


**THIS INSTRUMENT PREPARED BY:**

**James E. Vann, Esquire  
Sirote & Permutt, P.C.  
2311 Highland Avenue South - 35205  
P.O. Box 55727  
Birmingham, Alabama 35255-5727  
(205) 930-5484**

  
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Shelby Cnty Judge of Probate, AL  
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**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT  
(ALABAMA)**

**THIS MORTGAGE**, made as of the 2<sup>nd</sup> day of November, 2015, by **SB Dev. Corp.**, an Alabama business corporation (hereinafter referred to as "Borrower" or "Mortgagor", whether one or more), as mortgagor, and **Samford University**, an Alabama non-profit corporation (hereinafter said mortgagee and any subsequent holder of the Mortgage are referred to as "Lender" or "Mortgagee," whether one or more), as mortgagee.

**WITNESSETH:**

**WHEREAS**, Borrower is justly indebted to Lender in the principal sum of **Four Million Five Hundred Thousand and no/100 Dollars (\$4,500,000.00)** (the "Loan"), as evidenced by a promissory note dated November 2, 2015, payable to Lender with interest thereon (the "Note") as provided in the Note; and

**WHEREAS**, Mortgagor and Mortgagee desire to secure the payment of the principal amount of the Note with interest, and all renewals, amendments, extensions, modifications and consolidations thereof, and all refinancing of any part of the Note and any and all other additional indebtedness and obligations of Borrower to Lender, whether 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 and modifications thereof, including all liabilities and obligations of Borrower to Lender under the Purchase and Sale Agreement (the "PSA") between Borrower, as purchaser, and Lender, as seller, and whether incurred or given as maker, endorser, guarantor or otherwise (herein collectively referred to as the "Indebtedness").

**NOW, THEREFORE**, Borrower, in consideration of Lender making the Loan above-mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, amendments, modifications, consolidations and refinancing of same, and any charges herein incurred by Lender on account of Borrower, including, but not limited to, reasonable attorneys' fees, and any and all of the Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (together with the Note and this Mortgage, the "Loan Documents"), and as may be set forth in other instruments or agreements evidencing or securing any of the Indebtedness including, but not limited to, the PSA (collectively, the "Debt Instruments") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto Lender, its successors and assigns, the following described land, real estate, estates, leasehold estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of Lender or hereafter acquired by Borrower and subject to the rights of Lender under this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Mortgaged Property") to wit:

(a) All that tract or parcel or parcels of land and estates more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Land");



(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever (including, without limitation, property and collateral described in the Financing Statements executed, authorized or approved in connection herewith which are incorporated herein by reference as if set forth fully and at length), now or hereafter owned by Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements (except household goods of Borrower not acquired with the proceeds of any amount secured hereby), including all extensions, additions, improvements, betterments, renewals, substitutions and replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "Improvements");

(c) All accounts (as presently or hereafter defined in the Uniform Commercial Code), general intangibles, goods, contracts and contract rights relating to the Land, the Improvements, and other Mortgaged Property, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land, the Improvements and other Mortgaged Property;

(d) All easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by 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 Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Land, the Improvements, and other Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as there is no default hereunder, the right to receive and retain the rents, issues and profits thereof; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land, the Improvements, or other Mortgaged Property, or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land, the Improvements, or other Mortgaged Property, or any part thereof, or to any rights or appurtenances thereto, including any award for change of grade or streets. Lender 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 reasonable 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) All licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements of any kind relating to the use, development, construction, occupancy and operation of the Land and the Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing; and

(f) All proceeds and products, cash or non-cash (including, but not limited to, all insurance, contract and tort proceeds and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the property described above) of any of the foregoing types or items of property described in subparagraphs (a), (b), (c) (d) or (e) above.

Some of the aforesaid items are or may become "fixtures" on the above-described Land and as provided under Article 9 of the Uniform Commercial Code, this Mortgage, upon being filed for record in the real property



records of the county where the Land is located, shall operate also as a "fixture filing" and financing statement upon such of the items which are or may become fixtures.

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

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, and any extensions, renewals, amendments, modifications, consolidations 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 Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorney's fees, and shall pay any and all Indebtedness of Borrower to Lender, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents, and in each of the Debt Instruments without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

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

## **ARTICLE I**

**Section 1.1      Performance of Mortgage, Note and Loan Documents.**      Borrower will perform, observe and comply with all provisions hereof, and of the Note, and of the other Loan Documents, and of the other Debt Instruments, and will duly and punctually pay to Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, the Loan Documents, and the other Debt Instruments, all without any deductions or credit for taxes or other similar charges paid by Borrower.

**Section 1.2      Warranty of Title.**      Borrower warrants that, subject to any exceptions shown on **Exhibit A**, Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is shown on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

**Section 1.3      Future Advances, Revolving and Open-End Loans, and Other Debts.**

(a)      It is expressly understood and agreed that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all other Indebtedness, obligations and liabilities, direct or contingent, of Borrower to Lender, 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. Provided, however, that the real property and other collateral described in this Mortgage (or, if appropriate, the applicable portion of the real property and other collateral described in this Mortgage) shall not secure Other Indebtedness if and to the extent (i) a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan" as those terms are defined by federal law governing unfair and deceptive credit practices or (ii) prohibited by any applicable law, rule, or regulation, including, without limitation, the Truth in Lending Act, 15 U.S.C. Sections 1601, et seq.

