

This instrument prepared by
and record and return to:
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STATE OF ALABAMA

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COUNTY OF SHELBY

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

THIS FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (this “**Mortgage**”) is executed as of this the 16th day of November, 2010, by **VALLEYDALE OFFICE PLAZA, LLC**, an Alabama limited liability company (the “**Mortgagor**”), as Mortgagor, in favor of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation (together with its successors or assigns, the “**Mortgagee**”), as Mortgagee.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-102(a)(40) OF THE CODE OF ALABAMA.

THIS MORTGAGE IS A “CONSTRUCTION MORTGAGE” AS DEFINED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, ANY OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

RECITALS

Mortgagor is indebted to Mortgagee for money loaned in the original principal sum of up to Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00) (as amended, modified, renewed, or extended, the “**Loan**”), pursuant to that certain Construction Loan Agreement of even date herewith by and between Mortgagor and Mortgagee (as amended, the “**Loan Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Loan Agreement), as evidenced by that certain Promissory Note of even date herewith from Mortgagor, payable to the order of Mortgagee in installments of principal and/or interest thereon (as amended, modified, renewed, or extended, the “**Note**”).



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As a condition precedent to making the Loan, Mortgagee requires that Mortgagor execute this Mortgage as security for the Loan and the Loan Obligations (as herein defined), all renewals, extensions and modifications thereof, and all refinancings of any part of the Loan and any and all other additional indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise (herein "**Other Indebtedness**").

GRANTING CLAUSES

NOW, THEREFORE, for and in consideration of the Loan Obligations and the Other Indebtedness, and to secure the prompt payment thereof, Mortgagor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge, and set over unto Mortgagee, its successors and assigns, with power of sale as may be permitted by law, the Mortgaged Property (as hereinafter defined), and grants to Mortgagee a security interest in and to the Mortgaged Property;

TO SECURE unto Mortgagee the satisfaction of the entire Loan Obligations and the Other Indebtedness, at and in the manner stipulated herein, in the Note and in the other Loan Documents (as hereinafter defined), and the performance of the covenants and agreements of Mortgagor contained in the Loan Documents, the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that if Mortgagor shall (i) pay to Mortgagee and perform the entire Loan Obligations, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall cause all other obligated parties to keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents to be kept, performed, and observed, all without fraud or delay, and (ii) pay, perform and satisfy in full any and all Other Indebtedness; then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, sold and conveyed shall cease, terminate, and be void, but shall otherwise remain in full force and effect.

AGREEMENT

FOR VALUABLE CONSIDERATION, Mortgagor agrees as follows:

1. **DEFINITIONS.** The following terms, when used in this Mortgage (including when used in the above recitals), shall have the following meanings:

Accounts has the meaning given such term in the UCC, and includes, without limitation, any rights of Mortgagor arising from the operation of the Facility to payment for goods sold or leased or for services rendered, not evidenced by an Instrument, including, without limitation, (i) all accounts arising from the operation of the Facility, (ii) all moneys and accounts, if any, held by Mortgagee pursuant to this Mortgage or any other Loan Document, (iii) receivables arising out of the use of a credit or charge card or information contained on or for use with the card, (iv)

Supporting Obligations, letter-of-credit rights and letters of credit given by any Person with respect to any of the foregoing, and (v) all books and records in whatever media (paper, electronic or otherwise) recorded or stored, with respect to any or all of the foregoing and all equipment and general intangibles necessary or beneficial to retain, access and/or process the information contained in those books and records. Accounts shall include the Proceeds thereof.

Appurtenant Rights means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber, and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Land, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating, or appertaining to the Land, or any part thereof, now or hereafter.

Chattel Paper has the meaning given such term in the UCC, and includes, without limitation, a record or records (including, without limitation, electronic chattel paper) which evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods; all Supporting Obligations with respect thereto; any returned, rejected, or repossessed goods and software covered by any such record or records and all proceeds (in any form including, without limitation, accounts, contract rights, documents, chattel paper, instruments, and general intangibles) of such returned, rejected or repossessed goods; and all proceeds (cash proceeds and noncash proceeds) of the foregoing.

Commercial Tort Claims has the meaning set forth in the UCC.

Condemnation has the meaning given to that term in Section 11.

Contracts means all license agreements, operating contracts, and all management, service, employment, supply, and maintenance contracts and agreements, and any other agreements, licenses, or contracts of any nature whatsoever now or hereafter obtained or entered into by Mortgagor with respect to the acquisition, construction, renovation, expansion, ownership, occupancy, use, operation, maintenance, and administration of the Facility and/or the Mortgaged Property, including, without limitation, any and all contracts, authorizations, agreements, and/or consents executed by or on behalf of any customer or other Person seeking services from Mortgagor pursuant to which Mortgagor provides or furnishes services at the Facility.

Deposit Accounts has the meaning given such term in the UCC.

Equipment has the meaning given such term in the UCC, and includes, without limitation, all equipment, machinery, furniture, furnishings, vehicles, vehicle chassis, tools, spare parts, materials, supplies, store fixtures, leasehold improvements, all other goods (including embedded software to the extent provided for in Article 9 of the UCC) of every kind and nature (other than Inventory and Fixtures) and all "equipment" as defined in Article 9 of the UCC and all renewals and replacements thereof and substitutions therefor; provided, however, that with

respect to any items which are leased for the benefit of the Facility and not owned by Mortgagor, the Equipment shall include the leasehold interest only of Mortgagor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Mortgagor may hereafter acquire, but the foregoing shall not be construed to mean that such leasing shall be permitted hereunder and under the other Loan Documents.

