

STATE OF ALABAMA)  
SHELBY COUNTY)

## **MORTGAGE**

**THIS MORTGAGE** (this “**Agreement**”) dated August 26, 2021 is executed by COLUMBIANA HEALTH REALTY, L.L.C., an Alabama limited liability company, SOUTH-CARE MEDICAL FACILITIES, INC., an Alabama corporation, TALLASSEE HEALTH REALTY, L.L.C., an Alabama limited liability company, and VALLEY VIEW HEALTH REALTY, L.L.C., an Alabama limited liability company (such are collectively referred to herein as the “**Borrowers**”), as mortgagor, in favor of REGIONS BANK, an Alabama state bank (the “**Lender**”), as mortgagee.

### **Recitals**

Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Borrowers have requested that the Lender extend Credit to the Borrowers in the aggregate amount of \$27,506,690.40 (the “**Loan**”). To secure the Obligations, and to induce the Lender to extend the Credit to the Borrowers, the Borrowers have agreed to execute this Agreement.

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and to induce the Lender to extend Credit to the Borrowers under the Loan Documents, the Borrowers agree with the Lender as follows:

## **ARTICLE I**

### **RULES OF CONSTRUCTION AND DEFINITIONS**

**SECTION 1.1 Rules of Construction.** For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.
- (b) All references herein to designated “Articles,” “Sections” and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Agreement.
- (c) The terms “include,” “including,” and similar terms shall be construed as if followed by the phrase “without being limited to.”
- (d) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, other subdivision or Exhibit.
- (e) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

**SECTION 1.2 Definitions.** As used in this Agreement, the following terms are defined as follows:

(a) **Credit** means, individually and collectively, all loans, forbearances, renewals, extensions, advances, disbursements and other extensions of credit now or hereafter made by the Lender to or for the account of the Borrowers under the Loan Documents, including the Loan.

(b) **Debt** shall have the same meaning as the defined term "**Indebtedness**" set forth within the Loan Agreement.

(c) **Default Rate** shall have such meaning as set forth in the Loan Agreement.

(d) **Environmental Laws** shall have such meaning as set forth in the Loan Agreement.

(e) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(f) **Governmental Authority** shall have such meaning as set forth in the Loan Agreement.

(g) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(h) **Hazardous Materials** shall have such meaning as set forth in the Loan Agreement.

(i) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Agreement, the filing or recording of this Agreement or the Obligations.

(j) **Improvements** is defined in Section 2.1(b).

(k) **Land** is defined in Section 2.1(a).

(l) **Leases** shall have such meaning as set forth in the Loan Agreement.

(m) **Loan Agreement** shall have such meaning as set forth on Exhibit B attached hereto. Capitalized terms not otherwise defined herein shall have such meaning as set forth in the Loan Agreement.

(n) **Loan Documents** shall have such meaning as set forth in the Loan Agreement.

(o) **Obligations** shall have such meaning as set forth in the Loan Agreement.

(p) **Obligors** means the Borrowers, each other person, if any, executing any Security Document as a grantor (if any Borrower or any such grantor is a partnership, any general partner thereof),



and any other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations.

(q) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit C.

(r) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(s) **Personal Property** is defined in Section 2.1(c).

(t) **Property** is defined in Section 2.1.

(u) **Real Property** is defined in Section 2.1(b).

(v) **Security Documents** means all Loan Documents that now or hereafter grant or purport to grant to the Lender any guaranty, collateral or other security for any of the Obligations.

(w) **Tenants** shall have such meaning as set forth in the Loan Agreement.

(x) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

## ARTICLE II

### GRANTING CLAUSES

**SECTION 2.1 Granting Clauses.** As security for the Obligations, each Borrower hereby grants, bargains, sells, assigns, mortgages and conveys unto the Lender, and hereby grants to the Lender a security interest in, all of each of the Borrower's right, title and interest in, to and under the following property and interests in property (collectively, the "**Property**"):

(a) **Land.** The land located in Alabama more particularly described in Exhibit A, and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Borrowers, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "**Land**").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the Borrowers (all of the foregoing hereinafter collectively called the "**Improvements**," and together with the Land called the "**Real Property**").

(c) **Personal Property.** All of each of the Borrower's assets and personal property, whether presently existing or hereafter acquired or arising and wherever located, including without limitation, all accounts, chattel paper, deposit accounts, documents, electronic chattel paper, equipment, fixtures, general intangibles, goods, health-care-insurance receivables, instruments, inventory, investment property, letter-of-credit rights, payment intangibles, promissory notes, software, any commercial tort claims hereafter identified by Debtor in any authenticated record delivered to Lender, and all supporting obligations, products and proceeds of any of the foregoing

(d) **Rents and Leases.** All leases (including without limitation the Leases), subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing; whether accruing before or after the filing of any petition by or against any Borrower under the federal Bankruptcy Code; provided, however, that if no Event of Default exists, each Borrower shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.

(e) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Real Property, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of each Borrower in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(f) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to any Borrower or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(g) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of each Borrower thereon, including all licenses, certificates of need, patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Real Property, all governmental licenses, permits and certificates of need relating to the renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Agreement, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing and all rights of each Borrower to modify or terminate, or waive or release performance or observance of any obligations or condition of such document.

(i) **Proceeds.** All proceeds of any of the foregoing.

**SUBJECT, HOWEVER,** to Permitted Encumbrances.



**TO HAVE AND TO HOLD** the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

Each Borrower represents and warrants to the Lender that:

**SECTION 3.1 Valid Title, Debt, etc.** (a) Each Borrower is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and each Borrower has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the Property is free of all Liens other than Permitted Encumbrances; (c) each Borrower has full power to encumber, assign and convey the Property as provided herein; (d) this Agreement is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (e) each Borrower shall forever warrant and defend the title to the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

**SECTION 3.2 Hazardous Materials.** (a) To the best knowledge of the Borrowers, there are not any Hazardous Materials installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property in a manner that would cause a violation of, or that would support a claim under any Environmental Law; (b) to the best knowledge of the Borrowers, no activity is now being undertaken with respect to the Property that would cause a violation of, or support a claim under any Environmental Law; (c) to the best knowledge of the Borrowers, no Hazardous Material is now present in, on or under the Property, and no activity has been nor is now being undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Environmental Law, (2) a release or threatened release of Hazardous Materials from the Property within the meaning of any Environmental Law, (3) the discharge of Hazardous Material into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Environmental Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Environmental Law; (d) to the best knowledge of the Borrowers without investigation, no underground storage tanks or underground deposits of Hazardous Materials have ever been located in, on or under the Property and subsequently removed or filled; (e) to the best knowledge of the Borrowers, no investigation, inquiry, hearing, action, administrative order, litigation or settlement with respect to any Hazardous Material or Environmental Law is threatened or in existence with respect to the Property; (f) no notice has been served on the Borrowers from any person claiming any violation of any Environmental Law with respect to the Property, or asserting any claim under any Environmental Law with respect to the Property, or requiring compliance with any Environmental Law with respect to the Property, or demanding payment or contribution for environmental damage or injury to any person, property or natural resources as the result of the presence of any Hazardous Material in, on, under or from the Property or any violation of any Environmental Law with respect to the Property; and (g) the intended use of the Property will not result in any environmental activity that would cause a violation of, or that would support a claim under any Environmental Law.