(b)      The Loan and any other components of the Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.



**Section 1.4      Environmental Matters.** Borrower represents and warrants to Lender, and covenants with Lender as follows:

(a) No Hazardous Materials (hereinafter defined) have been or are, to Borrower's knowledge, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property, except in the ordinary course of Borrower's business and in strict compliance with all environmental laws, rules, regulations, and orders. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or material defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) To Borrower's knowledge, no underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

(c) To Borrower's knowledge, all of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) To Borrower's knowledge, there are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

(e) Borrower promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, the Borrower represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990 ("ADA") (42 U.S.C. Sections 12101, et seq. ) and the Rehabilitation Act of 1973 ("Rehabilitation Act") (29 U.S.C. Sections 749, et seq. ), each such act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto; and

(f) Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.4, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties, and/or covenants herein to be inaccurate or misleading in any respect.

Borrower shall indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Paragraph 1.4, (ii) Borrower's failure to perform any obligations of this Paragraph 1.4, (iii) Borrower's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or with or with the ADA or Rehabilitation Act, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events. However, this indemnification shall not apply to any new Hazardous Material first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full. Borrower hereby releases and waives any future claims against Lender for indemnity or contribution in the event



Borrower becomes liable for cleanup or other costs related to the Mortgaged Property, including, without limitation, under any applicable laws, rules, regulations or court orders.

In addition to other inspection rights of Lender, Borrower grants and conveys 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, as Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with the terms and conditions set forth in the Loan Documents and 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. Any tests or inspections made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person or entity. Notwithstanding the grant of the above easement and license to the Lender, the Lender shall have no obligation to perform any such audits, test, inspections, or examinations, or to take any remedial action. All the costs and expenses incurred by the Lender with respect to any audits, tests, inspections, examinations and interviews which the Lender may conduct or take pursuant to this paragraph, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Borrower, with interest, and shall be secured by the Mortgage and the other Loan Documents.

#### **Section 1.5      Taxes, Utilities and Liens.**

(a) Borrower will pay promptly, when and as due, and, if requested, will exhibit promptly to 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 interest of Lender in the Mortgaged Property or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower promptly shall pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage 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 thereof, or 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 Lender.

(d) If required or requested by Lender at any time after an Event of Default, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. So long as there is no Event of Default or event that with notice, lapse of time or both, could constitute an Event of Default, such amount shall be used by Lender to pay such taxes when due. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any Other Indebtedness Instruments, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, to other components of the Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, or with respect to any other portions of the Indebtedness, or any such



other obligations. Borrower agrees to pay all ad valorem taxes on the Mortgaged Property prior to the date such taxes become delinquent and to deliver to Lender proof of payment of all ad valorem taxes within ten (10) days after such payment is made.

**Section 1.6      Insurance.**

(a) Borrower will procure for, deliver to, and maintain for the benefit of Lender, during the life of this Mortgage, insurance policies in such amounts as Lender shall require, insuring the Mortgaged Property against fire, extended coverage, and such other insurable hazards, casualties and contingencies as Lender may require. The form of such policies and the companies issuing them shall be acceptable to Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement (or equivalent) making losses payable to Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said fund, Lender may apply the net proceeds, at its option, either toward restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be paid over to Borrower to be used to repair such improvements, or to build new improvements in their place or for any other purpose satisfactory to Lender, in Lender's sole discretion, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required or requested by Lender at any time after an Event of Default, Borrower shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.5 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.6. So long as there is no Event of Default or event that with notice, lapse of time or both, could constitute an Event of Default, such amount shall be used by Lender to pay such insurance premiums when due. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any of the other Debt Instruments, Lender may apply such sums to the reduction of the Indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by Lender in writing, no application of insurance deposits to the Note, to other portions of the Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the other Indebtedness, or any such other obligations.

(d) Borrower shall furnish to Lender a flood insurance policy acceptable to Lender if the Land described in **Exhibit A** attached hereto, or any portion thereof, is now or hereafter located in flood zone A or B or any other area where flood insurance is now or hereafter required by any applicable law, rule or regulation. If the Loan is made in connection with the construction of improvements upon the land described in **Exhibit A**, Borrower agrees to furnish to Lender an as-built survey of the Mortgaged Property within thirty (30) days after completion of the construction of the improvements to verify that no improvements are located within flood zone A or B and that flood insurance is not required.

(e) Borrower shall at all times maintain in full force and effect a commercial general liability insurance policy, with limits of liability for bodily injury and property damage of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate with Lender named as an additional insured.



**Section 1.7      Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently (other than an insubstantial taking of unimproved portions of the Mortgaged Property which does not in Lender's judgment materially affect access to or use of the Mortgaged Property), the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, which after deducting therefrom all its expenses, including attorney's fees may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require.

