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11:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CH 494.00

(b) All buildings and other improvements now or hereafter located in, on or about the Land, and all of Mortgagor's building materials intended for incorporation but not incorporated into the improvements to the Land, and all furnishings, furniture, fixtures, machinery, equipment, tools, and all other personal property or chattels used in connection with the operation of such improvements, specifically including, without limitation, appliances, gas and electric fixtures and systems, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, water heaters, air conditioning apparatus and systems, window screens, awnings, storm sashes AND ANY OTHER PERSONAL PROPERTY COLLATERAL DESCRIBED IN ANY SCHEDULE OF ADDITIONAL PERSONAL PROPERTY COLLATERAL ATTACHED HERETO, whenever acquired by Mortgagor and now or hereafter located in, upon or under the Land, together with all additions and accessions thereto and replacements and proceeds thereof (the "Improvements");

(c) All leases, rents, issues, profits, royalties, income and other benefits derived from the Land and the Improvements (the "Rents"), subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the Improvements; and

(d) All easements, rights-of-way and rights used in connection with the Land and the Improvements or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and

(e) All the rights, interest and privileges which the Mortgagor as lessor has or may have in the leases now existing or hereafter made and affecting the Land or the Improvements or any part thereof, as said leases may have been or may from time to time be hereafter modified, extended and renewed, together with any and all guarantees of any leases affecting all or any part of the Land or the Improvements (collectively, the "Leases") and all security deposits received in respect of any Lease (the "Security Deposits").

Notwithstanding anything to the contrary contained herein, the Premises, by reason of the terms of this Mortgage, shall not secure such other indebtedness, obligations and liabilities of the Mortgagor or Maker to the Mortgagee that are (a) consumer credit as defined in Federal Reserve Board Regulation Z and either subject to the disclosure requirements of Federal Reserve Board Regulation Z or state consumer protection laws, or (b) non-consumer credit if under applicable state law the maximum interest rate for such credit is reduced when secured (herein collectively referred to as the "Restricted Debt").

The term "Loan Documents" shall mean this Mortgage, the Note, any loan agreement, any security agreement, the Master Agreement, any guaranty, and all other such agreements or documents evidencing or securing the Note.

TO HAVE AND TO HOLD the Premises unto Mortgagee its successors and assigns, forever;

And Mortgagor covenants with Mortgagee that Mortgagor is seized of the Premises in fee and has the right to convey the same in fee simple; that the same are free and clear of all encumbrances, that Mortgagor has done no act to encumber the Premises and that Mortgagor will warrant and defend the title to the same against the lawful claims of all persons whomsoever, and that Mortgagor will execute such further issuances of said lands as may be required.

PROVIDED, HOWEVER, that if either Maker or Mortgagor shall pay all of the Obligations secured hereby and as defined above, in accordance with its terms and shall comply with all the covenants, terms and conditions of this Mortgage, this conveyance shall be released and canceled of record at the request and at the cost of Mortgagor. Mortgagor and Maker, as applicable, hereby further covenant and agree with Mortgagee as follows:

Section 1. Commitment Letter; Loan Agreement. The terms and provisions of any commitment letter relating to the loan evidenced by the Note, or to any of the other Obligations (the "Commitment"), and of any loan agreement between Maker and Mortgagee relating to the loan evidenced by the Note are incorporated herein by reference. A default under any such Commitment or loan agreement shall for all purposes constitute a default hereunder and under the Obligations. If there is any conflict between any such Commitment and the Note (or other Obligations), this Mortgage or any such loan agreement, then the Note (or other obligations), this Mortgage and any such loan agreement shall control.

Section 2. Financial Statements. Mortgagor or Maker will furnish to Mortgagee without cost to Mortgagee a statement, in form and certified in a manner satisfactory to Mortgagee, whenever reasonably requested by the Mortgagee, but in no case less frequently than annually, setting forth all income and expenses derived or incurred from the operation of Mortgagor's or

Maker's business conducted upon the Premises and if requested, accompanied by a rent roll, in form and substance satisfactory to the Mortgagee, specifying the name of each tenant in occupancy, the term of the lease of each tenant, the number of square feet leased by each tenant and the per square foot annual rental of each tenant, all in reasonable detail and certified by the Mortgagor or Maker to be correct. The Maker will also furnish to the Mortgagee upon request of Mortgagee such information with respect to each other income property owned by the Maker or any such guarantor of the Obligations. Such statements and rent rolls shall be furnished within ninety (90) days from the end of the calendar or fiscal year of such operations (or whenever reasonably requested by the Mortgagee). In addition, Maker will furnish to Mortgagee financial statements (in form satisfactory to Mortgagee) of Maker and of each guarantor, if any, of the Obligations as follows: (a) In the case of a corporation, partnership, limited liability company, trust or other entity, annual financial statements within ninety (90) days after each fiscal year-end of such entity and quarterly financial statements within 60 days after the end of each fiscal quarter of such entity, and (b) in the case of an individual, however, the Mortgagee shall be furnished a personal financial statement of such individual so that the Mortgagee has at all times a personal financial statement not more than twelve (12) months' old of such individual.

