

This Instrument Prepared By:

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STATE OF ALABAMA §
 § ss.
SHELBY COUNTY §

This Mortgage is filed as and shall constitute a “fixture filing” in accordance with the provisions of Section 7-9A-502(c) of the Code of Alabama (1975), as amended.

**MORTGAGE AND
ASSIGNMENT OF RENTS AND LEASES**

THIS MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES (this “**Mortgage**”) made effective as of the 11th day of December, 2019 by Valleydale Hospitality, LLC, an Alabama limited liability company (“**Borrower**”), to and for the benefit of Truist Bank, a North Carolina banking corporation (“**Bank**”).

WITNESSETH THAT:

WHEREAS, Borrower is justly indebted to Bank in the principal sum of Nine Million Three Hundred Thousand and No/100 Dollars (\$9,300,000.00) (together with any extensions, renewals, modifications and refinancings of same, the “**Loan**”), as more particularly described in that certain Loan Agreement (together with any renewals, amendments, modifications or extensions of same, the “**Loan Agreement**”) entered into contemporaneously herewith by and between Borrower and Bank, and as evidenced by a promissory note dated contemporaneously herewith (together with any extensions, renewals, modifications and refinancings of same, the “**Note**”) from Borrower payable to Bank; and

WHEREAS, as used herein, the term “**Swap**” means an interest rate swap, if any, provided to Borrower by Bank; and

WHEREAS, this Mortgage, the Note, the Loan Agreement, all other documents and instruments evidencing, securing or otherwise relating to the Loan, the Swap documentation, and all renewals, amendments, modifications or extensions of any of the foregoing are referred to herein collectively as the “**Loan Documents**”; and

WHEREAS, Borrower may hereafter become further indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (Bank and any subsequent holder of this Mortgage being referred to herein as “**Lender**”); and

WHEREAS, as used herein, the term “**Hedge Agreements**” means all agreements between Borrower and Lender or any affiliate of Lender, whether now existing or hereafter entered into, which

provide for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose of hedging Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices, including the Swap documentation and any ISDA master agreement executed by Borrower and Lender or any affiliate of Lender; and

WHEREAS, in addition to securing the indebtedness, obligations and liabilities of Borrower arising in connection with or out of the Loan Documents and the Hedge Agreements, Borrower intends this Mortgage to secure all other indebtedness, obligations and liabilities (collectively referred herein to as the "**Other Indebtedness**") of Borrower to Lender or any affiliate of Lender (or acquired by Lender or any affiliate of Lender as a participation or as collateral security from another person), now existing or hereafter arising, whether joint or several, due or to become due, matured or unmatured, absolute or contingent, direct or indirect, liquidated or unliquidated, primary or secondary, joint or several, and whether arising by contract, operation of law or otherwise, including all obligations incurred by Borrower under any agreement between Borrower and Lender or any affiliate of Lender (or from Borrower to Lender or any affiliate of Lender), and any renewals, extensions, modifications, amendments, consolidations, replacements, restatements and refinancings of all or any part thereof, and whether incurred or given as maker, endorser, guarantor, tort-feasor, account party with respect to a letter of credit, indemnitor, surety or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement guaranty, pledge or otherwise; and

WHEREAS, the documents and instruments evidencing, securing or otherwise relating to the Other Indebtedness, together with all renewals, amendments, modifications or extensions of any of the foregoing, are referred to herein collectively as the "**Other Indebtedness Instruments**;" and

WHEREAS, the Loan Documents, the Other Indebtedness Instruments, and the Hedge Agreements together with all renewals, amendments, modifications or extensions of any of the foregoing are referred to herein collectively as the "**Credit Documents**;" and

WHEREAS, Borrower, each other person, if any, executing any Credit Document as a grantor, and each other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the indebtedness, obligations or liabilities arising under or pursuant to any of the Credit Documents are referred to herein collectively as the "**Obligors**"; and

WHEREAS, as used herein, the term "**Obligations**" means: (i) the principal amount of the Note with interest accrued thereon and all renewals, extensions, modifications, amendments, consolidations, replacements, restatements and refinancings of all or any part thereof and (ii) all other indebtedness, obligations and liabilities of the Obligors under each and every Credit Document, as modified, amended or restated from time to time; and

WHEREAS, as used herein, the term "**Land**" means that parcel or parcels of land and estates particularly described on **Exhibit A**, attached hereto and made a part hereof, and the phrase "**Premises**" means the Land together with the Improvements known as Homewood Suites by Hilton, , 121 Riverchase Parkway East, Hoover, AL 35244; and

