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This Security Instrument was prepared by,
and after recording return to:

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Nashville, TN 37219

STATE OF ALABAMA

COUNTY OF SHELBY

**SECOND LIEN PURCHASE MONEY MORTGAGE WITH ASSIGNMENT OF RENTS
AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING**

**(INCLUDES FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)
COLLATERAL INCLUDES FIXTURES**

Revolving Commitment, Shelby County, Alabama

by and between

850 9TH STREET PROPCO, LLC,
a Delaware limited liability company,

as Mortgagor,

and

SERVISFIRST BANK,
an Alabama banking corporation,
in its capacity as administrative agent for Lenders

as Mortgagee

**THIS SECOND LIEN PURCHASE MONEY MORTGAGE IS FILED AS AND SHALL
CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF
SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.**

**SECOND LIEN PURCHASE MONEY MORTGAGE WITH ASSIGNMENT OF RENTS
AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING**

THIS SECOND LIEN PURCHASE MONEY MORTGAGE WITH ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING (the "**Mortgage**") is made as of October 25, 2021, by **850 9TH STREET PROPCO, LLC**, a Delaware limited liability company (herein referred to as "**Mortgagor**"), whose address is 850 9th Street NW, Alabaster, AL 35007, to **SERVISFIRST BANK**, an Alabama banking corporation, in its capacity as administrative agent ("**Mortgagee**"), whose address is 1600 West End Avenue, Suite 200, Nashville, Tennessee 37203.

Preliminary Statements

WHEREAS, pursuant to that certain Revolving Credit Agreement of even date herewith, by and among **Alabaster OPCO, LLC**, a Delaware limited liability company, as borrower (the "**Borrower**"), the financial institutions from time to time party thereto (collectively, the "**Lenders**" and individually, a "**Lender**"), the Mortgagee and the other parties more particularly described therein (as the same may be amended, restated, modified, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Credit Agreement**"), the Lenders have agreed to provide the Borrower a revolving commitment of up to Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) and make advances thereunder (the "**Revolving Commitment**"), as described in the Credit Agreement;

WHEREAS, the Revolving Commitment is evidenced by that certain Revolving Note of even date herewith in the principal amount of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)**, made by the Borrower to Mortgagee, as a Lender (as the same may be amended, restated, modified, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Note**");

WHEREAS, Mortgagor has agreed to unconditionally and absolutely guaranty all of the Borrower's obligations and liabilities under the Credit Agreement, the Note and with respect to the Revolving Commitment, as evidenced by that certain Guaranty Agreement dated of even date herewith executed by Mortgagor in favor of Mortgagee as administrative agent for the benefit of the Lenders (the "**Guaranty**"); and

WHEREAS, as a condition precedent to making the Revolving Commitment, the Lenders have required that Mortgagor execute and deliver this Mortgage to Mortgagee to secure the obligations under the Guaranty. All initially-capitalized terms used herein without definition shall have the meanings given such terms in the Credit Agreement.

Agreements

Now, therefore, in consideration of the agreements set forth in the Guaranty and the other Loan Documents and in order to induce Lenders to make the Revolving Commitment to Mortgagor, Mortgagor agrees as follows:



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Article I **Definitions.**

As used in this Mortgage, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement. In addition, the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in the Land or Improvements, or used in or necessary to the complete and proper construction or operation thereof, or acquired for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, arising out of the use, occupancy or enjoyment of the Property.

"Additions" means any and all alterations, additions, accessions and improvements to property, and renewals and replacements thereof.

"Claim" means any actual, out-of-pocket liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

"Encumbrance" means any recorded Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any condition, covenant or restriction imposed in connection with any condominium development or cooperative housing development), or other recorded matter of any nature that would affect title to the Property.

"Expenses" means all actual, out-of-pocket fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time by Mortgagee in connection with the Revolving Commitment, including without limitation, in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including reasonable attorneys' fees.

"First Mortgage" means that certain First Lien Mortgage with Assignment of Rents and Leases and Security Agreement and Fixture Filing dated as of even date hereof executed by Mortgagor in favor of Mortgagee recorded or to be recorded immediately prior hereto in the real property records of Shelby County, Alabama.

"Improvements" means all buildings, structures and fixtures of every kind and nature situated upon the Real Property, including the Healthcare Facility.

"Land" means the real property described in Exhibit A attached hereto and made a part hereof.



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"Leases" means all leases and other agreements affecting the use, enjoyment or occupancy of the Property or the Improvements heretofore or hereafter entered into (including, without limitation, the Operating Lease, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of any thereof, and all additional remainders, reversions, and other rights and estates appurtenant thereto.