Facility means that certain office building to be constructed on the Land.

Fixtures means all property which is now or hereafter so attached to the Land or the Improvements as to constitute a fixture under applicable law and all renewals and replacements thereof and substitutions therefor, including, without limitation: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention, and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors; cabinets, paneling, rugs, and floor and wall coverings; fences, trees and plants; and exercise equipment.

General Intangibles has the meaning given such term in the UCC, and includes, without limitation, all intangible personal property of Mortgagor arising out of or connected with the Mortgaged Property or the Facility and all renewals and replacements thereof and substitutions therefor (other than Accounts, Rents, Instruments, Inventory, Money and, Permits), including, without limitation, things in action, contract rights and other rights to payments of Money, commercial tort claims, other claims (including without limitation all claims for income tax and other refunds), payment intangibles, and Supporting Obligations.

Hazardous Materials means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground storage tanks, whether empty or containing any substance; any substance the presence of which on the Land and/or the Improvements is prohibited by any federal, state, or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, and regulations and standards, rules, policies, and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Land and/or the Improvements. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the

Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Section 11001 et seq., and their state analogs.

Imposition Deposits means the additional deposits to be made by Mortgagor, if any, for (i) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as Mortgagee may reasonably require under the Loan Documents and (ii) the yearly property Taxes.

Impositions means the obligations of Mortgagor for which the Imposition Deposits are required.

Improvements means all buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, including but not limited to, the Facility, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatuses which are or shall be attached to the Land or said buildings, structures or improvements.

Instruments has the meaning given such term in the UCC, and includes, without limitation, all instruments, Chattel Paper, documents or other writings obtained by Mortgagor from or in connection with the operation of the Mortgaged Property or the construction and operation of the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, software, trademarks or trade names, utility contracts, maintenance and service contracts, and files of Mortgagor relating thereto).

Inventory has the meaning given such term in the UCC, and includes, without limitation, all goods, merchandise and other personal property held by the Mortgagor for sale or lease or license or furnished or to be furnished by the Mortgagor under contracts of service or otherwise, raw materials, parts, finished goods, work-in-process, scrap inventory and supplies and materials used or consumed, or to be used or consumed, in the Mortgagor's present or any future business, and all such property returned to or repossessed or stopped in transit by the Mortgagor, whether in transit or in the constructive, actual or exclusive possession of the Mortgagor or of the Mortgagee or held by the Mortgagor or any other person for the Mortgagee's account and wherever the same may be located, including all such property that may now or hereafter be located on the premises of the Mortgagor or upon any leased location or upon the premises of any carriers, forwarding agents, warehousemen, vendors, selling agents, processors or third parties, and all "inventory" as defined in Article 9 of the UCC.

Investment Property has the meaning given such term in the UCC, and includes, without limitation, a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account, and all proceeds (cash proceeds and noncash proceeds) of, and Supporting Obligations with respect to, the foregoing.

Land means that certain real property situated in Shelby County, Alabama, as more particularly described in Exhibit "A" attached hereto and made a part hereof.

Leases means any and all oral or written leases and other agreements for the use or occupancy of the Mortgaged Property made or agreed to by any person or entity (including, without limitation of the foregoing, Mortgagor and Mortgagee under the Loan Documents) and any and all amendments, extensions, renewals, modifications, replacements, and guaranties thereof pertaining to all or any part of the Mortgaged Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to, including, without limitation, (i) that certain Lease Agreement dated as of February 5, 2010, by and between Mortgagor and Pain and Rehabilitation Center, Inc., an Alabama corporation, (ii) that certain Lease Agreement dated as of August 13, 2010, by and between Mortgagor and Parade Home Builders, Inc., an Alabama corporation.

Loan Obligations means the aggregate of all principal and interest owing from time to time under the Loan or Note and all expenses, charges, premiums and other amounts from time to time owing under the Note, this Mortgage, the Loan Agreement or the other Loan Documents, including all Hedging Obligations, and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Bank pursuant to the Loan Documents.

Money means all monies, cash, rights to Deposit Accounts, or other items of legal tender obtained from or for use in connection with the operation of the Facility.

Mortgaged Property means all of Mortgagor's present and future right, title and interest in and to all of the following, provided that if any of the following capitalized terms are defined in the UCC, each such term shall have the meaning given such term in the UCC and shall include, without limitation, the additional items set forth in this Mortgage with respect to such term:

- (a) the Land;
- (b) all Appurtenant Rights;
- (c) all Commercial Tort Claims;
- (d) all Equipment;
- (e) all Improvements;
- (f) all Fixtures;
- (g) all Accounts;
- (h) all Deposit Accounts;
- (i) all Contracts;

- (j) all General Intangibles;
- (k) all Permits (to the extent assignable);
- (l) all Money;
- (m) all Instruments;
- (n) all Inventory;
- (o) all Rents;
- (p) all Personalty;
- (q) all Leases;
- (r) all Chattel Paper;
- (s) all Supporting Obligations;
- (t) all Investment Property;
- (u) all Stock;
- (v) all Proceeds;

(w) all contracts, options and other agreements for the sale of the the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

- (x) all Imposition Deposits;

(y) all refunds or rebates of Impositions by any municipal, state, or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Mortgage is dated); and

(z) all renewals, replacements, and Proceeds of any of the foregoing and any substitutions therefor.