WHEREAS, Borrower requested the Loan from Bank to obtain funds to purchase certain assets and to refinance existing indebtedness secured by the Premises,

NOW, THEREFORE, in consideration of Lender's making the Loan and to secure (i) the prompt payment of the Note with the interest thereon, (ii) any charges incurred by Lender on account of Borrower, including but not limited to attorneys' fees, (iii) all other Obligations, and (iv) the performance of all of the covenants, conditions and agreements hereinafter set forth herein and the covenants, conditions and agreements set forth in the other Credit Documents, Borrower has bargained and sold and does hereby grant, bargain, sell, and convey unto Lender, 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 Lender or hereafter acquired by Borrower 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**"):

(a) All of 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, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by Borrower 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, equipment, furniture, furnishings and personal property 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**" and together with the Land, the "**Premises**");

(c) All accounts, general intangibles, goods, contracts and contract rights relating to the Premises, whether now owned or existing or hereafter created, acquired or arising, including without limitation, 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 any Improvements on, or the operation, management and sale of all or any part of the Premises;

(d) 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 the Premises or other property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, 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 Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Premises from time to time accruing, whether under leases, rental agreements, 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 Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or any part thereof, or to any rights appurtenant thereto, including any award for change of grade

or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender 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 Premises, 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), (b), (c), (d) or (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), (b), (c), (d) or (e) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, 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 shall fully pay or cause to be fully paid to Lender the principal and interest payable with respect of the Note, 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 Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorneys' fees, and shall pay any and all other Obligations, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note and in the other Credit Documents expressed to be kept, performed, and observed by or on the part of Borrower, all without fraud or delay, and (ii) Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan Agreement, the Note or any other Credit Document (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.

BORROWER FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

ARTICLE I GENERAL

1.01 Performance of Mortgage, Note and Credit Documents. Borrower shall perform, observe and comply with all provisions hereof, of the Note, and of the other Credit Documents, and shall duly and punctually pay to Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, of the Note, and the

other Credit Documents, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, except for the matters set forth on **Exhibit B** hereto: (a) Borrower is lawfully seized of an indefeasible estate in fee simple in the Land; (b) Borrower has good and absolute title to all existing personal property hereby granted as security; (c) Borrower has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the Mortgaged Property in the manner and form aforesaid; (d) the Mortgaged Property is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever; and (e) Borrower shall warrant and forever defend the title to the Mortgaged Property and the quiet use and enjoyment of the Mortgaged Property unto Lender, 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 Obligations, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and re-financings 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 Obligations may, if provided in the applicable other Credit Documents, 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 Lender, Borrower shall pay on the first day of each month one-twelfth (1/12th) of the yearly taxes on the Mortgaged Property, as estimated by Lender, 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 Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by the Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, 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) Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to Lender 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 Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.04), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) Borrower 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 Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender 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 Lender.

1.06 Insurance.

(a) Borrower shall procure for, deliver to, and maintain for the benefit of Lender during the term of this Mortgage insurance policies in such amounts as Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as Lender may require. The form of such policies and the companies issuing them shall be acceptable to Lender, and, unless otherwise agreed by Lender 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 Lender, as mortgagee. At least 15 days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender 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 Borrower, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) Lender 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 Lender instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said funds, Lender may apply the net proceeds, at its option, either toward repairing or restoring the Improvements on the Mortgaged Property, or as a credit on any portion of Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be used to repair such Improvements, or to build new Improvements in their place or for any other purpose and in a manner satisfactory to Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be liable to Borrower 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 the Lender, the Borrower 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 Section 1.04 hereof, one-twelfth (1/12th) of the yearly premiums for insurance maintained pursuant to the provisions of this Section 1.06. Such amount shall be

used by Lender 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 the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Borrower with Lender pursuant to this Section 1.06 to enable the Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any Other Indebtedness Instruments, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender 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. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender 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 Borrower'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 Borrower to Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require. Borrower promptly shall notify Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. Lender shall be entitled to retain, at the expense of Borrower, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to Borrower 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) Borrower 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, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower 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 Five Thousand Dollars

(\$5,000.00) for any single transaction, or a total of Ten Thousand Dollars (\$10,000.00) 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 Credit Documents, 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, Borrower shall give immediate written notice of the same to Lender.

