

20220104000000830
01/04/2022 09:01:16 AM
MORT 1/18

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated as of December 30, 2021

from

GRANDE VIEW PROPERTIES 700, LLC,
a Delaware limited liability company
as Mortgagor

and

AMERICA'S FIRST FEDERAL CREDIT UNION,
a credit union chartered and regulated under the authority of the
National Credit Union Administration of the U.S. federal government
as Mortgagee

**THIS MORTGAGE SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING
PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA, AS AMENDED.**

Prepared By, Record and
Return To:

Joshua Berlinsky, Esq.
DarrowEverett LLP
One Turks Head Place, 12th Floor
Providence, Rhode Island 02903

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

(Alabama)

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the “**Mortgage**”) is made and entered into as of the 30th day of December, 2021, by **GRANDE VIEW PROPERTIES 700, LLC**, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in Alabama (the “**Mortgagor**”), with a mailing address of 3128G Hudson Crossing, Unit 3, McKinney, Texas 75070, in favor of **AMERICA’S FIRST FEDERAL CREDIT UNION**, a credit union chartered and regulated under the authority of the National Credit Union Administration of the U.S. federal government (the “**Mortgagee**”), whose address is of 1200 4th Avenue North, Birmingham, Alabama 35203.

RECITALS:

A. Mortgagor is the owner of the property described on Exhibit “A” attached hereto (the “**Property**”); and

B. Mortgagee made a loan (the “**Loan**”) to Mortgagor and Grande View Operating, LLC, a Delaware limited liability company (collectively, the “**Borrower**”), as evidenced by a Secured Promissory Note executed of even date herewith by Borrower in favor of Mortgagee and in the stated principal amount of Nine Million Five Hundred Twenty Five Thousand and No/100 Dollars (\$9,525,000.00) (the “**Note**”), which Loan is being disbursed pursuant to the terms and conditions set forth in a Construction Loan Agreement executed of even date herewith by among the Borrower and Mortgagee (the “**Loan Agreement**”); and

C. The Note and all other debts, obligations and liabilities arising under the Note or otherwise secured hereby from time to time are referred to herein as the “**Obligations**”, and Borrower and all makers, endorsers, sureties, guarantors, accommodation parties and all persons liable or to become liable with respect to the Obligations are each referred to herein as an “**Obligor**”.

D. Mortgagor and Mortgagee desire hereby to secure Borrower’s obligations under the Loan Agreement and Note, and all other Obligations as hereinafter set forth.

NOW, THEREFORE, to secure the payment of the Obligations and the full and faithful payment and performance of the covenants and agreements contained in the Note, the Loan Agreement, this Mortgage, and the other Loan Documents (defined in the Loan Agreement), Mortgagor hereby grants, bargains, sells, conveys, assigns, transfers, mortgages, pledges, delivers, sets over, warrants and confirms to Mortgagee, with power of sale, and grants Mortgagee a security interest in:

All those certain lots, pieces, or parcels of land lying and being in Jefferson County, Alabama, being legally described in **Exhibit “A”** attached hereto and made a part hereof (hereinafter referred to as the “**Land**”), together with the buildings and improvements now or hereafter situated thereon (the “**Improvements**”).

TOGETHER WITH all and singular the tenements, hereditaments, easements, riparian rights and other rights now or hereafter belonging or appurtenant to the Land, and the rights (if any) in all adjacent roads, ways, streams, alleys, strips and gores, and the reversion or reversions, remainder and remainders, and all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in and to the same and every part and parcel thereof;

TOGETHER WITH all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, issues and profits from the Mortgaged Property;

TOGETHER WITH any and all tangible property (collectively, the “**Equipment**”) now or hereafter owned by Mortgagor and now or hereafter located at, affixed to, placed upon or used in connection with the Land or the Improvements, or any present or future improvements thereon, including without limitation: all machinery, equipment, appliances, fixtures, conduits and systems for generating or distributing air, water, heat, air conditioning, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage or garbage, or for fire prevention or extinguishing; all elevators, escalators, lifts and dumbwaiters; all motors, engines, generators, compressors, pumps, lift stations, tanks, boilers, water heaters, furnaces and incinerators; and any other items of property, wherever kept or stored, if acquired by Mortgagor with the intent of incorporating them in and/or using them in connection with the Land or the Improvements; together also with all additions thereto and replacements and proceeds thereof; all of which foregoing items described in this paragraph are hereby declared to be part of the real estate and encumbered by this Mortgage; and

TOGETHER WITH (a) any and all awards or payments, including interest thereon and the right to receive the same, growing out of or resulting from any exercise of the power of eminent domain (including the taking of all or any part of the Land or the Improvements), or any alteration of the grade of any street upon which the Land abuts, or any other injury to, taking of, or decrease in the value of the Land or the Improvements or any part thereof; (b) all rights of Mortgagor in and to any hazard, casualty, liability, or other insurance policy carried for the benefit of Mortgagor and/or Mortgagee with respect to the Improvements or the Equipment, including without limitation any unearned premiums and all insurance proceeds or sums payable in lieu of or as compensation for any loss of or damage to all or any portion of the Improvements or the Equipment; (c) all rights of Mortgagor in and to all supplies and materials delivered to or located upon the Land or elsewhere and used or usable in connection with the construction or refurbishing of the Improvements; and (d) all rights of Mortgagor in, to, under, by virtue of, arising from or growing out of any and all present or future contracts, instruments, accounts, insurance policies, permits, licenses, trade names, plans, appraisals, reports, paid fees, choses-in-action, subdivision restrictions or declarations or other general intangibles whatsoever now or hereafter dealing with, affecting or concerning the Land or the Improvements or any portion thereof or interest therein, including but not limited to: (i) all contracts, plans and permits for or related to the Land or its development or the construction or refurbishing of the Improvements, (ii) any agreements for the provision of utilities to the Land or the Improvements, (iii) all payment, performance and/or other bonds, (iv) any contracts now existing or hereafter made for the sale by Mortgagor of all or any portion of the Land or the Improvements, including any deposits paid by any purchasers (howsoever such deposits may be held) and any proceeds of such sales contracts, including any purchase-money notes and mortgages made by such purchasers, and (v) any restrictions, covenants, easements or similar documents now or hereafter recorded against the title to all or any portion of the Land.

