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This instrument prepared by
and should be returned to:
Richard W. Theibert, Esq.
2125 Morris Ave.
Birmingham, AL 35203

STATE OF ALABAMA
COUNTY OF SHELBY

MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT (Collateral Includes Fixtures)

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 9A OF THE UNIFORM COMMERCIAL CODE OF ALABAMA.

THIS MORTGAGE, made this 8th day of May, 2017, by Alabaster Surgical Group, LLC, whose address is 632 First Street North, Alabaster, AL 35007 (hereinafter referred to as "Mortgagor"), an Alabama limited liability company organized and existing under the laws of the State of Alabama, is granted and conveyed to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose mailing address is P.O. Box 1290, Whiteville, North Carolina 28472-1290.

■ IF CHECKED, THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS PROVIDED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

WHEREAS, Alabaster Surgical Group, LLC (if not the Mortgagor, the "Borrower") is indebted to Mortgagee, as evidenced by a certain promissory note dated the 8th day of May, 2017, executed in favor of Mortgagee in the principal sum of Two Million One Hundred Nine Thousand Six Hundred Forty-One dollars (\$2,109,641.00), and any renewals, extensions, modifications, restatements, amendments or substitutions thereof, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Note(s)" shall be deemed to include the note above described along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee or any affiliate of Mortgagee including without limitation all indebtedness and obligations of Mortgagor or Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Mortgagor or Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement," the terms of which are incorporated herein by reference, and any amounts advanced and outstanding under the Business Credit or Purchase Cards issued. All indebtedness secured by this Mortgage shall be due and payable in full as follows: *(check if applicable)*

☐ on _____, 20____. If the box is not checked, then on demand or as otherwise provided in the Note.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and

1. All future advances and readvances that may subsequently be made to Mortgagor or Borrower evidenced by the Note(s) and by all renewals, extensions, modifications and substitutions thereof, including without limitation any advances to pay any draft or drawing on any commercial or standby letter of credit issued on the account of Mortgagor or Borrower pursuant to any Application therefor; and

2. All other indebtedness of Mortgagor or Borrower to Mortgagee, and any other affiliate of Mortgagee now or hereafter existing, whether direct or indirect, absolute or contingent, liquidated or unliquidated, and any renewals, extensions, modifications, and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by a note, open account, assignment, endorsement, guaranty, pledge or otherwise and all interest thereon, all charges and expenses of collection of the indebtedness or preservation of any collateral securing the indebtedness incurred by Mortgagee or any of its affiliates including court costs and reasonable attorneys' fees; has granted, bargained, sold, assigned, conveyed and does by these presents grant, bargain, sell, assign and convey unto Mortgagee, its successors and assigns all of Mortgagor's right title and interest, in to and under the following property and interest in property (collectively the "Property")

The real property, buildings, fixtures and improvements situated thereon described in **Exhibit A** attached hereto and incorporated herein in full and any reversions and remainders in and thereto, all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances thereto, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of the Property, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining the Property or any parcel thereof, or in or to the air space over the Property; and all claims or demands of Mortgagor, at law or in equity, in possession or expectancy of, in or to any of the same, together with:

(a) all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Property or attached to, contained in, or used in connection with, any buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by Mortgagor;

(b) all leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Property and all rents, profits, issues and revenues of the Property now or hereafter accruing; provided, however, that if no Event of Default exists, Mortgagor shall have a license subject to the limitation herein to collect and receive all of such rents, profits, issues and revenues;

(c) all policies of hazard insurance now or hereafter in effect that insure the Property or any other property conveyed or encumbered hereby, together with all right, title and interest of Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums;

(d) all judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to Mortgagor or any subsequent owner of any of the Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Property or any other such property;

(e) all proceeds of any of the foregoing; and

(f) (1) all of Mortgagor's rights further to encumber the Property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Mortgagor hereby (a.) representing as a special inducement to Mortgagee to make the loan secured hereby that as of the date hereof there are no encumbrances to secure debt junior to this mortgage and (b.) covenanting that there are to be none as of the date this Mortgage becomes of record, except in either case encumbrances having the prior written approval of Mortgagee herein; and (2) all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage other than this Mortgage.

