

20201204000554910
12/04/2020 10:15:13 AM
MORTAMEN 1/3

MORTGAGE TAX HAS PREVIOUSLY
BEEN PAID ON \$2,250,000.00

(Space Above Line for Use by Recording Office)

THIS INSTRUMENT PREPARED BY:
W. Graham Burgess
Lanier Ford Shaver & Payne P.C.
2101 West Clinton Avenue, Suite 102
Huntsville, AL 35805
(256) 535-1100

STATE OF ALABAMA)

COUNTY OF SHELBY)

SECOND MORTGAGE MODIFICATION AGREEMENT

This Second Mortgage Modification Agreement is made and entered into as of the 23rd day of November, 2020 by and between **THE BOYD TUCKER COMPANY HELENA LLC**, an Alabama limited liability company ("**Borrower**"), **PROGRESS BANK AND TRUST**, an Alabama banking corporation (the "**Lender**"), and **SOUTH STATE BANK, N.A.**, a national association ("**Fixed Rate Provider**").

WHEREAS, Borrower is justly indebted to Lender on a construction/permanent loan in the original principal sum of \$2,250,000.00 (the "**Loan**"), or so much as may from time to time be disbursed thereunder, as evidenced by that certain Construction Loan Agreement dated February 9, 2018 by and between Lender and Borrower (the "**Loan Agreement**") and that certain Second Amended and Restated Promissory Note of even date herewith in the maximum principal sum of \$2,177,585.00, which amends and restates that certain \$2,250,000.00 Note dated as of November 29, 2018, which amended and restated in its entirety that certain Note dated February 9, 2018 in the original principal amount of \$1,865,000.00 (as amended, the "**Note**"); and

WHEREAS, the Loan is secured by, among other things, that certain Mortgage dated February 9, 2018 and recorded as Document No. 20180226000060550 in the Office of the Judge of Probate of Shelby County, Alabama; as amended by that certain Agreement for Modification, Re-Amortization, or Extension of a Mortgage dated November 29, 2018 and recorded as Document No. 20181206000426990 in the Office of the Judge of Probate of Shelby County, Alabama (the "**Mortgage**"); and

WHEREAS, Borrower and Lender desire to enter into an interest rate hedge agreement to be evidenced by a Rate Conversion Agreement dated on or about the date hereof, and desire that the lien of the Mortgage secure all of Borrower's obligations with respect thereto.

NOW THEREFORE, for and in consideration of the premises, Borrower and Lender agree that the Mortgage is modified to include the following provision:

Fixed Rate Provider is an additional secured party under this Mortgage. Any of the terms Mortgagee, Beneficiary, Secured Party or other term intended to reference the entity benefiting from the security interest or lien created hereunder to secure Borrower's obligations is deemed to include Fixed Rate Provider. Any of the terms Obligations, Secured Obligations, Debt, Secured Debt, Loan or other terms intended to reference Borrower's obligations secured hereunder is deemed to include obligations owed by Borrower to Fixed Rate Provider under the Rate Conversion Agreement between Fixed Rate Provider and Borrower dated on or about the date hereof (such agreement, as the same may be amended or modified, the "**Rate Conversion Agreement**").

Lender and Fixed Rate Provider have previously entered into a Master Servicing Agreement (the "**Master Servicing Agreement**") specifying, among other things, circumstances under which Fixed Rate Provider may take over Lender's rights under the Loan, Loan Agreement or Note and with respect to collateral for Borrower's obligations thereunder and under the Rate Conversion Agreement. Until Borrower's receipt of written notice from Fixed Rate Provider, Lender will be entitled to exercise all rights of Lender and Fixed Rate Provider hereunder and all rights of Lender under the Loan, Loan Agreement or Note. Upon and after written notice from Fixed Rate Provider to Borrower that Fixed Rate Provider is entitled to act with respect to the Loan, Loan Agreement or Note and the property pledged hereunder, (i) Fixed Rate Provider will be entitled to exercise all rights of Lender and Fixed Rate Provider hereunder and all rights of Lender under the Loan, Loan Agreement or Note and (ii) Borrower will comply with instructions, notices and other communications solely from Fixed Rate Provider with respect to rights of Lender and Fixed Rate Provider hereunder and rights of Lender under the Loan, Loan Agreement or Note. The relative rights and priorities as between Fixed Rate Provider and Lender with respect to the rights referred to in this paragraph will be governed by the Master Servicing Agreement.

