


THIS INSTRUMENT PREPARED BY:

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**AMENDED AND RESTATED FUTURE ADVANCE
MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT
(ALABAMA)**

STATE OF ALABAMA

COUNTY OF SHELBY

THIS AMENDED AND RESTATED INDENTURE (herein this "**Mortgage**") made this 20, day of December 2011, between **STV ONE NINETEEN SENIOR LIVING, LLC**, a Delaware limited liability company (hereinafter called the "**Borrower**," whether one or more), Mortgagor and **FUNDAMENTAL ADVISORS LP ("Agent")**, as **Agent for the benefit of the FUNDAMENTAL PARTNERS, LP, FUNDAMENTAL PARTNERS II LP and FUNDAMENTAL PARTNERS (TAX-EXEMPT) LP** (hereinafter collectively referred to as the "**Lenders**"), Mortgagee.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A
FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF
SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, Borrower is justly indebted on a loan (the "**Loan**") originally made by Compass Bank (the "**Original Lender**") in the principal sum of TWENTY-EIGHT MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$28,875,000.00), or so much as may from time to time have been disbursed thereunder, as evidenced by a promissory note dated June 16, 2008, payable to Original Lender with interest thereon (the "**Note**") on demand or as otherwise provided in the Note; and

WHEREAS, the Note is secured by (i) that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement (Alabama) dated June 16, 2008 (the "**Mortgage**"), and recorded with the real estate records of the Shelby County Judge of Probate (the "County Recorder") as Instrument No. 20080618000249520, (ii) that certain Assignment of Rents and Leases dated June 16, 2008, and recorded with the County Recorder as Instrument No. 20080618000249530, (the "**Assignment of Rents**"), (iii) that certain UCC-1 Financing Statement recorded with the County Recorder as Inst. No. 20080618000249540 (the "AL Financing Statement") and (iv) that certain UCC-1 Financing Statement filed with the Delaware Secretary of State as Inst. No. 2008 2082962 (the "DE Financing Statement") (the Note, the Original Mortgage, the Original Assignment of Rents, the AL Financing Statement and the DE

Financing Statement and all documents executed and delivered in connection therewith are herein collectively referred to as the "Loan Documents"; the loan that is the subject of the Loan Documents, as assigned, amended and restated as herein described, is referred to as the "Loan");

WHEREAS, pursuant to that certain Assignment of Loan Documents dated as of June 17, 2011 (the "Loan Documents Assignment"), Lenders acquired all of the interests of the Original Lender in and to the Loan Documents relating thereto; and

WHEREAS, simultaneously herewith, Lenders are assigning their interests under the Mortgage, the Assignment of Leases and Rents and certain of the other Loan Documents to Agent for the benefit of the Lenders; and

WHEREAS, simultaneously herewith, Lenders and Borrower are also amending and restating (i) the Note (as may be further amended from time to time, the "Amended and Restated Note") and the Construction Loan Agreement between the Borrower, the Lenders and the Agent dated June 16, 2008 (the "Amended and Restated Loan Agreement"), and are modifying certain of the other original Loan Documents, all as more particularly described in that certain First Modification Agreement between Borrower and Lenders of even date herewith (the Loan Documents, as assigned, amended and/or restated as described herein, being referred to as the "Loan Documents"); and

WHEREAS, Borrower may hereafter become indebted to the Lenders or to a subsequent holder of this Mortgage on loans or otherwise; and

WHEREAS, the parties desire to secure the principal amount of the Amended and Restated Note, as may be increased pursuant to the terms of the Loan Agreement, with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Amended and Restated Note and any and all other additional indebtedness of Borrower to the Lenders, 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, including all obligations incurred by the Borrower under any agreement between Borrower and Agent and/ or Lenders or any affiliate of the Agent or Lenders and related to the Loan, whether now existing or hereafter entered into, which provides for an interest rate currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose of hedging the Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (each, a "Hedge Agreement") (herein "Other Indebtedness").

NOW, THEREFORE, the Borrower, in consideration of the making of the Loan, 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 the Agent or Lenders on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants,

conditions and agreements hereinafter set forth and set forth in the Amended and Restated Notes and all other Loan Documents evidencing, securing or executed in connection with the Loan, and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Agent, on behalf of the Lenders, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the Agent or Lenders or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "**Mortgaged Property**") to-wit:

- (a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Land**");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**");
- (c) All accounts, general intangibles, deposit accounts, securities accounts, goods (each as presently or hereafter defined in the UCC), general intangibles, goods, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

- (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and
- (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Agent hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Agent may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;
- (e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing;
- (f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Agent, on behalf of the Lenders, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Borrower shall fully pay or cause to be fully paid to the Lenders the principal and interest payable with respect of the Loan and the Amended and Restated Notes, and any extensions, renewals, modifications and refinancings of same, 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 the Borrower, and shall pay all charges incurred herein by the Agent and Lenders on account of Borrower, including, but not limited to, attorneys' fees, and shall pay any and all Other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Amended and Restated Notes, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, and (ii) neither the Agent nor the Lenders

shall have any further commitment or agreement to make advances, incur obligations or give value under the Loan, the Amended and Restated Notes, any other Loan Document or any Other Indebtedness Instrument (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), 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. This Mortgage is not intended to, and shall not be construed to, effect a novation, and, except as expressly provided or referred to herein, none of the Loan Documents has been modified, amended, canceled, terminated, released, satisfied, superseded or otherwise invalidated.