(d) Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time upon five days' notice and during normal business hours.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower promptly shall restore 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, Borrower shall not be required to restore the Mortgaged Property as aforesaid unless Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Section 1.06, toward restoring the damaged Improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, Borrower promptly shall restore, repair or alter the remaining property in a manner satisfactory to Lender; provided, however, that if there are condemnation proceeds or awards, Borrower shall not be required to restore the Mortgaged Property as aforesaid unless Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Section 1.07, toward restoring the damaged Improvements.

1.09 Further Assurances; After-Acquired Property.

(a) At any time, and from time to time, upon request by Lender, Borrower, at Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to Lender 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 Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Borrower under the Note and this Mortgage, 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 Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower 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 10 days after Lender has given value under the Note, or either of them) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

(b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Section, 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 Borrower by whatsoever means, including that in the event Borrower 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 Borrower 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 Borrower or Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan and the other Obligations, Borrower hereby grants, bargains, sells and conveys to Lender, 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. Lender also shall have and hereby is granted a security interest in all monies, securities and other property of Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of Lender by or for the account of Borrower (including indebtedness due from Lender to Borrower and any and all claims of Borrower against Lender, 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, Lender may, in addition to any other rights provided by this Mortgage or any of the other Credit Documents, but shall not be obligated to, apply to the payment of the Loan or other Obligations secured hereby, and in such manner as Lender may determine, any such monies, securities or other property held or controlled by Lender. No such application of funds shall, unless otherwise expressly agreed by Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such other Obligations.

1.11 Leases Affecting Mortgaged Property. Borrower shall comply with and observe its obligations as landlord or tenant under all leases and rental agreement affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower shall furnish Lender with executed copies of all leases and rental agreements now or hereafter existing on the Mortgaged Property; and all leases and rental agreements now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower, may, without consent of the Lender, accept payment of rent on up to 50.0% of the leases for up to one year in advance. Otherwise, Borrower shall not accept payment of rent more than one month in advance without the express written consent of Lender. If requested by Lender, Borrower shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases and rental agreements whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. Borrower shall not cancel, surrender or modify any lease or rental agreement affecting the Mortgaged Property or any part thereof without the written consent of Lender except (to the extent applicable) in the ordinary course of the business of a multi-family townhouse community.

1.12 Expenses. Borrower shall pay or reimburse Lender for all reasonable attorneys' fees, costs and expenses incurred by Lender 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 Credit Documents, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Credit Documents, 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 Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Sections 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, the Note or any of the other Credit Documents, then Lender, at its option, may perform or observe the same. All payments made for costs or expenses incurred by Lender in connection therewith (herein, a "**Protective Advance**") shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note plus five percentage points (5.00%). Lender 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. Lender 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 Borrower or any person in possession holding under Borrower for trespass or otherwise. Any Protective Advance made by Lender shall, at the sole option of Lender, (A) reduce the availability of any undisbursed Loan proceeds by the lesser of (i) the amount of the Protective Advance or (ii) the amount of such undisbursed proceeds, and/or (B) be reimbursed to Lender, to the extent of available funds, through an advance of undisbursed Loan proceeds.

1.14 Books and Records. Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of Lender, Borrower shall furnish to Lender (i) within 90 days after the end of Borrower's fiscal year a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a certified public accountant, and (ii) within 10 days after request therefor from Lender, a rent schedule of the Mortgaged Property, certified by Borrower, showing the name of each tenant/renter, and for each tenant/renter, the space occupied, the lease/rental agreement expiration date and the rent paid.

1.15 Estoppel Affidavits. Borrower within 10 days after written request from Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Obligations and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. Borrower 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 Lender at least 30 days prior to such conveyance. If Borrower should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Lender, then, in such event, the entire balance of the indebtedness (including the Loan and all other Obligations) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of Lender.

1.17 Environmental and Compliance Matters. Borrower represents, warrants and covenants as follows:

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

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

(e) Borrower promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any

part thereof. Without limiting the foregoing, Borrower represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990 ("ADA") (42 U.S.C. Sections 12101, *et seq.*) and the Rehabilitation Act of 1973 ("Rehabilitation Act") (29 U.S.C. Sections 749, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.

(f) Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Section, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Borrower agrees to and does hereby indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Section, (ii) Borrower's failure to perform any obligations of this Section, (iii) Borrower's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Credit Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Lender, Borrower shall and hereby does grant and convey to Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Credit Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of Improvements, subsurface exploration and testing and groundwater testing (herein "**Inspections**"), as Lender, 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 Lender, Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by Lender with respect to any Inspections which Lender may conduct or take pursuant to this Section, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Borrower, with interest, and shall be secured by this Mortgage and the other Credit Documents.