TO HAVE AND TO HOLD the above-described and granted property, appurtenances and rights (referred to collectively in this Mortgage as the “**Mortgaged Property**”) unto Mortgagee in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that if Mortgagor (a) shall pay or cause to be paid to Mortgagee the principal and all interest payable in respect of the Obligations at the time and in the manner stipulated in the Loan Documents, all without any deduction or credit for taxes

or other similar charges paid by Mortgagor, (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Loan Documents to be performed, kept and observed by and on the part of Mortgagor, and (c) shall not permit or suffer to occur any Event of Default (defined below), then this Mortgage and all the interests and rights hereby granted, bargained, sold, conveyed, assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants with and warrants to Mortgagee: (a) that Mortgagor has good and marketable title to the Mortgaged Property, is lawfully seized and possessed of the Mortgaged Property in fee simple and has good right to sell and convey the same; (b) to the Mortgagor's knowledge, that the Mortgaged Property is unencumbered, except for any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the lien of this Mortgage; and (c) that Mortgagor shall forever warrant and defend the Mortgaged Property unto Mortgagee, and the validity and priority of the lien of this Mortgage, against the lawful claims and demands of all persons whomsoever. Mortgagor further covenants and agrees with Mortgagee as follows:

1. **Payment and Performance**. Mortgagor shall pay all sums due Mortgagee at the time and in the manner provided in the Note, this Mortgage, and the other Loan Documents, and Mortgagor shall otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants contained in the Loan Documents.

2. **Taxes, Assessments and Charges**. Subject to Section 7.10 of the Loan Agreement, Mortgagor shall pay, or cause to be paid, all taxes, assessments (whether general or special) and other charges whatsoever levied, assessed, placed or made against all or any part of the Mortgaged Property or any interest of Mortgagee therein, or against any Loan Documents or any obligation thereunder when due, subject to all grace periods. Mortgagor shall make, or cause to be made, such payment in full (and shall deliver to Mortgagee the paid receipts) prior to delinquency and without the imposition of interest (except interest on special assessments payable by law in installments, in which case Mortgagor shall pay each such installment when due) or other late charge or penalty. If Mortgagor shall fail, neglect or refuse to pay any such taxes, assessments or other charges as aforesaid, then Mortgagee at its option, upon thirty (30) days prior written notice to Mortgagor (within which time Mortgagor may make the requisite payment without premium or penalty) may pay the same, and any funds so advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

3. **Insurance**.

(a) Mortgagor shall maintain and keep in force, or cause to be maintained and kept in force, all insurance pertaining to the Mortgaged Property that is required to be maintained and kept in force under the Loan Agreement as well any such other insurance as may, from time to time, be reasonably required by Mortgagee in order to protect its interests in the Mortgaged Property.

(b) In the event of the foreclosure of this Mortgage, the purchaser of the Mortgaged Property, or any part thereof, shall succeed to all the rights of Mortgagor in and to all policies of insurance required under this Mortgage, including any right to unearned premiums, subject to the terms of any such policies and subject to limitations on the assignment of blanket policies, but limited to such rights as relate to the Mortgaged Property or such part thereof. If Mortgagee acquires title to the Mortgaged Property, or any part thereof, in any manner, Mortgagee shall thereupon (as between Mortgagor and Mortgagee) become the sole and absolute owner of the insurance policies with respect to the Mortgaged Property, and all insurance proceeds payable thereunder with respect to the Mortgaged Property, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Property, or such part thereof, if any.

4. **Improvements and Development.** Without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, none of the Improvements covered by the lien of this Mortgage shall be removed, demolished or materially altered (except as required in the event of fire, other casualty or condemnation). Notwithstanding the foregoing, Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such Equipment as from time to time may become worn out or obsolete, provided that, simultaneously with or prior to such removal, Mortgagor shall have replaced any such Equipment with new Equipment (of at least the same quality as that of the replaced Equipment when it was new) which shall be free from any title retention or other security agreement (except a specific UCC equipment filing) or other encumbrance, and, by such removal and replacement, Mortgagor shall be deemed to have subjected such new Equipment to the lien of this Mortgage. Without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, Mortgagor shall not undertake any development of the Land, nor construct any new Improvements thereon, nor initiate or join in or consent to any new (or any change in any existing) private restrictive covenant, zoning ordinance, master plan, site plan, easement, or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. Mortgagor shall complete and pay for any permitted development and/or improvements undertaken on the Land within a reasonable time after commencing the same.

5. **Maintenance and Repair.** Mortgagor shall do everything necessary to maintain the Mortgaged Property in good condition and repair, shall operate the Mortgaged Property in a first-class manner, shall not commit or suffer any waste, impairment, abandonment or deterioration of the Mortgaged Property, shall promptly pay, or cause to be paid, all utility fees for services provided to the Mortgaged Property, and shall comply, or cause compliance, with, in all materials respects, all applicable restrictive covenants and all statutes, ordinances and requirements of any governmental authorities having jurisdiction over the Mortgaged Property or the use thereof. In the event of any fire or other casualty loss or damage to all or any part of the Mortgaged Property, Mortgagor shall notify Mortgagee within three (3) business days of such occurrence. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation, alteration of grade, or other public or quasi-public taking or injury, except to the extent precluded by Mortgagee's retention and application of the insurance or condemnation proceeds against the Obligations. If Mortgagor shall fail, neglect or refuse to repair or maintain the Mortgaged Property as aforesaid, then Mortgagee may at its option undertake such repairs or maintenance, and any funds advanced therefore by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