**SECTION 3.3 Certificates and Permits.** (a) Each Borrower and/or Tenant has obtained all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of the Property as a nursing facility and the conduct of each Borrower's and Tenant's business at the Real Property, including all required zoning, land use, environmental, occupancy, fire and other approvals, and all health care licenses and provider numbers, (b)

the present and contemplated use and occupancy of the Property as a nursing home does not conflict with or violate any of the same, and (c) each Borrower, promptly upon request by the Lender, shall deliver to the Lender or cause to be delivered copies of all of the same.

## ARTICLE IV

### COVENANTS AND AGREEMENTS OF BORROWERS

**SECTION 4.1 Payment of Impositions.** Unless any Borrower is making monthly deposits pursuant to Section 4.6, each Borrower shall pay or cause to be paid all Impositions and at the Lender's request shall furnish evidence of the payment thereof at least 10 business days before the Impositions are delinquent. Each Borrower may, at such Borrower's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed. If, subsequent to the date hereof, any Governmental Requirement should become effective that in any manner changes or modifies the Governmental Requirements in effect on the date hereof governing the taxation of mortgages, deeds of trust, deeds to secure debt, assignments of rents and leases or security agreements, or the debts or other obligations secured thereby, or the manner of collecting such taxes, so as to adversely affect the Lender or any Borrower, in the opinion of the Lender, such Borrower shall pay any such tax on or before the due date thereof and shall reimburse the Lender for any out-of-pocket loss or expense suffered by the Lender as a result of such Governmental Requirement. If any Borrower fails to make such prompt payment or reimbursement, or if, in the opinion of the Lender, any such Governmental Requirement prohibits such Borrower from making such payment or reimbursement or would penalize the Lender if such Borrower makes such payment or reimbursement or if, in the opinion of the Lender, the making of such payment or reimbursement might result in the imposition of interest beyond the maximum amount permitted by applicable Governmental Requirement, then the entire balance of the Obligations and all interest accrued thereon shall, at the option of the Lender, become immediately due and payable.

**SECTION 4.2 Insurance.** Each Borrower shall comply with all provisions related to insurance set forth within the Loan Agreement, including without limitation Sections 5.1(i) and (j) thereof.

### **SECTION 4.3 Damage and Destruction**

(a) **Borrowers' Responsibilities.** In the event of any damage to or loss or destruction of the Property, each Borrower shall (1) promptly notify the Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by the Lender, promptly, regardless whether any insurance proceeds are sufficient for the purpose (unless such insurance proceeds are otherwise applied by the Lender as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by the Lender.

(b) **Lender's Rights; Application of Proceeds.** Lender's rights related to insurance proceeds are addressed within Section 5.1(j) of the Loan Agreement.

### **SECTION 4.4 Condemnation**

(a) **Borrowers' Responsibilities; Proceedings.** Each Borrower, immediately upon obtaining knowledge thereof, shall notify the Lender of any pending or threatened proceedings for the condemnation



of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. The Lender may participate in any such proceedings, and each Borrower from time to time shall execute and deliver to the Lender all instruments requested by the Lender to permit such participation. Each Borrower shall, at each Borrower's expense, diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by any Borrower without the Lender's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender. Each Borrower authorizes the Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Lender shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** The Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse the Lender for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.3(b) with respect to insurance proceeds.

#### **SECTION 4.5 Liens and Liabilities**

(a) **Discharge of Liens.** Each Borrower shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and in general, each Borrower shall do, or cause to be done, at each Borrower's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Agreement.

(b) **Creation of Liens.** No Borrower shall, without the Lender's consent, create, place or permit to be created or placed, or allow to remain, any voluntary or involuntary Lien on any of the Property, whether prior to, on a parity with or subordinate to the Lien of this Agreement, other than Permitted Encumbrances. If any such Lien is created or placed on the Property without the Lender's consent, each Borrower shall cause the same to be discharged, released or bonded off to the Lender's satisfaction within 10 days after the filing thereof.

(c) **No Consent.** Nothing in the Loan Documents shall be deemed or construed as constituting the consent or request by the Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. Each Borrower agrees that the Lender does not stand in any fiduciary relationship to the Borrowers by reason of the transactions contemplated by the Loan Documents.

**SECTION 4.6 Tax and Insurance Deposits.** At any time during the term of this Agreement, upon demand by the Lender, each Borrower shall deposit with the Lender a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Property for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or Impositions shall have become due and payable bears to twelve (12). For the purpose of this computation, the month in which the last preceding installment of premiums or Impositions became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day

of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Agreement, each Borrower shall deposit with the Lender a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums and Impositions shall become due and payable, each Borrower shall have deposited with the Lender a sum sufficient to pay the same. All such deposits shall be received and held by the Lender, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. The Lender shall, upon demand, furnish evidence to the Borrowers of the making of each such payment. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, each Borrower shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at the time when any installment of such premiums and such Impositions becomes due and payable any Borrower shall not have deposited a sum sufficient to pay the same, such Borrower shall, within 10 days after demand, deposit any deficiency with the Lender. Upon the termination of this Agreement in accordance with Section 6.18, any remaining amount on deposit with the Lender shall be repaid to such Borrower without interest. Each Borrower shall deliver to the Lender all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with the Lender. If the Obligations are accelerated as provided in Section 5.3(a), all funds so deposited may, at the Lender's option, be applied to the Obligations in any order determined by the Lender or to cure any existing Event of Default or to the payment of insurance premiums and Impositions as provided in this Section 4.6.