Mortgagor does hereby grant to Mortgagee title to and a security interest in such portions of the Property the security interest in and disposition of which is governed by the Alabama Uniform Commercial Code (the "Collateral"). For the purpose of using this Mortgage as a fixture filing, Mortgagor is the Debtor, Mortgagee is the Secured Party, each is an individual or an entity of the type set forth on the first page of this Mortgage, the addresses of the Debtor (Mortgagor) and the Secured Party (Mortgagee) are set forth on the first page of this Mortgage, a statement indicating the types, or describing the items of Collateral which are or will become fixtures is set forth in the granting clauses hereof, the Property to which the Collateral is or will be affixed is described on the first page of this Mortgage or an attachment hereto and the Debtor (Mortgagor) is the record owner of the Property.

Mortgagor(s) certify to Mortgagee that the Property is not homestead property of Mortgagor(s).

Any Mortgagor who has not also executed the Note is executing this Mortgage solely for the purpose of waiving his/her homestead rights, and also acknowledges receipt of good and valuable consideration for this waiver.

TO HAVE AND TO HOLD, all of such Property unto Mortgagee, its successors and assigns forever.

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

The Mortgagor (and where more than one, each jointly and severally) covenants and agrees as follows:

1. **PAYMENT.** If Mortgagor is a maker or obligor on the Note(s), Mortgagor will promptly pay the principal of and interest on the indebtedness evidenced by the Note(s) and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. This instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby.

2. **TITLE TO PROPERTY.** The Mortgagor covenants that Mortgagor is lawfully seized of the Property in fee simple absolute, or such other estate; if any, as is stated hereinbefore, that Mortgagor has good, right, and lawful authority to sell, convey, or encumber the same, and that the Property are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the Property as herein conveyed unto Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

3. **PERFORMANCE.** Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this Mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Mortgagor shall timely perform any obligations, covenant or warranty contained in the Note(s) or any other loan document executed in connection therewith. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of Mortgagee. Mortgagor shall regularly and promptly comply with any applicable legal requirements of the United States, the State of Alabama or other governmental entity, agency or instrumentality relating to the use or condition of the Property.

4. **DUTY TO PAY TAXES, PREMIUMS.** Mortgagor will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or imposition, assessed against the Property hereby mortgaged. Upon the request of Mortgagee, Mortgagor shall promptly furnish satisfactory evidence of such payment or performance. If Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this Mortgage. Upon demand of Mortgagee, Mortgagor shall deposit with Mortgagee or add to each payment required under the Note the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay as they become due all taxes, charges, assessments, and insurance premiums which Mortgagor is required to pay. Further, any deficiency occasioned by an insufficiency of such additional payments shall be deposited by Mortgagor with Mortgagee upon demand.

5. **MECHANICS' AND OTHER LIENS.** Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Mortgagor shall do, or cause to be done, at the cost of Mortgagor and without expense to Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event Mortgagor fails to make payment of such claims and demands, Mortgagee may, but shall not be obligated to, make payment thereof, and Mortgagor shall, on demand, reimburse Mortgagee for all sums so expended.

Notwithstanding the foregoing, Mortgagor may bond or otherwise discharge any such claim or demand which is contested, in form and substance satisfactory to Mortgagee.

6. DUTY TO MAINTAIN; INSPECTIONS; APPRAISALS. Mortgagor will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws, as hereinafter defined. Mortgage shall not initiate or acquiesce in a change in the zoning classification of the Property or make or permit any structural alteration thereof without Mortgagee's prior written consent. Should (i) Mortgagee at any time in good faith believe that the fair market value of the Property has declined below the appraised value utilized by Mortgagee in extending credit or any renewal thereof; (iii) there be an event of default under the Note or this Mortgage; (iv) there is a forbearance or restructure of any indebtedness secured under this Mortgage; (v) any applicable law or regulation require Mortgagee to obtain a current appraisal or valuation; (vi) there be any condemnation or material damage to the Property; or (vii) Mortgagee determine that there has been a material adverse change in the financial condition or business operation of Mortgagor, Borrower, guarantor, or other obligor; Mortgagee may, at the expense of Mortgagor and Borrower, obtain an appraisal or valuation of the Property from an appraiser retained by Mortgagee and thereafter, may obtain such updated appraisals or valuation as Mortgagee shall deem appropriate. Mortgagor shall cooperate fully with any such appraiser in connection with preparation of any appraisal or valuation. Mortgagor shall reimburse Mortgagee the cost of such appraisal or valuation within ten (10) days of request to do so. Any cost incurred by Mortgagee pursuant to this paragraph shall be secured by this Mortgage.