AND the Borrower further represents, warrants, covenants and agrees with the Agent as follows:

ARTICLE I GENERAL

1.01 Performance of Mortgage, Amended and Restated Note and Loan Documents. The Borrower shall perform, observe and comply with all provisions hereof, of the Amended and Restated Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to the Agent, on behalf of the Lenders, the sum of money expressed in the Amended and Restated Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, of the Amended and Restated Note, of the other Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, except for the matters set forth on **Exhibit B** hereto, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, and has good title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Agent, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 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, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the Lenders, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the 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.

1.04 Monthly Tax Deposit. If required by Agent following an Event of Default, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Agent, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Agent. Borrower agrees to pay Agent, on behalf of Lenders the amount of any deficiency necessary to enable Agent to pay such taxes when due. Such sums may be applied by the Agent to the reduction of the indebtedness secured hereby in any manner selected by Agent or Lenders if an Event of Default shall occur under this Mortgage or under the Amended and Restated Notes, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Agent in writing, no application of tax deposits to the Amended and Restated Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

- (a) The Borrower shall pay, or cause to be paid, promptly, when and as due, and, if requested, will exhibit promptly to the Agent receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Agent in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) The Borrower promptly shall pay, or cause to be paid, and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.
- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Agent or Lenders in any way are adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Agent.

1.06 Insurance.

- (a) The Borrower shall procure for, deliver to, and maintain for the benefit of the Lenders during the term of this Mortgage insurance policies in such amounts as

the Agent shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Agent may reasonably require. The form of such policies and the companies issuing them shall be reasonably acceptable to the Agent, and, unless otherwise agreed by the Agent in writing, shall provide for coverage without coinsurance or deductibles. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Agent, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Agent shall be delivered to the Agent. Upon reasonable request, the Borrower shall deliver to the Agent receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

- (b) The Agent hereby is authorized and empowered, at its option, and with the participation of the Borrower, to adjust or compromise any loss under any insurance policies on the Mortgaged Property (other than general liability insurance policies), and to collect and receive the proceeds from any such policy or policies. Notwithstanding the foregoing, if the aggregate loss under a single event or casualty is less than \$250,000.00, then Borrower shall have the right, without Agent's consent, to adjust, compromise or settle the casualty insurance claim with respect thereto and to receive the insurance proceeds therefor, provided that Borrower uses such proceeds to repair or replace the property damaged by such casualty. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Agent, on behalf of the Lenders, instead of to the Borrower and the Agent jointly. After deducting from said insurance proceeds any expenses incurred by the Agent in the collection or handling of said funds, the Agent may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Agent, whether then matured or to mature in the future, or at the option of the Agent, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Agent, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Neither the Agent nor any Lender shall be liable to Borrower or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.
- (c) If required by the Agent following an Event of Default, the Borrower shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Agent to pay such insurance

premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Agent, and no interest shall be payable in respect thereof. Upon demand of the Agent, the Borrower agrees to deliver to the Agent such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Borrower with Agent pursuant to this Paragraph 1.06 to enable the Agent to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Amended and Restated Note, any other Loan Documents, or any Other Indebtedness instruments, the Agent may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Agent, but, unless otherwise agreed by the Agent in writing, no application of insurance proceeds to the Loan, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.07 Condemnation.

If all or any part 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 or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, and such taking materially and adversely affects the Improvements on the Mortgaged Property or the use thereof, the parking or access drives on the Mortgaged Property, or causes the Improvements to no longer be in compliance with applicable laws, rules and regulations, then the entire indebtedness secured hereby shall at the option of the Agent become immediately due and payable. The Agent, on behalf of the Lenders, shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Agent, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Agent shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Agent may require. The Borrower promptly shall notify the Agent in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Agent, on behalf of the Lenders, shall be entitled to retain, at the expense of the Borrower, their own legal counsel in connection with any such proceedings or threatened proceedings. Neither the Agent nor any Lender shall be under any obligation to the Borrower or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

- (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.
- (b) Except as otherwise provided herein, no buildings, and except in the ordinary course of business, no fixtures, personal property, or other part of the Mortgaged Property, shall be removed, demolished or substantially altered without the prior written consent of the Agent. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.
- (c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower shall give immediate written notice of the same to the Agent.
- (d) The Agent hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect the Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours, subject to the rights of tenants in possession.
- (e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower promptly shall restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Agent, on behalf of the Lenders, shall apply any net proceeds from the casualty in question and held by Agent, on behalf of the Lenders, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower promptly shall restore, repair or alter the remaining property in a manner satisfactory to the Agent; provided, however, that if there are condemnation proceeds or awards, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Agent shall apply any net proceeds or awards from the condemnation and held by Agent, as provided in Paragraph 1.07, toward restoring the damaged improvements.

