


This instrument was prepared
by the attorney named below and,
when recorded, the recorded
instrument should be returned to:

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Davis, Malm & D'Agostine, P.C.
One Boston Place – 37th Floor
Boston, MA 02108


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MORTGAGE DEED, SECURITY AGREEMENT
AND FIXTURE FILING

dated as of December 12, 2017

from

EVP DG LLC,

2711 Allen Road LLC, and K.A., LLC

collectively, the Mortgagor,

to

Bank of New Hampshire,
the Mortgagee

Property:
316 W College St
City of Columbiana
State of Alabama

THIS IS A PURCHASE MONEY MORTGAGE FOR THE PROPERTY
(THIS PROPERTY REPRESENTS \$1,217,245.50 OF THE LOAN REFERRED TO HEREIN)

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EXHIBIT A Legal Description
EXHIBIT B Permitted Encumbrances



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MORTGAGE DEED, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE DEED, SECURITY AGREEMENT AND FIXTURE FILING is made as of the 12th day of December, 2017 among EVP DG LLC, an Alabama limited liability company with a place of business c/o 2353 Bent Creek Road, Suite 100, Auburn, Alabama 36830 ("EVP LLC"), 2711 Allen Road LLC, a Massachusetts limited liability company with a place of business at 816 Commonwealth Ave., Newton, Massachusetts 02467 ("Allen LLC"), K.A., LLC, a Massachusetts limited liability company with a place of business at 100 State Street, 11th Floor, Boston, Massachusetts 02109 ("KA LLC"), as tenants in common (collectively EVP LLC, Allen LLC and KA LLC the "Mortgagor"), and Bank of New Hampshire, a New Hampshire bank with a place of business at 62 Pleasant Street, Laconia, New Hampshire 03246-3422 (the "Mortgagee").

KNOW ALL MEN BY THESE PRESENTS:

That Mortgagor hereby irrevocably grants, mortgages, transfers, assigns and grants a security interest in and to the Mortgagee, WITH MORTGAGE COVENANTS, UPON THE STATUTORY CONDITION and WITH THE STATUTORY POWER OF SALE, in the following tract of land and other property:

I. LAND: All those certain parcels of land situated 316 W College St., Columbiana, Alabama 35051, and more particularly described in Exhibit A annexed hereto and hereby made a part hereof (the "Premises").

II. IMPROVEMENTS: All buildings and other improvements now situated upon the Premises or which may hereafter be constructed on the Premises or added thereto, together with all fixtures now or hereafter owned by Mortgagor or in which Mortgagor has an interest (but only to the extent of such interest) and placed in or upon the Premises or the buildings or improvements thereon (the "Improvements").

III. EASEMENTS: Any easement, bridge or right of way, contiguous or adjoining the Premises and the Improvements thereon, and all other easements, if any, inuring to the benefit of the Premises.

IV. LEASES AND RENTS: All of the Mortgagor's right, title and interest in and to any leases or other agreements for use of any of the Mortgaged Property (as hereinafter defined) and all rents, security deposits, and other proceeds of such leases and other agreements, in each case whether now or hereafter existing, relating to the Mortgaged Property, as provided in a Collateral Assignment of Leases and Rents of even date herewith delivered by the Mortgagor to the Mortgagee (the "Collateral Assignment").

V. PERSONAL PROPERTY AND FIXTURES: All goods, equipment, machinery, tools, and other personal property and fixtures of every kind and description now or hereafter owned by the Mortgagor or in which Mortgagor has an interest (but only to the extent of such interest) and situated or to be situated upon or used in connection the Premises or the Improvements, together with any renewals, replacements or additions thereto or substitutions

therefor, all proceeds and products of, and now or hereafter located at, or used in connection with the operation of the Premises or the Improvements, including without limitation the following:

A. EQUIPMENT, ETC. All of Mortgagor's interest in and to all equipment, fixtures, inventory, goods, materials, supplies, furnishings, accounts, accounts receivables, contract rights, plans, specifications, permits, licenses, other rights, chattel paper, documents, instruments, bank deposits, cash and general intangibles, whether now or hereafter existing, for use on or in connection with the Premises.

B. PROCEEDS FOR DAMAGE TO THE MORTGAGED PROPERTY. All proceeds (including, without limitation, insurance and condemnation proceeds), including interest thereon, paid for any damage done to the Mortgaged Property (as hereinafter defined), or any part thereof, or for any portion thereof appropriated for any character of public or quasi-public use in accordance with the provisions, terms and conditions hereinafter set forth.

C. UTILITY DEPOSITS. All right, title and interest of the Mortgagor in and to all monetary deposits which Mortgagor has been or will be required to give to any public or private utility with respect to utility services furnished or to be furnished to the Premises.

D. SALES CONTRACTS. All of Mortgagor's interest in and to any sales contracts, whether now or hereafter existing relating to the Premises, together with any proceeds thereof, including without limitation, any deposits.

E. RECORDS. All of the records and books of account now or hereafter maintained by Mortgagor in connection with the operation of the Premises.

F. NAME AND GOODWILL. The right, in event of foreclosure hereunder of the Mortgaged Property, to take and use any name by which the Mortgaged Property is then known or any variation of the words thereof, and the goodwill of Mortgagor with respect thereto.

All of which land, improvements and other property hereby granted, sold and conveyed, or intended so to be, are hereinafter generally referred to as the "Mortgaged Property".

SUBJECT, HOWEVER, to those certain liens, encumbrances and other matters, if any, set forth in Exhibit B (hereinafter sometimes referred to as the "Permitted Encumbrances").

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, and its successors, and assigns forever, together with all and singular the tenements, hereditaments, and appurtenances belonging or in anywise appertaining thereto, whether now owned or acquired hereafter, with the reversions, remainders, rents, issues, incomes and profits thereof, and all of the estate, right, title, interest and claim whatsoever which Mortgagor now has or which may hereafter acquire in and to the Mortgaged Property. And Mortgagor does hereby bind itself, its successors and assigns, to warrant and forever defend the same unto the Mortgagee, or its successors, against all persons whomsoever claiming or to claim the same or any part thereof.

The conveyance is made for the purpose of securing:

(1) Payment of all principal, interest and other amounts pursuant to the terms of that certain Commercial Term Promissory Note of Mortgagor of even date herewith in the principal amount of Five Million Four Hundred Fifty-Eight Thousand Five Hundred and 00/100 Dollars (\$5,458,500.00) payable to the order of the Mortgagee and any and all amendments, restatements, extensions, modifications and renewals thereof and substitutions therefor (such Commercial Term Promissory Note, as amended, restated, extended, modified, or renewed, or its substitution, is referred to as the "Note") and performance of every obligation and agreement of Mortgagor contained in the Note;

(2) Performance by Mortgagor of all of its obligations and payment of any amounts due under (a) a Loan Agreement of even date between Mortgagor and Mortgagee (the "Loan Agreement"), (b) the Collateral Assignment and (c) any other document or instrument securing the Note;

(3) Performance of each and every obligation of Mortgagor contained in this Mortgage and payment of any sums due hereunder; and

(4) Payment of any and all sums or indebtedness now or hereafter existing and owed to Mortgagee from Mortgagor.

ARTICLE I.