"Lien" means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"Mortgage" means this Second Lien Mortgage with Assignment of Rents and Leases and Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Note" shall have the meaning assigned to it in the recitals to this Mortgage.

"Notice" means a notice, request, consent, demand or other communication given in accordance with the provisions of the Credit Agreement.

"Obligations" means all present and future debts, obligations and liabilities of Mortgagor to Mortgagee arising pursuant to, and/or on account of, the provisions of this Mortgage, the Guaranty or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, fees, expenses and other amounts due pursuant to the Guaranty; (b) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (c) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (d) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Mortgagor is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; and (e) to pay and perform all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage.

"Permitted Encumbrances" means (a) any matters set forth in any policy of title insurance issued to Mortgagee and insuring Mortgagee's interest in the Property, together with any matters evidenced by a "marked-up" commitment for title insurance initialed on behalf of Mortgagee, (b) the Liens and interests of this Mortgage, and (c) any other Encumbrance that Mortgagee shall expressly approve in its sole but reasonable discretion.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management



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11/17/2021 12:21:31 PM FILED/CERT

or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Mortgagee shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any **Governmental Authority** related to the Real Property or the operation thereof; (e) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof; and (f) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Revolving Commitment; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all insurance proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all condemnation awards, and all Proceeds.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"State", for purposes of this Mortgage, means the State of Alabama.

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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

"Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any **Governmental Authority** or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including any contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration, except as permitted by the Credit Agreement.

Article II Granting Clauses; Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, including without limitation, any and all renewals, amendments, extensions and modifications thereof, Mortgagor does hereby (a) IRREVOCABLY GRANT, REMISE, ALIEN, BARGAIN, SELL, TRANSFER, CONVEY, ASSIGN, MORTGAGE AND RELEASE UNTO MORTGAGEE (FOR ITSELF AND ITS AFFILIATES), ITS SUCCESSORS AND ASSIGNS, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to the Real Property; (b) grant to Mortgagee a security interest in the Personalty; and (c) assign to Mortgagee, and grant to Mortgagee a security interest in, all condemnation awards and all insurance proceeds. The Property is commercial property.

TO HAVE AND TO HOLD, the Real Property and all of the foregoing rights, interests, and properties, and all rights, title, interest, estates, powers and privileges appurtenant thereto, in law and in equity, unto the Mortgagee, its successors and assigns, in fee simple, forever.

All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Real Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances except as set forth in the title insurance policy insuring the lien of the First Mortgage and the Permitted Encumbrances (as defined in the First Mortgage). Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Mortgagee and Mortgagee's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if all the Obligations (including without limitation, all termination payments) are paid in full, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record at the request and cost of Mortgagor. Mortgagor shall be responsible for the recordation of any release or cancellation of this Mortgage and the payment of any recording and filing costs for UCC termination statements. Upon the recording of such release



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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void.

Section 2.2 Assignment of Leases and Rents.

In consideration of the making of the Revolving Commitment by Mortgagee to Mortgagor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor absolutely and unconditionally assigns the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Mortgagor is not in material default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of and during the continuance of an Event of Default or a material default by Mortgagor under the Leases beyond any applicable cure period) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of owning and maintaining the Property to the extent it is responsible under the Leases and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement, Fixture Filing and Financing Statement.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Mortgagor to Mortgagee under the Uniform Commercial Code of the State. In addition to all of its other rights under this Mortgage and otherwise, Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Mortgage shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. Mortgagor is the "debtor" and Mortgagee is the "secured party". The respective mailing addresses of Mortgagor and Mortgagee are set forth in the opening paragraph of this Mortgage and in Section 6.1(d) below. A carbon, photographic or other reproduction of this Mortgage or any other financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage.

Section 2.4 Future Advances; Protection Of Property.

This Mortgage is given to secure not only existing Obligations, but also future advances and future obligations, including future advances and obligations under the Note and future

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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

advances and obligations under Letters of Credit, to the same extent as if such future advances and obligations are made on the date of the execution of this Mortgage. The principal amount (including any Letters of Credit and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed twice the principal face amount of the Note, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

This Mortgage shall secure any additional loans as well as any and all present or future advances and readvances under the Obligations made by any Lender to or for the benefit of Borrower, Mortgagor or the Property, to the fullest extent permitted by applicable law, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Obligations or this Mortgage; (b) all advances by Mortgagee to Borrower or Mortgagor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Mortgagee for the enforcement and protection of the Property or the lien of this Mortgage; and (d) all legal fees, costs and other expenses incurred by Mortgagee by reason of any default or otherwise in connection with the Obligations.

