

NOTE TO PROBATE OFFICE: The indebtedness secured by this Mortgage is secured by real property located in the State of Alabama (the "Alabama Property") and outside of the State of Alabama, and accordingly pursuant to that certain Mortgage Tax Order issued by the Alabama Department of Revenue dated May 22, 2020 the total amount of mortgage privilege tax due in Alabama is \$6,677.40 (the "Total Mortgage Privilege Tax"). The value of the property located in Shelby County, Alabama constitutes 54.5% of the total value of the Alabama Property, and the value of the property located in Houston County, Alabama constitutes 45.5% of the total value of the Alabama Property. Therefore, the Office of the Judge of Probate of Shelby County, Alabama shall collect \$3,639.18 of the Total Mortgage Privilege Tax, and the Office of the Judge of Probate of Dothan County, Alabama shall collect \$3,038.22 of the Total Mortgage Privilege Tax.

**20200601000217980**  
**06/01/2020 12:26:31 PM**  
**MORT 1/14**

This instrument prepared by  
and should be returned to:  
J. Corbitt Tate  
Balch & Bingham LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, AL 35203

**MORTGAGE OF REAL ESTATE, SECURITY AGREEMENT  
AND FIXTURE FILING**

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 9A OF THE UNIFORM COMMERCIAL CODE OF ALABAMA.

THIS MORTGAGE OF REAL ESTATE, SECURITY AGREEMENT AND FIXTURE FILING (including any exhibits and/or riders attached hereto, and any modifications and amendments hercof, the "Mortgage"), is entered into as of the date fully executed, but made effective as of the 25th day of May, 2020, by **MAYER PROPERTIES II, LLC**, an Alabama limited liability company, successor by conversion to Mayer Properties II, L.L.P., whose address is 3405 4th Avenue South, Birmingham, Alabama 35222 ("Mortgagor"), is granted and conveyed to **TRUIST BANK**, a corporation organized and existing under the laws of the State of North Carolina, whose mailing address is P.O. Box 1290, Whiteville, North Carolina 28472-1290 ("Mortgagee").

Bay Pine Property Management, LLC, a Delaware limited liability company ("Bay Pine") is indebted to Mortgagee, as evidenced by a certain promissory note dated as of even date herewith, executed in favor of Mortgagee in the principal amount of NINETEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$19,500,000.00), plus interest thereon, and any renewals, extensions, modifications, restatements, amendments, consolidations, substitutions or refinancings thereof, the terms of which are incorporated herein by reference (collectively, the "Bay Pine Note").

G4 Real Estate, LLC, an Alabama limited liability company ("G4") is indebted to Mortgagee, as evidenced by a certain promissory note dated as of even date herewith, executed in favor of Mortgagee in the principal amount of NINE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$9,500,000.00), plus interest thereon, and any renewals, extensions, modifications, restatements, amendments, consolidations, substitutions or refinancings thereof, the terms of which are incorporated herein by reference (collectively, the "G4 Note").

Six-C, L.L.C., an Alabama limited liability company ("Six-C") and together with Bay Pine and G4, the "Borrowers" and each a "Borrower") is indebted to Mortgagee, as evidenced by a certain promissory note dated as of even date herewith, executed in favor of Mortgagee in the principal amount of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), plus interest thereon, and any renewals, extensions, modifications, restatements, amendments, consolidations, substitutions or refinancings thereof, the terms of which are incorporated herein by reference (collectively, the "Six-C Note" and together with the Bay Pine Note and G4 Note, the "Notes" and each a "Note").

In addition to the Notes and this Mortgage, the Mortgagee, the Mortgagor, and/or the Borrowers (individually or collectively) have entered, and from time to time may enter, into certain other promissory notes, advance agreements, other evidences of indebtedness, loan agreements, credit agreements, security agreements, financing statements, guaranty agreements, applications and agreements for commercial or standby letters of credit, certificates, instruments and other documents, including all renewals, extensions, modifications, restatements, amendments, substitutions, consolidations, and refinancings thereof and therefor (collectively, the "Loan Documents").

In addition to securing payment and performance of the indebtedness and obligations set forth in the Notes and the Loan Documents, this Mortgage also secures payment and performance of the following indebtedness and obligations to Mortgagee (collectively, the "Indebtedness"):

A. All principal, interest, and other amounts, costs, fees, charges, and expenses payable under the Notes, the Loan Documents, any advance agreement, or other document now or hereafter evidencing any other debt whatsoever incurred by Mortgagor or any Borrower and payable to Mortgagee, any obligations under interest rate

swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transaction or agreement, any amounts advanced and outstanding under any business credit cards, together with all renewals, extensions, modifications, restatements, amendments, consolidations, substitutions and refinancings of the foregoing, and any amounts expended or advanced by Mortgagee to discharge Mortgagor's and/or any Borrower's obligations or expenses incurred by Mortgagee to enforce Mortgagor's or any Borrower's obligations under this Mortgage or the Loan Documents, together with any amounts expended to preserve and protect the Property (as hereinafter defined);

B. All future advances, future obligations and readvances made by Mortgagee to Mortgagor or any Borrower, or any one or more of them, whether or not the advances are made pursuant to a commitment, whether such advances are obligatory or to be made at the option of Mortgagee or otherwise, whether such advances are made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution hereof, even if no advance made at the time of such execution or if no Indebtedness is outstanding at the time any such advance is made, including without limitation any advances to pay any draft or drawing on any commercial or standby letter of credit issued on the account of Mortgagor or any Borrower;

C. All other indebtedness of Mortgagor or any Borrower to Mortgagee, and any other affiliate of Mortgagee now or hereafter existing, whether direct or indirect, absolute or contingent, liquidated or unliquidated, and renewals, extensions, modifications, restatements, amendments, consolidations, substitutions and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by a note, open account, assignment, endorsement, guaranty, pledge or otherwise and all interest thereon, all charges and expenses of collection of the Indebtedness or preservation of any collateral securing such indebtedness incurred by Mortgagee or any of its affiliates, including court costs and reasonable attorneys' fees; and

D. The payment and performance of all other obligations set forth in the Loan Documents; all sums expended by Mortgagor to protect and preserve the Property, including without limitation all taxes, insurance premiums, environmental reports and appraisals; and all costs of collection of the Indebtedness and enforcement of this Mortgage and the Loan Documents, including without limitation all reasonable attorneys' and paralegal fees, court costs, publication fees and related costs.