Permits means all licenses, permits, and certificates used or necessary in connection with the construction, ownership, operation, use, or occupancy of the Mortgaged Property and/or the Facility, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, and all such other permits, licenses, and rights, obtained from any governmental, quasi-governmental, or private person or entity whatsoever concerning ownership, operation, use, or occupancy of the Facility.

Permitted Encumbrances has the meaning given to that term in the Loan Agreement.

Personalty means all Equipment, Inventory, or General Intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering, and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental Permits relating to any activities on the Land.

Proceeds means all awards, payments, earnings, royalties, issues, profits, liquidated claims, and proceeds (including proceeds of insurance and condemnation and any conveyance in lieu thereof), whether cash or noncash, moveable or immovable, tangible or intangible, from the sale, conversion (whether voluntary or involuntary), exchange, transfer, collection, loss, damage, condemnation, disposition, substitution, or replacement of any of the Mortgaged Property.

Rents means all rent and other payments of whatever nature from time to time payable pursuant to the Leases.

Stock means all shares, options, warrants, general or limited partnership interests, membership interests, participations or other equivalents (regardless of how designated) in a corporation, limited liability company, partnership or any equivalent entity, whether voting or nonvoting, including, without limitation, common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended).

Supporting Obligation has the meaning given such term in the UCC, and includes, without limitation, a letter-of-credit right, secondary obligation, or obligation of a secondary obligor, or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a document, a General Intangible, an Instrument, or Investment Property.

Taxes means all taxes, assessments, vault rentals, and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

UCC has the meaning given to that term in Section 2.

UCC Collateral has the meaning given to that term in Section 2.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Mortgage is also a security agreement under the Uniform Commercial Code as in effect from time to time in the State of Alabama (the “UCC”) for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the UCC, whether acquired now or in the future, and all products and cash and non-cash Proceeds thereof (collectively, “UCC Collateral”), and, as collateral and security for the Loan Obligations, Mortgagor hereby grants to Mortgagee a security interest in the UCC Collateral. Mortgagor hereby authorizes Mortgagee to file financing statements, continuation statements, and financing statement amendments, in such form as Mortgagee may require to perfect or continue the perfection of this security interest and Mortgagor agrees, if Mortgagee so requests, to execute and deliver to Mortgagee such financing statements, continuation statements and amendments. Mortgagor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Mortgagee may require. Without the prior express written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral, unless otherwise permitted under the Loan Documents. If an Event of Default has occurred and is continuing, Mortgagee shall have the remedies of a secured party under the UCC, in addition to all remedies provided by this Mortgage or existing under applicable law. In exercising any remedies, Mortgagee may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Mortgagee’s other remedies hereunder and/or under applicable law. The terms “sign,” “signed,” and “signatures” shall have their ordinary meanings except that, to the limited extent Mortgagee in an authenticated record expressly agrees otherwise from time to time in the exercise of its sole and absolute discretion, the terms may also include other methods used to authenticate. Without implying any limitation on the foregoing, with respect to the UCC Collateral that may be perfected by control, Mortgagor shall take such steps as Mortgagee may reasonably require in order that Mortgagee may have such control. To the extent that the proceeds of any of the Accounts are expected to become subject to the control of, or in the possession of, a party other than Mortgagor or Mortgagee, Mortgagor shall cause all such parties to execute and deliver on the date of this Mortgage and from time to time hereafter security documents, financing statements, or other documents as reasonably requested by Mortgagee and as may be necessary to evidence and/or perfect the security interest of Mortgagee in those proceeds. Mortgagor agrees that a copy of a fully executed security agreement and/or financing statement shall be sufficient to satisfy for all purposes the requirements of a financing statement as set forth in Article 9 of the UCC. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor’s attorney-in-fact, with power of substitution, in the name of Mortgagee or in the name of Mortgagor or otherwise, for the use and benefit of Mortgagee, but at the cost and expense of Mortgagor and without notice to Mortgagor, to execute and deliver any and all of the instruments and other documents and take any action which Mortgagee may require pursuant the foregoing provisions of this Section. Further, to the extent permitted by applicable laws, Mortgagee may file, without Mortgagor’s signature, one or more financing statements or other notices disclosing Mortgagee’s liens and other security interests. All financing statements and notices may describe Mortgagee’s collateral as all assets or all personal property of Mortgagor.

3. **LEASES.** Mortgagor shall not, without the prior express written consent and approval of Mortgagee, enter into any lease or enter into or permit any management agreement

of or affecting any part of the Mortgaged Property or any amendments, extensions, or modifications of the foregoing.

4. **DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.** If required by Mortgagee, Mortgagor shall deposit with Mortgagee such additional amount for taxes and other charges as Mortgagee may require.

5. **USE OF PROPERTY.** Unless required by applicable law, Mortgagor shall not (a) except for any change in use approved by Mortgagee, allow changes in the use for which all or any part of the Mortgaged Property is being contemplated to be used at the time this Mortgage was executed, or (b) initiate or acquiesce in a change in the zoning classification of the Land and/or the Facility, except any change that does not adversely affect Mortgagor's use of the Mortgaged Property.