Section 3. Payment of Indebtedness; Impositions. Maker will pay, when due, the Obligations and will cause to be paid all real and personal property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments (hereinafter referred to as "Impositions") such as owner association dues or charges or fees and maintenance charges which are assessed or imposed upon the Premises or the Loan Documents. Mortgagee may, at its option, pay any such Impositions of which payment, amount and validity thereof the official receipt shall be conclusive evidence, and any amounts so expended shall immediately become debts due by Maker, shall bear interest at the rate specified in the Note, and such payment shall be secured by this Mortgage.

Section 4. Insurance. Mortgagor and Maker will cause the Improvements to be insured against loss and damage by fire, flood, tornado and windstorm, vandalism, malicious mischief and builder's risk (if applicable) and against such other hazards as are customary in the locale for the Improvements or as Mortgagee may otherwise require, including, if applicable, rent loss or business interruption for periods of no less than twelve (12) months, in amounts at no time less than the total replacement cost of such Improvements, plus an amount sufficient to prevent any co-insurance liability on the part of the owner of the Premises. All insurance shall be with reputable companies with a *Best Insurance Report* rating of B+ or better; and Maker will cause to be paid all premiums for such insurance when due. Unless and until requested by Mortgagee, Mortgagor or Maker shall not be required to cause such insurance to name Mortgagee as mortgagee or loss payee or to deliver such policies or renewals or evidence of payment of premiums to Mortgagee, but if requested by Mortgagee, Mortgagor or Maker immediately (but no later than five (5) calendar days) shall cause Mortgagee to be named as mortgagee and additional insured under such policies and renewals, shall deliver to Mortgagee copies of such policies and renewals and such other evidence of compliance with this Section 4 as Mortgagee may request, and Mortgagor or Maker shall make such adjustments in the coverage of such insurance as Mortgagee may require. If Mortgagor or Maker fails or refuses to keep the Premises so insured, Mortgagee may obtain such insurance without prejudice to its right to foreclose hereunder by reason of such default. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee who, if then named as mortgagee and additional insured, may make proof of loss if not made promptly by Mortgagor or Maker, and, if the Mortgagee is then named as mortgagee and additional insured, each insurance company concerned shall hereby be authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor, Maker and Mortgagee jointly. If the Mortgagee is then named as mortgagee and additional insured, the proceeds of any insurance, or any part thereof, may be applied by Mortgagee, at its option, either to the reduction of the Obligations or to the restoration or repair of the Improvements. Mortgagee may, at its option, pay any such insurance premiums of which payment, amount and validity thereof the official receipt shall be conclusive evidence, and any amounts so expended shall immediately become debts due by Maker, shall bear interest at the rate specified in the Note, and such payment shall be secured by this Mortgage.

If any portion of the Improvements is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the Mortgagor or Maker must maintain a flood insurance policy in the amount of the Note plus the outstanding principal balance of any senior liens on the Premises or the replacement value of the Improvements located in a special flood hazard area, whichever is less. If at any time during the term of the Note, the Improvements are classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur federal law requires the Mortgagee to notify the Mortgagor or Maker of the reclassification. If, within forty-five (45) days of receipt of notification from the Mortgagee that any portion of the Improvements has been reclassified by the FEMA as being located in a special flood hazard area, the Mortgagor or Maker has not provided sufficient evidence of flood insurance, the Mortgagee is mandated under federal law to purchase flood insurance on behalf of the Mortgagor or Maker, and any amounts so expended shall immediately become debts of the Maker, shall bear interest at the rate specified in the Note, and payment thereof shall be secured by this Mortgage.

Section 5. Maintenance of Premises; Compliance with Laws. Mortgagor will keep the Premises in good order, repair and condition, reasonable wear and tear excepted and shall not commit or permit any waste. Mortgagor will also comply with all applicable laws, statutes, ordinances, codes and judicial and administrative decisions (including without limitation and as applicable, all such laws, statutes, judicial and administrative decisions relating to the physical accessibility requirements of Title III of the Americans with Disabilities Act of 1990 (as amended) and the implementing regulations promulgated thereunder by the Department of Justice and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) associated therewith and the applicable ANSI Standards under the Fair Housing Act (as amended) and all applicable regulations) of all applicable state, federal or local governmental entities (the "Requirements"). Mortgagor will not make material changes to the Premises, change the use of the Premises, or consent to a change in zoning of the Premises without the Mortgagee's prior written consent. Mortgagor shall immediately provide notice of proposed zoning changes to the Mortgagee.