1.09 Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Agent, the Borrower, at Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to the Agent and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Agent any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Agent, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Amended and Restated Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Agent may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Agent the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lenders have given value under the Amended and Restated Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.
- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Borrower by whatsoever means, including that in the event the Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Borrower or the Agent or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lenders' making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Borrower hereby grants, bargains, sells and conveys to Agent, on behalf of the Lenders, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. The Agent, for the benefit of the Lenders, also shall have and hereby are granted a security interest in all monies, securities and other property of the Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Agent or Lenders by or for the account of the Borrower (including indebtedness due from the Agent or Lenders to the Borrower, and any and all claims of Borrower against Agent or Lenders,

at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Agent may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as the Agent may determine, any such monies, securities or other property held or controlled by the Agent or Lenders. No such application of funds shall, unless otherwise expressly agreed by the Agent in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. The Borrower shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Agent, Borrower shall furnish Agent with executed copies of all leases now or hereafter existing on the Mortgaged Property, and all leases shall be substantially prepared on a form approved by Agent. Borrower shall not accept payment of rent more than one (1) month in advance without the express written consent of Agent, other than security deposits. If requested by the Agent, the Borrower shall execute and deliver to Agent, as additional security, such other documents as may be requested by Agent to evidence further the assignment to Agent hereunder, and to assign 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. The Borrower shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Agent, except as permitted in the Amended and Restated Loan Agreement.

1.12 Expenses. The Borrower shall pay or reimburse the Agent for all reasonable attorneys' fees, costs and expenses incurred by the Agent in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Agent in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Agent is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Amended and Restated Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by the Agent shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Agent of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Amended and Restated Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then the Agent, at its option and following notice to the Borrower,

may perform or observe the same; and all payments made for costs or expenses incurred by the Agent in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Agent with interest thereon calculated in the manner set forth in the Amended and Restated Note, and at the Default Rate of interest specified in the Amended and Restated Loan Agreement, or, if no default interest rate is specified, then at the rate set forth in the Amended and Restated Notes, plus two percentage points (2%). The Agent hereby is 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 covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower for trespass or otherwise.

1.14 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property as set forth in the Amended and Restated Loan Agreement.

1.15 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Agent/Lenders shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. The Borrower shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property, except in accordance with the Amended and Restated Loan Agreement, without obtaining the express written consent of the Agent at least thirty (30) days prior to such conveyance. If Borrower should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Agent, then, in such event, the entire balance of the indebtedness (including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Agent may elect) shall without notice become due and payable forthwith at the option of the Agent.

1.17 Environmental and Compliance Matters. Borrower represents, warrants and covenants, to the best of Borrower's knowledge, and except as may be disclosed in the Phase I Site Assessment dated April 22, 2008 and prepared by Gallet & Associates, Inc. and delivered to Agent with respect to the Mortgaged Property, as follows:

- (a) No Hazardous Materials (hereinafter defined) in amounts that would constitute a violation of applicable environmental laws have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**") (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, et seq.), the

Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Sections 6901, et seq.), the Clean Water Act (33 U.S.C. Sections 1251, et seq.), the Clean Air Act (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("**OSHA**") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

- (b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;
- (c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;
- (d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;
- (e) The Borrower promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, the Borrower represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("**ADA**") (42 U.S.C. Sections 12101, et seq.) and the Rehabilitation Act of 1973 ("**Rehabilitation Act**") (29 U.S.C. Sections 749, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.
- (f) Borrower shall give oral and written notice to Agent as soon as reasonably practicable of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Borrower agrees to and does hereby indemnify and hold Agent and Lenders harmless from all loss, cost, damage, claim and expense incurred by Agent or Lenders on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Borrower's failure to perform any obligations of this Paragraph 1.17, (iii) Borrower's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, and any

subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences, but shall not apply. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property by Agent or Lenders while a "mortgagee in possession", or after the acquisition of title to the Mortgaged Property by Agent through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Agent, the Borrower shall and hereby does grant and convey to the Agent, its agents, representatives, contractors, and employees, to be exercised by Agent following an Event of Default hereunder or under any of the other Loan Documents, but subject to rights of tenants in possession, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein "**Inspections**"), as the Agent, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Agent, the Agent shall have no obligation to perform any such Inspections, or to take any remedial action. All the reasonable costs and expenses incurred by the Agent with respect to any Inspections which the Agent may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by the Borrower, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. The Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Amended and Restated Loan Agreement, or otherwise as permitted in writing by the Agent; (b) use diligent efforts to maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a "**Governmental Authority**" means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b)

"Governmental Requirements" means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Borrower, in consideration of Lenders' 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 Agent on account of Borrower, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Amended and Restated Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the Agent, for the benefit of the Lenders, 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, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the 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 the Agent 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 the Agent, for the benefit of the Lenders, and the Agent shall have the right after an Event of Default, and the Borrower does hereby appoint irrevocably the Agent its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to be exercised only after an Event of Default under the Amended and Restated Loan Agreement, 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 the Agent would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Borrower represents and agrees that no rent (other than security deposits) has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Borrower, except as otherwise permitted in the Amended and Restated Loan Agreement. The Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting the Agent or Lenders as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Agent pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Agent and Lenders, no liability shall be asserted or enforced against the Agent or Lenders, all such liability being expressly waived and released by the Borrower.

