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MORT 1/18

THE MAXIMUM AMOUNT SECURED BY THIS INSTRUMENT, INCLUDING ALL SUCH FUTURE ADVANCES, SHALL NOT EXCEED THE SUM OF \$572,678.00, PLUS INTEREST, COSTS, FEES, AND EXPENSES.

This instrument reviewed/prepared by:

Richmond C. Flowers, Esquire
Adams and Reese LLP
150 2nd Ave. N, Suite 1700
St. Petersburg, FL 33701

After recording return to:

Texas Capital Bank
2350 Lakeside Boulevard
Residential Builder Finance
Operations, Suite 800
Richardson, Texas 75082

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA 1975, AS AMENDED.

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF SUCH TERM IN SECTION 7-9A-0334(H), CODE OF ALABAMA 1975, AS AMENDED.

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), made and entered into as of the 23 day of October, 2019, by and between RC BIRMINGHAM, LLC, an Alabama limited liability company ("Mortgagor"), with an address at 4058 North College Suite 300, Fayetteville, Arkansas 72703; and TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, a National banking corporation ("Lender"), with an address at 2350 Lakeside Blvd., Suite 800, Richardson, Texas 75082.

WITNESSETH:

THAT, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations hereinafter set forth, Mortgagor has bargained, sold, given, granted, mortgaged, assigned, transferred, set over and conveyed, and by these presents does grant, bargain, sell, give, set over, assign, mortgage, transfer and convey, unto Lender, its successors and assigns, all of Mortgagor's right, title and interest in and to the following described land, real estate, buildings, improvements, fixtures, furniture and other personal property (which, together with any additional such property hereafter acquired by Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted, is hereinafter sometimes referred to as the "Premises"):

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The above-referenced Recitals are true, correct, and incorporated herein by this reference.

THIS MORTGAGE IS GIVEN TO SECURE PRINCIPAL INDEBTEDNESS IN THE AMOUNT OF FIVE HUNDRED SEVENTY-TWO THOUSAND SIX HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS (\$572,678.00) AS WELL AS PAYMENT OF THE SECURED INDEBTEDNESS DESCRIBED HEREIN.

a. All that certain tract or parcel of land (the "Land") lying and being in Shelby County, Alabama and being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

b. All buildings, structures and other improvements of every kind and nature whatsoever now or hereafter situated on the Land; and all machinery, equipment, fixtures, appliances and building, construction, development and landscaping supplies and materials now or hereafter placed on or in the Land; and all of the things addressed in this paragraph (b), whether generally or specifically, shall be deemed to be fixtures and accessions to the freehold and a part of the Land as between the parties hereto and all persons claiming, by, through or under either of them; and

c. All and singular, the easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, estates, rights, titles, interests, minerals, royalties, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land or the improvements now or hereafter located thereon, or any part thereof, whether now owned or hereafter acquired by Mortgagor, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and all right to receive excess payments in any tax sale of the Land and the improvements now or hereafter located thereon, or any part thereof; and all the estate, right, title, interest, claim and demand whatsoever of Mortgagor of, in and to the same; and

d. Any and all rents which are now due or may hereafter become due by reason of the renting, leasing and bailment of the Land or the improvements now or hereafter located thereon, or any part thereof; and

e. Any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street, or (iii) any other injury to the taking of, or decrease in the value of, the Land or the improvements now or hereafter located thereon;

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, and benefit of Lender, its successors and assigns, in FEE SIMPLE forever, subject, however, to terms and conditions herein; Mortgagor warrants that Mortgagor has good title to the Premises, and is lawfully seized and possessed of the Premises and every part thereof, and has the right to convey same; that the Premises are unencumbered; and the Mortgagor will forever warrant and defend the title to the Premises unto Lender against the claims of all persons whomsoever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Lender the Secured Indebtedness (as hereinafter defined) including future advances at the times and in the manner stipulated herein and in the other Loan Documents (as hereinafter defined), all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform and observe all and singular the covenants and promises herein and in the other Loan Documents expressed to be kept, performed and observed by and on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

This conveyance is made as security for the following obligations of Mortgagor and Borrower (hereinafter defined) (all of which present and future indebtedness are hereinafter collectively referred to as the "Secured Indebtedness"):

a. Payment of the debt evidenced by that certain Note dated December 13, 2017 (the "Note"), in the original principal amount of Twenty Five Million and 00/100 DOLLARS (\$25,000,000.00), made payable by 57894073_i

RAUSCH COLEMAN HOMES, LLC, an Arkansas limited liability company ("**Borrower**"), to the order of Lender, as modified by that certain Note Modification Agreement dated April 12, 2019, by and between Borrower and Lender, together with any and all renewals and/or extensions or renewals of the indebtedness evidenced by the Note together with the performance and discharge of each and every obligation of Borrower set forth in the Note. Aforesaid Note having a maturity date of April 12, 2021.

b. Payment of all other sums, with interest thereon, becoming due or payable to Lender under the provisions hereof or the provisions of any other instrument executed by Borrower for the purpose of further securing, or otherwise executed in connection with, the indebtedness represented by the Note;

c. Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Borrower as contained in that certain Borrower Base Loan Agreement dated December 13, 2017, as amended by those certain First through Fifth Amendments to Borrower Base Loan Agreement (collectively, the "**Loan Agreement**"), or in any other instrument executed by Borrower for the purpose of further securing, or otherwise executed in connection with, the indebtedness represented by the Note;

d. Such additional sums with interest thereon as may be hereafter borrowed from Lender, its successors or assigns, by the then record owner or owners of the Premises when evidenced by another promissory note or notes, which are by the terms thereof secured by this Mortgage; and

e. Any and all other indebtedness, obligations and liabilities of any kind, of Borrower to Lender, now or hereafter existing, absolute or contingent, joint and/or several, due or not due, secured or unsecured, arising by operation of law or otherwise or direct or indirect including indebtedness, obligations and liabilities to Lender of Borrower as a member of any partnership, syndicate or association or other group and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable remedy for breach of performance if such breach gives rise to an obligation by Borrower to pay Lender.

