to obtain such judgment or decree. Grantor will pay to Lender, upon demand, all expenses of obtaining

such judgment or decree, including Lender's attorneys' fees and expenses of Lender's agents; and all such expenses and compensation shall, until paid, become part of the Obligations and shall be secured by this Mortgage.

(c) Subject to the terms and conditions of Section 3.03(a) herein, upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control and maintain the Property and conduct the business thereof, 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 Property insured; (iii) manage and operate the Property and exercise all the rights and power of Grantor to the same extent as Grantor could in its own name or otherwise with respect to the same; and (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 in its best interest. Lender may collect and receive all the income, rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and Lender may apply any money and proceeds received by Lender, in whatever order or priority Lender, in its sole discretion, may determine, to the payment of (A) all expenses of taking, holding, managing and operating the Property (including reasonable compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Property or any part thereof; (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender; (G) accrued interest; and (H) overdue installments of principal. Anything in this Section 3.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Mortgage, nor shall Lender be responsible or liable for any waste committed on the Property by any tenant or other person or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property (except for any gross negligence on Lender's part) resulting in any loss, injury or death to any tenant, licensee, employee, or stranger, and Lender shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by Lender.

(d) For the purpose of carrying out the provisions of this Section 3.03, Grantor hereby constitutes and appoints Lender the true and lawful attorney in fact of Grantor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact.

(e) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall be paid and all Events of Defaults shall be cured, and as a result thereof Lender surrenders possession of the Property to Grantor, the same right of taking possession shall continue to exist if any subsequent Event of Default shall occur.

3.04 Performance by Lender. If Grantor shall default in the payment, performance or observance of any tax, lien, assessment or charge levied or assessed against the Property, or otherwise described in Section 1.04 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 term, covenant or condition of this Mortgage, the Note, or of any other Loan Documents, or of any of the other Obligations, and after the expiration of any applicable notice and cure period, if any, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, upon demand, immediately repaid by Grantor to Lender with interest thereon at the default rate provided in the Note. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Grantor or any person in possession holding under Grantor for trespass or otherwise.

3.05 Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all the rights and powers permitted under the laws of the State of Alabama. Grantor will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 3.05; and any such amounts paid by Lender shall be added to the Obligations and shall be secured by this Mortgage.

3.06 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 Loans; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any other Obligations; and (d) to pursue any other remedy available to Lender, all as Lender may elect.

3.07 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 Guaranty, the Note, any of the other Loan Documents, the other Obligations 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 Grantor 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 Grantor 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 Grantor agrees shall be reasonable notice of any sale or disposition of the Collateral;

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

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

To effectuate the rights and remedies of Lender upon default, Grantor does hereby irrevocably appoint Lender attorney-in-fact for Grantor, 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 Grantor could do, and to sell, assign, and transfer any collateral to Lender or any other party.

3.08 Power of Sale. If an Event of Default shall have occurred, Lender may sell the 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 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 Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the 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 Section 3.08 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Property hereunder.

3.09 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Section 3.08, or any sale pursuant to Section 3.07, 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 Property (as the case may be) for sale, and (ii) making the sale, including actual reasonable attorneys' fees 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 Guaranty, the Note, this Mortgage, the other Loan Documents or the other Obligations, 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 in its sole discretion;

(c) Third, to the payment of the indebtedness (including but not limited to the Loans and the other Obligations) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, the Guaranty, this Mortgage, the other Loan Documents or the other Obligations, 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.

3.10 Lenders' Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event actual, reasonable attorneys' fees 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 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 Grantor, 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 Property.

3.11 Waiver of Exemption. Grantor 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 Grantor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby.

3.12 Suits to Protect the 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 Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the 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.

3.13 Grantor 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 Obligations, or if any other Event of Default shall occur under this Mortgage, then, upon demand of Lender, Grantor shall pay to Lender the whole amount due and payable under the Note and under all other Obligations; and in case Grantor 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.

3.14 Delay or Omission No Waiver. No delay or omission of Lender 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 Obligations to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.15 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 Obligations 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 Obligations; (d) releases any part of the 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 Obligations; (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 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 Obligations of Grantor or any subsequent purchaser of the 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 Property, Lender, without notice to any person, corporation or other entity (except notice shall be given to Grantor so long as Grantor 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 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.

3.16 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 Grantor 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.

