

STATE OF ALABAMA

COUNTY OF SHELBY

20180328000101970 1/13 \$520.50  
Shelby Cnty Judge of Probate, AL  
03/28/2018 09:00:58 AM FILED/CERT

**PURCHASE MONEY**  
**MORTGAGE**

This Mortgage (this "Mortgage") made and entered into as of the 27<sup>th</sup> day of March, 2018, by and between Geoff Humber and Carrie Humber, husband and wife, (the "Mortgagor") and Rebekah B. Harris, (the "Mortgagee").

IN ADDITION TO BEING FILED AS A MORTGAGE, THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF ALA. CODE 1975, §7-9A-502.

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency are acknowledged, and in order to secure the Indebtedness (as defined below) and other obligations of the Mortgagor as set forth in this Mortgage, the Mortgagor does GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, PLEDGE AND SET OVER unto the Mortgagee and the successors, successors-in-title and assigns of the Mortgagee, with power of sale, all of the following described Land and interests in Land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances (collectively referred to in this Mortgage as the "Premises"):

A. All that certain tract, piece or parcel of Land (the "Land") more particularly described as follows, to wit:

**Parcel 1:**

Lot 2, according to the Survey of Kelley Estates, as recorded in Map Book 16, Page 138, in the Probate Office of Shelby County, Alabama.

**Parcel 2:**

Lot 3, according to the Survey of Kelley Estates, as recorded in Map Book 16, Page 138, in the Probate Office of Shelby County, Alabama.

B. All buildings, structures, and improvements of every nature whatsoever situated on the Land and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever owned by the Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the Land or not and whether in storage or otherwise wheresoever the same may be located;

C. All accounts, general intangibles, contracts and contract rights relating to the Land and the improvements on the Land including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and the improvements on the Land;

D. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, leases, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate

to or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor and the reversion and reversions, remainder and remainders, rents, issues, profits from the Premises, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the Premises, including but not limited to:

1. All leases of all or part of the Land, and all 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 Land, it being the intention of the parties to establish an absolute transfer and assignment of all the said leases and agreements, and all the avails thereof, to the Mortgagee, and the Mortgagor does appoint irrevocably the Mortgagee the true and lawful attorney for the Mortgagor in the name and stead of the Mortgagor (with or without taking possession of the Land as provided in this Mortgage), to rent, lease or let all or any portion of the Land to any party or parties at such rental and upon such term, in the discretion of the Mortgagor as the Mortgagor 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 and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Land, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagor would have upon taking possession of the Land pursuant to the provisions set forth in this Mortgage. All rents, royalties, profits, issues and revenues of the Premises from time to time accruing, whether under leases or tenancies, reserving to the Mortgagor, however, so long as the Mortgagor is not in Default under this Mortgage, the Note or any loan documents executed in connection with this Mortgage or the Note, the right to receive and retain the rents, issues and profits; and

2. All judgments, awards of damages and settlements made resulting from condemnation proceedings or the taking of the Premises or any part of the Premises under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the Improvements on the Premises or any part of the Premises, or to any rights appurtenant to the Premises, including any award for change of grade or streets. The Mortgagee is authorized on behalf and in the name of the Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums or any part of such sums so received, after the payment of all expenses, including costs and reasonable attorney's fees, on any of the Indebtedness secured by this Mortgage in such manner as the Mortgagee elects, or at the option of the Mortgagee, the entire amount or any part of said amount so received may be released.

E. All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in A., B., C. or D. of this Mortgage, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in A., B., C. or D. of this Mortgage.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances to the Premises, to the use and benefit of the Mortgagee and the successors and assigns of the Mortgagee, IN FEE SIMPLE, FOREVER; and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises, and has a good and lawful right to mortgage, grant and convey the Premises; and that the Premises are unencumbered.

This Mortgage is given to secure to the Mortgagee the repayment of the debt evidenced by that certain Promissory Note dated even date herewith made by the Mortgagor to the order of the Mortgagee in the original principal amount of Three Hundred Thirteen Thousand Dollars (\$313,000.00) with the final payment being due on April 1, 2058 (referred to in this Mortgage as the "Note" or the "Indebtedness").

Should the Note be paid according to the tenor and effect of the Note when the Note shall become due and payable, and should the Mortgagor perform all covenants contained in this Mortgage in a timely manner, then this conveyance shall become null and void and this Mortgage shall be canceled and surrendered.