6. **PROTECTION OF MORTGAGEE'S SECURITY.**


(a) If Mortgagor fails to perform any of its obligations under this Mortgage or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Mortgagee's security, or Mortgagee's rights under this Mortgage, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option and upon the expiration of all applicable cure periods, if any, and upon written notice to Mortgagor where feasible, Mortgagee may make such appearances, disburse such sums and take such actions as Mortgagee reasonably deems necessary to perform such obligations of Mortgagor and to protect Mortgagee's interest, including (i) disbursement of fees and out of pocket expenses of attorneys, accountants, inspectors, and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance coverages required under the Loan Agreement, and (iv) payment of amounts which Mortgagor has failed to pay under Section 9.

(b) Any amounts disbursed by Mortgagee under this Section 6, or under any other provision of this Mortgage, or under any of the other Loan Documents, that treats such disbursement as being made under this Section 6, shall be added to and become part of the Loan Obligations, shall be immediately due and payable, and shall bear interest from the date of disbursement until paid at the Default Rate.

(c) Nothing in this Section 6 shall require Mortgagee to incur any expense or take any action.

7. **INSPECTION.** Mortgagee, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable advance notice (which shall be at least one (1) Business Day) to Mortgagor (which may be oral) except in an emergency or during the continuance of an Event of Default, in which case no notice is required.

8. **TAXES; OPERATING EXPENSES.**


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(a) Subject to the provisions of Section 9(c) and Section 9(d), Mortgagor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty, or cost for nonpayment. Upon Mortgagee's request, Mortgagor will deposit with Mortgagee such amounts as Mortgagee may determine to be held for the future payment of Taxes.

(b) Subject to the provisions of Section 9(c), Mortgagor shall pay or cause to be paid the expenses of operating, managing, maintaining, and repairing the Mortgaged Property (including insurance premiums, utilities, repairs, and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added or lien imposed.

(c) As long as no Event of Default has occurred and is continuing, Mortgagor shall not be obligated to pay Taxes, insurance premiums, or any other individual Imposition to the extent that Imposition Deposits are held by Mortgagee for the purpose of paying that specific Imposition. If an Event of Default exists, Mortgagee may exercise any rights Mortgagee may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable.

(d) Mortgagor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Mortgagor notifies Mortgagee of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, as reasonably determined by Mortgagee, (iii) if requested by Mortgagee, Mortgagor deposits with Mortgagee cash reserves or other collateral sufficient to pay the contested Imposition, (iv) Mortgagor furnishes whatever security is required in the proceedings or is reasonably requested by Mortgagee, which may include the delivery to Mortgagee of the reserves established by Mortgagor to pay the contested Imposition, as additional security, and (v) such contest operates to suspend enforcement of such Imposition.

(e) Mortgagor shall promptly deliver to Mortgagee a copy of all notices of and invoices for, Impositions, and if Mortgagor pays any Imposition directly, Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments.

9. **LIENS; ENCUMBRANCES.** Mortgagor acknowledges that the existence of any Liens on the Mortgaged Property, other than Permitted Encumbrances, whether voluntary, involuntary or by operation of law, will constitute an Event of Default as provided under Section 13, and will subject Mortgagor to personal liability under the Note.

10. **PRESERVATION, MANAGEMENT, AND MAINTENANCE OF MORTGAGED PROPERTY.** Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition ordinary wear and tear excepted, or such other condition as Mortgagee may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair ordinary wear and tear excepted, except to the extent Mortgagee applies such insurance proceeds or condemnation awards to reduce the Loan Obligations, (d) shall keep the Mortgaged Property in

good repair, including the replacement of unusable Personalty and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property, and (f) shall give notice to Mortgagee of and, unless otherwise directed in writing by Mortgagee, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Mortgage. Mortgagor shall not (and shall not permit any other person to) remove, demolish, or alter the Mortgaged Property or any part of the Mortgaged Property except as contemplated on the date hereof and in connection with the replacement of tangible Personalty.

11. **CONDEMNATION.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Mortgagor shall appear in and prosecute or defend any proceeding relating to any Condemnation unless otherwise directed by Mortgagee in writing. Mortgagor authorizes and appoints Mortgagee as attorney-in-fact for Mortgagor to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 11 shall require Mortgagee to incur any expense or take any action. Mortgagor hereby transfers and assigns to Mortgagee all right, title and interest of Mortgagor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation. Mortgagee, in its sole discretion, may apply such awards or proceeds, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to the restoration or repair of the Mortgaged Property or to the payment of the Loan Obligations, with the balance, if any, to Mortgagor. Unless Mortgagee otherwise agrees in writing, any application of any awards or proceeds to the Loan Obligations shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 4 of this Mortgage or any Loan Document, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards or proceeds as Mortgagee may require.

12. **TRANSFERS OF THE MORTGAGED PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGOR.** No transfer of any part of the Mortgaged Property or any beneficial interest of Mortgagor shall be permitted without Mortgagee's prior express written consent which may be withheld in Mortgagee's sole and absolute discretion.

13. **EVENTS OF DEFAULT.** Mortgagor's violation of any of the representations, warranties, covenants or agreements hereunder shall constitute an Event of Default hereunder and under the Loan Agreement. Further, the occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder.

14. **REMEDIES.**

(a) Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Loan 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.

