

NOTE: THIS MORTGAGE IS A PURCHASE MONEY MORTGAGE

IN ACCORDANCE WITH SECTION 40-22-2 (1)(b) OF THE CODE OF ALABAMA (1975, AS AMENDED) THE MAXIMUM INDEBTEDNESS SECURED HEREBY FOR RECORDING TAX PURPOSES ON THE DATE OF THIS INSTRUMENT IS ONE MILLION TWO HUNDRED THIRTY TWO THOUSAND SEVEN HUNDRED NINETY ONE AND NO/100 (\$1,232,791.00) DOLLARS.

THIS DOCUMENT PREPARED BY:

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STATE OF ALABAMA

COUNTY OF SHELBY

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), executed on the 30th day of December, 2010, by Pate Montgomery, LLC, an Alabama limited liability company (hereinafter called "Borrower"), Mortgagor, which utilizes a mailing address of Post Office Box 20828, Tuscaloosa, Alabama 35402, in favor or for the benefit of Southern States Bank, a banking corporation formed pursuant to the laws of the State of Alabama (hereinafter called "Lender"), Mortgagee, which utilizes a mailing address of Post Office Box 8370, Anniston, Alabama 36202.

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender for borrowed money in the principal sum of Two Million Six Hundred Thousand and No/100 (\$2,600,000.00) Dollars (the "Loan"), as evidenced by a Promissory Note of even date herewith from Borrower, payable to Lender with interest thereon in installments (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein collectively referred to as the "Note") (the Note, together with this Mortgage, any amendments, modifications and replacements hereof or thereof, and all other documents now or hereafter evidencing or securing the Note and all certificates, documents and instruments now or hereafter executed by Borrower in favor of Lender in connection with the Loan, are individually referred to herein as a "Loan Document" and collectively referred to herein as the "Loan Documents"); and

WHEREAS, as a condition precedent to making the Loan, Lender required that Borrower execute this Mortgage as security for the Loan.

NOW, THEREFORE, in consideration of the foregoing recitals, the sum of Ten and No/100 (\$10.00) Dollars and for other good and valuable consideration, the receipt and sufficiency of which

is hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower under the Note, this Mortgage, any other obligation of Borrower to Lender as evidenced by a promissory note separate from the Note and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), including all future advances thereof, Borrower has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto Lender, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (which property is hereinafter referred to collectively in this Mortgage as the "Mortgaged Property"):

(a) That certain tract or parcel or tracts or parcels of land as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Land") all of which is hereby declared and shall be deemed to be a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and 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 apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same 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 Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them;

(d) All rents, issues, profits and revenues of the Mortgaged Property from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the

estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law), any and all licenses and permits obtained by Borrower relating to the use and operation of the Mortgaged Property.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns forever, subject however to the terms and conditions herein set forth.

PROVIDED, HOWEVER, that if Borrower shall pay to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform and observe all and singular the covenants and promises in the Note and in each of the Loan Documents expressed to be kept, performed and observed by and on the part of Borrower, all without fraud or delay, then this Mortgage, and all the properties, interests and rights hereby granted, bargained and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

AND Borrower covenants and agrees with Lender as follows:

ARTICLE I

1.01 Performance of Note and Mortgage. Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02 Warranty of Title. Borrower is lawfully seized of an indefeasible estate in fee simple in the Land, Improvements and Mortgaged Property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Taxes, Liens and Other Charges.

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and

interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings, and (ii) if required by Lender, Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender, and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note or this Mortgage.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Mortgaged Property; and all utility charges which are incurred by Borrower for the benefit of the Mortgaged Property, or which may become a charge or lien against the Mortgaged Property for gas, electricity, water and sewer services and the like furnished to the Mortgaged Property, and all other public or private assessments or charges of a similar nature affecting the Mortgaged Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Mortgaged Property; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

1.04 Insurance. Borrower agrees at all times to keep the Improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire, hazards included within the term extended coverage and any other hazards including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lenders approval which approval shall not be unreasonably withheld. If Borrower fails to maintain the coverage

described herein Lender may, at its option, obtain coverage to protect Lenders rights in the Mortgaged Property as evidenced by this Mortgage and the cost so incurred by Lender shall be an obligation of Borrower to Lender secured by this Mortgage. All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Improvements damaged, if the restoration or repair is economically feasible and Lenders security is not lessened. If the restoration or repair is not economically feasible or Lenders security would be lessened, the insurance proceeds shall be applied to the Note secured by this Mortgage whether or not then due with any excess paid to Borrower.

