

STATE OF ALABAMA
COUNTY OF SHELBY

**FIRST PRIORITY FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND
CONTRACTS, SECURITY AGREEMENT AND FINANCING STATEMENT**

NOTE: This Mortgage secures a debt incurred for either acquisition costs or the refinancing thereof and incurred to construct improvements on the land and is entitled to the priority established by Section 7-9A-334(h) of the Alabama Code.

THIS FIRST PRIORITY FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND CONTRACTS, SECURITY AGREEMENT AND FINANCING STATEMENT (hereinafter referred to as the "**Mortgage**"), is made this as of the date set forth below, effective April 25, 2022, between **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company (hereinafter referred to as the "**Mortgagor**"), whose address is 100 West Garden Street, Third Floor, Pensacola, FL 32502 and **BANKPLUS**, a Mississippi banking corporation (hereinafter referred to as the "**Mortgagee**"), whose address is 104 St. Francis Street, Suite 600, Mobile, AL 36602, which terms Mortgagor and Mortgagee, whenever hereinafter used be construed to refer to and include the legal representatives, successors and assigns of said parties.

RECITALS:

A. Mortgagor is justly indebted to Mortgagee for a loan (the "**Loan**") in the principal sum of Three Million Sixty Three Thousand Four Hundred and No/100ths Dollars (\$3,063,400.00) as evidenced by that certain Revolving Line of Credit Promissory Note of even date herewith (hereinafter, together with any and all extensions, renewals, modifications, replacements, substitutions, and any and all other certificates or evidence of indebtedness evidenced by said Revolving Line of Credit Promissory Note, referred to as the "**Note**"), which Note is by reference made a part hereof.

B. Mortgagor and Mortgagee have entered into that certain Construction Loan Agreement of even date herewith (as may be subsequently amended or modified, the "**Loan Agreement**") providing for a non-revolving line of credit from Mortgagee to Mortgagor to facilitate acquisition of land and construction of improvements by Mortgagor pursuant to the Loan Agreement on the property described in Exhibit A referred to herein

C. Advances made by Mortgagee will be evidenced by the Note and secured by this Mortgage, and this Mortgage.

D. To evidence and secure the Loan, the Mortgagor has executed and delivered to Mortgagee the Note, this Mortgage, the Loan Agreement, and an Environmental Indemnification Agreement, all of even date herewith and other documentation related to the Loan, which documents, and any modification, extension and amendments thereof are herein referred to as the "**Loan Documents**."

E. This Mortgage shall secure the Loan outstanding from time to time under the Loan Agreement and indebtedness referred to herein and the observance and performance by Mortgagor, of the terms and conditions and covenants and agreements of Mortgagor in the Loan Documents.

THIS MORTGAGE COVERS GOODS AND PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

THEREFORE, Mortgagor in consideration of and to secure the indebtedness now or hereafter evidenced and secured by the Loan Documents and the observance and performance by Mortgagor of the terms and conditions and agreements and covenants of Mortgagor in the Loan Documents, receipt whereof is hereby acknowledged, does hereby mortgage and grant a first priority security interest in, and grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its legal representatives, heirs, successors and assigns, the land situated in the above described county, State of Alabama, described more particularly in Exhibit A attached hereto and by reference made a part hereof (the "Land"),

TOGETHER WITH

- (a) All buildings, structures, driveways and other improvements now or hereafter located on the Land, or any part thereof; and
- (b) All rights-of-way, streets, alleys, passages, riparian and littoral rights, waters, water courses, sewer rights, rights, liberties, privileges, tenements, hereditaments, easements, and appurtenances thereunto belonging or in anyway appertaining, whether now owned or hereafter acquired by Mortgagor, and including all rights of ingress and egress to and from the Land and all adjoining property (whether such rights now exist or subsequently arise), together with the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and
- (c) To the extent the following are owned by Mortgagor, all machinery, apparatus, equipment, fittings, inventory, goods and fixtures, whether actually or constructively attached to the Land, and all building materials of every kind and nature, and all trade, domestic, and ornamental fixtures and all personal property now or hereafter located in, upon, over, or under the Land or any part thereof on or off-site benefiting the Land and used or usable or intended to be used in connection with any present, or future operation of the Land, including, but without limiting the generality of the foregoing: all heating, air-conditioning, lighting, incinerating, and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, and communications apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all built-in stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets, and partitions; all rugs and carpets; laundry equipment; together with all contract rights to acquire any of the foregoing and all deposits and payments made under contracts for the acquisition of same;; together with all accounts, general intangibles, chattel paper, instruments, judgments, claims, commercial tort claims and choses in action arising from or related to the Land and improvements thereon; together with all additions and accessions thereto and replacements thereof and proceeds therefrom (Mortgagor hereby agreeing with respect to all additions, accessions, replacements and proceeds to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm and perfect the conveyance, transfer and assignment of any and all of the foregoing); and