For the purposes and under the conditions described in this Mortgage, and in consideration of the Indebtedness and mutual promises, Mortgagor does by these presents grant, bargain, sell, assign and convey unto Mortgagee, its successors and assigns, all of Mortgagor's right, title and interest in, to and under the real property, having an address of 2158 Highway 31 South, Pelham, Alabama and 1390 Columbia Highway, Dothan, Alabama, and more particularly described on Exhibit A attached hereto and incorporated herein by reference, situated in Shelby County and Houston County, Alabama, whether now owned or held or hereafter acquired by Mortgagor, (the "Real Property") together with (i) all buildings, structures and other improvements now or hereafter located on the Real Property or on any part or parcel of the Real Property (the "Improvements"); (ii) all tenements, hereditaments, easements and appurtenances belonging to the Real Property or in any way appertaining to the Real Property, now or hereafter belonging to or to be used in connection with the Real Property or on any part or parcel of the Real Property; (iii) all fixtures (including all trade, domestic and ornamental fixtures) now or hereafter on the Real Property or on any part or parcel of the Real Property or in or on any of the Improvements, whether actually or constructively attached or affixed, including, without limitation, all plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning and heating, and sprinkling fixtures, and all screens, awnings and signs which are fixtures; (iv) all equipment, machinery, apparatus, fittings, furniture, furnishings and personal property of every kind or description whatsoever now or hereafter located on the Real Property or on any part or parcel of the Real Property or in or on any of the Improvements, and used in connection with the operation or maintenance of the Real Property or any of the Improvements, all accessions and additions to and replacements of the foregoing and all proceeds (direct and remote) of the foregoing, including, without limitation, all plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning and heating, and sprinkling equipment and systems, and all screens, awnings and signs; (v) all rights in now existing and hereafter arising easements, rights of way, rights of access, water rights and courses, sewer rights, air rights, development rights and other rights relating to the Real Property or on any part or parcel of the Real Property or any of the Improvements; (vi) all as-extracted collateral including without limitation all gas, oil and mineral rights of every nature and kind, all timber-to-be-cut and all other rights now or hereafter located on the Real Property or under the Real Property or on or under any part or parcel of the Real Property, and all of Mortgagor's rights to or arising directly or indirectly out of all as-extracted collateral; (vii) all of Mortgagor's rights as a declarant or developer under any declaration of condominium, homeowners' association declaration, commercial property owner's association or similar organization or association documentation now or hereafter in effect with respect to the Real Property; (viii) all authorizations, licenses, permits, contracts, management agreements, franchise agreements, and occupancy and other certificates concerning the ownership, use and operation of the Real Property; (ix) all plans and specifications prepared for construction of the Improvements on the Real Property and all studies, data and drawings related thereto, together with all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of the Improvements on the Real Property; (x) all leases, undertakings to lease, contracts to rent, and other agreements for use, occupancy or possession now or hereafter in force with respect to the Real Property or any part or parcel of the Real Property or any of the Improvements, any and all guaranties of the foregoing, and any and all other leases, occupancy agreements, contracts, licenses, permits and arrangements now or hereafter affecting the Real Property or any part or parcel of the Real Property or any of the Improvements, whether written or oral and whether now or hereafter existing; (xi) all rents, issues, income, revenues and profits now or hereafter accruing from, and all accounts and contract rights now or hereafter arising in connection with, the Real Property or any part or parcel of the Real Property or any of the Improvements, including, without limitation, all rents, issues, income, revenues and profits accruing from, and all accounts and contract rights arising in connection with, the leases, together with all monies and proceeds now or



hereafter due or payable with respect thereto or on account thereof, and all security deposits, damage deposits and other funds paid by any lessee, sublessee, tenant, subtenant, licensee, permitted or other obligee under any leases, whether paid in a lump sum or installments; (xii) all building materials, supplies, goods, machinery and equipment delivered to the Real Property and placed on the Real Property for the purpose of being affixed to or installed or incorporated or otherwise used in or on the Real Property or any part or parcel of the Real Property or any of the Improvements, and all accessions and additions to and replacements of the foregoing and all proceeds (direct or remote) of the foregoing; (xiii) all payments, awards, judgments and settlements (including interest thereon) to which Mortgagor may be or become entitled as a result of the exercise of the right of eminent domain with respect to the Real Property or any part or parcel of the Real Property or any of the Improvements; (xiv) all policies of insurance which insure against loss or damage to any property described above and all proceeds from and payments under such policies; (xv) all franchises, names, tradenames, signs, marks and trademarks under which any business located on the Real Property is operated or known, but excluding any of the foregoing related to or owned by Mayer Electric Supply Company, Inc.; and (xvi) all substitutions, accessions, additions and replacements to any of the foregoing and all products and proceeds of any of the foregoing, or with respect to the Real Property (collectively, the "Property").

TO HAVE AND TO HOLD, all of such Property unto Mortgagee, its successors and assigns forever.

Mortgagor certifies to Mortgagee that the Property is not homestead property of Mortgagor. Any Mortgagor who has not also executed the Notes is executing this Mortgage solely for the purpose of waiving his/her homestead rights, and also acknowledges receipt of good and valuable consideration for this waiver.

Mortgagor (and where more than one, each jointly and severally) covenants and agrees and consents to the following terms, covenants, and conditions set forth herein:

**1. PAYMENT AND PERFORMANCE.** If Mortgagor is a maker or obligor on any Indebtedness, Mortgagor shall promptly pay the principal of and interest on the Indebtedness at the time and in the manner therein provided. The lien of this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the Indebtedness or any part thereof secured hereby. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this Mortgage or the Loan Documents but also in any other mortgage or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance.

**2. TITLE TO PROPERTY.** Mortgagor represents and covenants that Mortgagor is lawfully seized of the Property in fee simple absolute (or such other estate, if any, as is stated above), that Mortgagor has good, right, and lawful authority to sell, convey, or encumber the same, and that the Property is free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy obtained by Mortgagee in the transaction in which this Mortgage was granted. Mortgagor represents and warrants that the provisions of this Mortgage do not conflict with or result in a default under any agreement or other instrument binding on Mortgagor and do not result in any violation of law, regulation, court order or decree applicable to Mortgagor, and that Mortgagee has made no representation to Mortgagor about the creditworthiness or financial condition of Borrowers. Mortgagor further covenants to warrant and forever defend title to the Property, at Mortgagor's expense, from and against all persons whomsoever claiming the same or any part thereof. In the event any action or proceeding is commenced that questions Mortgagor's title or the interest of Mortgagee under this Mortgage, Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Mortgagee's own choice, at Mortgagor's expense, and Mortgagor shall deliver, or cause to be delivered, to Mortgagee such instruments as Mortgagee may request from time to time to permit such participation. The representations and covenants set forth above shall survive the payment of the Indebtedness and shall not be affected by Mortgagee's acquisition of any interest in the Property.

**3. COMPLIANCE WITH APPLICABLE LAWS.** Mortgagor shall promptly comply with all laws, regulations and ordinances, now and hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Mortgagor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Mortgagor has notified Mortgagee in writing prior to doing so and so long as, in Mortgagee's sole opinion, Mortgagee's interests in the Property are not jeopardized. Mortgagee may require Mortgagor to post adequate security or a surety bond, reasonably satisfactory to Mortgagee, to protect Mortgagee's interest.

**4. DUTY TO PAY TAXES, PREMIUMS.** Mortgagor shall pay as they become due all insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or imposition, assessed against the Property. Upon the request of Mortgagee, Mortgagor shall promptly furnish satisfactory evidence of such payment or performance. Mortgagor shall authorize the appropriate governmental officer to deliver to Mortgagee a written statement of taxes and assessments against the Property. If Mortgagor fails to make any payments provided for in this Section or any other payments for taxes, assessments, work performed, materials furnished, or the like, Mortgagee may, but shall not be obligated to, pay the same and all sums so paid shall bear interest at the same rate as set forth in the Notes (from the date of such advance) and shall be secured by this Mortgage. Upon demand, Mortgagor shall immediately reimburse Mortgagee for any such funds so advanced. The failure, refusal or neglect of Mortgagor to pay any of the taxes assessed against the Property before any interest or penalty attaches thereto and to provide adequate security therefor or to keep the Property adequately insured as hereinafter provided, or to pay the premiums therefor shall constitute waste. Upon the happening of any act of waste and on proper application made therefor by Mortgagee to a court of competent jurisdiction, Mortgagee shall forthwith be entitled to the appointment of a receiver of the Property and of the earnings, rents, income, issue and profits thereof, with such powers as the court making such appointment shall confer. Mortgagor hereby irrevocably

consents to such appointment and waives notice of any application therefor. Upon demand of Mortgagee, Mortgagor shall deposit with Mortgagee or add to each payment required under the Notes the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay as they become due all taxes, charges, assessments, and insurance premiums which Mortgagor is required to pay. Further, any deficiency occasioned by an insufficiency of such additional payments shall be deposited by Mortgagor with Mortgagee upon demand.