1.05 Monthly Deposits. Borrower shall, upon request of Lender, deposit with Lender, on the due date of each installment under the Note, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to pay such charges; said deposits to be held and to be used by Lender to pay current taxes and assessments on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any default in the provisions of this Mortgage or the Note, or any instrument evidencing, securing or in any way related to the Secured Indebtedness, Lender may, at its option, apply any money in the fund relating from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.06 Condemnation. If all or any Material Part (as herein defined) of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the indebtedness secured hereby shall at the option of the Lender become immediately due and payable. For purposes hereof, a "Material Part" of the Mortgaged Property shall be any part thereof, which, if damaged or taken, shall prevent the cash flow available from the remaining portions of the Mortgaged Property after such taking from supporting the remaining debt secured hereby in substantially the same ratio of coverage as the debt is being supported prior to such damage or taking. Borrower, immediately upon obtaining knowledge of the institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Mortgaged Property or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation. Borrower may compromise or settle any claim for compensation but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of Lender. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, and Lender is

authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts therefore without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair or restoration of the Mortgaged Property taken, or may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys shall be paid to Borrower.

1.07 Intentionally Omitted.

1.08 Care of Mortgaged Property.

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

(b) Borrower will not remove, demolish or alter the structural character of any Improvement located on the Land without the written consent of Lender, nor make or permit use of the Mortgaged Property for any purpose other than that for which the same are now used.

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

(d) Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property during normal business hours.

(e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower will, except as provided in Section 1.04 of this Mortgage, promptly restore the Mortgaged Property to the equivalent of its original condition; and if a part of the Mortgaged Property shall be damaged through condemnation, Borrower will promptly restore, repair or alter the remaining portions of the Mortgaged Property in manner satisfactory to Lender. Notwithstanding the foregoing, Borrower shall not be obligated so to restore unless in each instance Lender agrees to make available to Borrower any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Borrower of its obligation to restore. In the event all or any portion of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall

promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Mortgaged Property (as determined by Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.09 Leases. Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases hereafter created with respect to all or any part of the Mortgaged Property, and will enter into leases only upon a lease form previously approved by Lender and for a fair market rental, unless Borrower first obtains Lender's written approval of changes to such form or the execution of a lease not on such form. Borrower warrants to Lender, that as of the date hereof, no person or party has any occupancy rights with respect to the Mortgaged Property which are not evidenced by written leases. Borrower further warrants to Lender that until the Note is paid in full, no person or party will be granted any leasehold rights with respect to the Mortgaged Property on terms not approved by Lender. If requested by Lender, Borrower will separately assign to Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the Mortgaged Property from time to time accruing. Borrower shall cause all tenants of the Mortgaged Property to deliver to Lender such estoppel certificates, subordination and attornment agreements or other supplemental agreements as Lender may from time to time require.

1.10 Security Agreement. With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Mortgaged Property, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama and Borrower hereby grants to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property may be appropriately filed by Lender. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy

of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Borrower will promptly upon demand reimburse Lender for the costs therefore.

1.11 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under the Note and under this Mortgage, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.12 Indemnity; Expenses. Borrower will pay or reimburse Lender, upon demand therefore, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that Borrower shall not be required to indemnify Lender for matters directly caused by Lender's gross negligence or willful misconduct.

1.13 Estoppel Affidavits. Upon ten (10) days prior written notice, Borrower shall furnish to Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

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

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

1.16 Intentionally Omitted.

1.17 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.17 shall control every other provision of this Mortgage and of the Note.

1.18 Default Affidavits. Upon the occurrence of any default hereunder, at Lender's request, Borrower shall deliver an affidavit specifying the nature of such default and the period of existence thereof and the action Borrower has taken or proposes to take with respect thereto.

1.19 Legal Actions. In the event that Lender is made a party, either voluntarily or

involuntarily, in any action or proceeding affecting the Mortgaged Property, the Note, the Secured Indebtedness or the validity or priority of this Mortgage, Borrower shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.20 Compliance with Zoning and Restrictions. Borrower shall at all times operate the Mortgaged Property in accordance with all applicable restrictions and zoning ordinances.