(b) Uniform Commercial Code. Mortgagee shall have all of the rights and remedies of a secured party under the UCC. Upon demand by Mortgagee, Mortgagor shall assemble the UCC Collateral and make it available to Mortgagee, at a place designated by Mortgagee. Mortgagee or its agents may without notice from time to time enter upon Mortgagor's premises without causing a breach of the peace to take possession of the UCC Collateral, to remove it, to render it unusable, to process it or otherwise prepare it for sale, or to sell or otherwise dispose of it.

Any written notice of the sale, disposition or other intended action by Mortgagee with respect to the UCC Collateral which is sent by regular mail, postage prepaid, to Mortgagor at the address of Mortgagor which may from time to time be shown on Mortgagee's records or which shall be been provided by Mortgagor to Mortgagee in writing, at least ten (10) days prior to such sale, disposition or other action, shall constitute commercially reasonable notice to Mortgagor. Mortgagee may alternatively or additionally give such notice in any other commercially reasonable manner. Nothing in this Mortgage shall require Mortgagee to give any notice not required by applicable laws.

If any consent, approval, or authorization of any state, municipal, or other governmental department, agency, or authority or of any person, or any person, corporation, partnership, or other entity having any interest therein, should be necessary to effectuate any sale or other disposition of the UCC Collateral, Mortgagor agrees to execute all such applications and other instruments, and to take all other action, as may be required in connection with securing any such consent, approval or authorization.

Mortgagor recognizes that Mortgagee may be unable to effect a public sale of all or a part of the UCC Collateral consisting of securities by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and other applicable federal and state laws. Mortgagee may, therefore, in its discretion, take such steps as it may deem appropriate to comply with such laws and may, for example, at any sale of the UCC Collateral consisting of securities restrict the prospective bidders or purchasers as to their number, nature of business and investment intention, including, without limitation, a requirement that the Persons making such purchases represent and agree to the satisfaction of Mortgagee that they are purchasing such securities for their account, for investment, and not with a view to the distribution or resale of any thereof. Mortgagor covenants and agrees to do or cause to be done promptly all such acts and things as Mortgagee may reasonably request from time to time and as may be necessary to offer and/or sell the securities or any part thereof in a manner which is valid and binding and in conformance with all applicable laws. Upon any such sale or disposition, Mortgagee shall have the right to deliver, assign and transfer to the purchaser thereof the UCC Collateral consisting of securities so sold.

(c) Right to Enter and Take Possession.

(i) If an Event of Default shall have occurred and be continuing, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual

possession of the Mortgaged Property and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without causing a breach of the peace without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers, and accounts of Mortgagor relating thereto;

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Mortgagee. Mortgagor shall pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including costs and expenses incurred by Mortgagee, its attorneys and agents, and all such expenses and costs shall, until paid, become part of the Loan Obligations and shall be secured by this Mortgage;

(iii) Upon every such entering or taking of possession, Mortgagee may, without relieving Mortgagor from any obligations under the Loan Agreement, hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (A) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional necessary and property Fixtures, Personalty and Equipment; (B) insure or keep the Mortgaged Property insured; (C) manage and operate the Mortgaged Property and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name; and/or (D) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may reasonably determine to be in its best interest. Mortgagee may collect and receive all the Rents;

(iv) If an Event of Default shall exist and continue beyond the applicable cure periods set forth in the Loan Documents, if any, Mortgagee may require that Mortgagor cause all of its Accounts to be paid to one or more deposit accounts with Mortgagee, or at Mortgagee's option, with another financial institution approved by Mortgagee. Mortgagor assigns and grants to Mortgagee a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts, to the extent permitted by applicable law. Mortgagor agrees to promptly notify all of its account debtors to make payments to one or more such deposit accounts upon Mortgagee's request and as designated by Mortgagee, and Mortgagor agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Mortgagee may cause moneys to be withdrawn from such deposit accounts and applied to the Loan Obligations in such order as Mortgagee may elect, whether or not then due. Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Mortgagor agrees to undertake in accordance with this Section. Mortgagee shall not be liable for failure to collect or to enforce any Accounts or for any action or omission on the part of Mortgagee, its officers, agents, and employees in

collecting or enforcing such Accounts except for gross negligence, willful misconduct or violation of law; and

(v) Whenever all the Loan Obligations shall have been paid and all Events of Default shall have been cured, Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor, its successors and/or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(d) Performance by Mortgagee. Upon the occurrence of an Event of Default, Mortgagee may, at its sole option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at the Default Rate or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(e) Receiver. If any Event of Default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Loan Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and the Facility and to collect and apply the Rents. The receiver shall have all the rights and powers permitted under the laws of the State of Alabama. Mortgagor will pay unto Mortgagee upon demand all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Mortgage.

(f) Power of Sale. If an Event of Default shall have occurred and be continuing, Mortgagee may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect.

(g) Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any

term thereof or any other right, (ii) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable law, and (iii) to pursue any other remedy available to it, including a sale by power of sale, to the extent applicable as may be permitted by law, all as Mortgagee shall deem most effectual for such purposes. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Mortgagee may determine.

(h) Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

(i) Application of Proceeds. Mortgagee shall apply the proceeds of any foreclosure sale of, or other disposition or realization upon, or Rents or profits from, the Mortgaged Property to satisfy the Loan Obligations in such order of application as the Mortgagee shall determine in its exclusive discretion.