Section 6. Conveyance of Premises. Mortgagor will not sell, convey, transfer or encumber the Premises, or any part thereof or interest therein, legal or equitable, without the prior written consent of Mortgagee, regardless of whether such transfer is subordinate to the interest of the Mortgagee. Mortgagee's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note (or other Obligations) or this Mortgage. For purposes of this Section 6, a change of ownership of partnership interests in Mortgagor or Maker or any guarantor (if such entity is a partnership or joint venture) or a material change in the structure of Mortgagor or Maker or any guarantor (if such entity is a corporation, limited liability company or a trust), including, without limitation, a change in principal stockholders, members, managers, trustees, beneficiaries, or their respective interests, shall be deemed a conveyance or transfer of the Premises.

Section 7. Hazardous Material.

7.01 Representations and Warranties. Mortgagor and Maker represent, warrant and agree that (a) no Hazardous Material (as hereinafter defined) has been used or placed on the Premises in violation of Environmental Laws (as hereinafter defined); (b) there are no unregistered underground storage tanks on the Premises that are subject to any underground storage tank registration laws or regulations; (c) no notice has been received with regard to any Hazardous Material on the Premises; (d) the Premises are presently in compliance with Environmental Laws; (e) no action, investigation or proceeding is pending or to Mortgagor's and Maker's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Premises under any Environmental Law; (f) Mortgagor shall permit no installation or placement of Hazardous Material on the Premises in violation of Environmental Laws; (g) Mortgagor shall permit no release of Hazardous Material onto or from the Premises; (h) Mortgagor shall cause the Premises to comply with Environmental Laws and be free and clear of any liens imposed pursuant to Environmental Laws; (i) all licenses, permits and other governmental or regulatory actions necessary for the Premises to comply with Environmental Laws (the "Permits") shall be obtained and maintained and Mortgagor shall assure compliance therewith; and (j) Mortgagor shall give Mortgagee prompt written notice if Mortgagor receives any notice with regard to Hazardous Material on, from or affecting the Premises and shall conduct and complete all investigations and all cleanup actions necessary to remove, in accordance with Environmental Laws, such Hazardous Material from the Premises.

7.02 Inspections and Audits. Mortgagee shall have the right at any time during the term of this Mortgage, whether before or after default, to conduct or cause to be conducted an environmental inspection or audit of the Premises by itself or by a qualified environmental consultant or engineer selected by Mortgagee and at the expense of Mortgagor or Maker; and Mortgagor hereby grants to Mortgagee and its employees, agents, and independent contractors (hereinafter collectively called "Mortgagee and its Representatives"), the right to enter the Premises upon reasonable notice for the purpose of conducting, whether before or after default, any inspection, audit or tests, making soil borings, extracting samples, installing monitoring wells, and conducting such other procedures as Mortgagee and its Representatives deem necessary or desirable in connection with such inspection or audit.

7.03 Indemnification. Mortgagor and Maker, jointly and severally, shall indemnify and hold harmless Mortgagee from and against all losses, expenses (including, without limitation, attorneys' fees) and claims of every kind suffered by or asserted against Mortgagee as a direct or indirect result of (i) the presence on or release from the Premises of any Hazardous Material, whether or not caused by Mortgagor or Maker, (ii) the violation of Environmental Laws applicable to the Premises, whether or not caused by Mortgagor or Maker, (iii) the requirement to conduct any remediation of Hazardous Materials from the Premises, (iv) the failure by Mortgagor to comply fully with the terms and provisions of this section, or (v) any warranty or representation made by Mortgagor or Maker in this section being false or untrue in any material respect.

7.04 Definitions; Survival of Provisions. "Hazardous Material" means polychlorinated biphenyls, petroleum, flammable explosives, radioactive materials, asbestos, lead and any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) Environmental Laws or listed as such by the Environmental Protection Agency. "Environmental Laws" means any current or future federal, state or local law, regulation or ruling applicable to environmental conditions on, under or about the Premises including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Clean Water Act. Mortgagor's and Maker's obligations under this section shall survive the repayment of the Note and other Obligations, a foreclosure of this Mortgage, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this Mortgage and a transfer of the Premises.