Article III

Representations, Warranties and Covenants

Mortgagor represents, warrants and covenants as follows:

Section 3.1 Performance of Note and Mortgage and the Other Loan Documents.

The Mortgagor will perform, observe and comply with all provisions of this Mortgage, the Guaranty and the other Loan Documents and will duly and timely pay, without relief from any valuation or appraisal law, to the Mortgagee the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, the Guaranty and the other Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

Section 3.2 Warranties and Representations.

Mortgagor hereby covenants with and represents and warrants to Mortgagee that Mortgagor is indefeasibly seized of a fee simple interest in the Property; that the Mortgagor has full power and lawful right to convey the same as aforesaid; that it shall be lawful for said Mortgagor at all times peaceably and quietly to enter upon, hold, occupy and enjoy the Property and every part thereof; that said Mortgagor will make such further assurances to perfect such title to the Property in Mortgagor, as may be reasonably required; and that Mortgagor does hereby fully warrant the title to the Property and every part thereof and will defend the same against the lawful claims of all persons whomsoever, except for the Permitted Encumbrances.



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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

Section 3.3 Real Estate Taxes, Assessments and Personal Property Taxes.

(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagor shall upon demand pay to Mortgagee on the day monthly payments are payable under the Note, until the Obligations are paid in full, a sum (herein "**Funds**") equal to one-twelfth of the yearly real estate taxes and assessments which may attain priority over this Mortgage, all as reasonably estimated initially and from time to time by Mortgagee on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Mortgagee and Mortgagee shall apply the Funds to pay said taxes and assessments as and when they shall be due and payable. No interest shall be paid on the Funds. The Funds are pledged as additional security for the sums secured by this Mortgage. If the amount of the Funds held by Mortgagee shall not be sufficient to pay taxes and assessments as they fall due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency within fifteen (15) business days from the date notice is mailed by Mortgagee to Mortgagor requesting payment thereof. Upon payment in full of the Note and all of the other Obligations, all Funds then held by Mortgagee shall be returned to Mortgagor.

(b) Except as provided in (a) above, Mortgagor shall pay when due according to law, all taxes, assessments and other charges which are now due or may hereafter be imposed or assessed against the Property. Upon reasonable request, Mortgagor will promptly send to the Mortgagee receipts for the payment of all such taxes, assessments and other charges. Upon the failure of the Mortgagor to promptly pay such taxes, assessments and other charges, Mortgagee shall have the option to pay and discharge same without notice to Mortgagor. Any sums so expended by Mortgagee shall at once become an indebtedness of the Mortgagor and shall be due and payable by Mortgagor with interest as provided in the Note following an Event of Default, which sums shall thereupon become secured by this Mortgage.

Section 3.4 Other Taxes, Liens and Utility Charges.

The Mortgagor will pay or cause to be paid promptly, when and as due, all charges for utilities, whether public or private, and will promptly exhibit to the Mortgagee, upon reasonable request, receipts for the payment of all taxes, assessments, water and sewer charges, dues, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Property, or any part thereof, or upon the interest of the Mortgagor in the Property (other than any of the same for which provision has been made in Section 3.3), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any State, county, municipality or other taxing authority upon the Mortgagor in respect of the Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or which would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Property or any part thereof.

Section 3.5 Prohibition Against Liens.

The Mortgagor will not suffer any mechanic's, laborer's, statutory or other liens, or any deed of trust or other lien which might or could be prior to, equal to, or subordinate to the lien of this Mortgage to be created or to remain outstanding upon any of the Property other than (i) the



20211117000553800 10/24 \$3841.00
Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

Permitted Encumbrances; (ii) the creation of any tax, municipal, utility, mechanics, materialmen, judgment or other similar lien against the Property if not bonded off, released of record or otherwise remedied to Mortgagee's satisfaction within thirty (30) days after Mortgagor has notice of such lien; (iii) the lien created by the Loan Documents; and (iv) the senior liens of yhe Senior Mortgage.

Section 3.6 Insurance.

