

purchase Money

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA (1975), AS AMENDED, AND IS TO BE RECORDED IN THE REAL PROPERTY RECORDS IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.

STATE OF ALABAMA)
 :
SHELBY COUNTY)

MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT (herein this "Mortgage") made this 31st day of October, 2017, between **Edwin B. Lumpkin, Jr.**, ("Mortgagor"), and **Oakworth Capital Bank**, an Alabama banking corporation ("Mortgagee").

W I T N E S S E T H:

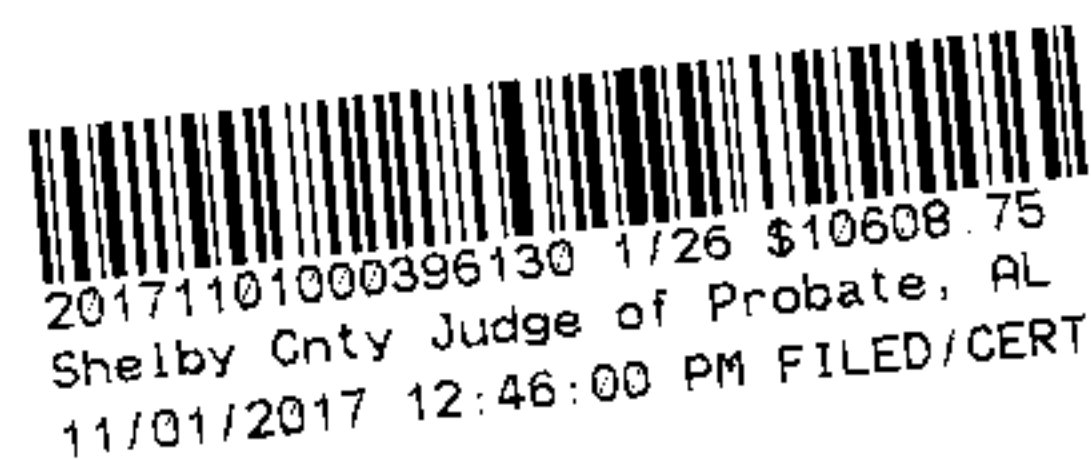
WHEREAS, Mortgagor is justly indebted to Mortgagee on a loan in the principal sum of Seven Million Twelve Thousand Five Hundred and No/100 Dollars (\$7,012,500.00) ("Loan"), as evidenced by a Promissory Note, of even date herewith, payable to Mortgagee with interest thereon as provided therein ("Note"). The Loan shall be advanced by Mortgagee in accordance with a Loan Agreement of even date herewith ("Loan Agreement"), the terms of which are incorporated and made a part of this Mortgage; and

WHEREAS, Mortgagor may hereafter become indebted to Mortgagee or to a subsequent holder of this Mortgage on loans or otherwise; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise (herein "Other Indebtedness").

NOW, THEREFORE, the Mortgagor, in consideration of Mortgagee's making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of

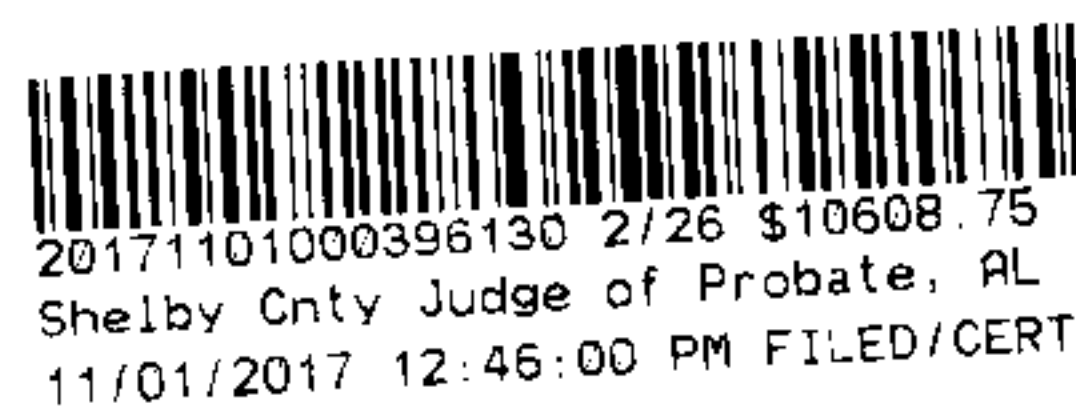
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Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, the Loan Agreement and in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Note, Loan Agreement and such other documents are sometimes referred to herein as the "Loan Documents"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "Other Indebtedness Instruments") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Mortgagee, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the Mortgagee or hereafter acquired by the Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Property") to-wit:

- (a) All that tract or parcel or parcels of land and estates particularly described on Exhibit "A" attached hereto and made a part hereof (the "Land");
- (b) TOGETHER with all and singular the leases, tenements, hereditaments, easements and appurtenances thereunto or unto any part thereof now or hereafter belonging or in any wise appertaining, and all streets, strips and gores of land, alleys, passages, ways, water courses, and all leasehold estates, rights-of-way, easements and covenants now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of the Land, and all rights to enforce the maintenance thereof, and all other rights, privileges and liberties of whatsoever kind or character, and the reversions and remainders thereof, and all estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the Land or any part thereof, and
- (c) TOGETHER with 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, reconstruction or remodeling of any of the aforesaid buildings, structures, or other improvements, and
- (d) TOGETHER with all personal property of every kind and description, and all apparatus, chattels, and fixtures now or hereafter erected or placed in or upon the Land or any improvement thereon or now or hereafter attached to or used in connection with the Land or any improvement thereon, and all additions thereto and all replacements thereof, whether or not the same have or would become part of the Land by attachment thereto, including without limiting the generality of the foregoing, all furnaces, heaters, gas and electric light fixtures, refrigerating, ventilating, incinerating, garbage disposal and air conditioning apparatus and equipment, all elevators, screens, doors, awnings, blinds, drapes, carpets, floor coverings, furnishings, appliances, televisions and television equipment, stereo and stereo equipment, restaurant equipment, refrigerators, stoves, storm windows, fire extinguishers, vehicles, inventory, supplies, gas and oil tanks and equipment, pipes,

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wires and plumbing and also all shrubbery or plants now or hereafter located on the Land or improvements, all of which shall to the extent permitted by law be considered as annexed to or forming a part of the Land (all of which is hereinafter referred to as the "Equipment"), and

- (e) TOGETHER with all monies, accounts receivable deposits, and proceeds (hereinafter referred to collectively as the "Proceeds") derived by Mortgagor from the Land, Equipment, or said apparatus, chattels, fixtures, buildings, structures, improvements, leases, tenant contracts, occupancy agreements, rental agreements, patrons, contracts, licenses, permits, rents, issues or profits, including but not limited to all revenue, receipts, rents, refunds, rebates, tenant reimbursements, condemnation awards and proceeds of the sale of, insurance on or other borrowings secured in whole or in part by any of the Land, Equipment, or said apparatus, chattels, fixtures, buildings, structures, improvements, leases, tenant contracts, rental agreements, contracts, licenses, permits, rents, issues and profits, and
- (f) TOGETHER with all books and records, the benefit of any deposits or payments now or hereafter made by Mortgagor or on behalf of Mortgagor, all franchise agreements, license agreements, tradenames, trademarks, service marks, logos and goodwill related thereto which in any way now or hereafter belong, relate or appertain to the Land, Equipment or Proceeds or any part thereof or are now or hereafter acquired by Mortgagor; all security deposits, and other deposits, and all other general intangibles and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Land, Equipment or Proceeds (all of which is hereinafter referred to as the "Intangibles").

