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Shelby Cnty Judge of Probate, AL
10/01/2021 11:38:05 AM FILED/CERT

This document prepared by:
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For recording tax purposes: 35% of the value of the real property is situated in Jefferson County and 65% is situated in Shelby County, and the total debt herein is allocated \$1,673,700 to Jefferson County property and \$3,108,300 to Shelby County property

Source of Title: Parcel 1 – Statutory Warranty Deed at Instrument No. 20020701000305960 (Shelby County)
Parcel 2 – General Warranty Deed at Instrument No. 20081223001673040 (Jefferson County)

**ALABAMA MORTGAGE
WITH SECURITY AGREEMENT
(INCLUDES FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)**

THIS MORTGAGE, made and entered into on this 19th day of August, 2021, is by and between ARMSTOR 212 NORTH LLC, an Alabama limited liability company, whose address is 212 Total Solutions Way, Alabaster, Alabama 35007, and ARMSTOR LTD., an Alabama limited partnership, whose address is 212 Total Solutions Way, Alabaster, Alabama 35007 (hereinafter collectively called “Mortgagor”), and PINNACLE BANK, a Tennessee banking company, whose address is 949 Shady Grove Road South, Suite 200, Memphis, TN 38120 (“Mortgagee”). This instrument covers property which is or may become so affixed to real property as to become fixtures and also constitutes a fixture filing under Article 9 of the Uniform Commercial Code as adopted in State of Alabama.

W I T N E S S E T H :

WHEREAS, ARMSTRONG TRANSFER & STORAGE CO., INC./ARMSTRONG RELOCATION COMPANY, an Alabama corporation (“Armstrong Birmingham”), SIMPLICITY RELOCATION, LLC, an Alabama limited liability company (“Simplicity Relocation”), and ARMSTRONG RELOCATION & COMPANIES, LLC, a Delaware limited liability company (“Armstrong Relocation” and together with Armstrong Birmingham and Simplicity Relocation, each a “Borrower” and collectively, the “Borrowers”) are, or may be, justly indebted to Mortgagee as follows: (i) Armstrong Birmingham and Simplicity Relocation are justly indebted to Mortgagee in the principal sum of TWO HUNDRED EIGHTY-TWO THOUSAND AND NO/100 DOLLARS (\$282,000.00), as evidenced by that certain promissory note of even date herewith, the description of which is set forth in Exhibit C, hereto attached (hereinafter referred to as the “Term Note”), which Term Note is by reference made a part hereof; and (ii) Armstrong Relocation are justly indebted to Mortgagee in the maximum principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,500,000.00), as evidenced by that certain promissory note of even date herewith, the description of which is set forth in Exhibit C, hereto attached (hereinafter referred to as the “Revolving Note” and together with the Term Note, collectively, the “Note”), which Revolving Note is by reference made a part hereof (ii) ; and

WHEREAS, this Mortgage is intended to and shall secure the Borrowers’ performance of the covenants contained in the Note (and any and all renewals, modifications and extensions thereof, in whole or in part), together with the other covenants herein described and contained;



NOW, THEREFORE, the Mortgagor, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, the indebtednesses created under the Note, and for other good and valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey, and confirm unto the Mortgagee, its legal representatives, successors and assigns, the real property in Shelby County and Jefferson County, Alabama, as more particularly described in Exhibit A, attached hereto, and made a part hereof as fully as if set out herein verbatim;

(1) TOGETHER with all the improvements now on or which may be hereafter placed on said real property during the existence of this Mortgage; and

(2) TOGETHER with all rights-of-way, streets, alleys, passages, riparian and littoral rights, waters, water courses, sewer rights, rights, liberties, privileges, tenements, hereditaments, easements, and appurtenances "hereunto belonging or in anywise appertaining, whether now owned or hereafter acquired by the Mortgagor, and including all rights of ingress and egress to and from said real property and all adjoining property (whether such rights now exist or subsequently arise), together with the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and

(3) TOGETHER with all machinery, apparatus, equipment, fittings, and fixtures, whether actually or constructively attached to the property, and all building materials of every kind and nature, and all trade, domestic, and ornamental fixtures, now or hereafter located in, upon, over, or under said real property or any part thereof and used or usable or intended to be used in connection with any present or future operation of said real property, including, but without limiting the generality of the foregoing: all heating, air conditioning, lighting, incinerating, and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits and switchboards; all plumbing, lifting, cleaning, fire prevention, extinguishing, refrigerating, ventilating, and communications apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all built-in stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets and partitions; all rugs and carpets; laundry equipment; together with all contract rights to acquire any of the foregoing and all deposits and payments made under contracts for the acquisition of same; together with all additions and accessions thereto and replacements thereof and proceeds therefrom (the Mortgagor hereby agreeing with respect to all additions, accessions, replacements and proceeds to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm and perfect the conveyance, transfer and assignment of any and all of the foregoing); all of the foregoing shall be deemed to be fixtures and all be part of the security for the indebtedness herein mentioned and are transferred and conveyed by this Mortgage (the property described in the foregoing paragraph (1) and this paragraph (3) being sometimes herein called the "Improvements"); and

(4) TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of grade of any street, or (c) any other injury to, taking of, or decrease in the value of any of the above described property.



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ALL the foregoing property, interests and rights encumbered by this Mortgage being collectively referred to herein as the "Mortgaged Property."

TO HAVE AND TO HOLD the same, together with all the estate right, title, interest, homestead, dower, right of dower, separate estate property, possession, claim, and demand whatsoever in law and in equity of the Mortgagor in and to the same and every part thereof, unto the Mortgagee, and the Mortgagee's legal representatives, successors and assigns, forever.

And the Mortgagor hereby covenants with the Mortgagee and with any purchaser at foreclosure sale hereunder that the Mortgagor is the lawful owner of a fee simple estate in and to the real property described on Exhibit A attached hereto; that the Mortgagor has full power, lawful right, and authority to convey such fee simple estate in the Mortgaged Property as aforesaid; that it shall be lawful for the Mortgagee at all times after default as provided hereunder to peaceably and quietly enter upon, hold, occupy, and enjoy the Mortgaged Property and every part thereof; and that the Mortgaged Property is free and clear of all liens and encumbrances.

This Mortgage shall secure payment of all sums of principal and interest and all other sums which become due and payable upon the Note, whether the entire amounts have been advanced to, or on behalf of, the Borrowers at the date hereof or are to be advanced at a later date, and shall secure any and all other sums, indebtednesses, obligations, and liabilities of any and every kind now or hereafter owing and to become due from the Borrowers to the Mortgagee, or to the holder of the Note, howsoever created, incurred, evidenced, acquired, or arising (including, but not limited to, the Obligations as defined and identified in Article I hereof) whether under the Note, under this Mortgage, or under any other instrument, obligation, contract, or agreement or dealing of any and every kind now or hereafter existing or entered into between the Borrowers and the Mortgagee, or otherwise, or whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any of the foregoing.

It is agreed that any additional sum or sums advanced by the then holder of the Note to the Borrowers at any time from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional loan or advance, shall be equally secured with and have the same priority as the original indebtedness secured hereby and be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a promissory note of the Borrowers and whether or not identified by a recital that it is secured by this Mortgage. Provided, however, that the aggregate amount of principal indebtednesses outstanding at any one time shall not exceed an amount equal to the aggregate original principal sum of the Note secured hereby, and provided further that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances.

AS FURTHER SECURITY, Mortgagor hereby pledges, assigns and grants to Mortgagee a continuing security interest in the property (the "Personal Property") described in Exhibit B, attached hereto and incorporated herein by reference (the property described in subparagraphs (a) and (b) of Exhibit B being sometimes herein called the "Tangible Personal Property").



PROVIDED ALWAYS and these presents are upon the express condition that if the Borrowers shall pay to the Mortgagee the entire indebtednesses evidenced by the Note, and all renewals, modifications, and extensions thereof, with interest thereon, and such other note or notes as may be given upon the security of this Mortgage and all renewals, modifications, or extensions therefor, as and when therein respectively provided, and Mortgagor shall promptly and fully perform, execute and complete each and every covenant, agreement, obligation, condition and stipulation contained in this Mortgage or contained in any other instrument given to secure the indebtednesses and undertakings secured hereby, then this Mortgage and the estate hereby created shall cease and be null and void; otherwise the same shall remain in full force and effect.

