


THIS DOCUMENT TO BE RETURNED TO:
Highland Commercial Mortgage, LLC
33 Inverness Center Parkway
Suite 140
Birmingham, AL 35242


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Shelby Cnty Judge of Probate, AL
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**MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES
AND FIXTURE FILING**

STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING, dated as of December 16, 2013 (this "Mortgage"), made by **CAPSTONE FUNDING, LLC, AN ALABAMA LIMITED LIABILITY COMPANY** (together with its successors and assigns, "Borrower"), having an address at 33 Inverness Center Parkway, Suite 140, Birmingham, Alabama 35242, ("Mortgagors") to **HIGHLAND COMMERCIAL MORTGAGE, LLC**, an Alabama Limited Liability Company (together with its successors and assigns, "Lender"), having an address at 33 Inverness Center Parkway, Suite 140, Birmingham, Alabama 35242

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING PURSUANT TO ALA. CODE § 7-9A-502 (1975), AS AMENDED, AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE BORROWER, AS DEBTOR, AND THE LENDER, AS SECURED PARTY.

WITNESSETH THAT:

WHEREAS, Borrower is on the date of delivery hereof the holder of a fee simple estate in the parcel or parcels of land described in Schedule 1 hereto (the "Land") and of the Improvements (as defined below);

WHEREAS, Borrower and Lender have executed a Loan Agreement (as defined below) whereby Borrower is indebted to Lender pursuant to the Loan (as defined in the Loan Agreement) from Lender to Borrower, such Loan being evidenced by the Note (as defined below);

WHEREAS, this Mortgage is given by Borrower to secure: (a) that certain Promissory Note dated as of the date hereof executed by Borrower in the Original Principal Amount (as defined in the Loan Agreement) of \$214,500.00 (as the same may be modified, amended or restated from time to time, the "Note") and with a Scheduled Maturity Date (as defined in the Loan Agreement) of January 16, 2015, including, without limitation, any renewal, extension or modification thereof, (b) the payment and performance of all Obligations (as defined in the Loan Agreement) of Borrower owed to Lender under the Loan Documents (as defined in the Loan

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Agreement), whether now existing or hereafter arising, including, without limitation, any renewal, extension or modification thereof and all future advances and readvances that may subsequently be made to Borrower by Lender under the Loan Documents and (c) the payment and performance of all obligations of Borrower under the Prior Agreements (as defined in the Loan Agreement); (subsections (a) through (c) above are referred to herein as the "Secured Obligations");

WHEREAS, as a condition precedent to Lender making the Loan, Borrower is required to execute and deliver this Mortgage for the benefit of Lender to secure the payment and performance of the Secured Obligations; and

WHEREAS, Borrower has duly authorized the execution, delivery and performance of this Mortgage.

G R A N T:

NOW, THEREFORE, in order to secure the repayment of the Secured Obligations, in principal, interest, costs, expenses, attorneys' fees and other fees and charges, and additionally, to secure repayment of any and all additional sums that Lender may advance on Borrower's behalf as provided under this Mortgage or in any of the Loan Documents, as well as the payment of all other sums of money secured hereby, as hereinafter provided; and the observance, performance, and discharge by Borrower of all covenants, conditions, and agreements set forth in the Note, this Mortgage, and in the Loan Documents and in all other documents and instruments executed and delivered by Borrower to and in favor of Lender for the purpose of further securing the repayment of the Secured Obligations, Borrower do by these presents **GIVE, GRANT, SELL, CONVEY, WARRANT, SET OVER, MORTGAGE AND ASSIGN TO LENDER, WITH POWER OF SALE AND RIGHT OF ENTRY** for its use and benefit and the use and benefit of its successors and assigns, upon the terms and conditions set forth herein, the following described property, to wit (the "Collateral"), subject only to the Permitted Exceptions:

(a) **Premises.** The Land, together with all tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise pertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, riparian rights, water, water rights, water stock, all rights in, to and with respect to any and all oil, gas, coal, minerals and other substances of any kind or character underlying or relating to the Land and any interest therein; any street, road, highway or alley, vacated or other, adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (collectively, the "Premises");

(b) **Improvements.** All buildings, structures and other improvements and any additions and alterations thereto or replacements thereof, now or hereafter built, constructed or located upon the Premises (collectively together with all additions and accessions thereto and all replacements and substitutions thereof, the "Improvements");

(c) **Personal Property.** All fixtures, fittings, appliances, apparatus, equipment, machinery, building and construction materials and other articles of personal property of



every kind and nature whatsoever owned by Borrower (other than inventory and intangible personal property, except as otherwise specifically provided herein) now or hereafter affixed or attached to, erected on, located at or on or used in connection with the operation of the Premises, including, without limitation, all partitions, furnaces, boilers, oil burners, radiators and piping, plumbing and bathroom fixtures, refrigeration, heating, ventilating, air conditioning and sprinkler systems, other fire prevention and extinguishing apparatus and materials, vacuum cleaning systems, gas and electric fixtures, incinerators, compactors, elevators, engines, motors, generators and all other articles of personal property whether or not considered fixtures under applicable law (collectively together with all additions and accessions thereto and all replacements and substitutions thereof, the "Personal Property"; the Premises, the Improvements and the Personal Property are collectively referred to herein as the "Property");

(d) **Leases.** All leases, licenses, occupancy agreements, concessions and other arrangements, oral or written, now existing or hereafter entered into (including, without limitation, the leases listed on Schedule 3 hereto but excluding any leases for terms of 30 days or less that are not recorded and do not adversely affect the intended use or value of the Premises or Improvements), whereby any Person agrees to pay money or any other consideration for the use, possession or occupancy of, or any estate in, the Property or any portion thereof or interest therein (collectively, the "Leases");

(e) **Permits and Approvals.** To the extent assignable under applicable law, all permits, franchises, licenses, approvals and other authorizations respecting the use, occupation or operation of the Property or any part thereof and respecting any business or other activity conducted on or from the Property, and any product or proceed thereof or therefrom, including, without limitation, all building permits, certificates of occupancy and other licenses, permits and approvals issued by governmental authorities having jurisdiction;

(f) **Rents.** All rents, issues, profits, royalties, avails, income, proceeds and other benefits derived or owned, directly or indirectly, by Borrower from the Collateral, including, without limitation, all rents and other consideration payable by Tenants, claims against guarantors, any guaranties with respect to any Tenant's obligations under any Lease and any cash or other securities deposited to secure performance by Tenants, under the Leases (collectively, "Rents");

(g) **Plans.** To the extent assignable under applicable law, all plans, specifications, contracts and agreements relating to the design or construction of the Improvements, any payment, performance, or other bond provided in connection with the design or construction of the Improvements, all contracts, agreements and purchase orders with contractors, subcontractors, suppliers and materialmen incidental to the design or construction of the Improvements, all other contracts and agreements pertaining to or affecting the Property, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Property and management contracts, service or supply contracts with respect to the Property;

(h) **Deposits.** Any moneys on deposit with or for the benefit of Lender in connection with any of the Collateral, including deposits for the payment of real estate taxes, public assessments and repairs;

(i) **Claims.** All claims, demands, judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from the taking of the Property or any portion thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Property or any portion thereof;

(j) **Other Rights.** All other property and rights of Borrower relating to any of the foregoing;

(k) **Addition; Replacements; Proceeds.** All additions, accessions, replacements, substitutions, proceeds and products of the property described herein.