The Mortgagor and the Mortgagee covenant and agree as follows:



## Article I

Section 1.01. Payment of the Indebtedness. The Mortgagor shall promptly pay the Note according to the tenor of the Note and the remainder of the Indebtedness promptly as the same shall become due.

### Section 1.02. Taxes, Liens and Other Charges.

A. The Mortgagor shall pay, on or before the date due, all taxes, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary or foreseen or unforeseen) of every character whatsoever (including all penalties and interest) levied, assessed, confirmed or imposed on or in respect of, or which may be a lien upon the Premises, or any part of the Premises, or any estate, right or interest in the Premises, or upon the rents, issues, income or profits from the Premises, and shall submit to the Mortgagee such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as the Mortgagee may require.

B. The Mortgagor shall pay, on or before the date due, all taxes, assessments, charges, expenses, costs and fees which may be levied upon, or assessed or charged against or incurred in connection with, the Note, the Indebtedness, this Mortgage or any other instrument evidencing, securing or otherwise relating to the Indebtedness, and shall submit to the Mortgagee such evidence of the due and punctual payment of all such taxes, assessments, charges, expenses, costs and fees as the Mortgagee may require. Provided, However, that nothing contained in this Mortgage shall require the Mortgagor to pay such taxes, assessments, charges, expenses, costs and fees so long as the validity thereof is being contested in good faith by appropriate legal proceedings operating to prevent sale of the Premises to satisfy all obligations.

C. The Mortgagor shall pay, on or before the date due, (i) all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to this Mortgage; and (ii) all ground rentals, other lease rentals and other sums, if any, owing by the Mortgagor and becoming due under any lease or rental contract affecting the Premises. Within fifteen (15) days prior to the date due of such premiums, rentals or other sums, the Mortgagor shall submit to the Mortgagee such evidence of the due and punctual payment of said sums as the Mortgagee may require.

D. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date of this Mortgage, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured by said mortgages or security agreements or the manner of collecting such taxes, except with respect to income taxes, so as to affect the Mortgagee adversely, the Mortgagor shall pay any such tax on or before the date due. If the Mortgagor fails to make such prompt payment or if, in the opinion of the Mortgagee, any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment or if, in the opinion of the Mortgagee, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness and all interest accrued on the Indebtedness shall, at the option of the Mortgagee, become immediately due and payable.

E. The Mortgagor shall not suffer any mechanic's materialman's, laborer's, statutory or other lien to be filed of record or to remain outstanding against the Premises.

### Section 1.03. Insurance.

A. The Mortgagor shall procure for, deliver to and maintain for the benefit of the Mortgagee and such other parties as the Mortgagee may designate, during the term of this Mortgage, original paid up insurance policies of such insurance companies, in such amounts, in such form and substance, and with such expiration dates as are acceptable to the Mortgagee, and containing a satisfactory mortgage loss payable endorsement in favor of the Mortgagee, and such other parties as the Mortgagee may designate, providing the type or types of insurance covering the Premises and the interest and liabilities incident to the ownership, possession and operation of the Premises as the Mortgagee may from time to time require.

B. In the event of loss, the Mortgagor shall give immediate written notice of said loss to the Mortgagee and the Mortgagee may make proof of loss if not made promptly by the Mortgagor. The Mortgagee is authorized and empowered, at the option of the Mortgagee, to adjust or compromise any loss under any insurance policies maintained pursuant to this Mortgage, and to collect and receive the proceeds from any such policy or policies. After deducting from said insurance proceeds all of the expenses of the Mortgagee incurred in the collection and administration of such sums, including attorneys' fees, the Mortgagee may apply the net proceeds or any part of the net proceeds, at the option of the Mortgagee, (i) to the payment of the Indebtedness, whether or not due and in whatever order the Mortgagee elects; (ii) to the repair and/or restoration of the Premises; and/or (iii) for any other purposes or objects for which the Mortgagee is entitled to advance funds under this Mortgage, all without affecting the security interest created by this Mortgage; and any balance of such moneys then remaining shall be paid to the Mortgagor or any other person or entity lawfully entitled. The Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

C. At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Mortgage, a renewal or replacement policy shall be delivered to the Mortgagee. The delivery of any insurance policies pursuant to this Mortgage shall constitute an assignment of all unearned premiums as further security under this Mortgage. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Indebtedness all right, title and interest of the Mortgagor in and to all insurance policies then in force shall pass to the purchaser or to the Mortgagee, as the case may be, and the Mortgagee is irrevocably appointed by the Mortgagor as attorney-in-fact for the Mortgagor to assign any such policy to said purchaser or to the Mortgagee, as the case may be, without accounting to the Mortgagor for any unearned premiums.