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

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the Loan and the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, attorneys' 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, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document or any Other Indebtedness Instrument (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

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granted, bargained, sold and conveyed shall cease, terminate and be of no further force and effect, but shall otherwise remain in full force and effect; it being understood that if the warranties and liabilities of Mortgagor in Paragraph 1.16 hereof are then fulfilled and this Mortgage is otherwise entitled to be satisfied and discharged by Mortgagee, then the survival provisions of Paragraph 1.16 shall not prevent the lien of this Mortgage from being so satisfied and discharged.

AND the Mortgagor further represents, warrants, covenants and agrees with the Mortgagee as follows:

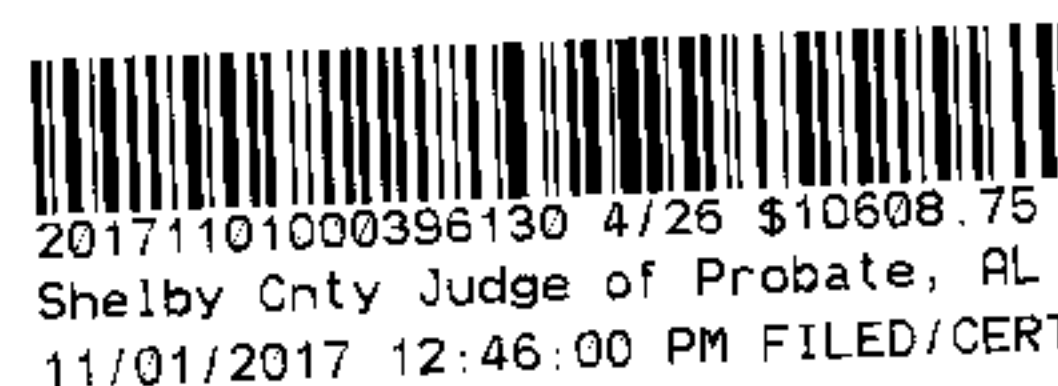
ARTICLE I **GENERAL**

1.01 Performance of Mortgage, Note and Loan Documents. The Mortgagor shall perform, observe and comply with all provisions hereof, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to the Mortgagee the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

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

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances of the Loan and any and all Other Indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

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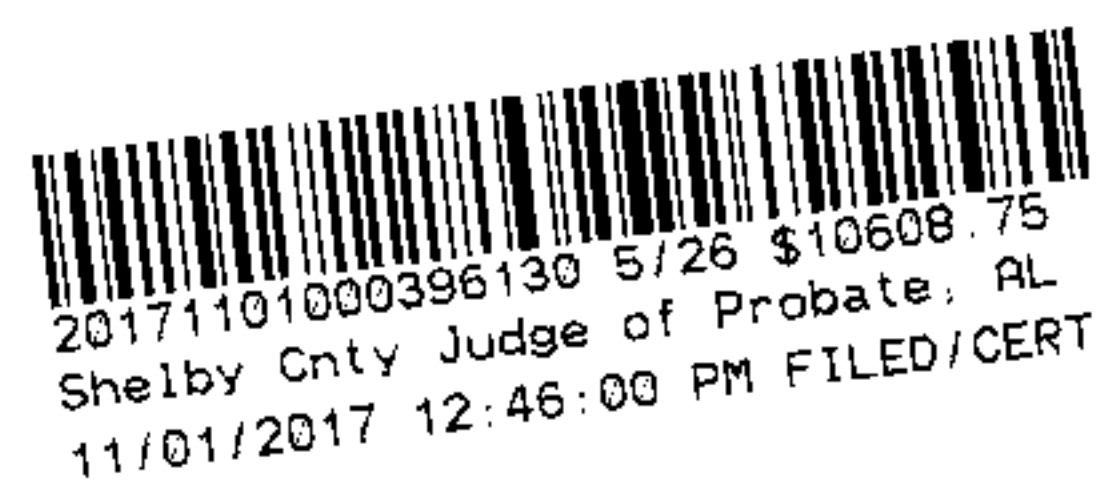
1.04 Taxes, Utilities and Liens.

- (a) The Mortgagor shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Mortgagee receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Property or any part thereof or upon the revenues, rents, issues and profits of the Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Mortgagee in the Property, or any charge which, if unpaid, would become a lien or charge upon the Property.
- (b) The Mortgagor promptly shall pay and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Property.
- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes within ten (10) days after written notice from Mortgagee, or if Mortgagor is prohibited from paying such taxes, or if Mortgagee in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage shall without notice become due and payable forthwith at the option of the Mortgagee. Notwithstanding the foregoing, Mortgagor shall not be required to pay Mortgagee any amount resulting from a change in income tax rates affecting interest income of Mortgagee.
- (d) With respect to the taxes, liens and other charges referred to in this Paragraph 1.04, Mortgagor shall have the right to contest such taxes, liens and other charges if Mortgagor is permitted by law to post a bond or other security with Mortgagee or with other parties, including but not limited to appropriate governmental authorities, in order to prevent any such lien being filed against the Property, or to remove such lien, and Mortgagor so posts or deposits such bond or security in an amount sufficient to so prevent or remove the lien.