REPRESENTATIONS, WARRANTIES AND COVENANTS. Mortgagor represents, warrants and covenants to the best of their ability as follows:

Section 1.01. Warranty of Title. Mortgagor has good and marketable title to the Mortgaged Property and has full power and lawful authority to encumber it with the lien created by this instrument, which lien is subject only to the Permitted Encumbrances. Mortgagor will defend the title thereto in any action affecting the rights of the Mortgagee hereunder and pay all costs of any such action (including, but not limited to, attorneys' fees), whether or not such action (i) progresses to judgment or (ii) is brought by or against the Mortgagee.

Section 1.02. Preservation of Rights. The Mortgagor, to the extent reasonably within its control, will maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Mortgaged Property from time to time and will not, without the prior consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant or other public or private restriction limiting or defining the use which may be made of the Mortgaged Property, except in the ordinary course of business. Mortgagor shall, however, comply with all restrictive covenants which may at any time affect the Mortgaged Property, zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 1.03. Payment of Taxes; Escrow. Mortgagor will pay (before they become delinquent) all taxes and exhibit the receipts therefor to the Mortgagee. The term "taxes" as used in the paragraph shall be deemed to include all assessments, impositions and other governmental charges, ordinary or extraordinary, foreseen or unforeseen, which may be levied, assessed or

otherwise become a lien upon or charge against the Mortgaged Property, or the interest created therein by this instrument. In the event said taxes are deemed delinquent, then in such event within ten (10) days after written demand by the Mortgagee, the Mortgagor will deposit monthly with the Mortgagee or its duly authorized agent an amount which will create a fund sufficient to make each and every payment of taxes in the future as the same shall become due and payable. Such deposits shall be received and held by the Mortgagee or its agent, without interest, and applied to the payment of each installment of such taxes as it becomes due and payable and Mortgagor shall furnish to the Mortgagee or its agent, promptly upon receipt, the tax bills with respect thereto. Although the Mortgagee intends to use its best efforts to make such payments in a timely fashion, the arrangements provided for in this paragraph are solely for the added protection of the Mortgagee and entails no responsibility on the Mortgagee's part beyond the allowing of due credit, without interest, for sums actually received by it. If the whole of said principal sum and interest shall be declared due and payable by the Mortgagee pursuant to Article VI hereof, all such deposits may, at the option of the Mortgagee, be applied in reduction of said principal sum or interest. Upon an assignment of the Mortgage, the Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and the Mortgagee shall thereupon be completely released from all liability with respect to such deposits and the Mortgagor or owner of the Premises shall look solely to the assignee or transferee in reference thereto. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment and satisfaction of this Mortgage or at any prior time, at the election of the Mortgagee, the balance of the deposits in its possession shall be paid over to the record owner of the Premises and no other party shall have any right or claim thereto in any event. If Mortgagor shall have deposited amounts in the aggregate more than sufficient to pay such taxes, the excess shall be applied by the Mortgagee toward the deposits next required to be made hereunder or at its election shall be repaid to Mortgagor, without interest. All of Mortgagor's interest in such deposits is hereby assigned by Mortgagor to the Mortgagee, and the Mortgagor hereby grants the Mortgagee a security interest in such deposits, as additional security for the payment of the indebtedness secured hereby in the event that an Event of Default shall occur hereunder. Upon payment in full of all indebtedness secured hereby, any monthly deposits then held by the Mortgagee or its agent shall be repaid to Mortgagor, without interest.

Section 1.04. Assessments; Charges. Mortgagor will also pay (before they become delinquent) all assessments, water, sewer and other utility charges and all other charges and encumbrances which are or may be a lien upon the Mortgaged Property.

Section 1.05. Stamp Tax. If at any time any governmental body shall impose a stamp, documentary or other similar tax on the Note, this Mortgage, the debt secured hereby or the income generated therefrom, or any modification, amendment, extension or consolidation of either thereof, Mortgagor will pay the same within ten (10) days after demand by the Mortgagee.

Section 1.06. Waste. Mortgagor will commit or permit no waste on the Mortgaged Property and will keep all Improvements now or hereafter erected on the Premises in a sound condition and in a first class state of decoration and repair.

Section 1.07. Obligation to Rebuild. Mortgagor will:



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1.07.01 Promptly repair, restore, rebuild, replace or alter as necessary any portion of the Mortgaged Property which may be damaged or destroyed by fire or other casualty, or taken by condemnation, as nearly as possible to the condition such improvements were in prior to such damage, destruction or taking at its own cost, risk, and expense, without regard to the availability or adequacy of insurance proceeds or condemnation awards. Mortgagor will give the Mortgagee prompt notice of damage to Improvements or personal property in excess of \$100,000;

1.07.02 Pay when due all claims for labor and materials thereof;

1.07.03 Provide management satisfactory to the Mortgagee;

1.07.04 Not remove or demolish any such Improvements, and make no change or alteration to such Improvements as would change their general character or size, without the prior consent of the Mortgagee except in accordance with plans approved by the Mortgagee. Mortgagor further covenants that it will not make, authorize or permit to be made any structural alterations, or any alteration the estimated cost of which exceeds \$25,000.00 with regard to damage or destruction caused by fire or other casualty, except in such manner and under such terms and conditions as the Mortgagee may reasonably require. No fixtures or personal property shall be removed from the Premises or such improvements during the course of any work performed in accordance with this subsection except as authorized in Section 7.11, without the prior consent of the Mortgagee. The provisions of this subsection shall apply to any change, alteration or addition made or required to be made by Mortgagor in the course of complying with the provisions of any other Section contained herein.

Section 1.08. Leases. All leases of all or any portion of the Mortgaged Property will be subordinated to the lien created by this Mortgage, and shall provide that following sale of the Mortgaged Property through foreclosure, the tenant under each such lease will, upon ten (10) days' written notice from the purchaser of the Mortgaged Property given within thirty (30) days after the sale thereof, attorn to such purchaser or its assignee as the direct tenant of such purchaser or its assignee. Notwithstanding the foregoing, existing tenants shall be bound by the terms of the current leases as provided to Mortgagee. Except for any lease entered into in the ordinary course of business of the Mortgagor, no such lease will be executed by Mortgagor without prior written approval of the Mortgagee. Mortgagor will, from time to time, promptly upon demand, deliver to the Mortgagee a true and correct schedule of all such leases then in effect, showing the name of the tenant, the space occupied, the rental rate and the expiration date of the term.

Section 1.09. Operation of Mortgaged Property. Mortgagor will continuously operate the Mortgaged Property in compliance in all material respects with (a) all applicable laws, ordinances, rules, regulations and directions of government authorities having jurisdiction of the Premises, and (b) the requirements of all policies of insurance on the Mortgaged Property and of the national or local Boards of Fire Underwriters. Mortgagor will also procure, pay for and maintain all permits, licenses and other authorizations needed for the operation of the Mortgaged Property.



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Section 1.10. Copy of Notice. Mortgagor will send to Mortgagee a copy of each notice relating to default, termination, foreclosure, or similar matters received relating to any of the Permitted Encumbrances, within five (5) business day after receipt thereof by Mortgagor.

Section 1.11. Payments by Mortgagee. In the event that any payment for taxes, insurance, or other matters relating to the Mortgaged Property is not paid when due and is deemed delinquent, the Mortgagee has the right (but not the obligation) in its discretion to make said payment. Any amounts paid by Mortgagee as a result of Mortgagor's failure to comply herewith, together with interest thereon at any default interest rate stated in the Note or if none is specified at the rate stated in Section 6.02.2 hereof shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become part of the principal indebtedness secured hereby, having the benefit of the lien hereby created, and of its priority, and the same may be collected as a part of said principal debt and any suit hereon or upon the Note.