**5. MECHANICS' AND OTHER LIENS.** Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Mortgagor shall do, or cause to be done, at the cost of Mortgagor and without expense to Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event Mortgagor fails to make payment of such claims and demands, Mortgagee may, but shall not be obligated to, make payment thereof, and all sums so paid shall bear interest at the same rate as set forth in the Notes (from the date of such advance) and shall be secured by this Mortgage. Mortgagor shall, on demand, reimburse Mortgagee for all sums so expended. Notwithstanding the foregoing, Mortgagor may bond or otherwise discharge any such claim or demand which is contested, in form and substance satisfactory to Mortgagee.

**6. DUTY TO MAINTAIN.** Mortgagor shall keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and shall not commit or permit any waste thereof, and promptly perform all repairs, replacements, and maintenance necessary to preserve its value. Mortgagor shall not demolish or remove any Improvements from the Property without Mortgagee's prior written consent. As a condition to the removal of any Improvements, Mortgagee may require that Mortgagor make arrangements satisfactory to Mortgagee to replace such Improvements with Improvements of at least equal value. Mortgagor shall not cause, conduct or permit any nuisance or allow the removal of any timber, minerals (including oil and gas), coal, soil, rock, or gravel products without Mortgagee's prior written consent. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property or make or permit any structural alteration, which would decrease the square footage of the Improvements by more than 5% without Mortgagee's prior written consent. Mortgagor shall give Mortgagee notice of any structural alterations that would increase the square footage of the Improvement by more than 5% at least fifteen (15) days prior to the commencement of such alterations.

**7. INSPECTIONS; APPRAISALS.** Mortgagee may, at the expense of Mortgagor and Borrowers, jointly and severally, at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws, as hereinafter defined. Should (i) Mortgagee at any time in good faith believe that the fair market value of the Property has declined below the appraised value utilized by Mortgagee in extending credit or any renewal thereof; (ii) there be an Event of Default under any Loan Document or this Mortgage; (iii) there be a forbearance or restructure of any Indebtedness secured under this Mortgage; (iv) any applicable law or regulation require Mortgagee to obtain a current appraisal or valuation; (v) there be any condemnation or material damage to the Property; (vi) Mortgagee determines that there has been a material adverse change in the financial condition or business operation of Mortgagor, any Borrower, any guarantor, or other obligor; (vii) any Borrower or Mortgagor request additional extensions of credit secured by this Mortgage; or (viii) Mortgagor's use of the Property become restricted, impaired or materially changed from its intended use on the date hereof; Mortgagee may, at the expense of Mortgagor and Borrowers, jointly and severally, obtain an appraisal or valuation of the Property from an appraiser retained by Mortgagee and thereafter, may obtain such updated appraisals or valuation as Mortgagee shall deem appropriate. Mortgagor shall cooperate fully with any such appraiser in connection with the preparation of any appraisal or valuation. Upon demand, Mortgagor shall reimburse Mortgagee for any costs incurred pursuant to this Section. All sums so paid shall bear interest at the same rate as the Notes (from the date of such advance) and shall be secured by this Mortgage and the Loan Documents.

**8. PROPERTY INSURANCE.**

**8.1 Maintenance of Insurance.** Mortgagor shall procure and maintain, and cause each tenant of the Property to procure and maintain, policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Mortgagee. Mortgagor shall also procure and maintain, and cause each tenant of the Property to procure and maintain, comprehensive general liability insurance in such coverage amounts as Mortgagee may request, with Mortgagee being named as additional insured in such liability insurance policies. Additionally, Mortgagor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Mortgagee may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Mortgagee and issued by a company or companies reasonably acceptable to Mortgagee. All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Mortgagee. Mortgagor, upon request of Mortgagee, shall deliver to Mortgagee from time to time the policies or certificates of insurance in form satisfactory to Mortgagee, including stipulations that coverages shall not be cancelled or diminished without at least thirty (30) days prior written notice to Mortgagee. Each insurance policy also shall include an endorsement providing that coverage in favor of Mortgagee shall not be impaired in any way by any act, omission or default of Mortgagor or any other person. If the Property is located in an area now or in the future designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Mortgagor shall obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the Notes and any prior liens on the Property securing the Notes, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Mortgagee, and to maintain such insurance



for the term of the Notes. Mortgagor may furnish the required insurance whether through existing policies owned or controlled by Mortgagor or through equivalent insurance from any insurance company authorized to transact business in the State of Alabama. If Mortgagor fails to provide any required insurance or fails to continue such insurance in force, Mortgagee may, but shall not be required to, procure such insurance at Mortgagor's expense, and all sums so paid shall bear interest at the same rate as set forth in the Notes (from the date of such advance) and shall be secured by this Mortgage.

**8.2 Application of Proceeds.** Mortgagor shall promptly notify Mortgagee of any loss or damage to the Property. Mortgagee may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. Whether or not Mortgagee's security is impaired, Mortgagee may, at Mortgagee's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Mortgagee elects to apply the proceeds to restoration and repair, Mortgagor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Mortgagee. Mortgagee shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration if Mortgagor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and for which Mortgagee has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Mortgagee under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Mortgagee holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Mortgagor as Mortgagor's interests may appear.

**8.3 Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

**8.4 Mortgagor's Report on Insurance.** Upon request of Mortgagee, Mortgagor shall furnish to Mortgagee a report on each existing policy of insurance showing: (i) the name of the insurer; (ii) the risks insured; (iii) the amount of the policy; (iv) the Property insured, the then current replacement value of such Property, and the manner of determining that value; and (v) the expiration date of the policy. Mortgagor shall, upon request of Mortgagee, have an independent appraiser satisfactory to Mortgagee determine the cash value replacement cost of the Property.

**9. ASSIGNMENT OF LEASES, RENTS AND PROFITS.** Mortgagor hereby presently, absolutely, and unconditionally assigns to Mortgagee all of the leases, rents, issues, and profits of the Property and the absolute, unconditional, and continuing right to receive and collect all of the leases, rents, issues and profits of the Property, it being intended that this assignment constitutes a present, outright, continuing and absolute assignment and not an assignment for additional security only. Mortgagee may elect to collect any and all rents, issues and profits at any time whether or not Mortgagor or any Borrower has committed an Event of Default under this Mortgage or any Loan Document. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, and endorse checks therefor, with or without suit, and to apply the same, less expenses of collection, to any Indebtedness secured by this Mortgage, in any manner as Mortgagee may determine. Such appointment shall be a power coupled with an interest and shall remain in full force and effect as long as any portion of the Indebtedness remains outstanding. Notwithstanding the foregoing, Mortgagee hereby grants to Mortgagor a revocable license to collect and receive all leases, rents, issues and profits of the Property until the occurrence and during the continuance of an Event of Default at which time such license shall automatically cease and terminate and shall be void and of no further effect. Upon the occurrence and during the continuance of an Event of Default, any portion of the leases, rents, issues and profits received and held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness. Mortgagee's election to pursue the collection of the rents or profits shall be in addition to all other remedies which Mortgagee might have and may be put into effect independently of or concurrently with any other remedy. Nothing contained in this Section shall diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver, nor shall any provision herein, diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth elsewhere in this Mortgage. In addition, this assignment of rents shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Mortgagor or any Borrower to Mortgagee.