**SECTION 4.7 Operations; Utilities; Waste, Demolition, Alteration or Replacement.** Each Borrower shall (a) continuously operate their business on any existing Improvements in accordance with sound business practices; (b) not engage in any activity that would diminish the value of the Property or decrease the income from the Property; (c) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (d) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (e) not commit or permit waste thereon; (f) not remove, demolish or alter the design or structural character of any Improvements; and (g) make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. No Borrower shall remove from the Real Property any of the fixtures or Personal Property included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

**SECTION 4.8 Sale, Lease or Transfer, etc**

(a) **Real Property.** Except for Permitted Encumbrances, no Borrower shall (1) sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein; (2) contract with any person for any of the foregoing; or (3) subject any of the Real Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) **Equity Interests in Borrowers.** Each Borrower (if a partnership, limited liability company or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in any Borrower, or any other transaction whereby the legal or beneficial ownership of any Borrower is changed, including the sale of additional membership, stock or other equity interests, the liquidation or dissolution of any Borrower, the merger or consolidation of any Borrower with any other person (other than an Affiliate of that Borrower), or the participation by any Borrower in a statutory share exchange with any other person, shall be treated as a transfer of the Real Property for purposes of this Section 4.8.



(c) **Lender's Rights.** The occurrence of any of the events described in Section 4.8(a) or Section 4.8(b) will constitute an Event of Default under this Agreement, and the Lender may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3 or require the payment after the date of such occurrence of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such rights and remedies, whether such rights and remedies be exercised by the Lender to obtain a higher rate of interest on the Obligations or to protect the security afforded by this Agreement.

(d) **Lender's Reliance.** Each Borrower acknowledges the Lender's express reliance on this Section 4.8 in extending Credit under the Loan Documents based on the security of this Agreement.

**SECTION 4.9 Use, Governmental Compliance, etc.** Each Borrower shall (a) use the Property solely for the uses contemplated by the Loan Documents or otherwise permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the use of the Property and the conduct of any business or activity on the Real Property, including all required zoning, land use, environmental, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Property or any business or activity conducted on the Real Property; and (d) not permit any act to be done on the Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

**SECTION 4.10 Zoning; Title Matters.** No Borrower shall: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Borrower or adversely affect the rights of the Lender under the Loan Documents; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.

**SECTION 4.11 Hazardous Material Compliance.** Each Borrower shall: (a) not permit any Hazardous Materials to be installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property that would cause a violation of, or that would support a claim under any Environmental Law; (b) not permit any activity to be undertaken with respect to the Property that would cause a violation of, or support a claim under any Environmental Law; (c) not permit any Hazardous Material to be present in, on or under the Property, and nor any activity to be undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Environmental Law, (2) a release or threatened release of Hazardous Material from the Property within the meaning of any Environmental Law, (3) the discharge of Hazardous Materials into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Environmental Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Environmental Law; (d) not permit any underground storage tanks or underground deposits of Hazardous Materials to be located on the Property; (e) not permit the Property to be used in any manner that would cause a violation of, or that would support a claim under any Environmental Law; (f) permit the Lender from time to time to inspect the Property and observe the operations thereon and to perform tests (including soil and ground water tests) for Hazardous Materials on the Property; (g) undertake all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (1) required by any applicable

Environmental Law or (2) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Materials in connection with the Property or the operations on the Property; and (h) deliver to the Lender, at the Lender's request, copies of any and all documents in any Borrower's possession or to which such Borrower have access relating to Hazardous Materials or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Lender at any time reasonably believes that any Borrower is not complying with all applicable Environmental Laws applicable to the Property or the requirements of this Agreement regarding the same, or that a material spill, release or disposal of Hazardous Materials has occurred on or under the Property, or if any other Event of Default exists, the Lender may require such Borrower to furnish to the Lender an environmental audit or site assessment reasonably satisfactory to the Lender with respect to the matters of concern to the Lender. Such audit or assessment shall be performed at such Borrower's expense by a qualified consultant approved by the Lender.

**SECTION 4.12 Required Hazardous Material Notices.** Each Borrower shall immediately advise the Lender in writing of any of the following of which any Borrower shall become aware: (a) any violation of any Environmental Law with respect to the Property or the operations at the Property; (b) any spill, release, discharge, disposal of any Hazardous Materials, or imminent threat thereof, at the Property, in connection with the operations at the Property, or at any property adjoining or in the vicinity of the Property, that could result in the violation of any Environmental Law with respect to the Property or such operations; (c) any action instituted or threatened by any Governmental Authority under any Environmental Law affecting the Property or the operations thereon, including any notice of inspection, abatement or noncompliance; (d) all claims made or threatened by any person against any Borrower, the Lender or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence of any Hazardous Material in, on, under or from the Property or any violation of any Environmental Law with respect to the Property or the operations at the Property; (e) any Borrower's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could (1) result in the violation of any Environmental Law, (2) support any claim under any Environmental Law, or (3) subject any Borrower, the Lender or the Property to any restrictions on ownership, occupancy, transferability or use of the Property under any Environmental Law. Each Borrower shall immediately deliver to the Lender any documentation or records that the Lender may reasonably request in connection with any such notices, inquiries, and communications and shall advise the Lender of any subsequent developments.

**SECTION 4.13 Maintenance of Lien Priority.** Each Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Agreement. Each Borrower shall execute, acknowledge, deliver, file and record such additional instruments as the Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds to such Liens. If the Liens, validity or priority of this Agreement, or if title to any of the rights of each Borrower or the Lender in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against any Borrower or the Lender with respect thereto, such Borrower shall promptly notify the Lender thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Lender's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Lender (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Agreement,



including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. Each Borrower shall, on demand, reimburse the Lender for all expenses (including attorneys' fees and disbursements) reasonably incurred by the Lender in connection with any of the foregoing matters.

**SECTION 4.14 Permitted Encumbrances.** No Borrower shall permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

## ARTICLE V

### **DEFEASANCE, DEFAULT AND REMEDIES**

**SECTION 5.1 Defeasance.** This Agreement is made upon the condition that if (a) all of the Obligations (as defined in Section 1.2(m), including all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full, and (b) each Borrower reimburses the Lender for any amounts the Lender has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing each Borrower's obligations under any lease related to the Real Property, performing each Borrower's obligations under Sections 4.11 and 4.12 with respect to environmental matters, and any other advancements hereunder, and interest thereon, and (c) each Borrower fulfills all of each Borrower's other obligations under this Agreement, and (d) the Lender has no obligation to extend any further Credit to or for the account of each Borrower and there is in existence no contingent liability of each Borrower that is secured by this Agreement, and (e) any other conditions set forth in Section 6.18 are fulfilled, this conveyance shall be null and void.