ARTICLE II.

INSURANCE

Section 2.01. Insurance Requirements. Mortgagor will at all times (a) keep the Mortgaged Property fully insured, for the mutual benefit of Mortgagor and the Mortgagee, as their respective interests may appear, in amounts sufficient to prevent the Mortgagor or the Mortgagee from becoming a co insurer of any loss under the applicable policies but in any event in amounts not less than one hundred (100%) percent of the full insurable value (as hereinafter defined) of the Mortgaged Property, against loss or damage by (i) fire, such other risks and hazards as now are or hereafter may be insured under standard "Extended Coverage" forms or endorsements, including, but not limited to, if applicable, one hundred (100%) percent "all risk" (including collapse) builder's risk insurance (non-reporting form, if available) covering the completed value of the Improvements and the value of all related material stored on the Premises or stored elsewhere and (ii) flood and such other risks of damage as the Mortgagee shall from time to time reasonably require, provided that insurance against such other risks shall then be commonly carried by prudent owners or lessees of buildings or improvements in the locality similar in character, construction, use and occupancy to the improvements then constituting a portion of the Mortgaged Property; (b) maintain general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about the Premises or the Improvements thereon, or any vault space or sidewalk adjoining the Premises, or any area or passageway adjacent to the Premises which is under the control of Mortgagor, such insurance to afford protection to such limits as the Mortgagee may reasonably require; and (c) maintain rental insurance in such amount and term as the Mortgagee may reasonably request.

As used in this Article, the term "full insurable value" shall mean actual replacement value (exclusive, as to insurance called for by subdivision (a) (i) of Section 2.01, of costs of excavation, foundations and footings below the lowest basement floor in the case of the buildings, structures and improvements upon the Premises).

Section 2.02. Evidence of Insurance. All such insurance shall be evidenced by valid and enforceable policies in form and substance, and issued by such insurers of recognized responsibility authorized to do business in the state where the Premises are located, which are

approved by the Mortgagee. The originals of all such policies provided for in subdivisions (a) and (c) of Section 2.01 hereof, and duplicate copies or certificates of the policies provided for in subdivision (b) of Section 2.01 hereof, shall be delivered to the Mortgagee concurrently with the execution and delivery of this Mortgage, and thereafter all renewals or replacement policies (or in the case of the insurance provided for in subdivision (b) of Section 2.01, duplicate copies or certificates thereof) shall be so delivered to the Mortgagee not less than thirty (30) days prior to the expiration date of the policy or policies to be renewed or replaced, in each case accompanied by evidence satisfactory to the Mortgagee that all premiums currently payable with respect to such policies have been paid in full by Mortgagor.

Section 2.03. Contents of Policies. All policies of insurance of the character described in:

2.03.01 Subdivisions (a) and (c) of Section 2.01 hereof shall: (i) contain a standard non-contributory form of mortgage clause satisfactory to the Mortgagee, which clause shall name the Mortgagee as mortgagee and loss payee; and (ii) provide, to the extent obtainable, that such policies may not be cancelled or amended without at least ten (10) days' prior written notice to the Mortgagee, that the Mortgagee shall in no event be responsible for the payment of any premiums thereon or assessments thereunder, and that no act of negligence of Mortgagor, its agents, servants or employees, or any tenant or other occupant of all or any portion of the Mortgaged Property which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance insofar as the Mortgagee is concerned; and

2.03.02 Subdivision (b) of Section 2.01 hereof shall provide, to the extent obtainable, that such policies may not be cancelled or amended without at least ten (10) days prior written notice to the Mortgagee and shall name Mortgagee as additional insured.

Section 2.04. Payment of Premiums; Escrow. Mortgagor will furnish to the Mortgagee, within ten (10) days after demand, receipted bills or other evidence satisfactory to the Mortgagee of payment of all premiums due on all insurance policies required to be maintained hereunder. Upon any notice to Mortgagee of cancellation of any insurance policies for failure to pay premiums, then within ten (10) days after written demand by the Mortgagee, Mortgagor will deposit monthly with the Mortgagee or its duly authorized agent an amount sufficient to create a fund to make each and every payment of insurance premiums as and when the same shall become due. Such deposits shall be received and held by the Mortgagee or its agent, without interest, and applied to the payment of the premium for each insurance policy required hereunder as it becomes due and payable and Mortgagor shall furnish to the Mortgagee or its agent, promptly upon receipt, the insurance bills with respect thereto. If Mortgagor shall have deposited amounts in the aggregate more than sufficient to pay premiums under all insurance policies required hereunder, the excess shall be applied by the Mortgagee toward the deposits next required to be made hereunder or at its election shall be repaid to Mortgagor, without interest. All of Mortgagor's interest in such deposits is hereby assigned by Mortgagor to the Mortgagee, and the Mortgagor hereby grants the Mortgagee a security interest in such deposit, as additional security for the payment of the indebtedness secured hereby in the event that an Event of Default shall occur hereunder. Upon payment in full of all indebtedness secured hereby, any

monthly deposits then held by the Mortgagee or its agent shall be repaid to Mortgagor, without interest.

Section 2.05. Contractor's Insurance. During any construction or repair of the Improvements, Mortgagor shall maintain at its sole cost and expense contractor's liability insurance and worker's compensation insurance in such amounts and forms as are reasonably acceptable, and issued by insurers reasonably satisfactory, to the Mortgagee; notwithstanding the foregoing the Mortgagor need not maintain such insurance if the Mortgagor's general contractor maintains such insurance which is reasonably satisfactory to the Mortgagee and the Mortgagor delivers to the Mortgagee proof thereof.

ARTICLE III.

DAMAGE BY FIRE OR OTHER CASUALTY.

Section 3.01. Application of Casualty Proceeds. If by reason of any damage or destruction to the Mortgaged Property, any sums are paid under any insurance policy mentioned in or contemplated by Article II hereof, such sums (after deducting all expenses, including legal fees, incurred by the Mortgagee in the enforcement, settlement, collection and handling of any claim for such damage or destruction) shall be paid as follows:

3.01.01 If the aggregate insurance proceeds received by reason of any single instance of such damage or destruction shall be \$50,000.00 or less, such insurance proceeds shall be paid over to the Mortgagee and Mortgagor jointly or, at the option of the Mortgagee, to Mortgagor alone, to be held as a trust fund to be used first for the payment of the entire cost of restoring, repairing, rebuilding or replacing the damaged or destroyed Mortgaged Property before using the same for any other purpose; provided, however, that if any Event of Default shall exist hereunder at the time such proceeds are so to be paid over, such proceeds shall be paid over to the Mortgagee alone, to be applied in the Mortgagee's discretion to the payment of the indebtedness secured hereby or the repair of the Mortgaged Property.

3.01.02 If the aggregate insurance proceeds received by reason of any single instance of such damage or destruction shall exceed \$50,000.00, such proceeds shall be paid to the Mortgagee alone, to be applied toward reimbursement of all costs and expenses of the Mortgagee in collecting such proceeds, and, at the option of the Mortgagee, either toward payment of the indebtedness secured hereby or any portion thereof, whether or not due and payable, or to the repair, restoration, rebuilding or replacement of that part of the Mortgaged Property so damaged or destroyed. The Mortgagee is authorized (i) to adjust and compromise such loss without the consent of the Mortgagor, (ii) to collect, receive and receipt for such proceeds in the name of the Mortgagee and the Mortgagor, and (iii) to endorse the Mortgagor's name upon any draft or check in payment of such loss and upon any agreement, release, instrument or document necessary to effect the collection thereof. It is agreed that the Mortgagee shall not be held responsible for any failure or delay in collecting any such proceeds regardless of the cause of such failure or delay.