1.05 Insurance.

- (a) The Mortgagor shall procure for, deliver to, and maintain for the benefit of the Mortgagee during the term of this Mortgage insurance policies in an amount not less than the full replacement value of the improvements

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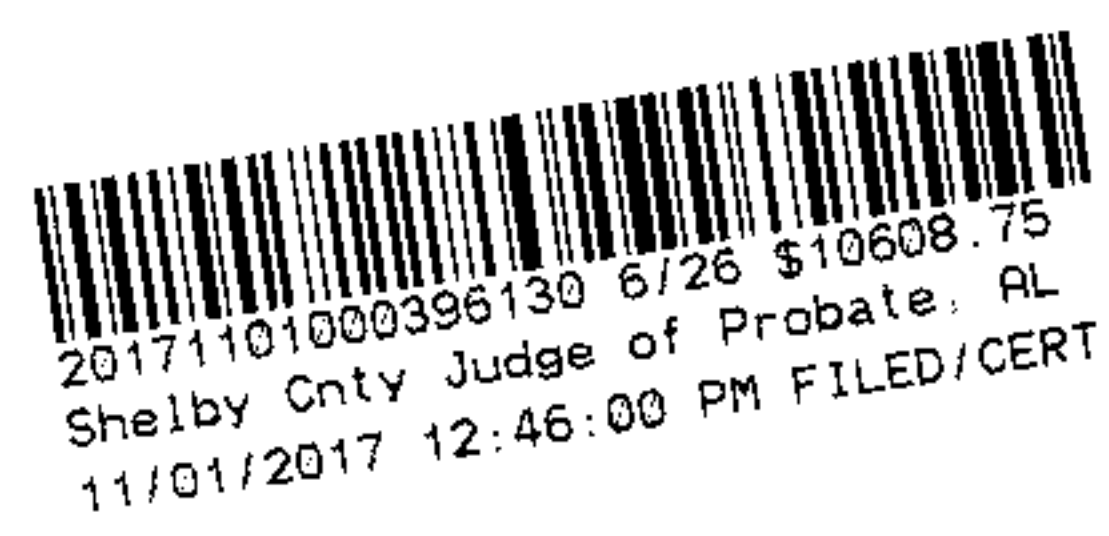


constructed or to be constructed on the Land, insuring the Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Mortgagee may require. The form of such policies and the companies issuing them shall be acceptable to the Mortgagee, and, unless otherwise agreed by the Mortgagee in writing, shall provide for coverage without coinsurance or deductibles. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Mortgagee, as mortgagee. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Mortgagee shall be delivered to the Mortgagee. The Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee. Liability policies obtained by the Mortgagor shall be for amounts of not less than the amount required in the Loan Agreement.

- (b) The Mortgagee hereby is authorized and empowered, at its option to adjust or compromise any loss under any insurance policies on the Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Mortgagee instead of to the Mortgagor and Mortgagee jointly; provided, that if such policies do not permit such direction to pay Mortgagee directly, then such payments shall be made to Mortgagor and Mortgagee jointly. After deducting from said insurance proceeds any expenses incurred by Mortgagee in the collection of handling of said funds, the Mortgagee may apply the net proceeds as set forth in the Loan Agreement, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Mortgagee shall not be liable to Mortgagor or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.06 Condemnation. If all or any material part of the Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the

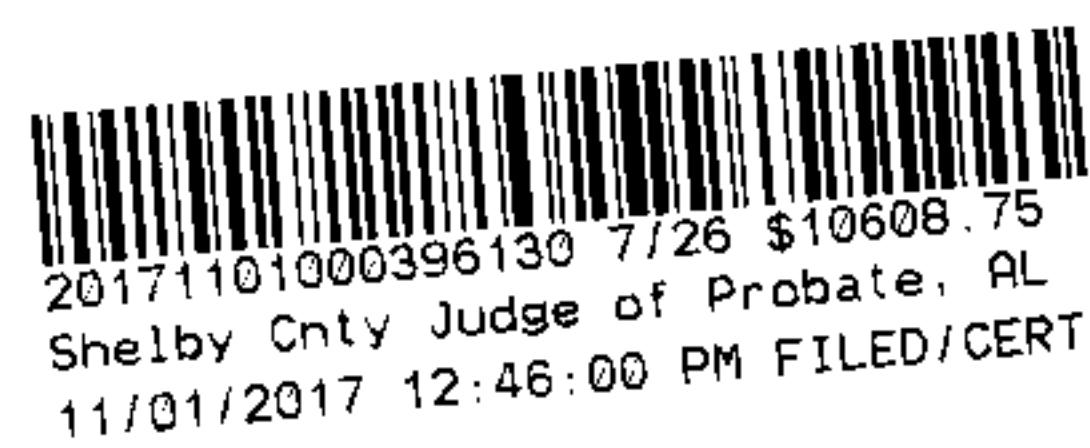
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right thereto are hereby assigned by the Mortgagor to the Mortgagee, which, after deducting therefrom all its reasonable expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require. The Mortgagor promptly shall notify the Mortgagee in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Mortgagee shall be entitled to retain, at the expense of the Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Mortgagee shall be under no obligation to the Mortgagor or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.07 Care of the Property.

- (a) The Mortgagor will preserve and maintain the Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or any part thereof.
- (b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Property shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee. The Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Twenty Thousand Dollars (\$20,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.
- (c) If the Property or any part thereof is damaged by fire or any other cause, the Mortgagor shall give immediate written notice of the same to the Mortgagee.

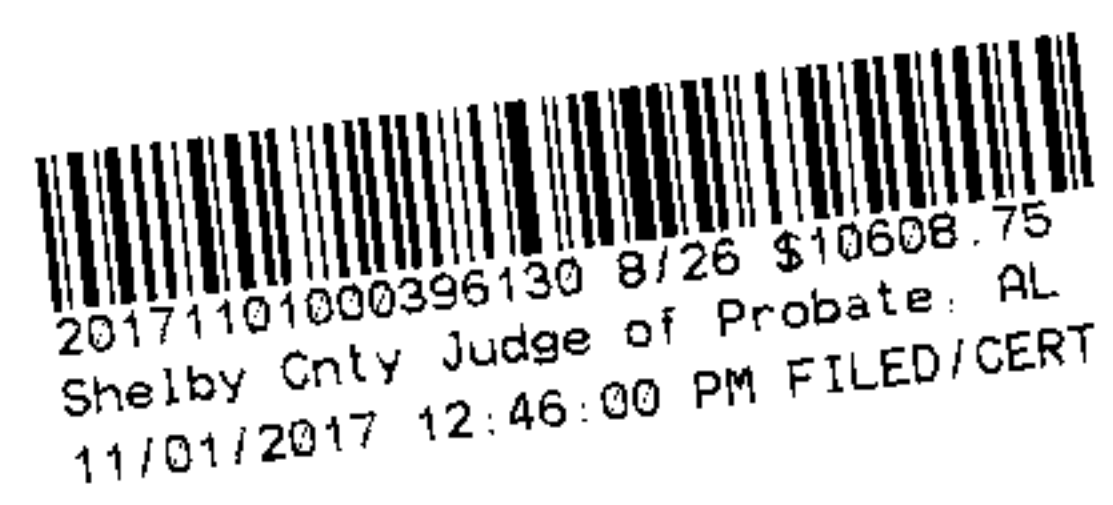


- (d) The Mortgagee hereby is authorized to enter upon and inspect the Property and to inspect the Mortgagors or Mortgagor's agent's records with respect to the ownership, use, management and operation of the Property, at any time during normal business hours.
- (e) If all or any part of the Property shall be damaged by fire or other casualty, the Mortgagor promptly shall restore the Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, the Mortgagor shall not be required to restore the Property as aforesaid unless the Mortgagee shall apply any net proceeds from the casualty in question and held by Mortgagee, as allowed under Paragraph 1.05, toward restoring the damaged improvements. If a part of the Property shall be physically damaged through condemnation, the Mortgagor promptly shall restore, repair or alter the remaining property in a manner satisfactory to the Mortgagee; provided, however, that if there are condemnation proceeds or awards, the Mortgagor shall not be required to restore the Property as aforesaid unless the Mortgagee shall apply any net proceeds or awards from the condemnation and held by Mortgagee, as provided in Paragraph 1.06, toward restoring the damaged improvements.

