

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502 OF THE CODE OF ALABAMA AND SHOULD ALSO BE INDEXED IN THE UCC RECORDS.

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**AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

**ALABASTER 1010 MEDICAL PROPERTIES, LLC,  
a Delaware limited liability company (Mortgagor)**

**to**

**CAPITAL ONE, NATIONAL ASSOCIATION,  
a national banking association  
(Mortgagee)**

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**Dated as of June 29, 2018**

**Property Location: 1010 First Street North, Alabaster, AL**

**DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:**

**Polsinelli  
150 N. Riverside Plaza, Suite 3000  
Chicago, IL 60606  
Attention: Jason Kaplan, Esq.**



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## **AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of June 29, 2018 by **ALABASTER 1010 MEDICAL PROPERTIES, LLC**, a Delaware limited liability company, whose organizational number is 4079180 ("**Mortgagor**"), whose address for notice hereunder is 181 W. Madison Street, Suite 4700, Chicago, Illinois 60602, for the benefit of **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association, as Administrative Agent for the Lenders (as defined in the Loan Agreement) ("**Mortgagee**"), whose address for notice hereunder is 77 W. Wacker Drive, 10<sup>th</sup> Floor, Chicago, Illinois 60601, Attention: Jeffrey M. Muchmore, Reference MB Kayne Heartland MP4.

### **ARTICLE 1 DEFINITIONS**

**Section 1.1 Definitions.** As used herein, the following terms shall have the following meanings:

**"Indebtedness"**: The sum of all principal, interest and all other amounts due under or secured by the Loan Documents.

**"Lease"** That certain Ground Lease, dated as of March 28, 2002, by and between Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center and Shelby MOB III, LLC, as evidenced by that certain Memorandum of Lease, dated as of March 28, 2002, by and between Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center and Shelby MOB III, LLC, as amended by that certain First Amendment to Ground Lease, dated November 15, 2004, by and between Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center and Shelby MOB III, LLC, as evidenced by that certain First Amendment to Memorandum of Lease, dated as of November 15, 2004, by and between Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center and Shelby MOB III, LLC, as amended by that certain Assignment and Assumption of Ground Lease, dated as of November 19, 2004, by and among Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center, Shelby MOB II, LLC, as assignor, and TST Houston, L.P., as assignee, and as further amended by that certain Assignment and Assumption of Tenant's Interest in Ground Lease and Special Warranty Deed, dated as of February 28, 2006, by and between TST Houston, L.P. and HCP Shelby MOB, LLC, as assigned to Mortgagor, as successor in interest to HCP Shelby MOB, LLC, and as further assigned by that certain Assignment and Assumption of Ground Lease, dated as of October 2, 2015, by and between Baptist Health System, Inc., as assignor and BBH SBMC, LLC as assignee ("**Lessor**").

**"Leasehold Estate"**: The leasehold estate created by the Lease, together with any and all rights, privileges and benefits of whatever character, derived by Mortgagor, or to which Mortgagor may be entitled, under or by virtue of the Lease, including any and all rights: (i) to exercise options (including options to purchase, renew, extend, terminate, reject or assume); (ii) to give consents and receive payments, reimbursements and refunds; (iii) to modify, supplement, terminate, or surrender the Lease; (iv) to release or discharge the Lessor of or from any of



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Lessor's obligations and covenants under the Lease: (v) to any and all claims and rights to the payment of damages that may presently exist or hereafter arise under or in connection with the Lease or the rights of Mortgagor thereunder, including any such claim or right that may arise as a result of the rejection or disaffirmance of the Lease by Mortgagor, or by any trustee of Lessor, pursuant to 11 U.S.C. Sec. 101 et seq., as amended (the "**Bankruptcy Code**"); (vi) to which Mortgagor may be entitled pursuant to Section 365 of the Bankruptcy Code, including all of Mortgagor's rights to remain in possession after rejection or disaffirmance of the Lease by Lessor or by any trustee of Lessor; and (vii) without limiting the foregoing, Mortgagor's interest in any of the deposits of cash, securities or other property which may be held at any time and from time to time by the landlord under the Lease to secure the performance by Mortgagor of the covenants, conditions and agreements to be performed by Mortgagor thereunder.

**"Loan"**: The loan in the maximum principal amount of up to TWO HUNDRED TWENTY-TWO MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$222,600,000.00) made to the Mortgagor and other Borrower parties (the "**Other Borrowers**") to the Loan Agreement by the Lenders, as evidenced and secured by the Loan Documents.

**"Loan Documents"**: means, collectively (a) the Amended and Restated Loan Agreement, of even date herewith, among Mortgagee, Lenders, Mortgagor and the Other Borrowers thereto (as amended, modified, supplemented, extended, renewed or replaced from time to time, the "**Loan Agreement**"); (b) one or more amended, restated and consolidated promissory notes of even date herewith, executed by Mortgagor and the Other Borrowers, payable to the order of one or more Lenders under the Loan Agreement, in the stated aggregate principal amount of up to (\$222,600,000.00) (collectively, the "**Note**"), which Note is due and payable on June 28, 2020, unless otherwise extended pursuant to the terms of the Note or the Loan Agreement, (c) this Mortgage, (d) all other documents included within the definition of "Loan Documents" in the Loan Agreement, (e) all other documents now or hereafter executed by Mortgagor or the Other Borrowers to the Loan Agreement or any other person or entity, to evidence, secure or guaranty the payment of all or any portion of the Indebtedness or the performance of all or any portion of the Obligations or otherwise executed in connection with the Note or this Mortgage, and (f) all modifications, restatements, extensions, renewals and replacements of the foregoing; provided however, in no event shall the term "Loan Documents" include the Environmental Indemnity Agreement.

**"Mortgaged Property"**: Subject to the terms and conditions of the Lease (to the extent applicable) with respect to the leasehold interest of Mortgagor therein, all estate, right, title, interest, claim and demand whatsoever which Mortgagor now or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (a) the real property described in Exhibit A attached hereto and made a part herewith, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "**Land**"), (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (d) all goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper



and all other personal property of any kind or character, including such items of personal property as presently or hereafter defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Personalty**"), (e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"), (g) all subleases, sub-subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Mortgaged Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Mortgagor of any petition of relief under the Bankruptcy Code and all related security and other deposits (collectively, the "**Subleases**")) and all of Mortgagor's claims and rights to the payment of damages arising from any rejection by a lessee of any Sublease under the Bankruptcy Code, (h) all of the rents, revenues, liquidated damages payable upon default under the Subleases, issues, income, proceeds, profits, and all other payments of any kind under the Subleases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "**Rents**"), (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (l) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, (m) all tradenames, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property; (n) the Leasehold Estate; (o) all of Mortgagor's right, title and interest in

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and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures and Personalty; and (p) all accessions, replacements and substitutions for any of the foregoing, and all proceeds thereof. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

**"Obligations"**: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee, the Lenders or others as set forth in the Loan Documents. Without limiting the generality of the foregoing, Mortgagor acknowledges the Environmental Indemnity Agreement pursuant to which Mortgagor has agreed, among other things, to indemnify Mortgagee from any and all losses arising out of or relating to the Liabilities (as those terms are defined therein) shall in no event be deemed to be a Loan Document for the purposes of this Mortgage and that notwithstanding any other provision hereof, this Mortgage does not secure the payment or performance of any obligation or indebtedness of Mortgagor described therein with respect to any liability, expense, loss or damage arising out of the existence or the removal of, or the failure to remove any hazardous or toxic material, chemical, substance or waste on or in the Mortgaged Property now or hereafter located thereon.

**"Permitted Encumbrances"**: The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, and any other matters that Administrative Agent agrees to in writing.

**"State"**: The State of Alabama.

**"UCC"**: The Uniform Commercial Code of the State of Illinois in effect from time to time or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

**Section 1.2 Other Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

## **ARTICLE 2**

### **GRANT**

**Section 2.1 Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor hereby MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS and ASSIGNS to Mortgagee, its successors and assigns, the Mortgaged Property subject, however, to the Lease and all other Permitted Encumbrances; TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, its successors and assigns, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND against the lawful claims of all persons whomsoever the title to the Mortgaged Property unto Mortgagee.

## **ARTICLE 3**

### **WARRANTIES, REPRESENTATIONS AND COVENANTS**



Mortgagor warrants, represents and covenants to Mortgagee and the Lenders as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property, subject to the terms and conditions of the Lease, free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates a valid, enforceable first priority lien and security interest against the Mortgaged Property, subject to the Permitted Encumbrances. Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage. Mortgagor further warrants that the Lease is in all respects valid and in full force and effect, that Mortgagor is not in default under any of its terms or provisions, that Mortgagor has no knowledge of, nor has received any notice from the Lessor under the Lease of any default under the Lease, and that no controversy exists involving any claim of default under the Lease as of the date hereof.

**Section 3.2 First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) take such other action with respect to such lien or security interest as required by the Loan Agreement.

**Section 3.3 Payment and Performance.** Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is worn out or obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

**Section 3.5 Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall, to the extent Mortgagor has such rights under the Lease, maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

**Section 3.6 Inspection.** Subject to the rights of tenants under the Subleases, Mortgagor shall permit Mortgagee, each Lender and Mortgagee's and the Lenders' agents, representatives and employees, upon reasonable prior notice to Mortgagor (so long as no Event of Default is then continuing, in which event no such notice shall be required), to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may

reasonably require in accordance with the terms and conditions of the Loan Agreement or under the Environmental Indemnity Agreement, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

**Section 3.7 Other Covenants.** All of the covenants in the Loan Agreement pertaining to the Mortgaged Property (whether specific to the Mortgaged Property or referring generally to the Projects) are incorporated herein by reference and are made a part of this Mortgage to the same extent and with the same force as if fully set forth herein and, together with covenants in this Article 3, shall be covenants running with the land.

**Section 3.8 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Subject to the terms and conditions of Section 3.3 of the Loan Agreement, Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Subject to the terms and conditions of Section 3.1 of the Loan Agreement, Mortgagor (i) assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, (ii) authorizes Mortgagee to collect and receive such proceeds, subject to the terms of the Loan Agreement, and (iii) authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.

**Section 3.9 Transfer or Encumbrance of Mortgaged Property; Due on Sale.**

(a) **No Transfer.** Mortgagor shall not permit or suffer any Transfer to occur, unless specifically permitted by the Loan Agreement (subject to any notice and cure and/or lien contest rights permitted therein) or unless Mortgagee shall consent thereto in writing.

(b) **Transfer Defined.** As used in this Section 3.9, "**Transfer**" shall mean any Sale or Pledge of: (a) all or any part of the Mortgaged Property or any estate or interest therein including, but not be limited to, (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments, (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder and its affiliates or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Subleases or any Rents; or (b) any ownership interest in (i) Mortgagor or (ii) any indemnitor or guarantor of any Obligations or (iii) any corporation, partnership, limited liability company, trust or other entity owning, directly or indirectly, any interest in Mortgagor or any indemnitor or guarantor of any Obligations.



## ARTICLE 4 DEFAULT AND FORECLOSURE

**Section 4.1 Remedies.** If an Event of Default (as defined in the Loan Agreement) exists and is continuing, Mortgagee may, at Mortgagee's election and on behalf of Lenders, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof, subject to the rights of the tenants under the Subleases, and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Subject to the rights of any tenant pursuant to the terms of any subordination, non-disturbance and acknowledgment agreement ("SNDA") or if no SNDA was delivered or is self-executing pursuant to the terms of the applicable Sublease, then subject to the rights of any tenant, hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7 hereof. Such actions of Mortgagee may include exercise of any option to renew or extend the Lease on behalf of Mortgagor and the curing of any default by Mortgagor under the terms and conditions of the Lease.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage by judicial or non-judicial proceedings in a manner permitted by applicable law, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by applicable Requirements of Law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either by law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment.

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Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7 hereof. Notwithstanding the appointment of any receiver, the Mortgagee shall be entitled to the possession and control of any cash, or other instruments held at the time by, or payable or deliverable under the terms of this Mortgage to the Mortgagee.

(f) **UCC.** Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the personal property, and (ii) request Mortgagor at its expense to assemble the personal property and make it available to Mortgagee at a commercially reasonable place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the personal property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor.

(g) **Fair Rental Payments.** If the Mortgagor or any other subsequent owner of the Mortgaged Property is occupying the Mortgaged Property or any part thereof, it is hereby agreed that said occupants shall pay such reasonable rental monthly in advance as the Mortgagee shall demand for the Mortgaged Property or the part so occupied, and for the use of personal property covered by this Mortgage or any chattel mortgage for so long as Mortgagee permits such continued possession.

(h) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, subject to applicable Requirements of Law).

**Section 4.2 Separate Sales.** Upon an Event of Default, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 4.3 Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note, subject to applicable Requirements of Law, and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 4.4 Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect, subject to applicable Requirements of Law.

**Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by applicable Requirements of Law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or applicable Requirements of Law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's and the Lenders' election to exercise or their actual exercise of any right, remedy or recourse provided for under the Loan Documents and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 4.6 Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the Lenders thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 4.7 Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order, unless otherwise required by applicable Requirements of Law:

(a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) Mortgagee's and receiver's fees and expenses, (ii) court costs, (iii) reasonable attorneys' and accountants' fees and expenses, (iv) costs of advertisement, (v) insurance premiums, (vi) electricity, telephone, water and other utility costs, water charges and sewer rents and other utility governmental charges levied, assessed or imposed against the Mortgaged Property, (vii) costs and expenses with respect to any litigation affecting the Mortgaged Property, the Subleases or the Rents, (viii) wages and salaries of employees, commissions of agents and attorneys' fees and expenses, (ix) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the



Mortgaged Property shall have been sold, and (x) all other out-of-pocket carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Mortgaged Property;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Mortgagee and/or the Lenders under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee and/or the Lenders, in its or their sole discretion, may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

**Section 4.8 Occupancy After Foreclosure.** The purchaser at any foreclosure sale of all or any portion of the Mortgaged Property shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

**Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee or the Lenders under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable Requirements of Law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the Lenders in respect thereof, by litigation or otherwise.

**Section 4.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Subleases under Article 5 hereof, the security interests under Article 6 hereof, nor any other remedies afforded to Mortgagee and/or the Lenders under the Loan Documents, at law or in equity shall cause Mortgagee or any Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Subleases or otherwise.

**Section 4.11 Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property.

## **ARTICLE 5**

### **ASSIGNMENT OF LEASES AND RENTS**

**Section 5.1 Assignment.** Mortgagor acknowledges and confirms that it has executed and delivered to Mortgagee an Assignment of Leases and Rents of even date herewith (as amended, modified, supplemented, extended, renewed or replaced from time to time, the "**Assignment of Leases and Rents**"), intending that, subject to the provisions of the law of the State, such instrument create a present, absolute assignment to Mortgagee and the Lenders of the Subleases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Leases and Rents, Mortgagor hereby irrevocably and absolutely assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Subleases and Rents. This is a present, irrevocable and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Subleases and Rents is not contingent upon, and may be exercised without possession of, the Mortgaged Property, and without any commencement of a foreclosure or appointment of a receiver. While any Event of Default exists, Mortgagee and/or the Lenders shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in Article 4 hereof, including, without limitation, the right to have a receiver appointed. If any conflict or inconsistency exists between the absolute assignment of the Rents and the Subleases in this Mortgage and the absolute assignment of the Rents and the Subleases in the Assignment of Leases and Rents, the terms of the Assignment of Leases and Rents shall control.

**Section 5.2 No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

## **ARTICLE 6**

### **SECURITY AGREEMENT**

**Section 6.1 Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable Requirements of Law and with respect to the Personalty, Fixtures, Plans, Subleases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, for the benefit of the Lenders, a first and prior security interest in the Personalty, Fixtures, Plans, Subleases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Subleases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any



action under the UCC shall constitute reasonable notice to Mortgagor. Mortgagee shall have all of the rights and remedies of a secured party under the UCC.

**Section 6.2 Further Assurances.** Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such assurances to be recorded and filed, at such times and places as may be required or permitted by applicable Requirements of Law to so create, perfect and preserve such security interest. Mortgagor's state of organization is the State of Delaware and its chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage. Mortgagor authorizes Mortgagee to file financing statements without the signature of Mortgagor thereon.

**Section 6.3 Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**Section 6.4 Continuing Effect Notwithstanding Termination of Mortgage.** To the extent permitted by applicable law, it is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Mortgagee, this Mortgage shall remain fully effective as a security agreement and fixture filing, notwithstanding that the lien on real property that is created by this Mortgage may be extinguished or released, by foreclosure of this Mortgage or otherwise.

## **ARTICLE 7** **MISCELLANEOUS**

**Section 7.1 Limitation on Interest.** The provisions of Section 12.9 (Limitation on Interest) of the Loan Agreement are incorporated herein by reference as though fully set forth herein.

**Section 7.2 Notices.** Any notice required or permitted to be given under this Mortgage shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement and applicable Requirements of Law, and (c) effective in accordance with the terms of the Loan Agreement.

**Section 7.3 Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee or the Lenders have or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities that may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents;

however, no such party shall be entitled to any rights thereunder without the express prior written consent of Mortgagee.

**Section 7.4 Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which appointment shall be effective during the continuance of an Event of Default and which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Subleases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, including, without limitation, those obligations of Mortgagor under the Lease; however: (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) neither Mortgagee nor any Lender shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

**Section 7.5 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior express written consent of Mortgagee, assign any rights, duties or obligations hereunder.

**Section 7.6 No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 7.7 Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Lenders) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Lenders); provided, however, that in no event shall Mortgagee be entitled to collect, pursuant to this Section 7.7, any amount in excess of the Indebtedness under the Loan Documents.

**Section 7.8 Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.



**Section 7.9 Release.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall cancel and release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor, as applicable; otherwise to remain in full force and effect.

**Section 7.10 Waiver of Stay, Moratorium and Similar Rights.** (a) Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee and/or the Lenders or any rights or remedies of Mortgagee and/or the Lenders.

(b) Except for Lenders' obligations to make the Loan in accordance with the terms of the Loan Documents, neither Mortgagee nor any affiliate of Mortgagee has made any representation, warranty or statement to Mortgagor in order to induce Mortgagor to execute this Mortgage. Mortgagor hereby expressly waives any claim of fraudulent inducement to execute this Mortgage and further disclaims any reliance or statements on or representations of Mortgagee in waiving such claim.

(c) Mortgagor and Mortgagee agree that, in connection with any action, suit or proceeding relating to or arising out of this Mortgage or any of the other Loan Documents, each mutually waives to the fullest extent permitted by applicable Requirements of Law any claim for consequential, punitive or speculative damages.

**Section 7.11 Limitation on Liability.** Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 13 of the Loan Agreement.

**Section 7.12 Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 7.13 Governing Law.** THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE (WITHOUT REGARD TO THE PRINCIPLE OF CONFLICTS OF LAW APPLICABLE UNDER ILLINOIS LAW) AND APPLICABLE REQUIREMENTS OF LAW; PROVIDED THAT (A) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO TITLE OR TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT OR FORECLOSURE OF LIENS ON AND SECURITY INTERESTS IN OR ASSIGNMENTS OF REAL PROPERTY, THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE; AND (B) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF LIENS ON PROPERTY GOVERNED BY ARTICLE 9 OF THE UCC, THE CONFLICTS OF LAW PROVISIONS OF THE UCC SHALL CONTROL; IT BEING UNDERSTOOD

THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LAWS OF THE STATE OF ILLINOIS SHALL GOVERN. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MORTGAGE SHALL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MORTGAGE, AND TO THIS END, THE PROVISIONS OF THIS MORTGAGE ARE DECLARED TO BE SEVERABLE.

**Section 7.14 Venue.** MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS, PROVIDED THAT ANY ACTION RELATED TO THE CREATION, PERFECTION OR ENFORCEMENT OF THE LIEN CREATED BY THIS MORTGAGE SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY IN WHICH THE LAND IS LOCATED. MORTGAGOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON MORTGAGOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO MORTGAGOR, AT THE ADDRESS SET FORTH IN THIS MORTGAGE AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY MORTGAGEE IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. NOTWITHSTANDING THE FOREGOING, IF MORTGAGEE BRINGS ANY ACTION OR PROCEEDING IN ANY JURISDICTION OTHER THAN THE COUNTY OF COOK, STATE OF ILLINOIS, NOTHING HEREIN IS INTENDED TO PRECLUDE MORTGAGOR FROM BRINGING ANY ACTION OR RAISING ANY CLAIM OR DEFENSE IN RESPECT OF SUCH ACTION, PROCEEDING OR EXERCISE OF REMEDIES IN SUCH OTHER JURISDICTION.

**Section 7.15 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 7.16 Entire Agreement.** This Mortgage and the other Loan Documents and the Environmental Indemnity Agreement embody the entire agreement and understanding between Mortgagee, the Lenders, Mortgagor and the Other Borrowers and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents and the Environmental Indemnity Agreement may



not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 7.17 Counterparts.** This Mortgage may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

**Section 7.18 No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 7.19 Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

**Section 7.20 Exhibits; Recitals.** The information set forth on the cover and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Mortgage with the same effect as if set forth in the body hereof.

**Section 7.21 Variable Rate Interest.** Mortgagor and, by its acceptance hereof, Mortgagee, acknowledge and agree that the rate of interest charged on the principal amount of the Loan may vary from time to time as more particularly set forth in the Note, the Loan Agreement and the other Loan Documents.

**Section 7.22 Amendment and Restatement.** This Mortgage is an amendment and restatement of, and supersedes, that certain Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Mortgagor for the benefit of Mortgagee, on behalf of the Lenders, dated as of December 30, 2015, and recorded on January 26, 2016, in Instrument 20160126000025760 in the Probate Office of Shelby County, Alabama, and rerecorded on February 29, 2016 in Instrument 20160229000061860 (the "**Original Mortgage**"). This Mortgage continues to secure the current outstanding principal and accrued interest balance of the Note and all future advances of Loan proceeds in accordance with the Loan Agreement, does not constitute a novation of the obligations and liabilities existing under the Original Mortgage or any of the other Loan Documents, does not affect the priority of any existing lien or security interest, or evidence payment of any such obligations or liabilities.

**Section 7.23 The Lease.**

(a) **Mortgagor's Obligations.** Mortgagor shall: (i) at the sole cost and expense of Mortgagor, enforce the performance and observance of each and every covenant and condition of the Lease to be performed or observed by any other party to the Lease, subject to applicable notice and cure periods, unless such enforcement is waived in writing by Mortgagee; (ii) appear in and defend any action challenging the validity or enforceability of the Lease; (iii) timely exercise any renewal or extension options under the Lease required to maintain Mortgagor's leasehold interest in the Mortgaged Property and not cancel or terminate (or permit the cancellation or termination of) the Lease, and (iv) timely and fully perform (or cause the

timely and full performance of) all obligations of the holder of the leasehold interest under the Lease until all Obligations have been satisfied or indefeasibly paid in full, as applicable. Mortgagor shall not waive or release any person from the observance or performance of any obligation to be performed under the terms of the Lease or liability on account of any warranty given thereunder to the extent such waiver could be reasonably anticipated to have a Material Adverse Effect. If Mortgagor, at any time while the Obligations are outstanding, acquires fee title or any greater estate than it holds as of the date of this Mortgage in and to the Land or any of the other Mortgaged Property, the lien of this Mortgage shall automatically attach, extend to, cover and encumber such fee title or other greater estate, and Mortgagor shall execute such further documents and take such further actions as Mortgagee may reasonably request to confirm such lien. Unless Mortgagee otherwise consents or elects, fee title to the Land and the leasehold interest in the Land created by the Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Mortgagee, or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise.

(b) Mortgagor's Lease Obligations. The provisions contained in this Mortgage and in the other Loan Documents relating to the Lease are in addition to Mortgagor's obligations as tenant with respect to similar matters under which Mortgagor is obligated under the Lease and shall not restrict or limit Mortgagor's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations as tenant under the Lease.

(c) New Lease. If the Lease is cancelled or terminated and Mortgagee or its nominee acquires an interest in any new lease of all or any portion of the Mortgaged Property, Mortgagor shall have no right, title or interest in or to the new lease or to the leasehold estate created by such new lease.

(d) Estoppel Certificates and Agreements. To the extent required by Lessor under the Lease, Mortgagor will use its best efforts to obtain and deliver to Mortgagee within twenty (20) days after written request by Mortgagee, an estoppel certificate from Lessor setting forth (i) the name of the tenant thereunder; (ii) that the Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification); (iii) the rent payable under the Lease; (iv) the date to which all rental charges have been paid by tenant under the Lease; (v) whether there are any alleged defaults by Mortgagor, as tenant under the Lease and, if so, setting forth the nature thereof in reasonable detail; and (vi) such other matters as Mortgagee may reasonably request. Mortgagor will also use its best efforts to obtain for the benefit of Mortgagee such other agreements of Lessor as Mortgagee may reasonably request, including agreements to permit Mortgagee to cure defaults under the Lease, become the tenant under the Lease, assign the leasehold and otherwise exercise its rights and remedies under the Loan Documents.

(e) No Assumption by Mortgagee. Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assumption by Mortgagee of the Lease, and Mortgagee shall not have any liability or obligation thereunder by reason of its acceptance of this Mortgage.



(f) Power of Attorney. IF THE LEASE REQUIRES MORTGAGOR TO DELIVER A NOTICE TO LESSOR EXTENDING THE LEASE TERM, AND MORTGAGOR FAILS TO DELIVER SUCH NOTICE AT LEAST 30 DAYS PRIOR TO THE DATE BY WHICH THE NOTICE MUST BE DELIVERED, OR IF NO SUCH DATE IS SET FORTH IN THE LEASE, IF MORTGAGOR FAILS TO DELIVER SUCH NOTICE AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE THEN CURRENT TERM OF THE LEASE, MORTGAGEE SHALL HAVE, AND IS HEREBY GRANTED, A POWER OF ATTORNEY ON BEHALF OF MORTGAGOR TO EXECUTE AND DELIVER SUCH NOTICE, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IRREVOCABLE. UPON THE REQUEST OF MORTGAGEE, MORTGAGOR SHALL EXECUTE ANY DOCUMENTS OR INSTRUMENTS REASONABLY REQUIRED BY MORTGAGEE OR LESSOR IN ORDER TO CONFIRM THE EXISTENCE OF THE POWER OF ATTORNEY SET FORTH IN THIS SUBSECTION, INCLUDING A SEPARATE POWER OF ATTORNEY IN RECORDABLE FORM WITH RESPECT TO THE MATTERS COVERED BY THIS SUBSECTION. MORTGAGEE SHALL FURTHER HAVE A POWER OF ATTORNEY, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE, TO EXECUTE ANY AND ALL OTHER DOCUMENTS REQUIRED BY THIS MORTGAGE WITH RESPECT TO THE LEASE AND TO PERFORM ANY AND ALL ACTS REQUIRED THEREBY, IF MORTGAGOR SHALL FAIL TO DO SO WITHIN FIFTEEN (15) DAYS AFTER WRITTEN DEMAND BY MORTGAGEE.

(g) Right to Cure. Subject to the terms of the Lease and the Recognition Agreement, if there is a breach or default by Mortgagor under the Lease, Mortgagee shall have the right, but not the obligation, to cure such breach or default on behalf of Mortgagor, and all reasonable costs and expenses incurred by Mortgagee in connection therewith shall constitute a part of the Obligations, shall be secured by this Mortgage, shall bear interest at the Default Rate (as defined in the Loan Agreement) from the date incurred until paid, and shall be due and payable upon demand by Mortgagee.

(h) Lessor Bankruptcy.

(i) Mortgagor shall promptly after obtaining knowledge thereof, notify Mortgagee of any filing by or against Lessor of a petition under the Bankruptcy Code, setting forth any information available to Mortgagor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Mortgagor hereby unconditionally assigns, transfers and sets over unto Mortgagee all of Mortgagor's claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Lease by Lessor (whether as debtor in possession or otherwise), or by any trustee of Lessor, pursuant to the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies and shall continue in effect until the Obligations have been satisfied and discharged in full.

(ii) If action, proceeding, application, motion or notice is commenced or filed in respect of Lessor or in respect of all or any part of the Mortgaged Property (including suits relating to the rejection or disaffirmance of the Lease) in connection with any case under the Bankruptcy Code or any other applicable federal or state law relating to relief for debtors, Mortgagee may, but is not obligated to, conduct and control any such litigation (including the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents) with counsel of Mortgagee's choice. Mortgagee may proceed, in its own name or in the name of Mortgagor, in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by Mortgagee in connection therewith. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person or persons that Mortgagee may designate, all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) paid or incurred by Mortgagee in connection with the prosecution or conduct of any such proceedings, together with interest thereon at the Default Rate if not paid within fifteen (15) days of written demand.

(iii) Mortgagor shall not, without the prior written consent of Mortgagee, in Mortgagee's sole and absolute discretion, commence any action, suit, proceeding or case, or file any application or motion, in respect of the Lease in any such case under the Bankruptcy Code or any other applicable federal or state law relating to relief for debtors. If Lessor rejects the Lease pursuant to the Bankruptcy Code, Mortgagor will not, without the prior written consent of Mortgagee, in Mortgagee's sole and absolute discretion, elect to treat the Lease as terminated but will elect to remain in possession of the leasehold interest as provided in 11 U.S.C. § 365(h)(1)(A)(ii), make lease payments subject to allowable setoffs under 11 U.S.C. §365(h) and retain its rights under the Lease.

(iv) The Lien of this Mortgage attaches to all of Mortgagor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including all of Mortgagor's rights to remain in possession of the Mortgaged Property.

## **ARTICLE 8**

### **SPECIAL STATE PROVISIONS**

**Section 8.1 State Specific Provisions.** In the event of any material inconsistencies between this Article 8 and any of the other terms and provisions of this Mortgage, the terms and provisions of this Article 8 shall control and be binding.

**Section 8.2 Right to Foreclose.** In furtherance of and not in limitation of any other provision of this Mortgage:

(a) If an Event of Default shall occur, all of the Indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee, without notice or demand which are hereby expressly waived, and this Mortgage may be foreclosed, at the option



of Mortgagee, and Mortgagee, its successors, assigns, agents or attorneys, shall have the right and are hereby authorized and empowered to enter upon and take possession of the Mortgaged Property, and, with or without taking such possession, to sell the same before the main door of the County Courthouse in which all or any portion of the Mortgaged Property is located, at public outcry, during the legal hours of sale, for cash, after first giving notice of the time, place and terms of such sale, by publication once a week for three successive weeks, prior to said sale, in some newspaper(s) published or circulated in the county or counties in which the Mortgaged Property lies, all in compliance with the laws of Alabama, and upon the payment of the purchase money shall execute to the purchaser at such sale a deed to the property so purchased. Mortgagee shall apply the proceeds of said sale first to the expenses incurred hereunder, including a reasonable attorney's fee for such services as may be necessary for the collection of said Indebtedness and the foreclosure of this Mortgage; then to the payment of whatever sum or sums Mortgagee may have paid or become liable to pay in carrying out the terms and stipulations of this Mortgage, together with interest thereon; and finally, to the payment and satisfaction of the Indebtedness secured hereby. The balance (if any) shall be paid over to Mortgagor or to whomever else is entitled thereto. In the event of a sale under the power contained herein Mortgagee, its successors, assigns, agents or attorneys, may purchase the Mortgaged Property at such sale the same as if they were strangers to this conveyance, and in that case the auctioneer or person making the sale is hereby authorized and empowered to execute a deed to the purchaser in the name and on behalf of Mortgagee herein.

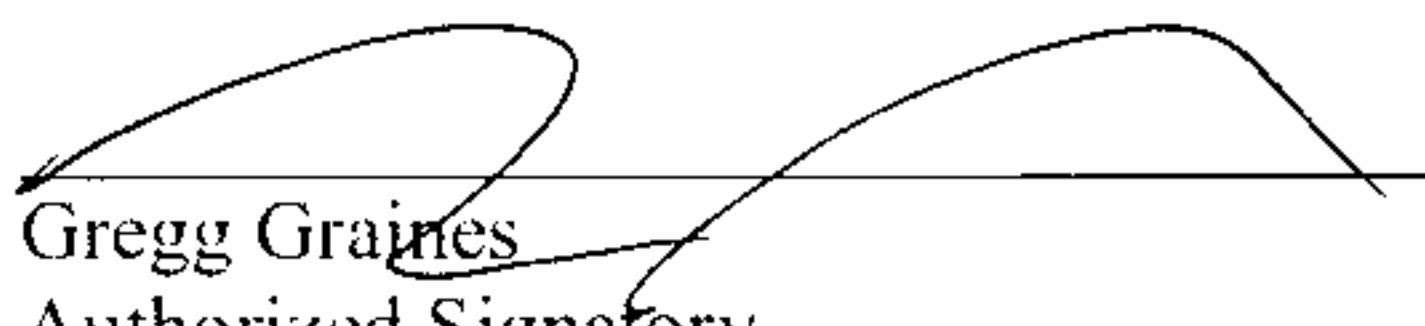
(b) Mortgagee may sell the Mortgaged Property under the terms designated in the notice of sale in one or more parcels and in such order as Mortgagee may determine. Mortgagee may postpone the sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale.

(c) If an Event of Default shall occur, Mortgagee may also institute proceedings for judicial foreclosure in a court of competent jurisdiction, and recover from Borrower all costs of such proceedings, including reasonable attorney's fees.

***[Remainder of this page intentionally left blank. Signature and notary page follows.]***

EXECUTED as of the date first above written.


**ALABASTER 1010 MEDICAL PROPERTIES, LLC,**  
a Delaware limited liability company

By:   
Name: Gregg Graines  
Title: Authorized Signatory

STATE OF ILLINOIS       )  
                                      ) ss.  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said State at Large, hereby certify that Gregg Graines, whose name as Authorized Signatory of **ALABASTER 1010 MEDICAL PROPERTIES, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Authorized Signatory, and with full authority, executed the same voluntarily for and as the act of said limited liability company as of the date hereof.

Given under my hand this 20 day of June, 2018.

  
\_\_\_\_\_  
Katarina Maier (SEAL)  
Notary Public

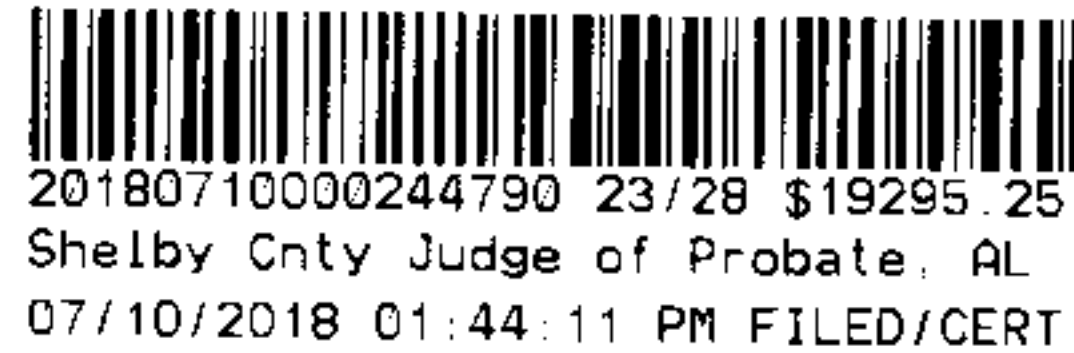


My Commission Expires: 3/27/22



## EXHIBIT A

### Legal Description



Parcel located in Shelby County, Alabama.

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in an Easterly direction along the North line of said quarter-quarter line a distance of 316.16 feet to a point; thence deflect  $88^{\circ}34'47''$  and run to the right and in a Southerly direction a distance of 262.86 feet to a point; thence deflect  $43^{\circ}11'19''$  and run to the left and in a Southeasterly direction a distance of 86.47 feet to the point of beginning of the herein described parcel; thence deflect  $50^{\circ}35'59''$  and run to the right and in a Southerly direction a distance of 120.67 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right and in a Westerly direction a distance of 184.00 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right and in a Northerly direction a distance of 120.67 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right and in an Easterly direction a distance of 184.00 feet to the point of beginning of the herein described parcel. Shelby County, Alabama.

Said parcel being one and the same as that set out in Memorandum of Lease by and between Baptist Health System, Inc. and Shelby MOB III, LLC recorded in Instrument #20020506000209240 corrected by Memorandum of Lease recorded in Instrument 20041126000644460; assigned to TST Houston, L.P., by instrument recorded in 20041123000644440; further assigned by Assignment and Assumption of Tenant's Interest in Ground Lease and Special Warranty Deed between TST Houston, L.P. and HCP Shelby MOB, LLC, recorded in Instrument 20060302000100210 and corrected by Scrivener's Affidavit recorded in Instrument 20061003000489370; Assignment and Assumption of Ground Lease executed by and between Baptist Health System, Inc. and BBH SBMC, LLC, as recorded in Instrument 20151002000346420 in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in an Easterly direction along the North line of said quarter-quarter section a distance of 316.16 feet to a point; thence deflect  $78^{\circ}14'10''$  to the right and run in a Southeasterly direction a distance of 331.53 feet to the Point of Beginning of the herein described parcel; thence deflect  $17^{\circ}41'19''$  to the right and run in a Southerly direction a distance of 120.00 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right in a Westerly direction a distance of 184.00 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run in a Northerly direction a distance of 120.00 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run to the right in an Easterly direction a distance of 184.00 feet to the Point of Beginning of said parcel.

## PARCEL II

The following non-exclusive easements as set out in Access, Ingress, Parking and Utility Easements and Restrictions Agreement recorded in Instrument #2002-20925 in the Office of the Judge of Probate of Shelby County, Alabama.

ACCESS EASEMENT NO. 1:

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama and run in a Westerly direction along the bearing of the North line of said 1/4-1/4 Section a distance of 14.33 feet to a point on a curve to the left having a central angle of 2°37'54" and a radius of 5629.58 feet, said point also being on the Easterly right of way line of U.S. Highway 31; thence deflect 80°09'10" to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and right of way a distance of 258.58 feet to the Point of Beginning of the herein described access easement; thence deflect 95°08'59" from the tangent of said curve and run to the left in a Northeasterly direction a distance of 147.08 feet to a point; thence turn an interior angle of 180°36'31" and run in an Easterly direction a distance of 227.72 feet to a point; thence turn an interior angle of 85°15'31" and run in a Southerly direction a distance of 56.71 feet to a point; thence turn an interior angle of 90°00'00" and run in a Westerly direction a distance 60.00 feet to a point; then turn an interior angle of 90°00'00" and run in a Northerly direction a distance of 20.63 feet to a point; thence turn an interior angle of 274°44'29" and run in a Westerly direction a distance of 104.19 feet to a point; thence turn an interior angle of 175°24'19" and run in a Northwesterly direction a distance of 84.96 feet to a point; thence turn an interior angle of 270°00'00" and run in a Southeasterly direction a distance of 244.23 feet to a point; thence turn an interior angle of 90°00'00" and run in a Southwesterly direction a distance of 87.87 feet to a point; thence turn an interior angle of 135°00'00" and run in a Northwesterly direction a distance of 54.41 feet to a point, said point being on the Easterly right of way line of U.S. Highway 31; thence turn an interior angle of 135°03'20" and run in a Northerly direction along said right of way a distance of 101.81 feet to a point on a curve to the right, having a central angle of 1°13'08" and a radius of 5629.58 feet; thence continue along the arc of said curve and said right of way a distance of 119.77 feet to the Point of Beginning of said easement, Shelby County, Alabama.

ACCESS EASEMENT NO. 2 (Walkway):

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said 1/4-1/4 Section a distance of 316.16 feet to a point; thence deflect 78°14'10" to the right and run in a Southeasterly direction a distance of 331.53 feet to a point; thence deflect 17°41'19" to the right and run in a Southerly direction a distance of 115.0 feet to a point; thence deflect 90°00'00" to the right and run in a Westerly direction a distance of 95.48 feet to the Point of Beginning of the herein described access easement; thence deflect 90°00'00" to the left and run in a Southerly direction a distance of 31.48 feet to a point; thence turn an interior angle of 90°00'00" and run in a Westerly direction a distance of 15.00 feet to a point; thence turn an interior angle of 90°00'00" and run in a Northerly direction a distance of 31.48 feet to a point; thence turn an interior angle of 90°00'00" and run in an Easterly direction a distance of 15.00 feet to the Point of Beginning of the herein described easement, Shelby County, Alabama.



**Sanitary Sewer Easement:**

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of  $3^{\circ}51'02''$  and a radius of 5629.58 feet, said point also being on the Easterly right of way line of U.S. Highway 31; thence deflect  $80^{\circ}09'10''$  to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and said right of way a distance of 378.35 feet to a point; thence continue on the tangent of said curve and said right of way a distance of 135.11 feet to the Point of Beginning of a 10 foot Sanitary Sewer Easement, lying 5 feet each side of, parallel to and abutting the following described centerline; thence deflect  $95^{\circ}37'52''$  to the left and run in a Northeasterly direction a distance of 241.85 feet to a point; thence deflect  $84^{\circ}10'00''$  to the left and run in a Northerly direction a distance of 84.57 feet to a point; thence deflect  $89^{\circ}51'56''$  to the right and run in an Easterly direction a distance of 128.00 feet to the endpoint of said easement, Shelby County, Alabama.

**GAS AND WATER LINE EASEMENT:**

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of  $3^{\circ}09'31''$  and a radius of 5629.58 feet, said point also being on the Easterly right of way of U.S. Highway 31; thence deflect  $80^{\circ}09'10''$  to the left to the tangent of said curve and run along the arc of said curve and right of way in a Southerly direction a distance of 310.35 feet to the Point of Beginning of the centerline of a 20 foot easement lying 10 feet each side of, parallel to and abutting the following described line; thence deflect  $90^{\circ}00'00''$  from the tangent of the last described curve and run in an Easterly direction a distance of 42.89 feet to a point; thence deflect  $64^{\circ}43'38''$  to the left and in a Northeasterly direction a distance of 45.19 feet to a point; thence deflect  $59^{\circ}14'55''$  to the right and run in an Easterly direction a distance of 379.07 feet to a point; thence deflect  $94^{\circ}26'20''$  to the right and run in a Southerly direction a distance of 39.55 feet to the endpoint of said easement.


**STORM SEWER EASEMENT:**

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West and run in a Westerly direction a distance of 14.33 feet to a point on a curve to the left having a central angle of  $3^{\circ}06'02''$  and a radius of 5629.58 feet, said point also being on the Easterly right of way line of U.S. Highway 31; thence deflect  $80^{\circ}09'10''$  to the left to the tangent of said curve and run in a Southerly direction along the arc of said curve and said right of way a distance of 304.65 feet to the Point of Beginning of a 10 foot Storm Sewer Easement, lying 5 feet each side of, parallel to and abutting the following described centerline; thence deflect  $62^{\circ}15'23''$  to the left and run in an Easterly direction a distance of 256.00 feet to a point; thence deflect  $27^{\circ}32'41''$  to the left and run in a Southeasterly direction a distance of 68.03 feet to a point; thence deflect  $90^{\circ}00'00''$  to the left and run in a Northerly direction a distance of 21.32 feet to the endpoint of said easement, Shelby County, Alabama.

**PARKING EASEMENT:**

All paved parking spaces located on the Hospital Campus within 400 feet of the insured tract, as set out in Access, Ingress, Egress, Parking and Utilities Easements and Restrictions Agreement in Instrument #200220925.

Parcel ID Number 13-7-36-2-001-049.002

  
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Shelby Cnty Judge of Probate, AL  
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## MORTGAGE RECORDATION TAX ORDER

STATE OF ALABAMA,  
MONTGOMERY COUNTY.

A proceeding authorized by  
Section 40-22-2(8)a, Code of Alabama 1975

### BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

Petitioner, **Capital One, National Association**, a national banking association ("**Mortgagee**"), requested the Department of Revenue to fix and determine the amount of mortgage recording tax due pursuant to Section 40-22-2(8), Code of Alabama 1975, upon recordation of that certain Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Mortgage**") from Alabaster 1010 Medical Properties, LLC, a Delaware limited liability company ("**Mortgagor**"), to Mortgagee.

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

1. The Mortgage and the other security documents secure an indebtedness presently incurred in the amount of \$222,600,000.00.
2. The Mortgage and the other security documents cover property and fixtures located both inside and outside of the State of Alabama.
3. The value of the property and fixtures covered by the Mortgage and the other security documents and located inside of the State of Alabama is \$20,300,000.00; and the value of all of the property and fixtures covered by the Mortgage and the other Security Documents in all states (including the State of Alabama) is \$352,820,000.00.
4. The percentage of the property and fixtures covered by the Mortgage and the other security documents that is located inside of the State of Alabama is 5.75%.
5. The amount of the Indebtedness secured by the Mortgage and the other Security Documents and subject to the Alabama mortgage filing privilege tax is \$12,799,500.00.
6. Alabama mortgage filing privilege tax in the amount of \$19,199.25 will be due on the Indebtedness secured by the Mortgage under Section 40-22-2, Code of Alabama 1975, as amended, upon the filing for record of the Mortgage in Shelby County, Alabama.



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**IT IS ORDERED, THEREFORE,** that the Probate Judge in Shelby County, Alabama shall collect mortgage recording tax upon recording of the Mortgage in the amount set forth in paragraph 6 above.

**DONE** this 14<sup>th</sup> day of June, 2018.

**ALABAMA DEPARTMENT OF REVENUE**

By: Joe Garrett Jr  
Deputy Commissioner of Revenue

ATTEST:

Michael D. Hall  
As Secretary

K. Elizabeth Jehle  
Legal Division: K. Elizabeth Jehle

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