**Section 1.8      Care of the Property.**

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenance subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in or operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, free and clear of all liens and security interest except those created by the Loan Documents or other Debt Instruments, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value and costing not less than the amount realized from the property sold or otherwise disposed of which shall forthwith become, without further action, subject to the provisions of this Mortgage. Notwithstanding the foregoing, Borrower may demolish the existing house once (i) the Land is annexed into the City of Hoover, and (ii) the final plat for the subdivision of the Land has been fully approved and filed for record in the Office of the Judge of Probate with a copy delivered by Borrower to Lender.

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

(d) Lender may enter upon and inspect the Mortgaged Property at any time during normal business hours after giving Borrower 24 hours prior notice.

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

(f) If all or any part of the Improvements shall be damaged by fire or other casualty, Borrower will promptly restore the Improvements to the equivalent of its condition immediately prior to the casualty, regardless of whether or not there shall be any insurance proceeds therefore; provided, however, that if there are insurance proceeds, Borrower shall not be required to restore the Improvements as aforesaid unless Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.6, toward restoring the damage. If a part of the Mortgaged Property shall be physically damaged through condemnation, Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to Lender; provided, however, that if there are condemnation proceeds or awards, Borrower shall not be required to restore the Mortgaged Property as aforesaid unless Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.7 toward restoring the damaged improvements.



**Section 1.9**      **Further Assurances; After Acquired Property.**      At any time, and from time to time upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, 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 Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior mortgage and lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The mortgage, 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 Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

**Section 1.10**      **Leases Affecting Mortgaged Property.**      If there are any leases in effect from time to time, Borrower will comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by Lender, Borrower will execute and deliver to Lender, as additional security such other documents as may be requested by Lender to further evidence 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, and will not cancel, surrender or modify any lease so assigned without the written consent of Lender. Borrower shall furnish Lender with a subordination, attornment and non-disturbance agreement in form and substance acceptable to Lender from such existing and future lessees as Lender may require.

**Section 1.11**      **Expenses.**      Borrower will pay or reimburse Lender for all reasonable attorney's fees, costs and expenses incurred by Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the Loan Documents or the other Debt Instruments, 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 Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, the Loan Documents, the other Debt Instruments, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

**Section 1.12**      **Performance by Lender of Defaults by Borrower.**      If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; 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 other Loan Documents, or of the other Debt Instruments, then Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be without demand, immediately repaid by Borrower to Lender with interest thereon at the greater of the rate of twelve percent (12%) per annum or the rate set forth in the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claims and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower for trespass or otherwise.



**Section 1.13     Books and Records.**     Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of Borrower's operations in accordance with sound accounting principles. Borrower will furnish to Lender within ninety (90) days after the end of Borrower's fiscal year, annual audited financial statements of SB Holding Corp. and subsidiaries, including, without limitation, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender audited by a certified public accountant selected by Borrower. Borrower further agrees to furnish to Lender internally prepared financial statements for Borrower, SB Holding Corp., and NSH Corp. within thirty (30) days after the end of each calendar quarter. Borrower further agrees to deliver to Lender Borrower's annual federal income tax returns within 30 days of filing and, within 10 days after the date of any request by Lender, such other information (financial or otherwise, including without limitation income tax returns) concerning Borrower, any guarantor of the indebtedness secured hereby, and/or the Mortgaged Property as Lender may request at any time or from time to time. The requirements in this Section 1.13 are in addition to any reporting requirements contained in any of the other Loan Documents.


**Section 1.14     Estoppel Affidavits.**     Borrower, within ten (10) days after written request by Lender, shall deliver to Lender a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note and whether or not any offsets or defenses exist against any principal and interest.

**Section 1.15     Transfers of Interests in Mortgaged Property or Borrower.**     Borrower shall not sell, assign, mortgage, encumber, or otherwise convey the Mortgaged Property, or any interest therein, without obtaining the express written consent of Lender prior to such conveyance. If Borrower should sell, assign, mortgage, encumber or convey all, or any part of, the Mortgaged Property, or any interest therein, without such consent by Lender, then, in such event, the entire balance of the Indebtedness secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of Lender. Borrower shall not permit or allow to occur any sale, assignment, transfer, pledge, encumbrance or other conveyance of any stock, partnership, membership or any other ownership, equity or beneficial interest in Borrower or any entity that directly or indirectly owns an equity interest in Borrower without obtaining the prior written consent of Lender. On sale, assignment, transfer, pledge, encumbrance, or conveyance of any stock, partnership, membership or any other ownership, equity or beneficial interests in Borrower or any entity that directly or indirectly owns an equity interest in Borrower (if Borrower or any entity that directly or indirectly owns an equity interest in Borrower is not a natural person or persons but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Lender, Lender may, in Lender's sole discretion, declare the entire balance of the Indebtedness secured by this Mortgage and all accrued interest thereon to be immediately due and payable.