**SECTION 5.2 Events of Default.** The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

- (a) An Event of Default shall occur under the Loan Agreement; or
- (b) any representation or warranty made in this Agreement shall prove to be false or misleading in any material respect as of the time made; or
- (c) any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false or misleading in any material respect as of the time furnished; or
- (d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of any Borrower to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.2 specifically dealt with) and such default shall continue unremedied for thirty (30) days; or
- (e) except for Permitted Encumbrances, if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and any Borrower fails to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to the Lender within ten days of the day such Lien, statement of Lien or suit is filed.

**SECTION 5.3 Rights and Remedies of Lender Upon Default**

(a) **Acceleration of Obligations.** If an Event of Default occurs under Section 6.4 of the Loan Agreement, all of the Obligations shall automatically become immediately due and payable. If any other Event of Default exists, the Lender shall have the right without further notice to the Borrowers (except any such notice as may be specifically required under the other Loan Documents) to accelerate the maturity of all payments and Obligations and declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** If an Event of Default exists, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the Borrowers therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrowers could do so, without any liability to the Borrowers resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the Borrowers with respect to the Property. The taking of possession of any or all of the Property shall not prevent concurrent or later proceedings for the foreclosure sale of the Property.

(c) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, the Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Borrowers for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Lender shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Agreement, to the extent required by law), to the appointment by any competent court or tribunal, without notice to the Borrowers or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary. In the event of Lender's application for appointment of a receiver, Borrowers consent to the appointment of a receiver and agrees that a receiver may be appointed without notice to Borrowers, without regard to whether Borrowers have committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Borrowers or any other person, firm or corporation who or which may be liable for the payment of the Obligations. All expenses, fees and compensation incurred in connection with such receivership shall be secured by the lien of this Agreement until paid.

(d) **Power of Sale.** If an Event of Default exists, this Agreement shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, 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 successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender may bid at any sale held under this Agreement and may purchase the Property, or any part thereof, if the highest bidder



therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, each Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Agreement shall have been terminated as provided herein.

(e) **Personal Property and Fixtures.** If an Event of Default exists, the Lender shall have with respect to the UCC Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Lender's request, each Borrower shall assemble the UCC Property and make it available to the Lender at any place designated by the Lender. To the extent permitted by law, each Borrower expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. Each Borrower agrees that the Lender may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Agreement with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, the Lender, at its option, shall have the right, power and authority to terminate the license granted to the Borrowers in Section 2.1(d) to collect the rents, profits, issues and revenues of the Real Property, whether paid or accruing before or after the filing of any petition by or against the Borrowers under the federal Bankruptcy Code, and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy all of such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.3(h).

(g) **Foreclosure Deeds.** To the extent permitted by applicable law, each Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrowers, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) **Order of Application of Proceeds.** All payments received by the Lender as proceeds of any of the Property, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under this Agreement, shall be applied by the Lender as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Agreement, including attorneys' fees and disbursements as provided in the Loan Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as the Lender may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by the Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to the Borrowers or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** If an Event of Default exists, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Agreement, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such

unmatured part of the Obligations this Agreement shall remain in full force and effect as though no sale had been made under this Section 5.3(i). Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) **Waiver of Certain Laws.** Each Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws). Each Borrower also waives any and all rights the Borrowers may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights or remedies under the Loan Documents and applicable law.

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

**SECTION 5.4 Default Rate.** If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

**SECTION 5.5 Remedies Cumulative.** The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.1 Notices.** Any notices hereunder shall be provided in accordance with the terms of the Loan Agreement.

**SECTION 6.2 Expenses.** The Borrowers shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement, and (f) the prosecution or defense of any action or proceeding by or against the Lender, the Borrowers, any other Obligor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. Each Borrower's obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Agreement.



**SECTION 6.3 Heirs, Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Borrowers may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Borrowers contained in this Agreement shall bind each Borrower's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

**SECTION 6.4 Joint and Several Liability.** If any Borrower is comprised of more than one person, each of such Borrower's representations, warranties, covenants and agreements under this Agreement shall be joint and several and shall be binding on and enforceable against either, any or all of such persons comprising such Borrower. If any one or more of the persons comprising such Borrower is in default, the Lender may exercise its remedies on default against any or all of the persons comprising such Borrower.

**SECTION 6.5 Independent Obligations.** Each Borrower agrees that each of the obligations of the Borrower to the Lender under this Agreement may be enforced against the Borrowers without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 6.6 Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

**SECTION 6.7 Date of Agreement.** The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

**SECTION 6.8 Separability Clause.** If any provision of the Loan Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 6.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 6.10 No Oral Agreements.** This Agreement is the final expression of the agreement between the parties hereto, and this Agreement 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 Agreement and the other Loan Documents, and there is no unwritten oral agreement between the parties hereto in existence.

**SECTION 6.11 Waiver and Election.** The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens granted by this Agreement, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Agreement. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or

remedy. No modification, termination or waiver of any provisions of the Loan Documents, nor consent to any departure by the Borrowers therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances.

**SECTION 6.12 No Obligations of Lender; Indemnification.** The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Loan Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or willful conduct. Each Borrower agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrowers or any Obligor in this Agreement or any other Loan Document; (b) any breach of any of the warranties or obligations of the Borrowers or any Obligor under this Agreement or any other Loan Document; and (c) the Property, or the Liens of the Lender thereon. Without limiting the generality of the foregoing, each Borrower agrees that each Borrower's obligation to defend, indemnify and save harmless the Lender set forth in this Section 6.12 shall specifically include all claims and losses asserted against or suffered by the Lender that are related to or arise out of (1) any representations or warranties in Section that prove to be false or untrue in any material respect, (2) any default in the performance or nonperformance of any Borrower's covenants in Section 4.11, and (3) any clean up or removal of, or other remedial action with respect to, any Hazardous Materials now or hereafter located on or included in the Property, that may be required by any Environmental Law or Governmental Authority. The provisions of this Section 6.12 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement.

**SECTION 6.13 Advances by the Lender.** If any Borrower shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing such Borrower's obligations under any such provision. Each Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from any Borrower's failure to pay such amounts.

**SECTION 6.14 Rights, Liens and Obligations Absolute.** All rights of the Lender hereunder, all Liens granted to the Lender hereunder, and all obligations of each Borrower hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Loan Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Loan Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 6.15 Construction of Mortgage.** This Agreement is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.