Section 1.04. Condemnation. The Mortgagor assigns to the Mortgagee all awards made by virtue of any exercise of the right of condemnation or eminent domain by any authority, including any award for damages to or taking of title to the Premises, or any part of the Premises, or the possession of the Premises, or any right or easement affecting the Premises, and the proceeds of all sales in lieu of condemnation. The Mortgagee is authorized, at the option of the Mortgagee, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances for such compensation, awards or damages without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of the expenses of the Mortgagee incurred in the collection and administration of such sums, including attorneys' fees, the Mortgagee may apply the net proceeds or any part of said net proceeds, at the option of the Mortgagee, (i) to the payment of the Indebtedness, whether or not due, and in whatever order the Mortgagee elects; (ii) to the repair and/or restoration of the Premises; and/or (iii) for any other purposes or objects for which the Mortgagee is entitled to advance funds under this Mortgage, all without affecting the security interest created by this Mortgage, and any balance of such moneys then remaining shall be paid to the Mortgagor or any other person or entity lawfully entitled. The Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as the Mortgagee may reasonably require.

Section 1.05. Care of the Premises.

A. The Mortgagor shall keep the Premises in good condition and repair, shall not commit or suffer any waste and shall not do or suffer to be done anything which would or could impair the value of the Premises or increase the risk of fire or other hazard to the Premises or any part of the Premises or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

B. The Mortgagor shall not remove, demolish or alter the structural character of any fixture or Improvement located on the Land without the written consent of the Mortgagee.

C. If the Premises or any part of the Premises is damaged by fire or other cause, the Mortgagor shall give immediate written notice of said damage to the Mortgagee.

D. The Mortgagee or a representative of the Mortgagee is authorized to enter upon and inspect the Premises at all reasonable times.



E. The Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part of the Premises.

F. If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor shall promptly restore the Premises to the equivalent of the original condition of the Premises; and if a part of the Premises shall be damaged through condemnation, the Mortgagor shall promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to the Mortgagee. Notwithstanding the foregoing, the Mortgagor shall not be obligated so to restore, repair or alter unless in each instance the Mortgagee agrees to make available to the Mortgagor (pursuant to a procedure satisfactory to the Mortgagee) any net insurance or condemnation proceeds actually received by the Mortgagee pursuant to this Mortgage in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or alteration.

Section 1.06. Environmental and Compliance Matters. The Mortgagor represents, warrants and covenants as follows:

A. No Hazardous Materials (as defined in this Mortgage) have been, are, or shall be, while any part of the Indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Premises. As used in this Mortgage, the term "Hazardous Materials" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. Sections 6901, et seq.), the Clean Water Act (33 U.S.C. Sections 1251, et seq.), the Clean Air Act (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("OSHA") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule or regulation;

B. No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Premises;

C. All of the Premises complies and shall comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

D. There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Premises;

E. The Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Premises or any part of the Premises. Without limiting the foregoing, the Mortgagor represents and covenants that the Premises is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("ADA") (42 U.S.C. Sections 12101, et seq.) and the Rehabilitation Act of 1973 ("Rehabilitation Act") (29 U.S.C. Sections 749, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.

F. The Mortgagor shall give immediate oral and written notice to the Mortgagee of the receipt by the Mortgagor of any notice of a violation of any law, rule or regulation covered by this Mortgage, or of any notice of other claim relating to the environmental or physical condition of the Premises, or of the discovery by the Mortgagor of any matter which would make the representations, warranties and/or covenants in this Mortgage to be inaccurate or misleading in any respect.

The Mortgagor agrees to and does indemnify and hold the Mortgagee harmless from all loss, cost,

damage, claim and expense incurred by the Mortgagee on account of (i) the violation of any representation or warranty set forth in this Mortgage, (ii) failure of the Mortgagor to perform any obligations of this Mortgage, (iii) failure of the Mortgagor or the Premises to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Premises. This indemnification shall survive the execution and delivery of this Mortgage, payment of the Note, the exercise of any right or remedy under this Mortgage, the Note or any loan document, and any subsequent sale or transfer of the Premises, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Premises after the acquisition of title to the Premises by the Mortgagee through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Indebtedness has been paid in full.