NOW, THEREFORE, so long as any part of the Obligations (hereinafter defined) shall remain unpaid or unperformed, Mortgagor covenants, agrees, represents and warrants as follows:

ARTICLE I OBLIGATIONS DEFINED

The following obligations are hereinafter collectively called the "Obligations":

1.1 **Note.** The Borrowers' payment of the indebtedness (and interest thereon) evidenced and to be evidenced by the Note, and of any and all renewals, modifications and extensions thereof, in whole or in part, including all future advances as hereinabove described;

1.2 **Loan Agreement.** Payment and performance of all obligations of the Borrowers under that certain Loan Agreement (the "Loan Agreement") of even date herewith between the Borrowers and Mortgagee, as amended or modified from time to time;

1.3 **Mortgage.** Payment of all sums advanced by Mortgagee to or for the benefit of the Borrowers contemplated hereby and performance of all obligations and covenants herein contained, including, without limitation, any amounts advanced to protect the trust estate and security interests herein granted and all attorneys' fees, court costs, and expenses of whatever kind incident thereto or to the collection of the indebtednesses and obligations hereby secured and/or enforcement of the liens and security interests herein granted;

1.4 **Hedging Transaction.** Payment and performance of all present and future debts, obligations and liabilities of the Borrowers (or any affiliate of the Borrowers) under or relating to: (i) any and all present and future interest rate swap, cap, collar, floor, option or forward transaction, including, without limitation, any commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, currency swap transaction, cross currency rate swap transaction, currency options or any similar transactions (any such transaction, a "Hedging Transaction") which the Borrowers (or any affiliate of the Borrowers) may enter into with Mortgagee in connection with or relating to the Loan, heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and (ii) any master agreement, confirmation or other document or instrument executed and/or delivered in connection with a Hedging Transaction (collectively, the "Hedging Contracts"); and



1.5 **Other Indebtednesses.** Payment of all other indebtednesses arising under or in connection with this Mortgage, the Note, the Loan Agreement, Hedging Contracts or any other instrument or document now or at any time evidencing, securing or guaranteeing the same (collectively the "Loan Documents"), of whatever kind or character, now owing or which may hereafter become owing by the Borrowers to Mortgagee, whether such indebtednesses are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise;

PROVIDED, HOWEVER, that the maximum principal amount of the Obligations at any one time outstanding which are or shall be secured hereby (exclusive of advances and expenses to protect the Mortgaged Property, the Personal Property or the lien of this Mortgage, as more fully described in Section 1.4 hereof) shall not exceed FOUR MILLION SEVEN HUNDRED EIGHTY-TWO THOUSAND AND NO/100 DOLLARS (\$4,782,000.00).

ARTICLE II COVENANTS AND AGREEMENTS AS TO MORTGAGED PROPERTY

Mortgagor does hereby covenant, warrant and represent to and agree with Mortgagee as follows:

2.1 **Payment and Performance.** Mortgagor shall ensure that the Borrowers make all payments on the indebtednesses evidenced by the Note when due and punctually and properly perform all of the other Obligations.

2.2 **Insurance.** Mortgagor shall, at its sole cost and expense, obtain and maintain or cause the same to be obtained and maintained by the Borrowers such insurance as shall be required by the terms of the Loan Agreement. All required insurance policies shall provide for not less than thirty (30) days' prior written notice to the Mortgagee of any cancellation, termination, or material amendment thereto. Mortgagor will cause all policies of hazard insurance to be payable to Mortgagee pursuant to a standard mortgagee clause acceptable to Mortgagee; and Mortgagor will cause all liability insurance policies to name Mortgagee as mortgagee or additional insured, if Mortgagee so requires. Mortgagor will deposit said policy or policies of insurance with the Mortgagee as further security for the Obligations, with no responsibility for the approval or maintenance of any insurance (required to be maintained pursuant hereto) being imposed upon the Mortgagee. In the event of damage to or destruction of the Improvements and/or Tangible Personal Property by fire or other casualty, the net proceeds of the insurance shall be applied in accordance with Section 5.07 of the Loan Agreement. Any insurance policies furnished to the Mortgagee shall become its property in the event the Mortgagee becomes the owner of the Mortgaged Property by foreclosure or otherwise. The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies, and to collect and receive the proceeds from any such policy or policies.

2.3 **Taxes and Assessments.** Mortgagor will promptly pay when due all taxes, assessments, levies, dues and charges of every type or nature assessed against the Mortgaged Property or the Personal Property, and any claim, lien or encumbrance against the Mortgaged Property or the Personal Property which may be or become prior to the lien of this Mortgage.

2.4 **Taxes on Loan Documents or Mortgage.** If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon the Note, the Loan Agreement, any of the Obligations, or this Mortgage, or upon any rights, titles, liens or security interests created hereby, or any part thereof, Mortgagor shall immediately pay all such taxes; provided that, if it is unlawful for Mortgagor to pay such taxes, Mortgagee may pay such taxes and Mortgagor shall reimburse Mortgagee for such payment in full within ten (10) days after notice; provided, further, that if it shall be unlawful for Mortgagor either to pay such taxes or to reimburse Mortgagee therefor, or if such payment or reimbursement would be usurious, Mortgagor shall not be required to make such payment or reimbursement, but at Mortgagee's option, the Obligations shall thereupon be immediately due and payable.

2.5 **Eminent Domain.** Mortgagor hereby transfers, sets over, and assigns to Mortgagee all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets; provided however that Mortgagor shall be entitled to retain all such awards or payments that do not exceed \$25,000.00. With respect to such awards or payments that are \$25,000.00 or greater, Mortgagee is hereby authorized, but not required, in behalf and in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgments or awards. Mortgagee may apply all such sums or any part thereof so received, after the payment of all of its expenses, including costs and reasonable attorney's fees, on the Obligations secured hereby, whether due or not, in such manner as they elect or, at its option, the entire amount or any part thereof so received may be released to the Mortgagor or other party lawfully entitled thereto.

2.6 **Repair, Waste, Alterations, etc.** Mortgagor shall keep every part of the Mortgaged Property and the Personal Property in good operating order, repair and condition and shall not commit or permit any removal or waste thereof, normal wear and tear excepted. Mortgagor shall not remove or demolish or alter the design or structural character of any Improvements now or hereafter erected upon the Mortgaged Property without the prior written consent of Mortgagee unless such removal, demolition or alteration is contemplated and permitted by the Loan Agreement. Mortgagor shall make promptly all necessary repairs, renewals and replacements to the Mortgaged Property and the Personal Property. Notwithstanding anything contained in this Section 2.6 to the contrary, Mortgagor is not required to obtain Mortgagee's written consent to materially alter the design or structural character of any of its Improvements now or hereafter erected upon the Mortgaged Property if such alterations are required by Mortgagor's franchisor.

2.7 **Advances by Mortgagee to Protect Collateral.** If the Mortgagor shall default in paying taxes, other than such taxes that are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted, maintaining insurance or making repairs, the Mortgagee may, at its discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and make repairs, and protect and preserve the Mortgaged Property and Personal Property, and such amounts so paid shall be treated as part of the expense of administering this trust, shall be repaid by Mortgagor on demand with interest at the Default

Rate (hereinafter defined), and shall be secured by the lien hereof. However, the making of any such payment by Mortgagee shall not be construed as a waiver of any default of Mortgagor.

2.8 **No Mechanics' Liens.** Mortgagor shall, within forty-five (45) calendar days of such recording or receipt of such notice or within five (5) calendar days of Lender's demand, whichever occurs first: (a) pay and discharge the lien claim; (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount; or (c) provide Lender with other assurances which Lender deems, in its sole discretion, to be satisfactory for the payment of such lien claim and for the full and continuous protection of Lender from the effect of such lien claim.