The Mortgagor will, at its expense, keep the Property owned by it insured at all times in accordance with the terms and conditions of the Required Insurance. This Mortgage shall operate as an assignment to the Mortgagee of the insurance policies set forth in the terms and conditions of Required Insurance, whether delivered or not. Mortgagor shall provide evidence of fully paid insurance policies at least fifteen (15) days prior to the expiration date of any insurance policy(ies). Upon the failure of the Mortgagor to provide the aforesaid insurance, the Mortgagee shall have the option (but not the duty) to procure and maintain such insurance or a beneficiary interest policy without notice to the Mortgagor. Any sums so expended by the Mortgagee shall at once become indebtedness owing from the Mortgagor to the Mortgagee and shall immediately become due and payable by the Mortgagor with interest thereon, to the extent legally enforceable. If the Mortgagee acquires title to the Property by foreclosure proceedings or otherwise, any unearned premiums on any hazard insurance covering the Property are hereby assigned to and shall belong to the Mortgagee. If at any time during the term of this Mortgage, any insurance policies shall be cancelled and returned premiums available, these returned premiums shall be retained by the Mortgagee to the extent required to reimburse the Mortgagee for any sums advanced by the Mortgagee to purchase insurance required by this Section and the balance may be used by Mortgagee to satisfy any other Events of Default by Mortgagor hereunder. Any rights of the Mortgagee to any insurance proceeds shall in no way be affected or impaired by reason of the fact that the Mortgagee may have instituted foreclosure proceedings hereunder. Upon the occurrence and during the continuance of an Event of Default hereunder and demand by Mortgagee, Mortgagor shall pay to Mortgagee an amount each month equal to one-twelfth (1/12) of the annual premium due for all such insurance. Such payment shall be added to the Funds (as provided in Section 3.3 hereof) and be applied to pay such insurance premiums when they shall become due and payable.

Section 3.7 Adjustment of Condemnation and Insurance Claims.

Mortgagor shall give prompt notice to Mortgagee of any Casualty or any Condemnation or threatened Condemnation. For any casualty loss in excess of \$50,000, Mortgagee is authorized, at its option, to commence, appear in and prosecute, in its own name, any proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any claim in connection therewith, or to permit Mortgagor to do so. In such case, Mortgagee shall have the right to receive all condemnation awards and insurance proceeds, and may deduct therefrom any or all of the costs, fees and expenses incurred in connection therewith, provided Mortgagee shall keep Mortgagor informed of the proceedings related to the Claim and so long as no Event of Default exists, Mortgagor shall have the right to participate in such proceedings. If any condemnation awards or insurance proceeds are paid to Mortgagor, Mortgagor shall receive the same in trust for Mortgagee. Within ten (10) business days after Mortgagor's receipt of any condemnation awards or insurance proceeds, Mortgagor shall deliver such awards or proceeds to



20211117000553800 11/24 \$3841.00
Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

Mortgagee in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Mortgagee.

Section 3.8 Good Condition and Repair.

The Mortgagor shall keep the Property in good condition and repair and shall comply with all laws, ordinances, and regulations of all public authorities relating to the Property, comply with all easements, declarations, covenants and any other private agreements imposing duties or obligations on owners or occupants of the Property, and shall not suffer any waste to be committed thereon nor remove or demolish any building. Mortgagor shall permit Mortgagee to enter upon the Property and inspect the Property at all reasonable hours upon twenty-four hours prior written notice. After completion of the planned renovations to the Property, Mortgagor shall not cause or permit any improvements on the Land to be materially altered or changed in such a manner that would materially and adversely affect the value of the Property without the prior written consent of Mortgagee to the proposed action, as well as Mortgagee's prior written consent to the plans and specifications related thereto. The consent of Mortgagee shall not be required for the planned renovations to the Property as described in the Credit Agreement. Mortgagor shall not consent to any subdivision of the Property or any zoning change or variance affecting the Property without the prior written consent of Mortgagee.

Section 3.9 Condemnation.

In the event any of the Property, or any part thereof, shall be damaged or taken by reason of any public improvement or Condemnation proceedings, Mortgagor agrees that such Condemnation proceeds or awards shall be payable to the Mortgagee to be applied against the outstanding balance of principal, interest and other charges due under the Note, the other Loan Documents and this Mortgage or, at Mortgagee's option, released to Mortgagor for restoration of the Property. Should said proceeds exceed the balance due on the Note and the other Loan Documents, any such excess shall be promptly repaid to the Mortgagor. All such proceeds and rights of action are hereby assigned to Mortgagee, and Mortgagee shall be entitled, along with the Mortgagor, to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement in connection with any such taking or damage after consultation with Borrower and consistent with commercially reasonable standards of a prudent lender. Mortgagor agrees to execute such further assignments or any such proceeds and rights of action as Mortgagee may require.

Section 3.10 Protection of Property.