7. PROPERTY INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

(a) Maintenance of Insurance. Mortgagor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Mortgagee. Mortgagor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Mortgagee may request, with Mortgagee being named as additional insured in such liability insurance policies. Additionally, Mortgagor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Mortgagee may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Mortgagee and issued by a company or companies reasonably acceptable to Mortgagee. All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Mortgagee. Mortgagor, upon request of Mortgagee, will deliver to Mortgagee from time to time the policies or certificates of insurance in form satisfactory to Mortgagee, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Mortgagee. Each insurance policy also shall include an endorsement providing that coverage in favor of Mortgagee will not be impaired in any way by any act, omission or default of Mortgagor or any other person. Should the Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Mortgagor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the Property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Mortgagee, and to maintain such insurance for the term of the loan.

(b) Application of Proceeds. Mortgagor shall promptly notify Mortgagee of any loss or damage to the Property. Mortgagee may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. Whether or not Mortgagee's security is impaired, Mortgagee may, at Mortgagee's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Note(s), payment of any lien affecting the Property, or the restoration and repair of the Property. If Mortgagee elects to apply the proceeds to restoration and repair, Mortgagor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Mortgagee. Mortgagee shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration if Mortgagor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Mortgagee has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Mortgagee under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Note(s). If Mortgagee holds any proceeds after payment in full of the Note(s), such proceeds shall be paid to Mortgagor as Mortgagor's interests may appear.

(c) Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

(d) Mortgagor's Report on Insurance. Upon request of Mortgagee, however not more than once a year, Mortgagor shall furnish to Mortgagee a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining

that value; and (5) the expiration date of the policy. Mortgagor shall, upon request of Mortgagee, have an independent appraiser satisfactory to Mortgagee determine the cash value replacement cost of the Property.

8. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor hereby presently, absolutely, and unconditionally assigns all of the leases, rents, issues, and profits of the Property to Mortgagee and the absolute, unconditional, and continuing right to receive and collect all of the leases, rents, issues and profits of the Property, it being intended that this assignment constitutes a present, outright, continuing and absolute assignment and not an assignment for additional security only. Mortgagee may at any time collect any and all rents, issues and profits whether or not any default has occurred hereunder, and should legal proceedings be instituted pursuant to this instrument, then Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may determine. Such appointment shall be a power coupled with an interest and shall be irrevocable until the indebtedness and obligations secured hereby have been paid in full. Notwithstanding the foregoing, Mortgagee hereby grants to Mortgagor a revocable license to collect and receive all leases, rents, issues and profits of the Property until the occurrence and during the continuance of an Event of Default at which time such license will automatically cease and terminate and will be void and of no further effect. Upon the occurrence and during the continuance of an Event of Default, any portion of the leases, rents, issues and profits received and held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of any indebtedness owing under the Note(s).

9. **PAYMENT OF OTHER OBLIGATIONS.** Mortgagor will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien or security interest having priority over this Mortgage as to the Property described herein. If Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this Mortgage.

10. **SECURITY INTEREST.** All fixtures, appliances and equipment which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the fixtures, this Mortgage shall be considered to be a security agreement which creates a security interest in such fixtures, appliances and equipment for the benefit of Mortgagee. Mortgagor hereby grants to Mortgagee a security interest in such fixtures, appliances and equipment and all of the rights and remedies of a secured party under the Alabama Uniform Commercial Code. Mortgagor hereby authorizes Mortgagee, concurrently with the execution of this Mortgage and upon the request of Mortgagee from time to time hereafter, to file all UCC financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. Mortgagor hereby irrevocably (as long as the Note(s) remains unpaid) makes, constitutes and appoints Mortgagee as the true and lawful attorney-in-fact of Mortgagor to file any financing statement, continuation financing statement or similar document required to perfect or continue such security interests. To the extent permitted by law, this Mortgage shall be a financing statement and fixture filing sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds. For such purpose, Mortgagor is the Debtor and Mortgagee is the Secured Party each having the addresses set forth above.