1.19 Use, Governmental Compliance, etc. Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement or otherwise as permitted in writing by Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Section 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the occupancy of the Improvements located on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; 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 “**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 “**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. Borrower, in consideration of Lender’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 Lender on account of Borrower, including but not limited to attorneys’ fees, and any and all Obligations, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and in the other Credit Documents, does hereby sell, assign and transfer unto Lender all leases, and rental agreements, 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 **Exhibit B** 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 or rental agreement, 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 Lender 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, rental agreements, subleases, lease guaranties and agreements, and all the avails thereof, to Lender, and Borrower does hereby appoint irrevocably Lender 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, rental agreements, 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 Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth. As used herein, the term "rent" is to be construed broadly no matter how denominated or designated, and the use of such term is not as a limitation. As used herein "rent" includes any and all fees, charges, accounts, or other payments for the use or occupancy of rooms and other private or public facilities in or on the Mortgaged Property as well as any and all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and other proceeds from any portion of the Mortgaged Property.

2.02 Prepayment of Rent. Borrower 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 Borrower. Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. Borrower 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 Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

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 Borrower shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Borrower'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 Lender.

2.05 No Obligation of Lender under Leases. Lender 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, rental agreements, subleases or rental agreements relating to the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold Lender 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, rental agreements, subleases or agreements. Should Lender incur any such liability, loss or damage, under said leases or rental agreements, or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said leases, rental agreements, subleases or agreements, Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys'

fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

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

2.07 Default. Upon the occurrence of any Event of Default as described in Section 3.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases and rental agreements of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III EVENTS OF DEFAULT AND REMEDIES

3.01 Event of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Mortgage (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) any representation or warranty made in this Mortgage or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Loan, this Mortgage or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time furnished; or

(c) default shall be made in the payment when due of any of the Obligations; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Borrower to be observed or performed pursuant to the terms of this Mortgage (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 3.01 specifically dealt with) and such default shall continue unremedied for 30 days after written notice by Lender to Borrower; or

(e) any default or event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein); or

(f) (1) default shall be made with respect to any indebtedness (other than the Obligations) of any Obligor, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity, or (2) any such indebtedness shall not be paid when due (after giving effect to any applicable notice, grace or cure periods); or

(g) any Obligor shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or any of such Obligor's properties or assets (including the Property), (2) fail or admit in writing such Obligor's inability to pay such Obligor's debts generally as they become due, (3) make a general assignment for the benefit of creditors, (4) suffer or permit an order for relief to be entered against such Obligor in any proceeding under the federal Bankruptcy Code, or (5) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against such Obligor in any proceeding under any such law or statute, or if corporate action shall be taken by any Obligor for the purpose of effecting any of the foregoing; or

(h) a petition shall be filed, without the application, approval or consent of any Obligor in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in Section 3.01(g)(5) against such Obligor, or the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or of all or a substantial part of the properties or assets of such Obligor, and such petition shall not have been stayed or dismissed within 30 days after the filing thereof; or

(i) any Obligor shall die, if an individual, be dissolved or liquidated, if an entity, or suspend business; provided, however, as to an Event of Default under this Section 3.01(i) relating to the death of an individual Obligor, the remaining Obligors may substitute a replacement Obligor, with the financial ability to perform the obligations of the replaced Obligor and approved by Lender in its reasonable discretion, within 90 days of the event that would otherwise constitute an Event of Default; or

(j) any writ of execution, attachment or garnishment shall be issued against the assets of any Obligor and such writ of execution, attachment or garnishment shall not be dismissed, discharged or quashed within 30 days of issuance; or

(k) any final judgment for the payment of money in excess of \$5,000.00 shall be rendered against any Obligor and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed; or

(l) any guarantor of any of the Obligations shall default in the due observance or performance of any covenant, condition or agreement on such guarantor's part to be observed or performed under such guarantor's guaranty agreement (after giving effect to any applicable notice, grace or cure period specified therein) or shall terminate or attempt to terminate such guarantor's guaranty agreement; or

(m) except for encumbrances permitted by the Loan Agreement, if any lien, statement of lien or suit to enforce a Lien is filed against any of the Premises and Borrower fails to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to Lender within 10 days of the day such lien, statement of lien or suit is filed.

3.02 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 all other Obligations) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.03 Right of Lender to Enter and Take Possession.

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

(b) Upon every such entering upon or taking of possession, Lender, as attorney-in-fact or agent of Borrower, 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 Lender) 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 Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of Borrower 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, rental agreement, or sublease for any cause or on any ground which would entitle Borrower to cancel the same, and to elect to disaffirm any lease, rental agreement, 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 Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (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 and purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other charges prior to this Mortgage as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property 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 moneys so received by Lender, first, to the payment of accrued interest under the Obligations, in such order as Lender shall determine in its sole discretion; second, to the payment of tax deposits required in Section 1.04; third, to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Credit Documents; fourth, to the payment of overdue installments of principal on the Obligations, in such

order as Lender shall determine in its sole discretion; fifth, to the payment of any sums due under any of the other Credit Documents, whether principal, interest or otherwise; and the balance, if any, as required by law.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, 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.

3.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, 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) Borrower shall pay to Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Section; and all such expenses shall be secured by this Mortgage.

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

3.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, the other Credit Documents, 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 UCC Collateral without judicial process and to enter upon any premises where the UCC Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the UCC Collateral without interference from Borrower 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 UCC Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the UCC Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least 10 days' prior notice of the time and place of any public sale of the UCC Collateral or of the time after which any private sale or other intended disposition of the UCC Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the UCC Collateral;

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

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

To effectuate the rights and remedies of Lender upon default, Borrower does hereby irrevocably appoint Lender attorney-in-fact for Borrower, 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 Borrower could do, and to sell, assign, and transfer any collateral to Lender or any other party.

3.07 Power of Sale. If an Event of Default shall have occurred, Lender 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, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender 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 Lender may elect. The provisions of Section 3.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in property which constitutes UCC Collateral.

3.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Section 3.07 or any sale pursuant to Section 3.06, shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the UCC Collateral and preparing the UCC Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, or the other Credit Documents, as applicable, 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, and as may be provided in the Note or the other Credit Documents, such repayment to be applied in the manner determined by Lender;

(c) Third, to the payment of the Obligations secured hereby (including, but not limited to, the Loan), with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage or the other Credit Documents, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

3.09 Lender's Option on Foreclosure. At the option of Lender, 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 Lender exercises its option to foreclose this Mortgage in equity, Lender 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 Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

3.10 Waiver of Exemption. Borrower 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 Borrower 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.

3.11 Suits to Protect the Mortgaged Property. Lender 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 Lender.

3.12 Borrower to Pay the Note on Default in Payment; Application of Moneys. If default shall occur in the payment of any amount due under this Mortgage, the Note or any of the other Credit Documents, or if any other Event of Default shall occur under this Mortgage, then, upon demand of Lender, Borrower shall pay to Lender the whole amount due and payable under the Note and under all other Credit Documents. If Borrower shall fail to pay the same forthwith upon such demand, Lender 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 Lender's agents and attorneys.

3.13 Delay or Omission No Waiver. No delay or omission of Lender or of 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 the Note, this Mortgage, or any of the other Credit Documents to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder or under any of the other Credit Documents 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 Lender (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 Note or in any of the other Credit Documents; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note or in any of the other Credit Documents; (e) consents to the filing of any map, plat, or re-plat 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 Note or in any of the other Credit Documents of Borrower 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 Lender 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 Lender 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, Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage or any of the other Credit 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 Credit 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.

3.15 Discontinuance of Proceedings -- Position of Parties Restored. In case Lender 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 Lender, then and in every such case Borrower 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 proceeding had been taken.

3.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Lender 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 Note, or any of the other Credit Documents or now or hereafter existing at law or in equity or by statute.

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

ARTICLE IV MISCELLANEOUS

4.01 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 Borrower or by or on behalf of Lender 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, Borrower 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 Lender.

4.02 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.

4.03 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.

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

4.05 Reference to Credit Documents. Wherever reference is made herein to this Mortgage or any of the other Credit Documents, such reference shall include all renewals, extensions, modifications and refinancings thereof.

4.06 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.

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

(a)	Name of Borrower (Debtor):	Valleydale Hospitality, LLC
	Address of Borrower:	2538 Lake Crest Drive Tuscaloosa, AL 35406 Attention: Mr. Rashmi Thakor

- (b) Name of Lender (Secured Party): Truist Bank
Address of Lender: 3610 McFarland Blvd. E
Tuscaloosa, Alabama 35405
Attention: Mr. Charles E. Bracknell II
- (c) Record Owner of Real Estate
Described on Exhibit A hereto: Valleydale Hospitality, LLC

4.08 Waiver of Trial by Jury. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THE NOTE, THIS MORTGAGE OR ANY OTHER CREDIT DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THE NOTE AND SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF LENDER, NOR LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF LENDER, NOR LENDER'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

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


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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed under seal effective as of the day and year first above written.

BORROWER (Mortgagor, Debtor)

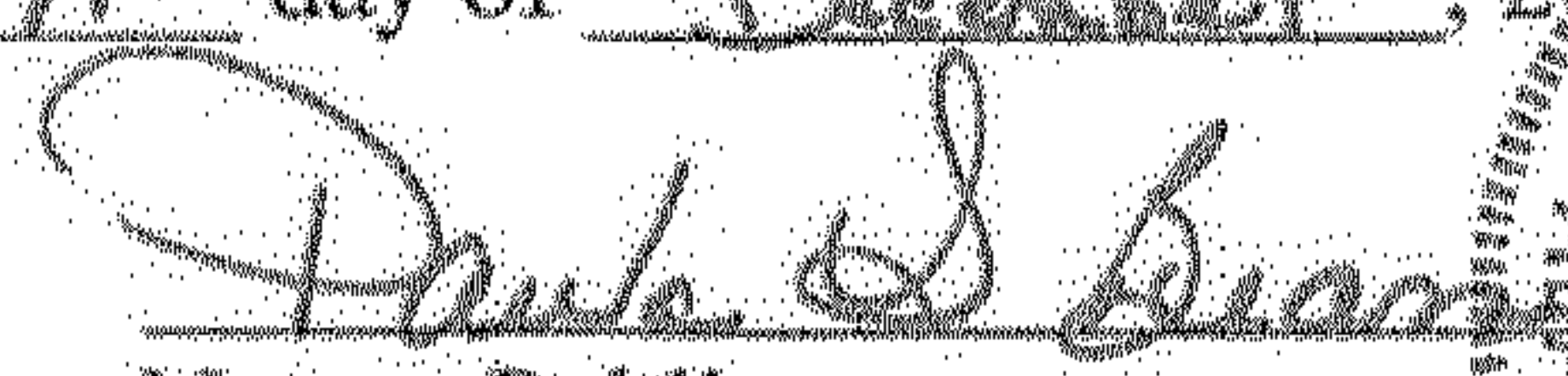
VALLEYDALE HOSPITALITY, LLC
an Alabama limited liability company

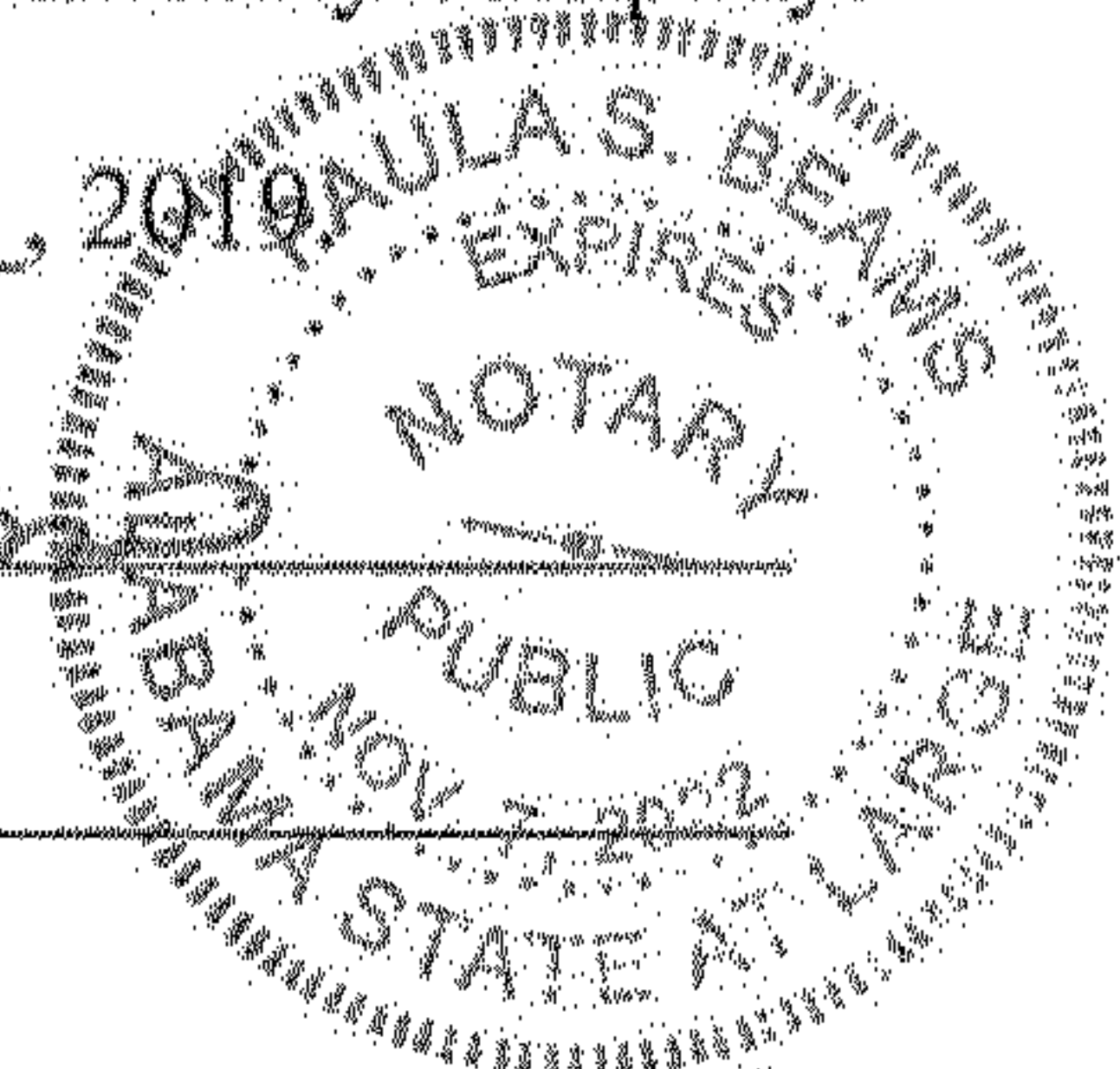
By: 
Rashmi Thakor, Manager

By: 
Mayur C. Desai, Manager

STATE OF ALABAMA §
§ ss.
TUSCALOOSA COUNTY §

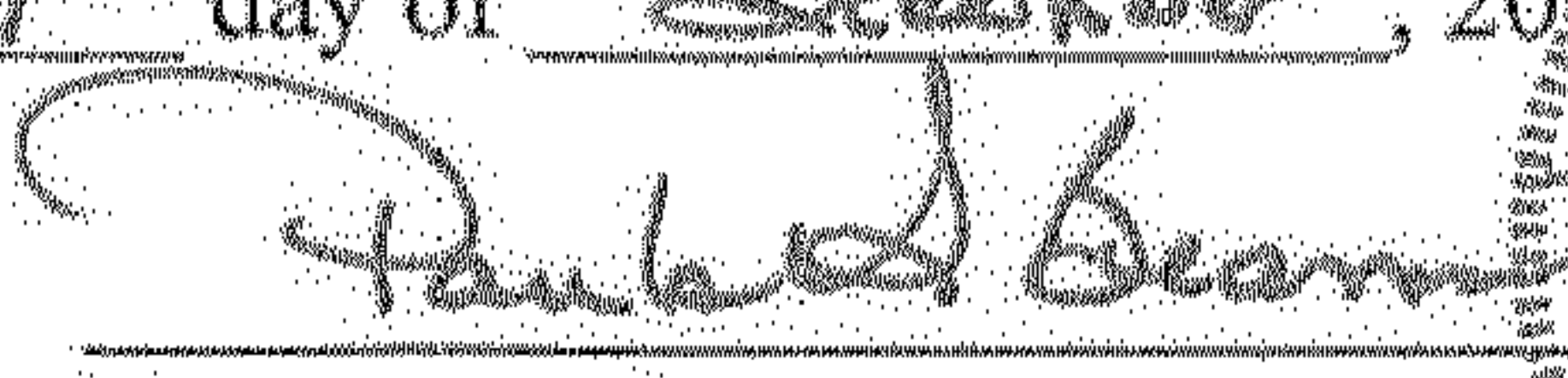
I, undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Rashmi Thakor, whose name as Manager of Valleydale Hospitality, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