3.01.03 If insurance proceeds are to be applied to the restoration of the Mortgaged Property, such restoration shall be done subject to the following conditions:

(a) Mortgagor shall submit to Mortgagee plans and specifications and a budget of all costs for such restoration, which items shall be reasonably satisfactory to Mortgagee,

(b) at any time and from time to time, to the extent the estimated cost of completion of such restoration exceeds then available insurance proceeds during such restoration, the Mortgagor shall deposit with Mortgagee the amount of such deficiency or otherwise demonstrate the availability of funds for such deficiency before the Mortgagee advances any more of the insurance proceeds but in no event later than twenty (20) days after demand by Mortgagee,

(c) the deficiency referred to in clause (b) of this section shall be spent on such restoration of the Mortgaged Property prior to any advance of insurance proceeds by the Mortgagee,

(d) the Mortgagee shall determine, in its sole discretion, that such restoration can be accomplished on or prior to the maturity date of the Note,

(e) advances shall be made from said insurance proceeds to the Mortgagor on the same terms and conditions as are customarily required by Mortgagee for its construction loans; and

(f) such proceeds shall be disbursed subject to such other terms and conditions as Mortgagee shall reasonably require.

Section 3.02. Application of Rental Proceeds. All proceeds of rental insurance payable as a result of the occurrence of any fire or other casualty that affects the Mortgaged Property shall be paid to the Mortgagee. The Mortgagee shall hold such proceeds in trust and shall apply or cause the same to be applied to the payment of taxes, insurance, and debt service on this Mortgage and any other Permitted Encumbrance from and after the date of the occurrence of such damage or loss until the date of the completion of the necessary restoration or replacement by Mortgagor or until the exhaustion of such proceeds, whichever first occurs. Upon completion of such restoration or replacement, any remainder of such rental insurance proceeds in the hands of the Mortgagee shall be paid to Mortgagor without interest.

Section 3.03. Obligations Unaffected. Nothing contained in this Article shall relieve Mortgagor of its obligations in Section 1.07.1 hereof in the event that no or inadequate proceeds of insurance are available to defray the cost of such work, except that, on the occurrence of any fire or other casualty which affects the Mortgaged Property, Mortgagor shall have the right to pay the mortgagee the entire principal balance of the Note, together with all accrued and unpaid interest thereunder to the date of such payment and all other sums, if any, then due under this Mortgage with no prepayment premium then due. In addition, nothing contained herein shall relieve Mortgagor of its duty to pay all installments of principal and interest and to make all other payments called for or required by the Note and this Mortgage subsequent to the occurrence of any fire or other casualty.



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ARTICLE IV.

CONDEMNATION.

Section 4.01. Notice; Rights of Mortgagee. Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, or any interest therein (whether for permanent or temporary use) in condemnation or by the exercise of the power of eminent domain, Mortgagor shall give notice thereof to the Mortgagee. The Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that the Mortgagee may not be a party to any such proceeding, will promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by Mortgagor in connection therewith. Mortgagor will not enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same in condemnation or by eminent domain unless the Mortgagee shall first have consented thereto, which said consent the Mortgagee may not unreasonably withhold. In addition, the Mortgagee is authorized (i) to adjust and compromise the claim for any such award without the consent of the Mortgagor, (ii) to collect, receive and issue receipts for the proceeds of any such award in the name of the Mortgagee and the Mortgagor, and (iii) to endorse the Mortgagor's name upon any draft or check in payment of such award and upon any agreement, release, instrument or document necessary to effect the collection thereof. Any and all checks or drafts representing the proceeds from any such award, after deducting any expenses, including attorneys' fees, incurred by Mortgagee in the enforcement, settlement, collection and handling of such claim shall be applied in accordance with paragraph 4.04 hereof. It is agreed that the Mortgagee shall not be held responsible for any failure or delay in collecting any such award, regardless of the cause of such failure or delay. Nothing herein shall in any way affect the grant and lien of this Mortgage or the liability of the Mortgagor for the payment of the indebtedness.

Section 4.02. Taking of All or Material Portion. In the event of a taking of all or a material portion of the Mortgaged Property in condemnation or by eminent domain, the whole of the principal sum and interest evidenced and secured by the Note and this Mortgage, together with all other amounts, if any, then secured hereby, shall forthwith become due and payable, at the option of the Mortgagee, and all awards paid or payable on account of such taking shall be paid to the Mortgagee with no prepayment premium then due. As used in this Section, a taking of all or a material portion of the Mortgaged Property shall mean a taking of so much as leaves a balance which reasonably will not as economically, feasibly or successfully be operated for the purposes for which the same was operated or intended to be operated prior to such taking.

Section 4.03. Taking of Less Than Material Portion. In the event of a taking of less than a material portion all of the Mortgaged Property in condemnation or by eminent domain, or by agreement in lieu thereof, all awards payable as a result of such taking shall forthwith be paid to the Mortgagee, and the proceeds of such awards shall, at the option of the Mortgagee, be applied towards the repair or restoration of the Mortgaged Property if such repair or restoration is commercially feasible in the reasonable opinion of the Mortgagee or towards the payment of the indebtedness secured hereby, or such portion thereof (in such priority as the Mortgagee shall determine) as the same shall be sufficient to pay; provided, however, that if any Event of Default shall exist hereunder at the time such proceeds are so to be paid over, such proceeds shall be paid

over to the Mortgagee alone, to be applied in the Mortgagee's discretion to the payment of the indebtedness secured hereby or the repair of the Mortgaged Property. In the event Mortgagor shall elect, and Mortgagee shall agree, to repair, restore and alter the Mortgaged Property to the extent required as a result of such taking, the proceeds of such taking shall be disbursed in accordance with subsection 3.01.3.

Section 4.04. Obligations Unaffected; Application of Award. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay interest on the entire principal sum secured hereby until any such award or payment shall have been actually received by the Mortgagee and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt. Said award or payment may be applied, in such proportions and priority as the Mortgagee in the Mortgagee's sole discretion may elect, to the payment of principal, whether or not then due and payable, or interest or any other sums secured by this Mortgage; provided, however, that so long as no Event of Default exists hereunder, in the event of a taking of part of the Premises, any award of \$50,000 or less for consequential damages to the portion of the Premises not so taken, or in the case of award by reason of alteration of the grade of any street, the entire award, shall be made available to the Mortgagor to pay the cost of restoration, alteration or rebuilding of the Premises in the same manner and upon the same conditions as insurance proceeds in accordance with the provisions of Article III hereof; and, if, prior to the receipt by the Mortgagee of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive said award or payment to the extent of any indebtedness remaining unsatisfied after such sale of the Premises with interest thereon as set forth in the Note, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and/or for reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment.

ARTICLE V.

EVENTS OF DEFAULT.

The happening and continuance for the period, if any, hereinafter indicated, of any of the following events shall constitute an Event of Default hereunder:

Section 5.01. Cross Default. The occurrence of any "Event of Default" as defined in the Loan Agreement, the Note, any Security Document (as defined in the Loan Agreement) or any other instrument now or hereafter securing the Note or evidencing the indebtedness secured hereby, all of which are hereby incorporated herein as if set forth at length (the "Loan Documents").