Upon the occurrence of an event of default, Mortgagee, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any other document, or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Alabama Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

(a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;

(b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give to Mortgagor at least ten (10) days; prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral; and

(c) The right to require Mortgagor, upon request of Mortgagee, to assemble and make the Collateral available to Mortgagee at a place reasonably convenient to Mortgagor and Mortgagee; and To effectuate the rights and remedies of Mortgagee upon default, Mortgagor does hereby irrevocable appoint Mortgagee attorney-in-fact for Mortgagor, with full power of substitution to sign, executed

and deliver any and all instruments and documents and do all acts and things to the same extent as Mortgagor could do, and to sell, assign, and transfer the Collateral to Mortgagee or any other party. Such appointment shall constitute a power coupled with an interest and shall remain effective as long as any indebtedness or obligation secured by this Mortgage remains outstanding, and shall survive Mortgagors' disability.

11. CONDEMNATION AWARD. Mortgagor shall immediately notify Mortgagee in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part of the Property. Mortgagor further agrees to promptly take such steps as may be necessary and proper within Mortgagee's sole judgment and at Mortgagor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Mortgagor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Mortgagee's prior written consent. Mortgagee may, at Mortgagee's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Mortgagee's choice. Mortgagor agrees to provide Mortgagee with such documentation as Mortgagee may request to permit Mortgagee to so participate and to reimburse Mortgagee for Mortgagee's costs associated with Mortgagee's participation, including Mortgagee's reasonable attorneys' fees. If Mortgagor fails to defend any such condemnation or expropriation proceedings to Mortgagee's satisfaction, Mortgagee may undertake the defense of such a proceeding for and on behalf of Mortgagor. To this end, Mortgagor irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Mortgage, Mortgagee will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Mortgagor's prior approval, which approval shall not be unreasonably withheld.

Mortgagee shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("condemnation proceeds"). In the event that Mortgagor should receive any such condemnation proceeds, Mortgagor agrees to immediately turn over and to pay such proceeds to Mortgagee. All condemnation proceeds, which are received by, or which are payable to either Mortgagor or Mortgagee, shall be applied, at Mortgagee's sole option and discretion, and in such manner as Mortgagee may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagor and/or Mortgagee), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the then outstanding balance of the Note(s), together with interest thereon, with such payments being applied in the manner provided in this Mortgage. Mortgagee's receipt of such condemnation proceeds and the application of such proceeds as provided in this Mortgage shall not affect the lien of this Mortgage.

12. COMPLIANCE WITH ENVIRONMENTAL LAWS; INDEMNITY. Mortgagor for itself, its successors and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has generated, manufactured, stored, treated, processed, released, discharged or disposed of any Hazardous Substances on the Property or received any notice from any Governmental Authority (hereinafter defined) or other person with regard to a release of Hazardous Substances on, from or otherwise affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (hereinafter defined) relating to or affecting the Property; (c) the Property is presently being operated in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) except in strict compliance with Environmental Laws, the Property shall be kept free of Hazardous Substances and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, process or release Hazardous Substances; (e) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (f) Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and other directives from any Governmental Authority necessary to comply with Environmental Laws; Mortgagor is in full compliance with the terms and provisions of the Environmental Requirements (hereinafter defined) and will continue to comply with the terms and provisions of the Environmental Requirements; (g) Mortgagor shall immediately give Mortgagee oral and written notice in the event that Mortgagor receives any notice from any Governmental Authority or any other party with regard to any release or storage of Hazardous Substances on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary or required to clean up and remove all Hazardous Substances on, from or affecting the Property in accordance with all applicable Environmental Laws. Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (i)

the presence on, or under, or the escape, spillage, emission or release on or from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (ii) the violation of any Environmental Laws or Environmental Requirements relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (iii) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (iv) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation of the Note(s); or if otherwise expressly permitted in writing by Mortgagee, the sale or alienation of any part of the Property.

