

Prepared By and After
Recording Return to:

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Shelby Cnty Judge of Probate, AL
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[ALABAMA]

MORTGAGE, ASSIGNMENT OF RENTS
AND LEASES AND SECURITY AGREEMENT

by

GREYSTONE APARTMENTS, LLC,
an Alabama limited liability company,
as Borrower,

to and in favor of

FIRST TENNESSEE BANK NATIONAL ASSOCIATION,
a national banking association,
as Lender

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

THIS INDENTURE (herein this “**Mortgage**”), made this 6th day of May, 2014, is made by GREYSTONE APARTMENTS, LLC, an Alabama limited liability company, whose address is c/o Tynes Development, 820 Shades Creek Parkway, Suite 2300, Birmingham, AL 35203 Attn: Ingram Tynes (“**Borrower**”), in favor of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, whose address is 1214 Murfreesboro Road, Franklin, TN 37064, Attn: Commercial Real Estate (“**Lender**”), and is executed pursuant to the Construction Loan Agreement dated as of June 6, 2012, between Lender and Borrower (such Construction Loan Agreement, as amended by the Modification Agreement of even date herewith between Lender and Borrower (the “**Modification Agreement**”), and as the same may from time to time be further supplemented, modified or amended from time to time, being referred to in this Mortgage as the “**Loan Agreement**”). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

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

W I T N E S S E T H:

WHEREAS, Lender has agreed to loan to Borrower amounts not to exceed \$6,454,405 (the “**Loan**”), or so much as may from time to time be disbursed pursuant to the Loan Agreement and as evidenced by a Promissory Note at even date herewith (as renewed, extended or amended from time to time, the “**Note**”); and

WHEREAS, the parties desire to secure the Obligations, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Obligations and any and all other additional indebtedness of Borrower to Lender related to the Project, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

NOW, THEREFORE, the Borrower, in consideration of Lender’s making the Loan, and to secure the prompt payment of the Obligations, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys’ fees, , and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, the Loan Agreement and the other Loan Documents, has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the

Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the “**Mortgaged Property**”) to-wit:

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

and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;

- (e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing;
- (f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a) through (g) above including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a) through (f) above.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Borrower shall fully pay or cause to be fully paid to the Lender the Obligations, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorneys' fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the Loan Agreement, and in the other Loan Documents, expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, and (ii) the Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, the Loan Agreement, or any other Loan Document (including, without limitation, advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

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

ARTICLE I.

GENERAL

Section 1.1. Definitions. As used in this Mortgage, the following terms shall have the Meanings set out below:

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Mortgaged Property.

“Condemnation” means any taking of title to, use of, or any other interest in the Mortgaged Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time by Lender in connection with the Loan, including without limitation, in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including attorneys’ fees.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Mortgaged Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Mortgaged Property, in each case whether now or hereafter existing or arising.

“Net Proceeds”, when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys’ fees, incurred in the collection of such gross proceeds.

“Obligations” means all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, and/or on account of, the provisions of this Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to pay and perform all obligations of Borrower under any Interest Rate Swap or any letter of credit; (d) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; (e) to pay and perform all future

advances and other obligations that Borrower or any successor in ownership of all or part of the Mortgaged Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and (f) all renewals, amendments, extensions and modifications of any of the foregoing.

"Proceeds" when used with respect to any of the Mortgaged Property, means all proceeds of such Mortgaged Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code.

"Property Assessments" means all taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Mortgaged Property or any part thereof, or upon any Leases or any rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

Section 1.2. Performance of Mortgage, Note and Loan Documents. Subject to any applicable notice and/or cure rights, the Borrower shall perform, observe and comply with all provisions hereof, of the Note, of the Loan Agreement, and of the other Loan Documents, and shall duly and punctually pay to the Lender the sum of money expressed in the Note or the Loan Agreement, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, of the Note, of the Loan Agreement, and of the other Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

Section 1.3. Warranty of Title. The Borrower hereby warrants that, except as may be otherwise set forth on **Exhibit B** hereto, it is lawfully seized of a fee simple estate in the Land and real property hereby mortgaged, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, and that the Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever. Borrower further warrants that it has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, assignments, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title to the foregoing and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 1.4. Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances, letters of credit, and any and all other obligations and liabilities, direct or contingent, of the Borrower to the Lender, in

connection with the Mortgaged Property, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Obligations may, if provided in the applicable Loan Documents, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