**10. PAYMENT OF OTHER OBLIGATIONS.** Mortgagor shall pay as they become due all principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien or security interest having priority over this Mortgage as to the Property. If Mortgagor fails to make any such payments when due, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as set forth in the Notes from the date of such advance and shall be secured by this Mortgage.

**11. SECURITY AGREEMENT; FIXTURE FILING.** All fixtures, appliances and equipment which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. This Mortgage shall be an authenticated security agreement which creates a security interest in all furniture, fixtures, appliances, machinery, equipment and all personal property and any replacements and proceeds and substitutions thereof, owned by Mortgagor and now located thereon, attached to, or hereafter acquired or located thereon or attached thereto, and all lighting, heating, cooking, ventilating, air conditioning, incinerating, sprinkling and plumbing systems and all pipes, wires, attached fixtures and apparatus forming a part of or used in connection therewith, and all cooking appliances, cabinets, windows, doors and all wall to wall carpeting located thereon; all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property or the Improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets; and all inventory, contract rights, cash,



proceeds, profits, income, rent, accounts receivable, lease agreements, lease payments, insurance proceeds, deposit and other accounts, logos, trademarks, and all trade name agreements, and all replacements and proceeds relating thereto now owned or hereafter acquired by Mortgagor, in connection with the Property and properties described in **Exhibit A** (the "Collateral"). This Mortgage is intended to be a financing statement and shall be recorded as a "fixture filing" in accordance with the Uniform Commercial Code of the State of Alabama, as the same may be amended from time to time (the "UCC"). In that regard Mortgagor grants a security interest in such Collateral and Mortgagee shall have all rights and remedies of a secured party under the UCC, as the same may be amended from time to time, or other applicable statutes. Without limiting those rights and remedies, Mortgagee may, at its option, either (a) enforce its security interest in such Collateral under the UCC or other applicable law or (b) include such Collateral in any judicial or non-judicial foreclosure of this Mortgage. For purposes of this Section, the mailing addresses of Mortgagor (debtor) and Mortgagee (secured party) from which information concerning the security interest granted by the Mortgage and Security Agreement may be obtained (each as required by the UCC) are as stated on the first page of this Mortgage and Security Agreement. Mortgagor hereby authorizes Mortgagee to file, at Mortgagor's expense, any UCC Financing Statements describing any and all assets and personal property in which Mortgagee has been granted a security interest. Upon request by Mortgagee, Mortgagor shall take whatever action is requested by Mortgagee to perfect and continue the security interest in such Collateral. Mortgagor hereby irrevocably (as long as the Indebtedness secured hereby remains unpaid) makes, constitutes and appoints Mortgagee as the true and lawful attorney-in-fact of Mortgagor to sign the name of Mortgagor on any similar document or amendment thereto deemed necessary to perfect or continue such security interests. However, this Mortgage shall be a financing statement sufficient to perfect and maintain any security interest created hereby in the Collateral and the Property and its proceeds. Upon default, Mortgagor shall not remove, sever, or detach any of the aforementioned Collateral from the Property. 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 Notes, any Loan Document, or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the UCC, all of which shall be cumulative.

**12. CONDEMNATION AWARD.** Mortgagor shall immediately notify Mortgagee in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking. Mortgagor further agrees to promptly take such steps as Mortgagee in its sole judgment deems necessary and proper and at Mortgagor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Mortgagor shall not agree to any settlement or compromise of any condemnation or expropriation claim without Mortgagee's prior written consent. Mortgagee may, at Mortgagee's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Mortgagee's choice. Mortgagor agrees to provide Mortgagee with such documentation as Mortgagee may request to permit Mortgagee to so participate and to reimburse Mortgagee for Mortgagee's costs associated with Mortgagee's participation, including Mortgagee's reasonable attorneys' fees. If Mortgagor fails to defend any such condemnation or expropriation proceedings to Mortgagee's satisfaction, Mortgagee may undertake the defense of such a proceeding for and on behalf of Mortgagor. To this end, Mortgagor irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default then exists under this Mortgage, Mortgagee shall not agree to any final settlement or compromise of any such condemnation or expropriation claim without Mortgagor's prior approval, which approval shall not be unreasonably withheld.

Mortgagee shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("Condemnation Proceeds"). In the event that Mortgagor should receive any such Condemnation Proceeds, Mortgagor agrees to immediately turn over and to pay such proceeds to Mortgagee. All Condemnation Proceeds, which are received by, or which are payable to either Mortgagor or Mortgagee, shall be applied, at Mortgagee's sole option and discretion, and in such manner as Mortgagee may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagor and/or Mortgagee), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the outstanding balance of the Indebtedness, with such payments being applied in such manner as Mortgagee shall determine in its sole discretion. Mortgagee's receipt of such Condemnation Proceeds and the application of such proceeds as provided in this Mortgage shall not affect the lien of this Mortgage.

**13. ENVIRONMENTAL WARRANTIES, INDEMNITIES AND AGREEMENTS.** Mortgagor represents, warrants and agrees that (a) neither Mortgagor nor any other person has generated, manufactured, stored, treated, processed, released, discharged or disposed of any Hazardous Substances (hereinafter defined) on, in, around and under the Property or received any notice from any Governmental Authority (hereinafter defined) or other person with regard to a release of Hazardous Substances on, from or otherwise affecting the Property; (b) neither Mortgagor nor any other person has violated any applicable Environmental Laws (hereinafter defined) relating to or affecting the Property; (c) the Property is presently being operated in compliance with all Environmental Laws; (d) there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (e) except in strict compliance with Environmental Laws, the Property shall be kept free of Hazardous Substances and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, process or release Hazardous Substances; (f) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) Mortgagor has obtained and shall at all times continue to obtain and/or maintain all licenses, permits and other directives from any Governmental Authority necessary to comply with Environmental Laws; (h) Mortgagor is in full



compliance with the terms and provisions of the Environmental Requirements (hereinafter defined) and shall continue to comply with the terms and provisions of the Environmental Requirements; and (i) Mortgagor shall immediately give Mortgagee oral and written notice in the event that Mortgagor receives any notice from any Governmental Authority or any other party with regard to any release or storage of Hazardous Substances on, from or affecting the Property and shall conduct and complete, at Mortgagor's expense, all investigations, sampling, and testing, and all remedial, removal, and other actions necessary or required to clean up and remove all Hazardous Substances on, from or affecting the Property in accordance with all applicable Environmental Laws.

In the event that any of Mortgagor's representations or warranties shall prove to be materially false or Mortgagor fails to satisfy any Environmental Requirement, Mortgagee, in its sole discretion, may (i) choose to assume compliance with governmental directives and Mortgagor agrees to reimburse Mortgagee for all costs, expenses (including all reasonable attorneys' fees), fines, penalties, judgments, suits, or liabilities whatsoever associated with such compliance; or (ii) seek all legal and equitable remedies available to it including, but not limited to, injunctive relief compelling Mortgagor to comply with all Environmental Requirements relating to the Property. Mortgagee's rights in this Section shall be in addition to all rights granted under the Notes or Loan Documents and payments by Mortgagor under this provision shall not reduce Mortgagor's obligations and liabilities thereunder. In the event Mortgagee undertakes compliance with Environmental Requirements which Mortgagor failed to perform or which Mortgagee determines is necessary to sell all or any part of the Property, Mortgagor authorizes Mortgagee and/or Mortgagee's agents to prepare and execute on Mortgagor's behalf, any manifest or other documentation relating to the removal and/or disposal of any Hazardous Substances, from, at or on the Property. Mortgagor acknowledges that Mortgagee does not own, or have a security interest in, any Hazardous Substances which exist on, originate from or affect the Property. All amounts expended by Mortgagee in connection with the exercise of its rights under this Section (including reasonable attorneys' fees and the fees of any environmental consultants) shall become part of the Indebtedness secured by this Mortgage.