**Section 1.07. Security Agreement.** With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, farm products, consumer goods and general intangibles referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is made and declared to be a security agreement encumbering each and every item of such property included in this Mortgage as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. Upon request by the Mortgagee, at any time and from time to time, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such property shall be executed by the Mortgagor and the Mortgagee and appropriately filed.

**Section 1.08. Entity Warranties and Representations.** If the Mortgagor is an entity other than a natural person (such as a corporation, limited liability company, partnership or other entity) the Mortgagor makes to the Mortgagee the following warranties and representations which shall continue as long as the Indebtedness remains outstanding:

A. The Mortgagor is duly organized and validly existing in the state in which it was organized. The Mortgagor is in good standing in the State of Alabama and in all states in which the Mortgagor transacts business. The Mortgagor has the power and authority to own the Premises and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which the Mortgagor operates.

B. The execution, delivery and performance of this Mortgage by the Mortgagor and the obligations evidenced by the Indebtedness are within the power of the Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.

C. Other than previously disclosed in writing to the Mortgagee, the Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without the prior written consent of the Mortgagee, the Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Indebtedness is satisfied.

**Section 1.09. This Mortgage Secures Future Advances.** If the Indebtedness evidenced by the Note is being advanced by the Mortgagee to the Mortgagor under the terms and provisions and in accordance with a loan agreement or construction loan agreement (the "Agreement"), the terms and provisions of the Agreement are incorporated by reference as part of this Mortgage as if fully set out in this Mortgage, and any Default in the performance of the provisions of the Agreement or any contract or agreement between the Mortgagee and the Mortgagor shall constitute a Default under this Mortgage entitling the Mortgagee to exercise the remedies provided in this Mortgage, including the right to foreclose this Mortgage in accordance with the terms of this Mortgage.

**Section 1.10. Financial Reports and Additional Documents.** The Mortgagor will provide to the Mortgagee upon request, any financial statement or information the Mortgagee may deem reasonably necessary. The Mortgagor agrees to sign, deliver and file and additional documents or certifications that the Mortgagee may consider necessary to perfect, continue, and preserve the obligations of the Mortgagor under this Mortgage and the lien status of the Mortgagee on the Premises.



## Article II

Section 2.01. Default. The terms "Default" or "Defaults" wherever used in this Mortgage shall mean any one or more of the following events:

A. Failure by the Mortgagor to pay as and when due and payable any portion of the Indebtedness; or

B. Failure by the Mortgagor to observe or perform any other term, covenant, condition or agreement of this Mortgage or the Note; or

C. The filing by the Mortgagor of a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for the Mortgagor under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors or mortgagors, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of the Mortgagor, or of all or any substantial part of the Premises or of any other property or assets of the Mortgagor, or of any or all of the income, rents, issues, profits or revenues, or the making by the Mortgagor of any general assignment for the benefit of creditors, or the admission in writing by the Mortgagor of the inability of the Mortgagor to pay the debts of the Mortgagor generally as they become due or the entry of a voluntary or involuntary order for relief against the Mortgagor under the Bankruptcy Act; or

D. The filing of a petition against the Mortgagor seeking any action for relief, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator for the Mortgagor, or of all or any substantial part of the Premises or of any or all of the income, rents, issues, profits or revenues unless such petition shall be dismissed within thirty (30) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or

E. The Mortgagor shall not sell or transfer title to the Premises, nor allow or make any change in the possession, or character of possession, without the written approval of the Mortgagee, and any violation of this provision shall constitute a Default under this Mortgage, and, at the option of the Mortgagee, all amounts secured by this Mortgage shall become due and payable; or

F. The Mortgagor shall not create or permit to exist any other mortgage or lien on or security interest in any portion of the Premises, including real property, any furniture, fixtures, machinery and equipment. The Mortgagor will not lease any furniture, fixtures, machinery or equipment and will not incur any Indebtedness to purchase any furniture, fixtures, machinery or equipment, except as contemplated by this Mortgage, without the prior written consent of the Mortgagee. Without first obtaining written consent of the Mortgagee, the Mortgagor shall have no right to permit the holder of a subordinate mortgage or other subordinate lien, regardless of whether the Mortgagee has consented to such mortgage or lien, to terminate any lease of all or any portion of the Premises, whether the lease is subordinate to the lien of this Mortgage by law, the terms of the lease, or a separate agreement. The holder of any subordinate mortgage or other subordinate lien shall have no right, whether by foreclosure of said mortgage or otherwise, to terminate any lease, whether permitted to do so by the Mortgagor or as a matter of law. Any attempt to terminate any lease shall be ineffective and void.