1.21 Conveyance of Mortgaged Property. Borrower shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Lender except as provided for in any Loan Agreement executed by Borrower and Lender on even date herewith. Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of Borrower or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of Lender the Secured Indebtedness shall be immediately due and payable in the event that Borrower conveys all or any portion of the Mortgaged Property or any interest therein other than in conformity or compliance with the Loan Agreement or Note, or in the event that Borrower's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.22 Compliance with Applicable Environmental Law. The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or asbestos, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. §6901 et seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. §9671, et seq.; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Borrower represents and warrants to Lender that neither the Mortgaged Property nor Borrower are in violation of or subject to any existing, pending or, to the best of Borrower's knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that Borrower has taken all steps necessary to

determine and has determined that no asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property or Lender, and this indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure; provided, however, that this indemnity shall not extend to any such fines, charges, fees, expenses, damages, losses, liabilities, or response costs which result solely from any action or inaction by Lender after the date upon which Lender succeeds to the Borrower's interest in the Mortgaged Property through foreclosure, deed in lieu of foreclosure or otherwise. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lender to have access to the Mortgaged Property at all reasonable times in order to conduct any tests which Lender deems are necessary to ensure that Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

1.23 Appraisals. At Lender's request, Borrower will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals. Borrower will reimburse Lender for the cost of any such appraisals, not to exceed the cost of one appraisal in any twelve (12) month period unless (i) an Event of Default shall then exist hereunder, or (ii) such appraisal shall be required by any regulatory guideline or authority to which Lender is subject, or (iii) Lender shall have determined, in the exercise of its reasonable business judgment, that the value of the Mortgaged Property shall have materially declined since the date of the last such appraisal.

1.24 Future Advances. Lender, at its option, may make future advances to Borrower; provided that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Documents. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such Future Advances (a) at the request of Borrower, whether or not there is any obligation to make future advances, or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.25 Representations and Warranties. Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) Borrower is a duly organized and validly existing Alabama limited liability company in good standing with the State of Alabama Department of Revenue. Borrower has the full power and authority to consummate the transactions contemplated by this Mortgage.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or Guarantor or which might impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Neither Borrower nor Guarantor is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or Guarantor's business or assets, and neither Borrower nor Guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or such Guarantor is subject. Neither the execution and performance of this Mortgage, the Note, nor any other Loan Document will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or Guarantor.

(c) All financial statements of Borrower, Guarantor and other business enterprises in which Borrower or Guarantor have an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of their respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change shall have occurred in the financial conditions reflected therein between the respective dates thereof and the date of submission to Lender.

(d) All utility and sanitary sewage services necessary for the use of the Mortgaged Property and all roads necessary for the use of the Mortgaged Property are, or will be made, available pursuant to permanent private or public easements which are not subject to the exclusive rights of any other persons which could interfere with Borrower's use thereof.

(e) There are no proceedings pending or, to the best of Borrower's knowledge, threatened, to acquire by power of condemnation or eminent domain any portion of the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

(f) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the Loan application or pursuant to any commitment letter issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

(g) The Mortgaged Property will at all times comply with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters.

ARTICLE II

2.01 Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Borrower to pay any installment of principal, interest, or other charges required under the Note, this Mortgage or any other Loan Document, as and when the same comes due, subject only to the expiration of any applicable notice or cure period set forth therein (a "Monetary Default"); or

(b) The failure of Borrower (or where applicable any Guarantor) properly and timely to perform or observe any covenant or condition set forth in this Mortgage or any of the Loan Documents (other than a Monetary Default) which is not cured within any applicable cure period as set forth herein or, if no cure period is specified therefore, is not cured within thirty (30) days of Lender's notice to Borrower of such Default; or

(c) The occurrence of any "Event of Default" under, and as defined in, any other Loan Document.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Right to Enter and Take Possession.

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

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements,

additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Performance by Lender. Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Note 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 Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

2.05 Receiver. If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured

Indebtedness 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 to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. Borrower will pay unto Lender upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

2.06 Lender's Power of Enforcement and Power of Sale.

(a) If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the County 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 by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the County where the Mortgaged Property is located and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefore. 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 Lender may elect.

2.07 Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to any insurance premiums, liens, assessments, taxes and charges including utility charges advanced or paid for by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall

determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

2.09 Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower 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 to tenants holding over.