6. **Uniform Commercial Code.** This Mortgage is a "security agreement" and creates a "security interest" in favor of Mortgagee as a "secured party" with respect to all property included in the Mortgaged Property which is covered by the Uniform Commercial Code. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may at its option pursue any and all rights and remedies available to a secured party with respect to any portion of the Mortgaged Property so covered by the Uniform Commercial Code, or Mortgagee may at its option proceed as to all or any part of the Mortgaged Property in accordance with Mortgagee's rights and remedies in respect of real property. Mortgagor and Mortgagee agree that the mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall never derogate from or impair in any way their declared intention that all items of collateral described in this Mortgage are part of the real estate encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the improvements or whether serial numbers are used for the better identification of certain items of Equipment. Specifically, the mention in any such financing statement of (a) the rights in or the proceeds of any insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, (c) Mortgagor's interest as lessor in any present or future lease or right to income growing out of the use or occupancy of the Land or Improvements, whether pursuant to lease or otherwise, or (d) any other item included in the definition of the Mortgaged Property shall never be construed to alter any of the rights

of Mortgagee as determined by this Mortgage or to impugn the priority of Mortgagee's lien and security interest with respect to the Mortgaged Property; such mention in a financing statement is declared to be for the protection of Mortgagee in the event any court shall hold that notice of Mortgagee's priority of interest with respect to any such portion of the Mortgaged Property must be filed in the Uniform Commercial Code records in order to be effective against or to take priority over any particular class of persons, including but not limited to the federal government and any subdivision or instrumentality of the federal government. This Mortgage or a carbon, photographic copy or other reproduction hereof or of any financing statement shall be sufficient as a financing statement. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code against all of the Property which is or is to become fixtures. The information provided in this paragraph 6 is provided so that this Mortgage shall comply with the requirements of the Uniform Commercial Code for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth in the preamble of this Mortgage. Mortgagee is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Mortgage. A statement describing the portion of the Property comprising the fixtures hereby secured is set forth in the granting clause of this Mortgage. Mortgagor represents and warrants to Mortgagee that Mortgagor is the record owner of the Land and the Mortgaged Property includes goods that are or are to become fixtures.

7. Assignment of Rents.

(a) As further security for the repayment of the Obligations, Mortgagor hereby assigns and transfers to Mortgagee all rents, income, issues and profits of the Mortgaged Property and all right, title and interest of Mortgagor in and under all leases and tenancies and occupancy agreements of any nature whatsoever, as they may exist from time to time (and any extensions and renewals thereof) (the "Leases"), together with any guaranties thereof and any security deposits or prepaid rent thereunder. Mortgagor hereby empowers Mortgagee, its agents or attorneys, to demand, collect, sue for, receive, settle, compromise and give acquittances for all of the rents that may become due under the Leases and to avail itself of and pursue all remedies for the enforcement of the Leases and Mortgagor's rights thereunder that Mortgagor could have pursued but for this assignment. Mortgagee is hereby vested with full power and authority to use all measures, legal and equitable, deemed necessary or proper by Mortgagee to enforce this assignment, to collect the rents so assigned, and/or to cure any default and perform any covenant of Mortgagor as the landlord under any of the Leases, including without limitation the right to enter upon all or any part of the Mortgaged Property and to take possession thereof to the extent necessary to exercise such powers. Mortgagee shall have the right (but not the obligation) to advance any sums necessary to exercise such powers, which sums shall bear interest, shall be paid and shall be secured as provided in paragraph 14. Mortgagor hereby empowers Mortgagee to use and apply all such rents and other income of the Mortgaged Property to the payment of the Obligations and all interest thereon and any other indebtedness or liability of Mortgagor to Mortgagee, and to the payment of the costs of managing and operating the Mortgaged Property, including without limitation: (i) taxes, special assessments, insurance premiums, damage claims, and the costs of maintaining, repairing, rebuilding, restoring and making rentable the Improvements; (ii) all sums advanced by Mortgagee (with interest thereon) for the payment of such costs or for any other reason permitted by this Mortgage or any other Loan Documents; and (iii) all reasonable costs, expenses and attorney's fees incurred by Mortgagee in connection with the enforcement of this Mortgage and/or any Lease; all in such order of priority as Mortgagee may deem appropriate in its sole discretion.

(b) Mortgagee shall not be obliged to press any of the rights or claims of Mortgagor assigned hereby, nor to perform or carry out any of the obligations of the landlord under any Lease, and Mortgagee assumes no duty or liability whatsoever in connection with or arising from or growing out of the covenants of Mortgagor in any Lease. This Mortgage shall not operate to make Mortgagee responsible for the control, care, management or repair of all or any part of the Mortgaged Property, nor shall it operate

to make Mortgagee liable for (i) the performance or carrying out of any of the terms or conditions of any Lease, (ii) any waste of the Mortgaged Property by any tenant or any other person, (iii) any dangerous or defective condition of the Mortgaged Property, nor (iv) any negligence in the management, upkeep, repair or control of all or any part of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Mortgagor hereby indemnifies and holds Mortgagee harmless against any and all liability, loss, claim, damage, costs and attorney's fees whatsoever which Mortgagee may or might incur under any Lease or by reason of this assignment, and against any and all claims or demands whatsoever (and any related costs and attorney's fees) which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Nothing herein contained shall be construed as constituting Mortgagee a trustee or mortgagee in possession.