For purposes of this Mortgage: "Environmental Laws" means (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.*; (b) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.*; (c) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (d) the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*; (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (f) the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; (g) the Refuse Act, 33 U.S.C. § 407; (h) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499; (i) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; (j) the regulations promulgated pursuant to the aforesaid laws, or any of them; and (k) all other federal, state or local laws, ordinances, orders, rules or regulations, now or hereafter existing, that directly and/or indirectly relate to the protection of human health, the environment, air pollution, water pollution, noise control and/or the presence, storage, escape, seepage, leakage, emission, release, use, spillage, generation, transportation, handling, discharge, disposal or recovery of on-site or off-site hazardous or toxic substances, wastes or materials and/or underground storage tanks, and as each and any of the foregoing laws, ordinances, orders, rules or regulations may be amended or enacted from time to time. "Environmental Requirement" means any Environmental Law, together with any administrative orders, directives, judgments, consent orders, permits, licenses, authorizations, consents, settlements, agreements or other formal or informal directions or guidance issued by or entered into with any Governmental Authority or private party, which obligate or commit Grantor to investigate, remediate, treat, monitor, dispose or remove Hazardous Substances. "Governmental Authority" means any federal, state or local agency, department, court or other administrative, legislative or regulatory governmental body, or any private individual or entity acting in place of such entities. "Hazardous Substances" means one or more of the following substances: (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in any one or more of the Environmental Laws; (b) those substances listed in the United States Department of Transportation's Hazardous Materials Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (c) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws, orders, ordinances, rules or regulations; and (d) any material, waste or substances which are or contain (i) asbestos, (ii) polychlorinated biphenyls, (iii) explosives, (iv) radioactive materials, (v) gasoline, (vi) petroleum, (vii) petroleum products, (viii) lead paint, or (ix) related or similar materials or substances.

Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on, or under, or the escape, spillage, emission or release on or removal from the Property of any Hazardous Substance regardless of whether or not caused by or within the control of Mortgagor, (ii) the violation of any Environmental Laws or Environmental Requirements relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (iii) the failure by Mortgagor to comply fully with the terms and provisions of this Section, or (iv) any warranty or representation made by Mortgagor in this Section being false or untrue in any material respect. The obligations and liabilities of Mortgagor under this Section shall survive the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation of any Indebtedness, or the sale or alienation of any part of the Property.

**14. RELEASES.** Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage or any of the Loan Documents, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagor or any Borrower from personal liability for the Indebtedness. In addition, Mortgagee may,

without notice to or the consent of Mortgagor, release any obligor of the Indebtedness or any other Collateral securing the Indebtedness and such release shall not impair in any manner the validity of or priority of this Mortgage, nor release Mortgagor or any Borrower from personal liability for the Indebtedness.

**15. INDEMNIFICATION IN EVENT OF ADVERSE CLAIMS.** In the event that Mortgagee voluntarily or otherwise shall become a party to any claim, suit or legal proceeding involving the Property, it shall be indemnified and held harmless and shall be reimbursed by Mortgagor and Borrowers, jointly and severally, for any amounts paid, including all costs, charges and attorneys' fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and the other Loan Documents and payable upon demand.

**16. EVENTS OF DEFAULT.** Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following ("Event of Default"):

(a) Mortgagor or any Borrower or any other obligor fails to pay any of the Indebtedness on the date due or to perform any covenant, warranty or obligation in any Note, this Mortgage, or any Loan Document, or other note or instrument of Mortgagor or any Borrower in favor of Mortgagee; or

(b) An event of default occurs under any Loan Document, or in any instrument or contract between Mortgagor and/or any Borrower and Mortgagee; or in any instrument or contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(c) Any warranty, representation, report or statement made or furnished to Mortgagee by or on behalf of Mortgagor or any Borrower in connection with the Indebtedness is incorrect, incomplete, false or misleading in any material respect; or

(d) The occurrence of any material loss, theft, damage or destruction to the Property which is not covered by insurance; or

(e) (i) The appointment of a custodian, receiver or trustee for or to take possession of any or all of the assets of any Borrower or Mortgagor; (ii) any Borrower or Mortgagor either voluntarily or involuntarily becomes subject to (A) any insolvency proceeding, including becoming a debtor under the United States Bankruptcy Code, (B) any proceeding to dissolve any Borrower or Mortgagor, or (C) any proceeding to have a receiver appointed for any Borrower or Mortgagor; (iii) any Borrower or Mortgagor makes an assignment for the benefit of creditors; or (iv) there is an attachment, execution, or other judicial seizure of all or any portion of any Borrower's or Mortgagor's assets, including an action or proceeding to seize any Property or any funds on deposit with Mortgagee, and such seizure is not discharged within thirty (30) days; or

(f) The death, dissolution, termination of existence, insolvency or business failure of Mortgagor or any Borrower, as applicable; or

(g) The entry of any final monetary judgment which is not covered by insurance or pending appeal, or the assessment of unpaid taxes against Mortgagor, any Borrower or guarantor, or upon the issuance of any writ of garnishment against Mortgagor, any Borrower or any guarantor; or

(h) The filing of any tax, mechanic's or materialman's lien against the Property, or an attachment is levied against the Property which remains undischarged for a period of thirty (30) days unless such judgment or execution thereon is effectively stayed; or

(i) Mortgagee determines that its liens and security interests in the Property are invalid, unperfected, unenforceable, or fail to have the priority required by Mortgagee, or the Property declines in fair market or appraised value below the amount required at the execution hereof; or

(j) Mortgagee in good faith determines that there has been a material adverse change in the financial condition or business operations of Mortgagor, any Borrower, or any co-maker, endorser, guarantor or surety; or

(k) Mortgagor or any Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Mortgagor's or any Borrower's property or Mortgagor's or any Borrower's ability to repay the Indebtedness or to perform obligations under this Mortgage or any Loan Document; or

(l) Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in any Loan Document, would be in violation of such zoning ordinance or regulation or public restriction, as changed, unless such present use of the Property is permitted notwithstanding such change; or

(m) Commencement of a foreclosure or forfeiture proceeding, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Mortgagor or by any governmental agency against any of the Property, including any garnishment of any of Mortgagor's accounts, including deposit accounts, with Mortgagee; or

(n) Any of the preceding events occur with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or should any guarantor, endorser, surety or accommodation party die or become incompetent, or revoke or dispute the validity of, or liability under, any guaranty of the Indebtedness.



