

This instrument prepared by:
Vaughn McWilliams, Esq.
2805 2nd Avenue South, Suite 200
Birmingham, Alabama 35233

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

20200130000039370
01/30/2020 10:31:57 AM
ASSIGN 1/9

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this “**Assignment**”), is made this 21st day of January, 2020, by **OAK VIEW AH PROPERTIES, LLC**, an Alabama limited liability company (the “**Assignor**”), to and in favor of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation (together with its successor or assigns, the “**Assignee**”).

WHEREAS, pursuant to that certain Construction Loan Agreement of even date herewith by between Assignor and Assignee (the “**Loan Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement), Assignee has agreed to make a construction loan to Assignor in the original principal amount of up to One Million Eight Hundred Nineteen Thousand and No/100 Dollars (\$1,819,000.00) (the “**Loan**”), as evidenced by that certain Promissory Note of even date herewith payable by Assignor to the order of Assignee (the “**Note**”), and those certain other documents and instruments evidencing or securing the Loan (collectively, the “**Loan Documents**”);

WHEREAS, to secure payment of the Loan, Assignor has executed and delivered to Assignee, among other instruments, that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement of even date herewith (the “**Mortgage**”), covering Assignor’s interest in certain real property, improvements and personal property, as more fully described on Exhibit A attached hereto and incorporated herein (collectively, the “**Mortgaged Property**”); and

WHEREAS, as a condition precedent to making the Loan, Assignee requires the execution of this Assignment, and this Assignment is given as additional security for the payment of and the performance of all covenants and agreements of Assignor in the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby grant, bargain, sell and convey to Assignee all of Assignor’s right, title and interest in and to (i) any and all present and future leases or tenancies, whether written or oral, covering or affecting all or any portion of the Mortgaged Property and any license or concession agreement and any other agreement, by whatever name called, involving a transfer or creation of possessory rights or rights of use in the Mortgaged Property, and any and all guaranties of any of the foregoing (together with any and all extensions, modifications and renewals thereof, collectively, the “**Leases**”, individually, a “**Lease**”), and (ii) all rents, issues, profits and other income or payments of any kind (whether or

not designated as rent) due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property or as the result of the use of or lease of any personal property constituting a part of the Mortgaged Property, including, without limitation, amounts so payable on account of maintenance, repairs, taxes, insurance, operating charges, and all security deposits and other amounts paid by tenants with respect to Leases, any amounts payable under any guaranty of any Lease and any amounts payable in bankruptcy of any tenant (collectively, the “**Rents**”), whether the Rents accrued before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing:

(a) Payment of all indebtedness evidenced by the Note and all other sums owing to Assignee with interest thereon becoming due and payable to Assignee under the terms set forth in the Loan Documents; and

(b) Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein or in the Loan Documents.

ASSIGNOR WARRANTS AND COVENANTS THAT:

(a) It is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than (i) the lien granted herein and (ii) other Permitted Encumbrances (as defined in the Loan Agreement), and has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any Person;

(b) It has and will have the right under applicable law, under the Leases and otherwise, to execute and deliver this Assignment and keep and perform all of its obligations hereunder; and

(c) It will warrant and defend the Rents and Leases against all adverse claims, whether now existing or hereafter arising.

ASSIGNOR FURTHER COVENANTS AND AGREES WITH ASSIGNEE AS FOLLOWS:

1. **Performance of Leases.** Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement that it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at Assignor’s sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from the tenant thereunder and will also, at Assignor’s sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or tenant thereunder.

Assignor shall, upon request of Assignee, furnish to Assignee a complete list as of the date of the request of all Leases and other tenancies of the Mortgaged Property in such reasonable detail as may be requested by Assignee. Further, if requested, Assignor shall deliver to Assignee executed

or certified copies of all Leases and other written agreements, correspondence, and memoranda between Assignor and lessees and other tenants setting forth the contractual arrangements between them. Such requests may be made at any reasonable time. Annual requests, or more frequent requests if made after an Event of Default under the Loan Documents, shall be deemed to be made at a reasonable time.