(c) Mortgagor shall promptly deliver to Mortgagee a true, correct and complete copy of each Lease as and when Mortgagor shall enter into the same, and Mortgagor shall use its best efforts to procure and deliver to Mortgagee estoppel letters or certificates from each tenant, in form and substance satisfactory to Mortgagee, within thirty (30) days after Mortgagee's request therefore. Mortgagor hereby represents and warrants to Mortgagee (and shall be deemed to have represented and warranted to Mortgagee upon and as of the date of delivering to Mortgagee a copy of each Lease), except as previously or concurrently disclosed to and approved by Mortgagee in writing and to the best of Mortgagor's knowledge: (i) that each such copy delivered (or to be delivered) to Mortgagee is true, correct and complete; (ii) that Mortgagor is the sole owner of the entire landlord's interest in each Lease and has not previously assigned or pledged any Lease or any interest therein to any person other than Mortgagee; (iii) that all the Leases are in full force and effect and have not been altered, modified or amended in any manner whatsoever; (iv) that each tenant thereunder has accepted that tenant's respective premises and is paying rent on a current basis; (v) that no default exists on the part of such tenants or on the part of Mortgagor as landlord in their respective performances of the terms, covenants, provisions and agreements contained in the Leases; (vi) that no rent has been paid by any of the tenants for more than one (1) month in advance; (vii) that Mortgagor is not indebted to any tenant in any manner whatsoever so as to give rise to any right of set-off against or reduction of the rents payable under any Lease; and (viii) that no payment of rents to accrue under any Lease has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor directly or indirectly, whether by assuming any tenant's obligations with respect to other premises or otherwise.

(d) Mortgagor covenants and agrees with Mortgagee: (i) that each Lease shall remain in full force and effect irrespective of any merger of the interests of the landlord and tenant thereunder; (ii) that without the prior written consent of Mortgagee, which it may grant or withhold in its sole discretion, Mortgagor shall not terminate, materially modify or amend any Lease or any guaranty thereof, nor grant any concessions in connection therewith (either orally or in writing) nor accept any surrender or cancellation thereof, and that any attempted termination, modification, amendment, concession, surrender or cancellation without such written consent shall be null and void, provided, however, that Mortgagor may terminate or cancel the Lease of a defaulting tenant for the purpose of re-letting the premises; (iii) that Mortgagor shall not collect more than one (1) month's rent, income and/or profits arising or accruing under any Lease in advance of the due date for the same, nor discount any future accruing rents, nor suffer or permit to arise in favor of any tenant any release of liability or any right to withhold payment of rent, nor take any action or permit any omission or exercise any right of election which would in any way impair the value of any Lease or diminish any tenant's liability thereunder or have the effect of terminating or shortening the stated term of any Lease; (iv) that Mortgagor shall perform all of Mortgagor's covenants and agreements as landlord under each Lease and shall promptly send Mortgagee copies of any notice of alleged default on the part of Mortgagor as landlord received from any tenant thereunder; (v) that if requested by Mortgagee, Mortgagor shall expeditiously and in good faith enforce the Leases and all remedies available to Mortgagor in case of default by the tenants thereunder; and (vi) that Mortgagor shall not execute any

other assignment or pledge of any Lease or any interest therein or any of the rents thereunder, nor consent to any tenant's assignment of any Lease or any subletting thereunder (except to the extent expressly provided for in the applicable Lease), nor request, accept, consent to or agree to any subordination of any Lease to any mortgage other than this Mortgage.

(e) Although Mortgagor and Mortgagee intend that this instrument shall be a present assignment, it is expressly understood and agreed that so long as no Event of Default shall exist, Mortgagor shall have a revocable license to collect assigned rents and profits for not more than one (1) month in advance of the accrual thereof, but upon the occurrence of any such Event of Default, or at any time during its continuance, all rights of Mortgagor to collect or receive rents or profits shall wholly terminate upon notice from Mortgagee. The tenants under all the Leases are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may be or thereafter become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and none of them shall have any right or duty to inquire as to whether any Event of Default shall have actually occurred or is then existing.

8. **Further Encumbrances.** Except for the Permitted Encumbrances, Mortgagor shall not grant any other lien or mortgage on all or any part of the Mortgaged Property or any interest therein nor make any further assignment of the leases and rentals of the Mortgaged Property without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion; any such unpermitted lien or mortgage or assignment by Mortgagor shall entitle Mortgagee to declare the Obligations immediately due and payable and to foreclose this Mortgage. Any such other lien or mortgage or assignment shall be junior to this Mortgage and shall be subject to all renewals, extensions, modifications, releases, interest rate increases, future advances, changes or exchanges permitted by this Mortgage, all without the joinder or consent of such junior lienholder or mortgagee or assignee and without any obligation on Mortgagee's part to give notice of any kind thereto. Except for the Permitted Encumbrances and any other permitted in writing by Mortgagee, Mortgagor shall not commit or permit or suffer to occur any act or omission whereby any of the security represented by this Mortgage shall be impaired or threatened, or whereby any of the Mortgaged Property or any interest therein shall become subject to any attachment, judgment, lien, charge or other encumbrance whatsoever, and Mortgagor shall immediately cause any such attachment, judgment, lien, charge or other encumbrance to be discharged or otherwise bonded or transferred to other security. Mortgagor shall not directly or indirectly do anything or take any action that might prejudice any of the right, title or interest of Mortgagee in or to any of the Mortgaged Property or impose or create any direct or indirect obligation or liability on the part of Mortgagee with respect to any of the Mortgaged Property.

9. **No Shift of Taxes.** If any federal, state or local law shall hereafter be enacted which (a) for the purpose of ad valorem taxation shall deduct the amount of any lien from the value of real property, or (b) shall impose on Mortgagee the payment of all or any part of the taxes or assessments or charges required to be paid hereunder by Mortgagor, or (c) shall change in any way the laws for the taxation of mortgages or debts secured thereby or Mortgagee's interest in the Mortgaged Property, or shall change the manner of collecting such taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then upon demand Mortgagor shall pay such taxes or assessments or charges imposed on Mortgagee or shall reimburse Mortgagee therefore; provided, however, that if in the reasonable opinion of Mortgagee's counsel the requirement that Mortgagor make such payments would result in the imposition of interest in excess of the maximum lawful rate, then Mortgagee shall have the right to declare the Obligations to be due and payable sixty (60) days after notice thereof to Mortgagor.