AND, without limiting any of the other provisions of this Mortgage, Borrower expressly grants to Lender, as secured party, a security interest in all of those portions of the Collateral that are or may be subject to the UCC provisions applicable to secured transactions; and

TO HAVE AND TO HOLD the Collateral unto Lender until the Secured Obligations are indefeasibly paid in full.

PROVIDED, HOWEVER, that nothing contained herein shall create an obligation on the part of Lender to make future advances or readvances to Borrower; and

PROVIDED, FURTHER, that the total amount of (i) the Secured Obligations and (ii) advances made within 1 year of the date hereof at any one time secured hereby plus interest thereon and all reasonable charges and expenses of collection incurred by Lender, including court costs and attorneys' fees and expenses and advancements for taxes, insurance premiums, public assessments and repairs, if any; and

FURTHER to secure the full, timely and proper payment and performance of the Secured Obligations, Borrower hereby covenants and agrees with and warrants to Lender as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the following meanings for all purposes of this Mortgage, and capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement:

"*CERCLA*" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time (42 U.S.C. Section 9601 et seq.).

[Not Used in Document]

"*Event of Default*" has the meaning set forth in Section 4.01.

“Hazardous Material” means (a) any “hazardous substance” as defined by CERCLA, (b) any hazardous waste” as defined by RCRA, (c) any petroleum product including, without limitation, waste oil, used oil or wastewater containing petroleum product, (d) any asbestos or material containing asbestos and (e) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any Environmental Law relating to or imposing liability or standards of conduct.

“Impositions” has the meaning set forth in Section 2.04.

“Indemnified Liabilities” has the meaning set forth in Section 2.12.

“Indemnified Parties” has the meaning set forth in Section 2.12.

“Loan Agreement” means the Loan Agreement dated as of the date hereof between Lender and Borrower, and any amendment or supplement thereto.

“Permitted Liens” has the meaning ascribed to such term in the Loan Agreement; provided, however, for purposes of clause (d) of the definition of “Permitted Liens” in the Loan Agreement, the exceptions set forth in Schedule 2 hereto shall also be Permitted Liens.

“Property” has the meaning set forth in the granting clause.

“Premises” has the meaning set forth in the granting clause.

“RCRA” means the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. Section 6901 et seq.).

“Release” means a “release” or “threatened release” as such terms are defined in CERCLA of a Hazardous Material.

“Rents” has the meaning set forth in the granting clause.

“State” means the State of Alabama.

“Taking” has the meaning set forth in Section 3.02.

“Tenant” means any tenant of the Property, and its successors and assigns.

“Tenant Guarantor” means any guarantor of any Tenant’s obligations under any Lease, and its successors and assigns.

“UCC” means the Uniform Commercial Code as enacted in the State.

ARTICLE II

COVENANTS AND AGREEMENTS OF BORROWER

Section 2.01. Payment and Performance of Obligations. Borrower agrees that it will duly and punctually pay and perform or cause to be paid and performed each of the Secured Obligations at the time and in accordance with the terms specified in the Loan Documents.

Section 2.02. Title to Collateral. Borrower represents and warrants to Lender that:

(a) as of the date hereof and at all times hereafter while this Mortgage is outstanding, Borrower is and shall be the sole, absolute owner and holder of the fee simple estate in the Property and the absolute owner of the legal and beneficial title to all other property included in the Collateral, subject in each case only to this Mortgage and Permitted Liens;

(b) Borrower has good and lawful right, power and authority to execute this Mortgage and to convey, transfer, assign, mortgage and grant a security interest in the Collateral, all as provided herein;

(c) this Mortgage has been duly executed, acknowledged and delivered on behalf of Borrower, all consents and other actions required to be taken by the officers, directors, shareholders and partners, as the case may be, of Borrower have been duly and fully given and performed and this Mortgage constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms;

(d) Borrower, at its expense, will and hereby does warrant and defend to Lender and any purchaser under the power of sale herein or at any foreclosure sale such title to the Collateral (as described in subsection (a) of this Section) and the first mortgage lien and first priority perfected security interest of this Mortgage thereon and therein against all claims and demands and will maintain, preserve and protect such Lien and will keep this Mortgage a valid, first mortgage lien of record on and a first priority perfected security interest in the Collateral, subject only to the Permitted Liens; and

(e) Borrower has duly paid in full all fees, premiums and other charges due in connection with (i) the recording of this Mortgage and the issuance of a loan policy or policies of title insurance in form and amount satisfactory to Lender naming Lender as the insured, insuring the title to and the first mortgage lien of this Mortgage on the Property with endorsements reasonably requested by Lender and (ii) a survey of the Property in form and substance acceptable to Lender and title insurer.

Section 2.03. Title Insurance. All proceeds received by and payable to Lender for any loss under any loan policy or policies of title insurance delivered to Lender shall be the property of Lender and shall, except as expressly provided to the contrary in the Loan Agreement, be applied by Lender in accordance with the provisions of Section 3.03.