2.9 **Protection and Priority of Lien.** Mortgagor shall not do anything or suffer or permit anything to be done whereby the lien and security interest of this Mortgage could be impaired. Mortgagor shall pay such reasonable expenses and fees as may be necessary in the protection of the Mortgaged Property and Personal Property and the maintenance and execution of liens and security interests herein granted. Any agreement hereafter made by Mortgagor and Mortgagee pursuant to or regarding this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

2.10 **Compliance with Laws.** Mortgagor, the Mortgaged Property, the Personal Property, and the use thereof by Mortgagor shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Mortgagor or the Mortgaged Property and its use; Mortgagor will not suffer or permit any violation thereof; and Mortgagor shall pay all fees or charges of any kind in connection therewith; provided Mortgagor shall have the right to contest the tax liens, assessments, levies and charges; and provided, further, that Mortgagor shall have the right to contest any laws, rules, ordinances, regulations, covenants, conditions, orders or decrees of any governmental authority; provided further that, as of the time of commencement of any such action or proceeding and during the pendency thereof, (i) no Default or Event of Default shall have occurred, (ii) such contest operates to suspend the collection of the contested amount and is maintained and prosecuted continuously with diligence, (iii) none of the Mortgaged Property would be subject to any forfeiture, termination or loss by reason of the institution or prosecution of such contest, and (iv) Mortgagor shall promptly pay or discharge such contested law, rule, ordinance, regulation, covenant, condition or decree and all interest, penalties and expenses, if any relating, relating to the contest thereof, if any, and shall deliver to Mortgagee evidence acceptable to Mortgagee of such compliance, payment or discharge, if such contest is terminated adversely to Mortgagor.

2.11 **Further Assurances.** Mortgagor, upon the request of Mortgagee, shall execute, acknowledge, deliver, and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of this instrument and the other Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property or the Personal Property.

2.12 **Inspection of Premises.** Until the Obligations shall have been fully paid and satisfied, Mortgagee and its agents shall have the right at all reasonable times and upon at least forty-eight (48) hours advance notice to Mortgagor to inspect the Mortgaged Property, the Personal Property and the other security for the Obligations, and all applicable books and financial records relating thereto.

2.13 **Intentionally Deleted.**

2.14 **Due on Sale or Encumbrance.** Mortgagor hereby acknowledges to Mortgagee that (a) the identity and expertise of Mortgagor were and continue to be material circumstances upon which the Mortgagee have relied in connection with, and which constitute valuable consideration to Mortgagee for, the extending to the Borrower of the loan evidenced by the Note, (b) any change in such identity or expertise could materially impair or jeopardize the security granted to Mortgagee by this Mortgage, for the payment of the Obligations. Mortgagor therefore covenants and agrees with Mortgagee that the entire Obligations secured by this Mortgage shall, at the absolute option of Mortgagee, be and become immediately due and payable should the Mortgagor, without the prior written consent of Mortgagee (which consent may be given or withheld in the sole and absolute discretion of Mortgagee), sell, assign, transfer, convey, lease with option to purchase, enter into a contract for sale, grant an option to purchase, or further encumber any or all of Mortgagor's interest in the Mortgaged Property or the Personal Property, or any portion thereof, or permit the same to be sold, assigned, transferred, conveyed, contracted for or further encumbered. Any change of ownership in Mortgagor without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, shall be deemed a breach of this covenant.

2.15 **Hazardous Wastes.** (a) As used below, and in any of the other Loan Documents, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under any local, state or federal law, rules or regulations pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA," "RCRA," or state lien or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Mortgagor warrants, represents and covenants as follows:

(i) Neither the Mortgaged Property nor any other personal or real property owned by Mortgagor is subject to any private or governmental lien or judicial or administrative notice or action, relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Mortgaged Property or such other property, or the direct or indirect violation of any Environmental Laws.

(ii) To the best of Mortgagor's knowledge, no Hazardous Substances are located on or have been stored, processed or disposed of on or released or discharged from (including ground water contamination) the Mortgaged Property except in compliance with Environmental Laws, and Mortgagor shall not allow any Hazardous Substances to be stored, located, discharged, possessed, managed, processed or otherwise



handled on the Mortgaged Property. Mortgagor shall comply with all Environmental Laws affecting the Mortgaged Property.

(iii) To the best of the Mortgagor's knowledge and belief, no property adjoining the Mortgaged Property is being used, or has ever been used at any previous time for the disposal, storage, treatment processing or other handling of Hazardous Substances.

(iv) Mortgagor shall immediately notify Mortgagee should Mortgagor become aware of (1) any Hazardous Substance or other environmental problem or liability with respect to the Mortgagor or the Mortgaged Property, or (2) any lien, action, or notice of the nature described in subparagraph (i) above. Mortgagor shall, at Mortgagor's own cost and expense, take or cause to be taken all actions as shall be necessary or advisable for the clean-up of the Mortgaged Property, including all removal, containment and remedial actions in accordance with all applicable Environmental Laws and environmental report recommendations (and in all events in a manner reasonably satisfactory to Mortgagee), and shall further pay or cause to be paid at no expense to Mortgagee all clean-up, administrative and enforcement costs of any court or applicable government agencies which may be asserted against the Mortgaged Property or the owner thereof. Mortgagor shall indemnify Mortgagee against and hold it harmless from all clean-up, administrative and enforcement costs, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) which are incurred by Mortgagee, whether before or after foreclosure of the lien hereof, with respect to any violation or claim of violation of any Environmental Law pertaining to the Mortgaged Property. Mortgagor shall (1) pay such amounts within thirty (30) days after notice from Mortgagee itemizing the amounts incurred to the date of such notice without requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding; or (2) provide Mortgagee, within thirty (30) days after demand by Mortgagee, with a bond, letter of credit or similar financial assurance evidencing to Mortgagee's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Substances and discharging any assessments which may be established on the Mortgaged Property as a result thereof.

(b) Mortgagee (by its officers, employees and agents) at any time and from time to time, after the occurrence of an Event of Default (following any applicable cure period), may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances. The Site Assessments may be performed at any time or times after the occurrence of an Event of Default (following any applicable cure period), upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Substances on the Mortgaged Property and such other tests on the Mortgaged

Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessments fully available to Mortgagor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The reasonable cost of performing such Site Assessments shall be paid by Mortgagor upon demand of Mortgagee and any such obligations shall be Obligations secured by this Mortgage.

(c) Mortgagee shall have the right but not the obligation, prior or subsequent to an Event of Default, without in any way limiting Mortgagee's other rights and remedies under this Mortgage, after thirty (30) day's written notice to Mortgagor and Mortgagor's failure to do so, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substances on the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Substance pertaining to the Mortgaged Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Mortgaged Property or other action and/or which, in Mortgagee's sole opinion, could jeopardize Mortgagee's security under this Mortgage. All reasonable costs and expenses paid or incurred by Mortgagee in the exercise of any such rights shall be Obligations secured by this Mortgage and shall be payable by Mortgagor upon demand.

(d) All warranties and representations above shall be deemed to be continuing and shall remain true and correct in all material respects until all of the Obligations have been paid in full and any limitations period expires. Mortgagor's covenants above shall survive any exercise of any remedy by Mortgagee under the Loan Documents, including foreclosure of this Mortgage (or deed in lieu thereof), even if, as a part of such foreclosure or deed in lieu of foreclosure, the Obligations are satisfied in full and/or this Mortgage shall have been released.

ARTICLE III SECURITY AGREEMENT

3.1 **Security Interest.** This Mortgage shall be a security agreement between Mortgagor, as debtor, and Mortgagee, as secured party, respecting the Personal Property, and Mortgagor grants to Mortgagee a security interest in such Personal Property (described in **Exhibit B** hereto). In addition to Mortgagee's other rights hereunder, Mortgagee shall have all rights of secured parties under the Uniform Commercial Code as adopted in Alabama (hereinafter called the "Code"). Mortgagor does hereby authorize and instruct Mortgagee to file (without Mortgagor's signature appearing thereon) all financing and continuation statements that may be required by Mortgagee to establish and maintain the validity and priority of Mortgagee's security interests, and Mortgagor shall bear all costs thereof, including all Code searches reasonably required by Mortgagee. Upon the occurrence of an Event of Default, Mortgagee may sell the Personal Property as provided in Article IV hereof.