Section 1.5. Monthly Deposits. Following the occurrence of a Default, Borrower shall, upon demand by Lender, pay to Lender monthly, on the same date payments are due under the Note, a sum (herein "Funds") equal to one-twelfth of the yearly Property Assessments which may attain priority over this Mortgage and premiums for insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender in an interest-bearing account, and Lender shall apply the Funds to pay the Property Assessments and insurance costs, as and when they shall be due and payable. The Funds are pledged as additional security for the Obligations secured by this Mortgage. If the amount of the Funds held by Lender shall not be sufficient to pay Property Assessments and insurance costs, when due, Borrower shall pay to Lender any amount necessary to make up the deficiency within fifteen (15) days from the date notice is mailed by Lender to Borrower requesting payment thereof. Upon payment in full of all Obligations, all Funds then held by Lender shall be returned to Borrower.

Section 1.6. Other Taxes, Utilities and Liens.

- (a) After Borrower has exhausted all rights to appeal, fight, or contest, Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) After Borrower has exhausted all rights to appeal, fight, or contest, Borrower promptly shall pay (or bond over) and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.
- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower

immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

Section 1.7. Insurance. Borrower shall maintain, at its sole cost and expense, insurance, as required by Lender, to include, without limitation:

- (a) “All Risk” insurance against casualty to the Mortgaged Property, including, but not limited to, fire, lightning, windstorm, hail, explosion, and riot. Such insurance shall name Lender as mortgagee and loss payee in accordance with Lender’s insurance requirements. Unless otherwise agreed in writing by Lender, such insurance shall be for the full insurable value of the Mortgaged Property, and in a form otherwise satisfactory to Lender.
- (b) Comprehensive general liability insurance on an “occurrence” basis against claims for “personal injury” liability and liability for death, bodily injury and damage to property, in limits satisfactory to Lender with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Lender as an additional insured.
- (c) Workers’ compensation insurance for all employees of Borrower as required by Law.
- (d) During any period of construction upon the Mortgaged Property, Borrower shall maintain, or cause others to maintain, builder’s risk insurance (non-reporting form) for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Mortgaged Property.
- (e) If at any time any portion of any structure on the Mortgaged Property is insurable against casualty by flood and is located in a Special Flood Hazard Area, as determined by Lender, a flood insurance policy in form and amount acceptable to Lender, as required by applicable Law.
- (f) Loss of rental value insurance or business interruption insurance as required by Lender.
- (g) Such other and further insurance as may be required from time to time by Lender.

In addition to the foregoing, Borrower shall cause the Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers’ compensation insurance for all employees of the Contractor.

Borrower acknowledges receiving Lender’s insurance requirements. Each policy of insurance shall meet Lender’s insurance requirements and be otherwise acceptable to Lender.

Section 1.8. Adjustment of Condemnation and Insurance Claims. Borrower shall give prompt notice to Lender of any Casualty or any Condemnation or threatened Condemnation. Lender is authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any claim in connection therewith, or to permit Borrower to do so. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any or all of its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Borrower, Borrower shall receive the same in trust for Lender. Within ten (10) days after Borrower's receipt of any Condemnation Awards or Insurance Proceeds, Borrower shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Borrower agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be requested by Lender to confirm the grant and assignment to Lender of any Condemnation Awards or Insurance Proceeds.

Section 1.9. If no Default exists, Lender may permit Net Proceeds for the restoration of the Mortgaged Property if, in the reasonable judgment of Lender, (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Lender for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Lender, and (iii) the restoration can be completed prior to the final maturity of the Loan. Otherwise, Net Proceeds shall be utilized for payment of the Obligations. If Net Proceeds are to be utilized for the restoration of the Mortgaged Property, the Net Proceeds, together with any other funds deposited with Lender for that purpose, shall be deposited in an interest-bearing account with Lender, which account will be assigned to Lender as additional security for the Loan. The account will be opened, managed and controlled in a manner consistent with, and subject to, the provisions of the Loan Agreement. Disbursements of funds from the account will be made in a manner consistent with the requirements under this Agreement for the disbursement of Loan proceeds.

Section 1.10. Care of the Property. The Borrower shall keep the Mortgaged Property in good condition and repair and shall comply with all Laws, ordinances, and regulations of all public authorities relating to the Mortgaged Property, comply with all easements, declarations, covenants and any other private agreements imposing duties or obligations on owners or occupants of the Land, and shall not suffer any waste to be committed thereon nor remove or demolish any building.