The proceeds of the Note have been or will be given in whole or in part to finance the construction of improvements upon land.

Mortgagor covenants and agrees as follows:

ARTICLE I

1.1 Payment of Secured Indebtedness. Mortgagor shall pay to Lender the Secured Indebtedness with interest thereon as and when the same becomes due and payable in accordance with the terms thereof.

1.2 Payment of Taxes, Etc. Mortgagor shall pay, when due and payable, (a) all taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against the Premises, this Mortgage, the Note or the Secured Indebtedness or any interest of the Lender in the Premises or the obligations secured hereby; (b) premiums on policies of fire and other hazard insurance covering the Premises, as required in Section 1.3 herein; (c) premiums on all collaterally pledged life insurance policies, if any; (d) premiums for mortgage insurance, if this Mortgage and the Note are so insured; and (e) ground rents or other lease rentals, if any, payable by Mortgagor. If Mortgagor fails to promptly make any such payment, then Lender may, at its option, make such payment, without notice, and the amount so advanced shall become part of the Secured Indebtedness and shall bear interest from the date advanced at the rate of interest from time to time in effect in the Note for principal. If, in the opinion of Lender, any state, federal, municipal or other governmental law, order, rule or regulation prohibits Mortgagor from paying any such tax, assessment or other charge or would penalize Lender if Mortgagor were to make such payment, or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the Secured Indebtedness shall, at the option of Lender, become immediately due and payable.

1.3 Insurance.

(a) Mortgagor shall maintain general and/or public liability insurance with coverages and amounts acceptable to Lender. Mortgagor shall keep improvements (if any) on the Premises insured for the benefit of Lender against loss or damage by fire, lightning, windstorm, hail, collapse, explosion, malicious mischief, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and such other hazards as Lender may from time to time require, all in amounts approved by Lender not exceeding 100% of full insurable value. All insurance herein provided for shall be in form and with companies approved by Lender; and, regardless of the types or amounts of insurance required and approved by Lender, Mortgagor shall assign and deliver to Lender, as collateral and further security for the payment of the Secured Indebtedness, all policies of insurance which insure against any loss or damage to the Premises, with loss payable to Lender, without contribution, pursuant to the New York Standard or other mortgagee clause satisfactory to Lender. If Lender, by reason of such insurance, receives any money for loss or damage, such amount shall, at the option of Lender, either be disbursed for the repair and restoration of the Premises in accordance with and subject to the conditions for disbursement that Lender would customarily impose as a prudent lender in a construction or development loan, or retained by Lender and applied toward payment of the Secured Indebtedness. Lender shall in no event be obligated to see to the proper application of any amount paid over to Mortgagor.

(b) Not less than twenty (20) days prior to the expiration date of each policy of insurance required of Mortgagor pursuant to this paragraph 1.3, and of each policy of insurance held as additional collateral to secure the Secured Indebtedness, Mortgagor shall deliver to Lender a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Lender.

(c) In the event of a foreclosure of this Mortgage, the purchaser of the Premises shall succeed to all the rights of Mortgagor in and to all policies of insurance required by this paragraph 1.3 and all policies of insurance assigned or delivered to Lender regardless of whether or not required by this paragraph 1.3, including without limitation the right to unearned premiums.

1.4 Condemnation. Notwithstanding any taking of, injury to, or decrease in the value of, any portion of the Premises by or as the result of eminent domain, the alteration of the grade of any street, or any other public or quasi-public action, Mortgagor shall continue to pay principal and interest on the Secured Indebtedness, and any reduction in the Secured Indebtedness resulting from the application by Lender of any award or payment for such taking, alteration, injury or decrease in value of the Premises shall be deemed to take effect only on the date of such receipt. Any such award or payment may, at the option of Lender, be retained and applied by Lender toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Mortgagor for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Premises, or for any other purpose or object satisfactory to Lender, but Lender shall not be obligated to see to the application of any amount paid over to Mortgagor. If, prior to the receipt by Lender of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with legal interest thereon and the costs (including reasonable attorney's fees) incurred by Lender in the obtaining and collection of such award or payment.

1.5 Care of Premises. Mortgagor shall maintain the Premises in good condition and repair, shall not commit or suffer any waste to the Premises, and shall comply with, or cause to be complied with, all restrictive covenants, statutes, ordinances and requirements of any governmental authority relating to the Premises and the use thereof or any part thereof. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Premises, now or hereafter encumbered by this Mortgage, which may be affected by any proceeding of the character referred to in paragraph 1.4 hereof. No part of the Premises, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property, now or hereafter conveyed as security by or pursuant to this Mortgage, shall be removed, demolished or materially altered without the prior written consent of Lender. Mortgagor shall complete, within a reasonable time, and pay for any building, structure or other improvement at any time in the process of construction on the property herein conveyed. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof. Lender and any persons authorized by Lender shall have the right to enter and inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

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1.6 Security Agreement.