3.2 **Representations and Warranties.** The Mortgagor represents and warrants as follows:

- (a) Mortgagor's principal place of business and chief executive office is set forth in the first paragraph of this Mortgage.
- (b) The Mortgagor owns and, with respect to any Personal Property hereafter acquired, will own the Personal Property free and clear of any lien, security interest or other charge or encumbrance except for the security interest created by this Mortgage, and no effective financing statement or other instrument similar in effect covering all or any part of the Personal Property is on file in any recording office except such as may have been filed in favor of Mortgagee relating to this Mortgage; Mortgagor has not and, with respect to Personal Property hereafter acquired, will not acquire any of the Personal Property under any conditional sales contract or other agreement or arrangement where the seller thereof purports to take or reserve a security interest therein; Mortgagor has the right to encumber the Personal Property and to grant a security interest therein to Mortgagee; and Mortgagor will forever warrant and defend the security interest of Mortgagee against the lawful claims of all persons

3.3 **Covenants as to the Personal Property.** So long as any of the Obligations shall remain outstanding, unless Mortgagee shall otherwise consent in writing:

- (a) **Notice of Changes.** Subject to the provisions of Section 2.14 hereof, Mortgagor shall give advance notice in writing to Mortgagee of any change or proposed change in Mortgagor's name, identity, or structure and shall authorize and instruct Mortgagee, prior to or concurrently with the occurrence of any such change, to file all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any of the Personal Property described or referred to herein.
- (b) **Further Assurances.** Mortgagor will at Mortgagor's expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that Mortgagee deems necessary or desirable or that Mortgagee may request in order (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable Mortgagee to exercise and enforce its rights and remedies hereunder in respect of the Personal Property; or (iii) to otherwise effect the purposes of this Mortgage, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as Mortgagee deems necessary or desirable or that Mortgagee may request in order to perfect and preserve the security interest created or purported to be created hereby; and (B) furnishing to Mortgagee from time to time statements and schedules further identifying and describing the Personal Property and such other reports in connection with the Personal Property as Mortgagee may reasonably request, all in reasonable detail.



- (c) Location of Property. The Mortgagor will at all times keep all of the Tangible Personal Property on the Mortgaged Property.
- (d) Care and Custody. The powers conferred on Mortgagee hereunder are solely to protect its interest in the Personal Property and shall not impose any duty upon it to exercise any such powers.

Except for the accounting for monies actually received by it hereunder, Mortgagee shall have no duty as to any Personal Property, the preservation or protection of the same or the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Personal Property.

ARTICLE IV EVENTS OF DEFAULT

Except as otherwise provided in the Loan Agreement, the occurrence of any of the following shall constitute an Event of Default ("Event of Default") under this Mortgage: (a) Mortgagor shall fail to observe or perform any obligation or agreement contained herein and such failure shall continue for thirty (30) days after Mortgagor received written notice thereof from Mortgagee (unless a shorter notice period shall apply as expressly provided herein); (b) any representation or warranty of Mortgagor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) any defined event of default, under any provisions of the Loan Agreement or any other contract, instrument or document executed in connection with, or with respect to, any Obligation, subject to any applicable cure periods provided therein.

ARTICLE V REMEDIES

If an Event of Default (including the expiration of any cure periods, if any, applicable thereto) shall occur, Mortgagee may exercise any one or more of the following remedies:

5.1 **Acceleration.** Mortgagee may declare the entire Obligations, principal and interest, immediately due and payable without notice or demand, the same being hereby expressly waived by Mortgagor.

5.2 **Enforcement of Assignment of Leases and Rents.** Mortgagee may enforce its rights under the terms of **Exhibit D** hereof.

5.3 **Foreclosure Under Law.** Mortgagee may proceed to foreclose this Mortgage in the manner provided by applicable law.

5.4 **Foreclosure Under Power of Sale.** Mortgagee may enter and take possession of the Mortgaged Property and sell and dispose of all or part of the Mortgaged Property at public auction at the usual place for conducting sales at the Courthouse in the County where the Mortgaged Property or any part thereof may be located to the highest bidder for cash after first advertising the time, terms and place of such sale, as provided by applicable law and if not so otherwise provided, by publishing a notice thereof once a week for three consecutive weeks in a newspaper of general circulation in such county, all other notices being hereby waived by



Mortgagor, and Mortgagee may thereupon execute and deliver to the purchaser at such sale a sufficient conveyance of the Mortgaged Property, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, and such recitals shall be presumptive evidence that all preliminary acts prerequisite to such sale and deed were in all things duly complied with; and Mortgagee, its agents, representatives, successors or assigns, may bid and purchase at such sale; and Mortgagor hereby constitutes and appoints Mortgagee or its assigns, agents and attorneys-in-fact to make such recitals, sale and conveyance, and all of the acts of such attorneys-in-fact are hereby ratified, and Mortgagor agrees that such recitals shall be binding and conclusive upon Mortgagor and that the conveyance to be made to Mortgagee, or its assigns (and in the event of a deed in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title, interest and equity of redemption, including all statutory redemption, homestead, dower, curtesy and all other exemptions of Mortgagor, or its successors in interest, in and to the premises; and Mortgagee, or its assigns, shall collect the proceeds of such sale, reserving therefrom all unpaid amounts due hereunder or under the Note with interest then due thereon, and all amounts advanced by Mortgagee for taxes, assessments, insurance premiums and other charges with interest at the Default Rate thereon, from date of payment, together with all costs and charges for advertising, and commissions for selling the Mortgaged Property, and reasonable attorneys' fees and court costs, including attorneys' fees on appeal, and pay over any surplus to Mortgagor; and Mortgagor agrees that possession of the Mortgaged Property during the existence of any indebtednesses by the Borrowers to Mortgagee under the terms of the Note or this Mortgage by Mortgagor or any person claiming under Mortgagor, shall be that of tenant under Mortgagee, or its assigns, and in case of a sale, as herein provided, Mortgagor, or any person in possession under Mortgagor shall then become and be tenants holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all remedies which Mortgagee may have at law or in equity.

The Mortgagee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and the sale or sales by Mortgagee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted. Mortgagor shall not have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Mortgagee shall have the right, at its sole election, to sell less than the whole of the Mortgaged Property.

5.5 Sale of Personal Property. The Mortgagee may sell the Personal Property concurrently with and in conjunction with a sale of the Mortgaged Property, in which case the provisions of the preceding Section shall apply to the Personal Property as well as the Mortgaged Property. Mortgagor stipulates and agrees that a sale of the Personal Property in conjunction with the Mortgaged Property is a commercially reasonable manner of disposing of the Personal Property. Alternatively, Mortgagee may sell or otherwise dispose of the Personal Property separately and apart from the Mortgaged Property in the time and manner provided by the Code. To the extent that the Code shall require prior notice of sale or other disposition of the Personal Property, ten (10) days written notice shall be deemed to be reasonable notice. Mortgagee also may (a) require the Mortgagor to, and the Mortgagor hereby agrees that Mortgagor will at Mortgagor's expense and upon request of Mortgagee forthwith, assemble all or part of the Personal Property as directed by Mortgagee and make it available to Mortgagee at a place to be

designated by Mortgagee which is reasonably convenient to the parties; and (b) sell the Personal Property or any part thereof in one or more parcels at public or private sale for cash or credit or for future delivery, and at such price or prices and upon such other terms as Mortgagee may deem commercially reasonable. Mortgagee shall not be obligated to make any sale of the Personal Property regardless of notice of sale having been given. Mortgagee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

5.6 **Judicial and Other Relief.** Mortgagee may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property or the Personal Property under the judgment or decree of any court or courts of competent jurisdiction.

5.7 **Entry on Mortgaged Property.** Mortgagee may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Mortgagor, and all persons claiming under Mortgagor, and its agents or servants, wholly or partly therefrom; and, holding the same, Mortgagee may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Mortgagor in the name, place and stead of Mortgagor, or otherwise, as the Mortgagee shall deem best; and in the exercise of any of the foregoing rights and powers Mortgagee shall not be liable to Mortgagor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Mortgagee.

5.8 **Receiver.** Mortgagee may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, for appointment of a receiver of the Mortgaged Property, and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all necessary and proper powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court.

5.9 **Mortgagee's Right to Perform.** Upon the Borrowers' or Mortgagor's failure to make a payment or perform an act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Mortgagor and without waiving or releasing any other right, remedy or recourse, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action as Mortgagee may deem necessary or appropriate.