2.04 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents, and to enter into leases with respect to the Mortgaged Property as herein provided, and to amend, modify and terminate such leases in the ordinary course of business, so long as there exists no Event of Default under this Mortgage, and provided further, that such rights of the Borrower 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 Agent or Lenders, except as otherwise provided in the Amended and Restated Loan Agreement.

2.05 No Obligation of Agent or Lenders Under Leases. Neither the Agent nor any Lender shall be obligated, unless it is then a "mortgagee in possession", 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 the Borrower shall and does hereby agree to indemnify and hold the Agent and Lenders harmless of and from any and all liability, loss or damage which they 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 any one or more of them 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; provided, that Borrower shall not indemnify Agent or Lenders against matters caused by Agent or Lenders' own gross negligence or willful misconduct. Should the Agent or Lenders 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 the Agent or Lenders in connection with any one or more of said leases, subleases or agreements (other than with respect to matters caused by the Agent or Lenders' own gross negligence or willful misconduct), the Borrower agrees to reimburse the Agent and Lenders for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and reasonable attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Borrower 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 the Agent upon receipt of demand from said Agent to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Agent, on behalf of the Lenders, shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT

3.01 Grant of Security Interest. Borrower (the "debtor" for purposes of the Uniform Commercial Code), in consideration of the Lenders' (collectively, the "secured party" for purposes of the Uniform Commercial Code) 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 Agent or Lenders on account of Borrower, 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 hereinafter set forth and set forth in the Amended and Restated Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Agent, for the benefit of Lenders, title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "**Collateral**").

3.02 Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "**Uniform Commercial Code**") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements to be released or otherwise discharged from Loan proceeds, or as specifically set forth on an addendum or exhibit attached hereto, if any, and except for the financing statements executed by Borrower and Agent. At the Agent's request, the Borrower will join with Agent in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Agent, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Agent to be necessary or desirable. The Borrower authorizes the Agent to prepare and to file financing statements covering the Collateral without signature, or signed only by the Agent, and to sign the Borrower's signature to such financing statements in jurisdictions where Borrower's signature is required. The Borrower promises to pay to the Agent the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Borrower (Collateral). With respect to all of the Collateral, Borrower represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;
- (b) If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Amended and Restated Note which Agent may disburse directly to the seller, contractor, or subcontractor, as may be required or permitted in accordance with the Amended and Restated Loan Agreement;
- (c) All the Collateral will be kept at the address of Borrower shown in Paragraph 5.07(a) or, if not, at the real property described in **Exhibit A** hereto. Borrower promptly shall notify Agent of any change in the location of the Collateral. Except for transactions in the ordinary course of Borrower's business, Borrower, its agents or employees, will not remove the Collateral from said location without the prior written consent of the Agent;
- (d) If certificates of title are issued or outstanding with respect to any of the Collateral, the Borrower shall cause the Agent's interest to be properly noted thereon; and
- (e) Borrower's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Agent. Borrower promptly shall advise the Agent in writing of any change in Borrower's name.

3.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Agent or Lenders transfer any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Agent or Lenders' rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Agent or Lenders retain any of such indebtedness or instruments, Agent and Lenders shall continue to have the rights and remedies herein set forth with respect thereto.

3.06 No Obligation of Agent or Lenders Under Assigned Contracts. Neither the Agent nor any Lender shall be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Agent and Lenders harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements; provided, that Borrower shall not indemnify Agent or Lenders against Agent and Lenders' own gross negligence or willful misconduct. Should the Agent or Lenders incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Agent or Lenders in connection with any one or more of said contracts or agreements, the Borrower agrees to reimburse the Agent and Lenders for the amount thereof, including reasonable costs and expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by

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

3.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, the Agent and Lenders shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence or existence of an "Event of Default" under the Amended and Restated Loan Agreement between Borrower, Agent and Lenders executed contemporaneously herewith.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred after the expiration of any applicable cure period, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Agent or Lenders may elect) with interest accrued thereon (or such parts as Agent or Lenders may elect) shall, at the option of the Agent or Lenders, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Agent or Lenders to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Agent to Enter and Take Possession.

- (a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Agent, shall forthwith surrender to the Agent the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Agent or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Borrower or then owner of the Mortgaged Property relating thereto, and may exclude the Borrower and its agents and employees wholly therefrom.
- (b) Upon every such entering upon or taking of possession, the Agent, as attorney-in-fact or agent of the Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Agent) and conduct the business thereof either personally or by its agents, 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 (or any portion thereof selected by Agent) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Agent) and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Borrower to

cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Agent, all as the Agent from time to time may determine to be to its best advantage; and the Agent may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Agent), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Agent may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Agent and Lenders, Agent shall apply the remainder of the moneys so received by the Agent, first to the payment of accrued interest under the Amended and Restated Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Amended and Restated Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

- (c) Whenever all such Events of Default have been cured and satisfied, the Agent may, at its option, surrender possession of the Mortgaged Property to the Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, the Agent, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured 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 the rents, profits, issues, royalties and revenues thereof.
- (b) The Borrower shall pay to the Agent upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Agent's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Agent may, either with or without entry or taking possession as hereinabove

provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Agent, all as the Agent may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Agent, in addition to any and all remedies it may have or exercise under this Mortgage, the Amended and Restated Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agent shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;
- (c) The right to require Borrower, upon request of Agent, to assemble and make the Collateral available to Agent at a place reasonably convenient to Borrower and Agent; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Agent upon default, Borrower does hereby irrevocably appoint Agent attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do, and to sell, assign, and transfer any collateral to Agent or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred, Agent 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, Agent or any person conducting the sale for Agent is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Agent or Lenders 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 Agent may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Agent's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

- (a) First, to the reasonable costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Amended and Restated Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Agent or Lenders may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Amended and Restated Note or the other Loan Documents, such repayment to be applied in the manner determined by Agent;
- (c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Amended and Restated Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;
- (d) Fourth, the balance, if any, shall be paid as provided by law.