(a) This Mortgage shall also constitute a security agreement within the meaning of the Uniform Commercial Code of the State of Alabama (the "Code") with respect to all the following: (i) all sums of Mortgage on deposit with Lender from time to time (the "Deposits"); (ii) if the Land is to be subdivided into lots, all income received from the sale of such lots (the "Lot Sales Income"); (iii) all fixtures and personal property included (whether generally or specifically) in the definition of "Premises" set forth herein and now or hereafter acquired by Mortgage, and all replacements, substitutions and additions thereto (the "Fixtures and Personalty"); (iv) all plans, specifications, drawings, surveys, contracts (including contracts with general contractors and architects) and subcontracts related to the improvement and development of the Premises (the "Improvement Documents"); and (v) all proceeds (including cash and insurance proceeds and proceeds of proceeds) of all of the foregoing (all such Deposits, Lot Sales Income, Fixtures and Personalty, Improvement Documents and proceeds are collectively referred to herein as the "Collateral"). Mortgage hereby grants to Lender a security interest in and to the Collateral and every component thereof, and does hereby transfer and assign to Lender all of Mortgage's right, title and interest in and to the Collateral and every component thereof, to secure the payment of the Secured Indebtedness as and when the same becomes due and payable. With respect to the Fixtures and Personalty, while an Event of Default is continuing, Lender shall also have the right (i) to proceed against the Fixtures and Personalty in accordance with Lender's rights and remedies with respect to the real property, in which event the provisions of the Code shall not govern the default and Lender's remedies, or (ii) to proceed against the Fixtures and Personalty separately from the real property. When proceeding against any of the Collateral under the provisions of the Code, ten (10) days' notice of Lender's determination to proceed against such Collateral shall be deemed reasonable notice. The reasonable expenses of retaking, holding, preparing for sale and selling the Collateral shall be deemed to include (without limitation) reasonable attorneys' fees. Mortgage agrees not to remove any of the Fixtures and Personalty from the Premises without the prior written consent of Lender; provided, however, that Mortgage may sell or otherwise dispose of obsolete, inadequate, useless or unserviceable items of the Fixtures and Personalty in the ordinary course of its management and operation of the Premises without Lender's consent. At the request of Lender from time to time, Mortgage will provide Lender with an inventory or schedule of all of the Collateral.

(b) Mortgage further covenants and agrees that all of the Fixtures and Personalty are and shall be owned by Mortgage and, except as disclosed to and approved by Lender in writing, shall not be the subject matter of any lease or other instrument, agreement or transaction whereby the ownership or beneficial interest thereof or therein shall be held by any person or entity other than Mortgage, nor shall Mortgage create or cause to be created any security interest covering any such property other than the security interest created herein in favor of Lender.

1.7 Further Assurances. Mortgage shall execute and deliver (and pay the costs of preparation and recording thereof) to Lender and to any subsequent holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, security deeds, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the Secured Indebtedness and the legal security title of Lender to all or any part conveyed, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof. Mortgage, upon request, made either personally or by mail, shall certify by a writing, duly acknowledged, to Lender or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the Secured Indebtedness and whether or not any offsets or defenses exist against the Secured Indebtedness, within five (5) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

1.8 Expenses. Upon demand Mortgage shall pay, or reimburse Lender for the payment of, all attorneys' fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind affecting the Secured Indebtedness, this Mortgage or the rights and interest created herein, or the Premises, including without limitation the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof (in all such instances, Mortgage agrees to pay all of Lender's attorney's fees, costs and expenses even if no formal suit, action, or legal proceeding is filed); and any such amounts paid by Lender shall be added to the indebtedness secured by this Mortgage.

1.9 Subrogation. Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Secured Indebtedness or otherwise discharged or paid by Lender.

Mortgagor waives all rights of subrogation until all indebtedness and obligations secured hereby have been paid in full.

1.10 Transfer of the Premises. Mortgagor shall not sell, transfer, lease, let, mortgage, pledge, encumber, create a security interest in, or otherwise hypothecate all or any part of the Premises without Lender's prior written consent. Lender may, in its sole discretion, consent to any such sale or transfer, but such consent shall not be deemed to constitute a novation. Should Lender consent to such sale or transfer, it will be deemed to have waived its right to declare an Event of Default for a breach of this paragraph 1.10 only if, prior to the consummation of such sale or transfer: (a) Lender determines that the credit of the purchaser or transferee is satisfactory; (b) the purchaser or transferee agrees to pay interest on the amount owed to Lender under the Note and under this Mortgage at such rate as Lender may then require; (c) the purchaser or transferee executes an assumption agreement acceptable to Lender that obligates the purchaser or transferee to keep all the promises and agreements made in the Note and this Mortgage whether according to their original terms or as amended pursuant to the assumption agreement; and (d) the purchaser or transferee pays the transfer fee then required by Lender. The foregoing provisions will apply to each and every sale and transfer whether or not the Lender has consented to any previous sale or transfer.

1.11 Limit of Validity. If from any circumstance whatsoever the fulfillment of any provision of this Mortgage, the Note or the Loan Agreement, at the time that the performance of such provision is due, involves transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage, the Note or the Loan Agreement that is in excess of the applicable limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this paragraph 1.11 shall control every other provision of this Mortgage, the Note and the Loan Agreement.