Section 5.02. Payment Default. Failure of Mortgagor to pay any amount payable pursuant to this Mortgage, or any amendment, restatement, supplement, modification or extension hereof within ten (10) days of the same shall become due and payable, whether at the due date thereof or at a date fixed for payment or otherwise.

Section 5.03. Covenant Default. Failure of Mortgagor to perform, comply with or observe any term, covenant, or agreement applicable to Mortgage contained in this Mortgage (other than an obligation to pay Mortgagee or the occurrence of any other Event of Default specifically listed in this Article V) and the continuance of such failure for thirty (30) days; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days and Mortgagor commences to cure such default promptly, such period of thirty (30) days shall be extended to a period of time necessary to cure such default with all due diligence, but in no event shall such period exceed thirty (30) days.

Section 5.04. Breach of Representation or Warranty. Any representation or warranty made by or on behalf of Mortgagor pursuant to this Mortgage shall be untrue or misleading in any material respect as of the date such made.


Section 5.05. Encumbrance; Transfer; Change in Ownership. Any (a) direct or indirect mortgage, pledge, hypothecation, lien, or encumbrance is executed, recorded, or discovered which affects the Mortgaged Property (other than Permitted Encumbrances), (b) sale, lease (other than in the ordinary course of business of the Mortgagor), assignment or other transfer of the Mortgaged Property is made by the Mortgagor, or (c) change (whether directly or indirectly) of greater than fifty percent (50%) in the legal or beneficial ownership of the Mortgagor is made, in each case without the prior written consent of the Mortgagee. For the purposes of this Section 5.05, the term "Mortgagor" shall be deemed to include Mortgagor named herein, or any other person, firm, corporation or other entity which is then the owner of all or substantially all of the Mortgaged Property. Notwithstanding the foregoing, transfers of the legal or beneficial ownership made for estate planning purposes shall not require any consent of Mortgagee.

Section 5.06. Insurance. The cancellation, lapse or termination of any insurance coverage required to be maintained by the Mortgagor under this Mortgage or any of the other Loan Documents.

Section 5.07. Tax Sale. The commencement of any proceeding for a tax sale of the Mortgaged Property for nonpayment of any taxes or betterment assessments.

Section 5.08. Environmental Violation. The failure of the Mortgagor to respond to and obtain a satisfaction and discharge of any notice of violation issued or any lien filed against the Mortgaged Property by any federal, state or local environmental agency within ninety (90) days of the issuance or filing thereof.

Section 5.09. Junior Mortgage.(a) The occurrence of any event which constitutes a default under any junior mortgage now or hereafter existing (without implying any right of Mortgagor to hereafter grant any junior mortgage without Mortgagee's consent) entitling the holder thereof to accelerate the indebtedness secured thereby or to commence foreclosure or other enforcement proceedings thereon, (b) the prepayment of such mortgage, or (c) any change is made in the terms of such mortgage or any related documents, in each case without the prior written consent of the Mortgagee.


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ARTICLE VI.

REMEDIES UPON DEFAULT.

Section 6.01. Acceleration and Demand. Upon the occurrence of any Event of Default hereunder, the Mortgagee, at its option, without presentment, demand, protest or notice of any kind, may declare the indebtedness evidenced by the Note and secured by this Mortgage immediately due and payable. However, the Mortgagee need not, and is not obligated to, declare said indebtedness due as a condition precedent to exercising its rights under the several remedies upon default set forth herein.

Section 6.02. Preservation of Mortgaged Property and Priority. Upon the occurrence of any Event of Default hereunder:

6.02.01 The Mortgagee, at its option, without obligation to do so, without notice to, or demand on, Mortgagor and without releasing Mortgagor from any liability under the Note or this Mortgage, may make any payment or perform any act which Mortgagor is obligated to pay or do under the terms of this Mortgage.

6.02.02 In exercising any of the rights set forth under subsection 6.02.1 above, the Mortgagee may incur any liability and expend whatever amounts it may deem necessary. All such amounts, without notice or demand, shall be immediately due and payable to the Mortgagee by Mortgagor with interest thereon, to the extent permitted by law, at the lower of the maximum rate permitted by law for a similar debt or five percent (5%) above the interest rate under the Note, and shall be secured by this Mortgage and a lien on the Premises prior to any right, title to, interest in or claim upon the Premises subordinate to the lien of this Mortgage.


6.02.03 If the Mortgagee shall pay or discharge any lien, rents or claim on the Mortgaged Property, or pay any delinquent tax, assessment or similar charge, the Mortgagee shall be subrogated to the rights of the holder of such lien, rents or claim or to the rights of such taxing authority.

Section 6.03. Right to Possession, Rents, and Receiver. Upon the occurrence of any Event of Default hereunder, the Mortgagee, at its option, without notice, without any liability to Mortgagor, to the extent permitted by law and without regard to the adequacy of the security for said debt, may:

6.03.01 Enter upon and take possession of the Mortgaged Property (with or without bringing any action or proceeding in court); or

6.03.02 Demand and receive payment of all rents, benefits and profits of the Mortgaged Property, including those past due and unpaid (whether or not the Mortgagee has taken possession of the Mortgaged Property); or

6.03.03 Have a receiver immediately appointed for the Mortgaged Property and the earnings, revenues, rents, issues, profits and other income thereof and therefrom, with all such powers as the Court making such appointment shall confer.


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Section 6.04. Right to Manage; Rent From Mortgagor. If the Mortgagee enters upon and takes possession of the Mortgaged Property as provided in Section 6.03:

6.04.01 The Mortgagee may operate and manage the Mortgaged Property and perform any acts which the Mortgagee, in its sole discretion, deems necessary or desirable to protect and preserve the rentability, increase the income, or conserve the value of the Mortgaged Property. The Mortgagee shall have no liability for any action or inaction while in possession of the Mortgaged Property so long as such action or inaction is taken or refrained from being taken in good faith.

6.04.02 The Mortgagor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be in possession of the Mortgagor, and upon default in any such payment, will vacate and surrender possession of such part of the Premises to the Mortgagee or to such receiver and, in default thereof, the Mortgagor may be evicted by summary proceedings or otherwise.

Section 6.05. Statutory Condition; Statutory Power of Sale. Upon the occurrence of an Event of Default hereunder:

6.05.01 The Mortgagee may, if and to the extent and in the manner permitted by law, itself, or by such agents and attorneys as it may appoint, with or without entry or taking possession, sell the Mortgaged Property as an entirety or in such separate lots or parcels as the Mortgagee may determine, at public or private sale and, except as otherwise provided by law, at such place or places (whether or not the Mortgaged Property be present), at such time or times, upon such terms (including credit, whether secured or unsecured) and upon such notice (by publication or otherwise), if any, as the Mortgagee in its discretion may determine.

6.05.02 The Mortgagee is irrevocably appointed the agent and attorney in fact of Mortgagor in its name and stead and on its behalf, for the purposes of effectuating any sale for the enforcement of this Mortgage, whether under the power of sale hereby given or pursuant to judicial proceedings or otherwise, to execute and deliver all such deeds, conveyances, bills of sale, assignments, transfers and other instruments as the Mortgagee may consider necessary or appropriate, and to substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that the Mortgagee, or such substitute or substitutes, shall lawfully do by virtue hereof. In addition, if so requested by the Mortgagee or by any purchaser, Mortgagor shall ratify and confirm any such sale by executing and delivering to the Mortgagee or to such purchaser or purchasers all such proper deeds, conveyances, assignments, instruments of transfer and releases as may be designated in any such request.