Mortgagor will from time to time execute and deliver all such supplements and amendments hereto (including UCC financing statements and continuation statements) and other instruments, and will take such other action, as Mortgagee reasonably requests and reasonably deems necessary or advisable to (a) grant to Mortgagee all of the Property, as security; (b) maintain or preserve the lien of the Mortgage or carry out more effectively the purposes hereof; and (c) preserve and defend title to the Property and the rights of Mortgagee therein against the claims of all persons and parties, provided that such instruments or agreements do not increase Mortgagor's liabilities or obligations beyond those expressly set forth in the Loan Documents.



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Section 3.11 Affirmative Covenants of the Mortgagor.

The Mortgagor covenants and agrees that during the term of this Mortgage, and until all of the principal amount and interest due on the Note, the other Loan Documents and all other amounts due hereunder shall have been duly paid in full, and except as specifically hereinafter provided to the contrary, it will, unless the Mortgagee shall otherwise consent in writing:

(a) Leases. Timely perform and observe in all material respects all terms, covenants, conditions and agreements contained in any lease or leases now or hereafter affecting the Property or any portion thereof which are required to be observed and performed by Mortgagor.

(b) Expenses. Pay or reimburse Mortgagee, within thirty (30) days after receipt of written demand, for all reasonable attorneys' fees, costs and expenses incurred by Mortgagee in any suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as a party plaintiff or defendant, affecting the Obligations, this Mortgage or the interest created herein, or the Property, including, but not limited to any action to protect the security hereof; and any such amount paid by Mortgagee and not reimbursed by Mortgagor shall be added to the Obligations.

(c) Books, Records, Accounts and Annual Reports. Keep and maintain proper and adequate books, records and accounts reflecting all items of income and expense, including all supporting facts relating to the operation of the Property. Mortgagee shall have the right from time to time, at all times during normal business hours and upon twenty-four (24) hours prior written notice, to examine all such records, books and accounts on the Property, or at such other place or with such other person or entity maintaining such books, records and accounts and to make copies or abstracts thereof as Mortgagee shall desire. With respect to the Property, Mortgagor will, upon Mortgagee's written request, from time to time furnish to Mortgagee operating statements, rent rolls and reports in form and content reasonably requested by Mortgagee. Mortgagor shall furnish Mortgagee with such other financial information concerning Mortgagor as Mortgagee may reasonably request to the extent that such other information exists and is in Mortgagor's possession or control.

All such reports described in this subparagraph (c) shall be certified as true and correct in all material respects by such party reasonably designated by Mortgagee.

(d) Additional Indebtedness. Mortgagor agrees to pay or reimburse Mortgagee, upon demand therefor, for any and all actual, out-of-pocket losses, damages, costs, expenses, fees, duties, taxes, penalties, assessments of other charges (hereinafter referred to as "Liabilities") at any time suffered by, imposed upon, assessed or levied against the Property or Mortgagee by any governmental authority or agency relating to, arising from or in connection with the execution and delivery of the Note, the execution of the Guaranty and the recording of this Mortgage, including, but not limited to, liabilities arising from any applicable law or statute relating to the making of the Revolving Commitment, the perfection of the security documents or the enforcement thereof. Any such liability so incurred or paid by Mortgagee and not reimbursed by Mortgagor shall be deemed to be a part of the Obligations.



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(e) Transfer and Encumbrance. Mortgagor shall not make, create or suffer to be made or created, any sale, transfer, conveyance, encumbrance, lien, lease or assignment of the Property, or any interest therein (other than Permitted Encumbrances, leases in the ordinary course of business, laundry leases, cable and other telecommunications leases, and other ancillary leases and agreements commonly associated with skilled care nursing home facilities), or any interest in the Mortgagor, without the prior written consent of Mortgagee.

(f) State of Organization. Mortgagor shall not voluntarily or involuntarily dissolve, cancel or terminate its legal existence or change the state of its incorporation or organization, as the case may be.

(g) Legal Name. Mortgagor shall not change its legal name without providing Mortgagee with not less than thirty (30) days prior written notice.

(h) Good Standing. Mortgagor shall remain in good standing under the laws of the state of its incorporation or organization, as the case may be.

Section 3.12 Environmental Representation.