1.12 Periodic Certifications. Mortgagor shall deliver to Lender, at any time within ten (10) days after notice and demand by Lender, but not more frequently than once per month, a statement in such reasonable detail as Lender may request, certified by the Mortgagor, of any and all expenses related to and income derived from the Premises for the twelve (12) calendar months preceding the giving of such notice, and, on demand, Mortgagor shall furnish to Lender with convenient facilities for the audit and verification of any such statement.

1.13 Hazardous Materials. Mortgagor warrants and represents to Lender that, to the best of Mortgagor's knowledge, no portion of the Premises has been used for the storage or dumping of, or has become contaminated with, any hazardous materials as defined in any federal, state or local law, ordinance or regulation from time to time in effect. Mortgagor covenants and agrees: (i) not to cause or permit the Premises to be used for the storage or dumping of any such hazardous materials; and (ii) promptly to remove and clean up any such hazardous materials that may now or hereafter be discovered on the Premises, at Mortgagor's sole cost and expense.

1.14 Status of Title. Mortgagor represents and warrants that it is the lawful owner of the Premises in fee simple, subject to no liens or encumbrances, except for covenants, conditions, restrictions, easements and rights-of-way of record, if any. Mortgagor represents and warrants that it has full right, power and authority to convey and mortgage the Premises and to execute this Mortgage. Mortgagor also agrees to protect, preserve and defend its interest in the Premises and title thereto, including full performance of any prior claim or lien; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Premises, the lien of this Mortgage thereon or any of the rights of Lender hereunder, and to pay all costs and expenses incurred by Lender in or in connection with any such action or proceeding, including attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against Lender. Lender shall be reimbursed for any such costs and expenses in accordance with the provisions of paragraph 1.8 hereof. Lender may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may deem advisable or may settle or compromise the same and, for any of such purposes, may expend and advance such sum of money as it may deem necessary, and Lender shall be reimbursed therefore in accordance with the provisions of Paragraph 1.8 hereof.

1.15 Representations and Warranties of Mortgagor. Mortgagor and each signatory who signs on its behalf hereby represents and warrants as follows:

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(a) That this Mortgage, the Note and all other instruments executed and delivered to Lender concurrently herewith were executed in accordance with the requirements of law and are valid, binding and enforceable in accordance with their terms.

(b) That the execution of this Mortgage, the Note and any other instrument executed and delivered to Lender in connection with this transaction, and the full and complete performance of the provisions thereof, will not result in any breach of, or constitute a default under, any indenture, mortgage, bank loan or credit agreement or other instrument to which Mortgagor is a party or by which Mortgagor is bound, and will not result in the creation of any lien, charge or encumbrance (other than those contained herein or in any instrument delivered to Lender in connection with this transaction) upon any Premises or assets of Mortgagor.

(c) That as of the date of execution of this Mortgage it is the owner of the Premises.

(d) The improvements on the Premises, existing and proposed, and their intended use will, when completed, comply fully with all applicable environmental, air quality, zoning, planning, building, subdivision and other governmental laws and requirements. Mortgagor specifically warrants that the existing improvements on each Premises comply with the applicable zoning ordinance.

(e) The Premises is composed of one or more whole tax parcels with a separate tax assessment, independent of any land or improvements not encumbered by this Mortgage.

(f) There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against the Premises. There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against Mortgagor, which might, so far as Mortgagor can now foresee, have a material adverse effect on Mortgagor's ability to repay the Note or to perform the provisions of this Mortgage or of any other document evidencing, securing or executed in connection with this transaction. Mortgagor has disclosed all litigation pending and threatened against Mortgagor to Lender in writing, and will disclose all future such litigation to Lender in writing within thirty (30) days of its receipt of notice thereof.

(g) The Premises complies with all applicable subdivision laws, ordinances, regulations, rules and other requirements.

(h) Mortgagor is not in default with respect to any existing indebtedness or obligation.

(i) Mortgagor has the power and authority to enter into and perform all terms and conditions of this Mortgage, the Note, and all other documents evidencing, securing or executed in connection with this transaction, and to incur the obligations herein and therein provided for.

(j) Mortgagor has not made any agreement or taken any action which may cause anyone to become entitled to a commission or finder's fee as a result of the making of any loan to Mortgagor by Lender.

1.16 Additional Representations and Covenants. Mortgagor makes the following representations and the covenants and agreements specified as follows:

(a) Additional Representations and Warranties. Mortgagor represents and warrants to Lender as follows, and acknowledges that such representations and warranties shall be continuing representations and warranties from Mortgagor to Lender:

(i) Mortgagor is and shall remain in compliance with the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation, regulations or executive orders relating thereto, and the Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act (USA Patriot Act of 2001), as amended, and any other enabling legislation, regulations or executive orders relating thereto;

(ii) Mortgagor is and shall remain in compliance with 31 U.S.C., Section 5313, as amended, 31 C.F.R. Section 103.22, as amended, and any similar laws or regulations involving currency transaction reports or disclosures relating to transactions in currency of more than \$10,000.00, or of more than any other minimum amount specified by any laws or regulations; and

(iii) Mortgagor (i) is not a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) does not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not otherwise associated with any such person in any manner violative of Section 2, or (iii) is not a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

(b) **Additional Covenant.** Mortgagor covenants and agrees with Lender that no part of any loan proceeds or advances evidenced by or referenced in this Mortgage and Security Agreement, and no part of any other amounts or sums derived from any property which secures repayment of such loan proceeds or advances, including, without limitation, any accounts, payment intangibles, money, rents, issues or profits, will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

1.17 **Extensions and Modifications.** From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein, without affecting the guaranty of any person, corporation, partnership or other entity for payment of indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Premises, Lender may, at Lender's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any other lienholders or guarantors, and without liability on Lender's part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal Note or notes therefor, modify the terms and time of payment of said indebtedness, release from this Mortgage any part of the Premises, take or release other or additional security, reconvey any part of the Premises, consent to the granting of any easement or dedication, join in any extension or subordination agreement and agree in writing with any person obligated to pay the same to modify the rate of interest or period of amortization of the indebtedness secured hereby or change the amount of the installments payable thereon. Mortgagor shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Mortgagor's request.