6.05.03 This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of the Mortgagor contained herein, in the Loan Agreement, the Note and all related documents shall be kept and fully performed, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

Section 6.06. Payment on Account. Acceptance by the Mortgagee of any payment in an amount less than the amount then due on said debt shall be deemed an acceptance on account

only and the failure to pay the entire amount then due shall be and continue to be an Event of Default; at any time thereafter and until the entire amount then due on said debt has been paid, the Mortgagee shall be entitled to exercise all rights conferred upon it in this instrument upon the occurrence of an Event of Default.

Section 6.07. Non Exclusive Nature of Remedies.No remedy herein conferred upon the Mortgagee shall be exclusive of any other remedy herein or by law provided or permitted, but such shall be cumulative and in addition to every other remedy given herein or now or hereafter existing at law. The exercise of any option in this instrument by the Mortgagee shall not be deemed a waiver of its rights to exercise any other option; and the filing of a suit for collection of the Note and foreclosure of this instrument as a mortgage or for any other default hereunder shall not preclude sale pursuant to the power of sale contained in this instrument after a dismissal of the suit. No provision hereof shall be deemed to release Mortgagor's obligation to pay the interest, principal and other sums and charges secured hereby until such time as all thereof have been paid to the Mortgagee in full.

Section 6.08. Rights Regarding Foreclosure and Judicial Action.If foreclosure should be commenced by the Mortgagee, at any time before the sale of the Mortgaged Property, the Mortgagee may abandon such sale and may at any time or times thereafter again commence such sale, or the Mortgagee may sue for collection of the Note and foreclosure of this instrument in the courts; if the Mortgagee should sue for such collection and/or foreclosure, it may at any time before entry of final judgment dismiss the suit and sell the Mortgaged Property pursuant to the power of sale contained herein.

Section 6.09. Sale of Personal Property.At any foreclosure sale, whether pursuant to the power of sale contained in this instrument, or pursuant to the judgment of a court, all of the Mortgaged Property, at the option of the Mortgagee and without notice to Mortgagor, may be sold as a whole and it shall not be necessary to have said personal property present at the place of sale. The recitals in the bill of sale to any purchaser at such sale shall be full and conclusive evidence of the truth of the matters stated therein, and all prerequisites to such sale shall be presumed to have been performed and such sale and bill of sale shall be conclusive against Mortgagor.

Section 6.10. Mortgagor Waiver of Rights.Mortgagor agrees, to the extent that it may lawfully so agree, that if an Event of Default shall occur hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, seek or claim to take advantage of any appraisement, valuation, stay, extension, redemption, moratorium or marshalling laws now or hereafter in force in the locality where the property subject to the lien of this Mortgage may be situated, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the final or absolute putting into possession thereof, immediately after such sale, of the purchaser thereof, and Mortgagor for itself and its successors and assigns hereby waives, to the full extent that it may lawfully do so, the benefit of such laws and any and all right to have the estates comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof and agrees that the Mortgaged Property may be sold as an entirety.



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Section 6.11. Consent to Jurisdiction; Venue. Mortgagor, to the extent that it may lawfully do so, hereby submits to the jurisdiction of the courts of the State of New Hampshire, or the United States District Court for the State of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from the aforesaid courts, for the purpose of any suit, action or other proceeding arising out of the breach by Mortgagor of any of obligations under or with respect to the Note or this Mortgage, and expressly waives any and all objections it may have as to venue in any of such courts.

ARTICLE VII.

MISCELLANEOUS.

Section 7.01. Rights of Mortgagee. Without affecting the liability of Mortgagor, or any other person (except any person expressly released in writing), for payment of any indebtedness secured hereby or for the performance of any obligations set forth in this Mortgage, and without affecting the lien or other rights of the Mortgagee with respect to any property or other security not expressly released in writing, the Mortgagee at any time, and from time to time, either before or after maturity of the Note, and without notice or consent, may:

7.01.01 Release any person liable for payment of said debt, or for the performance of any obligation;

7.01.02 Make any agreement extending the time, or otherwise altering the terms of payment of said debt, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien securing payment of the Note;

7.01.03 Exercise or refrain from exercising or waive any right the Mortgagee may have;

7.01.04 Accept additional security of any kind; and

7.01.05 Release or otherwise deal with any property, real or personal, securing said debt, including all or any part of the Mortgaged Property.

Section 7.02. Costs of Foreclosure and Collection. If any action or proceeding be commenced by the Mortgagee to foreclose this Mortgage or otherwise to collect the indebtedness secured hereby, all sums paid by the Mortgagee for the expense of any such action (including reasonable attorneys' fees) shall on notice and demand be paid by the Mortgagor, together with interest thereon for each day from the date such costs were incurred by the Mortgagee until paid by the Mortgagor at the lower of the maximum rate per annum permitted by law for a similar debt or the rate per annum set forth in the Note, plus five (5%) percent, and shall automatically be a lien on the Premises prior to any right or title to, interest in or claim upon the Premises subordinate to the lien of this Mortgage and shall be deemed to be secured by this Mortgage and evidenced by the Note and in any action or proceeding to foreclose this Mortgage or to recover or collect the indebtedness secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 7.03. Successors in Interest.In the event the Mortgagor conveys its interest in the Mortgaged Property to parties not appearing in this instrument (without implying any right of Mortgagor to do so without Mortgagee's consent) the Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and the Note secured hereby, either by way of forbearance on the part of the Mortgagee or extension of the time of payment of the debt or any sum hereby secured, without in any way modifying or affecting the conveyance under this Mortgage or the original liability of the Mortgagor or any other party on the Note secured hereby, either in whole or in part.

Section 7.04. Application of Payments.All payments on the debt and advances, if any, hereby secured shall be applied in such manner as Mortgagee shall deem appropriate. Proceeds from foreclosure sales and insurance proceeds or condemnation awards shall be applied in the same manner.

Section 7.05. Further Assurances.At any time and from time to time until payment of the indebtedness and upon request of the Mortgagee, Mortgagor will promptly execute and deliver to the Mortgagee such additional instruments as may be reasonably required to effectuate or confirm the estate, title, interest, lien, rights, powers and remedies hereunder or to carry out the intent and purposes of this Mortgage or to further to protect the security position of the Mortgagee with respect to the property subject to this Mortgage.

Section 7.06. Surrender Possession.In the event of any sale of the Mortgaged Property under the provisions hereof, Mortgagor shall forthwith surrender possession thereof to the purchaser. Upon failure to do so Mortgagor shall thereupon be a tenant at sufferance of such purchaser, and upon its failure to surrender possession of the Mortgaged Property upon demand, such purchaser, his heirs or assigns, shall be entitled to institute and maintain an appropriate action for possession of the Mortgaged Property.

Section 7.07. Discharge.Upon payment in full of the indebtedness secured hereby, this instrument shall become null and void and shall be released by the Mortgagee at Mortgagor's expense.

Section 7.08. Usury Savings Clause.All agreements between the Mortgagor and the Mortgagee contained herein are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Note, or otherwise, shall the amount paid or agreed to be paid to the Mortgagee for the use, forbearance or detention of the principal amount evidenced by the Note and secured by this Mortgage exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision of the Note and this Mortgage, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall automatically be reduced to the limit of such validity, and if from any circumstances the Mortgagee should ever receive as interest under the Note or this Mortgage an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced by the Note and secured by this Mortgage and not to the payment of interest. This provision shall control every other provision of all agreements between the Mortgagor and the Mortgagee.