2. **Collection of Rents.** Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

3. **Protecting the Security of this Assignment.** Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment or in the Loan Documents, then Assignee may, but without obligation to do so or liability for failure to do so, and without releasing Assignor from any obligation hereunder, make or do the same in such manner and to such extent as Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting Assignee's general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay attorneys' fees. Assignor shall pay within ten (10) days of written demand therefor all sums extended by Assignee under the authority of this Agreement, together with interest thereon at an annual rate equal to the rate then in effect for the Note, and the same shall be added to said indebtedness and shall be secured by the Loan Documents.

4. **No Liability for Assignee.** Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases; and this Assignment shall not operate to place upon Assignee any responsibility for the control, care, management or repair of the Mortgaged Property or for the carrying out of any of the terms and conditions of the Leases, nor shall this Assignment operate to make Assignee liable for any waste committed on the Mortgaged Property or any negligence in the management, upkeep, repair, or control of the Mortgaged Property resulting in loss, injury, or death to any tenant, licensee, employee, invitee or stranger to the Mortgaged Property.

5. **Indemnity.** Assignor shall, and does hereby agree to, indemnify, defend, and hold harmless Assignee of and from any and all liability, loss, claim or damage which Assignee may or might incur under the Leases or under or by reason of this Assignment 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 the Leases so long as said loss or damage is not the result of the gross negligence or intentional acts of Assignee. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and attorneys' fees, shall be secured hereby, Assignor shall reimburse Assignee therefor within five (5) days of written demand therefor, and upon Assignor's failure to do so, Assignee may declare all sums secured hereby immediately due and payable.

6. **Present Assignment.** This Assignment shall constitute a perfected, absolute and present assignment; provided, however, that Assignee shall not have the right to collect Rents unless and until an Event of Default exists under the Loan Documents. Any Rents which accrue prior to an Event of Default but are paid thereafter shall be paid to Assignee.

7. **Survival of Obligation to Comply With The Loan Documents.** This Assignment is given as security in addition to the other Loan Documents. Assignor covenants and agrees to observe and comply with all terms and conditions contained in the Loan Documents. All of Assignor's obligations under this Agreement shall survive foreclosure of the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Loan Documents throughout any redemption period after foreclosure of the Mortgage.

8. **Specific Assignment of Leases.** Assignor will from time to time execute any and all instruments reasonably requested by Assignee in order to effectuate this Assignment and to accomplish any of the purposes that are necessary or appropriate in connection with this Assignment, including, without limitation, the transfer and assignment by Assignor to Assignee, upon written notice by Assignee, of any and all specific Leases Assignee may request. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.

9. **Default; Remedies.** Upon the occurrence and during the continuance of any Event of Default and during any redemption period following foreclosure, Assignee may (in addition to exercising any other rights which it may have under the Loan Documents), at its option, at any time:

(a) To the extent permitted by law, in the name, place and stead of Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.

(b) With or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give notice, which notice shall comply with applicable Alabama law, to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to Assignee.

(c) Without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the Rents, profits and income pursuant to paragraph 10, shall not cure or waive any Event of Default (or notice of default) under the Loan Documents or invalidate any act done pursuant to such notice.

10. Application of Rents, Profits and Income. All Rents collected by Assignee or the receiver each month shall be applied as follows in the priority listed:

- (a) to payment of all reasonable fees of the receiver approved by the court, if any;
- (b) to payment of all tenant security deposits then owing to tenants under any of the Leases pursuant to the relevant provisions of Alabama law;
- (c) to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property;
- (d) to payment of all premiums then due for the insurance of the type required by the Loan Documents;
- (e) to payment of expenses incurred for normal maintenance of the Mortgaged Property;
- (f) if received prior to any foreclosure sale of the Mortgaged Property, to Assignee for payment of the indebtedness secured by the Loan Documents, but no such payment made after acceleration of the indebtedness shall effect such acceleration; and
- (g) if received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:
 - (i) if the purchaser at the foreclosure sale is not Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Loan Documents, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the purchaser;
 - (ii) if the purchaser at the foreclosure sale is Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Loan Documents and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 10 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

11. Authorization to Tenants. Upon notice from Assignee that it is exercising the remedy set forth in paragraph 9(b) of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that an Event of Default exists under the Loan Documents or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee, Assignor

agrees that the tenant shall have no further liability to Assignor for the same. The signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents to which Assignor is entitled, shall upon notice from Assignee, be drawn to the exclusive order of Assignee.

