


***Prepared by:***

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**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT**, dated February 11, 2021, between **MORROW-GREYSTONE, LLC**, an Alabama limited liability company (hereinafter called "Borrower"), whose address is 820 Shades Creek Parkway, Suite 2300, Birmingham, Alabama 35209, and **COMMERCEONE BANK**, an Alabama banking corporation (hereinafter called "Lender"), Mortgagee, whose address is 2100 Southbridge Parkway, Suite 385, Birmingham, Alabama 35209, Attn: Art Freeman.

**THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES AMONG OTHER OBLIGATIONS, AS OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENTS ON LAND. THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ARTICLE 9A OF THE UNIFORM COMMERCIAL CODE, CODE OF ALABAMA, 1975, AS AMENDED.**

**WITNESSETH:**

**WHEREAS**, pursuant to a certain Promissory Note of even date herewith, and as hereinafter described (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note"), Borrower is justly indebted to Lender in the principal sum of **THREE MILLION EIGHT HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS** (\$3,865,000.00), or so much thereof as shall have been advanced from time to time, with the principal balance of the Note, with interest, being due not later than the Maturity Date, as set forth in the Note; and

**WHEREAS**, as a condition to it making the loan to be evidenced by the Note, Lender has required that Mortgagor agree that this Mortgage secure the Note and Loan Obligations as defined in the Construction Loan Agreement dated of even date herewith by and between Borrower and Lender.

**NOW, THEREFORE**, the undersigned, in consideration of the indebtedness above mentioned, in consideration of the agreement of Borrower to secure the prompt payment of the Note, including future advances, (provided all future advances will not exceed twice the combined principal amount of the Note), with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, mortgage and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:



(a) All estate, right, title, and interest of Borrower in, to and under to that certain tract or parcel of land located in Shelby County, Alabama, as more particularly described in Exhibit A; and

(b) All estate, right, title and interest of Borrower in, to and under or derived from the Land and any interest Borrower presently has or acquires hereafter in any of the Mortgaged Property as defined herein.

(c) All right, title and interest of Borrower in and to all buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(d) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the improvements located or to be located on the real estate described herein, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

**TOGETHER** with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards.





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**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, shall keep, perform, and observe all and singular the covenants and promises of Borrower and in the Note, this Mortgage, and in every other document evidencing or securing the payment and performance of the obligations of Borrower under the Note, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.

**AND** this Mortgage is made subject to the following covenants and agreements:

## **ARTICLE 1.**

**Section 1.1 Performance of Note and Mortgage.** This Mortgage shall secure payment of the Note and the payment and performance of all of Borrower's obligations under this Mortgage, the Assignment of Rents and Leases, each executed by Borrower in connection herewith (all of which are herein referred to as the "Loan Documents"). Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by Borrower.

**Section 1.2 Warranty of Title.** Borrower is lawfully seized of an indefeasible estate in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in the policy of title insurance delivered to and approved by Lender, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

**Section 1.3 Monthly Tax Deposits.** If required by Lender at any time from and after an Event of Default, Borrower will pay to Lender monthly, together with and in addition to each regular installment of principal and/or interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount under this Section 1.3 remaining to Borrower's credit.



#### **Section 1.4 Other Taxes, Utilities and Liens.**

(a) Borrower will pay, when and as due, and prior to any delinquency, and will, upon request of Lender, exhibit promptly to Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.3 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof. Borrower may, after written notice to Lender, challenge any such taxes or assessments in good faith and through appropriate legal proceedings, provided that, in Lender's opinion, appropriate reserves are established for payment of such taxes or assessments and the lien and priority of the Mortgage are not jeopardized through such challenge.

(b) Borrower will promptly pay, or cause tenants of the Mortgaged Property to pay pursuant to leases, all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) Borrower shall pay promptly and will not suffer any mechanic's, laborer's, statutory, or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property, provided that Grantor shall have thirty (30) days after receipt of actual notice of the filing against the Property of any lien, statement of lien, or suit to enforce a lien to either (i) cause the same to be discharged and released as a lien against the Property or (ii) to furnish a good and sufficient bond, surety or other security satisfactory to Lender.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely Lender, and Borrower fails or is unable to reimburse Lender for such adverse effects, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Lender.

