

20191108000415240
11/08/2019 08:35:46 AM
MORT 1/26

This Instrument Prepared By:
Austin A. Averitt
Butler Snow LLP
1819 Fifth Avenue North, Suite 1000
Birmingham, Alabama 35203
Phone: (205) 297-2210

NOTWITHSTANDING ANYTHING HEREIN, THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY SHALL BE FIVE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$525,000.00). ACCORDINGLY, \$787.00 IN MORTGAGE RECORDING TAX SHALL BE DUE AND PAYABLE UPON THE RECORDING OF THIS MORTGAGE.

ACCOMMODATION MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT

STATE OF ALABAMA)

COUNTY OF SHELBY)

THIS ACCOMMODATION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT (this “**Mortgage**”) made this 7th day of November, 2019, by **HELENA PROPERTIES, LLC**, an Alabama limited liability company with an address of 100 Centerview Drive, Suite 220, Birmingham, Alabama 35216 (the “**Mortgagor**”) in favor of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation, whose address is 850 Shades Creek Parkway, Suite 200, Birmingham, Alabama 35209 (together with its successors or assigns, the “**Mortgagee**”).

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 7-9A-102(a)(40) AND 7-9A-502 OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, SOUTHMARK PROPERTIES, L.L.C., an Alabama limited liability company (the “**Borrower**”) is indebted to Mortgagee on a series of loans in the principal sum of up to Four Million Nine Hundred Thousand and No/100 Dollars (\$4,900,000.00) (as amended, extended, restated, modified or refinanced, the “**Loan**”), as evidenced by those certain promissory notes payable to Mortgagee (individually and collectively, as amended, extended, restated, modified or refinanced, collectively, the “**Note**”) and as further described in that certain Loan Agreement of even date herewith by and between Borrower and Mortgagee (the “**Loan Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Loan Agreement);

WHEREAS, Mortgagor is a subsidiary of Borrower and will directly benefit from the Loan being made available to Borrower by Mortgagee, and Mortgagor acknowledges that there is adequate consideration for the execution and delivery of this Mortgage;

WHEREAS, as a condition precedent to making the Loan as set forth in the Loan Agreement, Mortgagee has required that Mortgagor execute this Mortgage as security for the Loan and the Other Indebtedness (as defined below); and

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

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

NOW, THEREFORE, Mortgagor, in consideration of Mortgagee's making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Agreement and set forth in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Loan Agreement, the Note and such other documents arising out of or related thereto, collectively, the "**Loan Documents**") and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto Mortgagee, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of Mortgagee or hereafter acquired by Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "**Mortgaged Property**") to wit:

(a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit "A"** attached hereto and made a part hereof (the "**Land**");

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, whatsoever now or hereafter owned by 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, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, and equipment actually are located on or adjacent to the

Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the “Improvements”);

(c) All accounts, general intangibles, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, 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 Improvements;

(d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Mortgagee hereby is authorized on behalf of and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Mortgagee may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys’ fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;

(e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing;

(f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a) - (e) above, 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) - (e) above.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if Borrower or Mortgagor shall fully pay or cause to be fully paid to Mortgagee the principal and interest payable with respect of the Loan, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall pay or cause to be paid all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, reasonable attorneys' fees and shall pay any and all Other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Loan Agreement, in the other Loan Documents and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of Mortgagor and Borrower, all without fraud or delay, and (ii) Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Loan Agreement, any other Loan Document or any Other Indebtedness Instrument (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

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

ARTICLE I

GENERAL

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

1.02 Warranty of Title. Mortgagor hereby warrants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that, except as set forth in **Exhibit B** hereto, the same is free and

clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

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

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

1.05 Other Taxes, Utilities and Liens.

(a) Mortgagor shall pay promptly, when and as due, and, if requested, will exhibit promptly to Mortgagee receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of Mortgagee in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) Mortgagor promptly shall pay and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Mortgagee in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Mortgagee.