12. Satisfaction. Upon the payment in full of all indebtedness secured by the Loan Documents, as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.

13. Assignee an Attorney-In-Fact. Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignee. This power of attorney and the rights and power conferred hereby shall be effective only if there shall exist an uncured Event of Default.

14. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a Mortgagee in possession.

15. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto that this Assignment shall confer upon Assignee the fullest rights, remedies and benefits available pursuant to Alabama law.

16. Successors and Assigns. The covenants and agreements herein contained shall bind and the rights hereunder shall inure to the respective successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

17. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Assignee under the Loan Agreement.

18. Waiver. Assignee's failure to do any of the things or exercise any of the rights, interests, powers and/or authorities granted hereunder shall not be construed as a waiver of any of the rights, interests, powers and/or authorities assigned and granted to Assignee under the Loan Documents. Assignor agrees that neither the security of this Assignment nor any obligation of Assignor under

the Loan Documents will be released, impaired or subordinated by any amendment to this Assignment or any other instrument, any extension of time or waiver of right or remedy as to Assignor or any other party or any other act or thing which, but for this provision, would so release, impair or subordinate. This Assignment shall be in all respects valid and enforceable, securing all payments under the Note and all other indebtedness secured by the Loan Documents, regardless of whether the Note has been validly authorized, executed and delivered or is legal, valid or enforceable.

19. **Governing Law.** This Assignment is made and executed under the laws of the State of Alabama and is intended to be governed by the laws of the State of Alabama.

20. **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 ASSIGNMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF ASSIGNEE AND/OR ASSIGNOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT 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. ASSIGNOR AGREES THAT ASSIGNEE MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF ASSIGNOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT TO ASSIGNEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN ASSIGNOR AND ASSIGNEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[SIGNATURE ON FOLLOWING PAGE]

[Signature Page to Assignment of Leases and Rents]

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IN WITNESS WHEREOF, Assignor has caused this instrument to be executed as of the day and year first above written.

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 Jefferson)

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 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 16th day of January, 2020.

Edward Vaughn McWilliams
Notary Public
My Commission Expires: _____

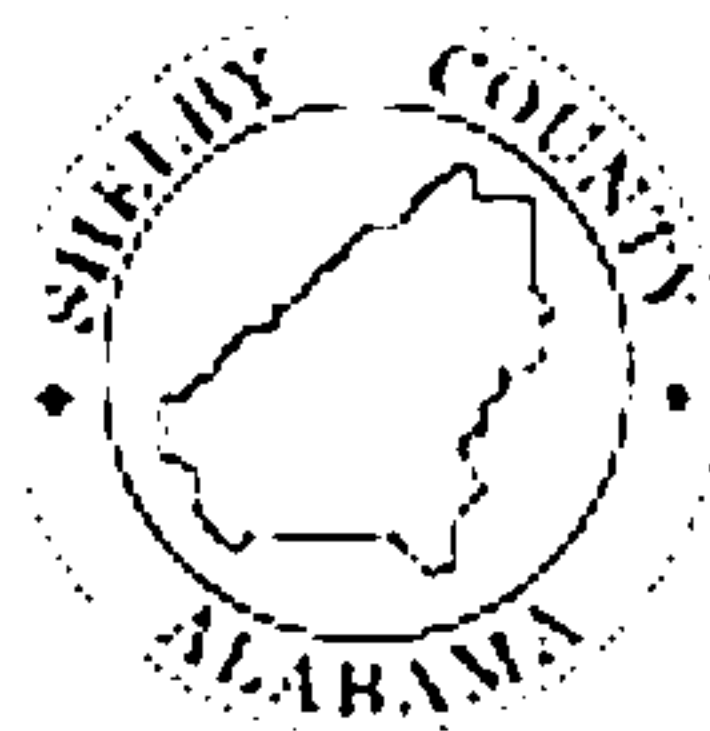
Edward Vaughn McWilliams
Notary Public, Alabama State At Large
My Commission Expires Nov. 30 2023

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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 10:31:57 AM
\$46.00 CHERRY
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Allie S. Bayl