3.17 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 Obligations or now or hereafter existing at law or in equity or by statute.

ARTICLE IV

4.01 Assignment. Grantor, in consideration of Lender's making the loans as aforesaid to Borrower 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 and Grantor, including but not limited to actual, reasonable attorneys' fees, and any and all other Obligations, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and in the other Loan Documents, does hereby sell, assign and transfer unto Lender all leases, subleases and lease guaranties of or relating to all or part of the 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 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 Grantor does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead following an Event of Default (with or without taking possession of the Property as hereinafter provided), to rent, lease or let all or any portion of the 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 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 Property pursuant to the provisions hereinafter set forth.

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

4.03 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 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 Grantor.

4.04 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 Grantor shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Grantor'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.

4.05 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 Property, and Grantor 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, Grantor agrees to reimburse Lender for the amount thereof, including costs, expenses and actual, reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Grantor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

4.06 Instruction to Lessees. Grantor 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 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.

4.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Section 3.01, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Property, Lender shall have all rights and remedies set forth in Article III or elsewhere in this Mortgage.

ARTICLE V

5.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Grantor and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to Grantor or Lender such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Grantor and Lender, as the case may be. The provisions of this Section 5.01 are subject to the restrictions on transfer contained in Section 1.15 herein.



20140806000243680 22/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

5.02 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to articles, sections, subsections, paragraphs or subparagraphs thereof, shall refer to the corresponding articles, sections, subsections, paragraphs or subparagraphs of this Mortgage unless specific reference is made to articles, sections, subsections, paragraphs or subparagraphs of another document or instrument.

5.03 Severability. If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid 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 enforced to the greatest extent permitted by law.

5.04 Applicable Law. This Mortgage and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Alabama (without giving effect to conflict of law provisions).

5.05 Notices, Demands and Requests. Except as otherwise expressly provided in other sections in this Mortgage or any other Loan Document, all notices, requests and other communications shall be in writing, either by letter (delivered by hand or sent by certified mail, return receipt requested), email, facsimile transmission, telex or telegram, addressed as follows:

Grantor 700 RIDGEVIEW, LLC,
 2 Buckhead Plaza
 3050 Peachtree Road, Suite 570
 Atlanta, Georgia 30305

Lender: FIDELITY BANK
 3490 Piedmont Road, Suite 1550
 Atlanta, Georgia 30305

Any notice, request, or communication hereunder shall be deemed to have been given: (a) when delivered by hand, facsimile transmission or electronic mail, (b) two (2) Business Days after being properly deposited in the mails postage prepaid, (c) when sent by telex, answer-back received, or (d) the next Business Day after being delivered to a telegraph company or an overnight courier. Any party may change the person or address to whom or which the notices are to be given hereunder, but any such notice shall be effective only when actually received by the party to whom it is addressed.

5.06 Assignment. This Mortgage is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender. Grantor's rights hereunder are not assignable by Grantor.


5.07 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Grantor under this Mortgage, the Guaranty and any

and all other instruments now or hereafter evidencing, securing or otherwise relating to the Obligations.

5.08 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 sealed instrument according to law.

5.09 Waiver. Grantor hereby represents and warrants to Lender that, as of the date hereof, it has no defenses, set-off, or counterclaim of any kind or nature whatsoever against Lender with respect to the Loan Documents, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien, or collateral in connection therewith to secure the Obligations.

[SIGNATURES COMMENCE ON NEXT PAGE]



20140806000243680 24/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

IN WITNESS WHEREOF, Grantor has executed this Mortgage under seal as of the day and year first above written.

700 RIDGEVIEW LLC, a Georgia
limited liability company

By: [Signature] [SEAL]
Christopher F. Brogdon, Manager

Acknowledgment

On the 23rd day of July, 2014, before me, the undersigned, personally appeared Christopher F. Brogdon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument as the Manager of 700 RIDGEVIEW, LLC (the "Company") as indicated above and acknowledged to me that they executed the same in his capacity as such officer of said Company, and that by his signature on the instrument on behalf of said Company, the Company executed the foregoing instrument.