**Section 1.5 Insurance.** Borrower will procure for, deliver to, and maintain for the benefit of, Lender during the life of this Mortgage, insurance policies, in such amounts as Lender shall reasonably require, with such insurers as Lender may approve, insuring the Mortgaged Property against fire, extended coverage, and such other insurable hazards, casualties and contingencies as Lender may reasonably require. Prior to completion and occupancy of the improvements to be constructed upon the real estate described on Exhibit A, Borrower will maintain builder's risk insurance to the extent of the full insurable value of the improvements under construction (not including sitework costs). If such improvements lie within a flood hazard area, Borrower will maintain flood insurance equal to the lesser of (a) the aggregate principal amount of the Note or (b) the maximum amount of coverage available under the National Flood Insurance Program. Upon completion of the improvements, Borrower shall, in addition, provide business interruption or rental continuation insurance in an amount not less than twelve (12)



months expected gross revenues from the Mortgaged Property, less those expenses that are not typically incurred during a period of business interruption, and general liability coverage. The form of such policies and the companies issuing them shall be reasonably acceptable to Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to Lender, and Lender shall be named as an additional insured on any liability policies. All policies must obligate the insurer to give to Lender not less than thirty (30) days' prior written notice of cancellation. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Upon request of Lender, Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and Lender is hereby authorized and empowered, at its option, to collect and receive the proceeds from any such policy or policies; provided, however, that if no Event of Default shall then exist, Lender shall not adjust or compromise any such loss without the written consent of Borrower. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to Lender, instead of to Borrower and Lender jointly. Proceeds of insurance will be applied as provided in Section 1.15 hereof. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, excluding, however, the gross negligence or willful misconduct of Lender. Notwithstanding the foregoing, if no Event of Default exists, and if the amount of proceeds payable on account of any loss is less than \$50,000, Borrower may, without the consent or participation of Lender, collect such insurance proceeds directly, provided that such proceeds are used by Borrower to repair or restore the property damaged or destroyed.

After an Event of Default, if required by Lender, Borrower will pay to Lender monthly, together with and in addition to each regular installment of principal and/or interest and monthly tax deposit (as and if required by Section 1.3 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such insurance premiums. Upon the occurrence of an Event of Default Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount paid in accordance herewith remaining to Borrower's credit.

**Section 1.6 Condemnation.** If all or any material portion (which shall be determined by Lender in its sole discretion) of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith; provided, however, that so long as no Event of Default then exists, Lender shall not compromise or settle any such claim without the written consent of Borrower. All such





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compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender and shall be applied as provided in Section 1.15 hereof. Borrower agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require.

#### **Section 1.7 Care of the Property.**

(a) Borrower will preserve and maintain, or cause to be preserved and maintained, the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein or in the Loan Agreement, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice of the same to Lender.

(d) Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours, subject to the rights of tenants.

(e) Lender is hereby authorized to cause the Mortgaged Property to be appraised and reappraised from time to time, as deemed necessary by Lender, whether or not an Event of Default has occurred hereunder, and Borrower agrees to pay all expenses incurred by Lender in connection therewith; provided, however, Borrower shall not be required to pay the cost of more than one appraisal during any calendar year unless an Event of Default exists.

(f) Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority, and covenants and restrictions affecting the Mortgaged Property or any part thereof.

(g) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, upon Lender making any insurance proceeds available to Borrower, Borrower will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not such insurance proceeds shall be sufficient for such purpose. If a part of the Mortgaged Property shall be physically damaged through condemnation, upon Lender making any condemnation proceeds available to Borrower, Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to Lender, regardless of whether or not such condemnation proceeds shall be sufficient for such purpose.

**Section 1.8 Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be





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made, executed and delivered, to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by Lender any and all, such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligation of Borrower under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used or useful in the operation of the Mortgaged Property or any part thereof.