ARTICLE II

2.1 **Events of Default.** Each of the following events shall constitute an "Event of Default" under this Mortgage:

- (a) should Borrower fail to pay the Secured Indebtedness or any part thereof when due;
- (b) should any warranty or representation of Mortgagor herein contained, or of Borrower as contained in any instrument, transfer, certificate, statement, conveyance, assignment or loan agreement given with respect to the Secured Indebtedness, prove untrue or misleading in any material respect;
- (c) should the Premises be subject to actual or threatened waste, or any part thereof be removed, demolished or materially altered so that the value of the Premises be diminished except as provided for in 1.4;
- (d) should any federal tax lien or claim of lien for labor or material be filed of record against Borrower or against the Premises and not be removed by payment or bond within thirty (30) days from date of recording;

(e) should a third party assert the priority of a lien, security interest, or security deed over that of this Mortgage in any legal proceeding;

(f) should Borrower or any guarantor of the Secured Indebtedness (Borrower and the guarantors, if any, are referred to in this paragraph 2.1 collectively as the "Obligors" and individually as an "Obligor") make any assignment for the benefit of creditors; or should a receiver, liquidator or trustee of any of the Obligors or of any of an Obligor's properties be appointed; or should any petition for the bankruptcy, reorganization or arrangement of an Obligor, pursuant to the Bankruptcy Code (11 U.S.C. § 101, et al.) or any similar federal or state statute, be filed and not dismissed within ninety (90) days; or should an Obligor be adjudicated as bankrupt or insolvent; or should an Obligor in any proceeding admit insolvency or an inability to pay debts as they fall due; or should an Obligor, if a corporation, be liquidated or dissolved or its articles of incorporation expire or be revoked, or if a partnership or business association, be dissolved or partitioned, or if an individual, die, or if a trust, be terminated or expire;

(g) should Borrower fail to keep, observe, perform, carry out and execute in every particular way the covenants, agreements, obligations and conditions set out in, or should a breach, default, event of default or failure of condition or performance (however denominated), occur under, this Mortgage, the Note, the Loan Agreement between Borrower and Lender, or any other document or instrument securing or given with respect to the Secured Indebtedness (this Mortgage, the Note, the Loan Agreement and all such other documents and instruments are collectively referred to herein as the "Loan Documents");

(h) should any event occur under any instrument, deed or agreement, given or made by an Obligor to or with any third party which would authorize the acceleration of any debt to any such third party, the acceleration of which would materially affect such Obligor's ability to pay when due any amounts owed to Lender;

(i) should Lender at any time in good faith deem itself insecure in the timely repayment of the Secured Indebtedness or in the sufficiency of the security and collateral therefor;

(j) should there occur any sale, transfer, leasing, or encumbering of all or any portion of the Premises without the prior written consent of Lender, which consent may be withheld or delayed in the sole discretion of Lender;

(k) should there occur any change in the legal or equitable ownership of a controlling interest in Mortgagor or in the legal or equitable ownership of, or the management of, the Premises, if in Lender's sole judgment such change materially and adversely affects the ability of Borrower to perform its obligations under the Loan Documents; or

(l) should Borrower default in the performance of its obligations of payment or performance under any other present or future loan made by Lender to Borrower.

2.2 Remedies, Enforcement, etc.; Power of Sale. Upon the occurrence of an Event of Default, the Lender shall have the following rights and remedies:

(a) The Lender shall have the right, at its option, to declare all amounts payable under the Note and all other Secured Indebtedness to be immediately due and payable, without notice or demand, time being of the essence of this Mortgage, whereupon the same shall become immediately due and payable, regardless of the maturity date thereof, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

(b) The Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law. This includes, but is not limited to judicial foreclosure, by filing suit with a court of competent jurisdiction. In lieu of or in addition to exercising such power of judicial foreclosure, Lender may sell the Premises at public outcry to the highest bidder for cash in front of the main entrance of the courthouse of the county where said Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper of general circulation

published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. Lender may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect. The proceeds of any foreclosure pursuant to this paragraph shall be applied as follows:

(i) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said Secured Indebtedness or the foreclosure of this Mortgage;

(ii) Second, to the repayment of any monies, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens or debts as hereinabove provided;

(iii) Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest to date of sale; and

(iv) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Premises at the time of the sale, after deducting any expenses of ascertaining who is such owner.

(c) If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

(d) Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

(e) In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over, or by any other manner now or hereafter provided by Alabama law.

(f) Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or laws now or hereafter 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 thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, 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 herein granted.

(g) Mortgagor hereby 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 Secured Indebtedness, or any part thereof.