Courtney Ringlein
Notary Public

[NOTARY SEAL]

(MUST BE FULLY LEGIBLE)

Printed Name: Courtney Ringlein

My Commission Expires: JAN 16, 2017



F:\DATA\D641\2014 Modification\AL Mortgage, Assignment & Security Agmt.docx

[Barcode]
20140806000243680 25/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT

EXHIBIT "A"

Legal Description:

Lot 2D-3A, according to the Southerland Place Resurvey, as recorded in Map Book 25, Page 143, in the Probate Office of Shelby County, Alabama.

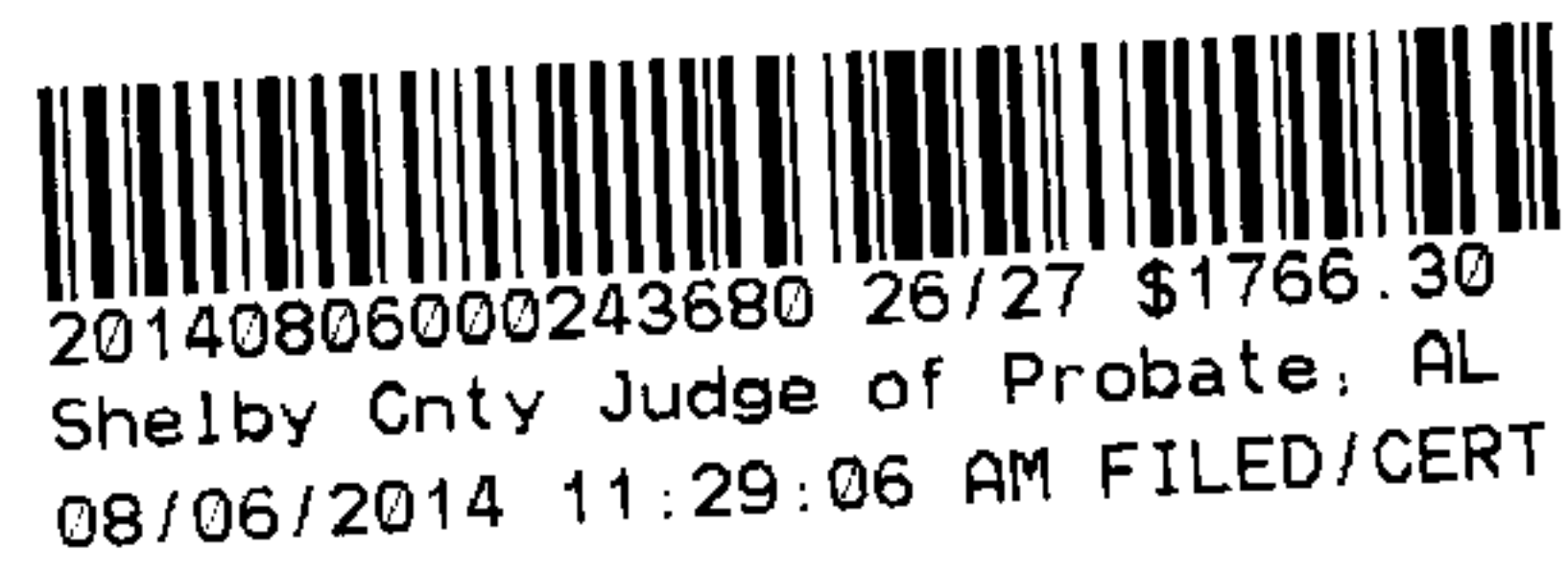



EXHIBIT "B"
Permitted Encumbrances

1. Taxes and assessments for the year 2014 and subsequent years and not yet due and payable.
2. Easements, reservations, restrictions, rights-of-way and setback lines as reserved and shown on record map of subdivision in Map Book 21, Page 92 and Map Book 25, Page 143.
3. Oil, gas and mineral rights as contained in instrument recorded in Deed Book 66, Page 34 and Deed Book 28, Page 581.
4. Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park as set out in Book 5, Page 772 along with First Amendment recorded in Book 177, Page 269; Second Amendment recorded in Instrument #1993-18243; Third Amendment recorded in Instrument #1996-27981 and Fourth Amendment recorded in Instrument #1996-28517, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c).
5. Nonexclusive Installation and Service Agreement dated February 27, 2009 and recorded in Instrument #20090728000289160.

F:\DATA\E771\Exhibit B - Permitted Encumbrances.docx


20140806000243680 27/27 \$1766.30
Shelby Cnty Judge of Probate, AL
08/06/2014 11:29:06 AM FILED/CERT