Section 1.11. Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Lender, the Borrower, at Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further

assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.10, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Borrower by whatsoever means, including that in the event the Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Borrower or the Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Obligations, Borrower hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

Section 1.12. Additional Security. The Lender also shall have and hereby is granted a security interest in all monies, securities and other property of the Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower, and any and all claims of Borrower against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. Following a Default, the Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Obligations secured hereby, and in such manner as the Lender may determine, any such monies, securities or other property held or controlled by the Lender. No such application of funds shall, unless otherwise expressly agreed by the Lender in writing,

reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or the other Obligations.

Section 1.13. Leases Affecting Mortgaged Property. The Borrower shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. If requested by the Lender, the Borrower shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Borrower shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Lender, which shall not be unreasonable withheld and, if Lender does not respond within ten (10) business days after a request from Borrower to approve (which request includes a statement that a failure by Lender to respond within ten (10) business days shall be deemed approval), Lender shall be deemed to approve Borrower's request.

Section 1.14. Expenses. The Borrower shall pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in connection with the collection of the Obligations secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents, or as may otherwise be provided by Law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, or any of the other Loan Documents, or the Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; provided, however, that in the event Lender files a suit or proceeding against Borrower and does not prevail, Lender shall not be entitled to reasonable attorneys fees in connection with that suit or proceeding; and any such amounts paid or incurred by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

Section 1.15. Performance by Lender of Defaults by Borrower. If the Borrower shall be in Default due to failure to the pay any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or as otherwise described in this Mortgage; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of the Loan Agreement, or of any of the other Loan Documents, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be a part of the Obligations secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon calculated in the manner set forth in the Note, and at the Default Rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note. The Lender

shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower for trespass or otherwise.

Section 1.16. Estoppel Affidavits. The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and the other Obligations and whether or not any offsets or defenses exist against any of the Obligations.

Section 1.17. Alienation or Sale of Mortgaged Property. The Borrower shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property, or any interest in the Borrower, except for residential Leases in the ordinary course of business.

Section 1.18. Inspection Rights and Easements. In addition to other inspection rights of Lender, the Borrower shall and hereby does grant and convey to the Lender, its agents, representatives, contractors, and employees, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein “**Inspections**”), as the Lender reasonably deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Lender, the Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the reasonable costs and expenses incurred by the Lender with respect to any Inspections which the Lender may conduct, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by the Borrower, with interest, and shall be secured by this Mortgage and the other Loan Documents. In performing the Inspections, Lender shall a) perform all Inspections pursuant to any pertinent terms and conditions of any leases affecting the Mortgaged Property; and b) provide a minimum of five (5) business days notice to Borrower and any other tenants.

Section 1.19. Use, Governmental Compliance, etc. The Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement, or otherwise as permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with all environmental laws, rules and regulations applicable to the Mortgaged Property from time to time, and (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property; (c) comply, in all material respects, with all

requirements of any Governmental Authority now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any requirements at any Governmental Authority or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

ARTICLE II.

ASSIGNMENT OF RENTS AND LEASES

Section 2.1. Assignment. Borrower, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all other Obligations, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and in the other Loan Documents, does hereby sell, assign and transfer unto the Lender a security interest in all Leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such Lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of a security interest in all the said Leases, subleases, lease guaranties and agreements, and all the avails thereof, to the Lender, and the Borrower does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), upon the occurrence and during the continuation of Default, to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the Leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

Section 2.2. Prepayment of Rent. The Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Borrower. The Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

Section 2.3. Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting the Lender as “mortgagee in possession” in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Borrower.

Section 2.4. Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents so long as there exists no Default under this Mortgage, and provided further, that Borrower’s right to collect such rents shall terminate and cease automatically upon the occurrence of any such Default without the necessity of any notice or other action whatsoever by Lender.

Section 2.5. No Obligation of Lender Under Leases. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases, subleases or rental agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any Leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements, the Borrower agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys’ fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and attorneys’ fees shall be secured by the assignment hereunder and by this Mortgage.