(h) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor. If Mortgagor shall for any reason fail to surrender or

deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Premises to Lender. Mortgagor will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage. Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this paragraph 2.2 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender. Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(i) If the Mortgagor and the Lender have contemporaneously entered into a building loan agreement or any other agreement by any other designation containing remedies exercisable by the Lender upon the occurrence of an Event of Default thereunder, then the Lender shall be entitled to exercise such rights and remedies as are contained in such separate agreement. Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Mortgagor will pay unto Lender upon demand all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph 2.2, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

(j) Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and Lender may pursue inconsistent remedies.

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

(l) In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

(m) In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

(n) After consulting with and considering the advice of independent legal counsel selected by Mortgagor, Mortgagor makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan as defined in the Loan Agreement: (i) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder 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 Mortgagor hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder; (ii) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (A) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (B) take other or additional security for the payment of any of the Secured Indebtedness; (C) waive or fail to exercise any right granted herein or in the Note; (D) 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; (E) consent to the filing of any map, plat or replat affecting the Premises; (F) consent to the granting of any easement or other right affecting the Premises; (G) make or consent to any agreement subordinating the security title or lien hereof, or (H) 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 related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings; (iii) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies Lender may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. To the fullest extent that Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time

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insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshalling, stay of execution, and extension. Mortgagor further agrees that if any law referred to in this paragraph and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties; and (iv) It is mutually agreed by and between Mortgagor and Lender that the respective parties waive trial by jury in any action, claim, suit, proceeding, or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Mortgage and/or the conduct of the relationship between Mortgagor and Lender.

2.3 Receiver. Lender, in any action to foreclose this Mortgage, or upon any Event of Default, shall be at liberty to apply for the appointment of a receiver of the rents and profits or of the Premises or both without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Premises as security for the amounts due the Lender, or the solvency of any person or corporation liable for the payment of such amounts.

2.4 Sale in Parcels. In case of any sale under this Mortgage by virtue of the exercise of the power herein granted, or pursuant to any order in any judicial proceedings or otherwise, at the election of Lender the Premises or any part thereof may be sold in one parcel and as an entirety, or in such parcels, manner or order as Lender in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish or exhaust the power unless the entire Premises are sold or the Secured Indebtedness paid in full.

2.5 Waiver of Homestead. Mortgagor hereby waives and renounces all right of homestead exemption in the Premises provided by the Constitution or Laws of the United States, the State of Alabama, or any other State in the United States.

2.6 Lender's Right to Sue. Lender shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, 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 all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Mortgagor, including an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

2.7 No Obligation to Marshal Assets. In realizing upon the security and collateral for the Secured Indebtedness during the subsistence of an Event of Default, Lender shall have no obligation whatsoever to marshal assets, or to realize upon all of such security and collateral; rather, Lender shall have the right to realize upon all or any part of such collateral from time to time as Lender deems appropriate.

2.8 Rights Cumulative. The rights of Lender, granted and arising under the clauses and covenants contained in this Mortgage and the other Loan Documents, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Lender may have at law or in equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages, and preservation of security as provided at law. No act of Lender shall be construed as an election to proceed under any one provision herein or under the Note or any of the other Loan Documents to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

2.9 Discontinuance of Proceedings. If Lender commences the enforcement of any right, power or remedy, whether afforded under this Mortgage or otherwise, and including without limitation foreclosure or entry upon the Premises, and such enforcement is then discontinued or abandoned for any reason, or is determined adversely to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights

hereunder, without waiver of any Event of Default and without novation, and all rights, powers and remedies of Lender shall continue as if no such enforcement had been commenced.

2.10 Deficiency; Liabilities and Rights After Default. To the extent permitted by law and by the Note, Mortgagor shall be and remain liable for any deficiency remaining after sale either pursuant to the Uniform Commercial Code, the power of sale created hereby, or judicial foreclosure. After default or breach, Mortgagor shall pay Lender's attorneys' fees, Lender's fees and its costs and expenses incurred as a result of said default or breach, and if suit is brought, all costs of suit, all of which sums shall be secured by this Mortgage. Mortgagor's statutory rights of reinstatement, if any, are expressly conditioned upon Mortgagor's payment of all sums required under the applicable statute and performance of all required acts.

2.11 Right of Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Lender is hereby authorized by Mortgagor at any time or from time to time, without notice to Mortgagor, any guarantor or endorser of the Note or any other person, any such notice being hereby expressly waived, to set off any obligations or liabilities any time held or owing by Lender to or for the credit or the account of Mortgagor or any guarantor or endorser of the Note against the obligations and liabilities of Mortgagor or any such guarantor or endorser to Lender, including, but not limited to, all claims of any nature or description arising out of or connected with this Mortgage or the Note or any other document evidencing, securing or executed in connection with the loan evidenced by the Note, irrespective of whether or not (a) Lender shall have made any demand hereunder or (b) Lender shall have declared the principal of and interest on the Note to be due and owing and although said obligations and liabilities, or any of them, shall be contingent or unmatured.

2.12 Future Advances. Upon request of Mortgagor, Lender, at Lender's option so long as this Mortgage secures indebtedness held by Lender, may make future advances to Mortgagor. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage, the Note or any other Loan Document, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby. The maximum amount secured hereby, including all such future advances, shall not exceed the sum of \$572,678.00, plus interest, costs, fees and expenses.

ARTICLE III

3.1 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Mortgagor and Lender and their respective legal representatives, heirs, executors, administrators, successors and assigns. (No right in Mortgagor to sell, transfer or encumber the Premises may be inferred from this.)