5.10 **Remedies Cumulative, Concurrent and Nonexclusive.** If the Obligations are now or hereafter further secured by chattel mortgages, mortgages, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Mortgagee may, at its option, exhaust its remedies under any one or more of said instruments and this Mortgage, either concurrently or independently, and in such order as Mortgagee may determine. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available to it at law or equity (including, without limitation, those granted by the Code), and same (a) shall be



cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Mortgaged Property or the Personal Property, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) shall be joint and several as to the Mortgagee, and may be pursued separately or concurrently by the Mortgagee.

ARTICLE VI MISCELLANEOUS

6.1 **Waiver of Marshaling and Certain Rights.** To the extent that Mortgagor may lawfully do so, Mortgagor hereby expressly waives any right pertaining to the marshaling of assets or marshaling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or other matter which might defeat, reduce or affect the right of Mortgagee to sell the Mortgaged Property or the Personal Property for the collection of the Obligations, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Mortgaged Property or the Personal Property, in preference to every other person and claimant. Mortgagor expressly waives or does not waive appraisal of the Mortgaged Property upon foreclosure of the Mortgage at Mortgagee's option.

6.2 **Waiver of Impairment of Recourse Defenses.** Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for the payment or performance of any of the Obligations, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time, and from time to time, either before or after the maturity of the Note, and without notice or consent:

- (a) Release any person liable for payment or performance of all or any part of the Obligations;
- (b) Make any agreement extending the time or otherwise altering the terms of payment or of all or any part of the Obligations (without limit as to the number of such extensions or the period or periods thereof), or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) Exercise or refrain from exercising any right Mortgagee may have;
- (d) Accept additional security of any kind;
- (e) Release or otherwise deal with any property, real or personal, securing the Obligations, including all or any part of the Mortgaged Property herein described.

Furthermore, the failure of the Mortgagee to perfect any lien granted herein or in any other Loan Document, to take any action to obtain payment or performance of the Obligations or to exercise any rights or remedies available hereunder shall not relieve Mortgagor or any other



person from liability for the payment or performance of the Obligations nor effect a discharge of the lien, security interest or assignment herein granted; it being intended that all "impairment of recourse" and "impairment of collateral" defenses are hereby waived.

6.3 **No Waiver**. No waiver by the Mortgagee shall be construed as a waiver of a subsequent similar default or any other default by the Mortgagor. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Mortgagee after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by the Mortgagee after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present, or future default on the part of the Mortgagor. Acceptance by Mortgagee of partial payments shall not constitute a waiver of the default by failure to make full payments.

6.4 **Mortgagee' Consent**. Except as otherwise expressly provided herein, in any instance hereunder where Mortgagee's approval or consent is required or the exercise of Mortgagee's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment. Mortgagee may consult with counsel, and the written advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

6.5 **Appointment of Attorney**. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, coupled with an interest, with full authority in the place and stead of the Mortgagor and in the name of the Mortgagor or otherwise, from time to time in the Mortgagee's discretion, to take any action and to execute any instrument which Mortgagee may reasonably deem necessary or advisable to accomplish the purposes of this Mortgage, including, without limitation (a) to obtain and adjust insurance required to be maintained pursuant to the provisions of this Mortgage; (b) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due in respect of any of the Mortgaged Property or the Personal Property; (c) to receive, endorse, and collect any drafts or other instruments, documents, and chattel paper in connection with clause (a) or (b) above; and (d) to file any claims or take any action or institute any proceedings which Mortgagee may deem necessary or desirable for the collection of any of the Personal Property or any amounts otherwise due in connection with the Mortgaged Property or the Personal Property, or otherwise to enforce the rights of Mortgagee with respect to the Mortgaged Property and the Personal Property. Mortgagor hereby ratifies and approves all acts of said attorney; and so long as the attorney acts in good faith they shall have no liability to Mortgagor for any act or omission as such attorney.

6.6 **Estoppel Certificate**. At the written request of the Mortgagee, the Mortgagor shall furnish within five (5) business days a written statement or affidavit, in such form as may be required by Mortgagee, confirming the unpaid balance of the Obligations, the date to which



interest has been paid and that there are no offsets to or defenses against any payment or performance of the Obligations or, if there are any such offsets or defenses, specifying them.

6.7 **Expenses of Mortgagee.** The Mortgagor will upon demand pay to the Mortgagee the amount of any and all costs and expenses, including without limitation all reasonable attorneys' fees and disbursements of the Mortgagee's counsel and of any experts and agents, attorneys' fees and court costs on any appeal, and the cost of abstracts of title, which Mortgagee may incur in connection with (a) the preparation and recording of this Mortgage and the financing statements to be filed to perfect the security interests granted herein, (b) the administration of this Mortgage, (c) the sale of, collection from, or other realization upon the Mortgaged Property and the Personal Property; (d) the exercise or enforcement of any of the rights of Mortgagee hereunder; or (e) the failure of Mortgagor to perform or observe any of the provisions hereof.

6.8 **Indemnification.** The Mortgagor agrees to indemnify and hold the Mortgagee harmless from and against any and all claims, losses, and liabilities arising out of or resulting from this Mortgage and the grant of security interests contained herein (including, without limitation, enforcement of this Mortgage), and/or arising out of or in connection with any other Loan Document, except claims, losses, or liabilities resulting solely and directly from the Mortgagee's gross negligence or willful misconduct. In the event that Mortgagee shall assign or transfer its rights hereunder or under the Note or any other Loan Documents, the rights of the Mortgagee under this section, under the immediately preceding section and under any other provisions of the Loan Documents which require the Mortgagor to indemnify or pay expenses of the Mortgagee shall continue in favor of the Mortgagee originally named herein as well as any successors or assigns of the Mortgagee; and any such provision may be enforced by the original Mortgagee named herein or any such successor or assign or, at its option, by all of such parties acting jointly.

6.9 **Default Rate.** If Mortgagee shall expend any money chargeable to Mortgagor or subject to reimbursement by Mortgagor under the terms of this Mortgage or any of the other Loan Documents, Mortgagor shall repay the same to Mortgagee immediately at the place where payments under the Note are payable, together with interest thereon from the date due (or, if there is no specified due date, from the date of demand therefor by Mortgagee) until paid at a rate (herein the "Default Rate") as specified in the Note.

6.10 **Subrogation.** To the extent that proceeds of the Obligations are used to pay any outstanding lien, charge or encumbrance affecting the Mortgaged Property (including, without limiting the generality of the foregoing, any prior lien) and Mortgagee shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Mortgagee and, to the extent permitted by law without impairing any of Mortgagee's rights of subrogation, shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Mortgagee are subrogated hereunder.

6.11 **Payment in Full.** If the Mortgagor or the Borrowers, as applicable, shall pay and perform all of the Obligations promptly when due, and shall pay such sums as shall be necessary



to discharge taxes and maintain insurance and perform repairs and the costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, and shall comply with all of the covenants, terms and conditions of the Note, the Loan Agreement and this Mortgage, and any other instrument which also now or hereafter secures the Obligations secured hereby, then this conveyance shall become void, and at the cost and expense of Mortgagor, Mortgagee shall prepare and execute a release of the lien hereof.

6.12 **No Partnership.** Nothing contained in this Mortgage is intended to create any partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagee co-principals with Mortgagor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

6.13 **Headings.** The article, paragraph and subparagraph headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such articles, paragraphs or subparagraphs. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

6.14 **Severability.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Mortgage a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Obligations shall be unsecured, the unsecured portion of the Obligations shall be completely paid prior to the payment of the secured portion of such Obligations, and all payments made on account of the Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligations.

6.15 **Burden and Benefit.** This instrument shall be binding on Mortgagor, its successors and assigns, and shall inure to the benefit of the Mortgagee and its successors and assigns. "Mortgagee" as used herein shall be deemed to refer to Pinnacle Bank and any subsequent owner or holders of the indebtednesses secured hereby.

6.16 **Applicable Law.** The provisions of this Mortgage regarding the creation, existence, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the State of Alabama. In all other respects, this Mortgage shall be construed in accordance with and governed by the laws of the State of Tennessee.