2.10 Waiver of Appraisement, Valuation, Etc.. Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or 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, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.11 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Secured Indebtedness, or any part thereof.

2.12 Discontinuance of Proceedings. In case Lender 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 Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

2.13 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as they or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now

or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

2.14 Waivers. After consulting with and considering the advice of independent legal counsel selected by Borrower, Borrower makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan:

(a) No delay or omission by Lender 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 Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower 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 Borrower hereunder. Failure on the part of Lender 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 Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any 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 Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) 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 or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting 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, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness, 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.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies they may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshalling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower 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.

(d) It is mutually agreed by and between Borrower and Lender that the respective parties waive trial by jury in any action, claim, suit, proceeding, or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Mortgage and/or the conduct of the relationship between Borrower and Lender, all as more particularly set forth in the Note. Said waiver is incorporated herein by this reference as though set forth in full.

2.15 Suits to Protect the Mortgaged Property. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

2.16 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, 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 Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE III

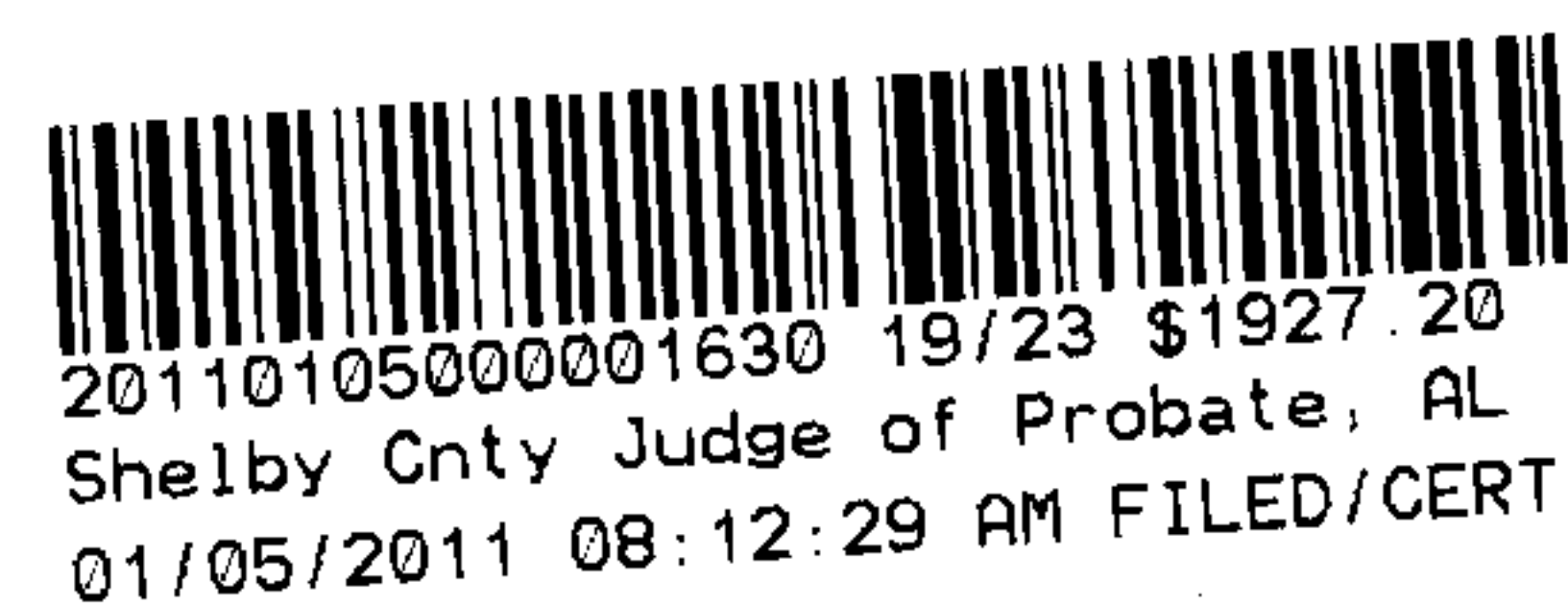
3.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender", such reference shall be deemed to include a reference to the legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited pursuant to the provisions of this Mortgage.