4.09 Agent Option on Foreclosure. At the option of the Agent, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other reasonable costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Agent exercises its option to foreclose this Mortgage in equity, Agent may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Agent to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

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

4.12 Borrower to Pay the Amended and Restated Notes on any Default in Payment; Application of Moneys by Agent. If default shall occur in the payment of any amount due under this Mortgage, the Amended and Restated Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Agent, the Borrower shall pay to the Agent, for the benefit of the Lenders, the whole amount due and payable under the Amended and Restated Note and under all Other Indebtedness Instruments; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Agent shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Agent's and Lenders' agents and attorneys.

4.13 Delay or Omission No Waiver. No delay or omission of the Agent or Lenders or of any holder of the Amended and Restated Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Amended and Restated Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to the Agent or Lenders may be exercised from time to time and as often as may be deemed expedient by the Agent.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Agent (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Amended and Restated Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Amended and Restated Note, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Amended and Restated Note, the other Loan Documents, or the Other Indebtedness Instruments of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Agent from exercising any right, power or privilege herein granted or intended to be granted

upon the occurrence of any other Event of Default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Agent shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Agent, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Amended and Restated Note, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings — Position of Parties Restored. In case the Agent shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Agent, then and in every such case the Borrower and the Agent shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Agent shall continue as if no such proceeding had been taken.

4.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Agent or Lenders by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Amended and Restated Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

4.17 Notice of Defaults Under the Loan Documents and Other Credit Arrangements. Borrower shall give prompt notice to Agent of any defaults by Borrower under this Mortgage or any of the other Loan Documents, and of any notice of default received by Borrower under any other credit arrangement of Borrower.

ARTICLE V MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Agent or Lenders shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Borrower shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Agent.

5.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Amended and Restated Note, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Amended and Restated Note, in the other Loan Documents and in the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Amended and Restated Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.06 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

5.07 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

- (a) **Name of Borrower (Debtor):** **STV ONE NINETEEN SENIOR LIVING, LLC,**
a Delaware limited liability company
- Address of Borrower:** c/o Dominion Partners, LLC
2700 Corporate Drive, Suite 125
Birmingham, Alabama 35242
- Name of Agent, for the benefit of the Lenders (Secured Party):** **FUNDAMENTAL ADVISORS LP**
- Address of Agent:** 745 Fifth Avenue, 30th Floor
New York, New York 10151
- (b) **Name of Lenders (Secured Parties):** **FUNDAMENTAL PARTNERS, LP, FUNDAMENTAL PARTNERS II LP and FUNDAMENTAL PARTNERS (TAX EXEMPT) LP**
- Address of Lender:** 745 Fifth Avenue, 30th Floor
New York, New York 10151
- (c) **Record Owner of Real Estate described on Exhibit A hereto:** **STV ONE NINETEEN SENIOR LIVING, LLC,**
a Delaware limited liability company

5.08 Applicable Law. This Mortgage shall be governed by the laws of the State of Alabama.

5.09 Application of Insurance and Condemnation Proceeds. Notwithstanding the provisions of Paragraphs 1.06 and 1.07 hereof, respectively relating to the application of insurance proceeds and condemnation proceeds, if the aggregate loss under a single event or casualty is \$250,000.00 or greater, and if the damage to the Mortgaged Property through casualty or condemnation can be repaired in a timely and economically feasible manner, and in a manner which remains in compliance with all leases on the Mortgaged Property and the requirements of all applicable building, subdivision and zoning codes, Agent agrees that it will make such proceeds available to the construction costs of, or to reimburse Borrower for those costs of construction incurred by Borrower in, effecting the repair and restoration of those portions of the Mortgaged Property which shall have been condemned, damaged or destroyed in accordance with the following conditions and procedures:

- (a) There shall then exist no uncured Event of Default on the part of Borrower hereunder or under any other Loan Document;
- (b) No portion of such proceeds shall be made available by Agent for architectural reviews or for any other purposes which are not directly attributable to the costs of reconstructing those portions of the Mortgaged Property which are so taken, damaged or destroyed;
- (c) Borrower shall have first provided assurances satisfactory to Agent that such repair can be timely completed to the satisfaction of Agent (including without limitation delivering to Agent an executed fixed price or maximum price contract for such repair or restoration, and depositing with Agent such amounts as shall in the opinion of Agent may be required in addition to the available insurance or condemnation proceeds, to fully pay the cost of such repair and restoration);
- (d) Borrower shall have further deposited with Agent an amount sufficient to cover carrying costs on the Project (interest on the Loan, operating expenses, etc.) until stabilization of the Project (the Project is producing a 1.0 debt service coverage), as determined by Agent in its reasonable discretion.
- (e) Each disbursement by Agent of such proceeds and deposits (i) shall be funded on a periodic basis, but no more frequently than monthly, (ii) shall not in any instance be in an amount greater than the actual cost of such repair and restoration which has been performed (aa) since the date of performance of that portion of such work which was reimbursed with the immediately preceding disbursement, or (bb) with respect to the first disbursement, since the date of commencement of such work (which cost shall be verified in writing in each instance by an architect, engineer or other party theretofore approved by Agent), (iii) shall be conditioned in part upon the delivery to Agent of a current title insurance policy, (iv) shall be further conditioned upon Agents' satisfaction that any undisbursed proceeds and deposits are sufficient to fully pay the then remaining costs of completing such repair and restoration, and (v) conditioned upon the approval of each draw request by an architect or engineer approved by Agent (whose expenses shall be paid by Borrower) as to the matters described in (i) - (iv) above and that the work is being performed in accordance with plans and specifications for such work which have been previously submitted to and approved in writing by Agent. In the event and to the extent such insurance proceeds or condemnation proceeds are not required or used for the repair and restoration of the Mortgaged Property as aforesaid, Agent shall be entitled to apply such sums on account of the indebtedness secured by this Mortgage, regardless of whether the same shall then be due and payable, and any balance of such sums thereafter remaining shall be paid to Borrower.



20111221000387430 28/32 \$43419.50
Shelby Cnty Judge of Probate, AL
12/21/2011 02:59:47 PM FILED/CERT

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

BORROWER (Mortgagor, Debtor):

**STV ONE NINETEEN
SENIOR LIVING, LLC,**
a Delaware limited liability company

WITNESS:

By: **DOMINION PARTNERS, LLC,**
an Alabama limited liability company, its
Manager

Amber M. Hargood

By: Allen Worthington

STATE OF ALABAMA

COUNTY OF Shelby

I, Stacey Nikkole Ehrhardt a notary public in and for said county in said state, hereby certify that Allen Worthington, whose name as AUTHORIZED AGENT of Dominion Partners, LLC, an Alabama limited liability company, as Manager **STV ONE NINETEEN SENIOR LIVING, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, in such capacity and with full authority, executed the same voluntarily for and as the act of said Dominion Partners, LLC, in its capacity as Manager of SW One Nineteen Senior Living, LLC.

Given under my hand and official seal this 19th day of December, 2011.

(NOTARIAL SEAL)

Stacey Nikkole Ehrhardt
Notary Public
My commission expires Dec 6, 2013
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 6, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**FUNDAMENTAL ADVISORS LP, as Agent for
FUNDAMENTAL PARTNERS, LP,
FUNDAMENTAL PARTNERS II LP and
FUNDAMENTAL PARTNERS (TAX-
EXEMPT) LP**

CMG

By: [Signature]

STATE OF New York
COUNTY OF New York

I, Justin Vinci, a notary public in and for said county in said state, hereby certify that Laurence Gottlieb, whose name as Chairman + CEO of **FUNDAMENTAL ADVISORS LP**, a Delaware Limited Partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, in such capacity and with full authority, executed the same voluntarily for and as the act of said **FUNDAMENTAL ADVISORS LP**.

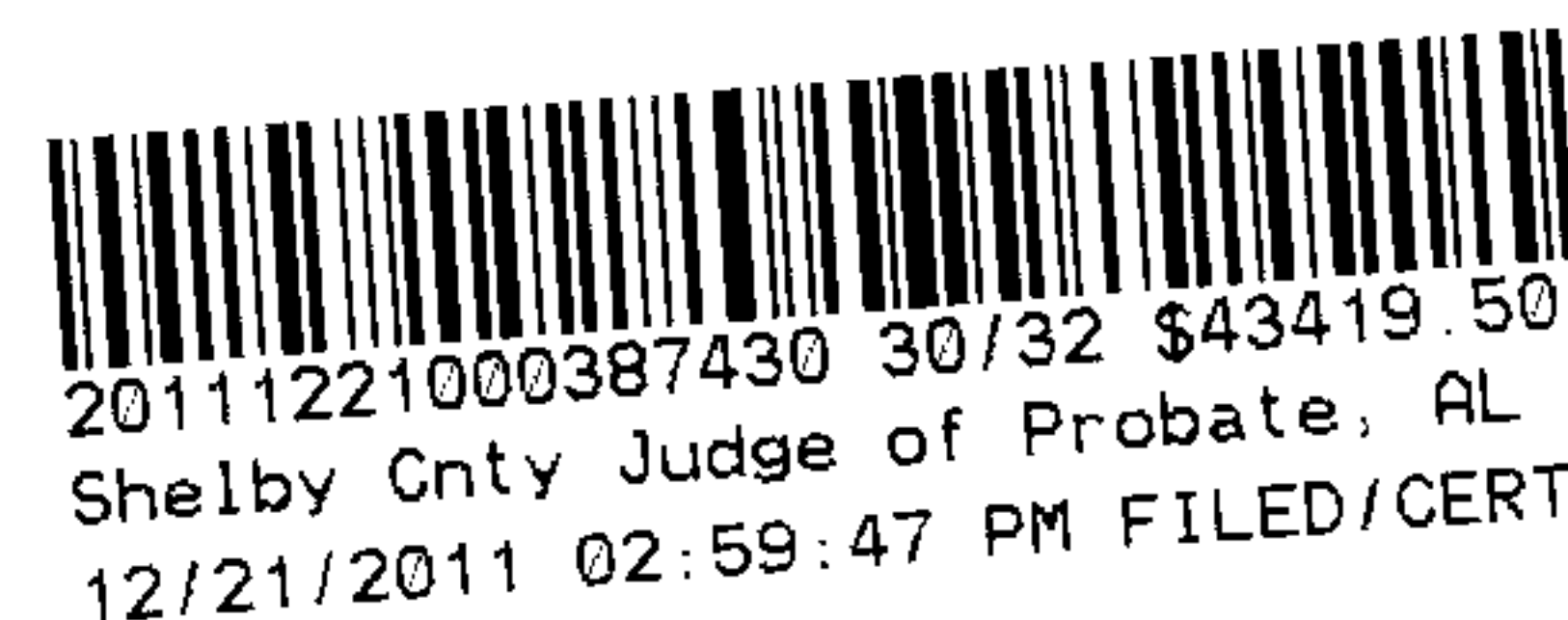
Given under my hand and official seal this 17 day of December, 2011.