1.06 Insurance.

(a) Mortgagor shall procure or cause tenant to procure, deliver to, and maintain for the benefit of Mortgagee during the term of this Mortgage insurance policies in such amounts as Mortgagee shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as Mortgagee may require. The form of such policies and the companies issuing them shall be acceptable to Mortgagee, and, unless otherwise agreed by Mortgagee in writing, shall provide for coverage without coinsurance or deductibles. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to Mortgagee, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) Mortgagee hereby is authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. The net proceeds of insurance shall be applied pursuant to the terms of the Loan Agreement, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Mortgagee shall not be liable to Mortgagor or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required by Mortgagee during the continuation of an Event of Default, Mortgagor shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Mortgagee to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general

funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand of Mortgagee, Mortgagor agrees to deliver to Mortgagee such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Mortgagor with Mortgagee pursuant to this Paragraph 1.06 to enable Mortgagee to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Mortgagor or Borrower under the Loan Agreement, any other Loan Documents, or any Other Indebtedness Instruments, Mortgagee may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Mortgagee, but, unless otherwise agreed by Mortgagee in writing, no application of insurance proceeds to the Loan, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness or any such other obligations.

1.07 Condemnation. Mortgagee shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to Mortgagee, which, shall be applied by Mortgagee pursuant to the terms of the Loan Agreement, without affecting the lien of this Mortgage, and any balance of such moneys then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as Mortgagee may require. Mortgagor promptly shall notify Mortgagee in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. Mortgagee shall be entitled to retain, at the expense of Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Mortgagee shall be under no obligation to Mortgagor or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

(a) Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior express written consent of Mortgagee; provided, however, that so long as no Default or Event of Default then exists, Mortgagor may make non-structural improvements to the Mortgaged Property. With respect to any such items owned by Mortgagor (but excluding any property of tenants of the Mortgaged Property), Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Fifty Thousand Dollars (\$50,000.00) for any single transaction, or a total of Two Hundred Thousand Dollars (\$200,000.00) in any one year, upon

replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor shall give immediate written notice of the same to Mortgagee.

(d) Subject to the rights of tenants of the Mortgaged Property, upon forty-eight (48) hours' advance written notice, Mortgagee hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect Mortgagor's or Mortgagor's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagor promptly shall restore or cause to be restored the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless Mortgagee shall apply any net proceeds from the casualty in question and held by Mortgagee, in accordance with the Loan Agreement, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, Mortgagor promptly shall restore, repair or alter or cause to be restored, repaired or altered the remaining property in a manner satisfactory to Mortgagee; provided, however, that if there are condemnation proceeds or awards, Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless Mortgagee shall apply any net proceeds or awards from the condemnation and held by Mortgagee, in accordance with the Loan Agreement, toward restoring the damaged improvements.

1.09 Further Assurances; After-Acquired Property.

(a) At any time, and from time to time, upon request by Mortgagee, Mortgagor, at Mortgagor's expense, will make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Mortgagor or Borrower under the Loan Agreement, this Mortgage, the Loan Documents and the Other Indebtedness Instruments, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, subject only to the Permitted Encumbrances set forth on **Exhibit B** attached hereto and incorporated herein. Upon any failure by Mortgagor so

to do, Mortgagee may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after Mortgagee has given value under the Loan) attached to and/or used in the operation of the Mortgaged Property or any part thereof, but excluding any property of tenants of the Mortgaged Property.

(b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by Mortgagor by whatsoever means, including that in the event Mortgagor is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of Mortgagor or Mortgagee or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Mortgagee's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness, and obligations set forth above, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

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

1.11 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof unless the failure to do so would not be reasonably expected to have a material and adverse effect. If requested by Mortgagee, Mortgagor shall furnish Mortgagee with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Mortgagee,

which shall not be unreasonably withheld or delayed. Mortgagor shall not accept payment of rent more than one (1) month in advance without the express written consent of Mortgagee. If requested by Mortgagee, Mortgagor shall execute and deliver to Mortgagee, as additional security, such other documents as may be requested by Mortgagee to evidence further the assignment to Mortgagee hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. Mortgagor shall not cancel, or surrender (except pursuant to the terms of the lease) or modify any lease affecting the Mortgaged Property or any part thereof to the extent it would reduce rent, shorten the term or otherwise have a material adverse effect on Mortgagor without the written consent of Mortgagee, which will not be unreasonably withheld or delayed.

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

1.13 Performance by Mortgagee of Defaults by Mortgagor. If Mortgagor or Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then Mortgagee, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon calculated in the manner set forth in the Loan Agreement, and at the default interest rate specified in the Loan Agreement, or, if no default interest rate is specified, then at the rate set forth in the Loan Agreement, plus two percentage points (2%). Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Subject to the rights of tenants of the Mortgaged Property, Mortgagee hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor for trespass or otherwise.

