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STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT
("Mortgage")

This document is also a financing statement filed as a fixture filing pursuant to Ala. Code § 7-9-402(6) (1975), and should be indexed in the index of financing statements under the names of Mortgagor, as debtor, and Mortgagee, as secured party.

☐ (Check box if applicable) This Mortgage is a "construction mortgage" within the meaning of such term in Ala. Code § 7-9-313(1)(c) (1975) and Ala. Code § 7-9-313(6) (1975).

KNOW ALL MEN BY THESE PRESENTS: That whereas **HELENA PROPERTIES, LLC**, a Georgia limited liability company (the "Mortgagor"), has become justly indebted to **WILLIAM E. LOVETT REVOCABLE TRUST**, whose address is Three Ravinia Drive, Suite 1800, Atlanta, GA, 30346 (the "Mortgagee"), in the principal sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) Dollars, together with interest thereon, as evidenced by a guaranty agreement of even date from Mortgagor to Mortgagee ("Guaranty") given to secure a promissory note of even date made payable by Harcon, Inc., a Georgia corporation, ("Borrower") to the order of Mortgagor in said principal amount ("Note");

NOW, THEREFORE, in consideration of the premises and in order to secure (i) the payment of the indebtedness evidenced by the Note and Guaranty and any modifications, extensions, renewals or consolidations thereof and substitutions therefor, either in whole or in part (including any future advances); (ii) any and all additional advances made by Mortgagee to protect or preserve the Mortgaged Property (hereinafter defined) or the security interest created hereby on the Mortgaged Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Mortgaged Property at the time of such advance); (iii) the performance of all obligations of Mortgagor under this Mortgage; and (iv) the performance of all obligations of Mortgagor and Borrower under any loan agreement (including, without limitation, any construction loan agreement), guaranty and other agreements, documents or instruments evidencing, securing or otherwise relating to the indebtedness evidenced or guaranteed by the Note (the Note, this Mortgage, the Guaranty and any and all other such loan agreements, guarantees, agreements, documents and instruments are hereinafter collectively referred to as the "Loan Documents") (all of the foregoing secured hereby are collectively described herein as the "Secured Indebtedness"), Mortgagor does hereby grant, bargain, sell and convey unto Mortgagee, the Mortgagor's interest in the real property situated in Shelby County, State of Alabama, that is described in Exhibit "A" attached hereto;

Together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements (collectively the "Property"), also together with all rights, title and interests now or hereafter owned by Mortgagor in and to all buildings and improvements, windows, doors, heating, lighting, ventilating, air conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling systems, detection devices and other equipment and fixtures now or hereafter attached or appertaining to the Property (collectively, the "Improvements").

The conveyance made hereby is subject to those matters set forth in Exhibit "B" attached hereto and incorporated herein.

TO HAVE AND TO HOLD the same and every part thereof unto Mortgagee, its successors and assigns forever.

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including any future advances), Mortgagor hereby assigns and transfers to Mortgagee, and grants to Mortgagee a security

interest in, all building materials, equipment, fixtures and fittings of every kind or character that improve or are intended to improve the Property, including, without limitation, all lumber, bricks, building blocks, sand, cement, roofing materials, paint, doors, windows, nails, wiring, hardware, plumbing and plumbing fixtures, heating and air conditioning equipment, electrical and gas equipment, piping, decorative fixtures, and in general all building materials, equipment and appliances of every kind and character, wherever located or stored, and whether now owned or hereafter acquired by Mortgagor (collectively, the "Personal Property"); provided, however, that for any consumer credit obligation secured hereby, Mortgagee waives any non-purchase money security interest in "household goods" as defined in federal regulations applicable to unfair or deceptive credit contract provisions and further waives any security interest in "consumer goods" purchased more than twenty (20) days after Mortgagee gives value. The Property, the Improvements and the Personal Property are hereinafter collectively called the "Mortgaged Property."

And for the purpose of further securing the payment of said indebtedness Mortgagor warrants, covenants and agrees with Mortgagee, its successors and assigns as follows:

. **Payment of Secured Indebtedness.** Mortgagor shall pay, or cause to be paid, to Mortgagee the Secured Indebtedness with interest thereon as in the Note, the Guaranty, the Loan Documents and this Mortgage provided.