Section 2.02. Acceleration of Maturity. If the Mortgagor fails to pay when due any amount payable under the Note or fails to perform or breaches any agreement, term or condition contained in this Mortgage, then the Mortgagor shall be in Default under this Mortgage. Upon Default the entire Indebtedness shall, at the option of the Mortgagee, immediately become due and payable and subject to foreclosure without notice or demand, time being of the essence of this Mortgage; and no omission on the part of the Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

**Section 2.03. Right to Enter and Take Possession.**

A. If a Default shall have occurred, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if and to the extent permitted by law the Mortgagee, or by such officers or agents as the Mortgagee may appoint, may enter and take possession of all of the Premises without the appointment of a receiver, or an application for a receiver, and may exclude the Mortgagor and the agents and employees of the Mortgagor from the Premises, and may have joint access with the Mortgagor to the books, papers and accounts of the Mortgagor.

B. If the Mortgagor shall for any reason fail to surrender or deliver the Premises or any part of the Premises after such demand by the Mortgagee, the Mortgagee may obtain a judgment or decree conferring upon the Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession of the Premises to the Mortgagee, and the Mortgagor specifically covenants and agrees that the Mortgagor shall not oppose, contest or otherwise hinder or delay the Mortgagee in any action or proceeding by the Mortgagee to obtain such judgment or decree. The Mortgagor shall pay to the Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to the Mortgagee, and the attorneys and agents of the Mortgagee, and all such expenses and compensation shall, until paid, become part of the Indebtedness and shall be secured by this Mortgage.

C. Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage and control the Premises and conduct business from the Premises, and, from time to time, (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and Improvements to the Premises and purchase or otherwise acquire additional fixtures, personalty and other property; (2) insure or keep the Premises insured; (3) manage and operate the Premises and exercise all rights and powers of the Mortgagor to the same extent as the Mortgagor could in the name of the Mortgagor or otherwise act with respect to the same; and (4) enter into any and all agreements with respect to the exercise by others of any of the powers granted in this Mortgage to the Mortgagee, all as the Mortgagee from time to time may determine to be in the best interest of the Mortgagee. The Mortgagee may collect and receive all the income, rents, issues, profits and revenues from the Premises, including those past due as well as those accruing, and the Mortgagee may apply any moneys and proceeds received by the Mortgagee, in whatever order or priority the Mortgagee in the sole discretion of the Mortgagee may determine, to the payment of (i) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (iii) the costs of such insurance; (iv) such taxes, assessments and other similar charges as the Mortgagee may at the option of the Mortgagee pay; (v) other proper charges upon the Premises or any part of the Premises; (vi) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee; (vii) accrued interest; or (viii) overdue installments of principal. Anything in this Mortgage to the contrary notwithstanding, the Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by the Mortgagee of the rights of the Mortgagee under this Mortgage, and the Mortgagee shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by the Mortgagee.

D. In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall be paid and all Defaults shall be cured, and as a result the Mortgagee surrenders possession of the Premises to the Mortgagor, the same right of taking possession shall continue to exist if any subsequent Default shall occur.

**Section 2.04. Performance by the Mortgagee.** If the Mortgagor shall Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, the Mortgagee may, at the option of the Mortgagee, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Mortgagee in connection with said Default shall be secured by this Mortgage and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the default rate provided in the Note. Notwithstanding the foregoing, it is specifically understood and agreed that in the event the Premises, or the security interest of the Mortgagee in the Premises, is endangered by such Default, the Mortgagee may act, as set forth in this Mortgage, immediately upon such Default and prior to the



expiration of said periods to cure Default. The Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Mortgagee is empowered to enter and to authorize others to enter upon the Premises or any part of the Premises for the purpose of performing or observing any such term, covenant or condition which is in Default without becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

Section 2.05. Receiver. If a Default shall have occurred, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Indebtedness or the solvency of any party bound for the payment of the Indebtedness, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues from the Premises. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. The Mortgagor shall pay to the Mortgagee upon demand all expenses, including receiver's fees, attorneys' fees, costs and agents' compensation, incurred pursuant to the provisions of this Section 2.05, and any such amounts paid by the Mortgagee shall be added to the Indebtedness and shall be secured by this Mortgage.