**SECTION 6.16 Fixture Filing.** This Agreement shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. Each Borrower is a debtor, and the Lender is the secured party. The names of the debtors (Borrowers) and the secured party (Lender) are given in the first paragraph of this Agreement. This Agreement is signed by the debtors (Borrowers) as a fixture filing. The mailing address of the Lender set out in the Loan Agreement is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in the Loan Agreement is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.16 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. Each Borrower is a record owner of the applicable real estate.

**SECTION 6.17 Landlord-Tenant Relationship.** Any sale of the Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Borrowers.

**SECTION 6.18 Termination.** This Agreement and the Lender's Liens under this Agreement in the Property will not be terminated until Borrowers have fulfilled the requirements set forth in Section 5.1 such that Lender is required by law to cause a written mortgage satisfaction instrument executed by one of the Lender's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Agreement, no satisfaction of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the Borrowers or the powers, rights and remedies of the Lender under this Agreement with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Lender at any one time should be paid in full, this Agreement will continue to secure any Obligations that might later be owed to the Lender until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Lender be obligated to satisfy its Liens under this Agreement or return or release any of the Property to the Borrowers (a) until the payment in full of all Obligations then outstanding, (b) if the Lender is obligated to extend Credit to the Borrowers, (c) if any contingent obligation of the Borrowers to the Lender remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to Lender under bankruptcy or insolvency laws.

**SECTION 6.19 Reinstatement.** This Agreement, the obligations of the Borrowers hereunder, and the Liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Borrowers, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrowers, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

**SECTION 6.20 Submission to Jurisdiction.** Each Borrower irrevocably (a) acknowledges that this Agreement will be accepted by the Lender and performed by the Borrowers in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the Borrowers may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the

Courts shall be conclusive and binding upon the Borrowers and may be enforced in any other court to the jurisdiction of which the Borrowers are subject, by a suit upon such judgment; (e) consents to the service of process on the Borrowers in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the Borrowers at the Borrowers' address designated in the Loan Agreement; (f) agrees that service in accordance with Section 6.20(e) shall in every respect be effective and binding on the Borrowers to the same extent as though served on the Borrowers in person by a person duly authorized to serve such process; and **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO EACH BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT EACH BORROWER TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY EACH BORROWER THAT EACH BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS.** Nothing in this Section 6.20 shall limit or restrict the Lender's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

[signatures continued on next page]

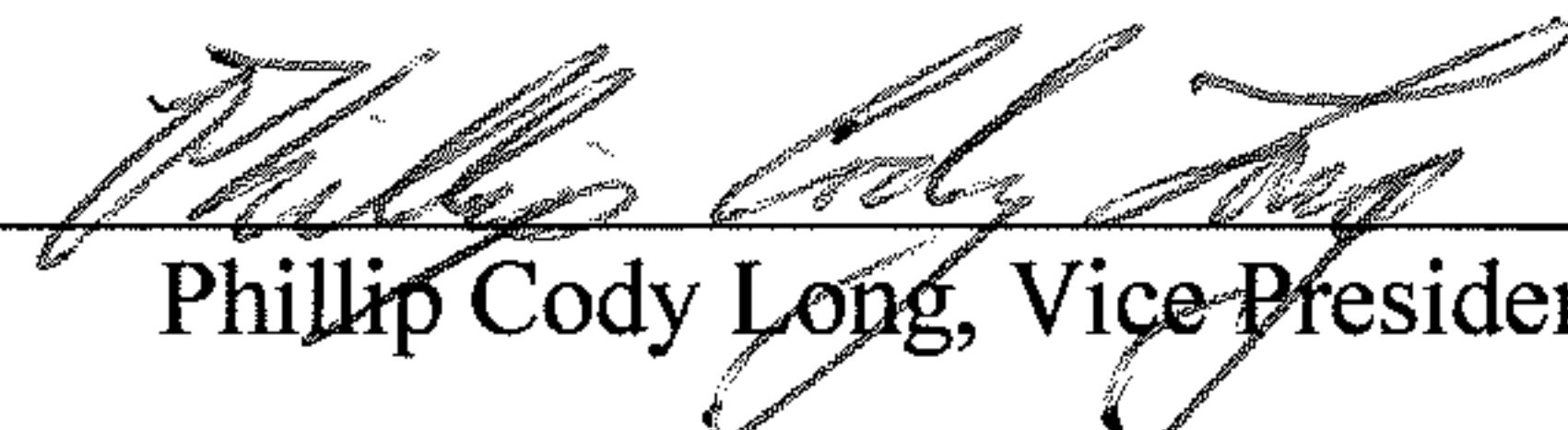


**IN WITNESS WHEREOF**, the undersigned Borrowers have caused this Agreement to be executed by its duly authorized representative as of the date first set forth above.

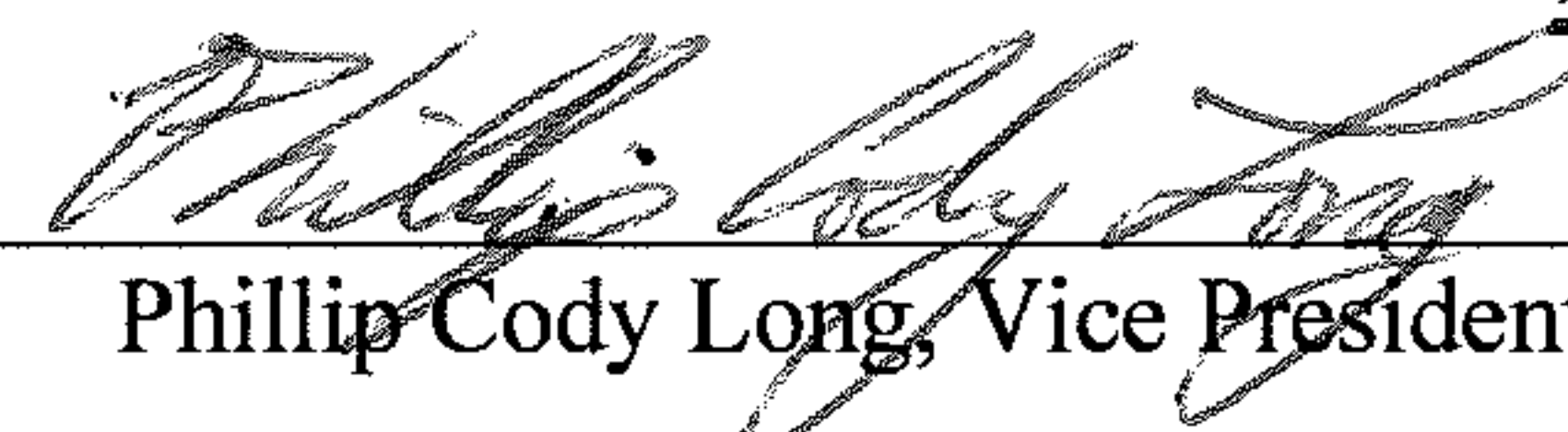
**BORROWERS:**

COLUMBIANA HEALTH REALTY, L.L.C.