10. **Representations and Warranties.** In order to induce Mortgagee to extend the credit secured hereby, Mortgagor represents and warrants that, to the best of Mortgagor's knowledge: (a) except

as previously or concurrently disclosed in writing to Mortgagee, there are no actions, suits or proceedings pending or threatened against or affecting any Obligor or any portion of the Mortgaged Property or involving the validity or enforceability of this Mortgage or the priority of its lien, before any court of law or equity or any tribunal, administrative board or governmental authority, and no Obligor is in default under any other indebtedness or with respect to any order, writ, injunction, decree, judgment or demand of any court or any governmental authority; (b) the execution and delivery of this Mortgage and all other Loan Documents do not and shall not (i) violate any provisions of any applicable law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any Obligor, nor (ii) result in a breach of, or constitute a default under, any indenture, bond, mortgage, lease, instrument, credit agreement, undertaking, contract or other agreement to which any Obligor is a party or by which any of them or their respective properties may be bound or affected; (c) this Mortgage and all other Loan Documents constitute valid and binding obligations of the Obligor(s) executing the same, enforceable against such Obligor(s) in accordance with their respective terms; (d) all financial statements of the Obligors previously delivered to Mortgagee fairly present the correct respective financial conditions of the Obligors as of their respective dates, and the foregoing shall be true with respect to all financial statements of the Obligors delivered to Mortgagee hereafter; (e) there is no fact that the Obligors have not disclosed to Mortgagee in writing that could materially adversely affect their respective properties, businesses or financial conditions or the Mortgaged Property or any other collateral for the Obligations; (f) the Obligors have duly obtained all permits, licenses, approvals and consents from, and made all filings with, any governmental authority (and the same have not lapsed nor been rescinded or revoked) which are necessary in connection with the execution or delivery or enforcement of this Mortgage or any other Loan Documents or the performance of any Obligor's obligations thereunder; (g) the proceeds of the Obligations are not being used to purchase or carry any "margin stock" within the meaning of Regulation "U" of the Board of Governors of the Federal Reserve System, nor to extend credit to others for that purpose; and (h) each extension of credit secured by this Mortgage is exempt from the provisions of the Federal Consumers Loan Protection Act (Truth-in-Lending Act) and Regulation "Z" of the Board of Governors of the Federal Reserve System, because Mortgagor is a person fully excluded therefrom, and/or because said extension of credit is only for business or commercial purposes of Mortgagor and is not being used for personal, family, household or agricultural purposes.

11. **Environmental Laws.** Mortgagor represents and warrants to Mortgagee that Mortgagor has undertaken an appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice in an effort to minimize liability with respect to any substances defined or classified or identified as "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" or other contaminants or pollution under any applicable federal or state or local laws, ordinances, rules or regulations now or hereafter in effect ("**Hazardous Substances**"). To the best of Mortgagor's knowledge and except as otherwise disclosed to Mortgagee in writing, Mortgagor represents and warrants that the Mortgaged Property is presently free from contamination by Hazardous Substances and that the Mortgaged Property and the activities conducted thereon do not pose any significant hazard to human health or the environment or violate any applicable federal, state or local laws, ordinances, rules or regulations pertaining to Hazardous Substances or industrial hygiene or environmental conditions ("**Environmental Laws**"). Mortgagor shall not cause or actively permit the Mortgaged Property to be used for the generation, handling, storage, transportation, disposal or release of any Hazardous Substances except as exempted or permitted under applicable Environmental Laws, and Mortgagor shall not cause or actively permit the Mortgaged Property or any activities conducted thereon to be in violation of any applicable Environmental Laws. Mortgagor agrees to indemnify Mortgagee and hold Mortgagee and its directors, officers, employees, successors and assigns harmless from and against any and all actual claims, losses, damages (including all foreseeable and unforeseeable consequential damages), liabilities, fines, penalties, charges, interest, administrative or judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including without limitation reasonable attorneys' fees and expenses), directly resulting in whole or in part

from the violation of any Environmental Laws applicable to the Mortgaged Property or any activity conducted thereon, or from any past, present or future use, generation, handling, storage, transportation, disposal or release of Hazardous Substances at or in connection with the Mortgaged Property, or any decontamination, detoxification, closure, cleanup or other remedial measures required with respect to the Mortgaged Property under any Environmental Laws. All sums actually paid and costs incurred by Mortgagee with respect to the foregoing matters shall bear interest, shall be paid and shall be secured as provided in paragraph 14. This indemnity shall not extend to any contamination of Hazardous Substances shown to have occurred subsequent to any foreclosure by the Mortgagee or any other transfer initiated by Mortgagee to a third party in lieu of such foreclosure proceeding. The burden of proving the environmental condition of the Mortgaged Property as of the date of such transfer shall rest with Mortgagee or the third party to which Mortgagee has transferred the Mortgaged Property in lieu of such foreclosure proceeding or by means of an environmental site assessment study conducted in scope and covering such matters as is reasonably satisfactory to Mortgagor and shall be performed by an environmental engineering firm on the Mortgagee's approved list; and failing such proof, the time of any such contamination shall be deemed to have occurred after such transfer. Mortgagee shall be entitled to contact all applicable regulatory agencies at any time to confirm Mortgagor's adherence to the Environmental Laws. In the event that Mortgagee reasonably believes that the Mortgaged Property is contaminated by Hazardous Substances, Mortgagee may, in its sole and discretion, obtain additional or supplemental environmental audit reports, at Mortgagor's sole cost and expense, as Mortgagee reasonably deems are necessary.

12. **Business Entity.** If Mortgagor is a corporation, limited liability company, partnership or other business entity, or if Mortgagor consists of more than one person and any such person is such a business entity, then each such business entity hereby represents and warrants as to itself, in order to induce Mortgagee to extend the credit secured hereby, that: (a) it is duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the State where the Mortgaged Property is located; (b) it has all requisite power and authority (corporate or otherwise) to conduct its business, to own its properties, to execute and deliver this Mortgage and all other Loan Documents executed by it, and to perform its obligations under the same; (c) its execution, delivery and performance of this Mortgage and all other such Loan Documents have been duly authorized by all necessary actions (corporate or otherwise) and do not require the consent or approval of its stockholders (if a corporation) members (if a limited liability company) or of any other person or entity whose consent has not been obtained; and (d) the execution, delivery and performance of this Mortgage and all other Loan Documents do not and shall not conflict with any provision of its organizational documents.