Lender shall have such right and option to withhold its consent in its sole discretion, absolutely, irrespective of any facts or circumstances, including, but not limited to, the following: whether such transfer would or might (i) diminish the value of any security for the Loan, (ii) increase the risk of default under this Mortgage or any of the other Loan Documents, (iii) increase the likelihood of Lender having to resort to any security for the Loan after default, or (iv) add or remove the liability of any person or entity for payment or performance of the Loan or any covenant or obligation under this Mortgage. If Lender's consent to a proposed transfer is requested, Lender shall have the right (in addition to its absolute right to refuse to consent to any such transfer) to condition its consent upon satisfaction of any conditions or requirements as Lender may determine including, but not limited to, any one or more of the following requirements: (i) that the interest rate on the Note be increased to a rate acceptable to Lender; (ii) that a reasonable transfer fee, in an amount determined by Lender be paid; (iii) that a principal amount deemed appropriate by Lender be paid against the Note; or (iv) that Borrower and each proposed transferee execute such assumption agreement and other instruments as Lender shall require.

## **ARTICLE II**

**Section 2.1     Event of Default.**     The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

  
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(a) Failure by Borrower to pay as and when due and payable or within five (5) days thereafter (i) any installment of principal, interest or escrow deposit, or other charge payable under the Note, this Mortgage or under any other Loan Document or (ii) any installment of principal, interest or escrow deposit, or other charge payable under any of the other Debt Instruments; or

(b) Failure by Borrower to maintain insurance as required by Section 1.6; or

(c) Violation of any of the transfer provisions of section 1.15; or

(d) Failure by Borrower to duly observe any other covenant, condition or agreement of this Mortgage and the continuance of such failure for fifteen (15) days or more after Lender sends written notice to Borrower at the address for Borrower in Section 3.8 (or any other address of Borrower appearing in the business records of Lender); or

(e) Failure by any guarantor to duly observe any covenant, condition or agreement of any guaranty agreement or other instrument covering or in any way relating to the Note or the Loan or any of the Indebtedness secured hereby or any Debt Instruments; or

(f) If any representation or warranty made herein or in any of the other Loan Documents shall prove to be false or misleading in any material respect or if any report, certificate, financial statement or other instrument heretofore or hereafter furnished in connection with this Mortgage or any other Loan Document or any advance of the proceeds of the Loan shall prove to be false or misleading in any material respect; or

(g) The filing by Borrower or any guarantor of any indebtedness secured hereby of a voluntary petition in bankruptcy or Borrower or any guarantor being adjudicated as a bankrupt or insolvent, or the filing by Borrower or any guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower or any guarantor seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits, or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(h) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against Borrower or any guarantor of any of the indebtedness secured hereby seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(i) The enforcement of any prior or junior lien, mortgage or encumbrance on the Mortgaged Property or any part thereof or the failure to pay when due any amount owed under any note or other instrument secured by any prior or junior lien or mortgage on the Mortgaged Property or any part thereof; or

(j) The dissolution of Borrower, SB Holding Corp. or NSH Corp.; or

(k) The death or incompetence of both Jonathan Belcher and Dwight A. Sandlin; or

(l) The death or incompetence of either Jonathan Belcher or Dwight A. Sandlin if the occurrence of any such event constitutes an event of default (or would constitute an event of default after notice, lapse of time, or



both) under any note, mortgage, or other agreement between a bank or other lender and any one or more of Borrower, SB Holding Corp. or NSH Corp.; or

(m) Any other event of default set forth in any of the other Loan Documents or any of the Debt Instruments.

**Section 2.2      Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby with interest accrued thereon (or such parts as Lender may elect) shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**Section 2.3      Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender may enter and take possession of all the Mortgaged Property, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property, 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 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 Lender; shall apply the remainder of the moneys so received by Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits; 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; fifth to the payment of any sums due under other Debt Instruments, whether principal, interest or otherwise; and the balance, if any to Borrower, or the party appearing of record to be the owner of the Mortgaged Property, or as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, or Borrower's heirs, successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**Section 2.4      Receiver.**

(a) If and to the extent permitted by applicable law, if an Event of Default shall have occurred and be continuing, 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 indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorneys' fees, cost and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 2.4; and all such expenses shall be secured by this Mortgage.



**Section 2.5      Lender's Power of Enforcement.** If an Event of Default shall have occurred, 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 to do any one or more of the following (simultaneously or in any order): (a) to enforce payment of the Note; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Loan Documents or other Debt Instrument; and (d) to pursue any other remedy available to Lender, all as Lender may elect.

**Section 2.6      Power of Sale.** If an Event of 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 3.5 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

**Section 2.7      Application of Foreclosure Proceeds.** Unless otherwise required by applicable law, the proceeds of any foreclosure sale pursuant to Paragraph 2.6 of Article II shall be applied as follows:

(a) First, to the expenses of making the sale, including, a reasonable attorney's fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, 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 Loan Documents;

(c) Third, to the payment and satisfaction of the indebtedness (including but not limited to the Loan, and the Other Indebtedness) secured hereby with interest to date of sale, whether or not all of such indebtedness be then due;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of sale, after deducting any expense of ascertaining who such owner is, or as may otherwise be provided by law.

**Section 2.8      Lender's Option on Foreclosure.** At the option of 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 Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**Section 2.9      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 or limiting 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 2.10      Suits to Protect the Mortgaged Property.** 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 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 Lender.