By: Northport Holding LLC, Sole Member

By:   
Phillip Cody Long, Vice President

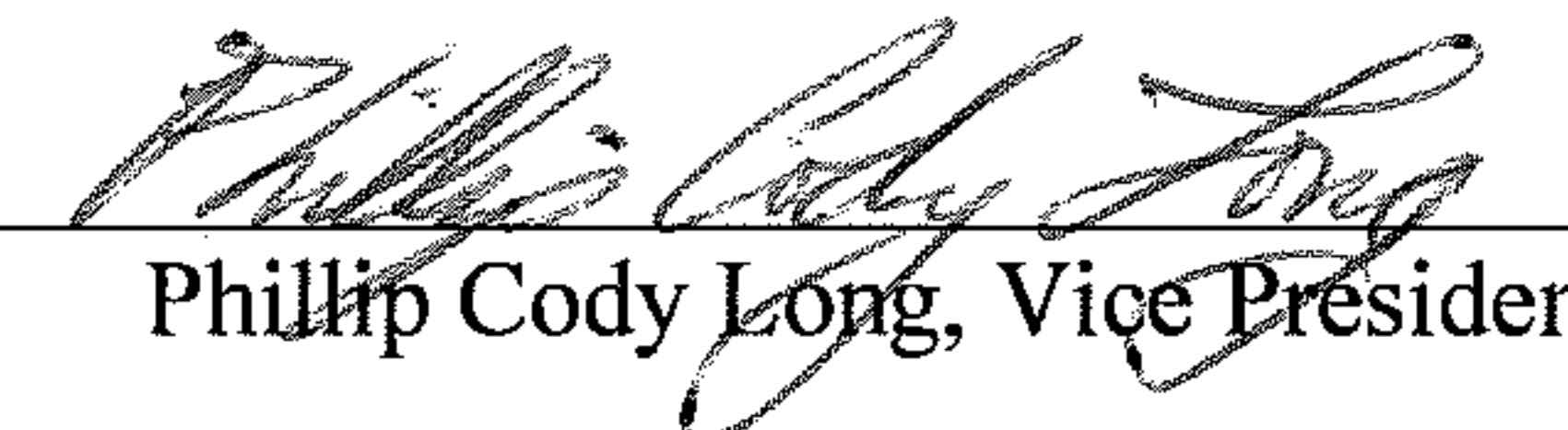
SOUTH-CARE MEDICAL FACILITIES, INC.

By:   
Phillip Cody Long, Vice President

TALLASSEE HEALTH REALTY, L.L.C.

VALLEY VIEW HEALTH REALTY, L.L.C.

By: Millennium Health Services, Inc., Sole Member

By:   
Phillip Cody Long, Vice President

This instrument prepared by and return to:

Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Attn: Bob Hannon  
(615) 252-2372

[Signature Page to Alabama Mortgage; notary acknowledgments on next page]

STATE OF ALABAMA)  
COUNTY OF TUSCALOOSA)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certifies that Phillip Cody Long, the Vice President of Northport Holding LLC, the sole Member of Columbiana Health Realty, L.L.C., an Alabama limited liability company, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company as the Vice President of its sole Member.

Given under my hand and official seal, this 20th day of August, 2021.

*Rachel R. Cabrice*

Notary Public

My Commission Expires 04/20/2024

My commission expires: \_\_\_\_\_

STATE OF ALABAMA)  
COUNTY OF TUSCALOOSA)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certifies that Phillip Cody Long, the Vice President of South-Care Medical Facilities, Inc. an Alabama corporation, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as its Vice President.

Given under my hand and official seal, this 20th day of August, 2021.

*Rachel R. Cabrice*

Notary Public

My Commission Expires 04/20/2024

My commission expires: \_\_\_\_\_



STATE OF ALABAMA)  
COUNTY OF TUSCALOOSA)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certifies that Phillip Cody Long, the Vice President of Millenium Health Services Inc., the sole Member of both Tallassee Health Realty, L.L.C. and Valley View Health Realty, L.L.C., each an Alabama limited liability company, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability companies as the Vice President of their sole Member.

Given under my hand and official seal, this 20<sup>th</sup> day of August, 2021.

  
\_\_\_\_\_  
Notary Public

AFFIX SEAL

My commission expires: My Commission Expires 04/20/2024

**EXHIBIT A**

(Land Description)

TRACT 1:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Shelby, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

A tract of land, lying in the NW 1/4 of the NE 1/4 and the NE 1/4 of the NE 1/4, all of which lying in Section 24, Township 21 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the intersection of the Westerly right-of-way line of Shelby County Highway 25 and the South line of the N 1/4 of the NE 1/4 of Section 24, Township 21 South, Range 1 West, Shelby County, Alabama; thence run South 88 degrees 30 minutes 20 seconds West along the South line thereof for 595.00 feet; thence run North 0 degrees 0 minutes 29 seconds West for 720.00 feet; thence run South 73 degrees 57 minutes 8 seconds East for 880.00 feet to the aforesaid Westerly right-of-way line of Shelby County Highway 25 (said right-of-way being 66 feet in width); thence run South 28 degrees 32 minutes 14 seconds West run along said right-of-way line for 525.00 feet to the said south line of said 1/2 - 1/4 section and to the point of beginning.

INCLUDED IN THE ABOVE LEGAL DESCRIPTION BUT EXPRESSLY EXCLUDED FROM THIS CONVEYANCE is that property more particularly described in a conveyance by Columbiana Health Realty, LLC to the State of Alabama of record in Instrument No. 20060512000225420, Judge of Probate Office for Shelby County, Alabama.