- (d) All leases, rents, issues, profits, royalties, income and other benefits derived from the Land and the improvements thereon (collectively the **"Rents"**), subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the improvements thereon; and
- (e) All insurance policies and proceeds and all condemnation proceeds, awards, damages and claims relating to or derived from the property described above; and
- (f) All licenses, permits, approvals, certificates and agreements with or from all boards, agencies, departments, governmental or otherwise, relating directly or indirectly to the lease, use, construction, operation and maintenance of all or any portion of the Land or improvements thereon, whether heretofore or hereafter issued or executed, including without limitation all building permits, stormwater permits, water distribution permits, Highway Department permits, sewage collection system permits, utility service agreements, approvals, environmental and wet lands permits and concurrency approvals and permits; and
- (g) All contracts, subcontracts, agreements, service agreements, warranties, purchase orders, plans (subject to collateral assignment of house plans to other lenders as well), specifications, drawings, surveys, reports, and specifications that have heretofore been or will hereinafter be executed or prepared by or on behalf of the Mortgagor, or that have been assigned to the Mortgagor, in connection with the lease, use, operation and maintenance of all or any portion of the Land, or the construction or development of improvements on all or any portion of the Land, including without limitation all contracts with general contractors, subcontractors, material suppliers, laborers, architects, engineers and surveyors; and
- (h) All contracts, purchase contracts, and agreements that have heretofore been or will hereafter be executed by or on behalf of the Mortgagor in connection with the sale, transfer, conveyance, or lease of any lot or portion of all or any portion of the Land and/or improvements thereon, together with deposits and letters of credit issued to Mortgagor, security or otherwise, paid to Mortgagor in connection therewith and together with all monies to be paid to Mortgagor in connection therewith, together with all proceeds thereof; and
- (i) All Unit (as defined in the Loan Agreement) sales contracts, documents, instruments, covenants, restrictions, declarations, property owner association documents, property owner associations articles of incorporation and by-laws which have heretofore been or will hereafter be executed by or on behalf of the Mortgagor or which have been assigned to the Mortgagor in connection with the use, operation, maintenance or development of all or any portion of the Land or the improvements thereon or which benefit the Mortgagor or all or any portion of the Land or the improvements thereon. (This subparagraph (i) and subparagraphs (f), (g), (h) above, together with any changes, extensions, revisions, modifications, or guarantees of performance thereof, collectively herein the **"Contract Documents"**); and
- (j) All proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing items.

TOGETHER WITH all land of Mortgagor and Additional Property related thereto hereafter subjected by Mortgagor by Subsequent Documentation to the lien, operation and effect of this Mortgage.

All the foregoing property, interests and rights encumbered and to be encumbered by this Mortgage are sometimes collectively referred to herein as the "**Premises**" or "**Property**," which term shall include any part thereof and all Units.

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

Mortgagor hereby covenants with Mortgagee and with any purchaser at foreclosure sale hereunder that: (i) Mortgagor is indefeasibly seized of the Premises in fee simple; (ii) that Mortgagor has full power, lawful right, and authority to convey the Premises in fee simple as aforesaid; (iii) that it shall be lawful for Mortgagee at all times hereafter peaceably and quietly to enter upon, hold, occupy, and enjoy the Premises and every part thereof; and that: (iv) the Premises are free and clear of all liens and encumbrances except for the lien of ad valorem real property taxes not yet due and payable.

Mortgagor further covenants and agrees to make such other and further assurances to perfect the fee simple title to the Premises in Mortgagee, or in any purchaser at foreclosure sale hereunder, as may hereafter be required by Mortgagee.

The foregoing property rights set out in the Premises are expressly made subject to the lien of this Mortgage so that Mortgagee, upon any default by Mortgagor, may complete the improvements to the Property contemplated by Mortgagee and Mortgagor under the Loan Agreement. Failure on the part of Mortgagor or Mortgagor's contractor to comply with the terms of the Loan Agreement shall, at the option of Mortgagee, constitute a default hereunder. This Mortgage shall secure payment of all indebtedness evidenced and secured by the Loan Documents from time to time and shall secure any and all other sums, indebtedness, obligations, and liabilities of any and every kind now or hereafter owing and to become due from Mortgagor to Mortgagee, or to the holder of the Note or the assignees thereof howsoever created, incurred, evidenced, acquired, or arising whether under the Note, under this Mortgage, or under any other instrument, obligation, contract, or agreement or dealing of any and every kind now or hereafter existing or entered into between Mortgagor and Mortgagee, or otherwise, or whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any of the foregoing.