**Section 2.11 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender.** If default shall be made in the payment of any amount due under this Mortgage, the Note, the Loan Documents or the other Debt Instruments, then, at the option of Lender, Borrower will pay to Lender the whole amount due and payable under the Note and under all other Debt Instruments; and in case Borrower shall fail to pay the same forthwith 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 Lender's agents and attorneys.

**Section 2.12 Delay or Omission No Waiver.** No delay or omission of the Lender or 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, the Loan Documents, or by the other Debt Instruments to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

**Section 2.13 No Waiver of One Default to Affect Another.** No waiver of any default hereunder, under the Loan Documents, or under the other Debt Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If 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, in the Loan Documents, or in the other Debt Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, the Loan Documents or the other Debt Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the Loan Documents, or the other Debt Instruments of 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 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 Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by the operation of law or otherwise of all or any part of the Mortgaged Property, 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 and the Loan Documents) is hereby 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 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 2.14 Discontinuance of Proceedings--Positions of Parties, Restored.** In case 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 Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

**Section 2.15 Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to 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, the Loan Documents, the other Debt Instruments or now or hereafter existing at law or in equity or by statute.

### **ARTICLE III**



**Section 3.1      Heirs, Successors and Assigns Included in Parties.** Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

**Section 3.2      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 otherwise affect any of the terms hereof.

**Section 3.3      Gender.** Whenever the context so requires, the masculine includes the feminine and neuter, and the singular includes the plural, and vice versa.

**Section 3.4      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, in the Loan Documents, or in the other Debt Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, the Loan Documents and the other Debt Instruments shall be in no way affected, prejudiced or disturbed thereby.

**Section 3.5      Grant of Security Interest.**

(a) Borrower (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Lender (the "secured party" for purposes of the Uniform Commercial Code) making the Loan and for other good and valuable consideration, and to secure the prompt payment of same, with 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 of the Indebtedness, and further to secure the performance of the covenants, conditions, and agreements herein set forth and in the Note and the other Loan Documents, and the other Debt Instruments, does hereby 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"), including, without limitation, the property described in the Financing Statements executed, approved, or authorized in connection herewith which are incorporated herein by reference as if set forth fully and at length.

(b) All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein.

(c) Borrower warrants to Lender that no financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed, authorized or approved by Borrower in favor of Lender. Borrower specifically authorizes Lender to prepare and to file financing statements covering the Collateral in form satisfactory to Lender, and will pay the cost of filing the same, in all public offices wherever filing is deemed by Lender to be necessary or desirable. Borrower promises to pay to Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

(d) Upon the occurrence of an Event of Default, Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, the Loan Documents, the other Debt Instruments or under applicable law, may immediately and without demand, exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code or other applicable law, all of which shall be cumulative. Such rights shall include, without limitation:

(i) 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;

(ii) 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;

(iii) 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

(iv) The right to notify account debtors and demand and receive payment therefrom.


To effectuate the rights and remedies of Lender upon default, Borrower irrevocably appoints 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 3.6**      **Conflict in Loan Documents.** In the event of conflict in the terms of any provision in this Mortgage, the Note, the Loan Documents, or the other Debt Instruments, the terms of the provision most favorable to Lender shall apply.

**Section 3.7**      **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 3.8**      **Addresses and Other Information.** The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements.

(a)	Name of Borrower (Debtor):	SB Dev. Corp.
	Address of Borrower:	3545 Market St, Hoover, AL 35226
(b)	Name of Lender (Secured Party)	Samford University
	Address of Lender:	800 Lakeshore Drive Birmingham, AL 35229 Attn: Mr. Harry B. Brock, III



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**Section 3.9**      **Releases.** Borrower shall be entitled to request partial releases of lots from time to time on the terms and conditions stated in the Principal Payment and Lot Release Schedule attached hereto as Exhibit B. After payment in full of the Note and the Indebtedness and this Mortgage is defeased pursuant to the defeasance provisions set forth hereinabove, then upon Borrower's written request, Lender agrees to execute and deliver to Borrower a release of this Mortgage in form reasonably acceptable to Lender.

**Section 3.10**      **Wavier of Jury Trial.** **TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN**



**DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE, KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER TO WAIVE BORROWER'S RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

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

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

BORROWER (Mortgagor, Debtor):

SB Dev. Corp.


By: Dwight A. Sandlin  
Name: DWIGHT A. SANDLIN  
Title: CEO

LENDER (Mortgagee, Secured Party):

Samford University

By: \_\_\_\_\_  
Name: **Harry B. Brock, III**  
Title: **Vice President for Business & Financial Affairs**

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

  
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I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DWIGHT SANDLIN whose name as the CEO of **SB Dev. Corp.**, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 2 day of November, 2015.

[Signature]  
Notary Public  
My Commission Expires: 4-17-2016

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Harry B. Brock, III**, whose name as the Vice President for Business and Financial Affairs of **Samford University** 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 the instrument, he, as such officer and with full authority, executed the same voluntarily.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



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

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

BORROWER (Mortgagor, Debtor):

SB Dev. Corp.