1.08 Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Mortgagee, the Mortgagor, at Mortgagor's expense, will make, execute and deliver or cause to be made, executed and delivered to the Mortgagee and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Mortgagee any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Mortgagor under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor for the purpose of such effectuation, completion and/or perfection only. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Mortgagee has given value under the Note) attached to and/or used in the operation of the Property or any part thereof.

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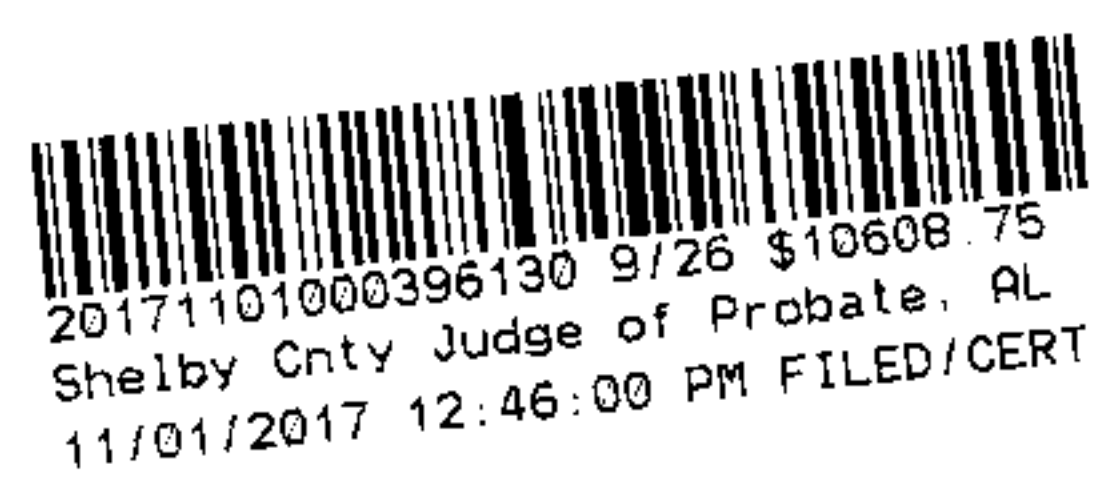


- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.08, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Property at any time acquired by the Mortgagor by whatsoever means, including that in the event the Mortgagor is the owner of an estate or interest in the Property or any part thereof (such as, for example, as the lessee or easement holder) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Mortgagor or the Mortgagee or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Mortgagee's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.09 Additional Security. The Mortgagee also shall have and hereby is granted a security interest in all other property of the Mortgagor, now or hereafter assigned, or coming into the possession, control, or custody of the Mortgagee by or for the account of the Mortgagor (including indebtedness due from the Mortgagee to the Mortgagor) whether expressly as collateral security, custody, pledge, earnest money or security deposits, transmission, collection, or for any other purpose, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Mortgagee may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as the Mortgagee may determine, any such monies, securities or other property held or controlled by the Mortgagee. No such application of funds shall, unless otherwise expressly agreed by the Mortgagee in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.10 Leases Affecting Property. The Mortgagor shall comply with and observe its obligations as landlord, under all leases affecting the Property or any part thereof. If requested by Mortgagee, Mortgagor will furnish Mortgagee with executed copies of all leases now or hereafter created on the Property; and, except as may be provided in the Loan Agreement, all leases or similar-type instruments entered into will be in form and substance approved by the Mortgagee. Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of Mortgagee. If requested by the Mortgagee, the Mortgagor shall execute and deliver to Mortgagee, as additional security, such other documents as may be requested by Mortgagee to further evidence the assignment to Mortgagee hereunder, and to assign any and all such leases whether now

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existing or hereafter created, including, without limitation, all deposits (whether for security, pet or otherwise), rents, royalties, issues, sales proceeds and profits of the Property from time to time accruing. Mortgagor shall not enter into, cancel, surrender or modify any lease affecting the Property or any part thereof without the written consent of the Mortgagee.

1.11 Expenses. The Mortgagor shall pay or reimburse the Mortgagee for all attorneys' fees, costs and expenses incurred by the Mortgagee in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Mortgagee in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Mortgagee is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Mortgagor or the Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Property, any environmental condition of or affecting the Property, any permit issued in connection with the development of the Property, or any action to protect the security hereof; and any such amounts paid or incurred by the Mortgagee shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.12 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Property, or otherwise described in Paragraph 1.04 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then the Mortgagee, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note, plus ten percentage points (10%). The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee hereby is empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor for trespass or otherwise.

1.13 Books and Records. The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Property. The Mortgagor shall furnish to the Mortgagee within ninety (90) days after the end of the Mortgagor's fiscal year such financial statements as required in accordance with the Loan Agreement, in reasonable detail and form satisfactory to Mortgagee and certified by Mortgagor.