In the event that any of Mortgagor's representations or warranties shall prove to be materially false or Mortgagor fails to satisfy any Environmental Requirement, Mortgagee, in its sole discretion, may (i) choose to assume compliance with governmental directives and Mortgagor agrees to reimburse Mortgagee for all costs, expenses (including all reasonable attorneys' fees, whether in-house or independent), fines, penalties, judgments, suits, or liabilities whatsoever associated with such compliance; or (ii) seek all legal and equitable remedies available to it including, but not limited to, injunctive relief compelling Mortgagor to comply with all Environmental Requirements relating to the Property. Mortgagee's rights hereunder shall be in addition to all rights granted under the Note(s) or related loan documents and payments by Mortgagor under this provision shall not reduce Mortgagor's obligations and liabilities thereunder. In the event Mortgagee undertakes compliance with Environmental Requirements which Mortgagor failed to perform or which Mortgagee determines is necessary to sell all or any part of the Property, Mortgagor authorizes Mortgagee and/or Mortgagee's agents to prepare and execute on Mortgagor's behalf, any manifest or other documentation relating to the removal and/or disposal of any Hazardous Substances, from, at or on the Property. Mortgagor acknowledges that Mortgagee does not own, or have a security interest in, any Hazardous Substances which exist on, originate from or affect the Property. All amounts expended by Mortgagee in connection with the exercise of its rights hereunder (including reasonable attorneys' fees and the fees of any environmental consultants) shall become part of the indebtedness secured by this Mortgage.

For purposes of this Mortgage: "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances. "Environmental Requirement" means any administrative orders, directives, judgments, consent orders, permits, licenses, authorizations, consents, settlements, agreements or other formal or informal directions or guidance issued by or entered into with any Governmental Authority or private party, including the provisions of any Environmental Law, which obligate or commit Mortgagor to investigate, remediate, treat, monitor, dispose or remove Hazardous Substances. "Governmental Authority" means any federal, state or local agency, department, court or other administrative legislative or regulatory federal, state or local governmental body, or any private individual or entity acting in place of such entities. "Hazardous Substances" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in the Environmental Laws.

13. PAYMENT OF EXPENSES. That in the event that Mortgagor shall default in its obligations under this Mortgage, the Note(s) or related loan documents, and Mortgagee employs an attorney to assist in the collection of the indebtedness or to enforce compliance of Mortgagor with any of the provisions of this Mortgage, the Note(s) or related loan documents or in the event Mortgagee shall become a party to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, concerning collection of the indebtedness or concerning compliance by Mortgagor or other borrower named herein with any of the provisions of this Mortgage, the Note(s) or related loan documents, Mortgagor shall pay Mortgagee's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the indebtedness. Mortgagor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced.

14. RELEASES; NO MARSHALLING. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagor from personal liability for the indebtedness. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the indebtedness are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagor, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

15. INDEMNIFICATION IN EVENT OF ADVERSE CLAIMS. In the event that Mortgagee voluntarily or otherwise shall become a party to any suit or legal proceeding involving the Property, it shall be held harmless and shall be indemnified by Mortgagor for any amounts paid, including all costs, charges and attorneys' fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and payable upon demand.

16. EVENTS OF DEFAULT. Subject to any notice and cure periods, if any, contained in the Note(s) or any related loan document executed by Mortgagor or Borrower or in this Mortgage, Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following:

(a) Should Mortgagor or Borrower fail to pay any of the indebtedness secured hereby on the date due or to perform any covenant or warranty in this Mortgage, in the Note(s) or any related loan document in any Loan Agreement, Hedge Agreement, Business Card Plan Agreement, or other note or instrument of Mortgagor or Borrower to Mortgagee; or in any contract between Mortgagor and/or Borrower and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(b) Should any warranty, representation, report or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with the indebtedness secured hereby prove to have been false or misleading in any material respect when made or furnished; or

(c) Should Mortgagor suffer any material loss, theft, damage or destruction to the Property which is not covered by insurance, or upon the assertion or filing of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) The death, dissolution, termination of existence, insolvency, business failure or the appointment of a Receiver for any part of the Property or other assets of Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for the indebtedness, or should any of the same make an assignment for the benefit of creditors or admit the inability to pay its debts in the ordinary course of business; or

(e) Failure of any corporate Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for Mortgagor or Borrower to maintain its legal existence in good standing; or

(f) The entry of any final monetary judgment which is not covered by insurance or pending appeal, or the assessment of unpaid taxes against Mortgagor or Borrower or filing of any tax, mechanic's or materialman's lien against the Property; or upon the issuance of any writ of garnishment or attachment is levied against the Property for debts due or rights of Mortgagor or Borrower or any guarantor; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of Mortgagor or Borrower, made without Mortgagee's prior written consent; or

(h) Should Mortgagee determine that its liens and security interests in the Property are invalid, unperfected, unenforceable, or failing to have the priority required by Mortgagee; or should the Property decline in fair market or appraised value below the amount required at the execution hereof; or should Mortgagee in good faith determine that there has been a material adverse change in the financial condition or business operations of Mortgagor, Borrower, or any co-maker, endorser, guarantor or surety; or

(i) Should Mortgagor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Mortgagor's property or Mortgagor's ability to repay the Note(s) or Mortgagor's ability to perform Mortgagor's obligations under this Mortgage or any of the related documents; or

(j) Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in any of the related documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed; or

(k) Should foreclosure or forfeiture proceedings be commenced, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Mortgagor or by any governmental agency against any of the Property, including any garnishment of any of Mortgagor's accounts, including deposit accounts, with Mortgagee; or

(l) Should any of the preceding events occur with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or should any guarantor, endorser, surety or accommodation party die or become incompetent, or revoke or dispute the validity of, or liability under, any guaranty of the indebtedness secured hereby.

RIGHT TO CURE. If Mortgagor or Borrower has a right to cure and if any default, other than a default in payment, is curable in the determination of Mortgagee and if Mortgagor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Mortgagor, after Mortgagee sends written notice to Mortgagor demanding cure of such default: (1) cures the default to the satisfaction of Mortgagee within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Mortgagee deems in Mortgagee's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

17. RIGHTS AND REMEDIES. Mortgagor shall hold and enjoy the Property until there is a default under this Mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this Mortgage or of any of the Note(s) secured hereby, then at the option of Mortgagee, and without prior notice to Mortgagor, all sums then owing by Mortgagor or any other obligor on the Note(s) to Mortgagee shall become immediately due and payable, Mortgagee may in addition pursue all other rights and remedies available against any Mortgagor or any borrower or other obligor under the Note(s) under applicable provisions of Alabama Law and of any other law governing the Note(s). This Mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another part of Mortgagor's obligations under the Note(s) or this Mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this Mortgage. None of the foregoing shall in any way affect the full force and effect of this Mortgage or impair Mortgagee's right to any other remedies against Mortgagor or any other obligors under the Note(s). Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this Mortgage, or in any of the Note(s) or any other document related thereto.

In addition, if a default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right without notice and without regard to the occupancy or value of any security for the Note(s) or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and operate the Property and collect and apply the revenues, and Mortgagor hereby consents thereto. 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 receivers' fees, reasonable attorneys' fees, costs and agent's compensation, all incurred pursuant to such appointment, all of which shall be considered a part of the Note(s) secured hereby. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the creditors or property of Mortgagor, 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 proceedings for the entire amount of the Note(s) at the date of the institution of such proceedings and for any additional portion of the Note(s) accruing after such date.

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

Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to this paragraph, shall be applied as follows: (a) First, to the costs and expenses of advertising, selling and conveying the Collateral or the Property (as the case may be) including a reasonable attorneys' fee for such service as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage. (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, as applicable, which Mortgagee may have paid, or become liable to

pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note, such repayment to be applied in the manner determined by Mortgagee; (c) Third, to the payment of the indebtedness secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other document, as applicable, whether or not all of such indebtedness is then due; and (d) Fourth, the balance, if any, shall be paid as provided by law.

If an Event of Default exists, Mortgagee shall have with respect to the fixtures all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell them at public or private sale or otherwise dispose of, lease or use them, without regard to preservation of the Collateral or its value and without the necessity of a court order. At Mortgagee's request, Mortgagor shall assemble the Collateral and make it available to Mortgagee at any place designated by Mortgagee. To the extent permitted by law, Mortgagor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the Collateral or exercise of any other right or remedy upon default. The Mortgagor agrees that Mortgagee may sell or dispose of both the Property and the Collateral in accordance with the rights and remedies granted under this Agreement with respect to the Property.

19. MORTGAGOR'S CONTINUING OBLIGATION. This Mortgage shall remain as security for full payment of the obligations under this Mortgage and for performance of any indebtedness evidenced by the Note(s) or related loan documents, notwithstanding any of the following: (a) the sale or release of all or any part of the Property; (b) the assumption by another party of Mortgagor's obligations under this Mortgage, the Note(s) or related loan documents; (c) the forbearance or extension of time for payment of the Note(s) or for performance of any obligations under this Mortgage, the Note(s) or related loan documents, whether granted to Mortgagor or to a subsequent owner of the Property; or (d) the release of any party who has assumed payment of the Note(s) or who assumed any other obligations under this Mortgage, the Note(s) or related loan documents. None of the foregoing shall, in any way, affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment in the event of foreclosure against Mortgagor or any party who had assumed payment of the Note(s) or who assumed any other obligations the performance of which is secured by this Mortgage.

20. WAIVER OF EXEMPTION. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby. Except to the extent prohibited by law, Mortgagee waives all appraisal rights relating to the Property.

21. DEFICIENCY. That upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), Mortgagee may foreclose upon the Property and ask for a deficiency judgment pursuant to Alabama law. DUE ON SALE - CONSENT BY MORTGAGEE. Mortgagee may, at Mortgagee's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Mortgagee's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of an interest in the Property. If any Mortgagor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Mortgagor. However, this option shall not be exercised by Mortgagee if such exercise is prohibited by federal law or by Alabama law.

22. RELEASE AND CANCELLATION. Upon fulfillment of all of obligations, the performance of which is secured by this Mortgage, and upon payment of the indebtedness secured hereby in full, this Mortgage and the Note(s) shall be marked "Satisfied" and returned to Mortgagor or Borrower, as applicable, and this conveyance shall be null and void and may be cancelled of record at the request and cost of Mortgagor, and title to the Property shall revert in Mortgagee as provided by law.

23. FURTHER ASSURANCES. At any time, and from time to time, upon request of Mortgagee, Mortgagor will make, execute and deliver, or will cause to be made, executed or delivered, to Mortgagee or to Mortgagee's designee, and when requested by Mortgagee, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Mortgagee may deem appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Mortgagor's obligations under the Note(s), this Mortgage, and any related loan documents, and (2) the liens and security interests granted in this Mortgage as first and prior liens on the Property,

whether now owned or hereafter acquired by Mortgagor. Unless prohibited by law or Mortgagee agrees to the contrary in writing, Mortgagor shall reimburse Mortgagee for all costs and expenses incurred in connection with the matters referred to in this paragraph.

24. **NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Mortgagee's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Mortgagor agrees to keep Mortgagee informed at all times of Mortgagor's current address. Unless otherwise provided or required by law, if there is more than one Mortgagor, any notice given by Mortgagee to any Mortgagor is deemed to be notice given to all Mortgagors.

25. **CHOICE OF VENUE.** Any legal action with respect to the Note(s) evidenced by this instrument or agreement may be brought in the courts of the State of Alabama or in the appropriate United States District Court situated in Alabama, and Mortgagor hereby accepts and unconditionally submits to the jurisdiction of such courts. Mortgagor hereby waives any objection to the laying of venue based on the grounds of forum non conveniens with respect thereto.

26. **MISCELLANEOUS.** The captions and headings of the paragraphs of this Mortgage are for convenience only and shall not be used to interpret or define any provisions. All remedies provided herein are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. If any provision of the Mortgage shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. That the covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used herein, the singular shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

27. **NO WAIVER BY MORTGAGEE.** Mortgagee shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Mortgagee. No delay or omission on the part of Mortgagee in exercising any right shall operate as a waiver of such right or any other right. A waiver by Mortgagee of a provision of this Mortgage shall not prejudice or constitute a waiver of Mortgagee's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Mortgagee, nor any course of dealing between Mortgagee and Mortgagor, shall constitute a waiver of any of Mortgagee's rights or of any of Mortgagor's obligations as to any future transactions. Whenever the consent of Mortgagee is required under this Mortgage, the granting of such consent by Mortgagee in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Mortgagee.