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

3.03 Severability; Complete Agreement. If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

3.04 Applicable Law. The law of the State of Alabama shall govern the validity, interpretation, construction, enforcement and performance of all other Loan Documents. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

3.05 Limitation of Interest. It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the



Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.


3.06 Notices. All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the date deposited in United States mail, certified or registered, with return receipt requested, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth in the heading of this Mortgage. Either party may change its address for receipt of notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.06.

3.07 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

3.08 Assignment. This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.


3.09 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

SIGNATURE OF BORROWER APPEARS ON PAGE WHICH FOLLOWS


20110105000001630 20/23 \$1927.20
Shelby Cnty Judge of Probate, AL
01/05/2011 08:12:29 AM FILED/CERT

IN WITNESS WHEREOF, Borrower has executed this Mortgage on the day and year first above written.

Pate Montgomery, LLC, an Alabama limited liability company

By: 
Luther S. Pate, IV, its Manager

STATE OF ALABAMA


NOTARY ACKNOWLEDGEMENT

COUNTY OF TULSA

I, the undersigned, a Notary Public in and for said State and County, hereby certify that Luther S. Pate, IV, whose name as Manager of Pate Montgomery, LLC, an Alabama limited liability company, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage, he, as such Manager executed the same voluntarily on behalf of Pate Montgomery, LLC, an Alabama limited liability company, on the day the same bears date.

Given under my hand and seal this 30th day of December, 2010.

(SEAL)


NOTARY PUBLIC
My Commission Expires: 7-7-11



20110105000001630 21/23 \$1927.20
Shelby Cnty Judge of Probate, AL
01/05/2011 08:12:29 AM FILED/CERT

Exhibit "A"

Land located in Shelby County, Alabama:

Parcel One in Shelby County, Alabama:

A parcel of land situated in the Northeast Quarter of the Northwest Quarter of Section 14, Township 21 South, Range 3 West, Shelby County, Alabama more particularly described as follows:

Commence at a 3 inch iron pipe found at the Northwest Corner of said Section 14; thence run South 89 degrees 03 minutes 42 seconds East along the North boundary of said Section 14 a distance of 1538.52 feet to a point on the Southeast right of way of Alabama Highway No. 119 (variable right of way); thence run South 25 degrees 20 minutes 17 seconds West along said right of way a distance of 134.10 feet to the point of beginning; thence depart said right of way and run South 67 degrees 21 minutes 17 seconds East a distance of 253.16 feet; thence run South 25 degrees 30 minutes 31 seconds West a distance of 217.20 feet; thence run North 64 degrees 29 minutes 29 seconds West a distance of 253.23 feet to a point on the Southeast right of way of said Alabama Highway No. 119; thence run North 25 degrees 20 minutes 17 seconds East along said right of way a distance of 204.56 feet to the point of beginning.

