  
20171215000447160 1/6 \$30.00  
Shelby Cnty Judge of Probate, AL  
12/15/2017 09:01:51 AM FILED/CERT

### **FIRST CONDITIONAL ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT made as of this 12<sup>th</sup> 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, 11<sup>th</sup> Floor, Boston, Massachusetts 02109 ("KA LLC"), as tenants in common (collectively EVP LLC, Allen LLC and KA LLC, the "Borrower") and Bank of New Hampshire, a New Hampshire bank with a place of business at 62 Pleasant Street, Laconia, New Hampshire 03246-3422 (the "Lender").

1. Reference is hereby made to the premises at, 316 W College St, Columbiana, Alabama 35051, as described in Exhibit A attached hereto (the "Premises"). Borrower is the owner of the Premises.

Reference is further made to (i) a Promissory Note of even date herewith from Borrower to Lender, as payee in the original principal amount Five Million Four Hundred Fifty-eight Thousand Five Hundred and 00/100 Dollars (\$5,458,500.00) (the "Note"), (ii) a Mortgage of even date to be recorded herewith from Borrower to Lender covering the Premises and securing said Note (the "Mortgage"), and (iii) any and all other documents executed by Borrower with respect to the loan evidenced by the Note (the Note, Mortgage, and such other documents, together with all amendments thereto hereafter made, are hereinafter, collectively referred to, as the "Instruments").

In order to secure further (i) the prompt payment of the indebtedness of Borrower to Lender evidenced by the Note, (ii) the performance of the obligations of Borrower under the Instruments, and (iii) in consideration of the making of the loan represented by the Note, the Borrower does hereby assign, transfer and set over unto the Lender (i) all rents and other payments required of any tenants, lessees, occupants, licensees, concessionaires, or other persons or parties, if any, whether now or in the future, (hereinafter, collectively referred to, as "Tenants"), whether or not designated as rent or additional rent (including without limitation

security deposits, tax and operating expense escalation payments, percentage rent, or any other payments from any license, use, permit or concession), and any other issues or profits (collectively referred to, as "Rents") arising from any rental units, space or rentable facilities within, on or appurtenant to the Premises or any portion thereof whether under existing leases, licenses, tenancies, occupancies or concessions or agreements of any sort, written or unwritten (collectively referred to, as "Leases"), or under any Leases hereafter arising (of which Borrower agrees to give Lender prompt written notice) and (ii) all of Borrower's contractual rights now existing or hereafter arising between Borrower and any Tenant with respect to the Premises, regardless of whether or not such rights run with the land.

2. The Borrower warrants and represents to Lender that the Borrower has not given any prior assignment or pledge of Rents due the Borrower from the Premises, nor given any prior assignment of the contract rights assigned herein or Borrower's interest in any of said Leases.

3. This Assignment is given on the following additional terms and conditions:

(a) This Assignment shall become operative at the option of the Lender and is exercisable without the need of any written notice, upon any default by the Borrower under the terms of any of the Instruments, after applicable notice and grace periods, if any.

(b) The Lender shall not be obligated by reason of this Assignment to perform or discharge any obligation, duty or liability under said Leases and the Borrower shall hold the Lender harmless and indemnified from and against any and all loss, cost, liability or damage, including reasonable attorneys' fees, which Lender may or shall incur under the Leases or under by reason of this Assignment, or from any other claims or demands which may be asserted against the Lender by reason of any alleged obligation or undertaking on its part to be performed or discharged under any of the Leases. If Lender incurs any such liability, loss or damage or in the defense of any such claims or demands, Borrower shall immediately, upon demand, reimburse Lender for the reasonable amount thereof, including costs, expenses, and attorney's fees and any failure to promptly reimburse Lender shall cause such amounts to be added to the debt secured hereby and shall earn interest at the rate set forth in the Note.

(c) The Borrower shall not collect Rents due from said Leases in advance, other than as required to be paid in advance by the terms of any such Lease, and further agrees not to do any act which would destroy or impair the benefits to the Lender of this Assignment.

(d) The Borrower shall not, without having given prior written notice to the Lender: (i) release the Tenants from any liability under the Leases, or suffer or permit or waive or consent to any act or omission on the part of the Tenants which would otherwise constitute a material default under the Leases; or (ii) enter into any Leases, cancel or surrender existing Leases, alter or amend the terms of the existing Leases in any material respect, renew existing Leases, or make material concessions to Tenants.