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER (Mortgagee, Secured Party):

Samford University

By: [Signature]  
Name: Harry B. Brock, III  
Title: Vice President for Business & Financial Affairs

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

  
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I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as the \_\_\_\_\_ of **SB Dev. Corp.**, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

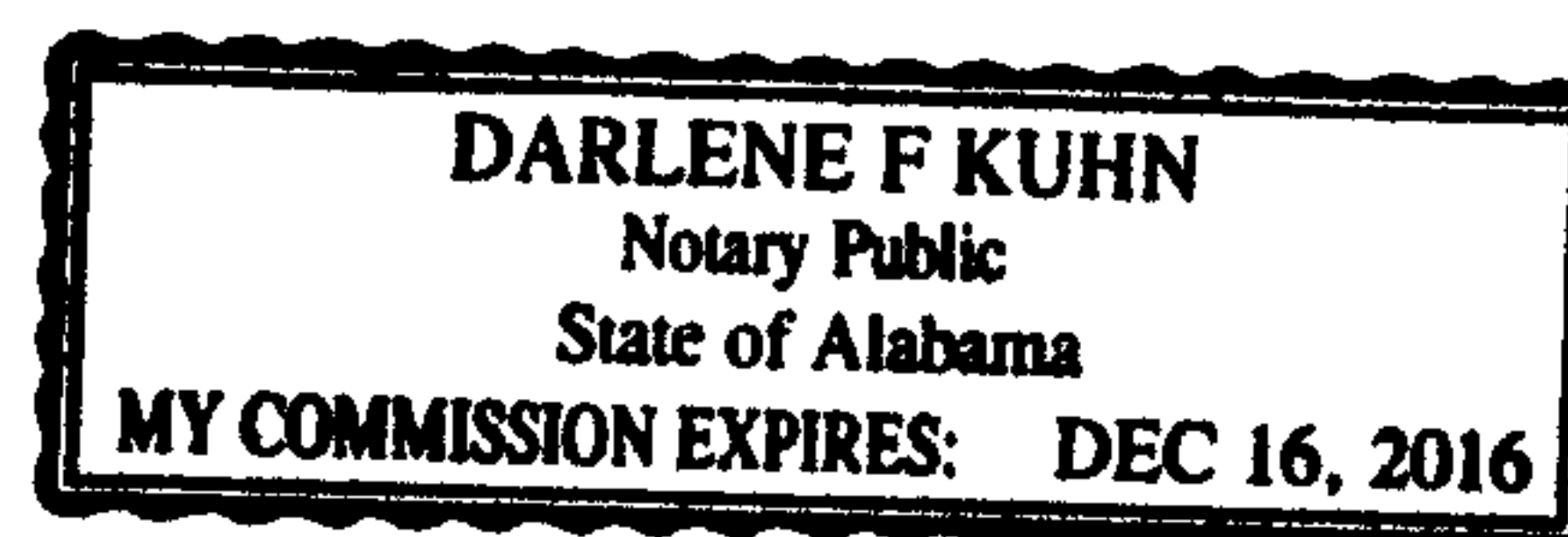
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Harry B. Brock, III**, whose name as the Vice President for Business and Financial Affairs of **Samford University** 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 the instrument, he, as such officer and with full authority, executed the same voluntarily.

Given under my hand this 2<sup>nd</sup> day of November, 2015.

[Signature]  
Notary Public  
My Commission Expires: 12/16/16





## **EXHIBIT A**

### **DESCRIPTION OF REAL PROPERTY**

#### **PARCEL I:**

TO LOCATE THE POINT OF BEGINNING COMMENCE AT THE NORTHWEST CORNER OF SECTION 26, TOWNSHIP 18 SOUTH, RANGE 1 WEST SHELBY COUNTY, ALABAMA; THENCE S 02° 35' 21" W A DISTANCE OF 1538.16 FEET TO A POINT; THENCE S 02° 34' 44" W A DISTANCE OF 1049.65 FEET TO A POINT, THENCE S 02° 37' 01" W A DISTANCE OF 265.36 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH LINE OF HARRY B. BROTH, JR. PROPERTY, THENCE S 88° 23' 50" E A DISTANCE OF 1149.08 FEET TO A POINT, THENCE N 37° 46' 30" E A DISTANCE OF 694.96 FEET TO A POINT, THENCE N 37° 46' 30" E A DISTANCE OF 425.00 FEET TO A POINT; THENCE N 37° 46' 30" E A DISTANCE OF 191.42 FEET TO A POINT THENCE N 34° 57' 26" W A DISTANCE OF 52.78 FEET TO A POINT; THENCE N 00° 36' 72" W A DISTANCE OF 93.80 FEET TO A POINT, THENCE N 52° 13' 30" W A DISTANCE OF 671.96 FEET TO A POINT THENCE N 59° 57' 24" W A DISTANCE OF 607.97 TO A POINT; THENCE N 59° 67' 24" W A DISTANCE OF 204.52 FEET TO A POINT; THENCE N 82° 07' 34" W A DISTANCE OF 466.16 FEET TO A POINT; THENCE S 43° 34' 23" W A DISTANCE OF 938.46 FEET TO A POINT, THENCE S 00° 00' 27" E A DISTANCE OF 94.68 FEET TO A POINT; THENCE S 00° 00' 28" E A DISTANCE OF 1096.51 FEET TO A POINT; THENCE S 41° 05' 54" E A DISTANCE OF 199.93 FEET TO A POINT; THENCE S 89° 32' 49" E A DISTANCE OF 289.24 FEET TO A POINT WHICH IS THE POINT OF BEGINNING.