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Section 7.09. Notices. All notices and correspondence hereunder shall be in writing and sent by certified or registered mail, return receipt requested, or by overnight delivery service, with all charges prepaid, to the applicable party at the addresses set forth below, or by facsimile transmission (including, without limitation, computer generated facsimile), promptly confirmed in writing sent by first class mail, to the addresses set forth below.

If to Mortgagee:

Bank of New Hampshire
62 Pleasant Street
Laconia, New Hampshire 03246-3422
Attention: Commercial Loan Documentation

If to Mortgagor:

K.A., LLC
100 State Street
Boston, Massachusetts 02109

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices and correspondence shall be deemed given upon the earliest to occur of (i) actual receipt, (ii) if sent by certified or registered mail, three (3) business days after being postmarked, (iii) if sent by overnight delivery service, when received at the above stated addresses or when delivery is refused or (iv) if sent by facsimile transmission, when receipt of such transmission is acknowledged. All notices by or on behalf of the Mortgagee herein named shall be deemed sufficient if signed by any one of its directors, officers or counsel and if otherwise given or made in compliance with this Section.

Section 7.10. Entry and Inspection. Upon reasonable notice to Mortgagor and in the presence of Mortgagor or its authorized representative and in a manner so as to not unnecessarily interfere with the business of the tenants, the Mortgagee and its agents may enter and inspect the Mortgaged Property during usual business hours.

Section 7.11. Security Agreement and Financing Statement. It is the intent of the parties hereto that this instrument shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code as in effect in the State of Alabama (the "Uniform Commercial Code") with respect to all fixtures and personal property above referred to and all replacements thereof, substitutions therefor or additions thereto (said property being sometimes hereinafter referred to as the "Collateral"), that a security interest shall attach thereto for the benefit of the Mortgagee to secure the indebtedness evidenced by the Note and secured by this Mortgage, and all other sums and charges which may become due hereunder or thereunder, and that this instrument shall be filed with the Land Records as a financing statement pursuant to Section 9-502 of the Uniform Commercial Code and as a construction mortgage pursuant to Section 9-334 of the Uniform Commercial Code. Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a)

indicate the Collateral (i) as all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor also ratifies its authorization for the Mortgagee to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. In the Event of Default under this Mortgage and to the extent permitted by law, the Mortgagee shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that in the event the Mortgagee elects to proceed with respect to the Collateral separately from the real property, five (5) days' notice of the sale of the Collateral shall be reasonable notice. Mortgagor agrees that, without the written consent of the Mortgagee, Mortgagor will not remove or permit to be removed from the Premises or the Improvements any of the Collateral unless the same is immediately replaced with unencumbered fixtures or articles of personal property, as the case may be, of a quality and value equal or superior to those which they replace. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and this agreement and be covered thereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee an inventory of the Collateral in reasonable detail, including an itemization of all items leased to Mortgagor or subject to conditional bill of sale, security agreement or other title retention agreement.

Section 7.12. Recovery of Sums Due. Mortgagee shall have the right from time to time to take action to recover any sums, whether interest, principal or any installment of either, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums evidenced by the Note and secured by this Mortgage shall be due and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 7.13. Environmental Matters. In the event Mortgagor fails to comply with the requirements of any environmental statutes or regulations, the Mortgagee may at its election, but without the obligation to do so, (1) give such notices, cause such work to be performed at the Premises, and take any and all other actions as Mortgagee deems necessary in order to cure the failure of compliance, and (2) by the payment of any assessment, claim, or charge imposed by any governmental authority be thereby subrogated to the rights of such governmental authority but no such payment shall be deemed to relieve Mortgagor from any default hereunder or under any documents relating hereto or impair any right or remedy resulting therefrom. Any amounts paid by Mortgagee as a result of Mortgagor's failure to comply herewith, together with interest thereon at the rate of interest stated in the Note (or if greater, any default interest rate provided in

the Note) shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become part of the principal indebtedness secured hereby, having the benefit of the lien hereby created, and of its priority, and the same may be collected as a part of said principal debt and any suit hereon or upon the Note. Mortgagor hereby gives to Mortgagee and its agents and employees access to the Premises and hereby specifically grants to Mortgagee a license to remove any hazardous waste from the Premises.

Section 7.14. Successors and Assigns; Interpretation. This instrument shall inure to and bind the successors and assigns of the parties hereto, and shall be so construed that whenever applicable with reference to any of the parties hereto, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of the masculine gender shall include the feminine gender, and shall likewise be so construed as applicable to and including a corporation or corporations or any other entity that may be a part or parties hereto. This Mortgage may not be waived, changed or discharged orally, but only by an agreement in writing signed by the party against whom any waiver, change or discharge is sought.

Section 7.15. Governing Law. It is understood and agreed that the validity, construction and interpretation of this Mortgage will be in accordance with the laws of the State of Alabama. It is intended that this Mortgage shall take effect as a sealed instrument.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed by its duly authorized manager, as of the day and year first above written.

WITNESS:

EVP DG LLC



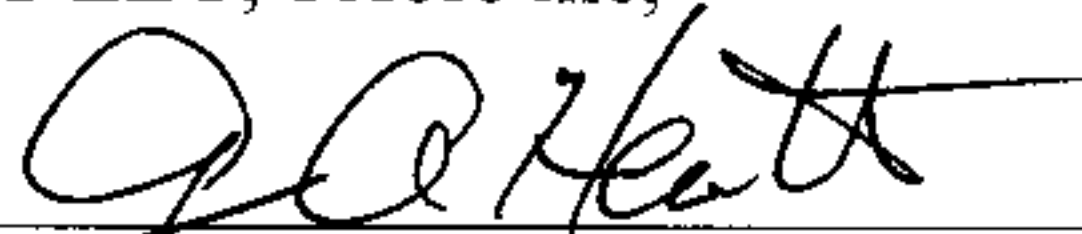
By: 
Michael Scanio, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 12, 2017

Then personally appeared the above-named Michael Scanio, Manager, proved to me through satisfactory evidence of identity, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged the foregoing instrument to be the free act and deed, of said EVP DG LLC, before me,