6.17 **Waiver of Right to Trial By Jury.** MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS INSTRUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS INSTRUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE



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TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING; AND FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT TO THE WAIVER OF TRIAL BY JURY.

6.18 **Notices.** Any notice or demand which, by provision of this Mortgage, is required or permitted to be given or served to any other party shall be deemed to have been sufficiently given and served for all purposes (if mailed) three calendar days after being deposited, postage prepaid, in the United States Mail, registered or certified mail, or (if delivered by express courier) one Business Day after being delivered to such courier, or (if delivered in person) the same day as delivery, in each case addressed (until another address or addresses is given in writing by such party) as follows:

If to Mortgagor:

212 Total Solutions Way
Alabaster, Alabama 35007

If to Mortgagee:

Pinnacle Bank
Attn: Joelle Rogin
949 Shady Grove Road South
Suite 200
Memphis, TN 38120

With a copy to:

Martin, Tate, Morrow & Marston, P.C.
Attn: Matthew Gabriel, Esq.
6410 Poplar Ave., Suite 1000
Memphis, TN 38119

[Signature Page Follows]



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**ALABAMA MORTGAGE
WITH SECURITY AGREEMENT
(INCLUDES FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)**

SIGNATURE AND ACKNOWLEDGEMENT PAGE

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage (or caused this Mortgage to be duly executed by their authorized representatives) as of the date first above written.

MORTGAGOR:

ARMSTOR 212 NORTH LLC,
an Alabama limited liability company

By: 

Name: Robert Parks

Title: TREASURER

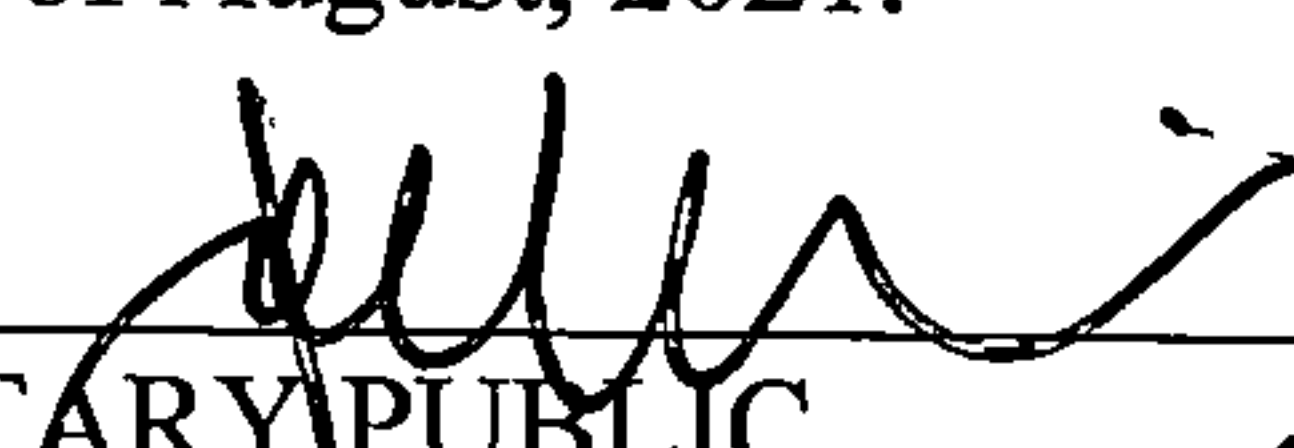
STATE OF TENNESSEE

COUNTY OF SHELBY

I, Joelle Rogin, a Notary Public, in and for said County in said State, hereby certify that Robert Parks whose name as Treasurer of Armstor 212 North LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said company.

Given under my hand and seal this 21st day of August, 2021.




NOTARY PUBLIC
My Commission Expires: October 5, 2022



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ARMSTOR LTD.,
an Alabama limited partnership

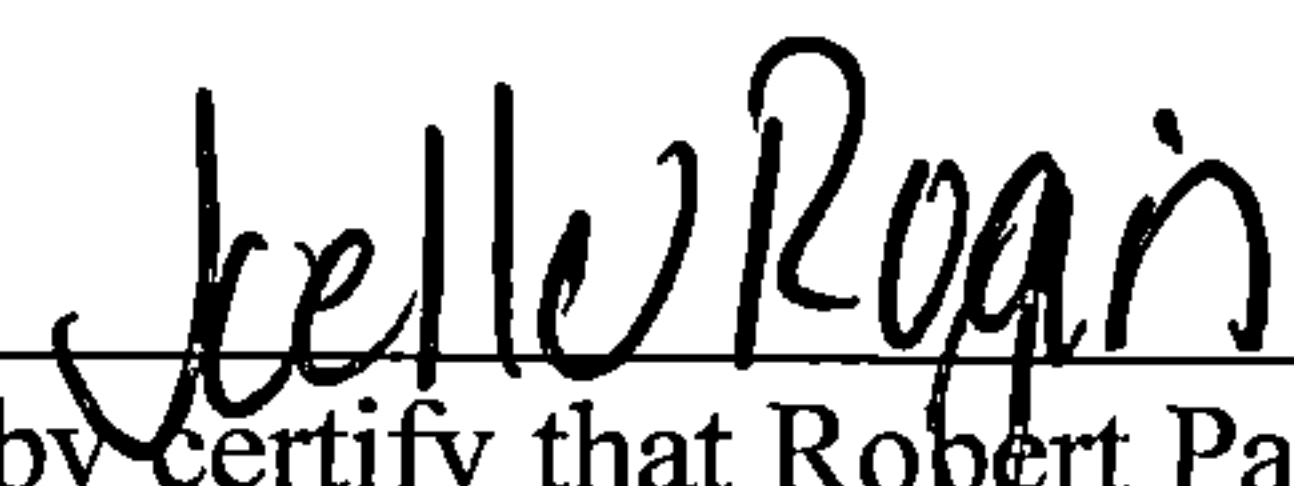
By: 

