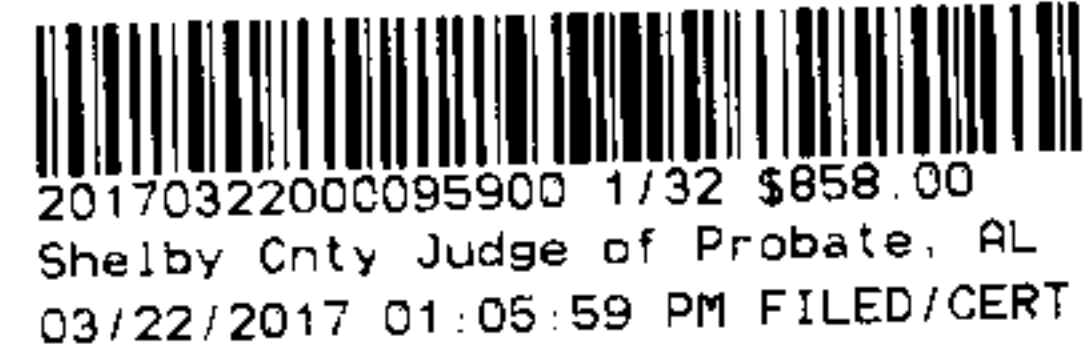


STATE OF Alabama)
)
COUNTY OF Shelby)



MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage"), is made and entered into as of March 14, 2017, by and between **PELHAM INVESTMENT PARTNERS, LLC**, a Georgia limited liability company, whose address is 2255 Cumberland Parkway, Building 1700, 2nd Floor, Atlanta, Georgia 30339 (hereinafter referred to as "Mortgagor"), and **SYNOVUS BANK**, a banking corporation organized under the laws of the State of Georgia, whose address is 1148 Broadway, Columbus, Georgia 31902 (hereinafter referred to as "Mortgagee").

RECITALS

WHEREAS, Mortgagee is making a loan to Mortgagor in the principal amount of Five Hundred Thousand and No/100ths Dollars (\$500,000.00) (the "Loan") and Mortgagor agreed to said Loan, with interest thereon, pursuant to that certain Promissory Note dated March 14, 2017 given by Mortgagor to Mortgagee in the face principal amount of Five Hundred Thousand and No/100ths Dollars (\$500,000.00) (such promissory note, as the same may be amended, modified, extended, renewed or replaced from time to time, being herein called the "Note").

WHEREAS, Mortgagee required as a condition to making the Loan to Mortgagor that Mortgagor execute and deliver this Mortgage.

WHEREAS, Mortgagor agreed to enter into this Mortgage to induce Mortgagee to make the Loan to Mortgagor and to secure the payment and performance of the Note and other Indebtedness (as hereinafter defined).

NOW THEREFORE, in consideration of the foregoing recitals and to induce Mortgagee to make the Loan to Mortgagor, and in order to secure the payment of Indebtedness as defined below, and other obligations of Mortgagor hereinafter set forth, Mortgagor does hereby mortgage, grant,

NOTE TO RECORDER: Mortgage Tax in the amount of \$750.00 is being paid to the Judge of Probate of Shelby County, Alabama at the time of recording of this Mortgage.

bargain, sell, convey, assign, transfer, pledge and set over unto Mortgagee and the successors, successors-in-title and assigns of Mortgagee all the following described property and interests in property, whether now owned or hereafter acquired by Mortgagor (hereinafter collectively referred to as the "Collateral"):

(a) the real property located in Shelby County, Alabama being more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Land"), together with all easements, permits, licenses, rights-of-way, tenements, hereditaments, appurtenances, rights and privileges pertaining or applicable thereto; (b) all additional lands and estates therein which are, from time to time, by supplemental mortgage or otherwise, expressly made subject to the lien of this Mortgage; (c) all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located at, under, above, on or upon the Land (the "Improvements"); (d) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and/or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto; (e) all furnishings, machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever now or hereafter owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever now or hereafter owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and/or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation or use of the Land and/or the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Land is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage and all proceeds and products of the above; (f) all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements or any portion thereof, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues (including, but not limited to, any payments made by tenants under the Leases in connection with the termination of any Lease), issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or

accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases (or any Lease) and the right to receive and apply the Rents to the payment of the Indebtedness (as hereinafter defined); (g) any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty" and collectively, the "Lease Guaranties") given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor" and collectively, the "Lease Guarantors"); (h) all rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases and beneficiary under all Lease Guaranties; (i) all awards or payments for property damage, including interest thereon, which may heretofore and hereafter be made with respect to the Land and/or other Collateral, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Collateral; (j) all proceeds of and any unearned premiums on any insurance policies covering the Collateral or any part thereof, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Collateral; (k) all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charges against the Collateral as a result of tax certiorari or any applications or proceedings for reduction; (l) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims; (m) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Collateral, or any portion thereof, and to commence any action or proceeding to protect the interest of Mortgagee in the Collateral; (n) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder; (o) all utility deposits, contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, and letters of credit which relate to the development of the Land and/or construction of Improvements on the Land; (p) all tradenames, trademarks, servicemarks, logos, copyrights, contract rights, development and use rights, declarant's rights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Collateral owned by Mortgagor; (q) all balances, credits, deposits, accounts, items and monies of Mortgagor now or hereafter held with Mortgagee or any bank participating in the financing secured hereby; (r) all building materials, fixtures, building machinery and building equipment delivered on site to the Land during the course of or in connection with the construction of any building, structures or other improvements on the Land; and (s) any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (r) above.

TO HAVE AND TO HOLD the Collateral and all rights, members and appurtenances thereof, to the use, benefit and behoof of Mortgagee and its successors and assigns, in FEE SIMPLE forever. Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Collateral as aforesaid, and has good right to convey the same, that the same is unencumbered

except for those matters (hereinafter referred to as the "Permitted Encumbrances") expressly set forth on Exhibit "B" attached hereto and incorporated herein by this reference. Mortgagor warrants and will forever defend the title thereto against the claims of all persons whomever.

Provided, however, that these presents are upon the condition that (i) should the Indebtedness be fully and indefeasibly paid and performed according to the terms and effect thereof when the same shall become due and payable, and (ii) should Mortgagor perform all covenants herein contained in a timely manner, then this Mortgage and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

This Mortgage is given to secure and does secure the full and timely payment and performance of the following described, indebtedness, liabilities and obligations (hereinafter referred to collectively as the "Indebtedness"):

- (a) All obligations, liabilities and indebtedness of Mortgagor to Mortgagee of whatever nature, whether now existing or hereafter arising or existing, evidenced by or arising under the Note and any and all amendments, modifications, extensions, renewals and/or restatements thereof; and
- (b) All other indebtedness, obligations (including, without limitation, obligations of performance) and liabilities of Mortgagor to Mortgagee of every kind and description whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, or acquired by the Mortgagee from any source, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by any agreement or instrument, and whether incurred as maker, endorser, surety, guarantor or otherwise, and any and all extensions, restatements and renewals of any of the same; and
- (c) Any and all additional advances made or costs or expenses incurred by Mortgagee to protect or preserve the Collateral or the security interest created hereby, or for taxes, levies, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or for any purpose referred to in Section 1.10 hereof or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Collateral at the time of such advances); and
- (d) All renewals and extensions of any or all the debts, liabilities and/or obligations described in paragraphs (a) through (c) above, whether or not any renewal or extensions agreement is executed in connection therewith.

As used herein, the term "Loan Documents" shall refer to the Note, this Mortgage, the Assignment of Leases and Rents entered into by Mortgagor and Mortgagee dated of even date herewith and recorded (or to be recorded) in the records of the Office of Judge of Probate of Shelby County, Alabama (as amended and/or modified from time to time) and all other Loan Documents (as defined in the Note) and any and all other documents, instruments and agreements now or hereafter entered into by Mortgagor to evidence and/or secure all or any of

the Indebtedness and any and all amendments, modifications, extensions and/or replacements of any such documents, instruments and/or agreements.

To protect the security of this Mortgage, Mortgagor further covenants and agrees with the Mortgagee as follows:

ARTICLE I

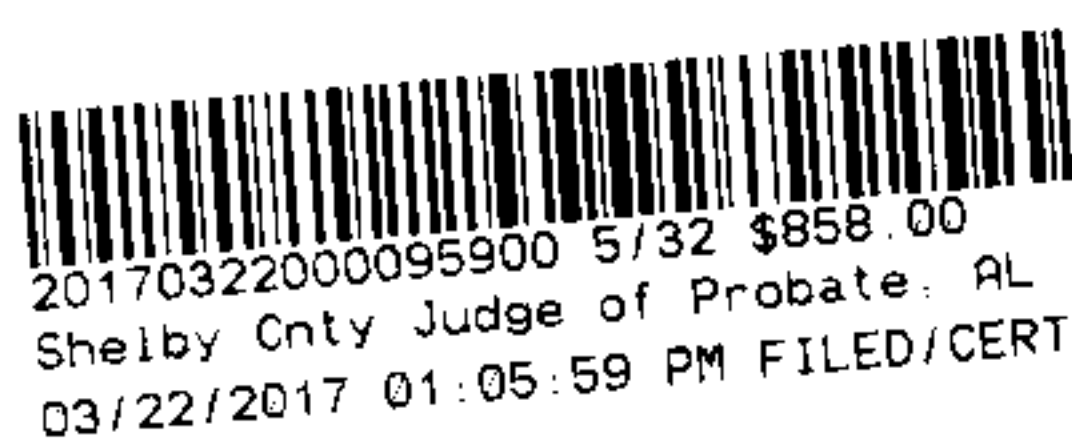
1.1 **Payment of Indebtedness.** Mortgagor will pay the Indebtedness promptly as the same shall become due.

1.2 **Taxes, Liens and Other Charges.**

1.2.1 Mortgagor shall pay or cause to be paid, on or before the due date thereof, all taxes, assessments, levies, license fees, permit fees and all other charges (including, without limitation, utility charges) (in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, public or private) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Collateral, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof (all of the foregoing are hereinafter sometimes collectively referred to as "Charges" and individually as a "Charge"), and shall submit to Mortgagee such evidence of the due and punctual payment of all such Charges as Mortgagee may require. Nothing in this section herein contained shall require the payment or discharge of any such Charge by Mortgagor so long as Mortgagor shall in good faith and at its own expense diligently contest the amount or the validity thereof by appropriate legal proceedings and so long as such contest shall operate to prevent (a) the collection of such Charge or other realization thereon or levy upon and sale or forfeiture of the Collateral or any part thereof to satisfy such Charge, and (b) the enforcement thereof against Mortgagor, Mortgagee or the Collateral or any part thereof; and provided further that during such contest, Mortgagor shall, at the option of Mortgagee in the exercise of its reasonable discretion, provide security satisfactory to Mortgagee, securing the discharge of Mortgagor's obligation to pay any Charge finally found to be due and any additional charge, penalty or expense arising from or incurred as a result of such contest.

1.2.2 Mortgagor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be filed of record or to remain outstanding against the Collateral or any part thereof (other than liens in favor of Mortgagee) and not be released (by payment, bonding or otherwise) within thirty (30) days after the date of filing thereof.

1.2.3 In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation by the State of Alabama, Shelby County, Alabama, or the United States of America or other applicable state or local government (excluding income taxes on Mortgagee and the financial institution excise tax and foreign franchise tax), subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or security agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect Mortgagee with respect to the



Indebtedness, Mortgagor will promptly pay any such tax on or before the due date thereof. If Mortgagor fails to make such prompt payment or if, in the opinion of Mortgagee, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Mortgagor from making such payment or would penalize Mortgagee if Mortgagor makes such payment or if, in the opinion of Mortgagee, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then Mortgagee may declare the occurrence of an Event of Default hereunder, and without limitation, may, at Mortgagee's option, declare the entire balance of the Indebtedness and all interest accrued thereon to be immediately due and payable.

1.3 Insurance.

1.3.1 Mortgagor shall procure for, deliver to and maintain for the benefit of Mortgagee during the term of this Mortgage, original paid insurance policies of such insurance companies, and in such amounts, in such form and substance and covering consecutive twelve (12) month periods as are acceptable to Mortgagee and containing non-contributory standard mortgagee clauses, their equivalent or a satisfactory mortgagee loss payable endorsement in favor of Mortgagee providing the following types of insurance covering the Collateral and the interest and liabilities incident to the ownership, possession and operation thereof:

(a) commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Collateral, including, without limitation, coverage against so-called occurrences, together with broad form and contractual liability endorsements, with a combined single limit for bodily injury and property damage in a coverage amount acceptable to Mortgagee;

(b) insurance against loss or damage by fire, lightning, windstorm, tornado, sinkhole, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as may now or hereafter be included in so-called "all risk coverage" forms, together with coverage for so-called difference in conditions, a replacement cost and an agreement amount endorsement, and such additional coverages as under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than one hundred percent (100%) of the full replacement cost (without deduction for depreciation);

(c) rent or business interruption insurance against loss of income arising out of damage or destruction by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and such other hazards as are presently included in so-called "extended coverage" in an amount not less than one hundred percent (100%) of one (1) year's gross rental and business income from the Collateral;

(d) in the event the Collateral is located in an area that has been identified by the U. S. Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazards, the Collateral must be insured by flood insurance that is provided under the National Flood Insurance Program ("NFIP"), which

flood insurance shall be in an amount equal to the lesser of either (i) the appraised value of the Collateral, or (ii) the maximum balance of flood insurance available under the NFIP; and

(e) at all times during which structural construction, repairs or alterations are being made with respect to the Collateral (A) Owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) builder's risk completed value form on a non-reporting basis; and

(f) such other insurance on the Collateral or any replacements or substitutions therefor and in such amounts as may from time to time be required by Mortgagee against other insurable casualties which at the time are commonly insured against in the case of properties of similar character and location, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

1.3.2 Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.3 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 to Mortgagee. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Mortgagee may apply the remaining proceeds or any part thereof, at its option, (a) to the payment of the Indebtedness, whether or not due and in whatever order Mortgagee elects, and/or (b) to the repair and/or restoration of the Collateral subject to such conditions as Mortgagee may reasonably require, and/or (c) for any other purposes or objects for which Mortgagee is entitled to advance funds under this Mortgage, all without affecting the security interest or lien created by this Mortgage and any balance of such monies then remaining shall be paid to Mortgagor or the person or entity lawfully entitled thereto; provided, however, if the total cost of the repairs and/or restoration is less than \$50,000.00, Mortgagee will make such proceeds available to Mortgagor for such repair and restoration. Mortgagee 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.

1.3.3 At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.3, a renewal or replacement thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Collateral in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or to Mortgagee, as the case may be. Mortgagor shall have the right to apply to the insurer for a refund of any unearned premiums thereon, and to retain any such refund, from and after the transfer of title to purchaser or Mortgagee, but Mortgagee shall not be required to refund to Mortgagor or account for any such unearned premiums. Without limiting the provisions of Section 1.3.1, all policies to be obtained pursuant to this Section 1.3

shall oblige unequivocally the issuers thereto to provide at least thirty (30) days' written notice prior to cancellation (due to non-payment or otherwise), expiration or modification of any of the policies. In addition, none of the insurance policies and renewals shall contain any co-insurance provisions.

1.4 **Monthly Deposits.**

1.4.1 In order to secure the payment of the taxes and assessments referred to in Section 1.2 and the premiums on the insurance referred to in Section 1.3, Mortgagee at any time may require that Mortgagor deposit with Mortgagee, on the tenth (10th) day of each month and at such other times as Mortgagee may elect, such amounts as, in the reasonable estimation of Mortgagee, shall be necessary to pay such premiums at least thirty (30) days before they become due with respect to the premiums on insurance and at least sixty (60) days before they become due with respect to the taxes and assessments; said deposits to be held by Mortgagee, in an account at Mortgagee free of any liens or claims on the part of creditors of Mortgagor (other than Mortgagee) and as part of the security of Mortgagee, and to be used by Mortgagee to pay current insurance premiums and Charges on the Collateral as the same accrue and are payable. Payment from said sums for said purposes shall be made by Mortgagee at its discretion and may be made even though such payments will benefit subsequent owners of the Collateral. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Mortgagee. If said deposits are insufficient to pay the premiums in full at least thirty (30) days before they become due with respect to the premiums on insurance and at least sixty (60) days before they become due with respect to the taxes and assessments and other Charges, Mortgagor will deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes and assessments and insurance premiums in full at least thirty (30) days before they become due with respect to the premiums on insurance and at least sixty (60) days before they become due with respect to the taxes and assessments.

1.5 **Condemnation.** Mortgagor, immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation or similar proceeding of the Collateral or any material part thereof, will notify Mortgagee, and Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Mortgagee, in its own and/or Mortgagor's name, any action or proceeding relating to any condemnation or similar proceeding, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds from property damage and the right thereto are hereby assigned by Mortgagor to Mortgagee, and Mortgagee is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of Mortgagee's expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, Mortgagee may apply the remaining proceeds or any part thereof, at its option, (a) to the payment of the Indebtedness, whether or not due and in whatever order Mortgagee elects; and/or (b) to the repair and/or restoration of the Collateral subject to such conditions as Mortgagee may reasonably require; and/or (c) for any other purposes or objects for which Mortgagee is entitled to advance funds under this Mortgage, all without affecting the security interest, lien or security

title created by this Mortgage, and any balance of such monies then remaining shall be paid to Mortgagor or any other person or entity lawfully entitled thereto. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as Mortgagee may require. If, prior to the receipt by Mortgagee of such award or proceeds, the Collateral shall have been sold on foreclosure of this Mortgage or under the power of sale herein granted (or by deed or action in lieu thereof), Mortgagee shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage or the Note shall have been sought or recovered, and to the extent of reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or proceeds.

1.6 Care, Use and Management of Collateral.

1.6.1 Mortgagor shall keep and maintain the buildings, improvements, parking areas, roads and walkways, common areas, landscaping and all other improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair and in a clean and sightly condition, will not commit, allow, or suffer any waste (ordinary wear and tear excepted) and will not do, allow or suffer to be done anything which would or could increase the risk of fire or other hazard to the Collateral or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Collateral.

1.6.2 Mortgagor will not remove or demolish nor materially alter the structural character or elements of any building located on the Land without the written consent of Mortgagee.

1.6.3 If the Collateral or any part thereof is damaged by fire or any other casualty, Mortgagor will give immediate written notice thereof to Mortgagee.

1.6.4 Mortgagee or its representative is hereby authorized to enter upon and inspect the Collateral at any time during normal business hours.

1.6.5 Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Collateral or any part thereof, including, without limitation, the Americans with Disabilities Act of 1990, as amended, and all regulations promulgated thereunder. Mortgagor warrants that to the best of its knowledge the Collateral, and the use thereof, comply (and shall comply at all times as long as this Mortgage is outstanding) with (a) all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, all applicable building, zoning, and environmental laws, regulations, and ordinances, including, without limitation, the Americans with Disabilities Act of 1990, as amended, and all regulations promulgated thereunder, and (b) all applicable restrictive covenants and other use limitations.

1.6.6 Intentionally Omitted.

1.6.7 Intentionally Omitted.


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1.6.8 Mortgagor makes the following covenants and representations to and for the benefit of Mortgagee: Neither Mortgagor nor any tenant or prior owner of the Collateral has used or suffered the use, and Mortgagor will not use or suffer the use (by any tenant or other person or entity), of the Land as a landfill or as a dump for garbage or refuse, or a site for manufacture, production, storage, treatment, or disposal of hazardous wastes, hazardous substances, or toxic substances (defined as "hazardous waste" or "hazardous substance" under Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. or Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.); to the best of Mortgagor's knowledge, the Land and the improvements thereon are free of hazardous or toxic waste, asbestos, contaminants, petroleum or petroleum products, oil, radioactive or other material (collectively, "Hazardous Materials"), the removal of which is required or the maintenance or storage of which is prohibited, regulated or penalized by any local, state or federal agency, authority or governmental unit, and Mortgagor shall not knowingly permit any such materials to be brought onto the Land or the improvements thereon, or if so brought or found located thereon, shall cause the same to be immediately removed at its expense, and Mortgagor's obligation to so remove shall survive any foreclosure or exercise of the power of sale contained herein (or a deed or action in lieu thereof). To the best of Mortgagor's knowledge, neither Mortgagor nor any tenant or prior owner of the Collateral has used or suffered the use, and Mortgagor will not use or suffer the use of the Land or the improvements thereon or any other property or facility owned or operated by Mortgagor in any manner other than in full compliance with all applicable federal, state, or local environmental laws and regulations regulating the release or discharge of solid, liquid, or gaseous waste or Hazardous Materials into the environment or the placement of structures or materials into waters of the United States of America (collectively, the "Environmental Laws"); and to the best of Mortgagor's knowledge, neither Mortgagor nor any tenant or prior owner of the Collateral has received any notice from a governmental agency for violation of any of the Environmental Laws and, if such notice is received, Mortgagor immediately shall notify Mortgagee orally and in writing. Mortgagor shall indemnify, defend, and hold Mortgagee harmless from and against any and all costs, damages, and expenses (including, without limitation, environmental compliance costs, costs for all remedial action and/or damage to third parties, attorneys' fees and court costs regardless of whether or not suit is filed, and if suit is filed, at both trial and appellate levels, and damages for business interruption and any lost profits) resulting, directly or indirectly, from any actual or alleged environmental contamination of the Collateral or any other property by Mortgagor or any misstatement or misrepresentation of facts concerning the matters recited in this Section 1.6.8. The indemnity in this Section 1.6.8 shall survive any foreclosure or exercise of the power of sale contained herein (or a deed or action in lieu thereof) and the satisfaction of this Mortgage (of record or otherwise).

1.7 Assignment of Leases and Rents.

1.7.1 As additional security for the repayment of the Indebtedness and the other payments to be made by Mortgagor as provided in this Mortgage, Mortgagor does hereby grant, transfer and assign to the Mortgagee all of Mortgagor's right, title and interest in and to the Leases (which term shall mean any present or future leases, subleases or rental agreements involving Mortgagor, as lessor or sublessor, covering all or any part of the Collateral and the

lessees, sublessees and tenants under the Leases shall be referred to hereinafter as the "Tenants"), together with any and all lease guarantees (or sublease guaranties), security deposits and prepayments of rents made thereunder and all extensions, modifications and renewals, if any, thereof, and any contract, whether written or oral, and any renewals or substitutions thereof, to which Mortgagor is a party relating to the management or operation of the Collateral. Nothing herein, however, obligates Mortgagee with respect to any such Leases, subleases, agreements or contracts. In addition to the foregoing, Mortgagor does further hereby grant, transfer and assign to the Mortgagee all of the rents, income, issues and profits (herein called the "Rents"), now or hereafter accruing or owing under the Leases or otherwise as a result of any use, possession or occupancy of the Collateral or any part thereof, whether accruing before or after foreclosure of the Collateral or during the period of redemption thereof, together with all gross income, revenues, receipts, money, royalties, rights, benefits, accounts, accounts receivable, contract rights, third party payments, and all proceeds therefrom arising from, associated with in any way, or otherwise due or to become due in relation to the business operated at the Collateral (herein called the "Income"), including any and all financial records or records of any type whatsoever relating to or constituting a memorandum of any Income, including but not limited to computer software programs, printouts and any computerized records relating to the Income, and any and all other moneys which may from time to time become subject to the lien of this Mortgage.

1.8 Security Agreement.

1.8.1 With respect to any machinery, equipment, contracts, contract rights and other items of personal property included in the above described Collateral and security not consisting of lands or real estate, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such property included herein as a part of the Collateral, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. At any time and from time to time, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such property may be filed by Mortgagee without notice to Mortgagor or execution thereof by Mortgagor. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage shall be (a) as prescribed herein, or (b) as prescribed by general law, or (c) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. To the extent allowed by applicable law, Mortgagor and Mortgagee agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Collateral or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (a) the proceeds of any fire and/or hazard insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) Mortgagor's interest as landlord in any present or future lease or rights to income growing out of the use

and/or occupancy of the Collateral, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this Mortgage or affect the priority of Mortgagee's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Mortgagee in the event any court shall at any time hold with respect to the foregoing clauses (a), (b) or (c) of this sentence, that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

1.8.2 Mortgagor warrants that (a) Mortgagor's (that is, "Debtor's") name, identity or organizational structure, state of organization and place of business or principal place of business are as set forth in Section 1.8.3 hereof; and (b) the location of the Collateral is upon the Land. Mortgagor covenants and agrees that Mortgagor will furnish Mortgagee with notice of any change in the matters addressed by clauses (a) or (b) of this Section 1.8.2 within thirty (30) days of the effective date of any such change and Mortgagor will promptly execute any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status (provided, however, execution by Mortgagor will not be necessary if the applicable law permits the filing of financing statements without execution).

1.8.3 The information contained in this Section 1.8.3 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. The names of the "Debtor" and the "Secured Party", the identity or entity structure and place of business or principal place of business of "Debtor", are as set forth in Exhibit "C" attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor", are as set forth on Exhibit "C" and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

1.9 **Further Assurances.** At any time, and from time to time, upon request by Mortgagee, Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to Mortgagee and, where appropriate, 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 Mortgagee, any and all such other and further mortgages, deeds to secure debt, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligation of Mortgagor under the Note and under this Mortgage, and (b) the security title and lien of this Mortgage as a security title and lien upon all of the Collateral.

1.10 **Expenses.** Mortgagor will pay or reimburse Mortgagee, upon demand therefor, for all reasonable attorney's fees, costs and expenses actually incurred by Mortgagee in any suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, affecting or arising in connection with the Indebtedness, this Mortgage or the interest created herein, or the Collateral, including, but not limited to, any

condemnation action involving the Collateral or any action to protect the security hereof; and any such amounts paid by Mortgagee shall be added to the Indebtedness and shall be secured by this Mortgage. Without limiting the generality of the foregoing, Mortgagor shall pay to Mortgagee all actual costs, expenses, disbursements, escrow fees, title charges, court and appellate costs and reasonable attorneys' fees and expenses incurred by Mortgagee and its counsel in (a) the collection, attempted collection, or negotiation and documentation of any settlement or workout of any amount due hereunder, under the Note, the interest thereon or any installment of other payment due hereunder or thereunder (whether or not suit be brought), and (b) any suit or proceeding whatsoever in regard to this Mortgage and/or the Note (including any appeals relating to such suit or proceeding) or to protect, sustain or enforce the security title or lien of this Mortgage or any other instrument securing the Note, including, without limitation, in any bankruptcy proceeding or judicial or non-judicial foreclosure proceeding. Without limiting the generality of the foregoing, Mortgagor further promises to pay to Mortgagee, immediately upon written notice from Mortgagee: (a) all recordation, transfer, stamp, privilege tax, mortgage tax, documentary or other similar fees or taxes levied on Mortgagee (exclusive of Mortgagee's income taxes, financial institution excise taxes and foreign franchise tax) by reason of the making or recording of this Mortgage. In addition, Mortgagor agrees to pay Mortgagee immediately on demand all expenses (including, without limitation, reasonable attorneys' fees) in connection with any amendments, waivers or consents requested by any party in connection with the Note and/or this Mortgage (whether or not the same are actually executed and delivered), including, without limitation, any amendments, waivers, or consents resulting from any workout, renegotiation or restructuring relating to the performance by Mortgagor of its obligations under this Mortgage or the Note and all recording fees, filing fees, stamp taxes, and other recording or filing taxes in connection with the recordation or filing of any such amendments, waivers and consents and in connection with any continuation statements or other documents filed to maintain and protect the rights of the Mortgagee under this Mortgage. It is the intent of the parties that Mortgagor pay all expenses and reasonable attorneys' fees incurred by Mortgagee as a result of Mortgagee's entering into any transaction evidenced by the Note and this Mortgage.

1.11 Estoppel Certificates. Upon the request of Mortgagee, Mortgagor, upon ten (10) days' prior written notice, shall furnish Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness, stating whether or not any offsets or defenses exist against the Indebtedness, or any portion thereof, and if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.

1.12 Subrogation. To the extent permitted under applicable law and to the full extent of the Indebtedness, Mortgagee is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Collateral which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Mortgagee as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Mortgagee had they been duly and legally assigned, transferred, set over and delivered unto Mortgagee by assignment, notwithstanding the fact that any instrument providing public notices of the same may be satisfied and canceled of record.

1.13 Books and Records. Mortgagor shall keep records regarding its operations in accordance with generally accepted accounting principles or other sound accounting principles acceptable to Mortgagee consistently applied. Mortgagor shall deliver to Mortgagee, at any time within thirty (30) days after notice and demand by Mortgagee, but not more frequently than once per quarter, (a) a statement in such reasonable detail as Mortgagee may request, certified by Mortgagor, of the leases relating to the Collateral, and (b) a statement in such reasonable detail as Mortgagee may request, certified by Mortgagor, of the income from and expenses of any one or more of the following: (i) the conduct of any business on the Collateral, (ii) the operation of the Collateral, or (iii) the leasing of the Collateral or any part thereof, for the last twelve (12)-month calendar period prior to the giving of such notice, and, on demand, Mortgagor shall furnish to Mortgagee executed counterparts of any such leases for the audit and verification of any such statement. Mortgagor also shall furnish to Mortgagee or cause to be furnished to Mortgagee, at the cost and expense of Mortgagor, such other information about the financial condition and operations of Mortgagor and/or the Collateral as the Mortgagee may from time to time reasonably request, and in any event within thirty (30) days of request.

1.14 Limit of Validity. If, from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, and to the extent permitted by applicable law the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. Mortgagor shall not institute any action or file any defense based upon the charging or collection of usurious interest hereunder unless Mortgagor shall give Mortgagee notice of an intent to do so whereupon Mortgagee shall have the right to comply with applicable law by notification and credit or return of the excess interest as provided in the Note within forty-five (45) days after such notice has been given to Mortgagee.

1.15 No Default Affidavits. Upon request of Mortgagee, Mortgagor shall furnish to Mortgagee an affidavit confirming the existence of no Event of Default hereunder within ninety (90) days after the end of each calendar year.

1.16 Conveyance of Collateral. Mortgagor hereby acknowledges to Mortgagee that (a) the identity and expertise of Mortgagor was and continues to be material circumstances upon which Mortgagee has relied in connection with, and which constitute valuable consideration for Mortgagee making the Loan to Mortgagor, and (b) any changes in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to Mortgagee by this Mortgage. Mortgagor therefore covenants and agrees with Mortgagee, as part of the consideration for Mortgagee making the Loan to Mortgagor, that except as permitted in the Release Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's reasonable discretion, sell, assign, convey, transfer, further hypothecate, pledge or otherwise encumber all or any part of the Collateral, or all or any part of its legal, beneficial or other interest in the Collateral. In the event, without obtaining Mortgagee's prior written consent, Mortgagor shall sell, assign, convey, transfer or

further hypothecate, pledge or otherwise encumber the Collateral or any of its interest therein or if any legal, beneficial or other interest in the Collateral is sold, assigned, conveyed, transferred or subject to a contract to sell, assign, convey or transfer or hypothecated, pledged or otherwise encumbered, without first obtaining such consent, then Mortgagee, at its option and without notice, may declare the occurrence of an Event of Default hereunder and under the Note and, without limiting other available rights and remedies, Mortgagee may at Mortgagee's option, declare the entire Indebtedness immediately due and payable in full whereupon the Indebtedness shall be so due and payable.

1.17 Acquisition of Collateral. Mortgagor shall not acquire any portion of the personal property covered by this Mortgage subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Mortgage.

1.18 Change in Ownership. Mortgagor shall not change its name or in any way alter its organizational or capital structure, liquidate, wind up or dissolve or otherwise sell or dispose of all or substantially all of its assets or consolidate or merge into one or more persons or permit one or more persons to consolidate with or merge into it, acquire the capital stock issued by any person, or make any acquisitions, or amend its organizational documents or allow any change in its ownership without obtaining Mortgagee's prior written consent, which consent may be refused in Mortgagee's sole discretion.

1.19 [INTENTIONALLY DELETED].

1.20 No Bankruptcy Intent. Mortgagor represents, warrants and covenants that Mortgagor has no intent (a) to file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. (hereinafter referred to as the "Bankruptcy Code"), or in any manner to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under any other local, state, federal or other insolvency laws or laws providing for relief of debtors or in equity, or directly or indirectly to cause any other party to file any such petition or to seek any such relief, either at the present time, or any time hereafter, or (b) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Mortgagor, or directly or indirectly to cause Mortgagor to become the subject of any proceedings pursuant to any other state, federal or other insolvency laws or laws providing for the relief of debtors, either at the present time or at any time hereafter, or (c) directly or indirectly to cause the Collateral or any other interest of Mortgagor in the Collateral to become the property of any bankruptcy estate or the subject of any state, federal or other bankruptcy, dissolution, liquidation or insolvency proceedings, either at the present time or at any time hereafter; and that the filing of any such petition or the seeking of any such relief by Mortgagor, whether directly or indirectly, would be in bad faith and solely for the purposes of delaying inhibiting or otherwise impeding the exercise by Mortgagee of Mortgagee's rights and remedies against Mortgagor and the Collateral pursuant to this Mortgage, or at law or in equity.

1.21 Waiver of Automatic or Supplemental Stay. Mortgagor represents, warrants and covenants that in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against Mortgagor, neither Mortgagor nor any officer, member, trustee,

attorney, agent or employee of Mortgagor shall assert or request any other party to assert that the automatic stay provided by Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Mortgagee to enforce any rights it has by virtue of this Mortgage, or any other rights Mortgagee has, whether now or hereafter acquired, against Mortgagor, or against any property (including but not limited to the Collateral) owned by Mortgagor; and further that, in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against Mortgagor, Mortgagor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code to stay, interdict, condition, reduce or inhibit the ability of Mortgagee to enforce any rights it has by virtue of this Mortgage, or any other rights Mortgagee has, whether now or hereafter acquired against Mortgagor, or against any property (including, but not limited to, the Collateral) owned by Mortgagor. Mortgagor agrees further not to directly or indirectly oppose or otherwise defend against Mortgagee's efforts to gain relief from the automatic stay and Mortgagee shall be entitled to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of Mortgagee to establish or prove the value of the Collateral, the lack of adequate protection of its interest in the Collateral, or the lack of equity in the Collateral. It is specifically agreed and acknowledged by Mortgagor the lifting of the automatic stay hereunder by the appropriate Bankruptcy Court shall be deemed to be "for cause" pursuant to Section 362(d)(1).

1.22 **No Fraudulent Intent.** Mortgagor represents, warrants and covenants that neither the execution and delivery of this Mortgage nor the performance of any actions required thereunder is being consummated by Mortgagor with or as a result of any actual intent by Mortgagor to hinder, delay or defraud any person or entity to which Mortgagor is now or will hereafter become indebted.

ARTICLE II

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

(a) Mortgagor fails to make any payment of principal or interest or principal and interest under the Note or any other sums owing under any of the Loan Documents; provided, however, with respect to Mortgagor's first two (2) failures in any calendar year to make a payment under the Note as and when due under the Note (other than payment due on the maturity date of the Note), no Event of Default shall be deemed to have occurred unless Mortgagor fails to make payment on or before the date that is ten (10) days after the date Mortgagee delivers notice to Mortgagor of Mortgagor's failure to pay (Mortgagee is not required to give any notice with respect to payments due on the maturity date of the Note and is not otherwise required to give notice of a payment default more than twice during any calendar year); or

(b) Any default or Event of Default shall occur under, and as defined in, the Note or any of the other Loan Documents; provided, however, for purposes hereof, the occurrence of an Event of Default under any of the other Loan Documents shall not constitute an Event of Default hereunder until any, if any, applicable cure period set forth in the other Loan Documents, as applicable, has expired;

(c) Any lien for labor, materials or taxes (except for ad valorem taxes not yet due and payable) or otherwise shall be filed against any of the Collateral and not be released (by payment, bonding or otherwise) within thirty (30) days after the filing thereof; or

(d) (i) Mortgagor shall (A) apply for, acquiesce to, or consent to the appointment of a receiver, trustee or liquidator of Mortgagor or any of its property or assets, (B) admit in writing its inability to pay its debts as they mature, (C) make a general assignment for the benefit of creditors, (D) be adjudicated a bankrupt or insolvent, (E) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the allegations of a petition filed against them in any proceeding under any such law, or (F) take action for the purpose of effecting any of the foregoing on behalf of itself; or (ii) an involuntary petition in bankruptcy is filed against Mortgagor and not dismissed within thirty (30) days of having been filed; or (iii) an order, judgment or decree shall be entered without the application, approval or consent of Mortgagor by any court of competent jurisdiction, approving a petition seeking reorganization of Mortgagor or of all or a substantial part of its properties or assets, or appoint a receiver, trustee or liquidator of Mortgagor and such order, judgment or decree shall continue un-stayed and in effect for any period of thirty (30) days; or

(e) At any time any representation, warranty or statement made by Mortgagor in this Mortgage shall be materially and adversely incorrect or misleading in any respect; or

(f) Mortgagor is dissolved, partitioned, liquidated, revoked or loses its separate entity status; or

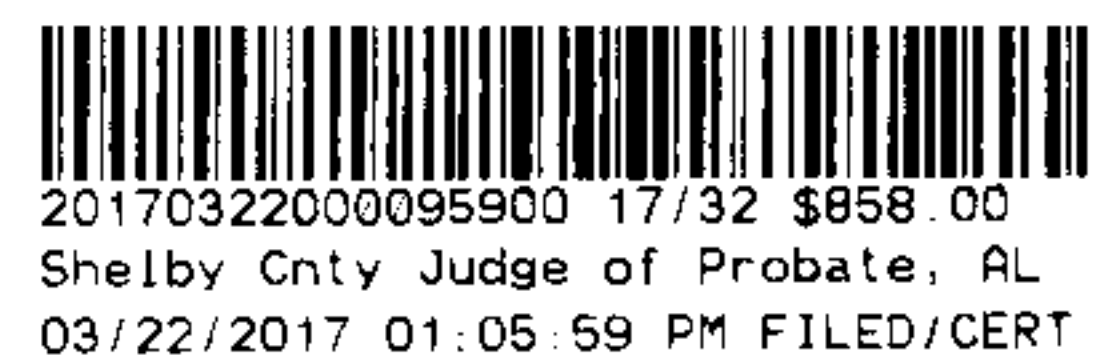
(g) A material, adverse change occurs in the or the financial condition of Mortgagor; or

(h) All or any portion of, or interest in, the Land or other Collateral is sold, transferred, assigned, further encumbered or conveyed without the prior written consent of Mortgagee; or

(i) The Collateral (or any portion thereof) is subjected to actual waste, or any material part of the Collateral is removed, demolished or altered without the prior written consent of Mortgagee; or

(j) Any membership interest or beneficial interest in Mortgagor is sold, transferred, conveyed, assigned or encumbered without the prior written approval of Mortgagee, which approval may be withheld in the sole discretion of Mortgagee; or

(k) Occurrence of a default under any, if any, mortgage and security agreement or similar instrument on all or any part of the Collateral regardless of whether such instrument is of equal priority with, of superior priority to, or junior in priority to this Mortgage; or



(l) A material adverse change occurs in the value of the Collateral or the condition of the Collateral as compared to the value and condition of the Collateral on the date hereof; or

(m) Mortgagor fails to perform or observe or comply with any other term, covenant or agreement contained in this Mortgage; provided, however, except with respect to a payment default or an Event of Default addressed elsewhere in this Section 2.1, Mortgagor shall have thirty (30) days following receipt of written notice from Mortgagee of such failure in which to cure such failure.

2.2 Acceleration of Maturity. If an Event of Default shall have occurred, the entire Indebtedness shall, at the option of Mortgagee, immediately become due and payable without further notice or demand, time being of the essence of this Mortgage, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.3 Mortgagee's Right to Enter and Take Possession, Operate and Apply Revenues.

2.3.1 If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Collateral and if, and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Collateral without the appointment of a receiver, or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

2.3.2 If an Event of Default shall have occurred and if Mortgagor shall for any reason fail to surrender or deliver the Collateral or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Collateral to Mortgagee, and Mortgagor hereby specifically covenants and agrees that Mortgagor will not oppose, contest or otherwise hinder or delay Mortgagee in any action or proceeding by Mortgagee to obtain such judgment or decree. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including, without limitation, reasonable attorney's fees actually incurred; and all such expenses and compensation shall, until paid, become part of the Indebtedness and shall be secured by this Mortgage.

2.3.3 Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Collateral and conduct the business thereof, and, from time to time (a) 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 needed to complete the Improvements or maintain the Improvements and Collateral; (b) insure or keep the Collateral insured; (c) manage and operate the Collateral and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (d) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted

Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the income, rents, issues, profits and revenues from the Collateral, including those past due as well as those accruing thereafter, and Mortgagee may apply any monies and proceeds received by Mortgagee, in whatever order of priority Mortgagee in its sole discretion may determine, to the payment of (a) all expenses of taking, holding, managing and operating the Collateral (including compensation for the services of all persons employed for such purposes); (b) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (c) the cost of such insurance; (d) such taxes, levies, assessments and other similar charges as Mortgagee may at its option pay; (e) other proper charges upon the Collateral or any part thereof; (f) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee; (g) accrued interest; (h) deposits required in Section 1.4 hereof and other sums required to be paid under this Mortgage; (i) overdue installments of principal; and/or (j) any other Indebtedness. Anything in this Section 2.3 to the contrary notwithstanding, Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Mortgagee of its rights under this Mortgage, and Mortgagee shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by Mortgagee.

2.3.4 In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall be paid and all Events of Default shall be cured, and as a result thereof Mortgagee surrenders possession of the Collateral to Mortgagor, its successors or assigns, the same right of taking possession shall continue to exist if any subsequent Event of Default shall occur.

2.4 **Performance by Mortgagee of Defaults by Mortgagor.** If Mortgagor shall default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Mortgagee may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, shall be secured hereby and shall be, upon demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Default Rate (as defined in the Note). Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Collateral or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

2.5 **Receiver.** To the extent permitted under applicable law, if an Event of Default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Collateral and to collect and apply the incomes, rents, issues, profits and revenues thereof.

MORTGAGOR HEREBY SPECIFICALLY WAIVES THE RIGHT TO OBJECT TO THE APPOINTMENT OF A RECEIVER AS AFORESAID AND HEREBY EXPRESSLY CONSENTS THAT SUCH APPOINTMENT SHALL BE MADE AS AN ADMITTED EQUITY AND AS A MATTER OF ABSOLUTE RIGHT OF MORTGAGEE. The receiver

shall have all of the rights and powers permitted under the laws of the State of Alabama. Mortgagor will pay to Mortgagee upon demand all expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.5, and any such amounts paid by Mortgagee shall be added to the Indebtedness and shall be secured by this Mortgage. All monies paid by the receiver to Mortgagee shall be applied in such order as the court appointing the receiver may direct, or, should the court fail to specify the order in which such monies are to be applied, in such order as Mortgagee in its sole discretion may decide.

2.6 Enforcement.

2.6.1 If an Event of Default shall have occurred, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages and Mortgagee, whether or not possession of the Collateral is taken, is and shall be authorized, at its option, to sell the Collateral or any part of the Collateral at one or more public sales, at public outcry, before the door of the courthouse of the county or counties, as may be required, in which the Collateral or any part of the Collateral is situated, to the highest bidder for cash after first having given notice of the time, place and terms of sale by publication once a week for three (3) consecutive weeks immediately preceding each sale in a newspaper then published in said county or counties, as may be required. At any such public sale, upon payment of the purchase price, Mortgagee may execute and deliver to the purchaser a good and sufficient deed or other instruments of conveyance for the Collateral or any part of the Collateral sold and to this end, Mortgagor hereby constitutes and appoints Mortgagee the agent and attorney in fact of Mortgagor to make such sale and conveyance, and thereby to divest Mortgagor of all right, title or equity that Mortgagor may have in and to the Collateral and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney in fact are hereby ratified and confirmed and binding upon Mortgagor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Indebtedness. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Collateral may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of Alabama, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Collateral is sold or the Indebtedness is paid in full. If the Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Mortgagee may at its option exhaust the remedies granted under any of said security instruments, either concurrently or independently, and in such order as Mortgagee may determine.

2.6.2 If any Event of Default shall have occurred Mortgagee may (in its own name or in the name of any nominee of Mortgagee), in addition to and not in abrogation of the rights covered under subsection 2.6.1, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Note and/or the performance of any term,

covenant, condition or agreement of this Mortgage and/or any other right, and (b) to pursue any other remedy available to it, all as Mortgagee at its sole discretion shall elect.

2.7 Purchase by Mortgagee. Upon any foreclosure sale or sales of all or any portion of the Collateral (including, without limitation, any sale(s) under the power herein granted), Mortgagee may bid for and if the highest bidder therefor, purchase the Collateral (or portion of the Collateral) sold and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

2.8 Application of Proceeds of Sale. In the event of a foreclosure sale of all or any portion of the Collateral (including, without limitation, any sale(s) under the power herein granted), the proceeds of said sale shall be applied, in whatever order and proportion Mortgagee in its sole discretion may decide (or if a particular order is required under applicable law, in such order required by law), to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' and trustee's fees, to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, advanced by Mortgagee, to payment of the principal amount of the Note, to payment of the other Indebtedness, and/or to the accrued interest on all of the foregoing, and the remainder, if any, shall be paid to Mortgagor or to the person or entity lawfully entitled thereto.

2.9 Mortgagor as Tenant Holding Over. In the event of any such foreclosure or sale or sales under the power herein granted, Mortgagor shall be deemed a tenant wrongfully holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants wrongfully holding over.

2.10 Waiver of Appraisement, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of a Default hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Collateral, or the delivery of possession thereof, immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security title, lien and security interest of this Mortgage marshalled upon any foreclosure or sale under the power granted herein.

2.11 Waiver of Homestead. To the extent permitted by applicable law and as applicable, Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Collateral as against the collection of the Indebtedness, or any part thereof.

2.12 Leases. To the extent permitted by applicable law, Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Collateral, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their

rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the Indebtedness.

2.13 Discontinuance of Proceedings. In case the Mortgagee shall have proceeded to enforce any right, power 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 Mortgagee, then and in every such case the Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

2.14 Remedies Cumulative. The obtaining of a judgment or decree on the Note, whether in the State of Alabama or elsewhere, shall not in any manner affect the security title, interest and lien of this Mortgage upon the Collateral covered hereby, and any judgment or decree so obtained shall be secured to the same extent as the Note, is now secured. No right, power or remedy conferred upon or reserved to Mortgagee 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 now or hereafter existing at law or in equity or by statute.

2.15 Waiver.

2.15.1 No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any breach or Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such breach or Default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligation of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare a Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

2.15.2 No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Collateral or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Default then made or of any subsequent Default, or alter the security interest or lien of this Mortgage except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (a) grant forbearance or an extension of time for the payment of all or a portion of the Indebtedness; (b) take other or additional security for the payment of the Indebtedness; (c) waive or fail to exercise any right granted herein or in the Note or any Loan Documents or any other documents or instruments; (d) release any part of the Collateral or any other property from the security title, security interest or the lien of this Mortgage or otherwise

may change any of the terms, covenants, conditions or agreements of the Note, any Loan Document or this Mortgage; (e) consent to the filing of any map, plat or replat affecting the Collateral; (f) consent to the granting of any easement or other right affecting the Collateral; (g) make or consent to any agreement subordinating the security title, security interest or lien hereof; (h) take or omit to take any action whatsoever with respect to the Note, this Mortgage or any Loan Document or the Collateral; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege or affecting the security title, security interest or lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Collateral, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Collateral or the Indebtedness or with reference to any of the terms, covenants, conditions or agreements hereof, 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 liabilities, obligations or undertakings.

2.16 Suits to Protect the Collateral. Mortgagee shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Collateral by any acts which may be unlawful or constitute a Default under this Mortgage, (b) to preserve or protect its interest in the Collateral and in the incomes, rents, issues, profits and revenues 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 Mortgagee.

2.17 Proof of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceeding for the entire amount of the Indebtedness at the date of the institution of such proceeding and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

2.18 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE, ANY OTHER INDEBTEDNESS SECURED BY THIS MORTGAGE, AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE COLLATERAL BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND

TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE, EXCEPT SUCH NOTICE (IF ANY) AS IF SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE, AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD (TO THE EXTENT PERMITTED BY LAW), EXEMPTION OR REDEMPTION LAWS; (D) TO THE EXTENT PERMITTED BY APPLICABLE LAW, WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, AND/OR THIS MORTGAGE (IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES AND COUNTERCLAIMS IN ANY ACTION OR PROCEEDING); (E) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ANY AND ALL QUESTIONS OF MORTGAGOR REGARDING THE LEGAL EFFECT OF THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR, AND MORTGAGOR HAS CONSULTED WITH COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (F) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE AFTER CONSULTING WITH COUNSEL AND CAREFUL CONSIDERATION AND HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR TRANSACTION AND THAT THIS MORTGAGE IS VALID AND ENFORCEABLE BY MORTGAGEE AGAINST MORTGAGOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

2.19 **Set Off.** If an Event of Default shall have occurred, Mortgagee may, without notice or other action (any such notice or other action being expressly waived by Mortgagor), set off any money owed by Mortgagee in any capacity to Mortgagor or any property of Mortgagor in the possession of Mortgagee against the Indebtedness, whether or not due. The right of set off granted hereunder shall be effective irrespective of whether Mortgagee shall have made demand under or in connection with the Indebtedness.

2.20 **Multiple Sales.** Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring all of the Indebtedness due. Any such sale may be made subject to the un-matured part of the Indebtedness, and such sale, if so made, shall not in any manner affect the un-matured part of the Indebtedness, but as to such un-matured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this Article. Several sales may be made under the provisions of this Article without exhausting the right of sale for any remaining part of the Indebtedness whether then matured or un-matured, the purpose hereof being to provide for a foreclosure and sale of the Collateral for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Collateral for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

2.21 **Application of Payments.** If the lien or the security interest created by this Mortgage is invalid or unenforceable as to any part of the Indebtedness or is invalid or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness that is not secured or not fully secured by the lien or security interest created hereby.

ARTICLE III

3.1 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Mortgagor and Mortgagee and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to "Mortgagor" or "Mortgagee", such reference shall be deemed to include a reference to the legal representatives, successors, successors-in-title, and assigns of Mortgagor and Mortgagee, as the case may be. With respect to Mortgagor, the provisions of this Section 3.1 are subject to the restrictions on transfer contained in Section 1.16.

3.2 **Terminology.** All personal pronouns used in this Mortgage whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to articles, sections, subsections, paragraphs or subparagraphs shall refer to the corresponding articles, sections, subsections, paragraphs or subparagraphs of this Mortgage unless specific reference is made to such articles, sections, subsections, paragraphs or subparagraphs of another document or instrument.

3.3 **Severability.** The parties hereto intend and believe that each provision of this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Mortgage is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of the Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and the rights, obligations and interests of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

3.4 **Applicable Law and Jurisdiction.** This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama. Mortgagor agrees that, at the option of Mortgagee, the United States District Court for the district in which the Land is located or any court of competent jurisdiction of the state in which the Land is located shall have jurisdiction in any action, suit or other proceeding arising out of or relating to any act taken or omitted hereunder or the enforcement of this Mortgage and Mortgagor shall not assert in any such action, suit or other proceeding that it is not personally subject to the jurisdiction of the courts described above,

that the action, suit or other proceeding is brought in an inconvenient forum or that the venue of the action, suit or proceeding is improper. In addition to and without limiting the generality of the foregoing, Mortgagor irrevocably and unconditionally submits to the non-exclusive jurisdiction of any court of competent jurisdiction of the state in which the Land is located and any United States District Court for the district in which the Land is located, and Mortgagor irrevocably and unconditionally agrees that any process or notice of motion or other application to any of said courts may be served upon Mortgagor in the manner prescribed in this Mortgage for the giving of notices or by personal notice or other services as allowed by law. Mortgagor further agrees to comply with all requirements necessary to give such courts in personam jurisdiction.

3.5 Notices, Demands and Requests. Any and all notices, elections or demands permitted or required to be made under this Mortgage shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, or sent by certified United States Mail, postage prepaid, or sent by a nationally recognized overnight courier provided a receipt for delivery is obtained from the recipient, to the other party at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing to the other party. Any such notice or other document shall be deemed delivered (i) if personally delivered, when actually received by the party to whom directed at the address specified pursuant to this Section, or (ii) if sent by U.S. Mail, five (5) days after such notice or document is deposited in the United States Mail, addressed as provided herein, or (iii) if sent by overnight courier, addressed as provided herein, on the date of receipt or refusal to accept delivery, as evidenced on the return receipt or other shipping invoice. For the purposes of this Mortgage:

The address of Mortgagee is:

Synovus Bank
Attention: Matthew Prielozny (CB&T)

if by mail:

P. O. Box 120
Columbus, Georgia 31902

if hand delivered:

1148 Broadway
Columbus, Georgia 31901

The address of Mortgagor is:

Pelham Investment Partners, LLC
Attention: C. Lee Wooddall
2255 Cumberland Parkway Building 1700
2nd Floor
Atlanta, Georgia 30339

With a copy to:

John H. Irby
Wilson Brock & Irby, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339

3.6 **Assignment by Mortgagee.** This Mortgage is assignable by Mortgagee, and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

3.7 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage and the Note.

3.8 **Consents and Approvals.** Except as otherwise provided herein, wherever the consent or approval of Mortgagee is required by this Mortgage, such consent or approval may be withheld in Mortgagee's sole discretion. The granting or withholding of consent by Mortgagee to any transaction or action as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Mortgagor covenants and agrees to reimburse Mortgagee promptly on demand for all costs and expenses (including attorneys' fees) actually incurred by Mortgagee or its agents in connection with all requests by Mortgagor for consent or approval under this Mortgage (and Mortgagee may condition consent or approval upon, inter alia, reimbursement of such costs and expenses).

3.9 **Entity Existence.** So long as the Collateral shall be owned or held by a corporation, nonprofit corporation, limited liability company, partnership or other business entity, such corporation, nonprofit corporation partnership, limited liability company or other business entity shall at all times maintain its existence and shall be fully authorized to do business in the State of Alabama and shall maintain in the State of Alabama a duly authorized registered agent for the service of process. Failure to comply with such obligations shall be a default under this Mortgage. Within ninety (90) days after the expiration of the time for filing its annual report and the payment of the appropriate corporate, limited liability company or partnership taxes in the State of Alabama, Mortgagor will furnish to Mortgagee a certificate of good standing or other evidence satisfactory to Mortgagee to show compliance with the provisions of this section.

3.10 **No Merger.** If both Mortgagor's and the tenant's estates under any lease or any portion thereof which constitutes a part of the Collateral shall at any time become vested in one owner, this Mortgage and the security title and lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In the event Mortgagor is the owner of a leasehold estate with respect to any portion of the Collateral and Mortgagor obtains a fee estate in such portion of the Collateral, then, such fee estate shall automatically, and without further action of any kind on the part of Mortgagor, be and become subject to the security title and lien hereof. In addition, upon the foreclosure of the security title and lien created by this Mortgage on the Collateral pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure sale unless Mortgagee or the purchaser at such sale shall so elect. To the extent permitted by law, no act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

3.11 **Modification.** This Mortgage may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

3.12 **No Joint Venture.** Nothing contained in this Mortgage or the Note shall be construed to create an agency, partnership or joint venture between Mortgagor and Mortgagee.

3.13 **Acknowledgment by Mortgagor.** **MORTGAGOR HEREBY DECLARES THAT MORTGAGOR AND MORTGAGOR'S COUNSEL HAS READ THIS MORTGAGE AND MORTGAGOR HAS RECEIVED A TRUE, CORRECT AND COMPLETE COPY OF THIS MORTGAGE AND HAS EXECUTED AND DELIVERED THIS MORTGAGE.**

3.14 **Acceptance by Mortgagee.** Mortgagee acknowledges its acceptance of and agreement to the terms and conditions contained herein by its acceptance of the delivery of this Mortgage by Mortgagor and the recordation of this Mortgage.

3.15 **Consideration.** Mortgagor, on behalf of itself, its successors, assigns, transferees, trustees and other entities acting by, through or on its behalf, does hereby represent, warranty and covenant that it received a direct substantial benefit from Mortgagee making the Loan to Mortgagor, and that the value of such benefit exceeds, or is reasonably equivalent to the value of Mortgagor's promises, covenants, obligations and agreements hereunder.

3.16 **OFAC.** Mortgagor shall (i) ensure that neither Mortgagor nor any other person who owns a controlling interest in or controls Mortgagor shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of any proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, (iii) comply with all applicable Bank Secrecy Act laws and regulations, as amended, and (iv) provide all information reasonably necessary for Mortgagee to comply with the USA Patriot Act, as amended from time to time.

3.17 **USA Patriot Act Notice.** Mortgagee hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), Mortgagee is required to obtain, verify and record information that identifies Mortgagor, which information includes the name and address of Mortgagor and other information that will allow Mortgagee to identify Mortgagor in accordance with the Patriot Act.


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IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage and Security Agreement, under seal, effective as of the date first above written.

Mortgagor:

PELHAM INVESTMENT PARTNERS, LLC,
A Georgia limited liability company

By: IRBY FAMILY INVESTMENTS, LLC,
a Georgia limited liability company, its
Manager

By: _____ (Seal)

Name: John H. Irby

Title: Manager

STATE OF GEORGIA
COUNTY OF Cobb

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that John H. Irby whose name as manager of Irby Family Investments, LLC, a Georgia limited liability company, as a manager of Pelham Investment Partners, LLC, a Georgia 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 this instrument, he, as such manager of said Irby Family Investments, LLC as a manager of Pelham Investment Partners, LLC and with full authority, executed the same voluntarily for and as the act of said companies.

Given under my hand and seal of office this 14th day of MARCH, 2017.

[NOTARY SEAL]



Jasonia Young
Notary Public
My Commission Expires:

THIS INSTRUMENT PREPARED BY:
AND AFTER RECORDING RETURN TO:
Angela Hicks and Linda Nguyen of
Page, Scrantom, Sprouse,
Tucker & Ford, P.C.
P. O. Box 1199
Columbus GA 31902
(706) 324-0251

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land located in the Southeast ¼ of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of said Section 14; thence in a Westerly direction along the South line of said Section 14 a distance of 201.98 feet to the center line of Atlantic Coast Line Railroad right of way; thence 62° 35' right along the center line of said right of way in a Northwesterly direction a distance of 196.31 feet to the intersection of the center line of the Ashville-Montevallo Road; thence 20° 35' right in a Northwesterly direction along said center line of said road a distance of 703.74 feet; thence 90° left in a Southwesterly direction a distance of 30.0 feet to the West right of way line of said road and the Point of Beginning of herein described property; thence continue along last described course a distance of 180.88 feet to the Northeast right of way line of Atlantic Coast Line Railroad; thence 69° 25' right in a Northwesterly direction along said right of way a distance of 594.74 feet to the beginning of a curve to the left, said curve having a central angle of 27° 12' (measure 8° 07' 53") and a radius of 2,914.82 feet; thence along arc of said curve a distance of 413.67 feet; thence 125° 32' 53" right, measured from tangent of said curve, in an Easterly direction a distance of 670.32 feet to the West right of way line of Ashville-Montevallo Road, said point being on a curve to the left having a central angle of 2° 23' 18" and a radius of 277.35 feet (calculated 2,775.35); thence 95° 34' 48" right, measured to tangent of said curve, in a Southerly direction along arc of said curve a distance of 115.69 feet to end of said curve; thence continue along said right of way line in a Southerly direction a distance of 180.82 feet to the beginning of a curve to the left, said curve having a central angle of 10° 01' 30" and a radius of 3,223.53 feet; thence continue along arc of said curve in a Southerly direction a distance of 564.02 feet to end of said curve and the Point of Beginning.

Tax parcel # 13 6 14 4 001 002.000



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EXHIBIT B

First American Title Insurance Company

SCHEDULE B

EXCEPTIONS FROM COVERAGE

Issuing Office File No.: **11480-0189 – Non-Residential**

Policy No.: **5011400-1646382e**

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) that arise by reason of:

1. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
2. Taxes and assessments for the year 2017 and subsequent years, which are not yet due and payable.
3. Easement to the City of Pelham, as recorded in Official Records Book 338, Page 361, in the Office of the Judge of Probate, Shelby County, Alabama.
4. Rights of others in and to the use of easement for ingress/egress recorded in Official Records Instrument 20091006000378890, in the Office of the Judge of Probate, Shelby County, Alabama.
5. Right of Way granted to Alabama Power Company filed for record in Official Records Book 241, Page 383, in the Office of the Judge of Probate, Shelby County, Alabama.
6. Transmission line permit to Alabama Power Company, as recorded in Official Records Book 101, Page 517, Official Records Book 93, Page 392, Official Records Book 127, Page 566, and Official Records Book 248, Page 835, in the Office of the Judge of Probate, Shelby County, Alabama.
7. Easement to Plantation Pipeline, as recorded in Official Records Book 112, Page 217 and Official Records Book 145, Page 430, in the Office of the Judge of Probate, Shelby County, Alabama.
8. Easement to Southern Natural Gas, as recorded in Official Records Book 267, Page 172, in the Office of the Judge of Probate, Shelby County, Alabama.
9. 100 foot right of way to Seaboard Coast Line Railroad Company, as recorded in Official Records Book 36, Page 254, in the Office of the Judge of Probate, Shelby County, Alabama.
10. Less and except any portion of subject property lying within railroad right of way in the western corner of the property as shown on the Survey prepared by Engineering Design Group, LLC, dated February 14, 2017, and designated as Project No. SWIF0001.
11. City ordinance and approval to sell subject property to Orlando Equity Partners, LLC, as recorded in Official Records Instrument 20161108000411880, in the Office of the Judge of Probate, Shelby County, Alabama.
12. Rights of tenants in possession under that certain unrecorded Ground Lease Agreement between Pelham Investment Partners, LLC, as Landlord, and Swift Straw II, LLC, as Tenant.
13. Easement – Secondary Voltage granted to Alabama Power Company as recorded in Official Records Instrument No. 20161115000421020, in the Office of the Judge of Probate, Shelby County, Alabama.
14. The final policy does not attempt to insure the exact amount of acreage or square feet contained in the land described in Schedule A.

[End.]

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Schedule B - Page 1

EXHIBIT "C"

A. Debtor:

- (1) Name or Identity: Pelham Investment Partners, LLC
- (2) Structure:
- (X) limited liability company organized under the laws of the State of Georgia
 - () limited partnership, having the following persons as its general partners;
 - () individuals
 - () other specify:
- (3) Mailing address: 2255 Cumberland Parkway, Building 1700
2nd Floor
Atlanta, Georgia 30339
- (4) Debtor has been using or operating under its name or identity without change since its organization.

B. Secured Party:

- (1) Name or Identity: Synovus Bank
- (2) Mailing address: P. O. Box 120
Columbus, Georgia 31902