Mortgagor hereby covenants and represents that, except as disclosed in the environmental report delivered to Mortgagee in connection with the execution of this Mortgage, and to the best of its knowledge, (d) the Property presently complies with, in all material respects, all applicable federal, state or local environmental, health and safety statutes and regulations with which non-compliance would have material adverse effect on the Property; (e) the Property is not subject to any judicial or administrative proceeding alleging the violation of any federal, state or local environmental, health or safety statute or regulation, which violation would have a material adverse effect on the Property; (f) the Property is not the subject of a federal or state investigation regarding the need for any remedial action to respond to a release of any hazardous or toxic wastes, substance or constituent, or other substance into the environment which remedial action would have a material adverse effect on the Property; (g) Mortgagor has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of a hazardous waste, or reporting a spill or release of a hazardous or toxic waste, substance or constituent, or other substance into the environment; (h) hazardous waste or substance has not been disposed of by placing it in or on the ground of the Property; and (i) there are no underground storage tanks or surface impoundments on the Property.

Section 3.13 Notice of Environmental Accident.

Promptly after learning of the occurrence of any of the following, Mortgagor shall give Mortgagee oral and written notice thereof, describing the same and the steps being taken by the Mortgagor with respect thereto: (j) the happening of any event involving the spill, release, leak, seepage, discharge or cleanup of any hazardous or toxic waste, substance or constituent the scope of which would require remediation under applicable Law; (k) any litigation, arbitration proceeding, or governmental proceeding arising from an environmental accident; (l) written notice received by Mortgagor from a governmental agency advising that the Mortgagor's operations on the Property are not in compliance with requirements of applicable federal, state or local environmental, health and safety statutes and regulations; (m) written notice received by Mortgagor from a governmental agency advising that Mortgagor is subject to federal or state

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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or asbestos or other hazardous substance from the Property into the environment; or (n) written notice received by Mortgagor from a governmental agency advising that the Property are subject to a lien in favor of any governmental entity for (i) any liability under federal or state environmental laws or regulations or (ii) damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other hazardous substance into the environment which emanated from the Property.

Section 3.14 Wetlands.

Mortgagor hereby covenants and represents that to the best of its knowledge, (o) it is in compliance with all federal laws relating to "Wetlands" as defined in 33 C.F.R. §328.3, as hereinafter amended, and in any comparable state and/or local law, statute or ordinance, rule or regulation pertaining to such Wetlands, and (p) Mortgagor shall not perform or cause to be performed any excavation or fill activity or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with or otherwise affect any Wetlands without first obtaining all required permits from the applicable federal and state agencies.

Section 3.15 ADA.

Mortgagor hereby covenants and represents that to the best of its knowledge, (q) the Property is in compliance in all material respects with the Americans With Disabilities Act ("ADA") and all rules and regulations pertaining thereto, and (r) Mortgagor shall at all times hereafter continue to comply in all material respects with all requirements of ADA.

Section 3.16 Compliance with Laws.

Mortgagor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Article IV Events of Default.

The failure of Mortgagor to comply with any of the terms and conditions of this Mortgage, beyond the applicable notice and cure periods set forth in the Credit Agreement, or the occurrence or happening, from time to time, of an Event of Default under the Credit Agreement, shall constitute an Event of Default under this Mortgage.

Article V Rights and Remedies.

Upon the happening of any Event of Default, Mortgagee shall have the right, in addition to any other rights or remedies available to Mortgagee under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 5.1 Acceleration.

Mortgagee may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of



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Shelby Cnty Judge of Probate, AL
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protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Mortgagor).

Section 5.2 Foreclosure and Sale.

Mortgagee may sell all or part of the Property (referred to as "Sale") pursuant to power of sale (which is hereby granted) at public outcry to the highest bidder for cash at public auction in front of the courthouse door in the county or counties, as may be required, where the Property or a substantial and material portion thereof is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. local time where the Property is located (or otherwise as required by Alabama law) on the day designated for the exercise of the power of sale hereunder. Upon receipt of the consideration bid at said sale, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. At any sale, including any sale pursuant to power of sale, any part or parcels or all of the Property, real, personal or mixed, may be offered for sale in whole or in part for one total price, the proceeds of any such sale to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. With respect to any portion of the Property governed by the Uniform Commercial Code, Mortgagee shall have all of the rights and remedies of a secured party thereunder. Mortgagee may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property. Mortgagee may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price. Mortgagee shall apply the proceeds of Sale, first to any fees or attorney fees permitted Mortgagee by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Mortgagee by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Mortgagee may, after an Event of Default, advise third parties of the amount (or estimated amount) of principal, interest and expenses that will be outstanding as of the date of any Sale and may share any other available information regarding the Property. Following the occurrence of an Event of Default hereunder or under any Loan Document, any "release" provision included herein or in any other Loan Document whereby Mortgagee agreed to release all or part of the Property upon the payment of less than all of the Obligations shall become void, and Mortgagee shall no longer be obligated to release any of the Property until the secured indebtedness has been paid in full. Mortgagor agrees that Mortgagor will not bid at any Sale hereunder and will not allow others to bid on Mortgagor's behalf unless, at the time of Sale, Mortgagor has cash sufficient to pay at Sale the amount of its bid.