**17. RIGHTS AND REMEDIES.** Upon the occurrence of any Event of Default, Mortgagee may, at its option, and without prior notice to Mortgagor or any Borrower, declare the Indebtedness immediately due and payable. Mortgagee may in addition pursue all other rights and remedies available against Mortgagor or any Borrower or other obligor under the Indebtedness, under applicable provisions of Alabama law and of any other law governing the Indebtedness. This Mortgage shall remain as security for full payment of all Indebtedness and for performance of any obligation under any Loan Document, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's or Borrowers' obligations under the Notes or any Indebtedness or this Mortgage, the forbearance or extension of time or payment of any Indebtedness or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any Indebtedness secured by this Mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to any other remedies against Mortgagor, Borrowers or any other obligors for payment of the Indebtedness. Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the Indebtedness.

In addition, if an Event of Default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right without notice and without regard to the occupancy or value of any security for the Notes, even if the apparent value of the Property exceeds the Indebtedness secured by a substantial amount, or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and operate the Property and collect and apply the revenues, and Mortgagor hereby consents thereto. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. The receiver may serve without bond if permitted by law. Employment by Mortgagee shall not disqualify a person from serving as receiver. Mortgagor shall pay to Mortgagee upon demand, all expenses, including receivers' fees, reasonable attorneys' fees, costs and agent's compensation, all incurred pursuant to such appointment, all of which shall be considered a part of the Notes secured hereby. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the creditors or property of Mortgagor, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional portion of the Indebtedness accruing after such date. In exercising its rights and remedies, Mortgagee shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Mortgagee shall be entitled to bid at any public sale on all or any portion of the Property.

Mortgagee shall give Mortgagor reasonable notice of the time and place of any public sale of the personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Unless otherwise required by applicable law, reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the personal property may be made in conjunction with any sale of the Property.

**18. FORECLOSURE AND POWER OF SALE.** If an Event of Default shall have occurred, in addition to all other remedies available to Mortgagee, Mortgagee may sell the 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 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 (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three (3) successive weeks), 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 Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the 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 this Section shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Property hereunder.

The proceeds of any foreclosure sale pursuant to this Section, shall be applied as follows: (a) First, to the costs and expenses of advertising, selling and conveying the Collateral or the Property (as the case may be) including a reasonable attorneys' fee for such service 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, 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 Loan Documents, such repayment to be applied in the manner determined by Mortgagee; (c) Third, to the payment of the Indebtedness secured hereby, with interest to date of sale at the applicable rate or rates, whether or not all of such Indebtedness is then due; and (d) Fourth, the balance, if any, shall be paid as provided by law.

If an Event of Default exists, Mortgagee shall have with respect to the fixtures all rights and remedies of a secured party under the UCC, including the right to sell them at public or private sale or otherwise dispose of, lease or use them, without regard to preservation of the Collateral or its value and without the necessity of a court order. At Mortgagee's request, Mortgagor shall assemble the Collateral and make it available to Mortgagee at any place designated by Mortgagee. To the extent permitted by law, Mortgagor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the Collateral or exercise of any other right or remedy upon default. Mortgagor agrees that Mortgagee may sell or dispose of both the Property and the Collateral in accordance with the rights and remedies granted under this Mortgage with respect to the Property.

**19. ATTORNEYS' FEES; EXPENSES.** Mortgagor shall upon demand pay all reasonable attorneys' fees and all expenses incurred by Mortgagee in connection with the collection of the Indebtedness; the enforcement of the provisions of this Mortgage or the Loan Documents; or any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, the lien of this Mortgage, the Indebtedness or compliance by Mortgagor or Borrowers with any of the provisions of this Mortgage or the Loan Documents. Mortgagor shall be liable for such attorneys' fees and expenses whether or not any suit or proceeding is commenced. Such fees and expenses shall become a part of the Indebtedness and shall bear interest at the rate set forth in the Notes from the date of expenditure until repaid. Expenses covered by this Section, subject to any limits under applicable law, shall include, without limitation, legal expenses, court cost, cost of appeals, post-judgment collection services and the cost of searching records, title reports (including foreclosure reports), surveyors' reports, environmental reports, appraisal fees, and title insurance.

**20. ANTI-MARSHALLING PROVISIONS.** Notwithstanding the existence of any other liens and security interests in the Property securing the Indebtedness or held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Collateral, including the Property, shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of any remedy it has. Mortgagor waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein or to require that Mortgagee resort to any particular Property or any part thereof.

**21. 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 Property be set off against any part of the Indebtedness secured hereby. Except to the extent prohibited by law, Mortgagor waives all appraisal rights relating to the Property.

**22. DEFICIENCY.** Upon an Event of Default hereunder, along with other remedies set out herein and in the Loan Documents, Mortgagee may foreclose upon the Property and seek a deficiency judgment pursuant to Alabama law.

**23. TENANCY AT SUFFERANCE.** If Mortgagor remains in possession of the Property after the Property is sold as provided above or Mortgagee otherwise becomes entitled to possession of the Property upon default of Mortgagor, Mortgagor shall become a tenant at sufferance of Mortgagee or the purchaser of the Property and shall, at Mortgagee's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Mortgagee.

**24. DUE ON SALE - CONSENT BY MORTGAGEE.** Mortgagee may, at Mortgagee's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Mortgagee's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease-option contract, or by sale, assignment, granting of a lien, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of an interest in the Property. If Mortgagor is a corporation, partnership or limited liability company, transfer also includes any restructuring of the legal entity (whether by division or otherwise) or any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Mortgagor. However, this option shall not be exercised by Mortgagee if such exercise is prohibited by federal law or by other applicable law.

**25. MORTGAGOR'S CONTINUING OBLIGATION.** This Mortgage shall remain as security for full payment of the Indebtedness under this Mortgage and for performance of any obligation evidenced by the Loan Documents, notwithstanding any of the following: (a) the sale or release of all or any part of the Property; (b) the assumption by another party of Mortgagor's or any Borrower's obligations under this Mortgage, the Notes or the Loan Documents; (c) the forbearance or extension of time for payment of the Indebtedness or for performance of any obligations under this Mortgage or the Loan Documents, whether granted to Mortgagor, any Borrower, or to a subsequent owner of the Property; or (d) the release of any party who has assumed payment of the Indebtedness or who assumed any other obligations under this Mortgage or the Loan Documents. None of the foregoing shall, in any way, affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment in the event of foreclosure against Mortgagor, any Borrower or any party who had assumed payment of the Indebtedness or who assumed any other obligations, the performance of which is secured by this Mortgage.

**26. RELEASE AND CANCELLATION.** Upon fulfillment of all obligations, the payment and performance of which are secured by this Mortgage, and upon payment of the Indebtedness secured hereby in full, Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value to any Borrower or Mortgagor under any Note, any Loan Document, or any other document (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), and a suitable satisfaction of this Mortgage shall be executed and delivered to Mortgagor and this conveyance shall be null and void and may be cancelled of record at the request and cost of Mortgagor and Borrowers.

**27. FURTHER ASSURANCES.** At any time, and from time to time, upon request of Mortgagee, Mortgagor shall make, execute and deliver, or shall cause to be made, executed or delivered, to Mortgagee or to Mortgagee's designee, and when requested by Mortgagee, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Mortgagee may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further



assurance, certificates, and other documents as may, in the sole opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) Mortgagor's obligations under this Mortgage and any Loan Document, and (b) the liens and security interests granted in this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Mortgagor. Mortgagor shall reimburse Mortgagee for all costs and expenses incurred in connection with the matters referred to in this Section.

**28. NOTICES.** Except for any notice required under applicable law to be given in another manner, any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, three (3) days after being deposited in the United States mail as first class or certified or registered mail postage prepaid, directed to the addresses shown at the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Mortgagee's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Mortgagor agrees to keep Mortgagee informed at all times of Mortgagor's current address. Unless otherwise provided or required by law, if there is more than one Mortgagor, any notice given by Mortgagee to any Mortgagor is deemed to be notice given to all Mortgagors.