**Section 1.9 Leases and Management Agreements Affecting Mortgaged Property.**

Borrower will substantially comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Except as allowed by the Assignment of Rents and Leases of even date herewith, Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender (other than standard deposits and fees). Notwithstanding the foregoing, ten percent (10%) of tenants may pre-pay their rent for more than thirty (30) days. Borrower shall not enter into any management agreement relating to the Mortgaged Property without the prior written consent of Lender. Any such consent, if given, will be conditioned upon Lender's receipt of a subordination agreement from such manager in form and content satisfactory to Lender.

**Section 1.10 Indemnity; Expenses.** Borrower will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that Borrower shall not be required to indemnify Lender for matters directly caused by Lender's violation of law, rule or regulation, gross negligence or willful misconduct.

**Section 1.11 Performance by Lender of Defaults by Borrower.** If Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises before the same becomes delinquent; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of the Loan Documents, then Lender, at its option, may perform or observe the same, and all payments made or costs incurred by Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at Default Rate (as defined in the Note). Lender shall



be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower. Unless an Event of Default exists, or unless such delay may, in Lender's judgment, threaten the security of the Mortgaged Property or the validity or priority of the lien of this Mortgage, Lender will not take action under this Section 1.11 unless Lender has given Borrower fifteen (15) days' prior written notice of its intention to act hereunder, and Borrower has not, within such fifteen (15) day period, taken the action described in such notice.

**Section 1.12 Books and Records.** Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property.

**Section 1.13 Estoppel Affidavits.** Borrower will, within ten (10) days after receipt of written request from Lender, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, whether or not any offsets or defenses exist against such principal and interest and such other matters as Lender may reasonably request.

**Section 1.14 Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. § 6901 et seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. § 9671, et seq.; "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Borrower represents and warrants to Lender that, to the best of its knowledge and belief, the Mortgaged Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that Borrower has not obtained and, to the best of its knowledge and belief, is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law (other than such permits as have been obtained or will, prior to the commencement of construction, be obtained); that Borrower has (based upon and in reliance upon the environmental report issued to Borrower by Terracon Consultants, Inc., a copy of which has been delivered to Lender) taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or



pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property or Lender; and this indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure (but shall not apply to any contamination caused by Lender or arising solely after the foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure). Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit the Lender to have access to the Mortgaged Property at all reasonable times in order to conduct, at Borrower's expense, any tests which Lender deems are necessary to ensure that Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

**Section 1.15 Restoration and Repair of Property Damaged or Taken.** Notwithstanding the provisions of Sections 1.5 and 1.6 hereof, Lender agrees that the net proceeds of insurance or condemnation (after payment of costs and expenses pursuant to Sections 1.5 and 1.6) shall be deposited into an interest-bearing account and shall be applied to repair or restoration of the Mortgaged Property, provided the following conditions are met:

(a) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Event of Default and no uncured event, which, but for expiration of any applicable grace period, would constitute an Event of Default on the part of Borrower under this Mortgage:

(b) The property, buildings, improvements and fixtures so damaged must be capable of being restored to substantially their pre-existing condition and utility (with a value equal to or greater than prior to such loss or damage), not later than three hundred sixty-five (365) days following the receipt of the applicable insurance or condemnation proceeds;

(c) Within thirty (30) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(d) Within sixty (60) days following the receipt of applicable insurance or condemnation proceeds, and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage,

(ii) if the loss or damage exceeds \$50,000, a fixed-price or guaranteed maximum cost construction contract, providing for repair or restoration of the improvements so damaged or taken, with a contractor and on terms satisfactory to Lender,

(iii) payment and performance bonds with respect to such contract, on standard AIA forms, naming Lender as obligee, unless Robins and Morton is the general contractor, in which case § 4.28 of the Loan Agreement shall be compiled.