#### **LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:**

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 18 SOUTH, RANGE 1 WEST, DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26, THENCE RUN SOUTH ALONG THE WEST BOUNDARY OF SAID SECTION 26 FOR A DISTANCE OF 2517.33 FEET, LEFT 90° 00' 00" AND RUN EAST FOR 98.02 FEET TO AN IRON PIN SET AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE LEFT 69° 43' 46" AND RUN THENCE NORTHEAST FOR A DISTANCE OF 168.59 FEET TO AN IRON PIN SET; THENCE RIGHT 44° 19' 06" AND RUN NORTHEAST FOR A DISTANCE OF 306.98 FEET; THENCE RIGHT 40° 52' 06" AND RUN IN A SOUTHEAST FOR A DISTANCE OF 363.40 FEET TO AN IRON PIN SET; THENCE RIGHT 94° 00' 21" AND RUN SOUTHWEST FOR A DISTANCE OF 123.83 FEET TO AN IRON PIN SET; THENCE RIGHT 24° 04' 35" AND RUN SOUTHWEST FOR A DISTANCE OF 509.04 FEET TO AN IRON PIN SET; THENCE RIGHT 79° 13' 57" AND RUN NORTHWEST FOR A DISTANCE OF 276.77 FEET TO AN IRON PIN SET; THENCE RIGHT 34° 00' 28" AND RUN NORTHWEST FOR A DISTANCE OF 155.52 FEET TO THE POINT OF BEGINNING.

#### **PARCEL II:**

TO LOCATE THE POINT OF BEGINNING COMMENCE AT THE NORTHWEST CORNER OF SECTION 26, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE S 01° 37' 07" W ON THE WEST BOUNDARY OF SAID SECTION A DISTANCE OF 2853.29 FEET TO THE POINT OF BEGINNING; SAID POINT BEING ON THE SOUTH LINE




OF HARRY B. BROCK, JR. PROPERTY; THENCE CONTINUE S 01° 37' 07" W ON THE WEST BOUNDARY OF SAID SECTION 26 A DISTANCE OF 1028.33 FEET TO THE SOUTHWEST CORNER OF THE NW1/4 OF THE SW1/4 OF SECTION 26; THENCE S 82° 32' 10" W A DISTANCE OF 121.36 FEET TO A POINT; THENCE S 65° 11' 47" E A DISTANCE OF 431.67 FEET TO A POINT ON THE NORTHWEST RIGHT-OF-WAY OF DUNNAVANT VALLEY ROAD, COUNTY HIGHWAY NO. 41; THENCE N 36° 48' 15" E ON THE NORTHWEST RIGHT-OF-WAY OF SAID DUNNAVANT VALLEY ROAD A DISTANCE OF 1514.25 FEET TO A POINT; SAID POINT BEING ON THE SOUTH LINE OF SAID HARRY B. BROCK, JR. PROPERTY; THENCE N 89° 23' 25" W ON THE SOUTH LINE OF SAID HARRY B. BROCK, JR. PROPERTY A DISTANCE OF 1149.70 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING IN SECTION 26 AND IN SECTION 27, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA.

PARCEL IV:

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 18, RANGE 1 WEST, DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26, THENCE RUN SOUTH ALONG THE WEST BOUNDARY OF SAID SECTION 26 FOR A DISTANCE OF 2517.33 FEET, LEFT 90° 00' 00" AND RUN EAST FOR 98.02 FEET TO AN IRON PIN SET AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE LEFT 69° 43' 46" AND RUN THENCE NORTHEAST FOR A DISTANCE OF 168.59 FEET TO AN IRON PIN SET; THENCE RIGHT 44° 19' 06" AND RUN NORTHEAST FOR A DISTANCE OF 306.98 FEET; THENCE RIGHT 40° 52' 06" AND RUN IN A SOUTHEAST FOR A DISTANCE OF 363.40 FEET TO AN IRON PIN SET; THENCE RIGHT 94° 00' 21" AND RUN SOUTHWEST FOR A DISTANCE OF 123.83 FEET TO AN IRON PIN SET; THENCE RIGHT 24° 04' 35" AND RUN SOUTHWEST FOR A DISTANCE OF 509.04 FEET TO AN IRON PIN SET; THENCE RIGHT 79° 13' 57" AND RUN NORTHWEST FOR A DISTANCE OF 276.77 FEET TO AN IRON PIN SET; THENCE RIGHT 34° 00' 28" AND RUN NORTHWEST FOR A DISTANCE OF 155.52 FEET TO THE POINT OF BEGINNING.