3.2 Terminology. The words "Mortgagor" and "Lender" shall include the legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto, and all those holding under either of them. If more than one party shall execute this Mortgage, the term "Mortgagor" shall mean all parties signing, and each of them, and each agreement, obligation and Secured Indebtedness of Mortgagor shall be and mean the several as well as joint undertaking of each of them. Pronouns used herein shall include both genders and both the singular and the plural, and the grammatical construction of sentences shall be deemed conformed thereto.

3.3 Captions for Convenience. The captions and headings in this Mortgage have been provided for convenience only and shall not limit the scope or extent of any provision hereof.

3.4 Severability. If any provision of this Mortgage should be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the validity, legality and enforceability of the remaining provisions of this Mortgage.

3.5 Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

3.6 Time of the Essence. Time is of the essence of this Mortgage and each of the other Loan Documents.

3.7 Notice, Etc. Notices and other communications hereunder shall be effective if given in writing by hand delivery to the recipient thereof, or by certified United States mail, postage and charges prepaid, addressed to the recipient at the addresses for Mortgagor and Lender set forth on the first page of this Mortgage. Notices given by hand shall be effective upon receipt. Notices given by certified mail shall be effective on the third (3rd) day after deposit in the United States mail, addressed as aforesaid. Either party hereto may change the address for notice by notifying the other party hereto of the new address in the manner set forth herein for giving notices. (No obligation on the part of Lender to provide any notice whatsoever may be inferred from this Section.)

3.8 No Implied Waiver by Lender. No indulgence or departure at any time by the Lender from any of the provisions hereof, or of any obligation hereby secured, shall modify the same or relate to the future or waive future compliance therewith by the Mortgagor.

3.9 WAIVER OF MORTGAGOR'S RIGHTS. MORTGAGOR EXPRESSLY: (1) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN IN THIS MORTGAGE TO LENDER TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE OR OTHER LOAN DOCUMENTS; (2) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY PROVIDED TO LENDER, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS MORTGAGE OR OTHER LOAN DOCUMENTS; (3) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR, AND MORTGAGOR HAS BEEN AFFORDED AN OPPORTUNITY TO CONSULT WITH COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; (4) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR; AND (5) AGREES THAT MORTGAGOR'S RIGHT TO NOTICE SHALL BE LIMITED TO THOSE RIGHTS TO NOTICE PROVIDED BY THIS MORTGAGE AND OTHER LOAN DOCUMENTS.

3.10 Usury Disclaimer. Any provision contained herein or in the Note or in any other instrument now or hereafter evidencing, securing or otherwise relating to any secured indebtedness to the contrary notwithstanding, neither Lender nor the holder of any other secured indebtedness shall be entitled to receive or collect, nor shall Mortgagor be obligated to pay, interest on any of the secured indebtedness in excess of the maximum rate of interest at the particular time in question, if any, which, under applicable law, Lender is then permitted to charge Mortgagor on the Note (herein the "Maximum Rate") provided that the Maximum Rate shall be automatically increased or decreased as the case may be, without notice to Mortgagor from time to time as of the effective time of each change in the Maximum Rate, and if any provision herein or in the Note or in such other instrument shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by applicable law, the provisions of this paragraph shall control and shall override any contrary or inconsistent provision herein or in the Note or in such other instrument. The intention of the parties being to conform strictly to the usury limitations under applicable law, the Note, this Mortgage, and each other instrument now or hereafter evidencing or relating to any secured indebtedness shall be held subject to reduction to the amount allowed under said applicable law as now or hereafter construed by the courts having jurisdiction.

ARTICLE IV

4.1 After Acquired Collateral. Mortgagor covenants and agrees that, if and to the extent that any of its respective rights, titles, estates and interests in any of the Premises or Collateral is not acquired until after delivery of this Mortgage, this Mortgage shall nonetheless apply thereto and the security interest of Lender hereby created shall attach to such Premises or Collateral at the same time as Mortgagor acquires rights therein, without the necessity of

any further mortgage, charge, pledge, assignment or assurance and thereafter such Premises and Collateral shall be subject to the security interests created under this Mortgage.

4.2 Additional Security Documents. Mortgagor has heretofore executed and delivered, and will hereafter execute and deliver, to or for the benefit of Lender certain other mortgages, deeds of trust, copies of this Mortgage or other documents and instruments encumbering or relating to certain other property of Mortgagor located in other counties in the States of Alabama, and/or in various other Counties and States of The United States of America, and as additional security for the Secured Indebtedness (collectively, sometimes, the "Additional Mortgages"). The Additional Mortgages and this Mortgage shall all constitute security for the Note, the indebtedness referred to therein and the Secured Indebtedness. If there should be an Event of Default in any of the terms, conditions or obligations of any of the Additional Mortgages, such default shall constitute an Event of Default under this Mortgage, and vice versa. The Lender may foreclose or otherwise enforce such security under the Additional Mortgages and, in any order as Lender may choose, enforce its rights, powers and remedies with respect to, and realize upon, such security or such guaranty or otherwise enforce its rights, powers and remedies with respect to, and realize upon, such security, either before or concurrently with or after a foreclosure or other enforcement of this Mortgage, any other such security or any of the other Loan Documents (whether or not every aspect of any such foreclosure or other enforcement may be commercially reasonable), all without impairing or being deemed to have waived any rights, benefits, liens or security evidenced by or arising under or in connection with this Mortgage, any other such security or any of the other Loan Documents, and without being deemed to have made an election thereby or to have accepted the benefits of such security (or the proceeds thereof) in full settlement of the Secured Indebtedness and of its rights with respect thereto. No judgment, order or decree rendered against Mortgagor with respect to any such other security or any of the other Loan Documents, whether rendered in the State in which the Collateral is situated or elsewhere, shall in any manner affect the security of this Mortgage, and any deficiency or other debt represented by any such judgment, order or decree shall, to the extent permitted by law, be secured by this Mortgage to the same extent that the Secured Indebtedness shall have been secured by this Mortgage prior to the rendering of such judgment, order or decree. Mortgagor for itself and for any and all persons who may at any time claim through or under Mortgagor or who hereafter may otherwise acquire any interest in or title to all or any part of the Premises and Collateral or any other security for the Secured Indebtedness, hereby irrevocably waives and releases, to the extent permitted by law, all benefit of any and all laws that would limit or prohibit the effectiveness of anything set forth in this Section.