(e) The Borrower authorizes the Lender, its employees or agents, at Lender's option, after the occurrence of a default as aforesaid, after notice and grace periods, if any, for so long as



said default is continuing to enter upon the Premises and to collect, in the name of the Borrower or in its own name as assignee, the Rents accrued but unpaid and in arrears at the date of such default, as well as the Rents thereafter accruing and becoming payable during the period of the continuance of the said or any other default; and to this end, the Borrower shall facilitate in all reasonable ways the Lender's collection of said Rents, and will, upon request by the Lender, execute a written notice to each Tenant directing the tenant to pay rent to the said Lender. The Lender shall not be liable for a failure to collect rents nor shall it be accountable except for such moneys as it actually receives from the Premises.

(f) The Borrower authorizes the Lender, its employees or agents, to (i) enforce all or any of such contractual rights as may have been assigned hereby, and Borrower hereby irrevocably appoints Lender its attorney in fact, coupled with an interest, to do all acts pertaining thereto in its place and stead, and (ii) upon such entry to take over and assume the management, operation and maintenance of the Premises and to perform all acts and to expend such sums out of the income of the Premises as may, in the Lender's sole judgment, be necessary or appropriate in connection therewith, in the same manner and to the same extent as the Borrower theretofore might do, including the right to effect new Leases, or to make concessions to Tenants, the Borrower hereby releasing all claims against the Lender arising out of such management, operation and maintenance, excepting the liability of the Lender to account as herein set forth.

(g) Lender shall, after payment of all costs and expenses, including reasonable attorney's fees and reasonable compensation to itself or to such managing agent as it shall in its sole judgment select and employ, and after the accumulation of all proper reserves (including without limitation reserves for taxes, assessments, utilities, and fire and liability insurance), credit the net amount of income received by it from the Premises by virtue of this Assignment to any amounts due and owing to it by Borrower under the terms of any of the Instruments. The manner of the application of such net income and what items shall be credited shall be determined in the sole discretion of Lender. Lender shall not be accountable for more monies than it actually receives from the Premises, nor shall it be liable for failure to rent or sublease vacant space, collect Rents or enforce other obligations of tenants. Lender shall make reasonable efforts to collect rents, reserving, however, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents or the eviction of delinquent Tenants shall be prosecuted.

(h) At such time as the Borrower shall have cured all defaults under the terms of the Note, this Agreement, and said Mortgage, and the Loan has been restored to good standing, the Lender shall no later than thirty (30) days after demand in writing redeliver possession of the Premises to the Borrower, who shall retain such possession unless and until another default shall occur, whereupon the Lender may, at its election, again take possession of the Premises under the terms of this Agreement.

(i) The provisions of this Agreement shall be binding upon and inure to the benefit of the Borrower and the Borrower's legal representatives, successors or assigns and upon and to the benefit of the Lender and its successors or assigns. The word "Borrower" shall be construed to



mean any one or more persons or parties who are the holders of the legal title or equity of redemption to or in the aforesaid Premises.

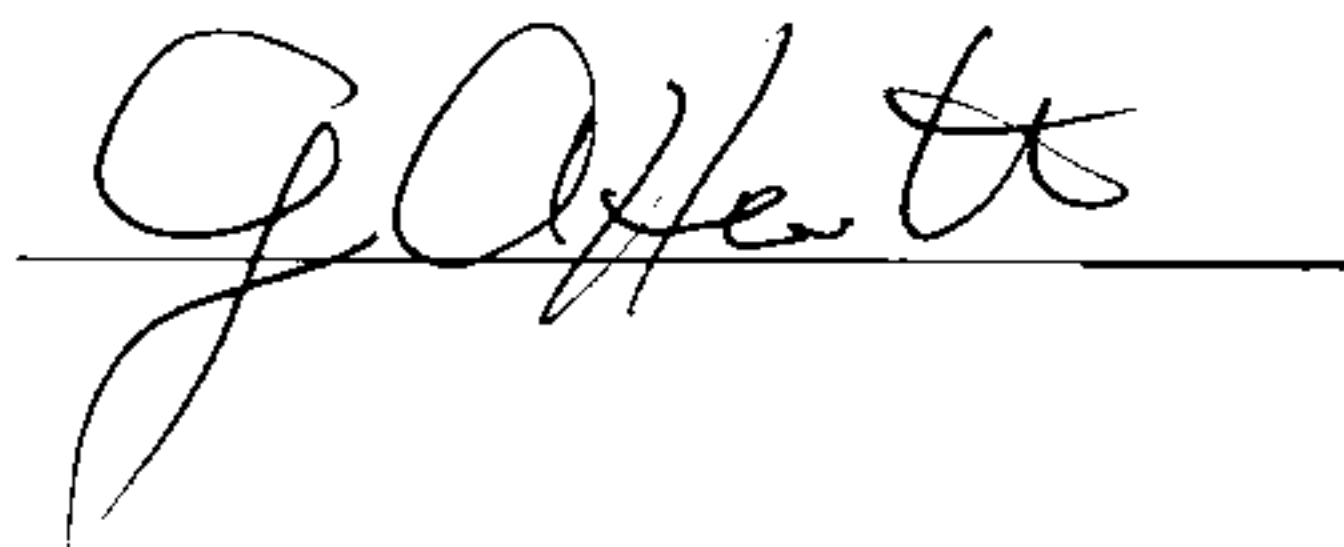
(j) Lender's waiver of any right or power accruing to it because of any event of default hereunder shall not constitute a waiver of any right accruing to Lender hereunder by reason of such default or any subsequent occurrence of the same or any other default, and no forbearance, failure to exercise a power, or course of dealing shall be construed as a waiver of any such rights or power, unless given in writing.