. **Payment of Other Items.** Mortgagor shall pay, when due and payable, (a) all taxes, assessments, general or special and other charges levied on, or assessed, placed or made against the Mortgaged Property, this Mortgage or the Secured Indebtedness or any interest of the Mortgagee in the Mortgaged Property or the obligations secured hereby; (b) premiums on policies of fire and other hazard insurance covering the Mortgaged Property, as required in Article 3 herein; (c) premiums on all collaterally pledged life insurance policies, if any; (d) premiums for mortgage insurance, if this Mortgage and the Note are so insured; and (e) ground rents or other lease rentals, if any, payable by Mortgagor. Upon request of Mortgagee, Mortgagor shall pay to Mortgagee, together with and in addition to the payments of principal and interest payable under the Loan Documents, on the installment-paying dates thereof, until the Secured Indebtedness is fully paid or until notification from Mortgagee to the contrary, an amount reasonably sufficient (as estimated by Mortgagee) to provide Mortgagee with funds on hand to pay taxes, assessments, insurance premiums, rents and other charges next due so that Mortgagee will have sufficient funds on hand to pay same thirty (30) days before the date on which they become past due. In no event shall Mortgagee be liable for any interest on any amount paid to it as herein required, and the money so received may be held and commingled with its own funds, pending payment or application thereof as herein provided. Mortgagor shall furnish to Mortgagee, at least thirty (30) days before the date on which the same will become past due, an official statement of the amount of said taxes, assessments, insurance premiums and rents next due, and Mortgagee shall pay said charges to the amount of the then unused credit therefor as and when they become severally due and payable. An official receipt therefor shall be conclusive evidence of such payment and of the validity of such charges. If Mortgagor pays such funds to Mortgagee, then Mortgagee shall pay these charges when payable, before they become past due, Any advances Mortgagee makes for any of said charges in excess of the then amount of credit for said charges shall be immediately due and payable to Mortgagee and bear interest at the rate of 12.50% per annum from date of advancement. Mortgagee may apply credits held by it for the above charges, on account of any delinquent installments of principal or interest or any other payments maturing or due under this Mortgage, and the amount of credit existing at any time shall be reduced by the amount so paid or applied. The amount of the existing credit hereunder at the time of any transfer of the Mortgaged Property shall, without assignment thereof, inure to the benefit of the successor-owner of the Mortgaged Property and shall be applied under and subject to all of the provisions hereof, provided that nothing contained in this paragraph shall be deemed to authorize or to constitute Mortgagee's consent to the transfer of the Mortgaged Property or any portion thereof or any interest therein, including a security interest. Upon payment in full of the Secured Indebtedness, the amount of any unused credit shall be paid over to the person entitled to receive it.



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Insurance. () Mortgagor shall keep the Mortgaged Property insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, and such other hazards (so-called "All Risk Coverage"), including flood, as Mortgagee may from time to time require, all in amounts approved by Mortgagee not to be less than 100% of the full replacement cost. Mortgagor shall also maintain (1) comprehensive public liability insurance, to include workmen's compensation insurance, covering all liabilities incident to the construction, ownership, possession and operation of the Mortgaged Property, and naming Mortgagee as an additional insured thereunder, in an amount acceptable to Mortgagee; (2) rent insurance against loss of income arising out of any hazard against which the Mortgaged Property are required to be insured under subparagraph (a) above in an amount not less than one (1) year's gross rental income from the Mortgaged Property; and (3) such other insurance on the Mortgaged Property or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable casualties which at the time are commonly insured against in the case of properties of similar character and location, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor including, without limitation, boiler insurance and flood hazard insurance, if applicable. All such insurance shall be written in form and by companies approved by Mortgagee; and regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign and deliver to Mortgagee, as collateral and further security for the payment of the Secured Indebtedness, all policies of insurance which insurance against any loss or damage to the Mortgaged Property, with loss payable to Mortgagee, without contribution by Mortgagee, pursuant to the New York Standard or other mortgagee clause satisfactory to Mortgagee. If Mortgagee, by reason of such insurance, receives any money for loss or damage, such amount may, at the option of Mortgagee, be retained and applied by Mortgagee toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Mortgagor for the repair or replacement of the Mortgaged Property or any part thereof, or for any other purpose or object satisfactory to Mortgagee, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor.

- () Not less than 30 days prior to the expiration date of each policy of insurance required of Mortgagor hereunder, and of each policy of insurance held as additional collateral to secure the Secured Indebtedness, Mortgagor shall deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee.
- () In the event of a foreclosure of this Mortgage, the purchaser of the Premiums shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Mortgagee, with respect to the Mortgaged Property.