(NOTARIAL SEAL)

[Signature]
Notary Public
My commission expires: 6/8/13

JUSTIN M. VINCI
Notary Public, State of New York
No. 01VI6207179
Qualified in New York County
Commission Expires June 08, 2013

EXHIBIT A



Parcel I

Lot 1-B according to St. Vincent's Hospital Highway No. 119 Survey as recorded in Map Book 39, page 103 in the office of the Judge of Probate of Shelby County, Alabama. Also known as:

A Part of LOT 1, GREYSTONE - 3RD SECTOR as recorded in Map Book 14, Page 79 in the office of the Judge of Probate of Shelby County, Alabama and situated in the NW 1/4 and the NE 1/4 of Section 32, Township 18 South, Range 1 West Shelby County, Alabama and being more particularly described as follows:

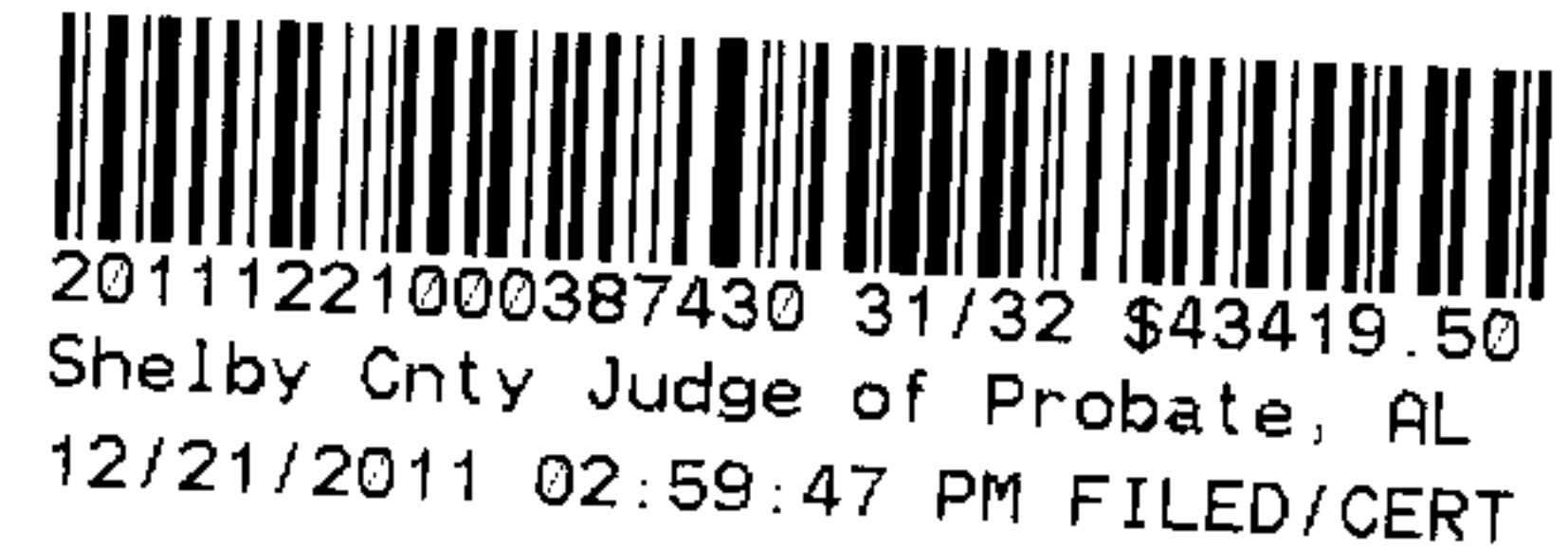
Begin at the Southeasterly Corner of LOT 1, GREYSTONE - 3RD SECTOR as recorded in Map Book 14, Page 79 in the office of the Judge of Probate of Shelby County, Alabama, said point being on the Northerly right-of-way line of Greystone Way as recorded in Map Book 29, Page 123 in the office of the Judge of Probate of Shelby County, Alabama, and run in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 569.13 feet to a point; thence $3^{\circ}53'00''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 1 and its prolongation a distance of 424.81 feet to a point; thence $76^{\circ}04'07''$ to the left in a Northwesterly direction a distance of 352.05 feet to a point; thence $58^{\circ}04'29''$ to the left in a Southwesterly direction a distance of 72.43 feet to a point on a curve to the right having a radius of 655.00 feet and a central angle of $47^{\circ}12'36''$; thence $78^{\circ}56'03''$ to the left (angle measured to tangent) in a Southeasterly, Southerly and Southwesterly direction along the arc of said curve a distance of 539.70 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 39.65 feet to a point; thence $90^{\circ}00'00''$ to the right in a Northwesterly direction a distance of 25.00 feet to a point; thence $90^{\circ}00'00''$ to the left in a Southwesterly direction a distance of 70.27 feet to the P.C. (Point of Curve) of a curve to the right having a radius of 517.00 feet and a central angle of $24^{\circ}29'13''$; thence in a Southwesterly direction along the arc of said curve a distance of 220.95 feet to the P.R.C. (Point of Reverse Curve) of a curve to the left having a radius of 370.50 feet and a central angle of $23^{\circ}26'54''$; thence in a Southwesterly direction along the arc of said curve a distance of 151.63 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 72.81 feet to a point on the Northerly right-of-way line of Greystone Way; thence $91^{\circ}09'24''$ to the left in a Southeasterly direction along the Northerly right-of-way line of Greystone Way a distance of 207.31 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 410.00 feet and a central angle of $43^{\circ}51'30''$; thence In a Southeasterly, Easterly, and Northeasterly direction along the Northerly right-of-way line of Greystone Way and along the arc of said curve a distance of 313.84 feet to the POINT OF BEGINNING.