(j) Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable thereto.

(k) Waiver of Appraisal, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will assert, claim or seek to take advantage of any appraisal, redemption, valuation, stay, homestead, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale.

(l) Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Mortgagee shall continue as if no such proceedings had occurred.

(m) Waiver.

(i) No delay or omission by Mortgagee or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor



hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

(ii) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage, the other Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Mortgagee or except in case of Mortgagee's gross negligence, intentional misconduct or violation of law. Without limiting the generality of the foregoing, Mortgagee may (A) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (B) take other or additional security for the payment of any of the Loan Obligations; (C) waive or fail to exercise any right granted herein, in the Note or in other Loan Documents; (D) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Mortgage or other Loan Documents; (E) consent to the filing of any map, plat or replat affecting the Land; (F) consent to the granting of any easement or other right affecting the Mortgaged Property; (G) make or consent to any agreement subordinating the security title or lien hereof, or (H) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Mortgage, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege with respect to the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with respect to the Mortgaged Property or the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Mortgagor, any guarantor of the Loan Obligations or others.

(iii) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

Mortgagor makes these arrangements, waivers, and relinquishments knowingly and as a material inducement to Mortgagee in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Mortgagor.

(n) Suits to Protect the Mortgaged Property. Mortgagee shall have power to institute and maintain such suits and proceedings as it may deem expedient (i) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute an Event of Default under this Mortgage; (ii) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule, or order would materially impair the security hereunder or be prejudicial to the interest of Mortgagee.

(o) Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other proceedings affecting Mortgagor, its creditors or its properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

(p) Actions Without Mortgagor's Consent. Mortgagor agrees that Mortgagee may do any one or all of the following without notice to or the consent of Mortgagor and without affecting Mortgagee's rights or remedies against Mortgagor: (i) accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Mortgagor's Loan Obligations to Mortgagee under or in connection with this Mortgage or any of the other Loan Documents; (ii) grant any indulgence or forbearance to Guarantor or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute, or add any or all collateral securing payment of any or all of the Loan Obligations; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Loan Obligations; and (v) exercise any right or remedy with respect to the Loan Obligations or any collateral securing the Loan Obligations, notwithstanding any effect on or impairment of Mortgagor's subrogation, reimbursement, or other rights against Guarantor or any other Person under or in connection with any or all of the Loan Documents.

15. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Mortgage is distinct from all other rights or remedies under this Mortgage or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

16. **FORBEARANCE.**

(a) Mortgagee may agree with Mortgagor, from time to time, at Mortgagee's option and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of any guarantor or other third party obligor, extend the time for payment of all or any part of the Loan Obligations, reduce the payments due under this Mortgage, the Loan Agreement, or any other Loan Document, release anyone liable for the payment of any amounts

under this Mortgage, the Loan Agreement, or any other Loan Document, accept a renewal of the Loan Agreement, modify the terms and time of payment of the Loan Obligations, join in any extension or subordination agreement, release any Mortgaged Property, take or release other or additional security, modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Loan Agreement, or otherwise modify this Mortgage, the Loan Agreement, or any other Loan Document.

(b) Any forbearance by Mortgagee in exercising any right or remedy under the Loan Agreement, this Mortgage, the Guaranty Agreement, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of any part of the Loan Obligations after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Mortgagee's right to require prompt payment when due of all other payments on account of the Loan Obligations or to exercise any remedies for any failure to make prompt payment. Enforcement by Mortgagee of any security for the Loan Obligations shall not constitute an election by Mortgagee of remedies so as to preclude the exercise of any other right available to Mortgagee. Mortgagee's receipt of any insurance and/or condemnation proceeds shall not operate to cure or waive any Event of Default.

17. **LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Mortgagor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Mortgagee in excess of the permitted amounts shall be applied by Mortgagee to reduce the principal of the Loan Obligations. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all Loan Obligations which constitute interest, as well as all other charges levied in connection with the Loan Obligations which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

18. **ASSIGNMENT OF LEASES.**

(a) Mortgagor, in consideration of Mortgagee's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements herein and set forth in the Loan Agreement, in the other Loan Documents, does hereby sell, assign and transfer unto Mortgagee all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or

occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Mortgagee, and Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth. Nothing herein contained shall be construed as constituting Mortgagee as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Mortgagee pursuant to the provisions herein contained. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

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

(c) Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Mortgagee in connection with any one or more of said leases, subleases or agreements, Mortgagor agrees to reimburse Mortgagee for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

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

(e) Upon the occurrence of any Event of Default, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property.

19. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Mortgage, the Note, the Loan Agreement, any other Loan Document or under applicable law. Mortgagee shall have the right to determine the order in which any or all portions of the Loan Obligations are satisfied from the proceeds realized upon the exercise of such remedies. Mortgagor waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Mortgage.

20. **FURTHER ASSURANCES.** Mortgagor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers, and assurances as Mortgagee may reasonably require from time to time in order to better assure, grant, and convey to Mortgagee the rights intended to be granted, now or in the future, to Mortgagee under this Mortgage and the Loan Documents; provided, however, that if an Event of Default has not occurred and remains outstanding and such further assurances are required by Mortgagor as a result of Mortgagee's efforts in connection with a sale, securitization or other transfer of the Loan or the Loan Documents, Mortgagor shall not be responsible for such costs and expenses.