Section 2.06. Enforcement and Foreclosure.

A. If a Default shall have occurred, the Mortgagee, at the option of the Mortgagee, with or without taking possession of the Premises, may sell the Premises before the door of the courthouse of the county in which the Land is situated, at public outcry to the highest bidder, for cash, after advertising the time, place and terms of sale by publication once a week for three (3) consecutive weeks preceding such sale in a newspaper of general circulation published in said county. At any such public sale, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for the Mortgagee, is authorized to execute and deliver to the purchaser a deed conveying the Premises so sold, and to this end the Mortgagor constitutes and appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor to make such sale and conveyance, and to divest the Mortgagor of all right, title and equity that the Mortgagor may have in and to the Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon the Mortgagor. The aforesaid power of sale and agency granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided in this Mortgage or by law for collection of the Indebtedness and shall not be exhausted by one exercise of said remedy but may be exercised until full payment of all of the Indebtedness. In the event of any sale under this Mortgage by virtue of the exercise of the powers granted in this Mortgage, or pursuant to any order in any judicial proceeding or otherwise, the Premises may be sold as an entirety or in separate parcels and in such manner or order as the Mortgagee in the sole discretion of the Mortgagee may elect, and if the Mortgagee so elects, the Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of Alabama, and one (1) or more exercises of the powers granted in this Mortgage shall not extinguish nor exhaust such powers, until the entire Premises are sold or the Indebtedness is paid in full. If the Indebtedness is further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, the Mortgagee may at the option of the Mortgagee exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as the Mortgagee may determine. The presence of any of the Premises at the place of sale is expressly waived.

B. If a Default shall have occurred, the Mortgagee may, in addition to and not in abrogation of the rights covered under this Mortgage, either with or without entry or taking possession as provided in this Mortgage or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note to the extent permitted by the Note and (ii) to pursue any and all other remedies available to the Mortgagee, all as the Mortgagee at the sole discretion of the Mortgagee shall elect. As to such, the Mortgagor waives all rights of exemption under the law and agrees to pay a reasonable attorney's fee for the collection of the Note.

Section 2.07. Purchase by the Mortgagee. Upon any foreclosure sale or sales of all or any portion of the Premises under the power granted in this Mortgage, the Mortgagee or the nominee of the Mortgagee may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a



credit to the purchase price.

**Section 2.08. Application of Proceeds of Sale.** In the event of a foreclosure or a sale of all or any portion of the Premises under the power granted in this Mortgage, or otherwise, the proceeds of said sale shall be applied first to the expenses of such sale and of all proceedings in connection with said sale, including reasonable attorneys' fees; second to the repayment of any money with interest which the Mortgagee may have paid or become liable to pay or which it may then be necessary to pay for insurance premiums, liens, assessments, taxes and charges, including utility charges advanced by the Mortgagee; third to payment of the outstanding principal balance of the Indebtedness, together with the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to the Mortgagor, or to the person or entity lawfully entitled.

**Section 2.09. The Mortgagor as Tenant at Will.** In the event of any such foreclosure sale or sales under the power granted in this Mortgage, the Mortgagor and all holding under the Mortgage shall be deemed tenants at will of the purchaser or purchasers at such sale.

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

**Section 2.11. Waiver of Homestead.** The Mortgagor waives and renounces all homestead and exemption rights provided for by the constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Indebtedness, or any part of the Indebtedness, and the Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Premises be set off against any part of the Indebtedness.

**Section 2.12. Leases.** The Mortgagee, at the option of the Mortgagee, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the Indebtedness.

**Section 2.13. Discontinuance of Proceedings.** In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise or in the event the Mortgagee commences advertising of the intended exercise of the sale under power provided under this Mortgage, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then in every such case (i) the Mortgagor and the Mortgagee shall be restored to their former positions and rights; (ii) all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken; (iii) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be or shall be deemed to be a continuing Default; and (iv) neither this Mortgage, nor the Note, nor the Indebtedness, nor any other instrument connected with this Mortgage, Note or Indebtedness, shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and the Mortgagor expressly waives the benefit of any statute or rule of law now provided, or which may be provided, which would produce a result contrary to or in conflict with this Mortgage.