13. **Defaults; Remedies.**

(a) The occurrence of any of the following events shall constitute an event of default ("**Event of Default**") under this Mortgage:

(i) the occurrence of an "Event of Default" pursuant to the terms of, and as defined in, the Loan Agreement;

(ii) [intentionally deleted];

(iii) the issuance of any order by the State in which the Mortgaged Property is located, or any subdivision, instrumentality, administrative board or department thereof, declaring unlawful or suspending any operation conducted on the Mortgaged Property and such order is not dismissed within sixty (60) days of the date it is filed, unless the activity giving rise thereto is as a result of an action or inaction of a tenant under a Lease and Mortgagor promptly commences and thereafter diligently pursues the correction of such event and the dismissal of such order; or

(v) the existence of any uncured default under any other mortgage or encumbrance affecting any part of the Mortgaged Property then encumbered by this Mortgage (in the case of a default for which such mortgage or other encumbrance provides a grace period, if the default remains uncured after the expiration of that grace period), or Mortgagor's acceptance of any future advance under, or modification of the terms of, any such other mortgage or encumbrance which may then be superior to the lien of this Mortgage and such default is not cured within thirty (30) days.

(b) Upon the occurrence and during the continuance of an Event of Default, Mortgagee, at Mortgagee's option, may declare all of the principal, interest and other sums secured by this Mortgage to be immediately, or at any time thereafter, due and payable upon notice to any Obligor, and Mortgagee shall immediately have all the rights accorded to Mortgagee by law and hereunder to foreclose this Mortgage by judicial proceeding or otherwise, to enforce this Mortgage and any other Loan Document and to invoke any other remedies permitted by applicable law or as provided herein of therein. In order to declare the Obligations due and payable because of Mortgagor's failure to pay any tax, assessment, insurance premium, charge, liability, obligation or encumbrance upon the Mortgaged Property as required by this Mortgage, or because of any other Event of Default, Mortgagee shall not be required to pay the same or to advance funds to cure the Event of Default, notwithstanding Mortgagee's option under this Mortgage or any other Loan Documents to do so; no such payment or advance by Mortgagee shall be deemed or construed a waiver of Mortgagee's right to declare the Obligations due and payable on account of such failure or other Event of Default.

(c) No consent or waiver expressed or implied by Mortgagee with respect to any Event of Default under this Mortgage shall be construed as a consent or waiver with respect to any further Event of Default of the same or a different nature; and no consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Mortgagee or any other course of conduct or in any other manner whatsoever except by a writing duly executed by Mortgagee, and then only for the single occasion to which such writing is addressed.

(d) In the event of a conflict between the terms of this paragraph and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

14. **Advances Hereunder.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the right (but in no event the obligation) at its option to cure such Event of Default or take any other action Mortgagee deems reasonably necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, insurance premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Mortgagee. If Mortgagee shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage or any other Loan Document, then such sum(s) shall be deemed Obligations, shall be repaid by Mortgagor on demand, shall be secured by this Mortgage and shall bear interest until paid at the Default Rate, commencing on the date they are advanced by Mortgagee. Mortgagee's lien on the Mortgaged Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Mortgaged Property junior to the lien of this Mortgage.

15. **Receiver.** In any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Mortgaged Property, Mortgagee shall have the right to apply without notice for the appointment of a receiver of the Mortgaged Property and the rents and profits thereof. To the extent permitted by law, Mortgagor hereby waives any right to object to the appointment of a receiver as aforesaid and expressly consents that such appointment shall be made as an admitted equity and as a matter of absolute right to Mortgagee.

16. **Remedies.** The rights and remedies of Mortgagee under this Mortgage or any other Loan Documents or applicable law shall be cumulative and concurrent and may be pursued separately, successively or together against any Obligor(s), the Mortgaged Property, any other collateral for the Obligations, or any one or more of the foregoing, all at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall arise, all to the maximum extent permitted by law. Mortgagee's pursuit of any remedy shall not preclude pursuit of any other remedy until Mortgagee shall have recovered all sums due Mortgagee, together with the interest thereon and all costs of collection, including reasonable attorney's fees and appellate attorney's fees, with interest thereon. Further, in the event of a judgment against Mortgagor pursuant to Mortgagor's continuing default under any Loan Document, such judgment shall bear interest until paid in full at the Default Rate (i.e. as opposed to the statutory rate otherwise applicable to judgments). Neither Mortgagor nor anyone claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisement, valuation, stay, moratorium, extension, exemption or redemption laws, now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Mortgaged Property. To the maximum extent permitted by law, the Obligors, for themselves and all who may claim through or under any of them, hereby severally waive the benefit of all such laws and waive any and all rights to have the Mortgaged Property or any other collateral for the Obligations marshalled upon any foreclosure of this Mortgage or any other instrument securing the Obligations, and hereby severally agree that the Mortgaged Property and any such other collateral may be sold as an entirety or in such parcels, in such manner and in such order as Mortgagee in its sole discretion may elect.