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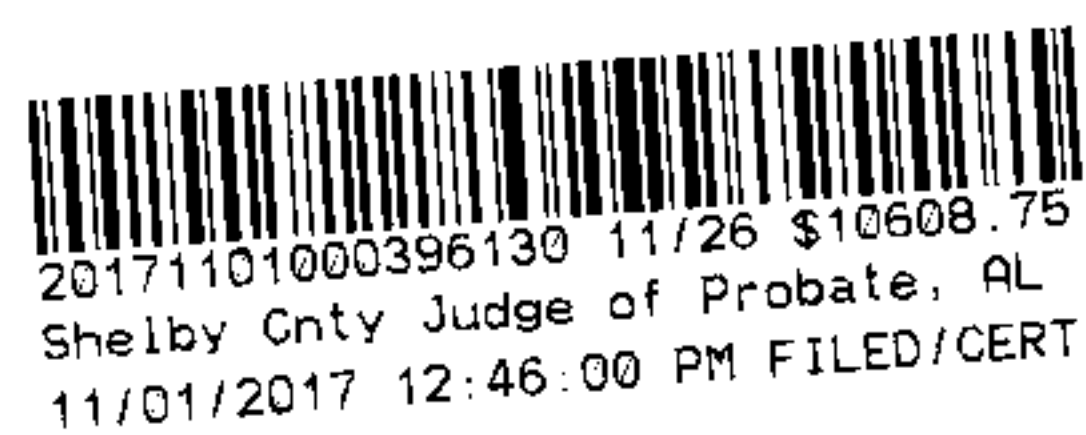
1.14 Estoppel Affidavits. The Mortgagor within ten (10) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.15 Alienation or Sale of Property. So long as the Loan is outstanding, the Property shall remain free and clear of all encumbrances, liens, mortgages, security interests and secondary financing, except those contemplated herein and those approved in advance in writing by Mortgagee, and Mortgagor shall not and shall not allow or suffer any other person or entity, without the prior written consent of Mortgagee, to sell, transfer or convey all or part of its interest in the Property or any portion thereof. Mortgagor shall not sell, assign, mortgage, encumber, grant a security interest in, lease, or otherwise convey all or any part of the Property without obtaining Mortgagee's express written consent. Unless otherwise agreed in writing by Mortgagee, the ownership of Mortgagor shall at all times remain unchanged. A change in ownership of Mortgagor shall be considered a "sale" of the Property. The occurrence of any of the foregoing shall, at the option of Mortgagee, constitute grounds for accelerating any and all sums unpaid under the Loan.

1.16 Environmental and Compliance Matters. Mortgagor warrants and represents that the Property and the facility do not contain (A) asbestos in any form; (B) urea formaldehyde; (C) transformers or other equipment which contain fluid containing polychlorinated biphenyls; (D) underground storage tanks; (E) or any other chemical, material or substance, including, but not limited to, radon, the exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority (the "Authorities") or which poses a hazard to the health or safety of the occupants of the Property or the facility, or the occupants of adjacent property (collectively "Hazardous Materials"), and the Property and facility are not, and have not been, the subject of any past, existing or threatened investigation, inquiry or proceeding concerning environmental matters by the Authorities, and no notice or submission concerning environmental matters has been given or should be given with regard to the Property and the facility to the Authorities, and the Property and facility are not subject to, or covered by, the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 11001 *et seq.* The Mortgagor acknowledges and agrees that the Mortgagee shall not be obligated to fund the Loan if, in Mortgagee's sole and exclusive judgment (including, without limitation, information revealed by the Environmental Audit) the use or condition of the Property, or any part thereof, poses a material health or safety hazard, or the actual or potential financial exposure of the Mortgagor or its past or present affiliates or subsidiaries, for an environmental response action, does or may have an adverse effect on the Mortgagor.

Mortgagor agrees to indemnify, defend and hold Mortgagee harmless from and against any and all claims, damages, actions, liabilities, causes of actions, suits, investigations, and judgments of whatever kind and nature, arising out of, directly or indirectly, any attempt by any federal, state, or local governing authority to impose liability or seek damages against Mortgagee occasioned by the existence on the Property of any substance set forth in this section. This indemnification shall survive the closing of the Loan, payment of the Loan, satisfaction and cancellation of this Mortgage,

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the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Property, and all similar or related events or occurrences.

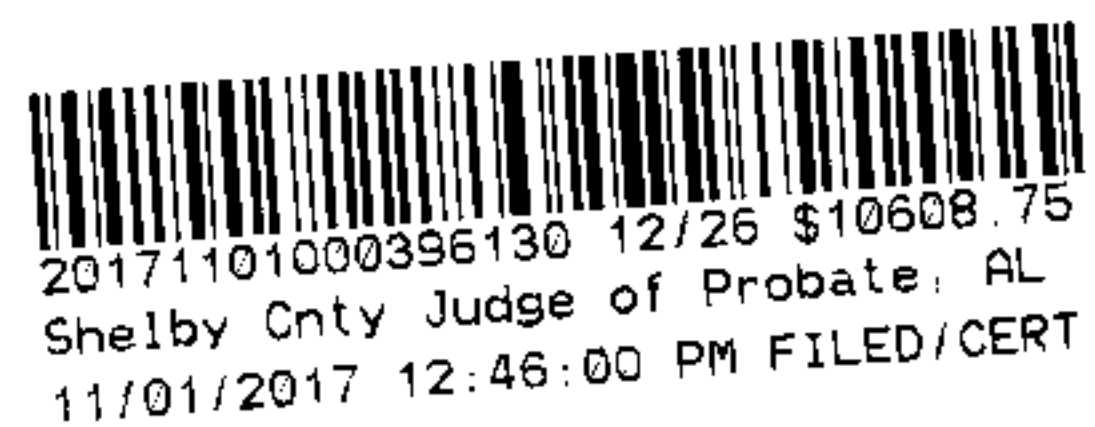
1.17 Inspection Rights and Easements. In addition to other inspection rights of Mortgagee, the Mortgagor shall and hereby does grant and convey to the Mortgagee, its agents, representatives, contractors, and employees, an easement and license to enter on the Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein "Inspections"), as the Mortgagee, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Property, to make an inventory of the Property, and to determine whether the ownership, use and operation of the Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Mortgagee, the Mortgagee shall have no obligation to perform any such Inspections, or to take any remedial action. All the reasonable costs and expenses incurred by the Mortgagee with respect to any Inspections which the Mortgagee may conduct or take pursuant to this Paragraph 1.17, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by the Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.18 Monthly Tax Deposit. If required by Mortgagee, Mortgagor shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Property, as estimated by Mortgagee, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee. Mortgagor agrees to pay Mortgagee the amount of any deficiency necessary to enable Mortgagee to pay such taxes when due. Such sums may be applied by the Mortgagee to the reduction of the indebtedness secured hereby in any manner selected by Mortgagee if an Event of Default shall occur under this Mortgage or under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Mortgagee in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Mortgagor, in consideration of Mortgagee's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the

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Mortgagee all leases, subleases and guaranties of or relating to all or part of the Property, whether now existing or hereafter created or arising, and all the proceeds, rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, guaranties and agreements, and all the avails thereof, to the Mortgagee, and the Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Property as hereinafter provided), to sell, rent, lease or let all or any portion of the Property to any party or parties at such price or rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession of the Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Property for more than one monthly installment in advance and that the payment of none of the rents to accrue for any portion of said Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Mortgagor except in the ordinary course of business or for other bona fide business reasons consistent with the prudent operations of the Property. The Mortgagor waives any right of setoff against any person in possession of any portion of the Property. The Mortgagor agrees that it will not assign any of the rents or profits.

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

2.04 Present Assignment. It is the intention of the parties that this assignment shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagor shall have the right to collect the proceeds of sale so long as there exists no Event of Default under this Mortgage and the proceeds are distributed in accordance with the terms of the Loan Agreement, and, provided further, that Mortgagor's right to collect such proceeds shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Mortgagee.