21. **ESTOPPEL CERTIFICATE.** Within ten (10) business days after a request from Mortgagee, Mortgagor shall deliver to Mortgagee a written statement, signed and acknowledged by Mortgagor, certifying to Mortgagee or any person designated by Mortgagee, as of the date of such statement, (a) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that, to the best of its knowledge, Mortgagor is not in default in paying the Loan Obligations or in performing or observing any of the covenants or agreements contained in this Mortgage or any of the other Loan Documents (or, if Mortgagor is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Mortgagor against the enforcement of any right or remedy of Mortgagee under the Loan Documents; and (f) any additional facts reasonably requested by Mortgagee.

22. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**



(a) This Mortgage, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the State of Alabama.

(b) Each of Mortgagor and Mortgagee consents to the nonexclusive jurisdiction of any and all state and federal courts in the State of Alabama located in Jefferson County, Alabama. Mortgagor agrees that its assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States and that no assets of Mortgagor in the United States shall be considered part of any foreign bankruptcy estate.

(c) Each of Mortgagor and Mortgagee agrees that any controversy arising under or in relation to the Note, this Mortgage, or any other Loan Document shall be litigated in the State of Alabama. The state and federal courts and authorities with jurisdiction in the State of Alabama shall have nonexclusive jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Loan Obligations, or any other Loan Document. Mortgagor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

23. **NOTICE.** Any notice or other communication required or permitted to be given by this Mortgage or other Loan Documents or by applicable law shall be in writing and shall be provided in accordance with the Loan Agreement and in each case addressed as follows:

If to Mortgagor:

Valleydale Office Plaza, LLC
2200 Valleydale Road, Suite 200
Birmingham, Alabama 35244
Attention: Moiz Fouladbakhsh

Address after completion:

2270 Valleydale Road, Suite 200
Birmingham, Alabama 35244

with a copy to:

James J. Odom, Jr. Esq.
P. O. Box 11244
Birmingham, Alabama 35202

If to Mortgagee:

Oakworth Capital Bank
2100A Southbridge Parkway, Suite 445
Birmingham, Alabama 35209
Attention: Keith Johnson

with a copy to:

David R. Kinman, Esq.
Johnston Barton Proctor & Rose LLP
Colonial Brookwood Center
569 Brookwood Village, Suite 901
Birmingham, Alabama 35209

Either party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

24. **SINGLE-PURPOSE ENTITY.** Until the Loan Obligations are paid in full, Mortgagor shall maintain its status as a Single-Purpose Entity and comply with all those covenants with respect to its status as a Single-Purpose Entity as set forth in the Loan Agreement.

25. **MORTGAGEE STATEMENT; CERTAIN CHARGES.** With respect to (a) any statement, accounting, or similar information requested by Mortgagor or any other Person pursuant to any provision of applicable law; or (b) any other document furnished to Mortgagor or any other Person by Mortgagee at Mortgagor's request, Mortgagee shall have the right to charge Mortgagee's customary charge for providing such statement, accounting, or other information. Mortgagor shall pay Mortgagee its customary charge for any other service rendered by Mortgagee at Mortgagor's request in connection with the Loan or the Mortgaged Property, including the issuance of a request for full or partial reconveyance of this Mortgage, transmitting Loan proceeds to an escrow holder and changing Mortgagee's records relating to the Loan Obligations.

26. **DISCLOSURE OF INFORMATION.** Mortgagee may furnish financial information regarding Mortgagor or the Mortgaged Property to third parties with an existing or prospective interest in the enforcement, evaluation, performance, purchase, or securitization of the Loan Obligations, including but not limited to credit rating agencies and, upon Mortgagor's request will provide a copy of all such disclosed information to Mortgagor and provide an opportunity for Mortgagor to correct any false or misleading information contained in such disclosures. Mortgagor irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

27. **FULL RECONVEYANCE.** Upon the payment and performance in full of all Loan Obligations (other than contingent obligations which survive the release hereof and as to which no event giving rise to the incurrence of any such obligation shall have occurred), and upon request of Mortgagor, Mortgagee shall reconvey the Mortgaged Property and shall surrender to Mortgagor the Note (marked Paid in Full) and all other documents evidencing the Loan Obligations secured by this Mortgage. The grantee in such reconveyance may be described as the Mortgagor or other "person or persons legally entitled thereto." Such reconveyance shall operate as a reassignment of the Rents and profits assigned to Mortgagee under the Assignment of Leases and Rents.

28. **EXECUTION OF DOCUMENTS BY MORTGAGEE.** Without notice to or affecting the liability of Mortgagor or any other Person for the payment or performance of the Loan Obligations, without affecting the lien or priority of this Mortgage or Mortgagee's rights and remedies under the Loan Documents, and without liability to Mortgagor or any other Person, Mortgagee shall have the right, at any time and from time to time, to do any one or more of the following: (a) reconvey any part of the Mortgaged Property to Mortgagor and (b) execute any extension agreement relating to any or all of the Loan Obligations, any document subordinating the lien of this Mortgage to any other lien or document, or any other document relating to the Mortgaged Property, the Loan Obligations, or the Loan Documents.

29. **FUTURE ADVANCES, REVOLVING AND OPEN-END LOANS, AND OTHER DEBTS.** It is expressly understood that this Mortgage is intended to and does secure not only the Loan Obligations, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of Mortgagor to Mortgagee, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this Mortgage on the probate records of the county where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

30. **COMMERCIAL LOAN.** Mortgagor represents and warrants that the loans or other financial accommodations included as Loan Obligations secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer, or household purposes.