Tract 2:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Walker, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

From the Northeast corner of the SW 1/4 of SE 1/4, Section 5, Township 15 South, Range 6 West, run South 30 degrees 38 minutes West for 221.2 feet to a point; thence South 36 degrees 51 minutes West for 255.3 feet to the point of beginning or Northeast corner of school lot; thence South 21 degrees 27 minutes East for 211.0 feet to the Southeast corner of school lot; thence South 68 degrees 33 minutes West for 115.8 feet to a point; thence South 69 degrees 33 minutes West for 275.4 feet to the Southwest corner of school lot; thence North 9 degrees, 01 minutes East for 238.7 feet to the Northwest corner of school lot; thence North 68 degrees 33 minutes East for 269.9 feet to the point of beginning. All of said lot lying and being in the SW 1/4 of SE 1/4, Section 5, Township 15 South, Range 6 West, Walker County, Alabama, and containing 1.59 acres, more or less; the foregoing description being based on the North line of SW 1/4 of SE 1/4, Section 5, Township 15, Range 6 West, having an assumed bearing of South 86 degrees, 15 minutes West.

PARCEL B:

Lot No. 3A as shown on plat of property of Indian Head Mills, Inc., Cordova, Alabama, prepared by N. M. Appling, Engineer, dated July 17, 1958, as recorded in the Office of the Judge of Probate of Walker County, Alabama, in Map Book 3, at Page 33, said Lot No. 3A being also described as follows:

A part of the SW 1/4 of SE 1/4 of Section 5, Township 15 South, Range 6 West, Walker County, Alabama, more particularly described as follows: Begin at SE corner of Lot 3 of a certain map showing Indian Head Mills property which appears of record at Map Book 3, Page 33, Office of the Judge of Probate, Walker County, Alabama; thence South 19 degrees 26 minutes East for a distance of 252.26 feet along the East line



of Lot 3A as shown on said map; thence Southwardly along the North line of Lot 4 as shown on said map on a course of South 65 degrees 10 minutes West for a distance of 40.8 feet; thence Northerly along the West line of said Lot 3A on a course of North 21 degrees 42 minutes West for a distance of 253.90 feet to a point in the South line of Lot 3 as shown on said map which is 50.7' Westerly from the point of beginning; thence Easterly along the South line of said Lot 3 on a course of North 67 degrees 51 minutes East for a distance of 50.7 feet to the point of beginning.

Tract 3:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Madison, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

Lot 1A, according to the Resurvey of Lot 1 of Jack Clift Subdivision Second Addition, as recorded in Plat Book 20130529000351240 in the Office of the Judge of Probate of Madison County, Alabama.

Tract 4:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Elmore, STATE OF ALABAMA AND IS DESCRIBED AS FOLLOWS:

Begin at a concrete monument at the intersection of the West right of way of Alabama Highway No. 14

(Gilmer Avenue), 80 foot right of way, and the North line of the SE 1/4 of the SE 1/4 of Section 3, Township 18 North., Range 21 East, Elmore County, Alabama; thence South 23 degrees 24 minutes 47 seconds East, along said right of way, 156.83 feet to an iron pin at an existing fence; thence leaving said right of way, South 58 degrees 11 minutes 27 seconds West, along said fence, 834.69 feet to an iron pin on the East margin of Dolan Road; thence North 01 degrees 38 minutes 50 seconds West, along said margin of road, 573.00 feet to a concrete monument on the North line of the SE 1/4 of the SE 1/4 of Section 3; thence leaving said road, North 89 degrees 02 minutes 27 seconds East, along 1/4 section line, 663.57 feet to the point of beginning.

The above described property lies in the SE 1/4 of the SE 1/4 of Section 3, Township 18 North, Range 21 East, City Limits of Tallassee, Elmore County, Alabama.

**EXHIBIT B**

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(Loan Documents)

The “**Loan Documents**” referred to in this Agreement include this Agreement and the following:

Loan Agreement of even date herewith executed by the Borrowers and the Lender, as such may be amended and/or restated from time to time (the “**Loan Agreement**”).

\$12,506,690.40 Term Note of even date herewith issued by the Borrowers, on a joint and several basis, in favor of the Lender, as such may be amended and/or restated from time to time.

\$15,000,000.00 Capex Delayed Draw Term Note of even date herewith issued by the Borrowers, on a joint and several basis, in favor of the Lender, as such may be amended and/or restated from time to time.

Guaranties dated of even date herewith executed by Guarantors as such may be amended and/or restated from time to time.

Such additional documentation included within the term “**Loan Documents**,” as defined in the Loan Agreement.



(Permitted Encumbrances)

1. Taxes for the year 2021, a lien not yet due and payable.

**Tract 1:**

2. Easement for Distribution Facilities granted to Alabama Power Company by Columbiana Heath and Rehabilitation, LLC of record in Instrument Number 20040423000209820, in the Office of the Judge of Probate for Shelby County, Alabama.

**Tract 2:**

3. Easement of record in Book 986, Page 414, in the Office of the Judge of Probate for Walker County, Alabama.
4. Subject to all matters shown on the Plat of record in Map Book 3, Page 33, Office of the Judge of Probate for Madison County, Alabama

**Tract 3:**

5. Subject to all matters shown on the Plat of record in Plat Book 20130529 000351240 (AKA Plat Book 31, Page 16), Office of the Judge of Probate for Madison County, Alabama.
6. Easement(s) of record at Instrument No. 20060228000121270, in the Office of the Judge of Probate of Madison County, Alabama.
7. Easement to Water & Wastewater Board of City of Madison of record in Book 0834, Page 1128 in the Office of the Judge of Probate of Madison County, Alabama.
8. Easement for Water Lines of record in Book 1054, Page 0319 in the Office of the Judge of Probate of Madison County, Alabama.
9. Easement for Water Lines of record in Book 1067, page 0100 in the Office of the Judge of Probate of Madison County, Alabama.
10. Restrictions in Agreement Restricting Use of Land recorded in Book 0798, Page 0582 in the Office of the Judge of Probate, Madison County, Alabama.
11. Restrictions appearing of record in Book 841, Page 1020 in the Office of the Judge of Probate of Madison County, Alabama.
12. Restrictions appearing of record in Book 1035, Page 0379 in the Office of the Judge of Probate of Madison County, Alabama.

**Tract 4:**

13. Right-of-Way granted to Alabama Power Company recorded in Roll 44, Frame 2987 in the Office of the Judge of Probate of Elmore County, Alabama.