Notary Public: George A. Hewett
My Commission Expires: January 14, 2022



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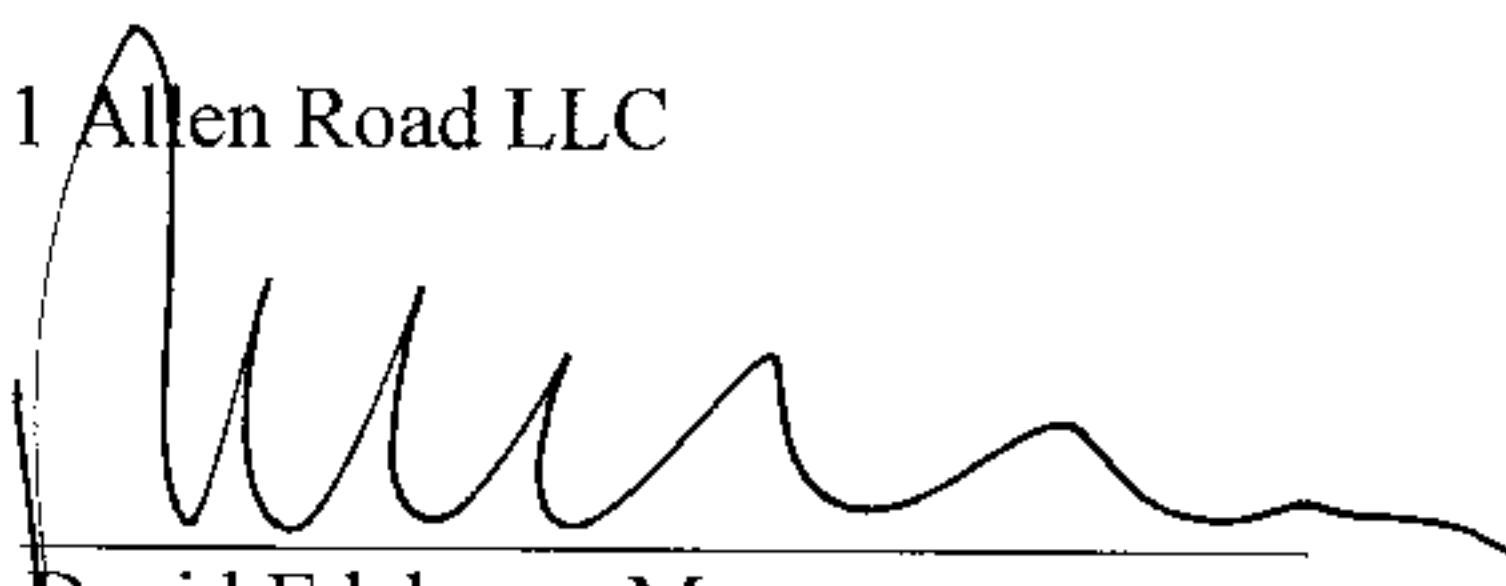


WITNESS:



2711 Allen Road LLC

By:

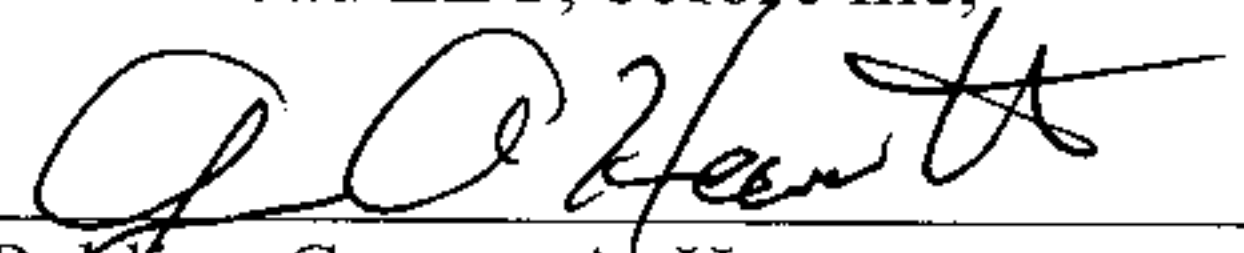

David Edelman, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 12, 2017

Then personally appeared the above-named David Edelman, Manager, proved to me through satisfactory evidence of identity, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged the foregoing instrument to be the free act and deed, of said 2711 Allen Road LLC, before me,


Notary Public: George A. Hewett
My Commission Expires: January 14, 2022

20171215000447150 25/28 \$97.00
Shelby Cnty Judge of Probate, AL
12/15/2017 09:01:50 AM FILED/CERT



WITNESS:



K.A., LLC

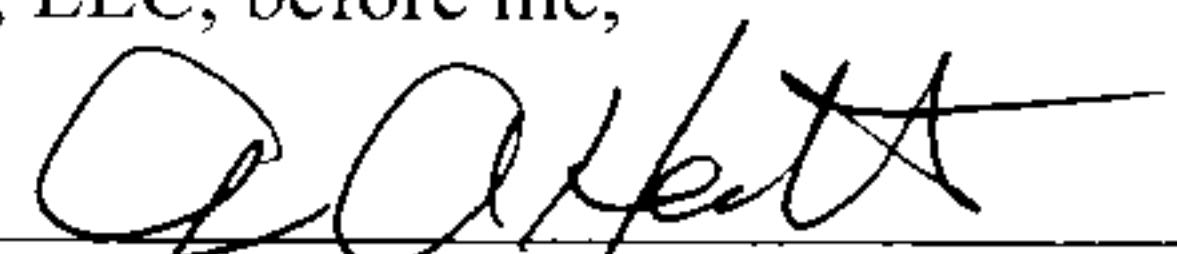
By: 
Andrew Kraus, President


COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 12, 2017

Then personally appeared the above-named Andrew Kraus, Manager, proved to me through satisfactory evidence of identity, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged the foregoing instrument to be the free act and deed, of said K.A., LLC, before me,


Notary Public: George A. Hewett
My Commission Expires: January 14, 2022


20171215000447150 26/28 \$97.00
Shelby Cnty Judge of Probate, AL
12/15/2017 09:01:50 AM FILED/CERT

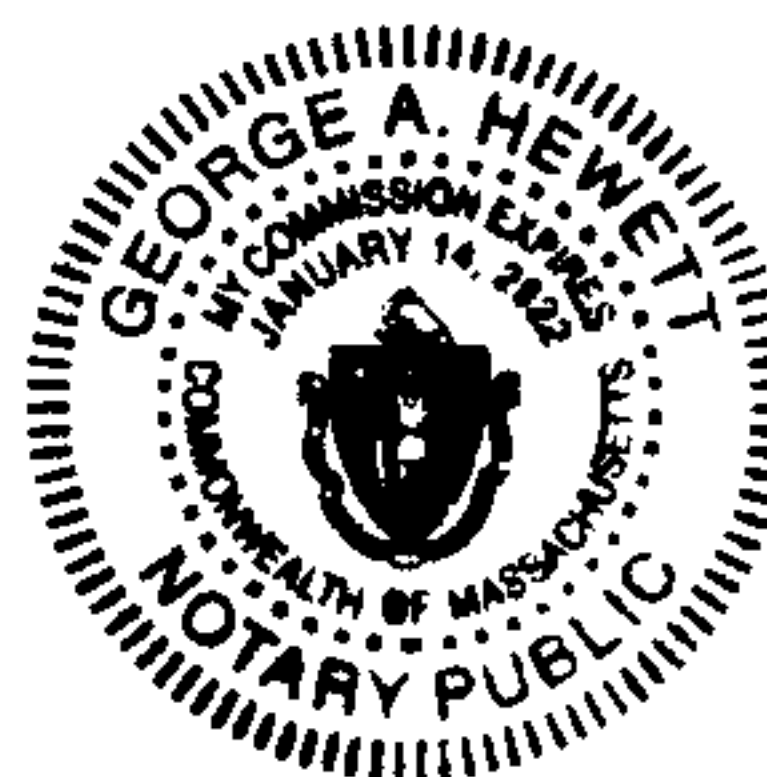


Exhibit A

Legal Description

Property Address: 316 West College Street, Columbiana, AL

A LOT OR PARCEL OF LAND LOCATED IN SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, IN THE CITY OF COLUMBIANA, SHELBY COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PART OF LOT 1 BROADWAY-WEST COLLEGE STREET SUBDIVISION, AS RECORDED IN PLAT BOOK 46, PAGE 47, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.



20171215000447150 27/28 \$97.00
Shelby Cnty Judge of Probate, AL
12/15/2017 09:01:50 AM FILED/CERT

EXHIBIT B

Permitted Encumbrances

316 W College St, Columbiana, Alabama

1. Taxes and assessments not yet due and payable
- 2.



20171215000447150 28/28 \$97.00
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