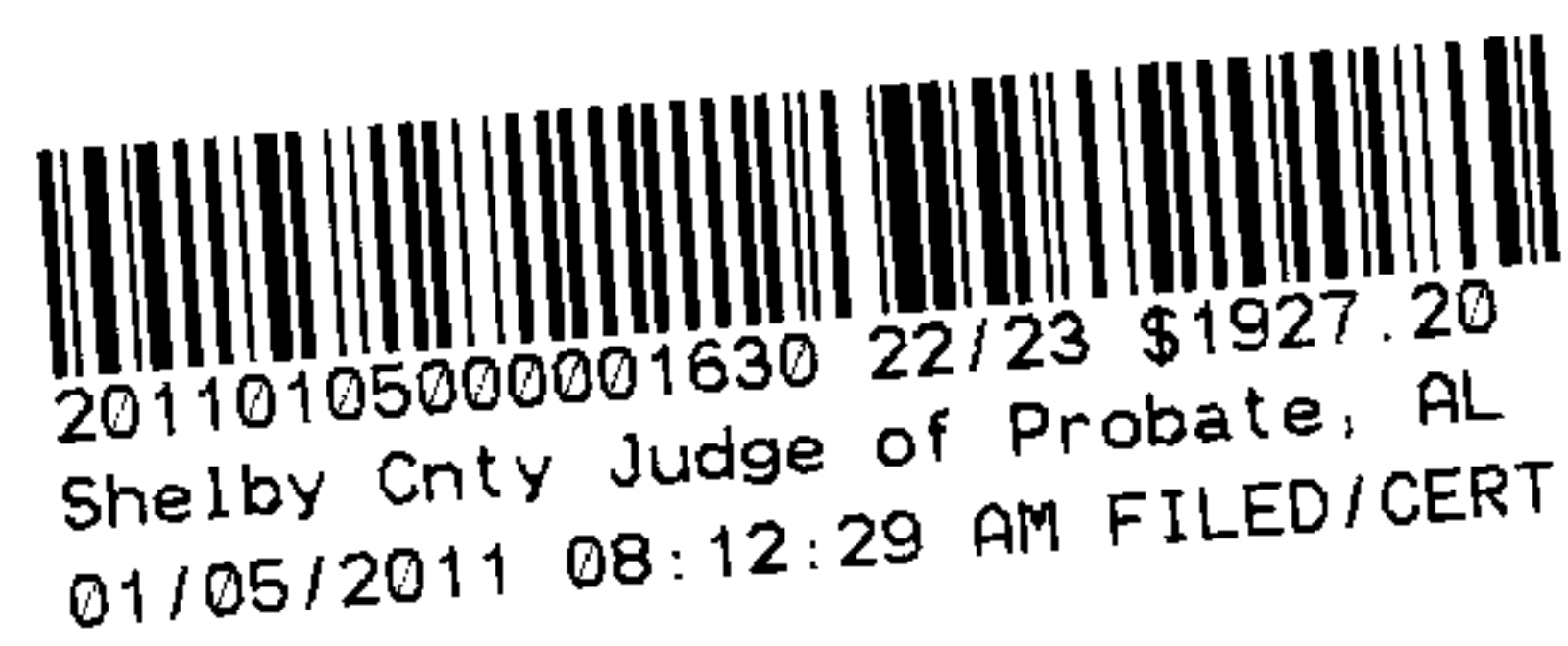
Parcel One now known as Lot 2 as shown on the plat or map of White Stone Center Subdivision recorded in Map Book 33, Pages 138 A & B, in the Probate Office of Shelby County, Alabama.

Parcel Two in Shelby County, Alabama:

Ingress and Egress easements for the benefit of Parcel One as created by that certain Declaration of Restrictions, Covenants and Conditions and Grant of Easements as recorded in Instrument #20031124000768400 in the Probate Office of Shelby County, Alabama, over, under and across the property described therein.

Together with that certain Non-Exclusive private easement between Brusters and Southtrust for the benefit of Parcel One as created by that certain Reciprocal Easement Agreement as recorded in Instrument # 20040615000322360, in the Probate Office of Shelby County, Alabama, under, over and across the property described therein.

Together with that certain easement regarding Curb-Cuts between Outparcel 2 and Shopping Center Tract as created by Clarification Regarding Curb-Cuts between Outparcel 2 and The Shopping Center Tract recorded in Instrument # 20040329000157920, in the Probate Office of Shelby County, Alabama, over, under and across the property described therein.



Parcel Three in Shelby County, Alabama:

Lot 2B, according to the Map and Survey of Resource Center, as recorded in Map Book 24, Page 118, in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel Four in Shelby County, Alabama:

A non-exclusive, perpetual easement for the benefit of Parcel Three for signage purposes as created by that certain Easement Agreement recorded in Instrument # 1999-13441, in the Office of the Judge of Probate of Shelby County, Alabama, and amended by that certain Scrivener's Affidavit dated August 31, 2004, and recorded in Instrument #20040914000511630, aforesaid records, over, under and across the property described therein.


Together with the terms and conditions of that certain Assignment of Easement as recorded in Instrument # 20040914000511640, in the Office of the Judge of Probate of Shelby County, Alabama, and that certain Assignment of Easement Rights as recorded in Instrument # 20040914000511660, aforesaid records.

Parcel Five in Shelby County, Alabama:

Lot 2, according to the plat or map of Chelsea Crossing Subdivision, as recorded in Map Book 37, Page 49, in the office of the Judge of Probate of Shelby County, Alabama.

Parcel Six in Shelby County, Alabama:

Rights obtained that constitute an interest in real estate and benefit Parcel Five under that certain Access Easement Agreement dated June 7, 2007, by and between Wachovia Bank, National Association & MJM Chelsea, LLC, as recorded in Instrument #20070608000270400, in the Office of the Probate Judge of Shelby County, Alabama.


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Shelby Cnty Judge of Probate, AL
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