1.14 Intentionally Omitted.

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

1.16 Alienation or Sale of Mortgaged Property. Mortgagor shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property without obtaining the express written consent of Mortgagee at least thirty (30) days prior to such conveyance. If Mortgagor should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Mortgagee, then, in such event, the entire balance of the indebtedness (including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Mortgagee may elect) shall without notice become due and payable forthwith at the option of Mortgagee.

1.17 Intentionally Omitted.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Mortgagee, Mortgagor shall and hereby does grant and convey to Mortgagee, its agents, representatives, contractors, and employees, to be exercised by Mortgagee following an Event of Default hereunder or under any of the other Loan Documents or Other Indebtedness Instruments, subject to the rights of any tenant of the Mortgaged Property, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein “**Inspections**”), as Mortgagee, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to Mortgagee, Mortgagee shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by Mortgagee with respect to any Inspections which Mortgagee may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. Mortgagor shall: (a) use the Mortgaged Property solely for the uses of the Mortgaged Property as employed on the date hereof, or otherwise as permitted in writing by Mortgagee; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) the use of the Mortgaged Property, and (ii) the construction, completion and occupancy of

the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a “**Governmental Authority**” means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) “**Governmental Requirements**” means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II

ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Mortgagor, in consideration of Mortgagee’s making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to reasonable attorneys’ fees and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Agreement, in the other Loan Documents and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto Mortgagee all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the 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 Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Mortgagee, and Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

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

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

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

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

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

ARTICLE III **SECURITY AGREEMENT**

3.01 Grant of Security Interest. Mortgagor (the “debtor” for purposes of the Uniform Commercial Code), in consideration of Mortgagee’s (the “secured party” for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to reasonable attorneys’ fees and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Agreement, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Mortgagee title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the “**Collateral**”).

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

3.03 Financing Statements. To the best of Mortgagor’s knowledge, no financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Mortgagor and Mortgagee. Mortgagee may record one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and Mortgagor will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable. Mortgagor authorizes Mortgagee to prepare and to file financing statements covering the Collateral. Mortgagor promises to pay to Mortgagee the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

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

- (a) This Mortgage is being obtained primarily for business purposes;
- (b) All the Collateral will be kept at the address of Mortgagor shown in Paragraph 5.07(a) or, if not, at the real property described in **Exhibit “A”** hereto; and

(c) Mortgagor's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to Mortgagee. Mortgagor promptly shall advise Mortgagee in writing of any change in Mortgagor's name.

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

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

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

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

(a) Failure by Mortgagor or Borrower to pay or cause to be paid as and when due and payable or within ten (10) days thereafter any installment of principal, interest or escrow deposit, or other charge payable under the Loan Agreement, this Mortgage or under any other Loan Document or Other Indebtedness Instrument;

(b) Failure by Mortgagor to duly observe any other covenant, condition or agreement of this Mortgage, of the Loan Agreement, of any of the other Loan Documents, and if such failure is curable, the continuance of such failure for thirty (30) days or more after written notification thereof, or the occurrence of any other Event of Default under any of the other Loan Documents or Other Indebtedness Instrument, subject to any notice, grace or cure provisions therein;

(c) The filing by Mortgagor, any Borrower or any guarantor of any indebtedness secured hereby or of any of Mortgagor's obligations hereunder, of a voluntary petition in bankruptcy or Mortgagor's or any such guarantor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor, any Borrower or any such guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's, any Borrower's or any such guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor, any Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due;

(d) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against Mortgagor, any Borrower or any guarantor of any of the indebtedness secured hereby or of any of Mortgagor's or any Borrower's obligations hereunder, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor, any Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, without the consent or acquiescence of Mortgagor, any Borrower or any such guarantor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(e) The filing or enforcement of any other mortgage, lien or encumbrance on the Mortgaged Property or any part thereof, or of any interest or estate therein and the same is not removed or satisfied within thirty (30) days; or

(f) an Event of Default under any other Loan Document, subject to any grace, notice or cure provisions therein.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Mortgagee may elect) with interest accrued thereon (or such parts as Mortgagee may elect) shall, at the option of Mortgagee, become due

and payable without notice or demand, time being of the essence. Any omission on the part of Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Mortgagee to Enter and Take Possession.