Parcel II:

Together with an easement for ingress and egress as described in that certain Restrictive Covenant and Reciprocal Easement Agreement between Seton Property Corporation of North Alabama and STV One Nineteen Senior Living, LLC, dated December 28, 2007 and recorded in Instrument No. 20071228000583600, as amended by first amendment to Restrictive and Reciprocal Easement Agreement in Inst. No. 20111221000387420

EXHIBIT B

Permitted Exceptions to Title



1. Real estate taxes for the year 2011 and subsequent years.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as set out in Deed Book 4, page 493 and as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
3. Restrictions and covenants, conditions and building setback/buffer lines (50ft setback lines and 50ft buffers) as set out in Map Book 14, page 79 as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
4. Transmission Line Permits to Alabama Power Company as shown by instruments recorded in Deed Book 109, page 500 and Deed Book 109, page 501.
5. Agreement in regard to water service and covenants set out there in between Dantract and Shelby County as shown by instrument recorded in Real 235, page 574 and as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
6. Confirmation of Approval and Waiver by Daniel Oak Mountain Limited Partnership recorded in Instrument 20020911000436060 in the Probate Office of Shelby County, Alabama and as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
7. Agreement between Brook Hills Baptist Church, Inc. and Seton Property Corporation of North Alabama, an Alabama not-for-profit corporation Executed Contemporaneously with Sale of Greystone Commercial Lot 1 recorded at Book 366, page 74 in the Probate Office of Shelby County, Alabama and as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
8. Terms and conditions of the Restrictive Covenant and Reciprocal Easement Agreement dated December 28, 2007 and recorded in Instrument No. 20071228000583600 as amended on or about the date hereof, and as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
9. Emergency Access Easement granted to City of Hoover, Alabama, dated June 16, 2008 and filed for record on June 18, 2008 at 3:41 p.m. under Inst. No. 20080618000249510 as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
10. Building setback lines, easements, restrictions and buffer as appear on Map Book 39, Page 103 as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.

11. Easement and right of way granted to Alabama Power Company recorded in Inst. No. 2011021600054010, Inst. No. 20090424000156700 and Inst. No. 20111212000373690 as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
12. Right of way granted to Shelby County, Alabama recorded in Inst. No. 2009031100089620 as shown on the survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011.
13. Matters of survey as shown on survey of Walter Schoel Engineering Company, Inc. dated June 9, 2011 including the following:
 - a. Face of earthwall and headwall over easterly property line.
 - b. Encroachment of Building onto 50' buffer area.
 - c. Landscape encroachment on northerly property line.
 - d. Reinforced concrete pipes, sewers, water lines, gas lines and power lines on various portions of subject property.
 - e. Water meters and valves encroach on adjoining property along northwesterly property line.
14. UCC Financing Statement between STV One Nineteen Senior Living, LLC, as debtor(s), and SouthCity Bank, as secured party, filed for record on July 9, 2009, under UCC No. 20090709000264700.
15. Rights of tenants in possession under unrecorded leases and residents under residency agreements with independent living, assisted living and memory care residents.
16. Right-of-way granted to Alabama Power Company recorded in Inst. No. 20040629000354690, Inst. No. 20090424000150710 and Inst. No. 20111212000373680. (Parcel II only).
17. Right-of-way and easement for water, sanitary sewer and utilities as recorded in Inst. No. 2009031100089610. (Parcel II only).