Section 2.04. Impositions. (a) Borrower will pay or cause to be paid all taxes, insurance premiums, assessments, water and sewer rates, ground rents, fees and other charges (collectively,



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the "Impositions") that at any time may be assessed, levied, confirmed or imposed or that may become a Lien upon the Collateral, or any portion thereof, or that are payable with respect, prior to delinquency, before any fine, penalty or interest may be added for non-payment and before the commencement of any action to foreclose any Lien against all or any portion of the Collateral with respect thereto. Borrower will deliver to Lender, upon written request, copies of official receipts or other satisfactory proof evidencing such payments. Borrower shall not be entitled to any credit against the Secured Obligations by reason of the payment of any Imposition. Notwithstanding the foregoing, Borrower shall be entitled to contest in good faith an Imposition in accordance with applicable law; provided, however, that (i) such contest does not involve any danger of sale, forfeiture or loss, of the Property or any part thereof or interest therein, (ii) such contest shall not result in Borrower or Lender being in any danger of any civil or criminal liability other than normal accrual of interest, for failure to comply therewith, (iii) Borrower shall have made adequate reserve in Borrower's books in accordance with GAAP consistently applied and (iv) Borrower shall have furnished such security as may be required in connection with such proceedings.

(b) Upon the occurrence of an Event of Default (hereinafter defined), and at Lender's sole option at any time thereafter, Borrower shall pay in addition to each monthly payment under the Loan Agreement, one-twelfth of the Impositions payable during each year (as estimated by Lender in its sole discretion), to be held by Lender without interest to Borrower, for the payment of such obligations. If the amount of such additional payments held by Lender (the "Funds") at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of Impositions as they fall due, such excess shall be at Borrower's option, either repaid to Borrower or credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay Impositions as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days after notice from Lender to Borrower requesting payment thereof. Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against the Secured Obligations. Upon payment in full of the Secured Obligations, Lender shall refund to Borrower any Funds held by Lender.

Section 2.05. Liens. Borrower will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any deed of trust, mortgage, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to or any other Lien on or in the Collateral or any part thereof or the interest of Borrower or Lender therein, or any proceeds or Rents or other sums arising therefrom other than Permitted Liens.

Section 2.06. Compliance with Instruments. Borrower, at its expense, will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Collateral and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of Borrower under the terms thereof. Borrower will not terminate, forfeit or materially amend any material right afforded to Borrower under any such instruments, without the prior written consent of Lender.

Section 2.07. Maintenance and Repair. Subject to ordinary wear and tear, Borrower will keep or cause to be kept all presently and subsequently erected or acquired Improvements and the sidewalks, curbs, vaults and vault space, if any, located on or adjoining the same, and the streets and the ways adjoining the same, in good and substantial order and repair and in such a fashion that the value and utility of the Collateral will not be materially diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, so that its business carried on in connection therewith may be properly conducted at all times. All repairs, replacements and renewals shall be equal or greater in quality and class to the original Improvements. Borrower, at its expense, will do or cause to be done all shoring of foundations and walls of any building or other Improvements on the Premises and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Property by reason of or in connection with any excavation or other building operation upon the Premises and upon any adjoining property, whether or not Borrower shall be required to take such action or be liable for failure to do so.

Section 2.08. Alterations, Additions. Borrower shall not make or cause to be made any material alterations of and additions to the Property or any part thereof unless (i) Lender has provided its prior written consent or (ii) such alterations, modifications or additions are made in the normal course of the Borrower's business and do not decrease the value of the Property or change the use of the Property from its same general purpose. If Lender consents to any alterations or additions to the Property, such alterations or additions shall be made at Borrower's sole expense by a licensed contractor and according to the plans and specifications approved by Lender and subject to any other conditions reasonably required by Lender. Any work commenced on the Property shall be diligently completed, shall be of good workmanship and materials and shall comply with the terms of this Mortgage. Upon the completion of any structural alterations or additions requiring Lender's approval, Borrower shall promptly provide Lender with (a) evidence of full payment to all laborers, materialmen contributing to the alterations or additions, (b) if applicable, an architect's certificate certifying the alterations conform to the plans and specification approved by Lender, (c) a certificate of occupancy (if such alterations or additions require the issuance thereof) and (d) any other documents or information reasonably requested by Lender.

Section 2.09. Acquired Property Subject to Lien. All right, title and interest of Borrower in and to all alterations, improvements, substitutions, restorations and replacements of, and all additions and appurtenances to, the Property hereafter acquired by Borrower, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the Lien of this Mortgage without further action on the part of Borrower or Lender. Upon the request of Lender, Borrower, at its expense, will execute and deliver (and will record and file as provided herein) an instrument or document supplemental to this Mortgage satisfactory in substance and form to Lender, whenever such an instrument or document is necessary under applicable law to subject to the Lien of this Mortgage all right, title and interest of Borrower in and to all property provided or required by this Mortgage to be subject to the Lien hereof.

Section 2.10. Assignment of Rents and Leases. (a) The assignment, grant and conveyance of the Leases, Rents and all other rents, income, proceeds and benefits of the Collateral contained in the granting clause of this Mortgage shall constitute an absolute, present and irrevocable assignment, grant and conveyance, provided that, until an Event of Default has occurred, a license is hereby given to Borrower to collect, receive and apply Rents, as they become due and payable, but not in advance thereof, and in accordance with all of the other terms, conditions and provisions hereof and of the Leases, contracts, agreements and other instruments with respect to which such payments are made. Upon the occurrence of an Event of Default, such license shall be revoked and shall terminate, immediately and automatically without notice to Borrower or any other Person (to the extent permitted by law), and shall not be reinstated upon a cure of such Event of Default without the express written consent of Lender. Such assignment shall be fully effective without any further action on the part of Borrower or Lender, and Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to collect, receive and apply all Rents and all other rents, income, proceeds and benefits from the Collateral, including all right, title and interest of Borrower in any escrowed sums or deposits or any portion thereof or interest therein, whether or not Lender takes possession of the Collateral or any part thereof. The collection of such amounts by Lender shall in no way waive the right of Lender to foreclose this Mortgage in the event of any Event of Default. Nothing contained herein and no exercise of any right or privilege hereunder by Lender shall be construed to constitute Lender as a mortgagee-in-possession. All Rents and all other rents, income, proceeds and benefits of the Collateral received by Borrower from or related to the Collateral or any part thereof, from and after the occurrence of an Event of Default, shall be deemed received in trust and shall be turned over to Lender within one Business Day after Borrower's receipt thereof. From and after the occurrence of an Event of Default, Borrower grants to Lender the right, at Lender's option, to:

(i) enter upon and take possession of the Property for the purpose of collecting Rents and all other rents, income, proceeds and other benefits;

(ii) dispossess by the customary summary proceedings any Tenant, purchaser or other Person defaulting in the payment of any amount when and as due and payable, or in the performance of any other obligation, under the Leases, contract or other instrument to which said Rents or other rents, income, proceeds or benefits relate;

(iii) let or convey the Collateral or any portion thereof or any interest therein; and

(iv) apply Rents and such other rents, income, proceeds and benefits, after the payment of all necessary fees, charges and expenses, on account of the Secured Obligations in accordance with Section 3.03.