Section 5.3 Judicial Action.

Mortgagee shall have the right from time to time to sue Mortgagor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of

Mortgagee thereafter to enforce any appropriate remedy against Mortgagor, including an action of foreclosure or an action for specific performance, for an Event of Default existing at the time such earlier action was commenced.

Section 5.4 Collection of Rents.

Upon the occurrence and during the continuance of an Event of Default, the license granted to Mortgagor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Mortgagor. Mortgagee may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Mortgagee may, but shall not be obligated to, exercise and enforce any or all of Mortgagor's rights under the Leases. Without limitation to the generality of the foregoing, Mortgagee may notify the tenants under the Leases that all Rents are to be paid to Mortgagee, and following such notice all Rents shall be paid directly to Mortgagee and not to Mortgagor or any other Person other than as directed by Mortgagee, it being understood that a demand by Mortgagee on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Mortgagee without the necessity of further consent by Mortgagor. Mortgagor hereby irrevocably authorizes and directs the tenants under the Lease to pay all Rents to Mortgagee instead of to Mortgagor, upon receipt of written notice from Mortgagee, without the necessity of any inquiry of Mortgagor and without the necessity of determining the existence or non-existence of an Event of Default. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable until the earlier of (1) the date such Event of Default is cured; or (2) the full and final payment and performance of the Obligations, in Mortgagor's name or in Mortgagee's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Mortgagee; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Mortgagee may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Mortgagor shall pay, on demand, to Mortgagee, the amount of any deficiency between (i) the Rents received by Mortgagee, and (ii) all Expenses incurred together with interest thereon as provided in the Credit Agreement and the other Loan Documents.

Section 5.5 Taking Possession or Control of the Property.

As a matter of right without regard to the adequacy of the security, and to the extent permitted by Law without notice to Mortgagor, Mortgagee shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Mortgagor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to Mortgagee pursuant to Section 5.4. Mortgagor agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has 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 Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations. In addition, to the extent permitted by Law, and with or without



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the appointment of a receiver, or an application therefor, Mortgagee may (a) enter upon, and take possession of (and Mortgagor shall surrender actual possession of), the Property or any part thereof, without notice to Mortgagor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Mortgagor and its agents and employees therefrom. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property.

Section 5.6 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 5.5, Mortgagee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Mortgagor (the costs of completing such Improvements shall be Expenses secured by this Mortgage and shall accrue interest as provided in the Credit Agreement and the other Loan Documents). Mortgagee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Mortgagee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 5.7 Uniform Commercial Code.

Mortgagee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, Mortgagor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Mortgagee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

Section 5.8 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article V and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Mortgagee may elect.



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Section 5.9 Other Remedies.

Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

Article VI Miscellaneous.

Section 6.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Mortgagee as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

Section 6.2 No Waiver by Mortgagee.

No course of dealing or conduct by or between Mortgagee and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee, or (c) Mortgagee's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Mortgagee may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Mortgagee may elect in its sole discretion.



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11/17/2021 12:21:31 PM FILED/CERT

Section 6.3 Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption (including statutory and equitable rights of redemption), valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws.

Section 6.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

Section 6.5 No Warranty by Mortgagee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Mortgage or any of the other Loan Documents, Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

Section 6.6 Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

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Section 6.7 Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Mortgagee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 6.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be deemed sufficiently given or furnished if given in accordance with the provisions of the Guaranty.

Section 6.9 Rules of Construction.

The words "hereof", "herein", "hereunder", "hereto", and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants". The words "include" and "including" shall be interpreted as if followed by the words "without limitation". The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 6.10 Governing Law.

WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL OTHER MATTERS RELATING TO THIS MORTGAGE AND THE



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Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE CREDIT AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE CREDIT AGREEMENT. GRANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK OR NASHVILLE, TENNESSEE OR ANY STATE IN WHICH THE PROPERTY IS LOCATED, AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON GRANTOR IN THE MANNER PROVIDED IN SECTION 13.4(b) OF THE CREDIT AGREEMENT. GRANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.

Section 6.11 Conflict with Credit Agreement. In the event of any conflict between the terms of the Credit Agreement and this Mortgage, the Credit Agreement shall control.