**Section 2.14. Remedies Cumulative.** No right power or remedy conferred upon or reserved by 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 under this Mortgage existing at law, in equity or by statute.



Section 2.15. Waiver.

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

B. No act or omission by the Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage or any other obligation of the Mortgagor or any subsequent purchaser of the Premises or any part of the Premises, or any maker, co-signer, endorser, surety or guarantor, or preclude the Mortgagee from exercising any right, power or privilege granted or intended to be granted in this Mortgage in the event of any Default then made or of any subsequent Default, or alter the security title, security interest or lien of this Mortgage except as expressly provided in an instrument or instruments executed by the Mortgagee. Without limiting the generality of the foregoing, the Mortgagee may (i) grant forbearance or an extension of time for the payment of all or any portion of the Indebtedness; (ii) take other or additional security for the payment of the Indebtedness; (iii) waive or fail to exercise any right granted under this Mortgage or in the Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title, security interest or lien created by this Mortgage; or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way relating to the Indebtedness; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding the Mortgagee from exercising any such right, power or privilege or affecting the security title, security interest or lien of this Mortgage. In the event of the sale or transfer by operation of law of all or any part of the Premises, the Mortgagee, without notice, is authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements contained in this Mortgage, as fully and to the same extent as the Mortgagee might deal with the original parties to this Mortgage and without in any way releasing and/or discharging any liabilities, obligations or undertakings.

Article III

Section 3.01. Heirs, Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon the Mortgagor and the Mortgagee and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to the "Mortgagor" or the "Mortgagee," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of the Mortgagor and the Mortgagee, as the case may be.

Section 3.02. Terminology. All personal pronouns used in this Mortgage whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of Articles, Sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references in this Mortgage to Articles, Sections, and paragraphs shall refer to the corresponding Articles, Sections, and paragraphs of another document or instrument.

Section 3.03. Severability. If any provisions of this Mortgage or the application of said provisions to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage

and the application of such provisions to other persons or circumstances shall not be affected and shall be enforced to the greatest extent permitted by law.

Section 3.04. Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

Section 3.05. Notices. Any and all notices, elections or demands permitted or required to be made under this Mortgage shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally or sent by registered or certified United States mail, postage prepaid, to the other party at the address set forth in this Mortgage, or at such other address within the continental United States of America as may have been designated in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election or demand. For the purposes of this Mortgage:

The address of the Mortgagor is:

15 SPRING WIND RD  
COLUMBIANA, AL 35051

The address of the Mortgagee is:


~~Post Office Box 781~~ 407 SATSUMA ST,  
~~Daphne, Alabama 36526~~ FAIRHOPE, AL. 36532


Section 3.06. Replacement of the Note. Upon receipt of evidence reasonably satisfactory to the Mortgagor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the Note, the Mortgagor shall execute and deliver, in lieu of the Note, a replacement Note, identical in form and substance to the Note, and dated as of the date of the Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.


Section 3.07. Assignment. This Mortgage is assignable by the Mortgagee, and any assignment of this Mortgage by the Mortgagee shall operate to vest in the assignee all rights and powers conferred in this Mortgage upon and granted to the Mortgagee.

Section 3.08. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the Mortgagor under this Mortgage, the Note and any and all other instruments evidencing, securing or otherwise relating to the Indebtedness.

IN WITNESS WHEREOF, the Mortgagor has set the hand and seal of the Mortgagor on this the 21<sup>st</sup> day of March, 2018.

  
\_\_\_\_\_  
Geoff Humber (Seal)

  
\_\_\_\_\_  
Carrie Humber (Seal)

  
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Shelby Cnty Judge of Probate, AL  
03/28/2018 09:00:58 AM FILED/CERT



STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and or said State and County, hereby certify that Geoff Humber, 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 27<sup>th</sup> day of March, 2018.

Michael L. Lantz  
Notary Public  
My Commission Expires:

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and or said State and County, hereby certify that Carrie Humber, 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 the instrument, she executed the same voluntarily on the day the same bears date.


Given under my hand and seal this 27<sup>th</sup> day of March, 2018.

Michael L. Lantz  
Notary Public  
My Commission Expires:

THIS INSTRUMENT PREPARED BY:

W. Kenneth Heard  
Irby & Heard, P.C.  
Attorneys at Law  
317 Magnolia Avenue  
Post Office Box 1031  
Fairhope, Alabama 36533  
(251)928-4555

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