(v) Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the Leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property,



or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any Tenant under any of the Leases or any other Person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

(b) Borrower represents, warrants, covenants and agrees with Lender as follows:

(i) All existing Leases are described on Schedule 3 hereto, and Borrower will not enter into any other Lease (other than leases with Raceway operators under Raceway agreements, in the ordinary course of business, and any lease agreement acceptable to Lender and pursuant to which the lessee thereunder has subordinated its interest in the Collateral to Lender's interest) without the prior written consent of Lender; provided however, as it pertains to this Section 2.10(b)(i) any such Raceway agreement must include a 30 day termination option for Borrower, as lessor, or contain a clause permitting termination for convenience to the extent such clauses are permitted by law. Borrower has delivered to Lender true, correct and complete copies of all existing Leases and all amendments and modifications thereto. The Leases are and shall be valid and enforceable in accordance with their terms.

(ii) There are no defaults now existing under any of the Leases, and no event has occurred or circumstance exists that, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(iii) Borrower shall give prompt notice to Lender of any notice received by Borrower claiming that a default has occurred under any of the Leases on the part of Borrower, together with a complete copy of any such notice.

(iv) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of Borrower and any Tenant under any of the Leases.

(v) Borrower will not permit any Lease to become subordinate to any Lien other than the Lien of this Mortgage.

(vi) Borrower shall not permit or consent to the assignment by any Tenant of its rights under its Lease. Without limitation of the foregoing, Borrower shall not permit or consent to the filing of any encumbrance against the Tenant's interest under any Lease, including, without limitation, any leasehold mortgage.

(c) Borrower hereby irrevocably appoints Lender its true and lawful attorney-in-fact with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after the occurrence of an Event of Default, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property that Lender may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. Lender shall not be liable for or prejudiced by any loss of any note,

checks, drafts, etc., unless such loss shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender. From and after the occurrence of an Event of Default, Borrower also hereby irrevocably appoints Lender as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the Tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a notice by Lender, from and after the occurrence of an Event of Default, to pay any and all amounts due Borrower pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such Tenants, and such Tenants are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

Section 2.11. No Claims Against Lender. Nothing contained in this Mortgage shall constitute any consent or request by Lender, express or implied, for the performance of any labor or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Lender in respect of labor or services or the furnishing of any materials or other property or any claim that any Lien based on the performance of such labor or the furnishing of any such materials or other property is prior to the Lien of this Mortgage.

Section 2.12. Indemnification. (a) Whether or not covered by insurance, Borrower hereby assumes responsibility for and agrees to reimburse Lender, its affiliates and its and their respective officers, directors, employees and agents (individually and collectively, the "Indemnified Parties") for and will indemnify, defend and hold the Indemnified Parties harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, suits, actions, proceedings, judgments, awards, amounts paid in settlements, debts, diminutions in value, fines, penalties, charges, fees, costs and expenses (including reasonable attorneys' fees and expenses) of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnified Party that in any way relate to or arise out of any of the Loan Documents, the transactions contemplated thereby and the Collateral, including, without limitation, (i) the selection, manufacture, construction, acquisition, acceptance or rejection of the Collateral, (ii) the ownership of the Collateral, (iii) the delivery, installation, lease, possession, maintenance, use, condition, return or operation of the Collateral, (iv) the condition of the Collateral sold or otherwise disposed of after possession by Borrower, (v) any patent or copyright infringement, (vi) any act or omission on the part of Borrower or any of its or their officers, employees, agents, contractors, lessees, licensees or invitees, (vii) any misrepresentation or inaccuracy in any representation or warranty of Borrower or a breach of Borrower of any of its covenants or obligations under any of the Loan Documents, (viii) any claim, loss, cost or expense involving alleged damage to the environment relating to the Collateral, including, without limitation, investigation, removal, cleanup and remedial costs, (ix) any personal injury, wrongful death or property damage arising under any statutory or common law or tort law theory, including, without limitation, damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Collateral, (x) any past, present or threatened injury to, or destruction of, the Collateral, including, without limitation, costs to investigate and assess such injury or damage, (xi) any administrative process or proceeding or judicial or other similar proceeding (including, without limitation, any alternative dispute resolution process and any bankruptcy proceeding) in any way connected with any

matter addressed in any of the Loan Documents, (xii) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (xiii) performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof made or suffered to be made by or on behalf of Borrower or any Tenant, (xiv) any work in connection with any alterations, changes, new construction or demolition of or additions to the Property or (xv)(A) any Hazardous Materials on, in, under or affecting all or any portion of the Property, the groundwater, or any surrounding areas, (B) any violation or claim of violation by Borrower or any Tenant of any Environmental Laws or (C) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup of Hazardous Materials or any Release. Notwithstanding the foregoing, the indemnity shall not apply to losses to the extent resulting directly from the gross negligence or willful misconduct of the Indemnified Parties.


(b) If any action or proceeding be commenced, to which action or proceeding the Indemnified Parties are made a party by reason of the execution of this Mortgage or the Loan Documents, or in which it becomes necessary to defend or uphold the Lien of this Mortgage, all reasonable sums paid by the Indemnified Parties, for the expense of any litigation to prosecute or defend the rights and Lien created hereby or otherwise, shall be paid by Borrower to such Indemnified Parties, as the case may be, as hereinafter provided. Borrower will pay and save the Indemnified Parties harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the State or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by the Indemnified Parties in respect of this Mortgage or any Secured Obligation.

(c) All amounts payable to the Indemnified Parties under this Section shall be deemed indebtedness secured by this Mortgage, and any such amounts that are not paid within 30 days after written demand therefor by any Indemnified Party shall bear interest at the highest Default Rate from the date of such demand. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower, upon request of such Indemnified Parties, will, at Borrower's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Lender. The obligations of Borrower under this Section shall survive any satisfaction, discharge or reconveyance of this Mortgage and payment in full of the Secured Obligations. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

Section 2.13. Hazardous Materials. Reserved.

Section 2.14. Right of Lender To Require Appraisal. Following the occurrence of an Event of Default, which has not been waived by Lender in writing, Lender shall have the right, from time to time during the term of this Mortgage, to obtain one or more fair market value appraisals of the Property from one or more MAI certified appraisers in such form as is satisfactory to Lender. The reasonable cost of any such appraisal(s) shall be paid by Borrower.

Section 2.15. Mortgage as UCC Security Agreement and Fixture Filing. This Mortgage shall constitute a security agreement, a financing statement and a fixture filing


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pursuant to the UCC for any of the items specified herein as part of the Collateral that, under applicable law, may be subject to a security interest pursuant to the UCC. The Collateral includes goods that are or are to become fixtures. Borrower agrees that Lender may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index as a fixture filing or other financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement.

ARTICLE III

INSURANCE; DAMAGE, DESTRUCTION OR TAKING

Section 3.01. Insurance.

(a) Borrower shall, at its own expense, provide Lender upon Lender's written request with evidence of liability insurance maintained with financially sound and reputable insurance carriers in such amounts and against such liabilities as customarily maintained by other companies operating similar businesses. In lieu of property insurance for the Collateral, in the event of damage to or destruction of any Existing Location, Borrower shall, within 90 days of the occurrence of such damage or destruction, either (i) pay to Lender the Prepayment Price for such Existing Location pursuant to Section 5.03(b) of the Loan Agreement, (ii) cause such Existing Location to be repaired or rebuilt to the same condition and value that existed immediately prior to such damage or destruction, provided that such repair or rebuilding shall be completed to Lender's reasonable satisfaction within 180 days of such damage or destruction, or (iii) provide substitute collateral in accordance with Section 5.02 of the Loan Agreement.

(b) Borrower will deliver to Lender, promptly upon written request, (i) copies of all policies evidencing all insurance required to be maintained under Section 3.01(a) and (ii) evidence as to the payment of all premiums due thereon (with respect to insurance policies payable other than by a single lump sum, all installments for the current year due thereon to such date), provided that Lender shall not be deemed by reason of its custody of such policies to have knowledge of the contents thereof.

Section 3.02. Damage, Destruction or Taking; Notice; Assignment of Awards.

Subject to Sections 5.02, 5.03(b) and 6.01(f) of the Loan Agreement, in case of any damage to or destruction of the Collateral or any material part thereof or any taking, whether for permanent or temporary use, of all or any part of the Collateral or any interest therein or right accruing thereto, as the result of the exercise of the right of condemnation or eminent domain (a "Taking"), or the commencement of any proceedings or negotiations that may result in a Taking, Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such damage, destruction or Taking and Borrower's best estimate of the cost of restoring the Collateral, or the nature of such proceedings or negotiations and the nature and extent of the Taking that might result therefrom, as the case may be. Lender shall be entitled to all insurance proceeds payable on account of such damage or destruction, if applicable, and to all awards or payments allocable to the Collateral on account of such Taking, and Borrower hereby irrevocably assigns, transfers and sets over to Lender all rights of Borrower to any such

proceeds, awards or payments and irrevocably authorizes and, in the event Borrower has not filed for such proceeds by the first to occur of (i) 10 Business Days prior to the expiration of the applicable time for such filing or (ii) 30 days after damage to the Collateral or any Taking, empowers Lender, at its option, in the name of Borrower or otherwise, to file and prosecute what would otherwise be Borrower's claim for any such proceeds, award or payment and to collect, receipt for and retain the same for disposition in accordance with Section 3.03. Borrower will pay all reasonable costs and expenses, if any, incurred by Lender in connection with any such damage, destruction or Taking and seeking and obtaining any insurance proceeds, awards or payments in respect thereof.

Section 3.03. Application of Insurance Proceeds and Condemnation Awards. Subject to Section 5.02, 5.03(b) and 6.01(f) of the Loan Agreement, Lender shall apply all amounts recovered under any insurance policy referred to in Section 3.01(a) and all awards received by it on account of any such Taking as follows:

- (a) first, to the payment of the reasonable costs and expenses incurred by Lender in obtaining any such insurance proceeds or awards, including the reasonable fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other proceedings and all other out-of-pocket expenses;
- (b) second, to the payment of any Secured Obligation;
- (c) third, to fulfill any of the other covenants contained herein or in the Loan Documents in accordance with such Loan Documents as Lender may determine after the occurrence of a Default or an Event of Default; and
- (d) fourth, the balance, if any, to Borrower.

ARTICLE IV

EVENTS OF DEFAULT; REMEDIES

Section 4.01. Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

- (a) The occurrence of an "Event of Default" as defined in the Loan Agreement.
- (b) The attachment of any Lien on any portion of the Collateral other than Permitted Liens which is not cured within thirty (30) days after Borrower's receipt of written notice from Lender.
- (c) Failure of Borrower to maintain insurance as required by Section 3.01 which is not cured within thirty (30) days after Borrower's receipt of written notice from Lender.

Section 4.02. Acceleration. Following the occurrence of an Event of Default described in subsection (i) of Section 7.01 of the Loan Agreement, all of the outstanding principal amount of the Secured Obligations shall be due and payable, whereupon the full unpaid amount of such Secured Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower. Following the occurrence of any other Event of Default, Lender may by notice to Borrower, declare all or any portion of the outstanding principal amount of the Secured Obligations to be due and payable, whereupon the full unpaid amount of such Loan and other Secured Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower. Borrower will pay on demand all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by or on behalf of Lender in enforcing this Mortgage, the Secured Obligations or the Loan Documents or occasioned by any Event of Default hereunder or thereunder.

Section 4.03. Legal Proceedings; Foreclosure. If an Event of Default shall have occurred, Lender at any time may, at Lender's sole discretion, proceed at law or in equity or otherwise to enforce the payment of the Secured Obligations and to foreclose the Lien of this Mortgage as against all or any part of the Collateral and to have the same sold under the judgment or decree of a court of competent jurisdiction. Lender shall be entitled to recover in such proceedings all costs incident thereto, including, without limitation, reasonable attorneys' fees and expenses in such amounts as may be fixed by the court.

Section 4.04. Power of Sale.

(a) *Sale.* If an Event of Default shall have occurred, Lender may foreclose this Mortgage in accordance with applicable law or foreclose this Mortgage under the power of sale herein granted pursuant to Alabama Code Ann. Sections 6-5-247 and 35-10-1, after publishing, posting, and serving notice as required by Alabama Code Ann. Sections 35-10-2 through 35-19-15. This Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Lender shall be authorized, at its sole discretion, regardless of whether possession of the Collateral is taken by Lender, after giving notice as required by this Section.

(b) *Notice of Sale.* Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in a newspaper published in the county or counties wherein the Collateral or any party thereof is located, to sell the Collateral (or such part or parts thereof as Lender may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such Person at the time and place last appointed for the sale; provided that, if the sale is postponed for longer than

10 days beyond the day designated in the notice of sale, notice of sale and notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Lender shall execute and deliver to the purchaser at any such sale a mortgagee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such mortgagee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Lender, may bid at the sale.

(c) *Partial Sale.* In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Indebtedness shall have been paid in full.

(d) *Application of Proceeds.* In the event of any foreclosure, to the extent permitted by applicable law, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Mortgage exceeds the net sale proceeds payable to Lender. All payments received by Lender as proceeds of the Property, or any part thereof, as well as any and all amounts realized by Lender in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Lender as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Indebtedness that is then due and payable (including without limitation principal, accrued interest, advances and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) any other sums that might be due under this Mortgage, the Note or the Loan Documents, which have not otherwise been contemplated above, and (iv) the remainder, if any, shall be paid to Borrower or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

Section 4.05. UCC Remedies. If an Event of Default shall have occurred, Lender may exercise from time to time and at any time any rights and remedies available to it under applicable law upon such Event of Default, including, without limitation, any right or remedy available to it as a secured party under the UCC. Borrower shall, promptly upon request by Lender, assemble the Collateral, or any portion thereof generally described in such request, and make it available to Lender at such place or places designated by Lender and reasonably convenient to Lender. If Lender elects to proceed under the UCC to dispose of portions of the Collateral, Lender, at its option, may give Borrower notice of the time and place of any public sale of any such property, or of the date after which any private sale or other disposition thereof is to be made, by sending notice by registered or certified first class mail, postage prepaid, to Borrower at least 10 days before the time of the sale or other disposition. If any notice of any proposed sale, assignment or transfer by Lender of any portion of the Collateral or any interest therein is required by law, Borrower conclusively agrees that 10 days' notice to Borrower of the date, time and place thereof is reasonable.

Section 4.06. Lender Authorized To Execute Deeds. Borrower irrevocably appoints Lender (which appointment is coupled with an interest) the true and lawful attorney of Borrower, effective from and after an Event of Default, in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement hereof, whether pursuant to power of sale, foreclosure or otherwise in connection with enforcing this Mortgage, to execute and deliver all such deeds, bills of sale, assignments, releases and other instruments as may be designated in any such request.

Section 4.07. Purchase of Collateral by Lender. Lender may be a purchaser of the Collateral or of any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Lender may apply to the purchase price thereof the Secured Obligations.

Section 4.08. Receipt a Sufficient Discharge to Purchaser. Upon any sale of the Collateral or any part thereof or any interest therein, whether pursuant to power of sale, foreclosure or otherwise, the receipt of Lender or the officer making the sale under judicial proceedings shall be a sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

Section 4.09. Waiver of Appraisement, Valuation, Homestead. Borrower hereby waives, to the fullest extent it may lawfully do so, (a) all benefits that might accrue to Borrower by any present or future laws exempting the Property from attachment, levy or sale on execution, (b) the benefit of all appraisement, valuation, stay, extension and redemption laws now or hereafter in force, (c) the administration of estates of decedents, or other matters to defeat, reduce or affect the right of Borrower under the terms of this Mortgage to sell the Property for the collection of the Secured Obligations (without any prior or different resort for collection) or the right of Borrower, under the terms of this Mortgage, to receive the payment of the Secured Obligations out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted) and (d) all rights of marshalling or a sale in inverse order of alienation in the event of any sale of the Collateral or any part thereof or any interest therein. To the extent allowable by law, Borrower hereby waives any and all rights to request or require an appraisal of the Property. In the event of foreclosure pursuant to the provisions hereof, Lender may, at Lender's option, obtain an appraisal of the Property and any reasonable funds expended by Lender for such purpose shall become indebtedness of Borrower to Lender secured by this Mortgage and shall be paid by Borrower to Lender within 10 days of demand.

Section 4.10. Obligations to Become Due on Sale. Except as otherwise permitted by the Loan Documents, upon any sale of the Collateral or any portion thereof or interest therein by virtue of the exercise of any remedy by Lender under or by virtue of this Mortgage, whether pursuant to power of sale, foreclosure or otherwise in accordance with this Mortgage or by virtue of any other remedy available at law or in equity or by statute or otherwise, at the option of Lender, all Secured Obligations shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and all other indebtedness secured by this Mortgage.

Section 4.11. Application of Proceeds of Sale and Other Moneys. The proceeds of any sale of the Collateral or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to power of sale, foreclosure or otherwise, and all other moneys at any time held by Lender as part of the Collateral, shall be applied as follows:

FIRST, fees, expenses or indemnities to enforce this Mortgage;

SECOND, to pay Secured Obligations in respect of any other fees, expenses or indemnities then due to Lender;

THIRD, to pay interest due in respect of the Loan;

FOURTH, to pay the principal outstanding with respect to the Loan; and

FIFTH, to the payment of all other Secured Obligations.

Section 4.12. Appointment of Receiver. If an Event of Default shall have occurred, Lender shall, as a matter of right and without regard to the adequacy of any security for the Secured Obligations secured hereby or the solvency of Borrower, be entitled to the appointment of a receiver for all or any part of the Collateral, whether such receivership be incidental to a proposed sale of the Collateral or otherwise, and Borrower hereby consents to the appointment of such a receiver and will not oppose any such appointment.

Section 4.13. Possession, Management and Income. If an Event of Default shall have occurred, in addition to, not in limitation of, the rights and remedies provided in Section 2.10, Lender, upon five days' notice to Borrower, may enter upon and take possession of the Collateral or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Borrower and all other Persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof. Lender shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

Section 4.14. Right of Lender to Perform Borrower's Covenants. After the occurrence of an Event of Default, which has not been waived by Lender in writing, Lender, without notice to or demand upon Borrower and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower, and may enter upon the Collateral for such purpose and take all such action thereon as, in Lender's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any Tenant or other person with the right to use or occupy all of any portion of the Property or any part thereof. After the occurrence of an Event of Default, all reasonable sums so paid by Lender and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the highest rate provided for in the Loan Agreement from the date of payment or incurring, shall constitute additional indebtedness secured by this Mortgage and shall be paid by Borrower to Lender within 10 days of demand.

Section 4.15. Subrogation. To the extent that Lender, on or after the date hereof, pays any sum due under any provision of any legal requirement or any instrument creating any Lien prior or superior to the Lien of this Mortgage, or Borrower or any other Person pays any such sum with the proceeds of the Loan evidenced by the Note, Lender shall have and be entitled to a Lien on the Collateral equal in priority to the Lien discharged, and Lender shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Lien, that shall remain in existence and benefit Lender in securing the Secured Obligations.