Section 8. Execution by Parties Other Than Maker of Obligations. Any Mortgagor who executes this Mortgage but does not execute the Note (or other Obligations) has executed this Mortgage only to subject whatever interest, if any, such Mortgagor has or may hereafter have in the Premises to the lien of this Mortgage, has no personal liability under the Note (or other Obligations) or under this Mortgage (nothing herein limits or affects such Mortgagor's liability to Mortgagee under any separate guaranty or any other instrument), and agrees that Mortgagee and any other Mortgagor hereunder and Maker may extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Obligations without such Mortgagor's consent and without releasing such Mortgagor hereunder or modifying or affecting this Mortgage as to such Mortgagor's interest in the Premises.

Section 9. Assignment of Rents; Leases; and Profits. As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, the Mortgagor hereby sells, transfers and assigns unto Mortgagee all the right, title and interest of the Mortgagor in and to the Rents and Security Deposits, and to that end the Mortgagor hereby assigns and sets over unto the Mortgagee all Leases of the Premises now made, executed or delivered, whether written or verbal, or hereafter made, whether written or verbal, and the Mortgagor does hereby authorize and empower the Mortgagee to collect the Rents when due, and does hereby direct each tenant of the Premises to pay the Rents to the Mortgagee, upon demand for payment thereof by the Mortgagee; it being understood and agreed, however, that no such demand shall be made absent the occurrence of an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to collect or continue collecting the Rents; such privilege to collect or continue collecting the Rents by the Mortgagor shall not operate, however, to permit the collection of any Rents more than thirty (30) days in advance of their due date. It is intended that the assignment set forth above be an absolute, present assignment from the Mortgagor to the Mortgagee and not merely the passing of a security interest. The rents, issues, income and profits are hereby assigned absolutely by the Mortgagor to the Mortgagee contingent only upon the occurrence of an Event of Default. The Mortgagor shall promptly and fully keep, perform and comply with and observe all terms, covenants and obligations as landlord under the Leases and the Mortgagor will not do, permit anything to be done or omit or refrain from doing anything, the doing or omission of which will entitle any tenant to terminate any of the Leases. The Mortgagor, if requested by the Mortgagee, shall furnish promptly to the Mortgagee executed copies of all such Leases, renewals or amendments now existing or hereafter created, all of which shall be subject to the approval of the Mortgagee.

Section 10. Mortgagee's Right to Perform. If Mortgagor or Maker, as applicable, shall fail in any of the covenants and provisions contained in this Mortgage, Mortgagee may (but shall not be obligated to) take any action Mortgagee deems necessary or desirable to perform any of Mortgagor's or Maker's covenants hereunder. Mortgagee shall have the right to enter upon the Premises to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable in order to perform the covenants hereunder of Mortgagor or Maker, as applicable. Mortgagee may expend such sums of money as Mortgagee, in its sole discretion, deems necessary for any such purpose, and Mortgagor and Maker, jointly and severally, hereby agree to pay to Mortgagee, immediately upon demand, all sums so expended by Mortgagee, together with interest thereon from the date of each such payment at the rate provided for in the Note. All sums so expended by Mortgagee, and the interest thereon, shall be added to and secured by the lien of this Mortgage. Mortgagee's performance of any of the covenants of the Mortgagor or Maker hereunder shall not cure any Event of Default arising therefrom.

Section 11. Condemnation. Upon condemnation of the Premises or any part thereof, this Mortgage shall become a lien, charge and encumbrance upon the proceeds or award realized as a result of any such proceeding or of any settlement or payment made in lieu of any such proceeding ("Condemnation Proceeds"). Mortgagor hereby grants to Mortgagee a security interest in any Condemnation Proceeds and hereby agrees to execute such further assignments of the Condemnation Proceeds as Mortgagee may require. Mortgagor further covenants and agrees that Mortgagee may (and is hereby authorized and empowered but not required to)

collect and receive any Condemnation Proceeds and, if received by Mortgagor, Mortgagor shall pay over and deliver immediately to Mortgagee all Condemnation Proceeds to be held by Mortgagee and applied as follows:

(a) In the event the entire Premises shall be taken by condemnation or in settlement of any threat of condemnation, then any Condemnation Proceeds shall be paid to Mortgagee and applied in payment in whole or in part to the Obligations, whether or not then due and payable, and any excess shall be delivered to the parties legally entitled thereto. In the event of a partial taking of the Premises, the portion of the Condemnation Proceeds necessary to prevent impairment of the security of this Mortgage, as determined by the Mortgagee in the Mortgagee's sole discretion, shall be set aside, withheld or paid over to Mortgagee and applied to the Obligations, whether or not then due and payable, and the excess of such award or proceeds shall be delivered to Mortgagor or other parties legally entitled thereto. Upon any partial taking of the Premises, this Mortgage shall continue in full force as security for the unpaid portion of the Obligations. Upon any partial taking of the Premises, Mortgagor covenants with Mortgagee to restore the Premises as nearly as possible to the condition thereof immediately prior to such taking and to apply Mortgagor's portion of any Condemnation Proceeds together with any other necessary funds to complete and pay for the costs of restoration.