**29. GOVERNING LAW.** This Mortgage shall be governed by the laws of the State of Alabama without regard to its conflicts of law principles.

**30. CHOICE OF VENUE.** Any legal action with respect to this Mortgage may be brought in the courts of the State of Alabama or in the appropriate United States District Court situated in Alabama, and Mortgagor hereby accepts and unconditionally submits to the jurisdiction of such courts. Mortgagor hereby waives any objection to the laying of venue based on the grounds of forum non conveniens with respect thereto.

**31. NO WAIVER BY MORTGAGEE.** Mortgagee shall not be deemed to have waived any rights under any Note, this Mortgage or any of the Loan Documents unless such waiver is given in writing and signed by Mortgagee. No delay or omission on the part of Mortgagee in exercising any right shall operate as a waiver of such right or any other right. A waiver by Mortgagee of a provision of this Mortgage or any of the Loan Documents shall not prejudice or constitute a waiver of Mortgagee's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage or any of the Loan Documents. No prior waiver with regard to any transaction or matter by Mortgagee, nor any course of dealing between Mortgagee and Mortgagor, shall constitute a waiver of any of Mortgagee's rights or of any of Mortgagor's obligations as to any future matter or transaction.

**32. NON-LIABILITY OF MORTGAGEE.** The relationship between Mortgagor and Mortgagee created by this Mortgage is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Mortgagee and Mortgagor. Mortgagor is exercising Mortgagor's own judgment with respect to Mortgagor's business. All information supplied to Mortgagee is for Mortgagee's benefit only and no other party is entitled to rely on such information. There is no duty for Mortgagee to review, inspect, supervise or inform Mortgagor of any matter with respect to Mortgagor's business. Mortgagee and Mortgagor intend that Mortgagee may reasonably rely on all information supplied by Mortgagor to Mortgagee, together with all representations and warranties given by Mortgagor to Mortgagee, without investigation or confirmation by Mortgagee and that any investigation or failure to investigate shall not diminish Mortgagee's right to so rely.

**33. AMENDMENTS.** No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**34. SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**35. ENTIRE AGREEMENT.** This Mortgage, together with the Loan Documents, is the final expression of the agreement between the parties hereto and this Mortgage may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Mortgage and the Loan Documents, and there is no unwritten oral agreement between the parties hereto in existence.

**36. SOLE DISCRETION OF MORTGAGEE.** Whenever Mortgagee's consent or approval is required under this Mortgage, the decision as to whether or not to consent or approve shall be in the sole and exclusive discretion of Mortgagee and Mortgagee's decision shall be final and conclusive.

**37. SUCCESSOR INTERESTS.** The terms of this Mortgage shall be binding upon Mortgagor, and upon Mortgagor's heirs, personal representatives, successors and assigns, and shall be enforceable by Mortgagee and its successors and assigns.

**38. HYPOTHECATION.** Mortgagor has given this Mortgage as a hypothecated security to secure the indebtedness of Borrowers to Mortgagee by the Notes. Mortgagor acknowledges that it will derive a direct and material benefit in consideration for giving this Mortgage as a material inducement to Mortgagee to extend credit to

Borrowers. Mortgagor agrees that should any Borrower commit an event of default under any Note or any other Loan Document, Mortgagee shall have all rights and remedies set forth in this Mortgage. An Event of Default under this Mortgage shall be an event of default under the Notes and the Loan Documents.

**39. NO MERGER.** Mortgagor agrees that this Mortgage and the lien hereof shall not merge in fee simple title to the Property, and if Mortgagee acquires any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

**40. WAIVER OF CONSEQUENTIAL DAMAGES.** Mortgagor covenants and agrees that in no event shall Mortgagee be liable for consequential damages, whatever the nature of a failure by Mortgagee to perform its obligations, if any, under the Loan Documents, and Mortgagor hereby expressly waives all claims that it now or may hereafter have against Mortgagee for such consequential damages.

**41. TIME IS OF THE ESSENCE.** Time is of the essence in all matters set forth in this Mortgage.

**42. MISCELLANEOUS.** The captions and headings of the Sections of this Mortgage are for convenience only and shall not be used to interpret or define any provisions. All remedies provided herein are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. The liability of Mortgagor hereunder shall, if more than one, be joint and several. Whenever used, the singular shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

**43. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE, IN EACH CASE WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. MORTGAGOR AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF MORTGAGOR TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. MORTGAGOR ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THIS SECTION, THAT MORTGAGOR FULLY UNDERSTANDS ITS TERMS, CONTENT AND EFFECT, AND THAT MORTGAGOR VOLUNTARILY AND KNOWINGLY AGREES TO THE TERMS OF THIS SECTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOANS SECURED BY THIS MORTGAGE. FURTHER, MORTGAGOR HEREBY CERTIFIES THAT NEITHER ANY REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. FURTHER, NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.**

[Remainder of page intentionally left blank; signature page to follow.]



This Mortgage is given as of the date first written above 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.

**MORTGAGOR:**

**MAYER PROPERTIES II, LLC,**  
an Alabama limited liability company

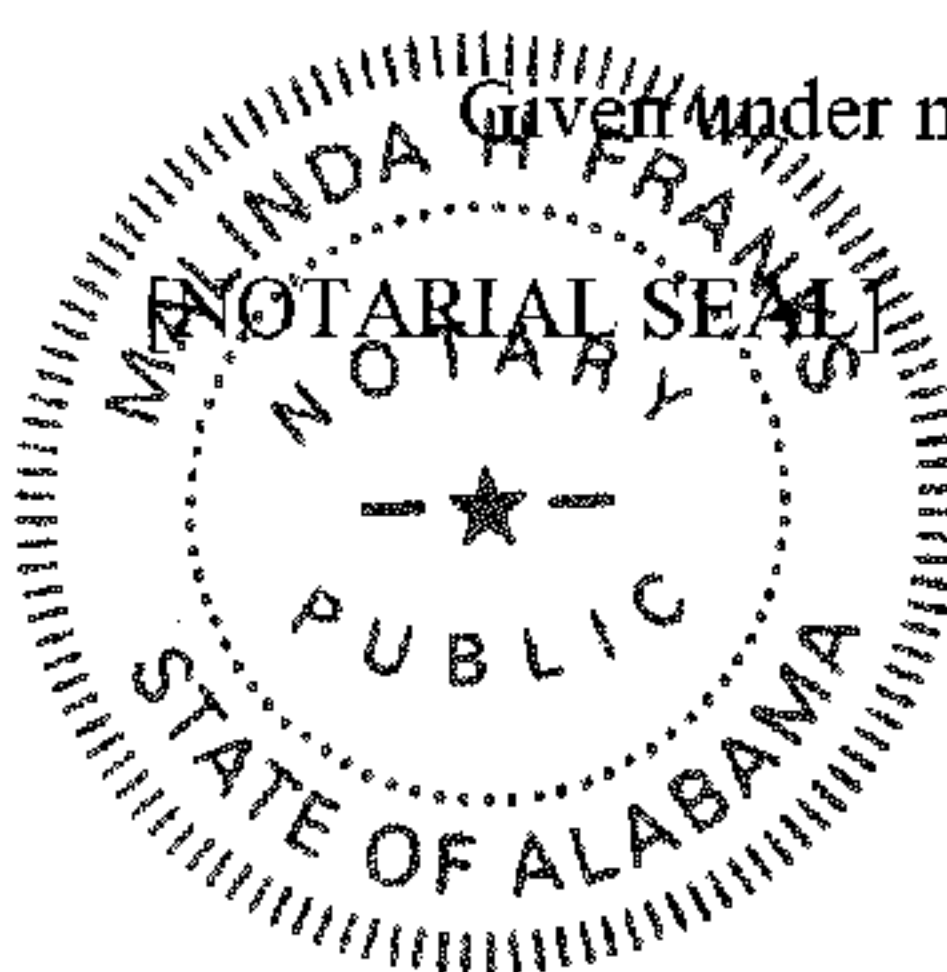
By: Bay Pine Property Management, LLC,  
a Delaware limited liability company,  
its Manager