31. **RELATIONSHIP OF PARTIES; NO THIRD PARTY MORTGAGEE.** The relationship between Mortgagee and Mortgagor shall be solely that of creditor and debtor, respectively, and nothing contained in this Mortgage shall create any other relationship between Mortgagee and Mortgagor. No creditor of any party to this Mortgage and no other person shall be a third party Mortgagee of this Mortgage or any other Loan Document.

32. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Mortgage contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Mortgage. This Mortgage may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

33. **MISCELLANEOUS PROVISIONS.** The captions and headings of the sections of this Mortgage are for convenience only and shall be disregarded in construing this Mortgage. Any reference in this Mortgage to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Mortgage or to a section of this Mortgage. All Exhibits attached to or referred to in this Mortgage are incorporated by reference into this Mortgage. Any reference in this Mortgage to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Mortgage, the term "including" means "including, but not limited to."

34. **WAIVER OF TRIAL BY JURY. EACH OF MORTGAGOR AND MORTGAGEE (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, AND**

THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE EXIST. MORTGAGOR AND MORTGAGEE ARE AUTHORIZED TO SUBMIT THIS MORTGAGE TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO ANY LOAN DOCUMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF MORTGAGOR'S AND MORTGAGEE'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, EACH OF MORTGAGOR AND MORTGAGEE CERTIFIES THAT NEITHER MORTGAGOR'S NOR MORTGAGEE'S REPRESENTATIVES OR AGENTS HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.

35. **SUCCESSORS AND ASSIGNS BOUND.** This Mortgage shall bind, and the rights granted by this Mortgage shall inure to, the respective successors and assigns of Mortgagee and Mortgagor.

36. **COUNTERPARTS.** This Mortgage may be executed in any number of counterparts, all of which when taken together shall constitute one and the same Mortgage.

37. **WAIVER OF AUTOMATIC STAY.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR HEREBY AGREES THAT, IN CONSIDERATION OF MORTGAGEE'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, IN THE EVENT THAT MORTGAGOR SHALL (A) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (C) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (E) BE THE SUBJECT OF AN ORDER, JUDGEMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST MORTGAGOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, MORTGAGEE SHALL THEREUPON BE ENTITLED AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT

LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO MORTGAGEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND MORTGAGOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

[SIGNATURE ON FOLLOWING PAGE]

[Signature page to Mortgage and Security Agreement]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be properly executed as of the date first above written.

MORTGAGOR:

VALLEYDALE OFFICE PLAZA, LLC, an
Alabama limited liability company

By:


Moiz Fouladbakhsh

Its:

Sole Member

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, Dana L. Campbell, a Notary Public in and for said County in said State, hereby certify that Moiz Fouladbakhsh, whose name as the duly authorized Sole Member of Valleydale Office Plaza, LLC an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that being informed of the contents of said instrument, he, as such Sole Member, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 16th day of November, 2010.

Dana L. Campbell

Notary Public

[AFFIX SEAL]

My commission expires: May 10, 2013



EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, known as Lot 1 Valleydale Office Plaza as recorded in Map Book 42, Page 19 in the Office of the Judge of Probate, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter section and run North 00 degrees 00 minutes 00 seconds West along the West line of said quarter-quarter section for a distance of 332.95 feet to a point on the Northwestern right of way line of Valleydale Road (80' right of way) and a point on a curve to the left, said curve having a radius of 5689.64 feet, a central angle of 00 degrees 11 minutes 26 seconds, a chord distance of 18.93 and a chord bearing of N 46 degrees 31 minutes 07 seconds East, thence run along arc of said curve and along said right of way of Valleydale Road for a distance of 18.93 feet to a found capped rebar stamped "PLS#15153", said point also being the POINT OF BEGINNING; thence leaving said right of way, run North 00 degrees 00 minutes 00 seconds West for a distance of 512.44 feet to a found capped rebar stamped "PLS#15153"; thence run South 90 degrees 00 minutes 00 seconds East for a distance of 121.98 feet to a set 5/8" rebar capped and stamped CA-560LS; thence run South 00 degrees 00 minutes 00 seconds East for a distance of 304.58 feet to a set 5/8" rebar capped and stamped CA-560LS; said point being at the point of beginning of a tangent curve to the left, said curve having a radius of 87.00 feet, a central angle of 41 degrees 49 minutes 54 seconds and a chord distance of 62.12 feet and a chord bearing of South 20 degrees 54 minutes 57 seconds East; thence run in a Southerly to Southeasterly direction along the arc of said curve for a distance of 63.52 feet to a set 5/8" rebar capped and stamped CA-560LS on the Northwesterly right of way line of Valleydale Road and a point on a non-tangent curve to the left, said curve having a radius of 5689.68 feet, a central angle of 02 degrees 05 minutes 38 seconds, a chord distance of 207.93 feet and a chord bearing of South 43 degrees 53 minutes 34 seconds West; thence run in a Southwesterly direction along arc of said curve and along the Northwesterly right of way of said Valleydale Road for a distance of 207.94 feet to the POINT OF BEGINNING. Said parcel contains 55,568 square feet or 1.28 acres more or less.