  
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## **EXHIBIT B**


### **PRINCIPAL PAYMENT AND LOT RELEASE SCHEDULE**

SB Dev. Corp. ("Borrower") shall be required to make mandatory principal payments to Samford University ("Lender") and, provided that no Event of Default (as defined in the Mortgage or any of the other Loan Documents (as defined in the Mortgage)) or event that with notice, lapse of time or both would constitute an Event of Default (a "Default Condition") has occurred and is continuing, Borrower shall be entitled to request and receive partial releases of the liens created by the Mortgage and the other Loan Documents on the terms set forth herein.

a) Borrower shall not be entitled to request or receive a partial release unless and until Borrower shall have caused the Land, as defined by the Mortgage, to be subdivided into lots (each a "Lot" and collectively, the "Lots") and zoned for the construction of residential homes. The subdivision plat creating the Lots shall be reasonably acceptable to Lender.

b) Beginning on the first day of the calendar month that is seven (7) months after the Closing (which date is the same as the date of the Note), Borrower shall make a payment of principal to Lender in the amount of Two Hundred Ten Thousand Dollars (\$210,000.00) (the "Initial Principal Payment"). Prior to the first day of the calendar month that is thirteen (13) months after the Closing, and prior to the first day of each third calendar month thereafter (i.e. every three months), Borrower shall make one or more payments of principal to Lender in the aggregate amount necessary to reduce the unpaid principal balance of the Note to the Maximum Principal Amount stated below (a "Minimum Quarterly Principal Payment"):

<b><u>ARTICLE I</u> DATE OF MINIMUM QUARTERLY PRINCIPAL PAYMENT</b>	<b>Maximum Principal Balance</b>
<b>Prior to 1<sup>st</sup> day 13<sup>th</sup> Calendar Month After Closing</b>	<b>\$3,870,000.00</b>
<b>Prior to 1<sup>st</sup> day 16<sup>th</sup> Calendar Month After Closing</b>	<b>\$3,450,000.00</b>
<b>Prior to 1<sup>st</sup> day 19<sup>th</sup> Calendar Month After Closing</b>	<b>\$3,030,000.00</b>
<b>Prior to 1<sup>st</sup> day 22<sup>nd</sup> Calendar Month After Closing</b>	<b>\$2,610,000.00</b>
<b>Prior to 1<sup>st</sup> day 25<sup>th</sup> Calendar Month After Closing</b>	<b>\$2,190,000.00</b>
<b>Prior to 1<sup>st</sup> day 28<sup>th</sup> Calendar Month After Closing</b>	<b>\$1,770,000.00</b>
<b>Prior to 1<sup>st</sup> day 31<sup>st</sup> Calendar Month After Closing</b>	<b>\$1,350,000.00</b>
<b>Prior to 1<sup>st</sup> day 34<sup>th</sup> Calendar Month After Closing</b>	<b>\$930,000.00</b>
<b>Prior to 1<sup>st</sup> day 37<sup>th</sup> Calendar Month After Closing</b>	<b>\$510,000.00</b>
<b>Prior to 1<sup>st</sup> day 40<sup>th</sup> Calendar Month After Closing</b>	<b>\$0.00</b>

  
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Payment by Borrower of the Initial Principal Payment and each Minimum Quarterly Principal Payment (each, a "Scheduled Principal Payment" and collectively, the "Scheduled Principal Payments") are mandatory and are in addition to the monthly payments of interest.


c) In consideration of the Initial Principal Payment by Borrower, provided that no Event of Default or Default Condition exists, Borrower shall be entitled to request and Lender shall grant to Borrower a partial release of the Mortgage as to four (4) of the Lots pursuant to the procedure hereinafter described.

d) In consideration of each Minimum Quarterly Principal Payment by Borrower, provided that no Event of Default or Default Condition exists, Borrower shall be entitled to request and Lender shall grant to Borrower a partial release of the Mortgage as to the number of Lots equal to the quotient determined by dividing the amount of the total principal payments made by Borrower on or before the date of calculation by \$52,500, rounded down to the next whole number, pursuant to the procedure hereinafter described.

e) Borrower shall be entitled to the release of one additional Lot for each principal payment of \$52,500 that is in excess of a Scheduled Principal Payment that is then due and owing (each, an "Additional Principal Payment"), provided that no Event of Default or Default Condition exist. No payment of principal qualifies as an Additional Principal Payment unless and until all Scheduled Principal Payments that are then due and owing have been paid in full. Additional Principal Payments may be made contemporaneous with Scheduled Principal Payments.

f) Partial releases of the Mortgage will be granted by Lender as follows. Each request shall be accompanied or preceded by (i) payment to Lender of the applicable Scheduled Principal Payment and/or the Additional Principal Payment, (ii) two (2) copies of an approved plat of the Property with a depiction of the Lots that have previously been released, the Lots for which a release is then being requested, and the Lots that will remain subject to the Mortgage, all in form and content reasonably satisfactory to Lender, and (iii) releases and other documents required to effect the partial release of the Mortgage and the other Loan Documents in form and substance satisfactory to Lender.

g) Each request by Borrower for the release of a Lot will be in accordance with an orderly and reasonable development of the Property.

  
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