(b) Notwithstanding any contrary provision of this Mortgage, (i) upon condemnation of the entire Premises, or (ii) upon partial condemnation of the Premises, the entire unpaid balance of the Obligations shall, at the option of the Mortgagee, at once become due and payable, whereupon any Condemnation Proceeds shall be paid over to the Mortgagee and applied in accordance with the first sentence of subparagraph (a) of this Section 11.

Section 12. **Inspection.** Mortgagee may inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose to Mortgagee and its representatives.

Section 13. **Events of Default.** The following shall constitute defaults or events of default hereunder ("Events of Default"):

(a) Failure by Maker to pay when due any payment of interest, principal, principal and interest, commitment fees, deposits or other payments which are due and payable under the Note or the other Obligations, this Mortgage or any documents executed in connection therewith or as security therefor.

(b) Failure by the Mortgagor or Maker to keep, perform or observe any covenant, term or condition required to be kept, performed or observed by the Mortgagor or Maker under this Mortgage, the Note, the Master Agreement, any of the other Obligations, or any documents executed in connection therewith or as security therefor.

(c) If Mortgagor, Maker or any general partner or member or manager thereof or any guarantor (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors; (ii) generally fails to pay its debts as such debts become due; (iii) has a custodian appointed for Mortgagor, Maker or any general partner or member or manager thereof or a guarantor or any general partner or member or manager thereof or for substantially all of the assets of any thereof; (iv) benefits from or is subject to the entry of an order for relief by any court of insolvency; (v) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (vi) makes an assignment for the benefit of creditors; (vii) has a receiver appointed, voluntarily or otherwise, for its property; (viii) suspends business; (ix) permits a judgment in the amount of \$5,000 or more in the aggregate to be obtained against it which is not promptly paid or promptly appealed and secured pending appeal; or (x) becomes insolvent, however otherwise evidenced.

(d) If any representation, warranty or certificate given by Mortgagor, Maker, any guarantor, or any other party granting a security interest in or lien upon any collateral for the Note in connection with the Obligations, or any commitment therefor or at any time hereafter required to be given by Mortgagor, Maker, any guarantor, or any other party granting a security interest in or a lien upon any collateral for the Obligations hereunder shall be false or erroneous in any material respect when made.

(e) A breach of or a failure of performance by Mortgagor, Maker, any guarantor, or any other party granting a security interest in or lien upon any collateral for the Note of any provision of or the occurrence of any default under the terms and provisions of any documents, instruments, security agreements, mortgages or deeds of trust granting security interests in or liens upon the Premises or any part thereof, whether prior to or subordinate to the lien of this Mortgage.

(f) Any attempted forfeiture action or enforcement of or realization upon any security interest, lien, encumbrance, charge or judgment affecting the Premises or any part thereof, whether prior to or subordinate to the lien of this Mortgage.

(g) Any actual or threatened demolition or injury or waste to the Premises which may impair the value of the Premises.

(h) Mortgagor, Maker or any guarantor shall change its name, change its principal residence, change its chief executive office, change its status to an organization, change its state of organization, change its type of organization, or its organizational identification number, as applicable, without giving Mortgagee at least thirty (30) days' prior written notice.