Section 6.12 Cross Default against Other Loan Documents. Mortgagor acknowledges and agrees that the occurrence of an Event of Default under the terms of this Mortgage shall constitute an Event of Default under the other Loan Documents in effect at the time of any such Event of Default, and an Event of Default under the other Loan Documents or any of them shall constitute an Event of Default under this Mortgage. The security interests, liens and other rights and interests in and relative to any of the collateral now or hereafter granted to Mortgagee by Mortgagor by or in any instrument or agreement, including but not limited to this Mortgage and the other Loan Documents, shall serve as security for any and all liabilities of Mortgagor to Mortgagee, including but not limited to the liabilities described in this Mortgage and the other Loan Documents, and, for the repayment thereof, Mortgagee may resort to any security held by it in such order and manner as it may elect.

Section 6.13 State Specific Provisions.

The provisions of this Section are an integral part of this Mortgage. In the event of any inconsistencies between the terms and conditions of this Section and other Sections, Articles or paragraphs of this Mortgage, the terms and conditions of this Section shall be controlling.

(a) **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby. **Instrument Under Seal.** This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

(c) **Addresses and Other Information.** The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

- (i) **Name of Borrower (Debtor):** 850 9TH STREET PROPCO, LLC
Address of Borrower: 850 9th Street NW
Alabaster, AL 35007
- (ii) **Name of Lender (Secured Party):** SERVISFIRST BANK
Address of Lender: 1600 West End Avenue, Suite 200
Nashville, TN 37203
Attn: Clif Tant, Jr.
Email: ctant@servisfirstbank.com
- (iii) **Record Owner of Real Estate**
described on Exhibit A hereto: 850 9TH STREET PROPCO, LLC

(d) WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. MORTGAGOR AND MORTGAGEE EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 6.14 **Entire Agreement.**

The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Revolving Commitment, and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Mortgagee to make the Revolving Commitment are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

(Remainder of page intentionally left blank)



20211117000553800 23/24 \$3841.00
Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

**SIGNATURE PAGE TO SECOND LIEN MORTGAGE WITH ASSIGNMENT OF
RENTS AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING**

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under
seal as of the day and year first written above.

MORTGAGOR:

850 9TH STREET PROPCO, LLC, a Delaware
limited liability company

By: **Rock Hill Managers, LLC, its
Manager**

By: 
Name: Jonathan Litt
Title: Manager

STATE OF New York

COUNTY OF New York

I, the undersigned, a notary public in and for said County in said State, hereby certify that Jonathan Litt, whose name as Manager of Rock Hill Managers, LLC, a Delaware limited liability company, being the Manager of **850 9TH STREET PROPCO, LLC**, a Delaware 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 said instrument, he/she, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 21 day of October, 2021.


Notary Public

[NOTARIAL SEAL]

My Commission Expires: MARCH 2, 2024

Jack Stephen Eisenberg
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01EI6405260
Qualified in Westchester County
Commission Expires March 2, 2024



20211117000553800 24/24 \$3841.00
Shelby Cnty Judge of Probate, AL
11/17/2021 12:21:31 PM FILED/CERT

EXHIBIT A

LEGAL DESCRIPTION

Commence at the Southeast corner of the West one-half of the Southeast one-fourth of the Northwest one-fourth of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama; thence proceed North $03^{\circ}27'31''$ East along the East boundary of the West one-half of said quarter-section for a distance of 342.79 feet to a 1" open top pipe in place, said point being the point of beginning. From this beginning point continue North $03^{\circ}27'31''$ East along the West one-half of said quarter-quarter section for a distance of 821.47 feet to a 1" rebar in place; thence proceed South $89^{\circ}24'28''$ West for a distance of 593.07 feet to a $\frac{1}{2}$ " rebar in place being located on the Easterly right-of-way of Shelby County Highway No. 95; thence proceed South $01^{\circ}17'42''$ East along the Easterly right-of-way of said road for a distance of 484.46 feet to the P.C. of a concave curve right having a delta angle of $02^{\circ}07'57''$ and a radius of 7679.28 feet; thence proceed Southeasterly along the Easterly right-of-way of said road and along the curvature of said curve for a chord bearing and distance of South $00^{\circ}10'25''$ East, 285.79 feet to a $\frac{1}{2}$ " rebar in place; thence proceed South $85^{\circ}17'56''$ East for a distance of 533.45 feet to the point of beginning.

The above described land is located in the Southeast one-fourth of the Northwest one-fourth of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama.