

This Instrument Prepared By:  
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Birmingham, AL 35233

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**MORT 1/26**

**FUTURE ADVANCE MORTGAGE,  
ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT**

**STATE OF ALABAMA                    )**

**COUNTY OF SHELBY                 )**

**THIS FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT** (this “**Mortgage**”) executed this 21<sup>st</sup> day of January, 2020, by **OAK VIEW AH PROPERTIES, LLC**, an Alabama limited liability company (the “**Mortgagor**”), as Mortgagor, in favor of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation (together with its successors or assigns, the “**Mortgagee**”), as Mortgagee.

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

**THIS MORTGAGE IS A “CONSTRUCTION MORTGAGE” AS DEFINED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, ANY OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.**

**W I T N E S S E T H:**

**WHEREAS**, Mortgagor is justly indebted to Mortgagee on a loan in the original principal sum of up to One Million Eight Hundred Nineteen Thousand and No/100 Dollars (\$1,819,000.00) (the “**Loan**”), or so much as may from time to time be disbursed thereunder, pursuant to that certain Construction Loan Agreement of even date herewith by and between Mortgagor and Mortgagee (the “**Loan Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Loan Agreement), as evidenced by that certain Promissory Note of even date herewith payable by Mortgagor to the order of Mortgagee with interest thereon on demand or as otherwise provided therein (the “**Note**”).

**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 Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of 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 (the **“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 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 Note 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 evidencing or securing the Loan, collectively, the **“Loan Documents”**), and as may be set forth in instruments evidencing or securing the 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, collectively, the **“Mortgaged Property”**) to-wit:

(a) All that tract or parcel or parcels of land and estates particularly described in **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, furniture and furnishings and personal property of every nature 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, 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”**)

(c) all machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including but not limited to all inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefore and other property of every kinds and nature whatsoever owned by Mortgagor, or in which Mortgagor



has or shall have an interest, now or hereafter located upon, or in, and used; in connection with the Land or the Improvements, or appurtenant thereto, and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon, or in, and used in connection with the Land or the Improvements or appurtenant thereto (collectively, the **“Equipment”**), all of which, and any replacements, modifications, alterations and additions thereto, to the extent permitted by applicable law, shall be deemed to constitute fixtures (the **“Fixtures”**), and are part of the real estate and security for the payment of the Loan and the Other Indebtedness and the performance of Mortgagor’s obligations under the Note, this Mortgage, the Loan Documents and the Other Indebtedness Instruments;

(d) 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;

(e) All licenses, franchise agreements, and other agreements affecting the use, enjoyment or occupancy of the Land, the Improvements, the Fixtures, or the Equipment or any portion thereof currently or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, together with all receivables, revenues, rentals, receipts and payments, received from the rental of rentals, meeting rooms, beverage or food sales, and facilities, vending machines, telephone systems, resident laundry and all other payments received from residents or visitors of the Land, and other items of revenue, receipts or income;

(f) 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;

(g) 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; and

(h) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a) - (g) 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) - (g) 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 Mortgagor shall fully pay or cause to be fully paid to Mortgagee the principal and interest payable with respect of the Loan and the Note, 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 all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, 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 Note, 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, 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, the Note, 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, Note and Loan Documents.**  
Mortgagor shall perform, observe and comply with all provisions hereof, of the Loan Agreement,



of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to Mortgagee the sum of money expressed in the Note, 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 Note, 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, subject to those matters set forth on **Exhibit "B"** hereto and all other Permitted Encumbrances (as defined in the Loan Agreement), 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, 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 the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and 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 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 Mortgage on the probate records of the county 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.** Following a monetary default under the Loan Documents, if required by Mortgagee, Mortgagor shall pay on the day of each month when Mortgagor renders payment under the Note 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 the Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by Mortgagee 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) 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 of the same being contested in good faith by Mortgagor), 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 for, deliver to, and maintain for the benefit of Mortgagee during the term of this Mortgage insurance policies 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 thirty (30) 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. After deducting from said insurance proceeds any expenses incurred by Mortgagee in the collection or handling of said funds, Mortgagee may apply the net proceeds, at its option, either toward repairing or restoring the Improvements or as a credit on any portion of Mortgagor's indebtedness selected by Mortgagee, whether then matured or to mature in the future, or at the option of Mortgagee, 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 Mortgagee, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place; provided, however, Mortgagee shall make such proceeds available to Mortgagor so long as no default exists under any of the Loan Documents, the repairing or restoration of the Improvements is economically feasible, and all other sources of funding for the Mortgaged Property remain viable. 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) Following a monetary default under the Loan Documents, if required by Mortgagee, Mortgagor shall pay on the on the day of each month when Mortgagor renders payment under the Note, 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 under the 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.** If any material 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 Mortgagee become immediately due and payable. 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, 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 Mortgagee shall determine to the reduction

of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, 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; provided, however, Mortgagee shall make such proceeds available to Mortgages so long as no default exists under any of the Loan Documents, the repairing or restoration of the Improvements is economically feasible, and all other sources of funding for the Mortgaged Property remain viable. 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 Mortgaged 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 contemplated in connection with the Project and 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 express written consent of Mortgagee. 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 Twenty Thousand Dollars (\$20,000.00) for any single transaction, or a total of Eighty Thousand Dollars (\$80,000.00) 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 and other Permitted Encumbrances, 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) 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 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, as allowed under Paragraph 1.06, 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 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, as provided in Paragraph 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 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 opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of Mortgagor under the Loan Agreement, 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 Mortgagor. 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 Note) 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 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. During the existence of 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 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 or such 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. 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 (that are not in the form approved by Mortgagee) will be in form and substance subject to the approval of Mortgagee. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior 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, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the prior express written consent of Mortgagee.

**1.12 Expenses.** Mortgagor shall pay or reimburse Mortgagee for all 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 or 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, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Mortgagor 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 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 the Loan Agreement, of the Note, 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 Note, and at the default interest rate specified in the Note. 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. 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 Books and Records.** Mortgagor 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.

**1.15 Estoppel Affidavits.** Mortgagor within ten (10) days after written request from Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and 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, other than Permitted Encumbrances, 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, other than Permitted Encumbrances, 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 Environmental and Compliance Matters.** Mortgagor represents, warrants and covenants as follows:

(a) No Hazardous Substances (as defined in the Loan Agreement) 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 (other than the Hazardous Substances permitted by Section 7.2 of the Loan Agreement);

(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) Mortgagor 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, Mortgagor 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) Mortgagor shall give immediate oral and written notice to Mortgagee of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, 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.

Mortgagor agrees to and does hereby indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Mortgagor’s failure to perform any obligations of this Paragraph 1.17, (iii) Mortgagor’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 Loan 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 Substances first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Mortgagee 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 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 under the Loan 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 buildings and Improvements, subsurface exploration and testing and groundwater testing (“**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 provided for in the Loan Agreement or otherwise as expressly permitted in writing by Mortgagee; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities (as defined in the Loan Agreement) necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 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 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, liquor, occupancy, fire and utility approvals; (c) comply with all Requirements of Law 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 Requirements of Law 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.

## **ARTICLE II**

### **ASSIGNMENT OF RENTS AND LEASES**

**2.01 Assignment.** Mortgagor, in consideration of Mortgagee’s making the Loan 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 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 Note, 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 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 Mortgagor's 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 Mortgagee's 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 the Loan Documents, 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 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 during the existence of an Event of Default 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 Alabama 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 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 Note, 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 (collectively, the "**Collateral**").

**3.02 Definitions.** All terms used in this Article III 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.** 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. At Mortgagee's request, Mortgagor will join with Mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and shall 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 signed only by Mortgagee and to sign Mortgagor's signature to such financing statements in jurisdictions where Mortgagor's signature is required. 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) The Collateral is used or bought primarily for business purposes;
- (b) The Collateral is being acquired and/or installed with the proceeds of the Note which Mortgagee may disburse directly to the seller, contractor, or subcontractor;
- (c) All the Collateral will be kept at the address of Mortgagor shown in Paragraph 5.08(a) or, if not, at the real property described in **Exhibit "A"** hereto. Mortgagor promptly shall notify Mortgagee of any change in the location of the Collateral. Except for transactions in the ordinary course of Mortgagor's business, Mortgagor, its agents or employees, will not remove the Collateral from said location without the prior express written consent of Mortgagee;
- (d) If certificates of title are issued or outstanding with respect to any of the Collateral, Mortgagor shall cause Mortgagee's interest to be properly noted thereon; and
- (e) 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 Collateral, 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 an "Event of Default" under the Loan Agreement.

**4.02 Acceleration of Maturity.** If an Event of Default shall exist, 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 exist, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Mortgagee 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 Mortgagor or the 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, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, Mortgagee shall 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) Upon an Event of Default, 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, 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.** Upon an Event of Default, 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 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, the Note, 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 during the existence of an Event of 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 as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral or Mortgaged Property and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including attorneys' fees 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, the Loan Agreement this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Mortgagee 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 Loan Documents, such repayment to be applied in the manner determined by Mortgagee;

(c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, the Loan Agreement, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, 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.

**4.09 Mortgagee's Option on Foreclosure.** At the option of Mortgagee during the existence of an Event of Default, this Mortgage may be foreclosed as provided by law or in equity, in which event attorneys' fees 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.** During the existence of an Event of Default, then, upon demand of Mortgagee, Mortgagor shall pay to Mortgagee the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case Mortgagor shall fail to pay 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 compensation, expenses and disbursements of Mortgagee's agents and attorneys.

**4.13 Delay or Omission No Waiver.** No delay or omission of Mortgagee 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, 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 Note, 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, the Note, 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 Note, the other Loan Documents, or the Other Indebtedness Instruments of Mortgagor 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 remains liable under the Note, 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, the Note, any of the other Loan Documents, 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 known by Mortgagor under this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Other Indebtedness Instruments 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 express 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 the Note, 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 Note, 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 Note, 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 Notice, Addresses and Other Information.** Any notice required by this Mortgage shall be given in accordance with the Loan Agreement. 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:

If to Borrower:	Oak View AH Properties, LLC 1506 Valley Place Birmingham, Alabama 35209 Attn: John H. Price III
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with a copy to:

If to Lender:	Oakworth Capital Bank 850 Shades Creek Parkway Birmingham, Alabama 35209 Attn: Matt Condra
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with a copy to:	Vaughn McWilliams, Esq. Haskins Jones, LLC 2805 2 <sup>nd</sup> Avenue South, Suite 200
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Either party may designate new addresses or fax numbers for notices hereunder upon ten (10) days advance notice to the other party.

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

**5.09 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 DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGEE AND/OR MORTGAGOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE 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. MORTGAGOR AGREES THAT MORTGAGEE MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT TO 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]



20200130000039360 01/30/2020 10:31:56 AM MORT 25/26

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:**

**OAK VIEW AH PROPERTIES, LLC**, an Alabama limited liability company

By: Elizabeth B. Robinson  
Name: Elizabeth B. Robinson  
Its: Manager

STATE OF Alabama )  
COUNTY OF Tefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Elizabeth B. Robinson, whose name as Manager of **OAK VIEW AH PROPERTIES, 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, s/he, as such Member/Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 16<sup>th</sup> day of January, 2020.

Edward Vaughn McWilliams  
Notary Public  
My Commission Expires: \_\_\_\_\_

Edward Vaughn McWilliams  
Notary Public, Alabama State At Large  
My Commission Expires Nov. 30 2023

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EXHIBIT "A"

Lot 12, according to the Survey of Southpark, as recorded in Map Book 20, Page 100, in the Probate Office of Shelby County, Alabama, being Resurvey of Lot 1, according to the Survey of Sunlink Subdivision, as recorded in Map Book 14, Page 25, in the Probate Office of Shelby County, Alabama.

More commonly known as: 1810 Southpark Drive, Birmingham, AL 35244

Parcel ID: 10-9-30-001-005.011



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
01/30/2020 10:31:56 AM  
\$2825.50 CHERRY  
20200130000039360

*Alvin S. Bayl*