Section 14. Acceleration. If an Event of Default shall have occurred, the Obligations shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Mortgage; and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 15. Foreclosure. Upon the occurrence of an Event of Default, the Mortgagee shall have the right to enter upon and take possession of the Premises and after, or without, taking possession of the same, sell the Premises at public outcry, in front of the courthouse door of the county wherein the Premises are located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place, and terms of such sale by publication once a week for three consecutive weeks in a newspaper published in said county and, upon the payment of the purchase money or the crediting of the successful bid against the Obligations in the event the Mortgagee is the successful bidder, the Mortgagee or any person conducting such sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Premises. The Mortgagee, or the then holder of the Obligations, may bid at such sale and become the purchaser of the Premises if the highest bidder therefor. The proceeds of any sale shall be applied first to the expenses incurred in making the sale and for all prior efforts to effect collection of the Obligations or to enforce or protect the interest of the Mortgagee, including a reasonable attorney's fees, as permitted by law for such services as may be or have been necessary in any one or more foreclosures of this Mortgage, the collection of the Obligations and the pursuit of any efforts theretofore directed to that end, including, but not limited to the defense of any proceedings initiated by the Mortgagor or anyone liable for said Obligations or interested in the Premises to prevent or delay, by any means, the exercise of said power of sale and the foreclosure of this Mortgage, including, but not limited to any bankruptcy proceedings; then to the payment of whatever advances or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; then to the payment and satisfaction of accrued interest on the Obligations to the day of sale; then to the payment of the principal indebtedness on the Obligations secured hereby in the order of priority as determined by Mortgagee in its sole discretion; and the balance, if any shall be paid over to that entity or entities which may be lawfully entitled to receive the same, including the Mortgagor, or the Mortgagor's successors or assigns. In the event one or more persons or entities may be legally entitled to receive any surplus proceeds, the Mortgagee may, in its discretion, interplead such surplus proceeds. In any event, any purchaser under any foreclosure sale, as provided herein, other than the Mortgagee, shall be under no obligation to see to the proper application of the purchase money.

Section 16. Delay Not to Operate as Waiver; Indemnification of Mortgagee. No delay or forbearance by Mortgagee in exercising any rights hereunder or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and all such rights shall be cumulative. In case Mortgagee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Premises or the lien of this Mortgage, Mortgagee shall be saved harmless and reimbursed by Mortgagor and Maker for any amounts paid, including all reasonable costs, charges and attorneys' fees incurred in any such suit or proceeding, which obligations shall be secured by this Mortgage.

Section 17. Waivers. Mortgagor and Maker hereby waive any rights or remedies on account of any extensions of time, releases granted or other dealings between the Mortgagee and any subsequent owner of the Premises herein conveyed or pledged. The foregoing waiver shall not be construed as affecting or otherwise amending the covenants of the Mortgagor and Maker in Section 6 hereof. To the full extent Mortgagor and Maker may do so, Mortgagor and Maker agree that Mortgagor and Maker will not at any time insist upon, plead, claim or seek to take benefit or advantage of, and do hereby waive any law now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Premises and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations. To the full extent Mortgagor and Maker may do so, Mortgagor and Maker agrees that Mortgagor and Maker will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption) appraisal, valuation, stay, or extension, and Mortgagor, Maker, Mortgagor's and Maker's heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Premises, to the extent permitted by

law, hereby waive and release all rights of valuation, appraisal, stay of execution, notice of election to mature or declared due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor and Maker further waives any and all notices including, without limitation, notice of default, intention to accelerate and of acceleration of the Note and other Obligations.

Section 18. **Interest Not to Exceed Maximum Allowed by Law.** The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

Section 19. **Escrow of Taxes, Insurance.** The Mortgagor, in order to more fully protect the security of this Mortgage, agrees that in addition to the scheduled payments of principal and/or interest, as the case may be, under the terms of the Note, or other Obligations, Mortgagor will, upon request of Mortgagee, pay on the first day of each month, or on the due date of scheduled payments of principal and/or interest, to Mortgagee a sum equal to one-twelfth of the known or estimated (by Mortgagee) yearly taxes, assessments and insurance premiums on or against the Premises.

Section 20. **Security Agreement.** This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code for any items constituting a part of the Premises, including fixtures, which, under applicable law, may be subjected to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants, assigns, hypothecates, pledges, delivers and sets over unto Mortgagee a security interest in such items. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created any other security interest in such items, including replacements and additions thereto. In exercising such remedies, Mortgagee may proceed against the real property and personal property described herein separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or herein. This Mortgage shall constitute a financing statement filed as a fixture filing in accordance with Alabama Code Section 7-9-402(6) (or any amendment thereto). For purposes of complying with the requirements of Alabama Code Section 7-9-402(6), the name of Mortgagor, as Debtor, and Mortgagee, as Secured Party, and the respective addresses of Mortgagor, as Debtor, and Mortgagee, as Secured Party, are set forth on the first page of this Mortgage; the types or items of Collateral are described in this Section and in the definition of the "Premises" appearing in the granting clauses of this Mortgage; and the description of the Land is set forth on Exhibit "A" attached hereto. The Collateral is or includes fixtures.

In case any one or more Events of Default under the Note, other Obligations, and/or this Mortgage shall have occurred and be continuing beyond any applicable cure period therefor, the Mortgagee shall have, in addition to all other rights and remedies given to it by this Mortgage, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction. Without limiting the generality of any rights and remedies conferred upon the Mortgagee under this Paragraph 20, the Mortgagee may, to the full extent permitted by law: (a) Enter upon the Premises, exclude therefrom Mortgagor or any affiliate thereof, and take immediate possession of the Improvements, either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary force to do so; (b) Use, operate, manage and control the Improvements in any lawful manner; (c) Collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (d) Maintain, repair, renovate, alter or remove the Improvements as the Mortgagee may determine in its discretion, and any monies so collected or received by the Mortgagee shall be applied to, or may be accumulated for application upon, satisfaction of the Note or any other sums secured by this Mortgage.

Section 21. **Successors and Assigns.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "Mortgagee" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 22. **Governing Law.** This Mortgage secures a loan transaction executed and delivered in and to be performed in the State of Alabama, which by the terms of the Note is to be governed by the laws of the State of Alabama without regard to principles of conflicts of laws. The interests, rights and remedies granted by this Mortgage and the manner in which they are enforced shall be governed and construed by the laws of the State of Alabama..

Section 23. **Severability.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent under applicable law, 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.

Section 24. **Indemnity.** Mortgagor and Maker, jointly and severally, shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by the Mortgagee by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Note or the Obligations, or (b) the condition of the Premises, or (c) failure to pay recording, mortgage, intangibles or similar taxes, roll back taxes, fees or charges relating to the Obligations or any one or more of the Loan Documents, or (d) the Loan Documents or any claim or demand whatsoever which may be asserted against the Mortgagee by reason of any alleged action, obligation or undertaking of the Mortgagee relating in any way to the Obligations or matter contemplated by the Loan Documents, or (e) any and all liability arising from any of the Leases or any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. In the event the Mortgagee incurs any liability, loss or damage arising out of or in any way relating to the loan transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such liability, loss or damage shall be added to the Obligations, shall bear interest at the interest rate specified in the Note from the date incurred until paid and shall be payable on demand.

Section 25. **Greater Estate.** In the event that Mortgagor or Maker is the owner of a leasehold estate with respect to any portion of the Premises and Mortgagor or Maker obtains a fee estate in such portions of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor or Maker, be and become subject to the security title and lien hereof.

Section 26. **Headings.** The headings of the sections, paragraphs, and subparagraphs of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

Section 27. **Arbitration.**

27.01 **Definitions.** As used herein, the term "Dispute" shall have the following meaning:

Any controversy, claim or demand between or among any or all of the parties hereto, whether now existing or hereafter arising and whether sounding in contract, tort or otherwise, including but not limited to those: (i) arising out of or related to this Mortgage, or any other loan document or agreement executed in connection herewith; (ii) arising out of or related to any other liability or obligation which exists between any or all of the parties hereto; (iii) in any way connected, related or incidental to the past, present or future relationship between or course of dealings of all, or any, of the parties hereto, regardless of whether the relationship or course of dealings arises out of or is related to the subject matter of this Mortgage or any other liability or obligation; or (iv) relating to the scope of this arbitration clause or any preliminary issue of arbitrability, including but not limited to capacity, waiver, unconscionability, fraudulent inducement, duress, undue influence or adhesion.

27.02 **Waiver of Right to Trial by Jury.** Each of the parties hereto expressly waives any right to trial by jury of any Dispute regardless of whether the Dispute is subject to or not subject to arbitration, and regardless of whether the arbitration provision set forth herein is found by a court of competent jurisdiction to be unenforceable, in whole or in part.

27.03 **Arbitration.** By executing this Mortgage, each of the parties hereto acknowledges that this transaction and the relationship of the parties affects interstate commerce. All Disputes (with the exception of Excluded Disputes, as defined below) shall be resolved exclusively by binding arbitration in accordance with the Federal Arbitration Act, and the American Arbitration Association's (AAA) Commercial Arbitration Rules, in effect on the date of this Mortgage. All statutes of limitations applicable to a judicial action shall be applicable to arbitration, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for such purposes. An arbitration proceeding shall be deemed commenced upon receipt by the AAA of a party's written demand for arbitration.

The parties hereto waive the right to receive any damages exceeding compensatory damages. The arbitrator shall not award punitive, exemplary or consequential damages. The arbitrator shall award arbitration costs and fees (excluding attorney's fees) to the party prevailing on substantially all of its claims. Unless otherwise agreed to in writing, the arbitration proceeding shall be conducted in the State and County where this Mortgage was executed. Judgment on the arbitration

award may be entered by any court of competent jurisdiction. The Federal Arbitration Act and federal case law interpreting that act, shall apply to the construction, interpretation and enforceability of this provision notwithstanding any other choice of law provision contained elsewhere in this Mortgage.