Name: Robert Parks

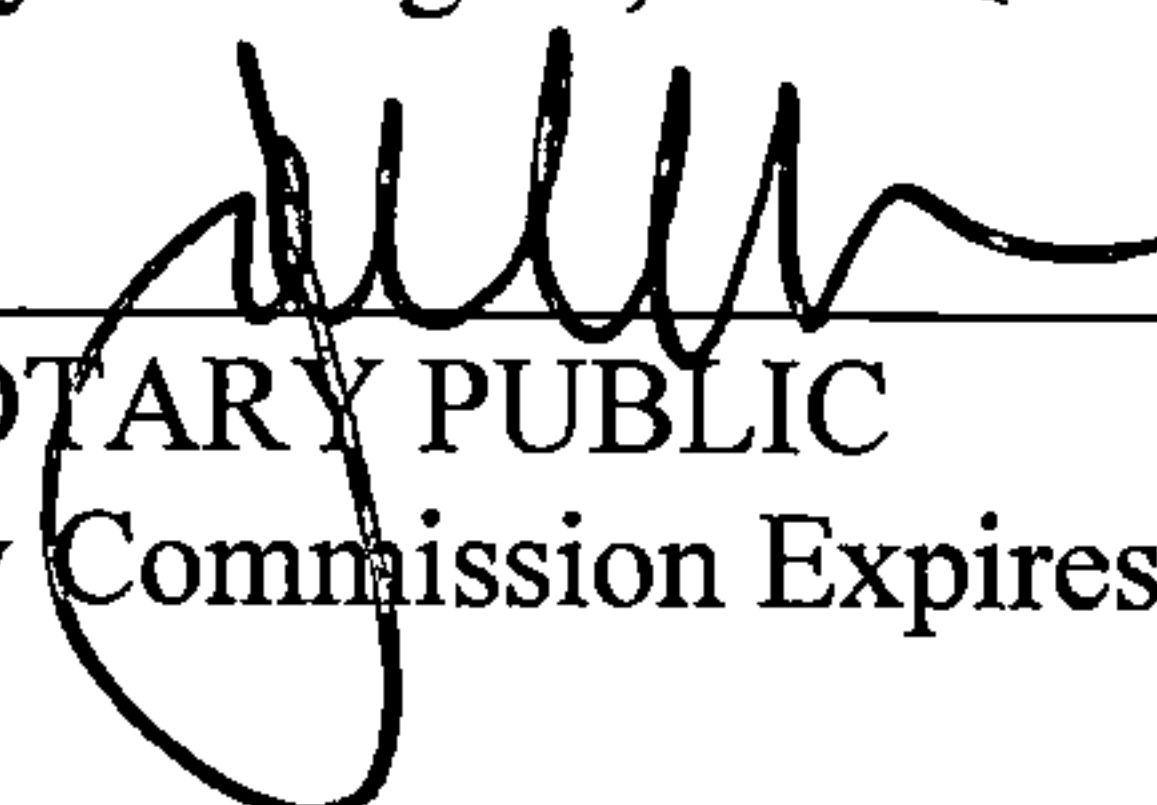
Title: Authorized Representative

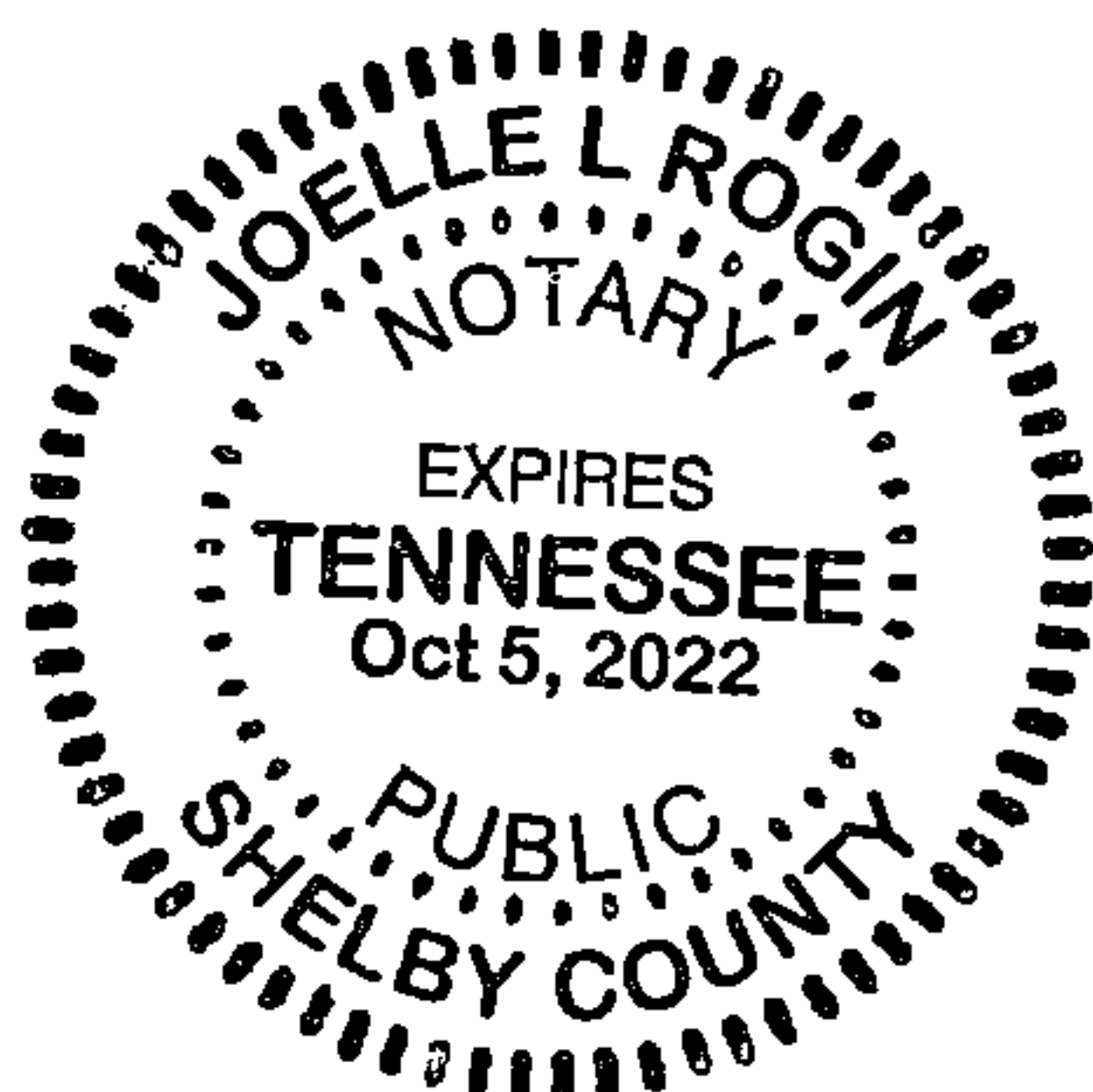
STATE OF TENNESSEE

COUNTY OF SHELBY

I, , a Notary Public, in and for said County in said State, hereby certify that Robert Parks, whose name as Authorized Representative of ARMSTOR LTD., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said company.

Given under my hand and seal this 19 day of August, 2021.


NOTARY PUBLIC
My Commission Expires: October 5, 2022





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EXHIBIT A
REAL PROPERTY DESCRIPTION

Parcel 1:

The Land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

SITE 12-A, ACCORDING TO A MAP OF THE UNITED/ARMSTRONG SURVEY BEING A RESURVEY OF A COMMERCE, INDUSTRY AND TECHNOLOGY COMPLEX, SHELBY WEST CORPORATE PARK, LOTS 10, 12, 13 AND 14 AS RECORDED IN MAP BOOK 28, PAGE 49 IN THE OFFICE OF THE PROBATE JUDGE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA.

Parcel 2:

The Land referred to herein below is situated in the County of Jefferson, State of Alabama, and is described as follows:

LOTS 1, 2, 3, 4 AND 5, BLOCK 81, ACCORDING TO THE PRESENT PLAN AND SURVEY OF THE CITY OF BIRMINGHAM, AS MADE BY THE ELYTON LAND COMPANY, SITUATED IN JEFFERSON COUNTY, ALABAMA. THIS SURVEY HAS NEVER BEEN RECORDED AND IS UNAVAILABLE FOR RECORDATION.



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EXHIBIT B PERSONAL PROPERTY

(a) All stoves, ranges, refrigerators, dishwashers, clothes washers, clothes dryers, disposals, all heating, plumbing, lighting, water heating, incinerating, ventilating and air conditioning equipment, swimming pool equipment, shades, awnings, blinds, drapes and draperies, linoleum, rugs and carpeting, all furniture, furnishings, machinery, equipment, and fixtures (whether or not so attached to the realty as to become a part thereof) and all other tangible personal property of every kind and character now or at any time hereafter located in or on the buildings and improvements on the property described in Exhibit A attached hereto, together with all substitutions, additions, and accessions to any and all of the foregoing, and exchanges and replacements of any and all of the foregoing;

(b) To the extent not otherwise described in (a) above, all furniture, furnishings, appliances, equipment, cable and computer wiring included as part of the improvements to the Mortgaged Property for use as a student housing/apartment facility;

(c) All judgments, awards of damages, and settlements hereafter made as a result of or in lieu of any taking of said real property and improvements, or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to said real property or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets;

(d) All proceeds of hazard or other insurance policies maintained with respect to any collateral described in subparagraph (a) above or with respect to the improvements now or hereafter located on said real property (whether or not Mortgagee is a loss payee thereof);

(e) All proceeds of any and all of the foregoing collateral. Although proceeds are covered, Mortgagee does not authorize the sale or other transfer of any of the collateral or the transfer of any interest in the collateral;

in each case, whether now owned or hereafter acquired by Mortgagor (Debtor) and howsoever the interest of Mortgagor (Debtor) therein may arise or appear (whether by ownership, lease, security interest, claim, or otherwise).

NAME OF RECORD OWNER OF REAL PROPERTY

DESCRIBED IN EXHIBIT A: ARMSTOR 212 NORTH LLC and ARMSTOR LTD.