(iv) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause,



(v) such additional funds as in Lender's opinion are necessary to complete the repair and restoration, and

(vi) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications (or evidence that such permits and licenses have been applied for and will be issued in due course);

(e) Lender may, at Borrower's expense, retain an independent inspector to review plans and specifications and completed construction and to certify all requests for disbursement;

(f) Borrower shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion;

(g) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures then used by Lender for its construction loans; and

(h) If, at any time during the course of such work, amounts held by Lender should be insufficient, in the reasonable judgment of Lender, to pay for all remaining costs of the work, Borrower will immediately deposit with Lender the amount of such estimated deficiency, such funds to be held and disbursed as provided in this Section 1.15.

In the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fails to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the indebtedness under the Note or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

Notwithstanding anything to the contrary contained herein, any insurance proceeds received from a builder's risk policy during the construction term shall be applied to the restoration of the improvements provided no Default or Event of Default exists.

**Section 1.16 Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Mortgaged Property, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of



income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Borrower will promptly upon demand reimburse Lender for the costs therefor.

**Section 1.17 Subrogation.** To the full extent of the Note and the Loan Obligations, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Mortgaged Property which is paid or satisfied, in whole or in part, out of the proceeds of the Note and the Loan Obligations, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby preserved and shall pass to and be held by Lender as additional collateral and further security for the Note and the Loan Obligations, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that the same may be satisfied and cancelled of record.

**Section 1.18 Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, the Note, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), Borrower shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

**Section 1.19 Compliance with Zoning and Restrictions.** Borrower shall at all times operate the Mortgaged Property in accordance with all applicable restrictions and zoning ordinances.

**Section 1.20 Conveyance of Mortgaged Property.** Except as otherwise expressly permitted in the Loan Agreement, Borrower shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Lender (other than involuntary liens which are contested in good faith and are in any event removed or bonded off within sixty (60) days after the filing thereof). Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of Borrower or anyone who has



assumed or guaranteed the payment of the Note and the Loan Obligations or any portion thereof. At the option of Lender the Note and the Loan Obligations shall be immediately due and payable in the event that Borrower conveys all or any portion of the Mortgaged Property or any interest therein, or in the event that Borrower's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Note and the Loan Obligations due and payable for any subsequent transfer.

**Section 1.21 Financing Statements.** Borrower hereby authorizes Lender to file such financing statements pertaining to the Mortgaged Property as Lender deems appropriate and in such jurisdiction as Lender deems appropriate without the signature or approved of Borrower.

## ARTICLE 2.

**Section 2.1 Event of Default.** The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Borrower to pay as and when due and payable under the Note, this Mortgage, or any other Loan Document any installments of principal, interest or escrow deposits, which failure is not cured within ten (10) days of written notice thereof given by Lender to Borrower (however, Lender shall not be required to give more than two (2) written notices in a twelve (12) month period); or

(b) Failure by Borrower duly to observe any covenant, condition, or agreement of this Mortgage, which failure is not cured within thirty (30) days after written notice thereof from Lender to Borrower; provided that, if such failure shall not be capable of cure within such thirty (30) day period, Lender shall, upon Borrower's written request, permit Borrower an additional period, not to exceed an additional thirty (30) days, within which to cure such failure, and no Event of Default shall exist as long as Borrower (A) commences to cure such failure within the initial thirty (30) day period, (B) prosecutes such cure with due diligence to completion, and (C) cures such failure within the additional period allowed by Lender; or

(c) The occurrence of an "Event of Default" under the Note or Loan Documents; or

(d) Except as permitted in the Loan Documents, the sale or other transfer by Borrower of all or any portion of the Mortgaged Property, or any interest therein, without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion; or

(e) The creation or suffering to exist by Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this Mortgage, the lien for ad valorem taxes not then delinquent, and mechanics' or material men's liens which are removed of record, bonded off or dismissed within thirty (30) days of the filing thereof, without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion.

Notwithstanding anything in this Section, all requirements of notice shall be deemed inapplicable if Lender is prevented from giving such notice by bankruptcy or other applicable law. In such event, the cure period, if any, shall then run from the occurrence of the event or condition of default rather than from the date of notice.