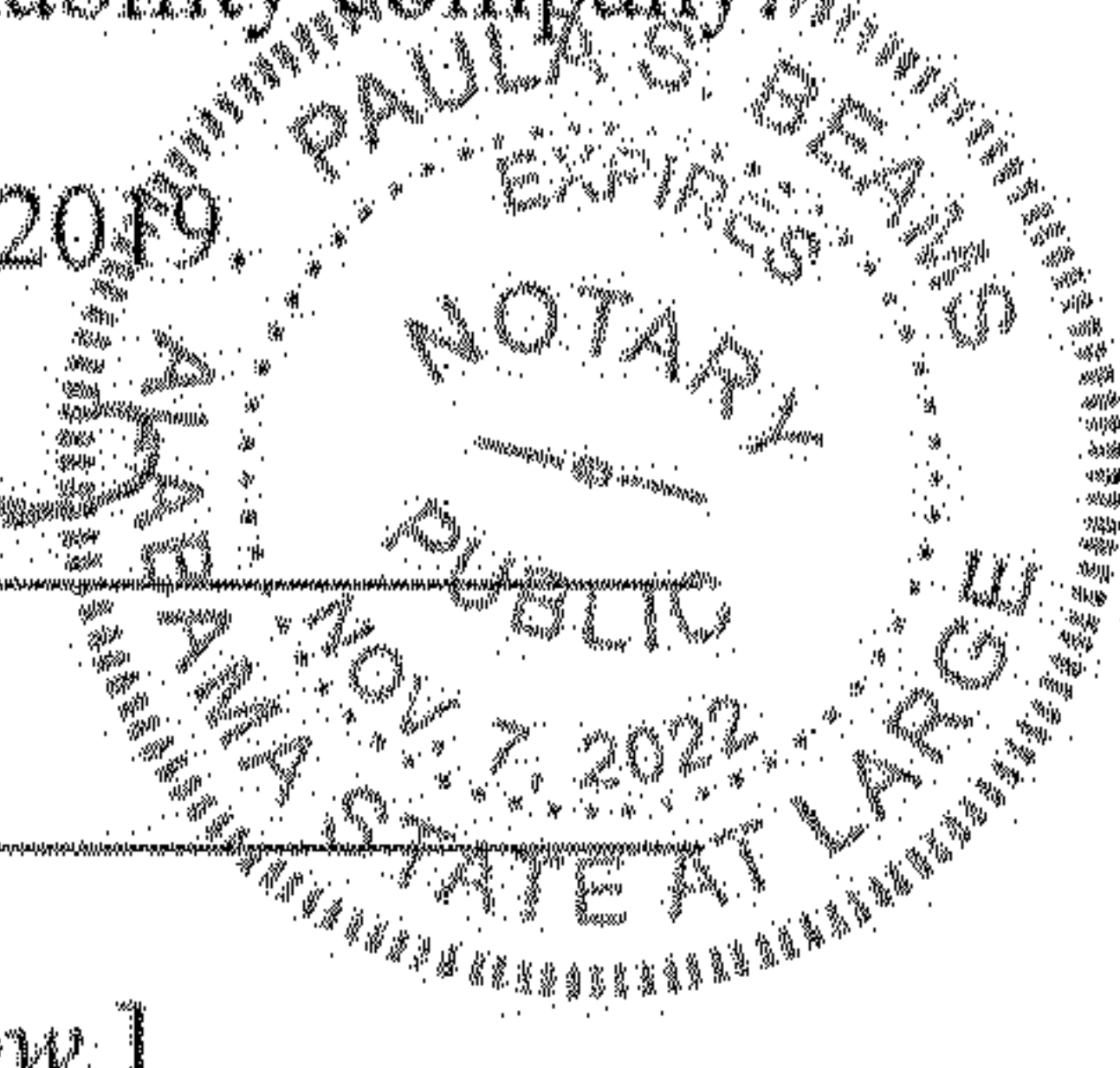
Given under my hand on this the 11th day of December, 2019, 
Notary Public
My Commission Expires: Nov 7, 2022



STATE OF ALABAMA §
§ ss.
TUSCALOOSA COUNTY §

I, undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Mayur C. Desai, whose name as Manager of Valleydale Hospitality, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of 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 on this the 11th day of December, 2019, 
Notary Public
My Commission Expires: Nov 7, 2022



[remainder of this page is blank – exhibits follow]

EXHIBIT A

Description of Land

Lot 2C, according to A Resurvey of Lot 2, an Amendment to Resurvey of an Amendment to The Concourse at Riverchase, as recorded in Map Book 36, Page 91 in the Probate Office of Shelby County, Alabama.

EXHIBIT B

Permitted Exceptions

None



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
12/13/2019 08:54:33 AM
\$14047.00 CHERRY
20191213000461100

Allie S. Bezel