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**MORTGAGE RECORDATION TAX ORDER**

STATE OF ALABAMA	*	A proceeding authorized by
	*	§40-22-2(8),
COUNTY OF MONTGOMERY	*	<u>Code of Alabama 1975</u>

**BEFORE THE ALABAMA DEPARTMENT OF REVENUE:**

The Petitioner, **REGIONS BANK**, an Alabama state bank, has asked the Department of Revenue to fix and determine the amount of mortgage recording privilege tax due, pursuant to §40-22-2(8), Code of Alabama 1975, upon recordation of that certain Mortgage (the “**Mortgage**”) from COLUMBIANA HEALTH REALTY, L.L.C., an Alabama limited liability company (“**Columbiana Propco**”), SOUTH-CARE MEDICAL FACILITIES, INC., an Alabama corporation (“**South-Care Propco**”), TALLASSEE HEALTH REALTY, L.L.C., an Alabama limited liability company (“**Tallassee Propco**”), and VALLEY VIEW HEALTH REALTY, L.L.C., an Alabama limited liability company (“**Valley View Propco**”; and collectively with the foregoing, the “**Alabama Propcos**”) to Petitioner, which Mortgage encompasses properties located in Shelby, Walker, Elmore and Madison Counties, Alabama (the “Alabama Counties”). Such indebtedness will also be secured by property located outside the State of Alabama by mortgages, deeds of trusts and similar instruments from certain affiliates of Alabama Propcos (together with Alabama Propcos, collectively, the “**Borrowers**”) to Petitioner (such properties, together with the property described in the Mortgage, collectively the “**Property**”).

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. That the total amount of principal indebtedness owed by the Borrowers and secured in part by the Mortgages is \$27,506,690.40 (“**Secured Principal Indebtedness**”).



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2. That the total value of all Property, both within and without the State of Alabama, given to secure the Secured Principal Indebtedness is \$67,400,000.00.

3. That the total value of all Property located within the State of Alabama and to be encumbered by the Mortgages is \$48,000,000.00 or 71.22% of the total value of the entire Property.

4. That the amount of the Secured Principal Indebtedness which is allocable to Alabama and upon which mortgage recording tax is due upon recordation of the Mortgages in the Alabama Counties is \$19,590,264.91(rounded up to \$19,590,300.00).

5. That the amount of mortgage recording privilege tax to be paid on the Secured Principal Indebtedness allocable to the State of Alabama at the rate of \$.15 for each \$100.00, or fraction thereof, secured thereby, is \$29,385.45.

6. That the relative property values lying within the State of Alabama are as follows:

<u>County</u>	<u>Value</u>	<u>Percentage</u>
Shelby County	\$ 7,100,000.00	14.79%
Walker County	\$ 8,800,000.00	18.33%
Elmore County	\$ 9,200,000.00	19.17%
Madison County	<u>\$22,000,000.00</u>	<u>47.71%</u>
Total:	\$48,000,000.00	100%
	* * *	

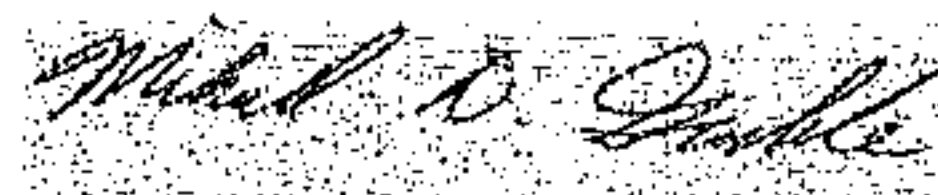
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**IT IS ORDERED, THEREFORE,** that the Probate Judge of Shelby County, Alabama the county wherein the first Mortgage is first recorded, shall collect mortgage recording tax in the amount of \$29,385.45, and pursuant to §40-22-2(7), Code of Alabama (1975), as amended, after deducting such Probate Judge's five percent (5%) commission, shall make distribution of such mortgage recording tax to the State of Alabama and to the other counties named herein in the percentages set out in Paragraph 6. The Probate Judge of Shelby County is also entitled to collect any applicable recording fees. Upon payment of the mortgage recording tax and upon the filing of the Mortgage in Shelby County, the Mortgage shall be accepted for recordation in the other Alabama Counties pursuant to §40-22-2(5), Code of Alabama (1975), as amended, without the payment of any further mortgage recording tax. The Probate Judges of such counties are entitled, however, to collect applicable recording fees.

DONE this 25<sup>th</sup> day of August, 2021.

**ALABAMA DEPARTMENT OF REVENUE**

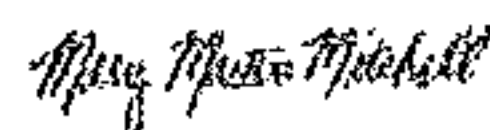
BY:



Deputy Commissioner of Revenue

LEGAL DIVISION:

BY:

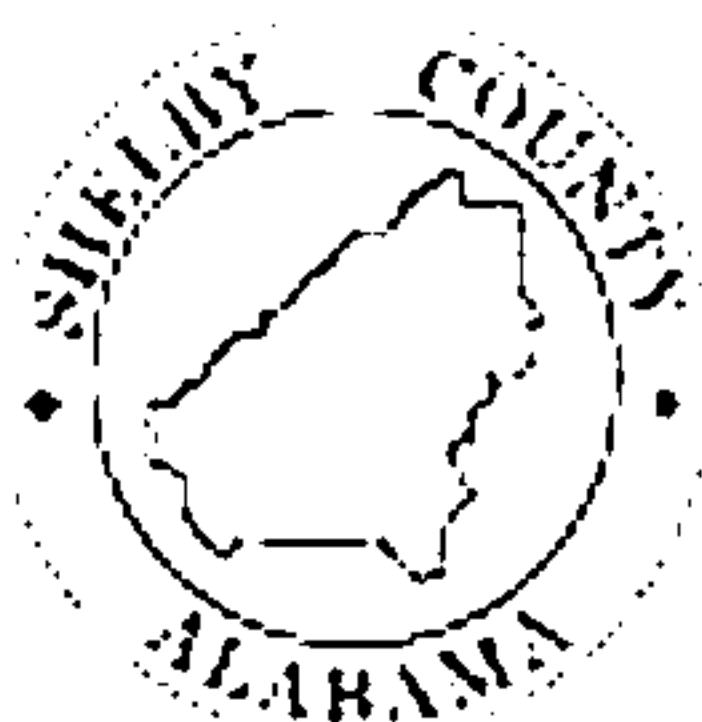


Secretary

BY:



K. Elizabeth Jehle



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
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