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EXHIBIT C DESCRIPTION OF NOTE

Term Note: That certain Term Loan Promissory Note bearing date of the 19th day of August, 2021, in the principal sum of Two Hundred Eighty-Two Thousand and No/100 Dollars (\$282,000.00), bearing interest from date at the rate set forth in said note, the principal of said note being payable in installments as set forth in said note, with the final installment being payable no later than August 19, 2028, said note being payable to the order of Pinnacle Bank at its office in Memphis, Tennessee, or at such other place as the holder thereof may designate in writing, being executed by Armstrong Transfer & Storage Co., Inc./Armstrong Relocation Company, an Alabama corporation, and Simplicity Relocation, LLC, an Alabama limited liability company, and being given for value received.

Revolving Note: That certain Promissory Note bearing date of the 19th day of August, 2021, in the maximum principal sum of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), bearing interest from date at the rate set forth in said note, the principal of said note being payable in installments as set forth in said note, with the final installment being payable no later than February 19, 2025, said note being payable to the order of Pinnacle Bank at its office in Memphis, Tennessee, or at such other place as the holder thereof may designate in writing, being executed by Armstrong Relocation & Companies, LLC, a Delaware limited liability company, and being given for value received.



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EXHIBIT D

ASSIGNMENT OF LEASES AND RENTS AND OTHER INCOME

For value received and as additional security for the indebtedness hereinafter mentioned, the Mortgagor hereby assigns, sets over, transfers, and conveys unto the Mortgagee all of its right, title, and interest in and to any leases, rents, issues, profits, revenues, royalties, rights and benefits saving and excepting and interest in any tenant deposits (hereinafter collectively referred to as "rents") the Mortgagor's interest from the Mortgaged Property.

And to that end the Mortgagor hereby further assigns, sets over, transfers, and conveys unto the Mortgagee, all leases of any portion of the Property now made, executed, or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal.

And the Mortgagor does hereby authorize and empower the Mortgagee to collect the rents payable under all of said leases above referred to as they shall become due, and does hereby direct each and all of the tenants of any portion of the Property to pay such rents as may now be due or shall hereafter become due to the Mortgagee upon demand for payment thereof by the Mortgagee. It is understood and agreed, however, that no such demand shall be made unless and until there has occurred (i) a default in the payment of the indebtedness secured by the Loan Documents herein mentioned which remains uncured following any applicable notice and cure period, (ii) default in the payment of any other sums secured by said Loan Documents which remains uncured following any applicable notice and cure period, or (iii) default in the performance of any of the covenants set forth in said Loan Documents or this Assignment which remains uncured following any applicable notice and cure period and, until such demand is made, the Mortgagor is authorized to collect, or continue collecting, said rents, but such privilege to collect, or continue collecting, as aforesaid by the Mortgagor, shall not operate to permit the collection of (and the Mortgagor hereby covenants and agrees with the Mortgagee that the Mortgagor will not collect, demand or receive) any installment of rent more than one (1) month in advance of the date prescribed in said lease or leases for the payment thereof.

The authority and power of Mortgagee to collect the rents from the Property, as set forth herein, may be exercised and said rents collected with or without the taking of possession of the Property, or any part thereof, and without the necessity of (but nothing herein contained shall be construed to prohibit) the Mortgagee instituting foreclosure of its mortgage, and an action upon said Notes, or an action upon this Assignment directly against the tenants under the leases assigned herewith.

And in furtherance of this Assignment, the Mortgagor does hereby additionally authorize and empower the Mortgagee, by its employees, agents, or representatives, at the option of the Mortgagee, upon the occurrence of any default which remains uncured following any applicable notice and cure period, as aforesaid, to enter upon the Property and to collect, in the name of the Mortgagor or in its own name as assignee, the rents accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter accruing and becoming payable during the period this Assignment is operative; and to this end, the Mortgagor further agrees to cooperate and to assist the Mortgagee, its employees, agents, or representatives in all reasonable ways with collection of said rents.



Notwithstanding any provision herein to the contrary, however, this Assignment is intended to be an absolute and present assignment from the Mortgagor to the Mortgagee, and not merely the passing of a security interest, and the rental payments and other sums due under the aforesaid leases are hereby assigned absolutely by the Mortgagor to the Mortgagee. The Mortgagor covenants and represents that it has full right and title to assign all its interest in said leases, and the rents, income, and profits due or to become due thereunder; that the terms of said leases have not been changed from the terms of any lease submitted to the Mortgagee for approval; that no prior assignment of any interest therein has been made; that there are no existing defaults under the provisions thereof; that no rental payments or other sums due under said leases have been prepaid to the Mortgagor other than as disclosed to the Mortgagee and that the Mortgagor will not hereafter cancel, alter or modify so as to reduce any tenant's obligations, or surrender or terminate any such lease or any provisions thereof, except as may be allowed by its terms, or exercise any option which might lead to such termination, or change, alter, or modify or consent to the release of any party liable thereunder or to the assignment of any such lease, or any interest therein, other than in the ordinary course of business in accordance with the terms of such lease, without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld. The Mortgagor understands and agrees that any default under this Assignment shall constitute a default under the Loan Documents.

The Mortgagee shall, after payment of all proper charges and expenses, including reasonable compensation to such agents, employees, or representatives as shall be selected or employed, and after the accumulation of a reasonable reserve to meet taxes, assessments, utility rents, and fire and liability insurance in requisite amounts, credit the net amount of income received by it from the Property by virtue of this Assignment to any amounts due and owing to it under the terms of said Loan Documents, but the manner of the application of such net income and what items shall be credited, shall be determined in the sole but reasonable discretion of the Mortgagee.

The Mortgagor expressly covenants and agrees with the Mortgagee that at the time of the execution and delivery of this Assignment, there has been no anticipation or prepayment of any rents in advance by any of the tenants occupying the above described property or by any of the lessees in any of the above described leases.

It is further covenanted and agreed that the Mortgagor and its successors or assigns, shall have no right, power, or authority to (and the Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall not) materially alter, modify, or amend the terms of any of the leases above described so as to reduce the tenant's monetary obligations to an amount insufficient to service the payments required under the Notes, or would otherwise materially affect the value of the Property.

The provisions of this instrument shall be binding upon and shall inure to the benefit of the Mortgagor and its legal representatives, successors, or assigns and upon the Mortgagee, its successors and assigns.



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Nothing herein contained shall be construed as making the Mortgagee a mortgagee in possession, nor shall the Mortgagee be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights, and benefits, and it is understood that the Mortgagee is to account only for such sums as are actually collected.

The Mortgagor covenants and agrees with the Mortgagee that no tenant need determine whether or not a default has occurred making this Assignment operative, but shall pay over the rent to Mortgagee upon notice from the Mortgagee to do so and upon so doing shall be relieved from liability therefor to Mortgagor in all respects.

It is further covenanted and agreed that the Mortgagor will keep, observe, and perform all of the covenants on the part of the lessor to be kept, observed, or performed in any lease affecting any portion of the Property. If the Mortgagor fails to keep, observe, and perform any covenant of any such lease, the Mortgagee shall have the right, at its option, but without obligation to do so, to keep, observe, and perform such covenant on behalf of the Mortgagor or to declare, after providing notice and an opportunity to cure, all sums secured by the Loan Documents to be immediately due and payable and avail itself of any and all remedies provided in the Loan Documents. In the event of an event of default, Mortgagor hereby agrees to indemnify, defend, save and hold harmless the Mortgagee from any and all liability arising from any such lease or this Assignment. In the event the Mortgagee should exercise its option to keep, observe, or perform any of the lessor's obligations under any lease affecting the Property, it shall be entitled to recover from the Mortgagor immediately upon demand any expenses reasonably incurred or amounts advanced in performing such covenants, together with interest at the default rate provided in said Notes from the date of such advance. Should the maker of the Notes fail to repay the Mortgagee any such expenses or advances as herein provided, the Mortgagee may, at its option, without notice, declare all sums secured by said mortgage to be immediately due and payable and avail itself of any and all remedies provided for in the Loan Documents in the event of the occurrence of an event of default.

IT IS UNDERSTOOD AND AGREED that neither the existence of this Assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights, and benefits hereunder, shall be construed as a waiver by the Mortgagee, or its successors and assigns, of the right to enforce payment of the debt hereinabove mentioned, in strict accordance with the terms and provisions of the Loan Documents for which this Assignment is given as additional security.