As additional security for Borrower's obligations to Lender secured hereunder, Borrower pledges to Lender and grants Lender a first priority lien and security interest in any Early Unwind Amount (as defined in the Rate Conversion Agreement) owed to Borrower under the Rate Conversion Agreement. In the event of a default by Borrower under the Loan, Loan Agreement or Note, Borrower assigns to Lender payment of any such Early Unwind Amount. Upon written notice from Lender to Fixed Rate Provider that a default has occurred under the Loan, Loan Agreement or Note, Fixed Rate Provider will be authorized to pay such Early Unwind Amount to Lender without liability to Borrower. Any dispute on Borrower's part regarding the appropriateness of Lender's notice of default or Fixed Rate Provider's payment of the Early Unwind Amount to Lender will be addressed by Borrower to Lender, and Borrower will not seek legal or other recourse or remedy from or with respect to Fixed Rate Provider.


Except as modified herein, all of the terms and conditions of the Mortgage shall remain in full force and effect and Borrower hereby ratifies and confirms the terms of the Mortgage.

[signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

BORROWER:

THE BOYD TUCKER COMPANY
HELENA LLC, an Alabama limited liability
company

By: 
Joshua H. Boyd
Its: Sole Member

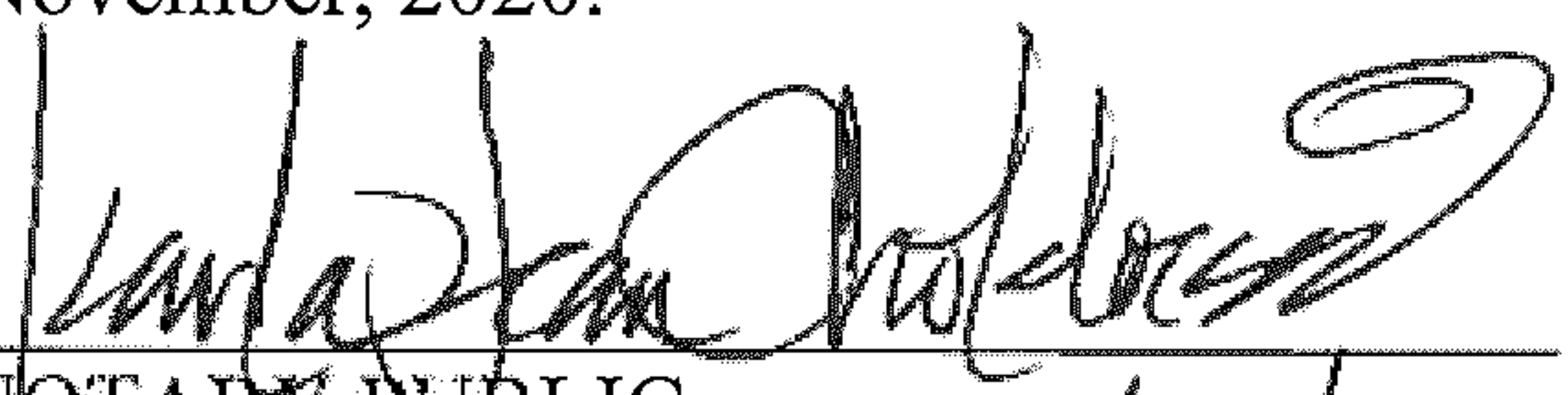
STATE OF ALABAMA)

COUNTY OF shelby)

I, the undersigned Notary Public in and for said County in said State, hereby certify that **Joshua H. Boyd**, whose name as Sole Member of THE BOYD TUCKER COMPANY HELENA 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 19th day of November, 2020.

[NOTARIAL SEAL]


NOTARY PUBLIC
My Commission Expires: 10/02/2022



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
12/04/2020 10:15:13 AM
\$30.00 CHARITY
20201204000554910

Allen S. Boyd