2.05 No Obligation of Mortgagee Under Leases. The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Property, and the Mortgagor

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shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Mortgagee in connection with any one or more of said leases, subleases or agreements, the Mortgagor agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Mortgagee upon receipt of demand from said Mortgagee to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then, in addition to the right to demand and collect directly from purchasers of the Property, Mortgagee shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

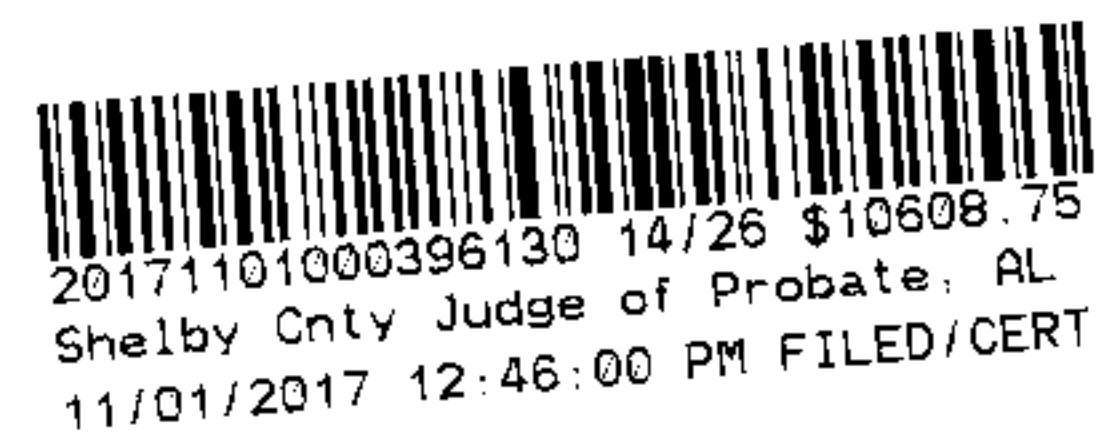
ARTICLE III **SECURITY AGREEMENT**

3.01 Grant of Security Interest. Mortgagor (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Mortgagee's (the "secured party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and 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 Uniform Commercial Code (the "Collateral").

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

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth

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on an addendum attached hereto, if any. At the Mortgagee's request, the Mortgagor will join with Mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Mortgagee to be necessary or desirable. The Mortgagor authorizes the Mortgagee to prepare and to file financing statements covering the Collateral signed only by the Mortgagee and to sign the Mortgagor's signature to such financing statements in jurisdictions where Mortgagor's signature is required. The Mortgagor promises to pay to the Mortgagee the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Mortgagor (Collateral). With respect to all of the Collateral, Mortgagor represents and warrants that:

- (a) The Collateral is used or bought for business purposes;
- (b) The Collateral is being acquired with the proceeds of the Note which Mortgagee may disburse directly to the seller;
- (c) All the Collateral will be kept at the address of Mortgagor shown in Paragraph 5.07(a) or, if not, at the real property described in Exhibit "A" hereto. Mortgagor promptly shall notify Mortgagee of any change in the location of the Collateral. Except for transactions in the ordinary course of Mortgagor's business, Mortgagor, its agents or employees, will not remove the Collateral from said location without the prior written consent of the Mortgagee;
- (d) If certificates of title are issued or outstanding with respect to any of the Collateral, the Mortgagor shall cause the Mortgagee's interest to be properly noted thereon; and
- (e) Mortgagor's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Mortgagee. Mortgagor promptly shall advise the Mortgagee in writing of any change in Mortgagor's name.

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



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

3.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, the Mortgagee shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV **EVENTS OF DEFAULT AND REMEDIES**

4.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean an Event of Default as defined in the Loan Agreement, the terms and provisions of which are incorporated herein by reference and made a part hereof as if more fully set forth at length.

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

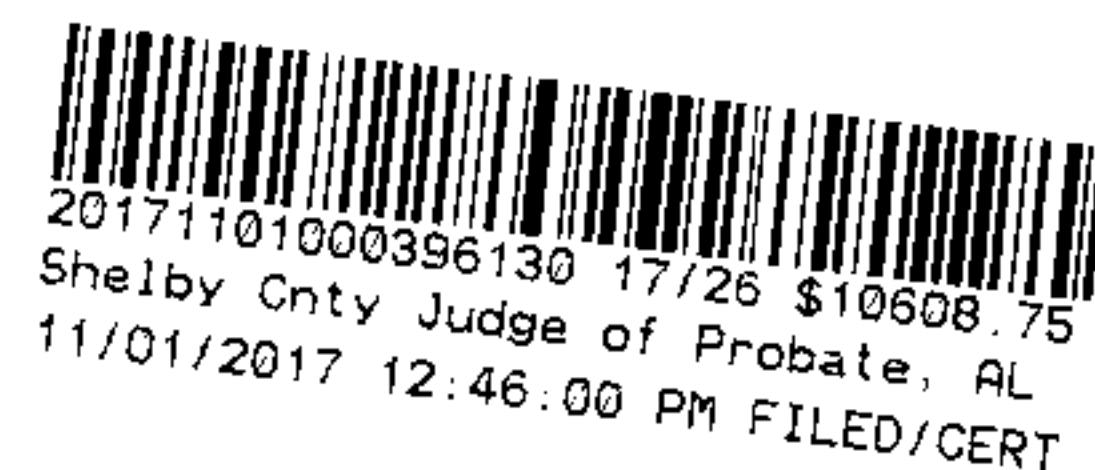
4.03 Right of Mortgagee to Enter and Take Possession.

- (a) If an Event of Default shall have occurred and be continuing, if permitted by law, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Property, and if and to the extent permitted by law, the Mortgagee or its agents may enter and take and maintain possession of all the Property, together with all the documents, books, records, papers and accounts of the Mortgagor or then owner of the Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

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- (b) Upon every such entering upon or taking of possession, if permitted by law, the Mortgagee may hold, store, use, operate, manage and control the Property (or any portion thereof selected by Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, component parts, personalty and other property; (ii) insure or keep the Property (or any portion thereof selected by Mortgagee) insured; (iii) manage and operate the Property (or any portion thereof selected by Mortgagee) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Property (or any portion thereof selected by Mortgagee), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to the lien of this Mortgage as the Mortgagee may determine to pay, (ee) other proper charges upon the Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, Mortgagee shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest under the Note; second to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under the other Loan Documents; third to the payment of overdue installments of principal on the Note; fourth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.
- (c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Property to the Mortgagor, or to whomsoever shall be entitled to possession of the Property as a matter of law. If permitted by law, the same right of taking possession,

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however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect the rents, profits, issues, royalties and revenues thereof.
- (b) The Mortgagor shall pay to the Mortgagee upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, if permitted by law, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Mortgagee, all as the Mortgagee may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Mortgagee, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Subject to being permitted by law, such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from 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 notice of the time and place of any public sale of the Collateral or of the time after

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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;

- (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
- (d) The right to notify account debtors, and demand and receive payment therefrom.