**Section 2.2 Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of Lender, become due and payable without notice or demand, except as otherwise expressly provided in the Loan Documents, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**Section 2.3 Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of the Lender, shall forthwith surrender to Lender the actual possession, and if and to the extent permitted by law, Lender may enter and take possession, of all the Mortgaged Property, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agent of Lender; shall apply the remainder of the moneys so received by Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.3 and 1.5 hereof, and to the payment of overdue installments of principal, all in such order and priority as Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**Section 2.4 Receiver.**

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.



(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.4; and all such expenses shall be secured by this Mortgage.

**Section 2.5 Lender's Power of Enforcement.**

(a) If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county where the property is located, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

**Section 2.6 Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.5 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at Default Rate, which Lender may have paid, or become liable to pay; or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of the sale after deducting any expense of ascertaining who is such owner.

**Section 2.7 Lender's Option on Foreclosure.** At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option,



foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**Section 2.8 Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

**Section 2.9 Suits to Protect the Mortgaged Property.** Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, and (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom.

**Section 2.10 Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender.** Upon the occurrence of an Event of Default, then, upon demand of Lender, Borrower will pay to Lender the whole amount due and payable under the Note; and in case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys.

**Section 2.11 Delay or Omission No Waiver.** No delay or omission of Lender or of any holder of the Note to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

**Section 2.12 No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged



Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

**Section 2.13 Discontinuance of Proceedings - Position of Parties, Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Lender shall continue as if no such proceeding had been taken.

**Section 2.14 Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 2.15 No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

**Section 2.16 Release of Collateral, Effect on Subordinate Liens.** Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of Borrower or Guarantor under the Note and/or this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this Section 2.16.

**Section 2.17 Other Collateral.** For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender, in such order and manner as Lender may elect without affecting its remedies under this Mortgage, to the maximum extent permitted by the laws of the State of Alabama.

**Section 2.18 Waiver of Redemption, Notice, Marshalling, Etc.** Borrower hereby waives and releases, to the maximum extent permitted by the laws of the State of Alabama:

(a) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; and

(b) unless specifically required herein, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise, of any option or remedy under the Note or this Mortgage; and

(c) any right to have the Mortgaged Property marshaled; provided, that if any



of the rights waived by Borrower in this Section affect or extend the time for sale of the said described Mortgaged Property, affect Lender's rights to enforce this Mortgage or affect Borrower's right to redeem, Lender shall have the right to elect to accept or reject the waiver of such right by Borrower, and such election may be made by Lender at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

**Section 2.19 Due on Sale.** Lender may declare the secured indebtedness of the Note immediately due and payable upon any transfer or further encumbrance without Lender's consent without regard to whether any impairment of its security or any increased risk of default hereunder can be demonstrated. This provision shall apply to every transfer or further encumbrance of the Mortgaged Property or any part thereof or interest in the Mortgaged Property or in Borrower regardless of whether voluntary or not, or whether or not Lender has consented to any previous transfer or further encumbrance of the Mortgaged Property or interest in Borrower.

### ARTICLE 3.

**Section 3.1 Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

**Section 3.2 Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

**Section 3.3 Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in the Note shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

**Section 3.4 Lien on Personal Property.** This Mortgage creates a lien on and grants a security interest in, the personal property of Borrower located and to be located on the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code. If an Event of Default occurs, Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

**Section 3.5 Representation Regarding Homestead.** Each individual executing this Mortgage represents, warrants, and covenants that no part of the Mortgaged Property constitutes the homestead of such individual or his or her spouse.

**Section 3.6 Future Advances.** Lender, at its option, may make future advances to Borrower, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Agreement, if applicable. Such future



advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

**Section 3.7 Notices.** Any and all notices, elections or demands permitted or required to be made under the Loan Documents, or any other agreement executed in connection with or relating to the Note or this Mortgage, or by applicable law, shall be given and be deemed effective upon being (a) delivered in person, (b) deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by Federal Express or overnight U.S. Mail or other national overnight carrier, and addressed in each such case to the parties at their respective addresses set forth in the heading of this instrument or such other single address as either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).