(k) Entry by Lender upon the Premises under the terms of this Assignment shall not constitute Lender a "mortgagee in possession" in contemplation of law, except at the option of Lender expressed in writing.


4. This Assignment shall remain in full force and effect as long as the obligations secured by the Mortgage debts remain outstanding and only a discharge of the Mortgage appearing of record in the Registry of Deeds or Registry District where the Mortgage is recorded shall operate as a release of all of Lender's rights and interest hereunder.

This Assignment shall have the effect of an instrument under seal.

WITNESS:




EVP DG LLC

By:   
Michael Scanio, Manager

2711 Allen Road LLC

By:   
David Edelman, Manager

K.A., LLC

By:   
Andrew Kraus, Manager



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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

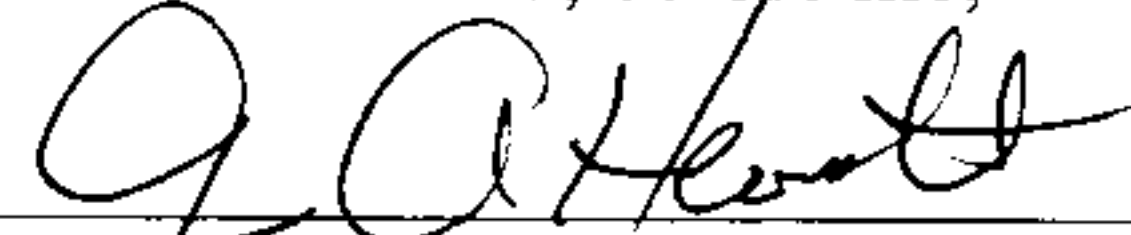
COMMONWEALTH OF MASSACHUSETTS

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


COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

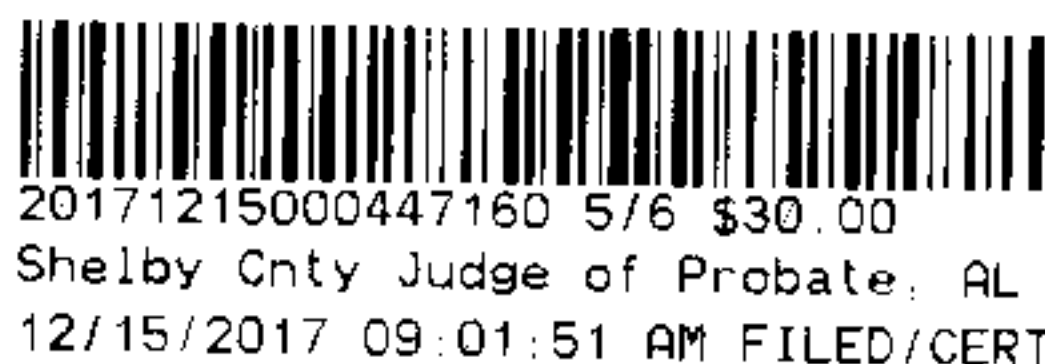
December 12, 2017

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

843917.1



**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.