17. **Fees and Expenses.** Mortgagor shall pay any and all actual costs, expenses and reasonable attorney's fees incurred by Mortgagee (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Mortgagee's rights under this Mortgage or under any other Loan Documents, to recover any indebtedness secured hereby, to contest or collect any award or payment in connection with the taking or condemnation of all or any part of the Mortgaged Property, or for any title examination or abstract preparation or appraisal or title insurance policy relating to the Mortgaged Property, and all such sums shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

18. **Inspection and Watchmen.** Upon the occurrence and during the continuance of an Event of Default, Mortgagee and any persons authorized by Mortgagee shall have the right, from time to time at the discretion of Mortgagee, to enter and inspect the Mortgaged Property so long as such entry and inspection does not materially interfere with the applicable tenant's permitted use of the Mortgaged Property and does not violate any term of such tenant's lease agreement. At any time after an Event of Default, if any of the Improvements or Equipment shall be unprotected or unguarded, or if any of the Improvements shall be allowed to remain vacant or deserted, then, at its option, Mortgagee may employ watchmen for the Mortgaged Property and expend any monies deemed necessary by Mortgagee to protect the same from waste, vandalism and other hazards, depredation or injury, and any sums expended by Mortgagee for such purpose shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

19. **Payments to Mortgagee.** Any payment made in accordance with the terms of the Loan Documents by any person at any time liable for the payment of the whole or any part of the Obligations, by any subsequent owner of the Mortgaged Property, or by any other person whose interest in the Mortgaged Property might be prejudiced in the event of a failure to make such payment (or by any partner, stockholder, member, officer, manager or director of any such person), shall be deemed, as between Mortgagee and all such persons who at any time may be so liable or may have an interest in the Mortgaged Property, to have been made on behalf of all such persons. Mortgagee's acceptance of any payment that is less than full payment of all amounts then due and payable to Mortgagee, even if made by one other than the person liable therefore, shall not constitute a waiver of any rights or remedies of Mortgagee.

20. **Consent to Changes.** Mortgagor consents and agrees that, at any time and from time to time without notice, (a) Mortgagee and the owner(s) of any collateral then securing the Obligations may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (b) Mortgagee and any person(s) then primarily liable for the Obligations may agree to renew, extend or compromise the Obligations in whole or in part or to modify the terms of the Obligations in any respect whatsoever. Mortgagor agrees that no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification, no sale of the Mortgaged Property or any part thereof, no forbearance on the part of Mortgagee, nor any other indulgence given by Mortgagee (whether with or without consideration) shall relieve or diminish in any manner the liability of any Obligor, nor adversely affect the priority of this Mortgage, nor limit or prejudice or impair any right or remedy of Mortgagee. All Obligors and all those claiming by, through or under any of them hereby jointly and severally waive any and all right to prior notice of, and any and all defenses or claims based upon, any such release, increase, change, substitution, exchange, renewal, extension, compromise, modification, sale, forbearance or indulgence.

21. **Joint and Several Liability.** If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several, and wherever the term "Mortgagor" is used it shall be deemed to refer to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Mortgagee may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

22. **No Usury.** In no event shall any agreed to or actual exaction charged, reserved or taken as an advance or forbearance by Mortgagee as consideration for the Obligations exceed the limits (if any) imposed or provided by the law applicable from time to time to the Obligations for the use or detention of money or for forbearance in seeking its collection; Mortgagee hereby waives any right to demand any such excess. In the event that the interest provisions of the Loan Documents or any exactions required thereunder shall result at any time or for any reason in an effective rate of interest that transcends the maximum interest rate permitted by applicable law (if any), then without further agreement or notice the obligation to be fulfilled shall automatically be reduced to such limit and all sums received by Mortgagee in excess of those lawfully collectible as interest shall be applied against the principal of the Obligations immediately upon Mortgagee's receipt thereof, with the same force and effect as though the payor had specifically designated such extra sums to be so applied to principal and Mortgagee had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments.

23. **Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

24. **Indemnity.** In the event Mortgagee shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Mortgaged Property or this Mortgage or the Obligations, then regardless of the merits of such lawsuit Mortgagor shall defend Mortgagee and indemnify, defend (with counsel of Mortgagee's choice) and hold Mortgagee fully harmless from any and all claims, demands, damages, liabilities, judgments, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith.

25. **No Partnership.** Mortgagor and Mortgagee hereby acknowledge and agree that Mortgagee is not, has never been, and shall not be deemed a partner or joint venturer of Mortgagor or any other Obligor with respect to the Mortgaged Property, and that the relationship of Mortgagee to said parties is, has always

been, and shall continue to be strictly the role of a lender. Mortgagor hereby (a) waives and relinquishes any and all claims, demands, counterclaims and/or defenses alleging the existence of any partnership, joint venture or other fiduciary relationship between any of them and Mortgagee, and (b) agrees to indemnify and hold Mortgagee harmless against any and all actual losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments, and any other fees, costs and expenses that Mortgagee may sustain as the result of any such allegation by any person whomsoever.

26. **Further Assurances.** From time to time and on demand, Mortgagor shall execute and deliver to Mortgagee any further reasonable instruments required by Mortgagee to reaffirm, correct or perfect the evidence of the Obligations secured hereby and the lien and security interest of Mortgagee in all the Mortgaged Property and all additions, replacements and proceeds, including but not limited to mortgages, security agreements, financing statements, assignments and renewal and substitution notes.

27. **Subrogation.** Mortgagee is hereby subrogated (a) to the lien(s) of each and every mortgage, lien or other encumbrance on all or any part of the Mortgaged Property which is fully or partially paid or satisfied out of the proceeds of the Obligations, and (b) to the rights of the owner(s) and holder(s) of any such mortgage, lien or other encumbrance. The respective rights under and priorities of all such mortgages, liens or other encumbrances shall be preserved and shall pass to and be held by Mortgagee as security for the Obligations, to the same extent as if they had been duly assigned by separate instrument of assignment and notwithstanding that the same may have been cancelled and satisfied of record.

28. **Notices.** Whenever Mortgagor or Mortgagee are obliged to give notice to the other, such notice shall be in writing and shall be given in the manner set forth in the Loan Agreement.

29. **Other Indebtedness Secured.** In addition to the specific indebtedness identified hereinabove, the Obligations also include, and this Mortgage also secures, all indebtedness, obligations and liabilities of Mortgagor to Mortgagee of every kind and description whether or not presently contemplated by the parties, direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, regardless of how the same arise or by what instrument, agreement or book account they may be evidenced or whether evidenced by any instrument, agreement or book account, including without limitation all loans (including any loan by renewal), all indebtedness, all undertakings to take or refrain from taking any action, all indebtedness, liabilities or obligations owing from Mortgagor to others that Mortgagee may have obtained by purchase, negotiation, discount, assignment or otherwise, and all interest, taxes, fees charges, expenses, and attorney's fees chargeable to Mortgagor or incurred by Mortgagee hereunder or under any other document or instrument delivered in connection herewith.

30. **Interpretation.** Whenever the context of any provision of this Mortgage shall so require, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. Captions and headings in this Mortgage are for convenience only and shall not affect its interpretation. All references in this Mortgage to Exhibits, Schedules, paragraphs and subparagraphs refer to the respective subdivisions of this Mortgage, unless the reference expressly identifies another document. Wherever used in this Mortgage, unless the context clearly indicates a contrary intention or unless this Mortgage specifically provides otherwise: (a) the term "Mortgagor" shall include any subsequent owner(s) of the Mortgaged Property; (b) the term "Mortgagee" shall include any subsequent holder(s) of this Mortgage; (c) the term "Obligors" shall include any permitted successor(s) or permitted assign(s) of any Obligor; (d) the term "Obligations" shall include any modification of any Obligations from time to time and any future advances or other sums payable to Mortgagee under this Mortgage; (e) the term "Loan Documents" shall include any note or other instrument evidencing or pertaining to any future advance hereunder and any renewals, extensions or modifications of any Loan Documents; and (f) the term "person" shall mean "an individual, corporation, partnership, limited

partnership, limited liability company, unincorporated association, joint stock corporation, joint venture or other legal entity”.

31. **Conflict.** In the event there is any conflict between the terms and provisions of this Mortgage and the terms and provisions of the Loan Agreement, the terms and provisions of the Loan Agreement shall prevail. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

32. **Miscellaneous.** Time is of the essence of all provisions of this Mortgage. Mortgagor hereby waives all right of homestead exemption (if any) in the Mortgaged Property. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several, and wherever the term “Mortgagor” is used it shall be deemed to refer to such persons jointly and severally. If Mortgagor is a partnership, then all general partners in Mortgagor shall be liable jointly and severally for the covenants, agreements, undertakings and obligations of Mortgagor in connection with the Obligations, notwithstanding any contrary provision of the partnership laws of the State of Florida. This Mortgage shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, and it shall inure to the benefit of Mortgagee and its successors and assigns and to the benefit of Mortgagor and Mortgagor’s heirs, personal representatives and permitted successors and assigns. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

33. **Governing Law.** This Mortgage shall be governed by, construed and enforced in accordance with the laws of Alabama.

34. **Venue.** Any legal suit, action or proceeding against Mortgagee or Mortgagor arising out of or relating to this Mortgage may at Mortgagee’s option be instituted in any federal or state court in Jefferson County, Alabama, and Mortgagor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Mortgagor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

35. **WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO TRIAL BY JURY AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER COLLECTIVELY REFERRED TO AS THE “PARTIES”) SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS MORTGAGE OR THE OBLIGATIONS SECURED HEREBY OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THE LOAN OR TO THIS MORTGAGE. THE PARTIES ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.

36. **Local Law Provisions.** Notwithstanding anything to the contrary contained in this Mortgage, in the event of any conflict or inconsistency between the provisions of this Section 36 and the other provisions of this Mortgage, the provisions of this Section 36 will govern.

(a) **Power of Sale.** Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to sell or offer for sell, pursuant to power of sale or otherwise, the Mortgaged Property (or such part or parts thereof or leasehold, subleasehold or other interest therein encumbered hereby as the Mortgagee may from time to time elect to sell) at public outcry to the highest bidder for cash

in front of the main entrance of the county courthouse of the county where said Mortgaged Property or a substantial and material part 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 legal description of the Mortgaged Property to be sold, by publication once a week for three (3) successive weeks prior to said sale in a newspaper published in said county; provided, however, that (i) if the Mortgaged Property being foreclosed is located in more than one county, publication is to be made in all counties in which such Mortgaged Property is located and (ii) if no newspaper is published in a county where the Mortgaged Property that is being foreclosed is located, notice shall be in a newspaper in an adjoining county. 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 Mortgaged Property so purchased. Mortgagee may bid at said sale in the form of cash, cash equivalents and/or cancellation of all or any part of the Obligations, or any combination thereof, and purchase said Mortgaged Property, or any part or parcel thereof, if the highest bidder therefor. At any sale, including any sale pursuant to power of sale, any part or parcels or all of the Mortgaged 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. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. If the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the obligations secured by this Mortgage shall have been paid in full.

(b) **Future Advances.** This Mortgage shall secure such future advances (including optional and protective advances) as may be made by Mortgagee, at its option and for any purpose. All such future advances shall be included within the term "Obligations", shall be secured to the same extent as if made on the date of the execution of this Mortgage, and shall take priority as to third persons without actual notice from the time this Mortgage is filed for record as provided by law.

[Signature page to follow]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage, Assignment of Rents, Security Agreement and Fixture Filing to be duly executed as of the date first written above.

Mortgagor:

GRANDE VIEW PROPERTIES 700, LLC

By: [Signature]
Name: James H. Taylor Jr.
Title: Authorized Representative

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that James Taylor Jr., whose name as Duly Authorized Signatory of the foregoing entity, of Grande View Properties 700, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability companies.

Given under my hand and official seal, this 24 day of December, 2021.

[Signature]
Notary Public
My Commission Expires: April 16, 2025



Scott Pylant
Notary Public
My Commission Expires
April 16, 2025

Exhibit "A"

Legal Description of Property

Lot 2D-3A, according to the Southerland Place Resurvey, as recorded in Map Book 25, Page 143, in the Probate Office of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
01/04/2022 09:01:16 AM
\$74.00 CHARITY
20220104000000830

Allen S. Bayl