By: Charles A. Collat, Jr. (SEAL)  
Charles A. Collat, Jr., its Manager

By: Nancy C. Goedecke (SEAL)  
Nancy C. Goedecke, its Manager

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles A. Collat, Jr., whose name as Manager of Bay Pine Property Management, LLC, a Delaware limited liability company, Manager of **Mayer Properties II, 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 the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.



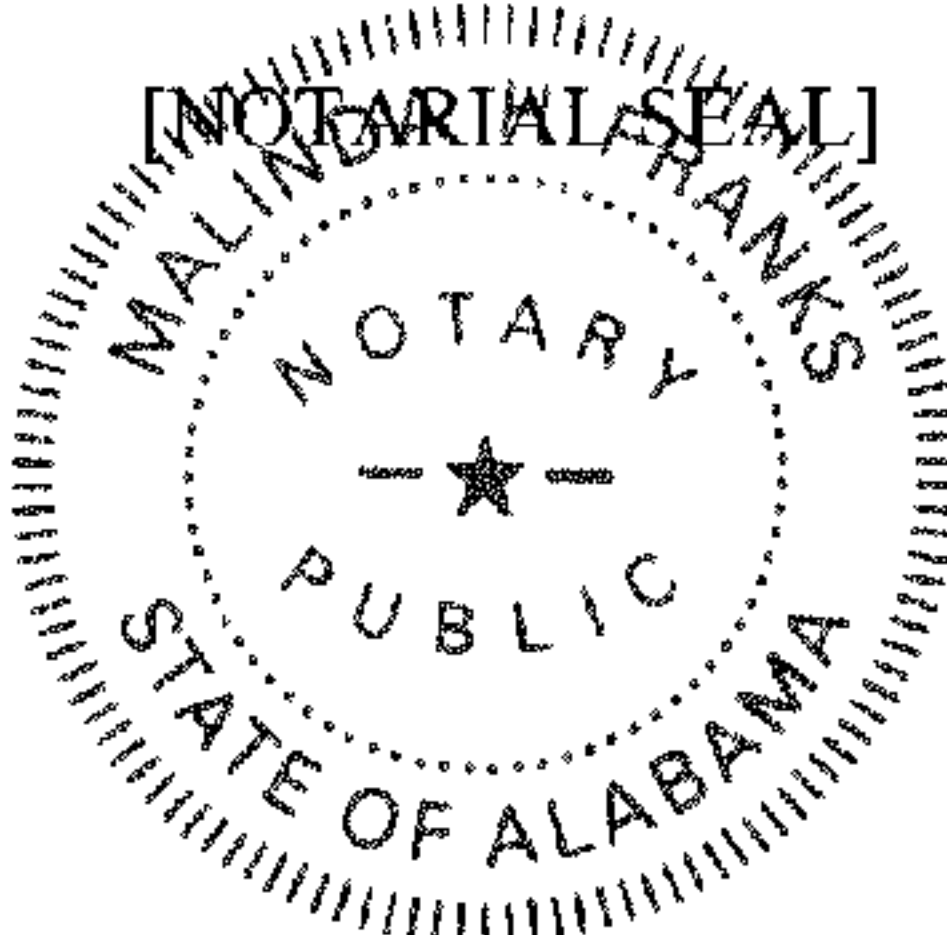
Given under my hand this 27 day of May, 2020.

Malinda H. Franks  
Notary Public

My commission expires: July 14, 2021

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Nancy C. Goedecke whose name as Manager of Bay Pine Property Management, LLC, a Delaware limited liability company, Manager of **Mayer Properties II, 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 the instrument, she, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.



Given under my hand this 27 day of May, 2020.

Malinda H. Franks  
Notary Public

My commission expires: July 14, 2021

**Exhibit A**

**Real Property**

**Tract A (Houston County, Property)**

The following real property situated in Houston County, Alabama:

**PARCEL I:**

A lot or parcel of land in the City of Dothan, Houston County, Alabama, and being more particularly described as follows:

COMMENCING at the Southeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 19, Township 3 North, Range 27 East; thence North 01 degrees 34 minutes 57 seconds East a distance of 618.14 feet to a set iron pin (SIP) and the POINT OF BEGINNING (P.O.B.); thence North 88 degrees 42 minutes 48 seconds West a distance of 262.83 feet to a set iron pin; thence North 00 degrees 05 minutes 49 seconds West a distance of 844.32 feet to a set iron pin on the South right of way of Columbia Highway (80' right of way); thence along said South right of way bearing South 75 degrees 25 minutes 00 seconds East a distance of 76.69 feet to a set iron pin; thence along said South right of way bearing S 81 degrees 43 minutes 50 seconds East a distance of 209.06 feet to a set iron pin; thence depart said South right of way bearing South 00 degrees 31 minutes 50 seconds West a distance of 283.60 feet to an existing iron pin (5/8" Pipe); thence South 01 degrees 34 minutes 57 seconds West a distance of 517.45 feet to the POINT OF BEGINNING. Said land being located in the Northwest 1/4 of the Southeast 1/4 and the Southwest 1/4 of the Northeast 1/4 of Section 19, Township 3 North, Range 27 East.

**PARCEL II:**

Together with those beneficial rights as set out in Ingress-Egress Easement and Maintenance agreement recorded in Deed Book 690, Page 28.

Situated in Houston County, Alabama.

**Tract B (Shelby County, Property)**

The following real property situated in Shelby County, Alabama:

Lots 5 and 6 Block 1, Part of Lot-1 Block 3 and part of vacated Sonya Lane according to the Eckmann Subdivision as recorded in Map Book 3, Page 144 in the Probate Office Shelby County, Alabama being more particularly described as follows:

Begin at the most Southerly corner of Lot 5 Block 1 of the Eckmann Subdivision; thence run in a Northwesterly direction along the Southwesterly line of Block One of said Eckmann Subdivision and its extension Northwesterly for a distance of 434.72 feet; thence turn an angle to the right of 89 degrees 59 minutes 5 seconds and run in a Northeasterly direction for a distance 202.21 feet to a point on the Southwesterly right of way line of U.S. Highway No. 31 South; thence turn an angle to the right of 90 degrees 0 minutes 57 seconds and run in a Southeasterly direction along the Southwesterly right of way line of U.S. Highway No. 31 South for a distance of 419.46 feet to the Southeast corner of Lot 5 Block 1 Eckmann Subdivision; thence turn an angle to the right of 85 degrees 40 minutes 1 seconds and run in a Southwesterly direction along the Southeasterly line of said Lot 5 for a distance of 202.78 feet to the point of beginning.

Situated in Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
06/01/2020 12:26:31 PM  
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*Allen S. Bayl*