Section 2.6. Instruction to Lessees. Following a Default, Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any Lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

Section 2.7. Default (Assignment). Upon the occurrence of any Default, in addition to the right to demand and collect directly from tenants rents accruing from Leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III.
SECURITY AGREEMENT

Section 3.1. Grant of Security Interest. Borrower (the “debtor” for purposes of the Uniform Commercial Code), in consideration of Lender’s (the “secured party” for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys’ fees, and any and all other Obligations, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and in the other Loan Documents, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the “Collateral”).

Section 3.2. Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Uniform Commercial Code shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

Section 3.3. Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office. Borrower hereby authorizes Lender to file such financing statements as Lender deems necessary to evidence or perfect the security interest granted herein or in the other Loan Documents. The Borrower promises to pay to the Lender the fees incurred in filing the financing statements perfecting a security interest in the Collateral, including but not limited to mortgage recording taxes payable in connection with filings of financing statements, which fees shall become part of the indebtedness secured hereby. Borrower hereby authorizes Lender to file financing statements as Lender deems necessary to perfect the Lender’s security interest in the Collateral.

Section 3.4. Representations of Borrower (Collateral). With respect to all of the Collateral, Borrower represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;
- (b) The Collateral is being acquired and/or installed pursuant to the Loan Agreement.

Section 3.5. Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the Obligations secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such Obligations transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such Obligations, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

Section 3.6. No Obligation of Lender Under Assigned Contracts. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should the Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said contracts or agreements, the Borrower agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

Section 3.7. Default (Security Agreement). Upon the occurrence of any Default as defined in the Loan Agreement, the Lender shall have all rights and remedies set forth in Article IV, elsewhere in this Mortgage or in the Loan Documents or at Law or equity.

ARTICLE IV.

EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Event of Default. The term "Default", wherever used in this Mortgage, shall mean the occurrence or existence of a "Default", as set forth in the Loan Agreement.

Section 4.2. Acceleration of Maturity. If a Default shall have occurred, then the entire balance of the Obligations secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

Section 4.3. Right of Lender to Enter and Take Possession.

- (a) If a Default shall have occurred, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by Law and applicable Leases, the Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Borrower or then owner of the Mortgaged Property relating thereto, and may exclude the Borrower and its agents and employees wholly therefrom.
- (b) Upon every such entering upon or taking of possession, the Lender, as attorney-in-fact or agent of the Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Borrower to cancel the same, and to elect to disaffirm any Lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, Lender shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of taxes; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Loan Documents; fourth to the payment of overdue

installments of principal on the Note; and the balance, if any, as otherwise required by Law.

- (c) Whenever a Default has been cured and satisfied as permitted under the Loan Documents, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of Law. The same right of taking possession, however, shall exist if any subsequent Default shall occur.

Section 4.4. Receiver.

- (a) If a Default shall have occurred, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Obligations hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.
- (b) The Borrower shall pay to the Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Mortgage; and all such expenses shall be secured by this Mortgage.

Section 4.5. Lender's Power of Enforcement. If a Default shall have occurred, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; and (c) to pursue any other remedy available to Lender, all as the Lender may elect.

Section 4.6. Rights of a Secured Party. Upon the occurrence of a Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, or under applicable Law, and subject to any applicable Leases, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender

shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;

- (c) The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

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

Section 4.7. Power of Sale. If a Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

Section 4.8. Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the Obligations secured by this Mortgage or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, or the other Loan Documents, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or

other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

- (c) Third, to the payment of the Obligations secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents, as applicable, whether or not all of such Obligations is then due;
- (d) Fourth, the balance, if any, shall be paid to Borrower.

Section 4.9. Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by Law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

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

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

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

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

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

If the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, or in any of the other Loan Documents; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, or any of the other Loan Documents; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, or the other Loan Documents of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

Section 4.16. Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or

remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, or any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute.

ARTICLE V.

MISCELLANEOUS

Section 5.1. Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Borrower shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Lender.

Section 5.2. Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein", "hereby", "hereunder", "hereof", and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

Section 5.3. Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

Section 5.4. Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in any of the other Loan Documents, shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, or in the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

Section 5.5. Loan Documents. Wherever reference is made herein to this Mortgage, the Note, or the other Loan Documents, such reference shall include all renewals, extensions, modifications and refinancings thereof.

Section 5.6. Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

Section 5.7. Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

Name of Borrower (Debtor): Greystone Apartments, LLC

Address of Borrower: c/o Tynes Development
820 Shades Creek Parkway, Suite 2300
Birmingham, AL 35203
Attn: Ingram Tynes

Name of Lender (Secured Party): First Tennessee Bank National Association

Address of Lender: 1214 Murfreesboro Road
Franklin, TN 37064

In the case of each notice, request, demand and other communication delivered to Borrower, a copy of same shall be given in the same manner to Ingram Tynes, c/o 820 Shades Creek Parkway, Suite 2300, Birmingham, AL 35203.