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

(b) Upon every such entering upon or taking of possession, Mortgagee, as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Mortgagee) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Mortgagee) and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Mortgagee, all as Mortgagee from time to time may determine to be to its best advantage; and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Mortgagee), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the moneys so received by Mortgagee in accordance with the Loan Agreement.

(c) Whenever all such Events of Default have been cured and satisfied, Mortgagee may, at its option, surrender possession of the Mortgaged Property to Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The

same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) Mortgagor shall pay to Mortgagee upon demand all costs and expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Mortgagee 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 (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right or remedy under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Mortgagee, all as Mortgagee may elect.

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

(a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;

(b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give to Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;

(c) The right to require Mortgagor, upon request of Mortgagee, to assemble and make the Collateral available to Mortgagee at a place reasonably convenient to Mortgagor and Mortgagee; and

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

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

4.07 Power of Sale. If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied in accordance with the Loan Agreement.

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

4.10 Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a

deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

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

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

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

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If Mortgagee (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Loan Agreement, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Loan Agreement, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Loan Agreement, the other Loan Documents or the Other Indebtedness Instruments, or any subsequent

purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, corporation or other entity (except notice shall be given to Mortgagor so long as Mortgagor or Borrower remains liable under the Loan Agreement, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings — Position of Parties Restored. In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

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

4.17 Notice of Defaults Under the Loan Documents and Other Credit Arrangements. Mortgagor shall give prompt notice to Mortgagee of any defaults by Mortgagor or Borrower under this Mortgage or any of the other Loan Documents, and of any notice of default received by Mortgagor under any other credit arrangement of Mortgagor.

ARTICLE V

MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, Mortgagor shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities

hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of Mortgagee.

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

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

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

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

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

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

- | | | |
|------------|---|--|
| (a) | Name of Mortgagor (Debtor): | Helena Properties, LLC |
| | Address of Mortgagor: | 100 Centerview Drive, Suite 220
Birmingham, Alabama 35216 |
| (b) | Name of Mortgagee (Secured Party): | Oakworth Capital Bank |
| | Address of Mortgagee: | 850 Shades Creek Parkway
Suite 200
Birmingham, Alabama 35209 |

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

5.09 Cross-Collateralization And Cross-Default. MORTGAGOR UNDERSTANDS AND ACKNOWLEDGES THAT A DEFAULT OR EVENT OF DEFAULT UNDER THE LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THIS MORTGAGE.

5.10 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, THE LOAN AGREEMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGEE, MORTGAGOR OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF EACH PARTY TO IRREVOCABLY WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF MORTGAGEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND MORTGAGEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[SIGNATURE ON FOLLOWING PAGE]

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

MORTGAGOR:

HELENA PROPERTIES, LLC, an Alabama limited liability company

By:

James A. Bruno

Its:

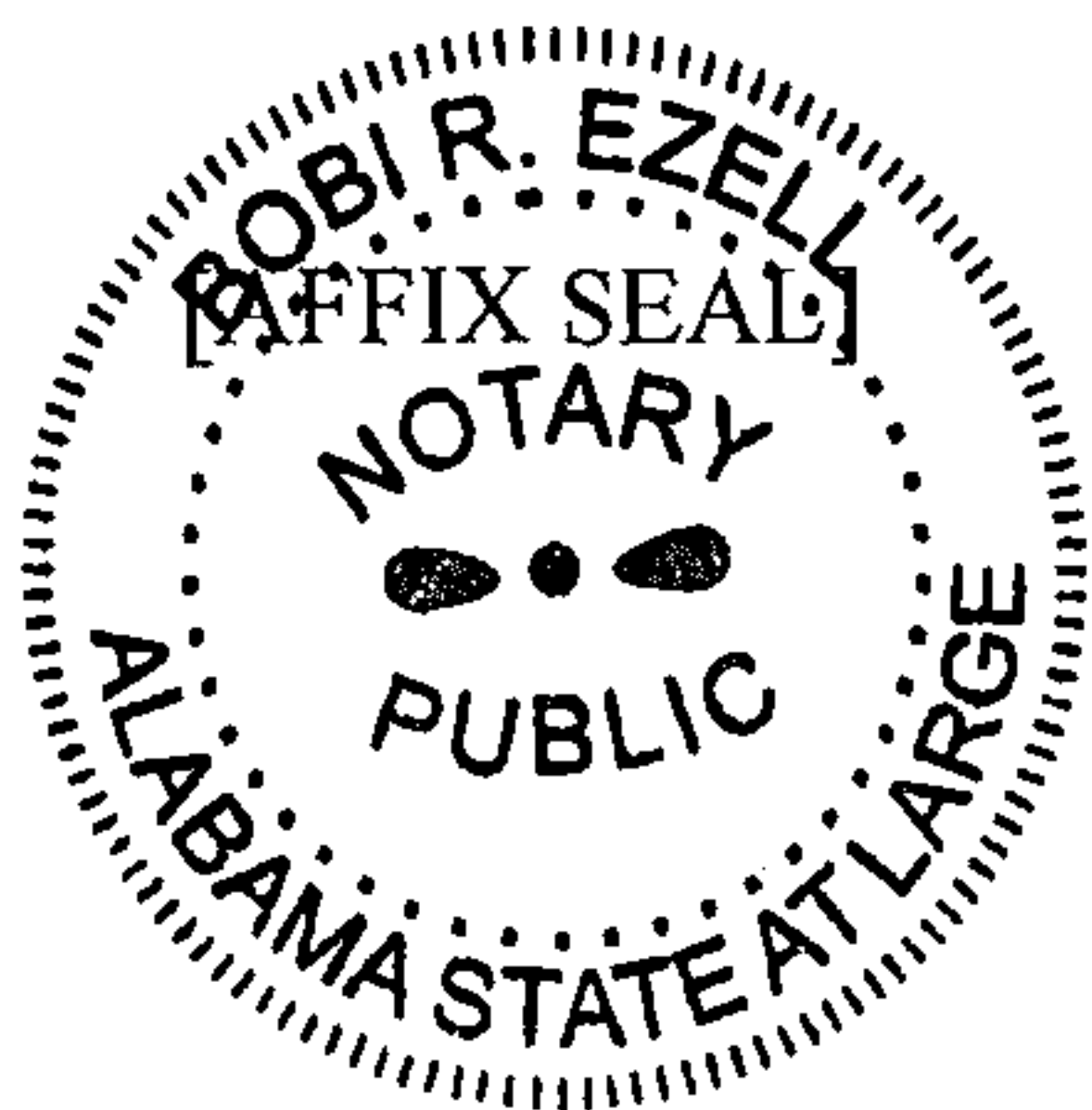
Manager

STATE OF ALABAMA)

COUNTY OF Jefferson)

The undersigned, a Notary Public in and for said County in said State, hereby certifies that James A. Bruno, whose name as Manager of **HELENA PROPERTIES, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that being informed of the contents of said instrument, he, as such manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 6th day of November, 2019.



Robi R. Ezell

Notary Public

My commission expires: _____

MY COMMISSION EXPIRES 06/11/2023

20191108000415240 11/08/2019 08:35:46 AM MORT 25/26
EXHIBIT A

LEGAL DESCRIPTION

Lot 2, according to the Survey of Helena Marketplace Phase II, as recorded in Map Book 27, Page 145, in the Probate Office of Shelby County, Alabama.

PERMITTED ENCUMBRANCES

1. Taxes and assessments for the year 2020 and subsequent years, not yet due and payable.
2. Declaration of Covenants and Easements including the subject Lot 2, appearing of record in Inst. # 1997-37151.
3. Amendment to Declaration of Covenants and Easements including the subject Lot 2, appearing of record in Inst. # 2001-12331.
4. Right of way for Shelby County Road 17 granted to Shelby County as recorded in Deed Book 154, Page 384.
5. Easement for Alabama Power Company as recorded in Real 1, Page 332 and Real 142, Page 221.
6. Easement to the Town of Helena as recorded in Deed Book 305, Pages 394, 396, 398, 400 and 402.
7. Drainage Easement condemned by the State of Alabama as recorded in Real 249, Page 370 and Real 226, Page 869.
8. Boundary lines and set back lines as shown on that Plat of Helena Marketplace Phase II as recorded in Map Book 27, Page 145.
9. Less and except any part of subject property lying within a road right of way.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
11/08/2019 08:35:46 AM
\$884.50 CHARITY
20191108000415240

Alexis S. Bayl