It is agreed that any additional sum or sums advanced by the then holder of the Note to Mortgagor at any time within twenty (20) years from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional loan or advance, shall be equally secured with and have the same priority as the original indebtedness secured hereby and be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a promissory note of the Mortgagor and whether or not identified by a recital that it is secured by this Mortgage. Provided, however, that the aggregate amount of principal indebtedness outstanding at any one time shall not exceed an amount equal to four (4) times the original principal sum of the Note secured hereby, and provided further that it is understood and agreed that this future advance provision shall not be construed to obligate Mortgagee to make any such additional loans or advances.

PROVIDED ALWAYS and these presents are upon the express condition that if Mortgagor shall pay to Mortgagee all indebtedness from time to time evidenced by the Note and secured by the Loan Documents, and shall promptly and fully perform, execute and complete each and every covenant, agreement, obligation, condition and stipulation contained in the Loan Documents, then this Mortgage and the estate hereby created shall cease and be null and void; otherwise the same shall remain in full force and effect.

Mortgagor does hereby covenant and agree as follows:

1. PERFORMANCE AND PAYMENT. Mortgagor shall perform, observe and comply with all terms and conditions and agreements and covenants of Mortgagor contained in the Loan Documents and to timely pay all and singular the principal, interest, and other sums of money payable by virtue of the Loan Documents and to pay all other sums secured hereby promptly on the days the same become due, whether in due course or upon acceleration.

2. SECURITY AGREEMENT.

(a) This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code in and to the Property, including the Contract Documents, which, under applicable law, may be subjected to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in such items (collectively the "Collateral"). Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created any other security interest in such items, including replacements and additions thereto other than the Subordinated Debt as defined in the Loan Agreement.. This Mortgage shall constitute a financing statement filed as a fixture filing in accordance with the Uniform Commercial Code (or any amendment thereto). For purposes of complying with the requirements of the Uniform Commercial Code, the name of Mortgagor, as Debtor, and Mortgagee, as Secured Party, and the place of business of the Mortgagor, or, if more than one place of business, the Chief Executive Office of the Mortgagor, or, if Mortgagor is an individual, the principal residence of the Mortgagor, as Debtor, and the state of organization in which the Mortgagor is registered, are set forth on the first page of this Mortgage. The Collateral is or includes fixtures.

(b) Except as otherwise provided herein, in case any one or more defaults under the Note, the Mortgage or other Loan Documents, this Mortgage shall have occurred and be continuing beyond any applicable cure period therefor, the Mortgagee shall have, in addition to all other rights and remedies given to it by this Mortgage, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction, and, without limiting the generality of the foregoing, the Mortgagee may immediately, without demand of performance and without other notice (except as set forth in the Note, this Mortgage or other Loan Documents) or demand whatsoever to Mortgagor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in the county where the Premises are located, or elsewhere, the whole or, from time to time, any part of the Collateral, or any interest which Mortgagor may have therein, and, after deducting from the proceeds of sale or other disposition of the Collateral all expenses (including all reasonable expenses for legal services), shall apply the residue of such proceeds towards the satisfaction of the Note and any other sums secured by this Mortgage. The remainder, if any, of the proceeds after satisfaction in full of the Note and any other sums secured by this Mortgage shall be paid to Mortgagor. Notice of any sale or other disposition shall be given to Mortgagor at least ten (10) days before the time of any intended public sale or the time any intended private sale or other disposition of the Collateral is to be made, which the Mortgagor hereby agrees shall be reasonable notice of sale or other disposition. Mortgagor agrees to assemble, or cause to be assembled, at its own expense, the Collateral at such place or places as the Mortgagee shall designate by written notice. At any such sale or disposition, the Mortgagee may, to the extent permissible under applicable law, purchase the

whole or any part of the Collateral sold. Without limiting the generality of any rights and remedies conferred upon the Mortgagee under this subparagraph, the Mortgagee may, to the full extent permitted by law: (a) Enter upon the Premises, exclude therefrom Mortgagor or any affiliate thereof, and take immediate possession of the Collateral, either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary force to do so; (b) Use, operate, manage and control the Collateral in any lawful manner; (c) Collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (d) Maintain, repair, renovate, alter or remove the Collateral as the Mortgagee may determine in its discretion, and any monies so collected or received by the Mortgagee shall be applied to, or may be accumulated for application upon, satisfaction of the Note or any other sums secured by this Mortgage. Notwithstanding anything to the contrary, Mortgagee's remedy in the event of default is first against the Collateral. No suit on the Note or any Guarantor will be brought by Mortgagee until after credit is given on the Loan for the net proceeds based upon the value of the Collateral at the time of such sale that is received from any sales conducted pursuant to the terms of the Loan Documents. Upon payment in full of the Loan, the Mortgagor and Guarantors will be released from all obligations to Mortgagee and the Loan Documents will be cancelled and satisfied.

(c) Mortgagor hereby authorizes Mortgagee to file, and, if required by Mortgagee, Mortgagor will execute and deliver to Mortgagee Uniform Commercial Code financing statements and all amendments, renewals, extensions and terminations thereof and such other documents, instruments, supplemental security agreements and chattel mortgages as Mortgagee may deem necessary, proper or desirable to obtain the benefits of this Mortgage. Mortgagor authorizes Mortgagee to effect any filing or recording of any such financing statement or statements relating to the Collateral or amendments thereto without the signature of Mortgagor, where lawful, and hereby appoints Mortgagee as its limited attorney in fact to perfect the lien (without requiring Mortgagee to act as such) to, if deemed necessary by Mortgagee, execute any such financing or other statement or statements in the name of Mortgagor, and to perform all other acts which Mortgagee deems appropriate to perfect and continue the security interest in, and to protect and preserve, the Collateral. The power herein conferred upon Mortgagee is limited to that of perfecting and continuing the perfection of the lien, and is coupled with an interest and is irrevocable. Mortgagor further agrees to assign Mortgagee its rights in or under any financing statements relating to the Collateral filed in favor of Mortgagor.

3. TAXES. Mortgagor shall pay within the time set forth in the Loan Agreement before delinquency, and without requiring any notice from Mortgagee, all and singular the taxes, assessments (general or special), levies, liabilities, obligations, judgments, rents, charges, statutory and common law liens, decrees, and encumbrances of every nature and kind now on the Premises or that hereafter may be imposed, suffered, placed, levied or assessed thereupon, or that hereafter may be levied or assessed upon or on account of the Loan Documents or upon the indebtedness now or hereafter secured thereby, and insofar as any of the same is of record the same shall be promptly satisfied and discharged of record and the original official document (such as the tax receipt or the satisfaction paper officially endorsed or certified) evidencing discharge shall be placed in the hands of Mortgagee within ten (10) days after request therefore from Mortgagee.

4. INSURANCE. Mortgagor shall keep all normally insured insurable interests related to the Premises constantly and adequately insured as may be required from time to time by Mortgagee against loss by fire, wind and such other hazards and contingencies as may be required by Mortgagee and, if any of the Land is located in a special flood hazard area according to the Federal Emergency Management Agency, then flood insurance, however at this time no flood insurance is required. Mortgagor shall pay promptly when due, all premiums upon all such insurance. All such insurance shall be carried in companies and under policies approved as to form by Mortgagee. All such insurance policies and renewals thereof shall be assigned to and held by Mortgagee as collateral and further security for the indebtedness secured hereby and shall have attached thereto loss payable clauses in favor of and in form acceptable to Mortgagee, without contribution by Mortgagee, pursuant to the New York standard or other mortgagee clause acceptable to

Mortgagee. Mortgagor shall furnish to Mortgagee annually, within at least fifteen (15) days prior to the anniversary date of each policy, with copies of an endorsement evidencing an agreed amount of insurance or similar document issued with respect to the policies evidencing that Mortgagor will not become a co-insurer. The periods of coverage afforded under such insurance policies shall be in accordance with Mortgagee's directions. Not less than fifteen (15) days prior to the expiration date of each such policy of insurance Mortgagor shall deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of premium payment satisfactory to Mortgagee. Such policies of insurance shall provide that the same may not be canceled except after thirty (30) days advance written notice of cancellation by the insurer to Mortgagee.

5. TAX AND INSURANCE DEPOSITS. Upon an event of default hereunder and if required by Mortgagee, Mortgagor shall pay to Mortgagee on the first day of each month until the Note is fully paid, a sum equal to the premiums that will next become due and payable on policies of insurance required under this Mortgage, plus the taxes, assessments and other charges next due upon the Premises, all as estimated by Mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one (1) month prior to the date when each of such items will become payable. Such sums shall be held by Mortgagee in escrow (but without liability of Mortgagee to pay interest thereon) to pay such insurance premiums, taxes, assessments, and other charges. The failure by Mortgagor to make any such monthly payment as and when required under this numbered paragraph shall constitute a default under the Mortgage.

Mortgagor shall furnish to Mortgagee, not later than fifteen (15) days after receipt by Mortgagor, an official statement of the amount of all insurance premiums, taxes, assessments, and other charges next payable. Mortgagee shall pay such items to the extent of the then unused escrowed funds on hand therefor, as and when they become severally due and payable. An official receipt therefor shall be conclusive evidence of such payment and of the validity of such expenses.

If the total of the payments made by Mortgagor under this numbered paragraph shall exceed the amount of expenses actually paid by Mortgagee for the purposes set forth herein, Mortgagee shall credit such excess on subsequent payment to be made under this numbered paragraph by Mortgagor or shall refund such excess to Mortgagor at the option of Mortgagee. If, however, the monthly payments to be made under this numbered paragraph by Mortgagor shall not be sufficient to pay such items when the same shall become payable, then Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency five (5) days on or before the date when payment of such insurance premiums, taxes, assessments and other charges shall become due and payable. If at any time Mortgagor shall tender to Mortgagee, in accordance with the provisions of the Note secured hereby, full payment of the entire indebtedness represented thereby, Mortgagee, in computing the amount of such indebtedness, and at its option, may credit to the account of Mortgagor any balance remaining in the funds so accumulated in escrow. The amount of the existing credit under this numbered paragraph at the time of any transfer of the Premises shall, without the necessity for a separate assignment thereof or agreement relating thereto inure to the benefit of the successor-owner of the Premises and shall be applied under and be subject to all of the provisions of this numbered paragraph. If there shall be a default under any of the provisions of this Mortgage resulting in a public sale of the Premises, or if Mortgagee acquires the Premises otherwise after default, Mortgagee may apply, at the time of the commencement of such a proceeding or at the time the Premises are otherwise acquired, the balance then remaining in escrow accumulated hereunder as a credit against the indebtedness remaining unpaid under the Note.

6. FORECLOSURE AND OTHER EXPENSES. Mortgagor shall pay all and singular the costs, fees, and expenses of every kind and nature, including Mortgagee's attorney's fees (including on appeal) and the cost of title evidence incurred or expended at any time by Mortgagee in the collection of Mortgage debt and/or foreclosure on the Note and Mortgage or otherwise incurred in protecting and preserving the lien of this

Mortgage or in enforcing Mortgagee's rights under this Mortgage or under any other instrument evidencing and/or securing the indebtedness secured hereby, or in enforcing, sustaining, protecting, or defending the lien or priority of this Mortgage against any and all persons including, but not limited to, lien claimants or the exercise of the power of eminent domain or other governmental power of any kind. Every such payment made by or on behalf of Mortgagee shall be immediately due and payable by Mortgagor to Mortgagee and shall bear interest from the date of disbursement thereof by Mortgagee at the rate per annum then applicable under the Note to sums of principal then outstanding and the same, together with such interest, shall be secured by the lien hereof. Nothing contained in this numbered paragraph shall be construed as requiring Mortgagee to advance or spend money for any of the purposes mentioned in this numbered paragraph.

7. CARE OF PROPERTY. Consistent with the construction of improvements contemplated by the Loan Agreement, Mortgagor shall: (a) permit, commit, or suffer no waste, impairment, or deterioration of the Premises or any part thereof and shall take all necessary steps to prevent same; (b) permit, commit or suffer no mining, drilling, removal of sand, gravel, loam, or other materials, or excavations in, on or under the Premises, except excavations incident to construction of improvements on the Premises; (c) keep the buildings and other improvements now or hereafter constituting a part of the Premises in as nearly as possible the same order and condition or repair as they now are or as they may be when placed upon the Premises, normal wear and tear excepted; (d) do or permit to be done to the Premises nothing that will in any respect impair or weaken the security of this Mortgage in the opinion of Mortgagee; and (e) comply with, or cause to be complied with, all statutes, ordinances, regulations, and requirements of any governmental authority affecting the Premises or any part thereof or affecting the operation thereof. Mortgagor shall promptly repair, restore, replace, or rebuild any part of the Premises, now or hereafter existing, which may be damaged or destroyed by fire or other casualty or which may be affected by any eminent domain proceedings or other governmental taking, but only to the extent that any insurance proceeds or condemnation awards resulting from such events have not been applied to the reduction of the indebtedness hereby secured. Other than as required by the Plans and Specifications, no part of the Premises shall be removed, demolished, or materially altered without the written consent of Mortgagee. Other than as required by the Plans and Specifications, Mortgagor shall not grant, join in, seek or consent to any right-of-way, easement, license, restrictive covenant, zoning ordinance, or other public or private restriction which affects or limits or defines the use which may be made of the Premises or any part thereof, and shall not grant, join in, seek or consent to any modification of any of the foregoing without the written consent of Mortgagee.

Mortgagee may determine, in its discretion, whether the foregoing portions of this numbered paragraph are being complied with and, for this purpose, Mortgagee shall have the right to inspect the Premises at any reasonable hour of the day. In the event Mortgagee determines in its inspection that Mortgagor is violating the provisions of this paragraph by deferring maintenance on the mortgaged premises, Mortgagee shall have the right to require Mortgagor to escrow with Mortgagee such funds as are necessary to correct said deferred maintenance.

8. PERFORMANCE OF LEASES. If applicable, Mortgagor shall perform the covenants of Mortgagor as lessor under any present and future leases affecting all or any part of the Premises (which are preapproved by Mortgagee in writing, and in its sole discretion), and neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or any of them, or which may diminish or impair their value, or the rents provided for therein, or the interest of Mortgagor or Mortgagee therein or thereunder. Mortgagor without first obtaining the written consent of Mortgagee thereto, shall not: (a) assign the rents from the Premises or any part thereof; (b) consent to the modification, cancellation or surrender of any lease or sublease of the Premises, or any part thereof, now existing or hereafter to be made, having an unexpired term of one (1) year or more; (c) collect rents from the Premises or any part thereof, for more than two (2) months in advance; or (d) enter into a lease which provides for rent based in whole or in part on the net income, net profits or net sales of any such lessee or sub-lessee. Mortgagor shall procure and deliver to Mortgagee at the time of executing this Mortgage,

or at any time within thirty (30) days after notice and demand from Mortgagee, estoppel letters or certificates from each lessee, tenant, or occupant in possession of the Premises, as required by, and in form and substance satisfactory to Mortgagee. Mortgagor shall, upon request by Mortgagee, furnish to Mortgagee accurate copies of all leases affecting the Premises or any part thereof. All leases or subleases hereafter entered into by Mortgagor with respect to the Premises or any part thereof, shall be subordinate to the lien of this Mortgage unless expressly made superior to this Mortgage in the manner hereinafter provided. At any time or times Mortgagee may execute and record in the appropriate Office of the County where the Land is situated, a Notice of Subordination reciting that the lease or leases therein described shall be superior to the lien of this Mortgage. From and after the recordation of such Notice of Subordination, the lease or leases therein described shall be superior to the lien of this Mortgage and shall not be extinguished by any foreclosure sale hereunder. Mortgagor also consents to the recording of any subordination, non-disturbance or attornment agreement executed by any tenants of the Premises.

9. ASSIGNMENT OF RENTS.

a. If applicable, Mortgagor hereby collaterally assigns and transfers to Mortgagee all the Rents, and hereby gives to and confers upon Mortgagee the right, power and authority to collect the Rents as herein set forth. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, immediately and without further legal action being necessary, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all Rents and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect the Rents (but not more than one month in advance) prior to or at any time there is not an event of default under this Mortgage.

b. Upon any event of default under this Mortgage, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Premises, or any part thereof, in its own name, and sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of the Rents or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

c. This inclusion of this section does not constitute authority for the Mortgagor to enter into any lease without the prior written consent of Mortgagee, which consent may be withheld or conditioned in the sole discretion of Mortgagee.

10. ASSIGNMENT OF CONTRACT DOCUMENTS. Mortgagor hereby grants, transfers and assigns to Mortgagee, its successors and assigns, all of the right, title and interest of Mortgagor in and to the Contract Documents ("Assignment") on the following terms and conditions:

(a) Mortgagor's warranties and representations relating to the Contract Documents:

(1) There is no assignment of any of Mortgagor's rights under any of the Contract Documents to any other person.

(2) Mortgagor is not in default under any of the Contract Documents and knows of no default on the part of any other party to any of the Contract Documents.

(3) Mortgagor has not done or omitted to do any act so as to be estopped from exercising any of its rights under any of the Contract Documents.

(4) Mortgagor is not prohibited under any agreement with any other person or under any judgment or decree from the granting of this Assignment or the performance of each and every covenant of Mortgagor under this paragraph 10 or in the Contract Documents.

(5) No action has been brought or threatened which would prohibit or impair the granting of this Assignment or the performance of each and every covenant of Mortgagor under this paragraph 10 or in the Contract Documents.

(b) Mortgagor's agreements relating to the Contract Documents:

(1) Mortgagor will (i) perform and observe each and every condition and covenant of Mortgagor contained in any of the Contract Documents; (ii) give prompt notice to Mortgagee of any claim of default under any of the Contract Documents given to Mortgagor or given by Mortgagor, together with a complete copy or statement of any information submitted or referenced in support of such claim; (iii) at the sole cost and expense of Mortgagor, enforce the performance and observance of each and every covenant and condition of the Contract Documents to be performed or observed by any other party to any of the Contract Documents; and (iv) appear in and defend any action growing out of or in any manner connected with any of the Contract Documents.

(2) Mortgagor will not (i) modify the terms of the Contract Documents unless required so to do by the terms of the Contract Documents if such modification would adversely affect the Mortgagor's ability to perform its obligations under the Loan Documents; or (ii) waive or release any person from the observance or performance of any obligation to be performed under the terms of the Contract Documents or liability on account of any warranty given by the Contract Documents if such waiver or release would adversely affect the Mortgagor's ability to perform its obligations under the Loan Documents; provided, however, the parties acknowledge that in the normal course of Mortgagor's business, Mortgagor occasionally releases purchasers from sales contracts when the purchaser backs out of the contract. Mortgagee will allow this as long as it is occasional and in the normal course of Mortgagor's business.

(3) The rights assigned under this paragraph 10 include all of Mortgagor's right and title to (i) modify the Contract Documents; (ii) terminate the Contract Documents; and (iii) waive or release the performance or observance of any obligation or condition of the Contract Documents; provided, however, Mortgagee shall not exercise these rights unless Mortgagor is in default under this Mortgage.

(4) Subject to notice and the right to cure given to Mortgagor, the occurrence of any of the following events shall be an event of default under this paragraph 10.

(i) should Mortgagor fail to perform or observe any covenant of Mortgagor contained in this paragraph 10 or in the Mortgage or in any of the Loan Documents and such default continues after the expiration of all applicable cure periods; or

(ii) should any warranty of Mortgagor contained in this paragraph 10 or in this Mortgage or in any of the Loan Documents prove untrue or misleading in any material respect; or

(iii) should Mortgagor fail to perform promptly any undertaking of Mortgagor set forth in any of the Contract Documents and such failure to perform continues after the expiration of all applicable cure periods; or

(iv) should any condition precedent to the obligation of any party to any of the Contract Documents to perform such party's obligations not be promptly met.

(c) Subject to the limitations set forth herein requiring Mortgagee to first pursue the Collateral and foreclose on the Premises and credit against the Loan the net proceeds based upon the value of the Collateral at the time of such sale that is received from such sales, and the rights to cure, upon the occurrence of any such event of default and at any time thereafter, Mortgagee may, in addition to any other rights, powers and remedies Mortgagee may have in this Mortgage and the Loan Documents,

(1) declare the total indebtedness secured by this Mortgage immediately due and payable;

(2) proceed to enter upon, take possession, and operate the Premises without becoming a mortgagee in possession;

(3) proceed to perform any and all obligations of Mortgagor contained in any of the Contract Documents and exercise any and all rights of Mortgagor contained in any of the Contract Documents as fully as Mortgagor itself could, and without regard to the adequacy or security for the indebtedness secured by this Mortgage and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court;

(4) take possession of all plans, surveys and architectural or engineering drawings or sketches reasonably required by Mortgagee in the exercise of its rights and remedies under this Assignment;

(5) apply to a court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect and to operate the Premises pursuant to, and together with the rights under, the Contract Documents regardless of the value of the security for the indebtedness secured hereby or the solvency of the Mortgagor, and the Mortgagor hereby expressly agrees to the appointment of such a receiver; and

(6) do all other acts which Mortgagee deems necessary or proper to protect Mortgagee's security.

(d) Should Mortgagor fail to perform or observe any covenant or comply with any condition contained in any of the Contract Documents, Mortgagee, after reasonable notice to or demand on

Mortgagor (and without releasing Mortgagor from its obligations to do so), may, without any obligation to do so perform such covenant or condition and, to the extent that Mortgagee shall incur any costs or pay any monies in connection with its performance, including any costs or expenses of litigation, such costs, expense or payment shall be included in the indebtedness secured by this Mortgage and shall bear interest from the incurring or payment of such costs, monies or expenses at the rate specified herein for amounts advanced by Mortgagee on behalf of Mortgagor.(e) In the event of an uncured default, Mortgagor agrees that if a receiver is appointed, and the Mortgagee forecloses the Mortgage, then the receiver shall be entitled, upon approval of the court, to transfer all of the Contract Documents to the successful purchaser at the foreclosure sale; provided, however, Mortgagee shall not exercise any of these rights unless Mortgagor is in default under the Loan Documents. The powers granted by this paragraph 10 shall include, but shall not be limited to, the powers to sue on the Contract Documents (except as otherwise limited herein) and to seek all governmental approvals required for the completion of the improvements contemplated by the Contract Documents in the name of Mortgagor, Mortgagee or both. The power of attorney granted by Mortgagor under this paragraph shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due to Mortgagee by Mortgagor.

(e) Mortgagee shall not be obligated to perform or discharge any obligation of Mortgagor under any of the Contract Documents.