Section 5.8. Applicable Law. This Mortgage shall be governed in all respects by the laws of the State of Alabama.

Section 5.9. JURY TRIAL WAIVER. THE LENDER AND BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER, RELATING TO, OR CONNECTED WITH THIS MORTGAGE AND AGREE THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

Section 5.10. Rules of Construction. The words "hereof", "herein", "hereunder", "hereto", and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants". The words "include" and "including" shall be interpreted as if followed by the words "without limitation". The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time

unless expressly indicated otherwise, (d) to the Mortgaged Property shall mean all or any portion thereof, and (e) to Paragraphs, Articles or Sections are to the respective Paragraphs, Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code.

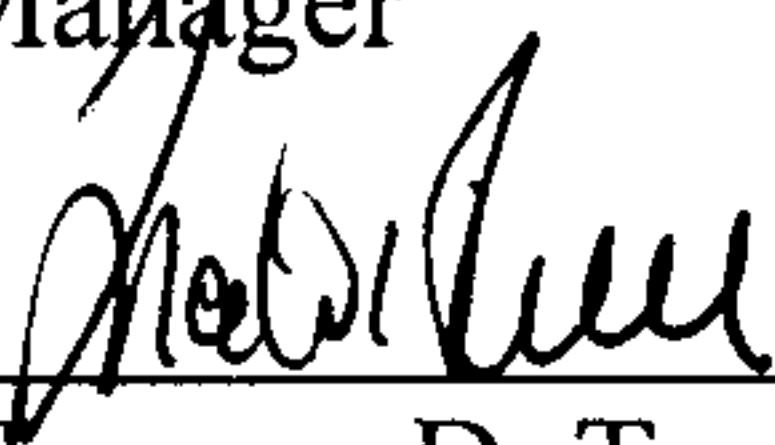
(Remainder of page intentionally left blank)

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


BORROWER:

GREYSTONE APARTMENTS, LLC

By: Tynes Development Corporation
As its Manager

By: 
Ingram D. Tynes
As its President

By: B&J III Delaware, LLC
As its Manager

By: 
James O. Rein
As its Manager

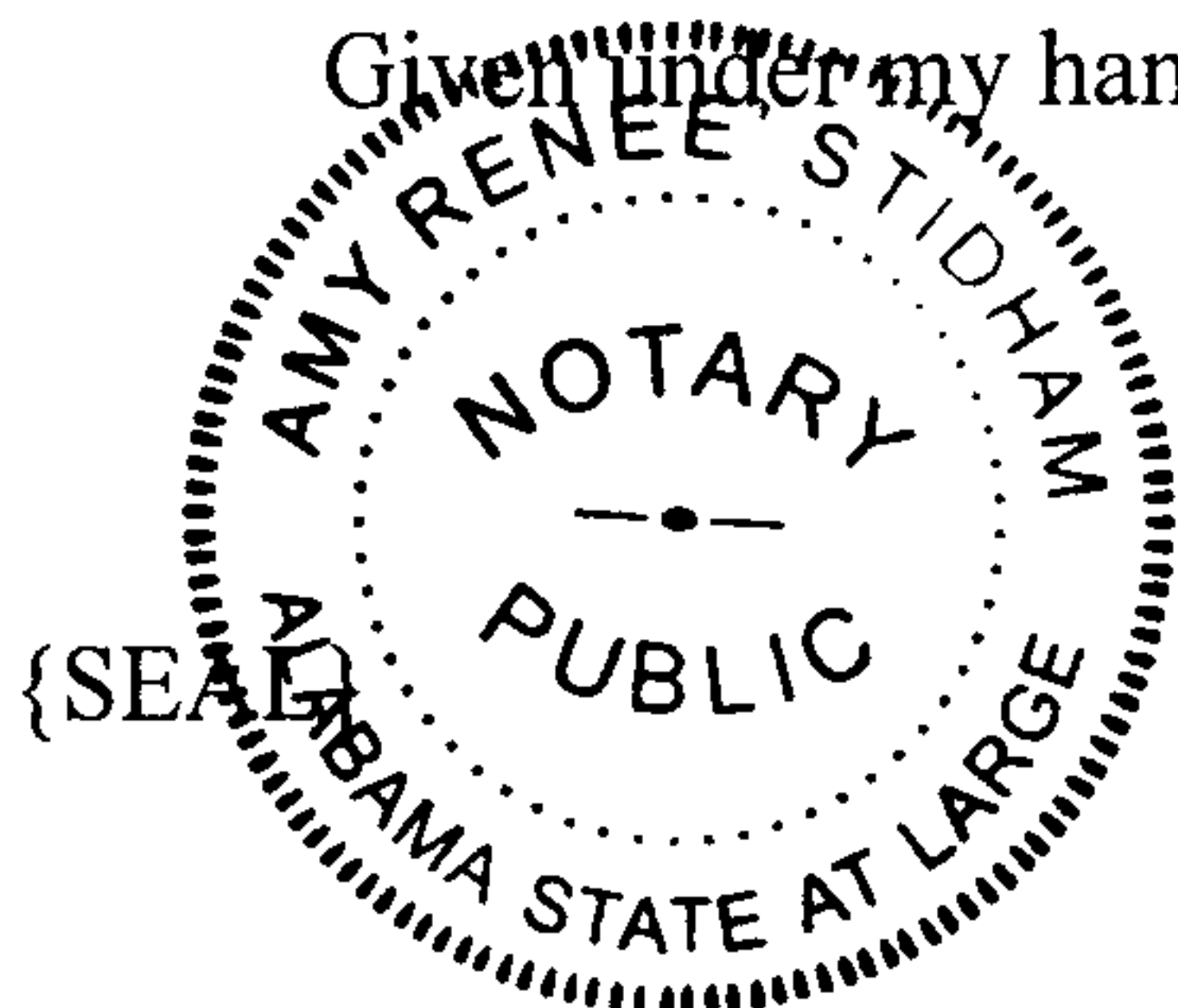
ACKNOWLEDGMENTS

STATE OF ALABAMA

COUNTY OF Shelby

I, Amy Renee' Stidham, a notary public in and for said County, in said State, hereby certify that Ingram D. Tynes, whose name as President of Tynes Development Corporation, as Manager of Greystone Apartments, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this the 6th day of May, 2014.



Amy Renee' Stidham

Notary Public

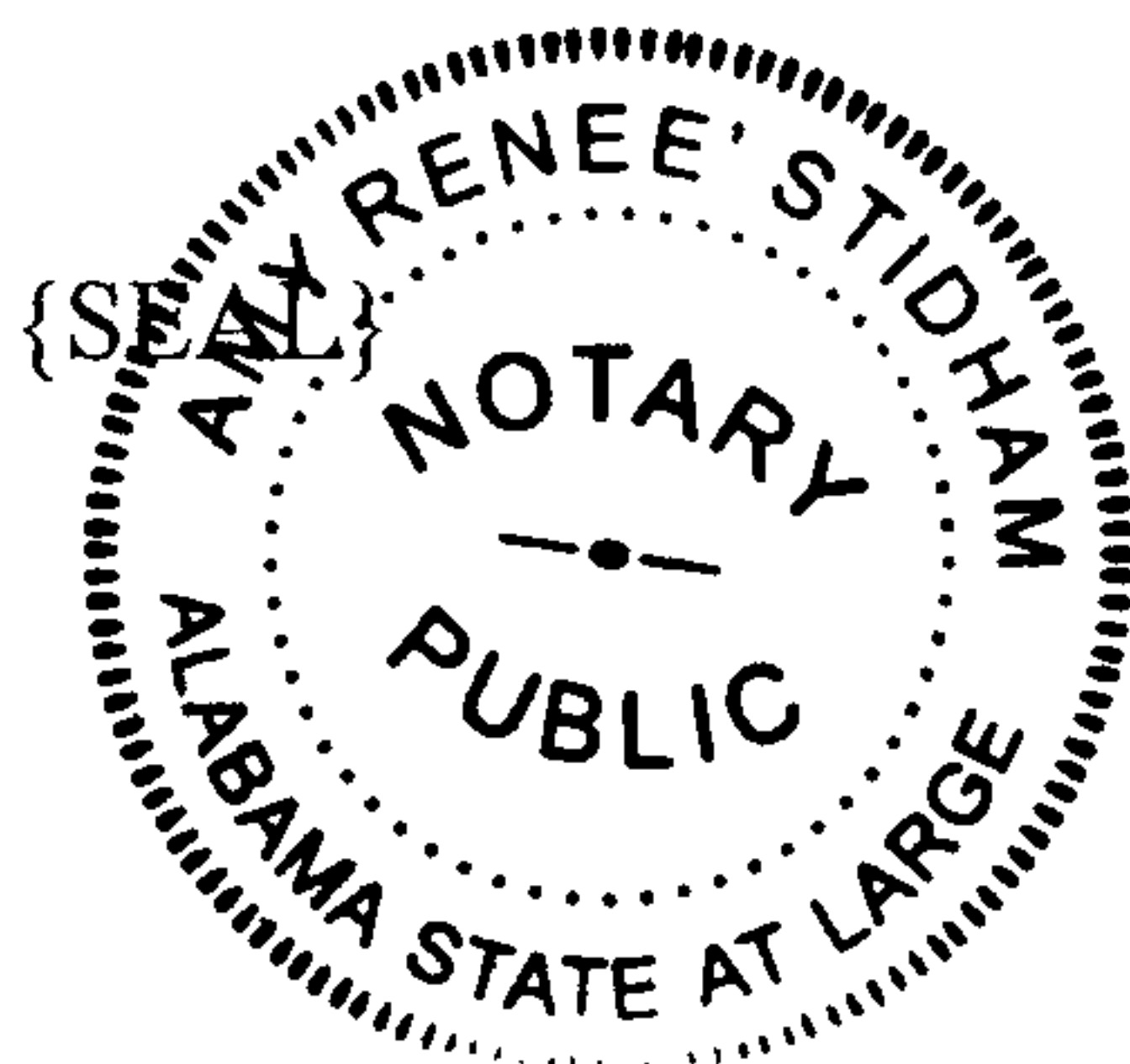
My Commission Expires: 7/1/15

STATE OF ALABAMA

COUNTY OF Shelby

I, Amy Renee' Stidham, a notary public in and for said County, in said State, hereby certify that James O. Rein, whose name as Manager of B&J III Delaware, LLC, as Manager of Greystone Apartments, 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 said instrument, he, as such manager, and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this the 6th day of May, 2014.



Amy Renee' Stidham

Notary Public

My Commission Expires: 7/1/15

Exhibit A Legal Description

A parcel of land being part of that certain tract of land as described and recorded in Real Book 2, Page 206, in the Office of the Judge of Probate for Shelby County, Alabama and lying in the Northeast Quarter of Section 29, Township 18 South, Range 1 West, said Shelby County, Alabama and being more particularly described as follows:

Commence at a pine knot found marking the Northwest Corner of the Southwest Quarter of the Northeast Quarter of said Section 29; thence N 00°16'54" W along the westerly line of the Northeast Quarter of said Section 29 for a distance of 221.77 feet to a 1.5" open top pipe found; thence departing said westerly line N 88°53'33" E for a distance of 1329.26 feet to an axle found in place on the easterly line of the Northwest Quarter of the Northeast Quarter of said Section 29; thence S 00°10'35" E for a distance of 224.05 feet to a 3/4" crimped pipe found marking the Northeast Corner of the Southwest Quarter of the Northeast Quarter of said Section 29; thence S 63°46'50" E for a distance of 420.57 feet to a capped rebar found (LS#12579) in place on the northwesterly right-of-way line of Alabama Highway No. 119; thence S 25°06'07" W along said northwesterly right-of-way line for a distance of 582.90 feet to a capped rebar found (LS#12579); thence departing said northwesterly right-of-way line N 62°35'29" W for a distance of 420.97 feet to a capped rebar found (PARKS); thence S 25°05'55" W for a distance of 25.02 feet to a capped rebar found (PARKS); thence N 62°32'16" W for a distance of 64.26 feet a capped rebar found (PARKS); thence S 24°57'41" W for a distance of 257.00 feet a 5/8" capped rebar set (SMW LS 19753); thence S 23°08'45" W for a distance of 264.78 feet a capped rebar found (LS#12579); thence S 89°07'32" W for a distance of 800.17 feet to a 3" capped pipe (illegible) found in place on the westerly line of the Northeast Quarter of said Section 29; thence N 00°16'26" W for a distance of 978.16 feet to the Point of Beginning.