Section 4.16. Remedies Cumulative. Each right, power and remedy of Lender provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or the other Loan Documents, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lender of any one or more of the rights, powers or remedies provided for in this Mortgage, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lender of any or all such other rights, powers or remedies.

Section 4.17. Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of such term shall not be affected thereby.

Section 4.18. No Waiver, Compromise of Actions. No failure by Lender to insist upon the strict performance of any term hereof or of any other Loan Documents, or to exercise any right, power or remedy consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment or performance of any amount or other Secured Obligation before or after its due date, Lender shall not be deemed to have waived its right either to require prompt payment or performance when due of all other amounts payable hereunder and the Secured Obligations or to declare an Event of Default for failure to effect such prompt payment. Any action, suit or proceeding brought by Lender pursuant to any of the terms of this Mortgage, any Loan Document or otherwise, and any claim made by Lender hereunder or thereunder may be compromised, withdrawn or otherwise dealt with by Lender without any notice to or approval of Borrower.

ARTICLE V

MISCELLANEOUS

Section 5.01. Further Assurances; Financing Statements; Recordation.

(a) Borrower, at its expense, will execute, acknowledge and deliver all such instruments and take all such other action as Lender from time to time may reasonably request in order to further effectuate the purposes of this Mortgage and to carry out the terms hereof and to better assure and confirm to Lender its rights, powers and remedies hereunder.

(b) Notwithstanding any other provision of this Mortgage, Borrower hereby agrees that, without notice to or the consent of Borrower, Lender may file with the appropriate public officials such financing statements, continuation statements, amendments and similar documents as are or may become necessary to perfect, preserve or protect the security interest granted by this Mortgage.

(c) Borrower, at its expense, will at all times cause this Mortgage and any document, agreement or instrument amendatory hereof or supplemental hereto or thereof (and any appropriate financing statements or other instruments and continuations thereof), and each other document, agreement and instrument delivered in connection with the Loan Documents and intended thereunder to be recorded, registered and filed, to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees, taxes and other charges, and will comply with all such statutes and regulations as may be required by law in order to establish, preserve, perfect and protect the Lien of this Mortgage as a valid, first mortgage lien and first priority perfected security interest in the Collateral, subject only to the Permitted Liens. Borrower will pay or cause to be paid, and will indemnify Lender in respect of, all taxes and other fees and charges (including interest and penalties) at any time payable in connection with the filing and recording of this Mortgage and any and all supplements and amendments hereto.

Section 5.02. Additional Security. Without notice to or consent of Borrower, and without impairment of the Lien and rights created by this Mortgage, Lender may accept from Borrower or any other Person additional security for the Secured Obligations. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Lender from resorting, first, to such additional security, or, first, to the security created by this Mortgage, or concurrently to both, in any case without affecting Lender's Lien and rights under this Mortgage.

Section 5.03. Notices. All notices, certificates, requests, demands and other communications provided for hereunder or under any Loan Document shall be in writing and shall be (a) personally delivered or (b) sent by overnight courier of national reputation, and shall be deemed received on the date received or the date of refusal to take delivery. All communications shall be addressed to the party to whom notice is being given at its Notice Address set forth in the Preamble to this Mortgage, provided that any notices sent to Borrower

shall be sent to the attention of the Chief Financial Officer of Borrower with a copy to General Counsel.

Section 5.04. Waivers, Amendments. The provisions of this Mortgage may be amended, discharged or terminated only by an instrument in writing executed by Borrower and Lender, and the observance or performance of any provision of this Mortgage may be waived, either generally or in a particular instance and either retroactively or prospectively, only by an instrument in writing executed by Lender.

Section 5.05. Governing Law. THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

Section 5.06. Successors and Assigns. This Mortgage shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of Lender.

Section 5.07. Waiver of Jury Trial. LENDER AND BORROWER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS MORTGAGE, ANY OF THE LOAN DOCUMENTS, ANY DEALINGS BETWEEN LENDER AND BORROWER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN LENDER AND BORROWER. BORROWER ACKNOWLEDGES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, ANY LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.


Section 5.08. Time of Essence. Time is of the essence with respect to Borrower's obligations under this Mortgage.

Section 5.09. No Offset. Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Mortgage and under the other Loan Documents shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction,

defense or other right that Borrower or any guarantor may have or claim against Lender or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Lender.

Section 5.10. Severability. Any provision of this Mortgage or other Loan Documents that is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Mortgage or such Loan Documents or affecting the validity or unenforceability of such provision in any other jurisdiction.

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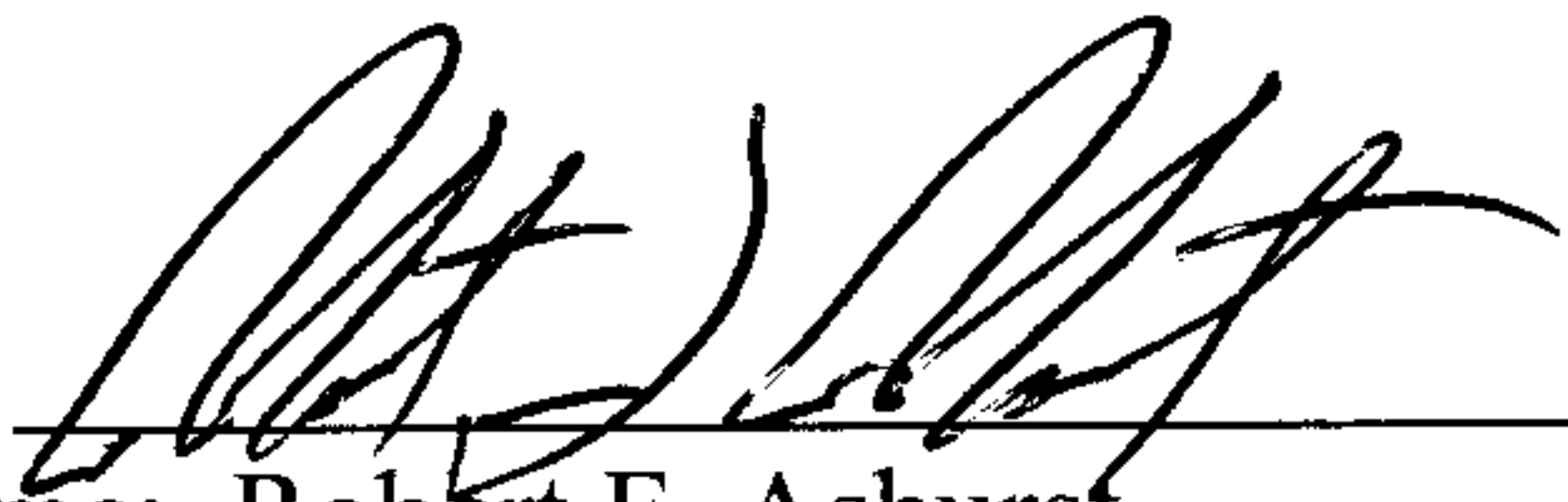
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IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS MORTGAGE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS MORTGAGE ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed as of the day and year first above written.

CAPSTONE FUNDING, LLC

By: YELLOWHAMMER HOLDINGS, LLC,
its Member

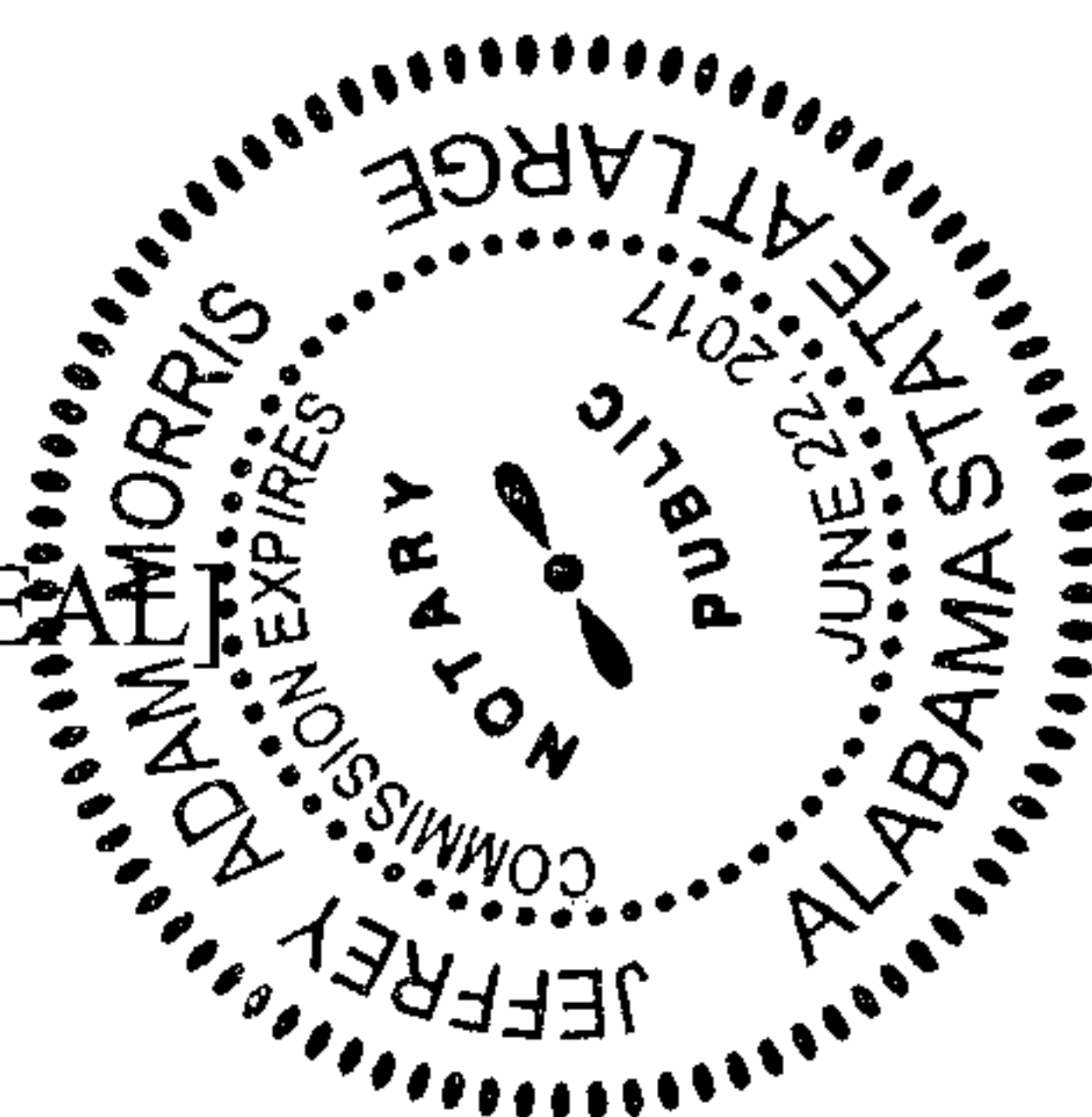
By 
Name: Robert F. Ashurst
Title: Manager

STATE OF ALABAMA)
) ss.
COUNTY OF Jefferson)

I, Jeffrey Adam Morris, a notary public in and for said County in said State, hereby certify that Robert F. Ashurst, whose name is signed as Manager of Yellowhammer Holdings, LLC, an Alabama Limited Liability Company, Manager for Capstone Funding, LLC, an Alabama 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, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this 16th day of December, 2013.

[AFFIX NOTARY SEAL]




Notary Public
My Commission Expires: _____

SCHEDULE 1

DESCRIPTION OF LAND

LOT 16, ACCORDING TO THE SURVEY OF QUAIL RIDGE, AS RECORDED IN MAP BOOK 22, PAGE 35, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.



20131226000491330 24/26 \$410.75
Shelby Cnty Judge of Probate, AL
12/26/2013 01:32:44 PM FILED/CERT

RF

SCHEDULE 2

EXCEPTIONS TO TITLE

1. Standard Exceptions

(A) Rights or claims of parties in possession not shown by the public records;

(B) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records;

(C) Taxes or special assessments which are not shown as existing liens by the public records;

(D) Any encroachment, encumbrance, violation, variation, or adverse circumstances affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

(E) Easements or claims of easements not shown by the Public Records.

2. Subject to existing easements, restrictions, set back lines, rights of way and limitations if any of record.

3. Mineral and mining rights of record and all rights and privileges incident thereto.



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Shelby Cnty Judge of Probate, AL
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SCHEDULE 3
DESCRIPTION OF LEASES

None.



20131226000491330 26/26 \$410.75
Shelby Cnty Judge of Probate, AL
12/26/2013 01:32:44 PM FILED/CERT

RFD