Maintenance and Inspection. Mortgagor shall maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste to the Mortgaged Property, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Mortgaged Property or any part thereof. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property, now or hereafter encumbered by this Mortgage, which may be affected by a proceeding of the character referred to in Article 7 herein. No part of the Mortgaged Property now or hereafter conveyed as security by or pursuant to this Mortgage, shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor shall complete, within a reasonable time, and pay for any building, structure or other improvement at any time in the process of construction on the property herein conveyed. Mortgagor shall not initiate, join in or consent to any change in the private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

Leases and Assignment of Rents. Mortgagor shall faithfully perform the material covenants of Mortgagor as lessor under any present and future leases, affecting all or any portion of the Mortgaged Property, and neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or any of them, or which may materially diminish or materially impair their value, or the rents provided for therein, or the interest of Mortgagee or



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Mortgagee therein or thereunder. Mortgagor, without first obtaining the written consent of Mortgagee thereto, shall not (a) assign the rents, or any part thereof, from the Mortgaged Property, (b) consent to the cancellation or surrender of any lease of the Mortgaged Property, or any part thereof, now existing or hereafter to be made, (c) modify any such lease so as to shorten the unexpired term thereof, or so as to decrease the amount of the rent payable thereunder, or (d) collect rents from the Mortgaged Property for more than one month in advance.

Mortgagor hereby absolutely assigns and transfers to Mortgagee all the rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the Secured Indebtedness.

Notwithstanding anything contained herein to the contrary, this assignment is intended and shall be construed to create, an absolute, present assignment from Mortgagor to Mortgagee. The rents, issues and profits of the Mortgaged Property are hereby assigned absolutely by Mortgagor to Mortgagee. It is the further intent of Mortgagee and Mortgagor that the rents, issues and profits absolutely assigned are no longer, during the term of this Mortgage, property of Mortgagor or property of the estate of Mortgagor as defined in 11 U.S.C. § 541 and shall not constitute collateral, cash or otherwise, of Mortgagor.

Although this assignment constitutes a present and current assignment of all rents, issues and profits of the Mortgaged Property, so long as Mortgagor is not in default hereunder, Mortgagee shall not demand that such rents, issues and profits be paid directly to Mortgagee, and Mortgagor shall have a revocable license to collect, but no more than one (1) month prior to accrual, all such rents, issues and profits from the Mortgaged Property; provided that such revocable license shall ipso facto terminate without further action by Mortgagee and without notice to Mortgagor upon the occurrence of a Default.

. **Additional Documentation.** Mortgagor shall execute and deliver and pay the costs of preparation and recording thereof to Mortgagee and to any subsequent holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, security Mortgages, security agreements, financing statements, assignments, and renewal and subscription notes and guaranties, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the legal security title of Mortgagee to all or any part of the Mortgaged Property intended to be hereby conveyed, whether now conveyed, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof. Mortgagor, upon request, shall certify by a writing, duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the Secured Indebtedness and whether or not any offsets or defenses exist against the Secured Indebtedness, within 6 days in case the request is made personally, or within 10 days after the mailing of such request in case the request is made by mail.

. **Condemnation.** In the event all or any part of the Mortgaged Property is taken by eminent domain by any public or quasi-public authority or corporation, or in the event all or any portion of the Mortgaged Property is purchased from Mortgagor under threat of such taking, then all of the award of payment arising from said taking or purchase shall be paid to Mortgagee. Mortgagee shall have the right to retain said award or payment toward payment of the Secured Indebtedness, or to pay over said amount, in whole or in part, to Mortgagor, but Mortgagee shall not be obligated to see to the application of any amount paid over to Mortgagor. If prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and all costs and disbursements incurred by Mortgagee in connection with the collection of such award of payment, including, but not limited to, attorneys' fees actually incurred.

. **Financial Statements.** Mortgagor shall deliver to Mortgagee, at any time within 30 days after notice and



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demand by Mortgagee, (i) a statement in such reasonable detail as Mortgagee may request, certified by the Mortgagor or an executive officer of a corporate Mortgagor, of the leases relating to the Mortgaged Property, and (ii) a statement in such reasonable detail as Mortgagee may request certified by Mortgagor or an executive officer or treasurer of a corporate Mortgagor, of the income from and expenses of any one or more of the following: (a) the conduct of any business on the Mortgaged Property, (b) the operation of the Mortgaged Property, or (c) the leasing of the Mortgaged Property or any part thereof, for the last 12 month period prior to the giving of such notice, and, on demand, Mortgagor shall furnish to Mortgagee executed counterparts of any such leases and convenient facilities for the audit and verification of any such statement.

Security Agreement. This Mortgage is and shall be deemed a security agreement as defined in the Alabama Uniform Commercial Code for purposes of the Personal Property described herein. Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other documents as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of the Personal Property. On demand, Mortgagor will promptly pay all costs and expenses of filing financing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity, perfection and priority of the security interest of Mortgagee hereby granted, or any modification thereof, and all costs and expenses of any record searches reasonably required by Mortgagee. A copy of this Mortgage may be filed as a financing statement in any public office.

Default. Upon the occurrence of any one of the following events (herein called an "Event of Default" or "Default"):

- (i) should Mortgagor fail to pay or cause to be paid the Secured Indebtedness, or any part thereof, when and as the same shall become due and payable;
- (ii) should any representation or warranty of Mortgagor (Mortgagor, Borrower and each person primarily or secondarily liable to Mortgagee for the Secured Indebtedness hereinafter referred to as an "Obligor") herein contained, or contained in any instrument given by any Obligor to Mortgagee with respect to the Secured Indebtedness or the Mortgaged Property, prove untrue, incomplete or misleading in any material aspect;
- (iii) should the Mortgaged Property be subject to actual or threatened waste, or any part thereof be removed, demolished or materially altered so that the value of the Mortgaged Property is materially reduced or materially diminished in any manner whatsoever;
- (iv) should any federal tax lien, execution, or claim of lien for labor or material be filed of record against Mortgagor or the Mortgaged Property and not be removed by payment or bond within 30 days from date of actual notice to Mortgagor of such filing or recording;
- (v) should any claim of priority superior to this Mortgage by title, lien or otherwise be asserted in any legal or equitable proceeding, and such claim not be removed, by bonding or otherwise, within thirty (30) days from the date of actual notice to Mortgagor of such assertion;
- (vi) should any Obligor become insolvent or should any Obligor make any assignment for the benefit of creditors, or should a receiver, liquidator or trustee of any Obligor or of any of any Obligor's property be appointed, or should any petition for the bankruptcy, reorganization or arrangement of any Obligor, pursuant to the Federal Bankruptcy Act or any similar statute, be filed, or should any proceeding be instituted against or on behalf of any Obligor alleging that any Obligor is insolvent or unable to pay such Obligor's debts as they become due and such proceeding shall not be dismissed within sixty (60) days after filing or institution of claim, or should any Obligor be adjudicated a bankrupt or insolvent, or should any Obligor, if a corporation, be liquidated or dissolved or its charter expire or be revoked, or, if a partnership or business association, be dissolved or partitioned, or, if a trust, be terminated or


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expire;

- (vii) should any Obligor fail to keep, observe, perform, carry out and execute in every particular the covenants, agreements, obligations and conditions set out in this Mortgage, or in the Note, or in any other Loan Document to which he is a party, provided that (i) with respect to monetary defaults, an Obligor shall have ten (10) days after written notice from Lender in which to cure such non-payment, and (ii) with respect to non-monetary defaults, an Obligor shall have thirty (30) days after written notice from Lender to cure non-monetary defaults, or such longer time as is necessary to cure a non-monetary default, provided such Obligor begins to cure within thirty (30) days of written notice from Mortgagee, and diligently proceeds to cure such default;
- (viii) should any event occur under any instrument, Mortgage or agreement, given or made by Mortgagor to or with Mortgagee, which would authorize the acceleration of any debt owed by Mortgagor to Mortgagee;
- (ix) should Mortgagor sell or transfer the Mortgaged Property or any portion thereof or any interest therein, including a security interest, without Mortgagee's prior written consent;
- (x) if any Obligor is a corporation, partnership or other artificial entity, if there is any encumbrance, pledge, conveyance, transfer or assignment of any legal or beneficial interest whatsoever in such Obligor; or
- (xi) if the financial responsibility of any Obligor becomes materially impaired in the sole opinion of Mortgagee or if Mortgagee otherwise deems itself to be insecure;

then and thereupon:

- (i) Mortgagee may take possession of the Mortgaged Property without the appointment of a receiver, or an application therefor, employ a managing agent of the Mortgaged Property and let the same, either in its own name, or in the name of Mortgagor, and give notice to any lessees or tenants under any existing leases affecting the Mortgaged Property to make all future payments directly to Mortgagee or its order and to attorn to Mortgagee or its order as lessor or landlord, and receive the rents, incomes, issues and profits of the Mortgaged Property and apply the same, after payment of all reasonable charges and expenses, on account of the Secured Indebtedness.
- (ii) Mortgagee may pay any sums in any form or any manner deemed expedient by Mortgagee to protect the security of this instrument or to cure any Event of Default other than payment of interest or principal on Secured Indebtedness; make any payment hereby authorized to be made according to any bill, statement or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Mortgagee shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date of such payment at the rate of 12.5 % per annum, shall be added to and become a part of the Secured Indebtedness and be immediately due and payable to Mortgagee; and Mortgagee shall be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this Mortgage;
- (iii) The whole of the indebtedness hereby secured, or any portion or part thereof which may at said date not have been paid, with interest thereon, shall at once become due and payable and this Mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived by Mortgagor, and Mortgagee shall have the right to enter upon and take possession of the Property and


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Improvements and after or without taking such possession to sell the same before the County Court House door considered the front or main door to the County Court House in the county or division of the county where the Property, or any substantial part of the Property, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks prior to said sale in some newspaper published in said county; and upon the payment of the purchase price, Mortgagee, or owner of the indebtedness and this Mortgage, or auctioneer at said sale, is authorized to execute to the purchaser for and in the name of Mortgagor a good and sufficient Mortgage to the Property and Improvements, or any part thereof, sold.

Upon the occurrence of any event that would subject this Mortgage to foreclosure, Mortgagee shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of any of the Personal Property and to sell the same at one or more public or private sales, at the election of Mortgagee. At Mortgagee's request, Mortgagor agrees to assemble the Personal Property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagor agrees that notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of the Personal Property, or of any part thereof, will be held shall be sufficient if delivered to Mortgagor or mailed to Mortgagor at the address set forth herein or such other address as Mortgagor shall have furnished to Mortgagee in writing for the purpose, not less than seven days before the date of such sale or other intended disposition of the Personal Property.

Mortgagee shall apply the proceeds of any sale or sales under this Mortgage as follows: First, to the expense of advertising, selling and conveying (including a reasonable attorney's fee incurred by Mortgagee in connection therewith or in connection with any proceeding whatsoever, whether bankruptcy or otherwise, seeking to enjoin or stay the foreclosure of this Mortgage, or otherwise challenging the right of Mortgagee to foreclose this Mortgage); second, to the payment of any amounts that may have been expended or that may be appropriate to expend in paying insurance, taxes, assessments, and other liens and other mortgages, and in making repairs to the Mortgaged Property or any portion thereof, together with interest thereon; third, to the payment of the indebtedness hereby secured and late charges and interest thereon in such order as Mortgagee may elect, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; and fourth, the balance, if any, to be paid over to Mortgagor or to whomever then appears of record to be the owner of any of Mortgagor's interest in the Mortgaged Property, including without limitation, any subordinate lienholder. Mortgagee may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder. Mortgagor hereby waives any requirement that the Property and Improvements be sold in separate tracts and agrees that Mortgagee, in its sole discretion, may sell the Property and Improvements en masse regardless of the number of parcels hereby conveyed.; and

Mortgagee, in any action to foreclose this Mortgage, or upon any Event of Default, may apply for the appointment of a receiver of the rents, profits and other income of the Mortgaged Property without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Property as security for the amounts due the Mortgagee, or the solvency of any person or corporation liable for the payment of such amounts.


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In case of any sale under this Mortgage by virtue of the exercise of the power herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property or any part thereof, may be sold in one parcel and as entirety, or in such parcels, manner or order as Mortgagee in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish or exhaust the power unless and until the entire Mortgaged Property are sold or the Secured Indebtedness is paid in full.

Waiver of Homestead; Time of the Essence. Mortgagor, for himself and family, hereby waives and renounces all homestead and exemption rights provided for by the Constitution and Laws of the United States or the State of Georgia, in and to the Mortgaged Property as against the collection of the Secured Indebtedness, or any part thereof; and Mortgagor agrees that where, by the terms of this Mortgage, the Note, or any of the Loan Documents, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the time stated enters into the consideration and is of the essence of the whole contract.

Mortgagee's Right to Sue. Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Mortgage or any of the Loan Documents, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor, including an action of foreclosure, or any other action, for a Default or Defaults by Mortgagor existing at the time such earlier action was commenced.

Rights Cumulative. The rights of Mortgagee, granted and arising under the clauses and covenants contained in this Mortgage, the Note, and the other Loan Documents shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Mortgagee may have in law or equity, and none of them shall be in exclusion of the others, and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under security Mortgages, and preservation of security as provided at law. No act of Mortgagee shall be construed as an election to proceed under any one provision herein or under the Note or any of the Loan Documents to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

Notice. Any and all notices, elections or demands permitted or required to be given under this Mortgage shall be in writing, signed by or on behalf of the party giving such notice, election or demand, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, or upon being deposited with an overnight commercial delivery service requiring proof of delivery, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response, if given to Mortgagee, shall be addressed as follows:

WILLIAM E. LOVETT REVOCABLE TRUST
Three Ravinia Drive
Suite 1800
Atlanta, GA 30346


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and if given to Mortgagor shall be addressed as follows:

Helena Properties, LLC
1121 Alderman Drive, Suite 101
Alpharetta, GA 30005

. Any indulgence or departure at any time by the Mortgagee from any of the provisions hereof, or of any obligation hereby secured, shall not modify the same or relate to the future or waive future compliance therewith by the Mortgagor.

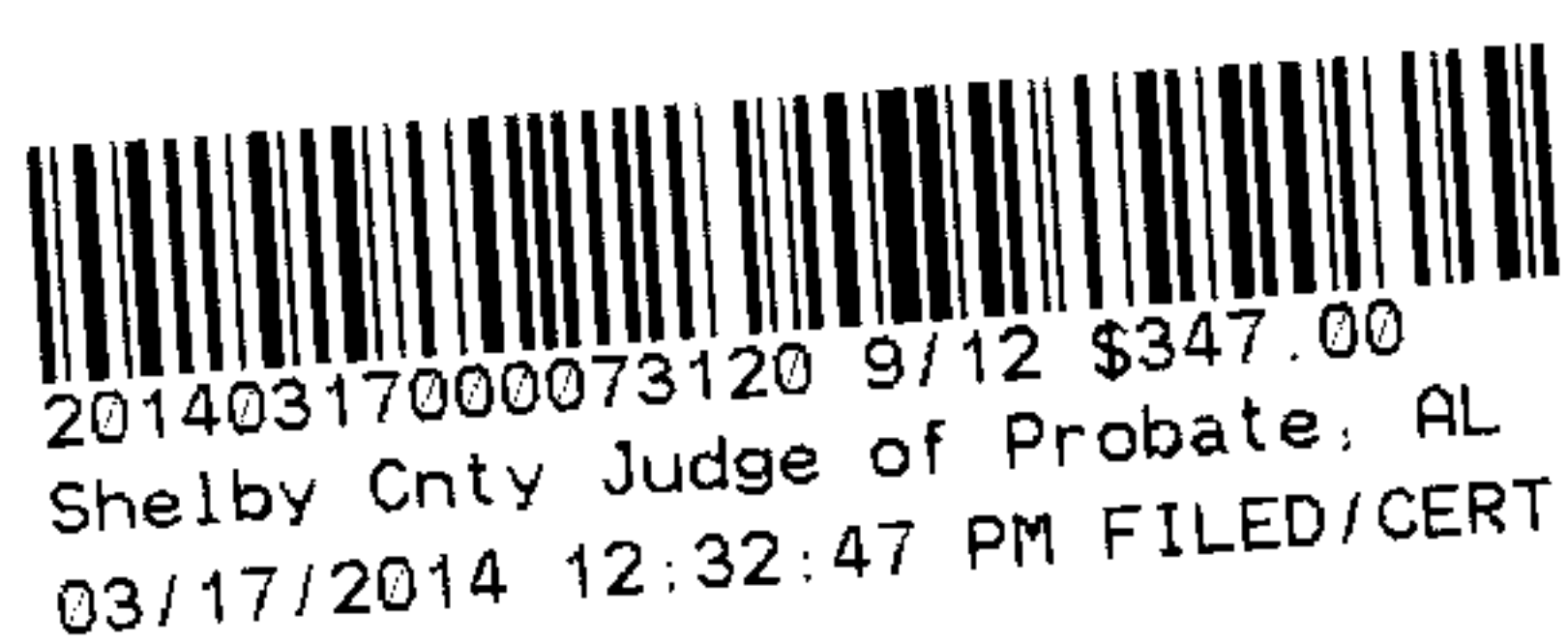
. **Definitions.** The words "Mortgagor" and "Mortgagee" whenever used herein shall include all individuals, corporations (and if a corporation, its officers, employees, agents or attorneys) and any and all other persons or entities, and the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the word "Note" shall also include one or more notes or guaranties and the grammatical construction of sentences shall conform thereto. If more than one party shall execute this Mortgage, the term "Mortgagor" shall mean all parties signing, and each of them, all of whom shall be jointly and severally liable hereunder, and each agreement, obligation and Secured Indebtedness of Mortgagor shall be and mean the several as well as joint undertaking of each of them.

. **Severability.** The parties agree that the provisions of this Mortgage are severable, and in the event any clause, phrase, sentence or paragraph shall be declared by a court of competent jurisdiction to be invalid or unenforceable, then the parties declare that the remaining clauses, phrases, sentences and paragraphs of this Mortgage shall remain in full force and effect.

. **Waiver of Mortgagor's Rights.** BY EXECUTING THIS INSTRUMENT AND BY INITIALLING THIS PARAGRAPH 18, MORTGAGOR EXPRESSLY ACKNOWLEDGES THAT UPON MORTGAGOR'S DEFAULT HEREUNDER, MORTGAGEE IS GIVEN THE RIGHT TO ACCELERATE THE DEBT SECURED HEREBY AND TO SELL THE PROPERTY CONVEYED HEREBY AT PUBLIC AUCTION PURSUANT TO THE POWER OF SALE CONTAINED HEREIN, AND MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHTS TO NOTICE AND HEARING BEFORE SUCH SALE UNDER POWER BY MORTGAGEE, OTHER THAN THE REQUIRED ADVERTISEMENT ONCE A WEEK FOR FOUR WEEKS PLUS MORTGAGOR'S INHERENT LEGAL RIGHT TO SEEK A COURT INJUNCTION. MORTGAGOR MAKES THIS WAIVER KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY, AFTER HAVING BEEN GIVEN FULL EXPLANATION OF MORTGAGEE'S RIGHTS HEREUNDER PLUS THE OPPORTUNITY TO CONSULT AN ATTORNEY OF MORTGAGOR'S OWN CHOOSING BEFORE EXECUTING THIS INSTRUMENT AND INITIALLING THIS PARAGRAPH.

MAH

. **Prior Mortgages.** If a default by Mortgagor should occur under any one or more of the documents evidencing or securing a debt that is secured by the Mortgages to secure debt listed below (the "Prior Mortgages"), if any, such default shall constitute a Default hereunder, whereupon Mortgagee, at Mortgagee's option and without notice or demand to Mortgagor, may proceed immediately to exercise any and all rights and remedies provided hereunder, or may make any payments or perform any acts necessary to correct any such default, or may pay all or part of the debt secured by any one or more of the Prior Mortgages. Any payment so made or costs so incurred in connection with Mortgagee's action pursuant to this paragraph shall be treated as though made or incurred pursuant to the provisions of Paragraph 2 hereof, shall bear interest as set forth in Paragraph 2 hereof, and shall be secured hereby. Mortgagor hereby assigns to Mortgagee all surplus funds which, upon foreclosure of a Prior Mortgage, may come into the hands of the person performing such foreclosure, and Mortgagor hereby directs that such surplus funds be paid over to Mortgagee to be



applied upon payment of the debt secured hereby. Mortgagor will pay or cause to be paid as and when due all payments on the debts and other obligations secured by the Prior Mortgages. Mortgagor represents and warrants to Mortgagee that as of the date of this Mortgage, Mortgagor is not in default under any of the Prior Mortgages and no event exists which, with the giving of notice or passage of time, or both, would constitute a default under any of the Prior Mortgages.

PRIOR MORTGAGES: Mortgage in favor of Bay Point Capital Partners, L.P. securing a loan in the original principal amount of \$310,000.00.

Indemnity. Mortgagor shall protect, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys' fees actually incurred and expenses) imposed upon or incurred by Mortgagee by reason of (a) any claim for brokerage fees or other such commissions relating to the Mortgaged Property or the Secured Indebtedness, or (b) the condition of the Mortgaged Property, or (c) any default by Mortgagor under this Mortgage, the Note, or any other Loan Documents, or (d) failure to pay recording, mortgage, intangibles or similar taxes, fees or charges relating to the indebtedness evidenced by the Note or any one or more of the Loan Documents, or (e) the Loan Documents or any claim or demand whatsoever which may be asserted by reason of any alleged action, obligation or undertaking to be performed or discharged by Mortgagee pursuant to this Mortgage or any other document evidencing, securing, or in any way relating to the Secured Indebtedness or pursuant to any matter contemplated in the Loan Documents. In the event Mortgagee incurs any liability, loss or damage by reason of the foregoing, or in the defense of any claim or demand arising out of or in connection with the foregoing, the amounts of such liability, loss or damage shall be added to the Secured Indebtedness, shall bear interest at the interest rate specified in the Note from the date incurred until paid and shall be payable on demand.

SEE EXHIBIT "C" FOR RESOLUTION AND CERTIFICATE OF EXISTENCE OF MORTGAGOR.



20140317000073120 10/12 \$347.00
Shelby Cnty Judge of Probate, AL
03/17/2014 12:32:47 PM FILED/CERT

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its duly authorized officer or representative, this 4th day of March, 2014.

This document was prepared by:

Marvin M. Rice, Esq.
Law Office of Marvin Rice, LLC
8302 Dunwoody Place, Suite 355
Atlanta, Georgia 30350

"MORTGAGOR":

HELENA PROPERTIES, LLC,
a Georgia limited liability company

By: Michael A. Hardin (SEAL)
Michael A. Hardin, Manager

CORPORATE ACKNOWLEDGMENT

STATE OF GEORGIA)
COUNTY OF Fulton)

I, the undersigned, a Notary Public in and for Forsyth County, in said State, hereby certify that Michael A. Hardin, whose name as Manager of Helena Properties, LLC, a Georgia limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such representative, and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and official seal, this 4th day of March, 2014.

Susan M. Caron
Notary Public

My Commission Expires:

(NOTARY SEAL)


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Shelby Cnty Judge of Probate, AL
03/17/2014 12:32:47 PM FILED/CERT

**SUSAN M. CARON
NOTARY PUBLIC
FORSYTH COUNTY, GEORGIA
MY COMMISSION EXPIRES DECEMBER 2, 2014**

EXHIBIT A

The land referred to in this Commitment is described as follows: State of Alabama, County of Shelby

Beginning at the Northwest corner of Lot 1, Block 1, Mullins East Side Addition to Helena, as recorded in Map Book 4, Page 25, in the Office of the Judge of Probate of Shelby County and run thence North 82 degrees 28 minutes 39 seconds East along the North line of said Lot 1 a distance of 163.05 feet to the Northwest corner of Lot 15, Block 1, of same said Subdivision: thence run North 82 degrees 17 minutes 12 seconds East along the North line of said Lot 15 a distance of 173.99 feet to the Northeast corner of same said Lot 15: thence continue North 83 degrees 10 minutes 04 seconds East, crossing the Northerly end of the Vacated Mimosa Street a distance of 51.15 feet to the Northwest corner of Lot 9, Block 2 of same said Subdivision; thence continue North 80 degrees 02 minutes 41 seconds East a distance of 180.57 feet to a corner; thence run North 35 degrees 54 minutes 28 seconds East a distance of 38.14 feet to a corner; thence run North 80 degrees 05 minutes 13 seconds East a distance of 231.10 feet to a found capped corner; thence run South 06 degrees 46 minutes 41 seconds East a distance of 87.40 feet to a cross in concrete corner; thence run South 10 degrees 57 minutes 15 seconds East a distance of 91.97 feet to a found rebar corner: thence run South 74 degrees 26 minutes 16 seconds West a distance of 191.12 feet to a found rebar corner: thence run South 60 degrees 15 minutes 51 seconds West a distance of 42.65 feet to a found rebar corner: thence run South 07 degrees 54 minutes 53 seconds East a distance of 185.78 feet to a set rebar corner on a cul de sac property line having a central angle of 77 degrees 29 minutes 14 seconds and a radius of 50.0 feet: thence run Southwesterly along the arc of said cul de sac distance of 67.62 feet to a set rebar corner: thence run North 85 degrees 24 minutes 07 seconds West a distance 366.10 feet to a set rebar corner; thence run North 13 degrees 13 minutes 14 seconds West a distance of 127.78 feet to a found rebar corner: thence run South 82 degrees 14 minutes 09 seconds West a distance of 199.32 feet to a round rebar corner on the East margin of Rolling Mill Street; thence run North 02 degrees 58 minutes 06 seconds West along said margin, of said street a distance of 199.91 feet to the point of beginning.



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