28. **NON-LIABILITY OF MORTGAGEE.** The relationship between Mortgagor and Mortgagee created by this Mortgage is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Mortgagee and Mortgagor. Mortgagor is exercising Mortgagor's own judgment with respect to Mortgagor's business. All information supplied to Mortgagee is for Mortgagee's benefit only and no other party is entitled to rely on such information. There is no duty for Mortgagee to review, inspect, supervise or inform Mortgagor of any matter with respect to Mortgagor's business. Mortgagee and Mortgagor intend that Mortgagee may reasonably rely on all information supplied by Mortgagor to Mortgagee, together with all representations and warranties given by Mortgagor to Mortgagee, without investigation or confirmation by Mortgagee and that any investigation or failure to investigate will not diminish Mortgagee's right to so rely.

29. **ENTIRE AGREEMENT.** This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other loan documents, and there is no unwritten oral agreement between the parties hereto in existence.

30. **WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE

CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

[Signature on following page]

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

WITNESS:

Print Name: _____

Alabaster Surgical Group, LLC

Name of LLC

By:

Name: Steven M. Taylor

Title: Manager

Steven M. Taylor
Manager

(SEAL)

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Steven M. Taylor, whose name as manager of Alabaster Surgical Group, LLC, of a 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 the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this 8th day of May, 2017.

[NOTARIAL SEAL]

Nathan Charles Weinert
Notary Public

My commission expires: 2/10/18

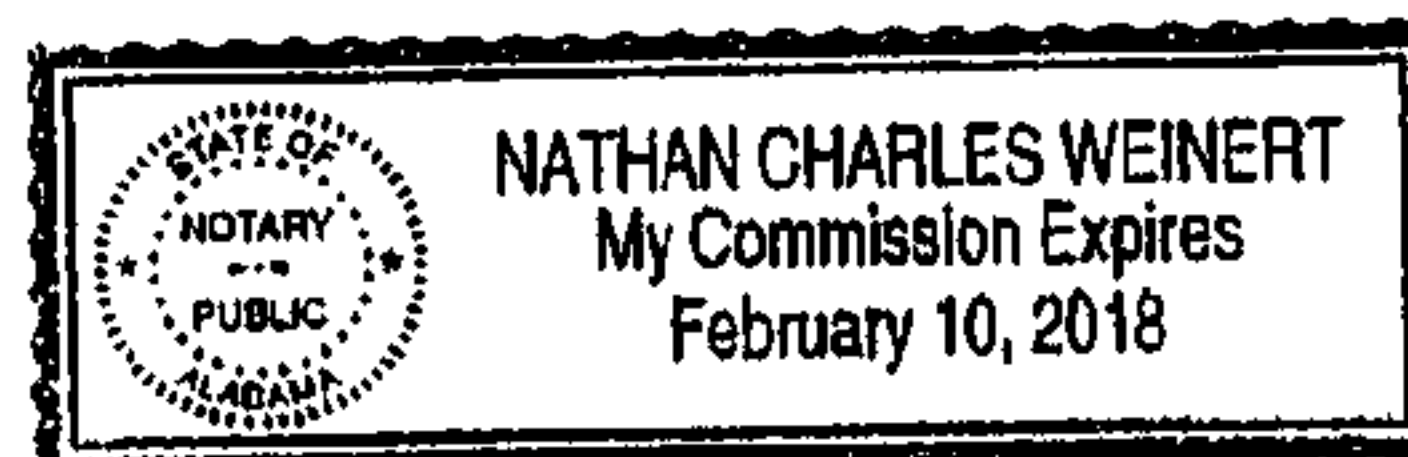


Exhibit "A"

Legal description:

Lot 2 according to the plat of Alabaster Landing Subdivision Final Plat as recorded in Map Book 47, Page 70 in the Office of the Judge of Probate for Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
05/23/2017 03:45:00 PM
\$3218.55 CHERRY
20170523000180690

A handwritten signature in black ink, appearing to be "J. W. Fuhrmeister", is written over the printed name of the Probate Judge.