Notwithstanding anything contained herein to the contrary, Lender shall be under no duty to Mortgagor or any other person or entity, including, without limitation, any holder of a junior, senior or subordinate mortgage on the Premises or the Collateral or any part thereof or on any other security held by Lender, to exercise, exhaust or first resort to all or any of the rights, powers and remedies available to Lender, whether under this Mortgage, the other Loan Documents or the Additional Mortgages prior to the sale of the Premises and/or Collateral or any other enforcement of this Mortgage. Furthermore, Mortgagor and such other persons and entities waive all rights relating to marshaling and agree that Lender shall not be compelled to release any part of the security of this Mortgage, the other Loan Documents or the Additional Mortgages or be prevented from foreclosing or enforcing this Mortgage, the other Loan Documents or the Additional Mortgages upon all or any part of such security unless the Secured Indebtedness shall have been paid in full and that Lender shall not be compelled to accept or allow any apportionment of the Secured Indebtedness to or among any of the property encumbered by this Mortgage, the other Loan Documents or the Additional Mortgages.

[Signature page follows]

IN WITNESS WHEREOF, this Mortgage has been duly executed under seal by Mortgagor as of the day and year first above written.

"Mortgagor"

RC BIRMINGHAM, LLC, an Alabama limited liability company

By: [Signature]
David C. Frye, as Manager

Print Name: _____

Print Name: _____

STATE OF Arkansas

COUNTY OF Washington

I, the undersigned Notary Public in and for said County, in said State, hereby certify that David C. Frye, as Manager of RC Birmingham, LLC, an Alabama limited liability company, on behalf of such company. He/She signed the foregoing instrument, and who is (check one) ☒ personally known to me, or who produced a driver's license for identification, and acknowledged before me on this day that, being informed of the contents of said instrument, she/he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this 23 day of October, 2019.

[Signature]
Notary Public

My Commission Expires: 5-29-22

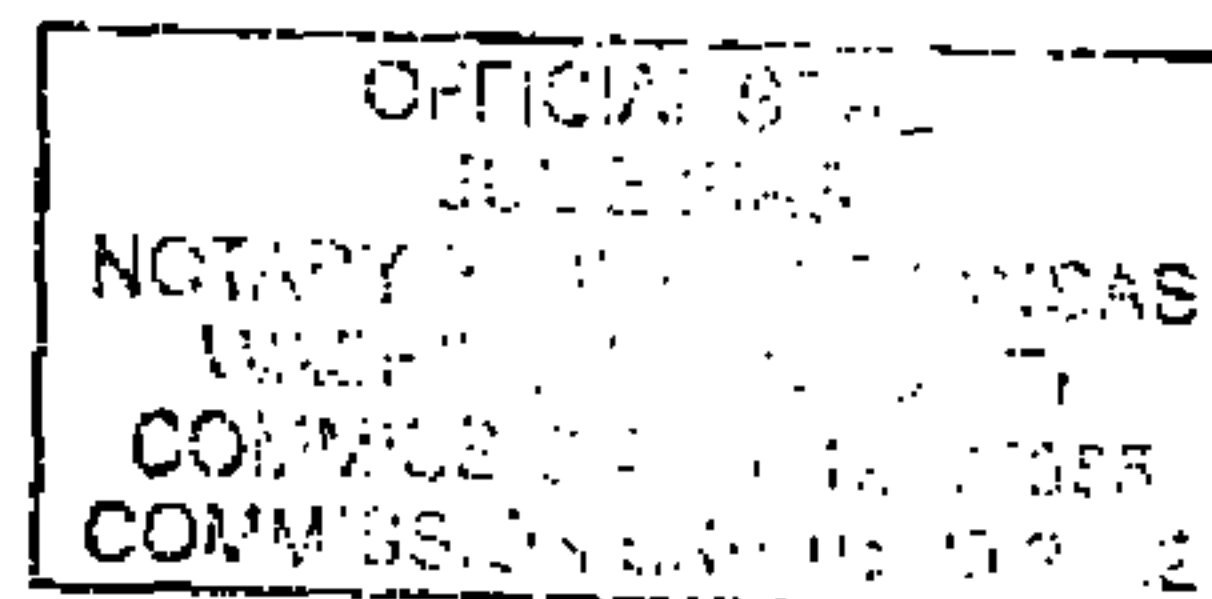


EXHIBIT "A"

Lots 147, 148, 215, 216 and 217 according to the Map of The Lakes at Hidden Forest Phase 3, as recorded in Map Book 51, Page 1, in the Probate Office of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
10/28/2019 08:17:57 AM
\$932.05 CHERRY
20191028000394180

Allen S. Boyd