**Section 3.8 Governing Law.** This Mortgage shall be governed by the laws of the State of Alabama.

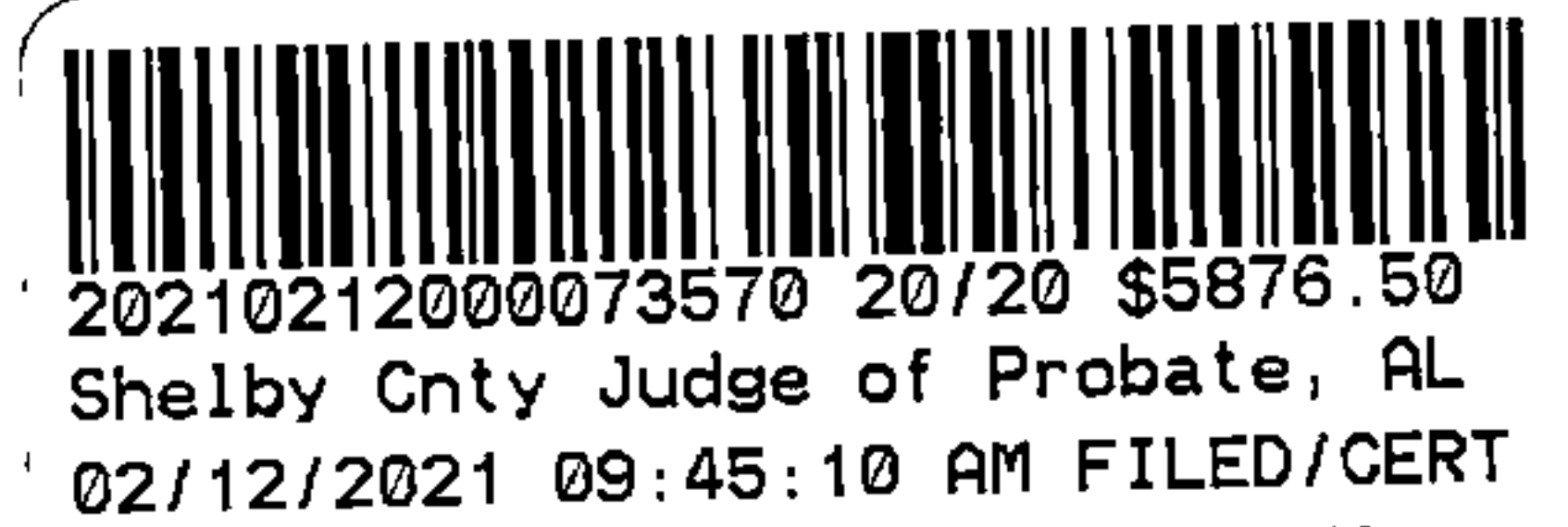
**Section 3.9 Waiver of Jury Trial.** BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

*[Signature Page Follows]*









## **EXHIBIT A**

### **Legal Description**

Lot 2, according to the Map and Survey of The Retreat at Greystone as recorded in Map Book 44, Page 123, in the Office of the Judge of Probate of Shelby County, Alabama.

Also, a 25' Construction Easement described herein as beginning at the Capped Iron (#12579) at the Southerly most corner of Lot 2 of The Retreat at Greystone as recorded in Map Book 44, Page 123, in the Shelby County Judge of Probate Office and being on the Northwesterly Right of Way of Highway #119, Cahaba Valley Road; thence S 25°06'07" W along said Right of Way of Highway #119 a distance of 22.95' to a Capped Iron (#12579); thence N 62°52'23" W leaving said road a distance of 420.89' to a Capped Iron (#12579) on the corner of Lot 1 and Lot 5; thence N 25°26'44" E along said lot line a distance of 25.22' to a Capped Iron (#12579) at the Westerly corner of said Lot 2; thence S 62°33'48" E along the southerly boundary of said Lot 2 and Lot 5 a distance of 420.82' to the point of beginning, being a 25 foot wide construction easement on the Southerly side of the lot line between Lots 2 and 5.