Without implying that other means of disposition would not be commercially reasonable, Mortgagor agrees that it would be commercially reasonable to foreclose the personal property (if any) encumbered by this Mortgage in the same foreclosure sale at which the real estate conveyed by this Mortgage is foreclosed, either with or without conducting a separate bid for the personal property. Nevertheless, to the full extent permitted by law, all parts of the Premises shall be deemed to be real property or fixtures and a part of the freehold, and not personal property.

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

4.07 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, if 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 Paragraph 4.06 of this Mortgage shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Property hereunder.

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

- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Property (as the case may be) for sale, and (ii) making the sale, including a reasonable

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attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

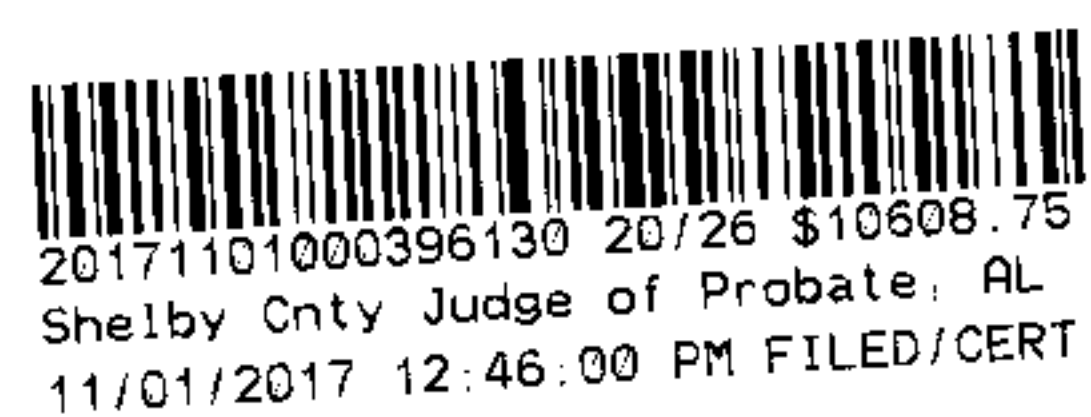
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Mortgagee may have paid, or become liable to pay, or which 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 or the other Loan Documents, such repayment to be applied in the manner determined by Mortgagee;
- (c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;
- (d) Fourth, the balance, if any, shall be paid as provided by law.

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

4.10 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.

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

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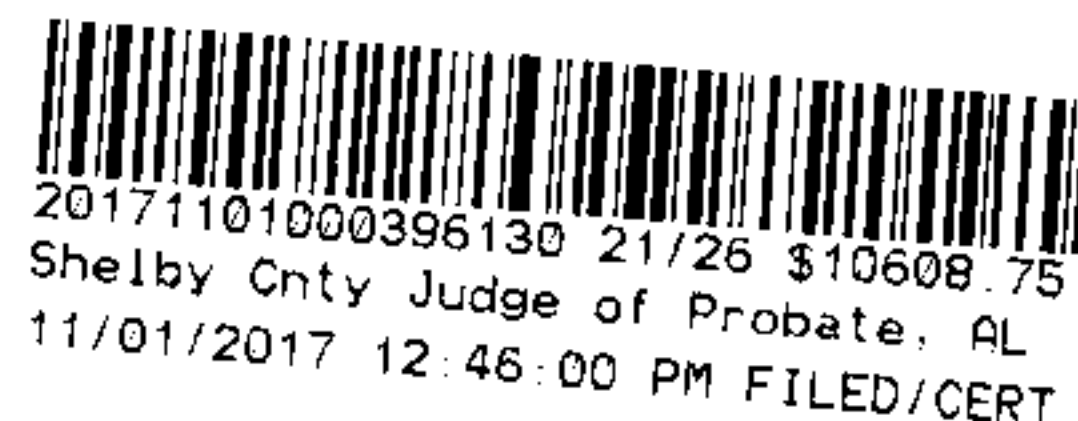


4.12 Mortgagor to Pay the Note on any Default in Payment; Application of Moneys by Mortgagee. If default shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur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

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

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon. If the Mortgagee (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Property from the lien of this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the other Loan Documents, or the Other Indebtedness Instruments of the Mortgagor or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, the Mortgagee, without notice to any person, corporation or other entity (except notice shall be given to Mortgagor so long as Mortgagor remains liable under the Note, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

Mortgage, Assignment and Security Agreement



4.15 Discontinuance of Proceedings - Position of Parties Restored. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case the Mortgagor and the 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.

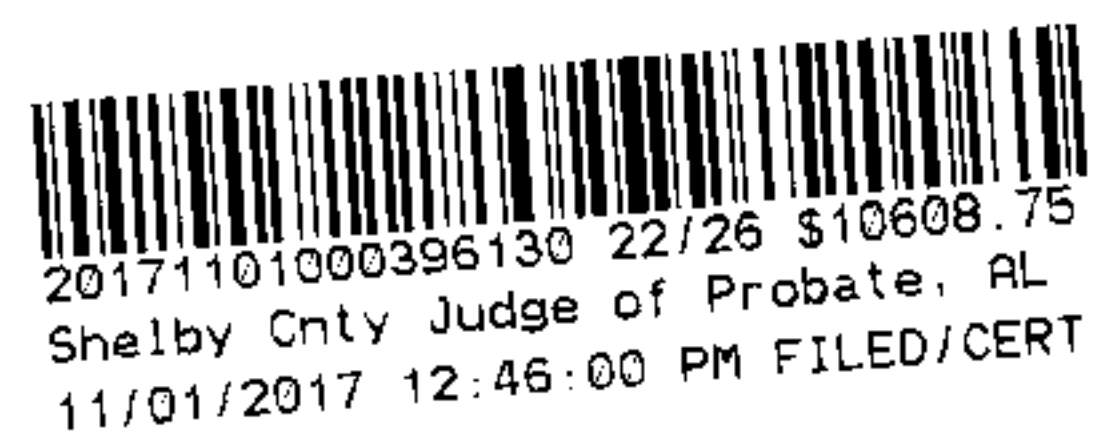
4.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

4.17 Waiver of Mortgagor's Rights. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE PREMISES 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 THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, 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 IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS MORTGAGE; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ANY AND ALL QUESTIONS 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 (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED-FOR LOAN TRANSACTION.