27.04 Excluded Disputes. Notwithstanding the foregoing arbitration provision, any party may exercise any of the following rights and remedies it may have without being required to submit to arbitration: any self-help remedies, the right of set-off, the right to take possession and to realize upon or foreclose against any personal or real property constituting collateral or security whether pursuant to a power of sale or by judicial proceedings or otherwise, the right to reduce the indebtedness to a monetary judgment by judicial action (so long as such judgment is limited to principal and accrued interest due, and reasonable attorney's fees), the right to demand payment under and/or to accelerate any note(s) and/or other instruments and agreements evidencing any indebtedness between the Mortgagor and Mortgagee, or to obtain provisional or ancillary remedies such as the appointment of a receiver, injunctive relief, declaratory judgment, or other traditionally equitable relief which does not claim money damages from any court or agency tribunal having jurisdiction, either before, after or during the pendency of any arbitration. All parties acknowledge that they waive the right to a trial by jury in connection with the resolution of any Excluded Dispute.

27.05 Miscellaneous. The terms of this provision shall survive the payment in full of the indebtedness which is the subject of this Mortgage, and constitute an agreement to arbitrate severable from the remainder of this Mortgage. This Agreement to Arbitrate has been voluntarily entered into and constitutes a material term of this Mortgage, upon which the parties have relied in deciding to enter into this Mortgage.

Section 28. Addendum. The terms and provisions of any addendum attached hereto are incorporated herein by reference and made a part hereof.

Section 29. Waiver of Jury Trial. EACH OF MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT, ANY OF THE OBLIGATIONS, ANY COLLATERAL, ANY GUARANTOR, SURETY OR PLEDGOR OR ANY RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE. MORTGAGOR AND MORTGAGEE EACH WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH COMPETENT LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. EITHER MORTGAGOR OR MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE PARTIES' WAIVER OF THE RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Mortgagor and Maker have caused this Mortgage to be executed under seal the day and year first above written.

MDV DEVELOPMENT CO., LLC

By: David S. Demaio (SEAL)
David S. Demaio, Manager

By: Jose L. Vargas - POA (SEAL)
Alton C. Molin, Manager

By: Jose L. Vargas (SEAL)
Jose L. Vargas, Manager

Alton C. Molin
Alton C. Molin

Jose L. Vargas
Jose L. Vargas, Attorney in Fact,
under Power of Attorney recorded
as Instrument 2002-5506, in
Probate Office of Shelby County, AL
STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority Jose L. Vargas, the undersigned authority, in and for said county in said state, hereby certify that David S. Demaio, Alton C. Molin, Jose L. Vargas whose name s as member/manager of MDV Development Co., LLC, a limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, in his/her capacity as such member/manager, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 29th day of January 2002.

Collette Fuoner
Notary Public

(Seal)

My Commission Expires: 10/16/04

This instrument prepared by: Donna Nash, Closing Coordinator, Wachovia Bank, N.A., 101 N. Cherry St., Winston-Salem, North Carolina 27150

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State hereby certify that Jose L. Vargas, whose name as Attorney in Fact for Alton C. Molin is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day, that, being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date, in his capacity as such Attorney in Fact.

Given under my hand and official seal this 29th day of January, 2002.

Notary Public

My Commission Expires: 10/16/2004

EXHIBIT "A"
LEGAL DESCRIPTION

From a 1.5" pipe accepted as the NW corner of the NW 1/4-NE 1/4 of Section 4, Township 24 North, Range 13 East, run thence South along the accepted West boundary of said NW 1/4-NE 1/4 a distance of 50.08 feet to a 1/2" rebar, being the point of beginning of herein described parcel of land; thence continue along said course a distance of 596.00 feet to a 1/2" rebar; thence turn 86 degrees 28 minutes 34 seconds left and run 439.00 feet to a 1/2" rebar; thence turn 93 degrees 31 minutes 01 seconds left and run 597.23 feet to a 1/2" rebar; thence turn 86 degrees 38 minutes 39 seconds left and run 439.00 feet to the point of beginning of herein described parcel of land. Situated in the N 1/2-NW 1/4-NE 1/4 of Section 4, Township 24 North, Range 13 East, Shelby County, Alabama.

ALSO, an easement along the South 30 feet of Davis Machine & Fabricating Co., Inc. lying East of the railroad crossing and a 30 feet easement along the East boundary of Davis Machine & Fabricating Co., Inc. lying South of the above described property. These easements lying in the NE 1/4 of the NW 1/4 of Section 4, Township 24 North, Range 13 East, Shelby County, Alabama.

TAX MAP PARCEL NO. 58-35-2-04-0-001-001-001

Inst # 2002-05508

02/01/2002-05508
11:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CH 494.00