LESS & EXCEPT THE FOLLOWING PARCELS:

PARCEL 2

A parcel of land lying in the NE 1/4 of Section 29, Township 18 South, Range 1 West of Shelby County, and being more particularly described as follows:

Commence at a 3/4" crimp pipe found in place at the SW corner of SW 1/4 of the NE 1/4 of said Section 29; thence run S 63°46'50" W for a distance of 420.57 feet to a capped rebar (LS#12579) found on the Northwest right-of-way line of Alabama Highway No. 119 (Cahaba Valley Road); thence S 25°06'07" W along said right-of-way line for a distance of 582.90 feet to a capped rebar (LS#12579) found and the Point of Beginning; thence N 62°35'29" W for a distance of 420.97 feet to a capped rebar (Parks) found; thence N 25°05'55" E for a distance of 244.12 feet to a 5/8" rebar capped (CA-627-LS) set; thence N 86°00'31" E for a distance of 4.59 feet to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the right having a radius of 55.00 feet and an arc length of 102.08 feet (bearing S 57°09'45" E, chord distance 88.05 feet) to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the right having a radius of 25.00 feet and an arc length of 20.32 feet (bearing S 87°02'59" E, chord distance 19.76 feet) to a 5/8" rebar capped (CA-627-LS) set; thence S 63°45'58" E for a distance of 286.63 feet to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the right having a radius of 25.00 feet and an arc length of 38.78 feet (bearing S 19°19'55" E, chord distance 35.00 feet) to a 5/8" rebar capped (CA-627-LS) set on the Northwest right-of-way line of Alabama Highway No. 119 (Cahaba Valley Road); thence S 25°06'07" W along said right-of-way line for a distance of 228.24 feet to the Point of Beginning. Said above described parcel contains 2.36 acres, more or less.

PARCEL 3


A parcel of land lying in the NE 1/4 of Section 29, Township 18 South, Range 1 West of Shelby County, and being more particularly described as follows:

Begin at a 3/4" crimp pipe found in place at the SW corner of SW 1/4 of the NE 1/4 of said Section 29; thence run S 63°46'50" W for a distance of 420.57 feet to a capped rebar (LS#12579) found on the Northwest right-of-way line of Alabama Highway No. 119 (Cahaba Valley Road); thence S 25°06'07" W along said right-of-way line for a distance of 244.64 feet to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the right having a radius of 25.00 feet and an arc length of 39.76 feet (bearing S 70°40'05" W, chord distance 35.70 feet) to a 5/8" rebar capped (CA-627-LS) set; thence N 63°45'58" W for a distance of 284.45 feet to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the right having a radius of 25.00 feet and an arc length of 20.32 feet (bearing N 40°28'56" W, chord distance 19.76 feet) to a 5/8" rebar capped (CA-627-LS) set; thence with a curve to the left having a radius of 55.00 feet and an arc length of 102.62 feet (bearing N 70°39'09" W, chord distance 88.37 feet) to a 5/8" rebar capped (CA-627-LS) set; N 34°06'23" W for a distance of 5.62 feet to a 5/8" rebar capped (CA-627-LS) set; thence N 25°08'04" E for a distance of 270.03 feet to the Point of Beginning. Said above described parcel contains 2.57 acres, more or less.

Exhibit B
Permitted Encumbrances

1. The lien of Ad Valorem taxes for the year 2014, and subsequent years. 2014 taxes are a lien but neither due nor payable until October 1, 2014.
2. Transmission line permits to Alabama Power Co. in Deed Book 109 at page 504 and Deed Book 111 at page 403.
3. Right of way to Alabama Gas Corporation as recorded in Inst. No. 1999-00383, in the Office of the Judge of Probate of Shelby County, Alabama.
4. Right of way to Water Works & Sewer Board of Birmingham as recorded in Inst. No. 9908/6040, in the Office of the Judge of Probate of Jefferson County, Alabama.
5. Ordinance No. 04-77 approving annexation to the City of Birmingham as recorded in Inst. No. 20040811000452070, in the Office of the Judge of Probate of Shelby County, Alabama.
6. Mortgage, Assignment of Rents and Leases and Security Agreement, by and between Greystone Apartments, LLC and First Tennessee Bank National Association, dated as of June 6, 2012, and recorded in Inst. No. 20120608000203320, in the Office of the Judge of Probate of Shelby County, Alabama.

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Shelby Cnty Judge of Probate, AL
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