ARTICLE V **MISCELLANEOUS**

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained

Mortgage, Assignment and Security Agreement



in this Mortgage by or on behalf of the Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Mortgagor shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Mortgagee.

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

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

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

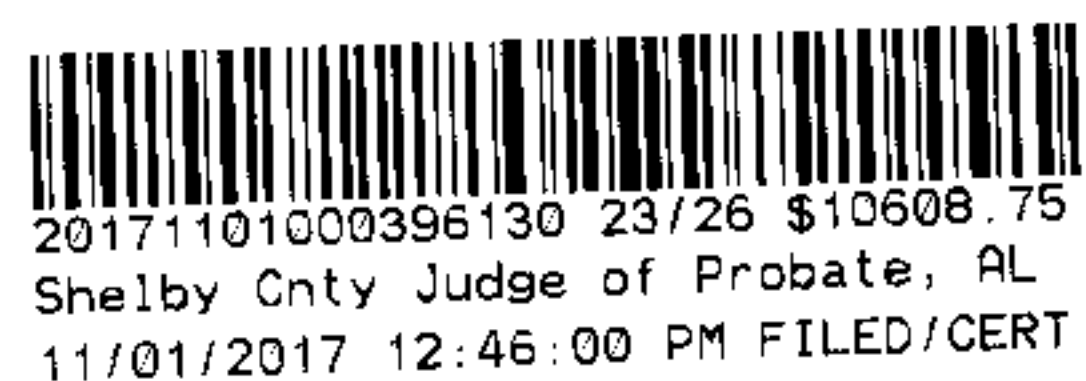
5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

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

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

- | | | |
|-----|------------------------------------|--|
| (a) | Name of Mortgagor (Debtor): | Edwin B. Lumpkin, Jr. |
| | Address of Mortgagor: | 100 Metro Parkway
Pelham, Alabama 35124 |
| (b) | Name of Mortgagee (Secured Party): | Oakworth Capital Bank |
| | Address of Mortgagee: | 2100A SouthBridge Parkway, Suite 445 |

Mortgage, Assignment and Security Agreement



Birmingham, Alabama 35209
Attention: Commercial Lending

- (c) Record Owner of Real Estate
described on Exhibit "A" hereto:

Edwin B. Lumpkin, Jr.
100 Metro Parkway
Pelham, Alabama 35124

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

[EXECUTION ON FOLLOWING PAGE]


20171101000396130 24/26 \$10608.75
Shelby Cnty Judge of Probate, AL
11/01/2017 12:46:00 PM FILED/CERT

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

Mortgagor (Debtor):

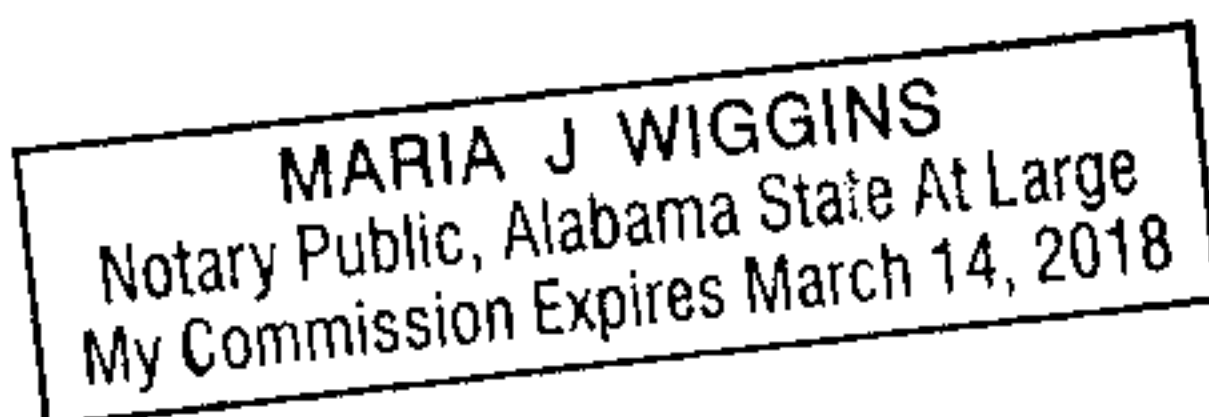
Edwin B. Lumpkin, Jr.
Edwin B. Lumpkin, Jr.

STATE OF ALABAMA)
 :
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Edwin B. Lumpkin, Jr., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the date of this notary acknowledgement.

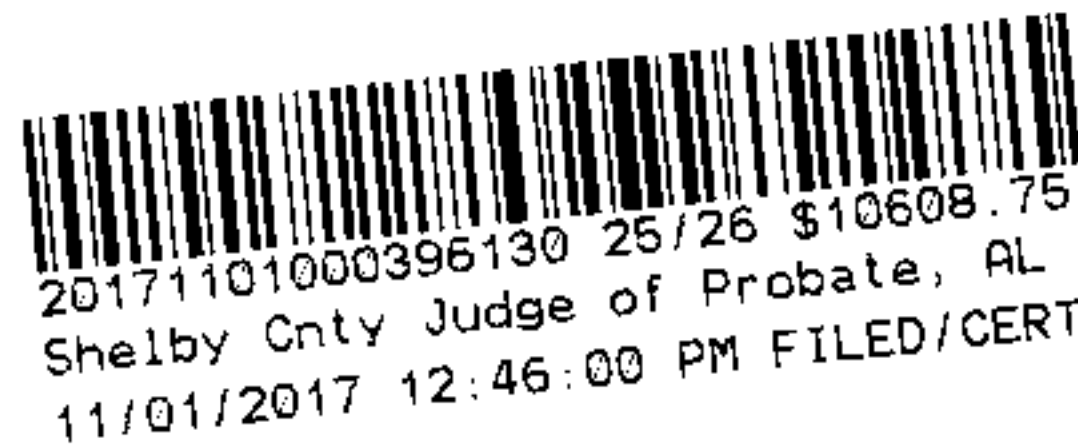
Given under my hand this the 30 day of October, 2017.

(SEAL)



Maria J. Wiggins
Notary Public
My commission expires: 3/14/2018

This instrument was prepared by:
J. Ladd Davis, Esq.
Rushton, Stakely, Johnston & Garrett, P.A.
2100B SouthBridge Parkway, Suite 240
Birmingham, Alabama 35209
RSJ&G File No. 9910-0006



Mortgage, Assignment and Security Agreement

EXHIBIT "A"

Description of Property

Lot 1, according to the Resurvey of Lots 3-6, Calera North Industrial Park, as recorded in Map Book 26, Page 18 in the Probate Office of Shelby County, Alabama, as corrected by the certain Scrivener's Affidavit by Barton F. Carr recorded as Instrument 20131104000435290 in the Probate Office of Shelby County, Alabama.