11. ASSIGNMENT OF CONDEMNATION AWARDS. Mortgagor hereby transfers, assigns, and sets over to Mortgagee, up to the amount of the total indebtedness secured hereby, all awards of damages arising and all other sums paid or which become payable in connection with the condemnation of all or any part of the Premises for public use or for injury to any part thereof by any governmental body, quasi-public authority, or public utility, and the proceeds of all such awards, after payment of all reasonable expenses incurred in recovering same, including fees for attorneys representing Mortgagee in any proceeding in which any such award is made, shall be paid to Mortgagee. Notwithstanding any taking of all or any part of the Premises by eminent domain, or other injury to, or decrease in value of, the Premises by any governmental body, quasi-public authority, or public utility, Mortgagor until such time as the mortgage debt is paid in full shall continue to pay and perform the obligations of this Mortgage and of the Note secured hereby in the manner therein provided. Such awards or payments may, at the option of Mortgagee, be retained and applied by Mortgagee toward payment of the indebtedness secured hereby in the manner designated by Mortgagee, or be paid over, wholly or in part, to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the Premises which may have been altered, damaged, or destroyed as a result of any such taking, or other injury to the Premises. If, prior to the receipt by Mortgagee of any such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, and there remains owing any sums, then Mortgagee shall have the right to receive and retain such award or payment and will apply such award or payment towards any deficiency judgment which may be entered in favor of Mortgagee, together with interest applicable as set forth in the Note thereon, and to the extent of the reasonable attorney fees (including on appeal), costs, and disbursements incurred by Mortgagee in connection with the collection of such award or payment, and the balance of such award or payment shall inure to the benefit of the party entitled thereto by applicable law.

12. FURTHER DOCUMENTS AND ESTOPPEL CERTIFICATES. Mortgagor shall execute and deliver to Mortgagee, from time to time, upon demand, and pay the costs of preparation and recording thereof, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments, and renewal and substitution notes, so as to reaffirm, to correct, and to perfect the evidence of the obligations secured hereby and the security title of Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and any extensions or modifications hereof. Mortgagor, from time to time, upon request, shall certify by a writing, duly executed under oath, to Mortgagee or to any actual or proposed assignee of this Mortgage, or to any other person, firm, or

corporation specified by Mortgagee, within ten (10) days after the mailing of such request to Mortgagor, the following:

(a) That the Note secured hereby, this Mortgage, the Loan Agreement and all other instruments given to secure the indebtedness secured hereby are unmodified and in full force and effect, and if there has been some modification, that the same is in full force and effect as modified and stating the modification;

(b) The dates, if applicable, to which interest on the Note and the taxes, insurance premiums, and other charges payable hereunder have been paid;

(c) Whether Mortgagor, to the best of Mortgagor's knowledge and belief, is in default in the performance of any covenant, condition, or agreement on Mortgagor's part to be performed under the terms of the Loan Documents, and, if so, stating specifically and in what manner or manners such default exists;

(d) Whether or not any offsets or defenses exist against the Loan Documents and, if so, the specific nature and amounts thereof;

(e) The amount of principal and interest then due and owing on the indebtedness evidenced and secured by the Loan Documents and the amounts of principal and interest yet to be paid thereon from the date of the certificate until maturity of such indebtedness; and

(f) Such other matters as Mortgagee may reasonably request.

13. DEFAULT. Subject to notice and cure periods given to Mortgagor contained in the Loan Documents, the occurrence of any one or more of the following events shall constitute a default under this Mortgage and the other Loan Documents:

(a) Should Mortgagor fail to make any payment payable by virtue of the Note, Loan Agreement or the other Loan Documents on the date such payment is due;

(b) Should any representation or warranty of Mortgagor herein contained, or contained in the other Loan Documents prove to be untrue or misleading in any material respect;

(c) Should the Premises be subject to actual or threatened waste, or any part thereof be removed, demolished, or materially altered so that the value of the Premises be diminished, except as a result of eminent domain proceedings, other than in the ordinary course of development in accordance with the Plans and Specifications;

(d) Should any federal, state, or local tax lien, or any claim of lien for labor or materials, or any other lien, encumbrance, mortgage or other security instrument or judgment be filed of record against Mortgagor or the Premises and not be removed by payment or transferred to bond in the manner provided by law within thirty (30) days from the date of recording;

(e) Should any claim of priority to this Mortgage by title, lien, or otherwise be asserted in any legal, administrative, or equitable proceeding, and said claim remain pending in excess of sixty (60) days;

(f) Should Mortgagor merge or consolidate with or into any other entity or sell, lease, transfer or otherwise dispose of all or any substantial part of its assets without prior written approval from Mortgagee without satisfying the Loan as a part of such transaction;

(g) Should Mortgagor have a material change in its management or ownership (except for any changes in ownership for estate planning of any individual Guarantor) or in the manner in which its business is conducted;

(h) Should Mortgagor make any assignment for the benefit of creditors; or should a receiver, liquidator, or trustee of Mortgagor or any of Mortgagor's property be appointed; or should any petition for the adjudication of bankruptcy, reorganization, composition, arrangement or similar relief as to Mortgagor, pursuant to the Federal Bankruptcy Act or any other law relating to insolvency or relief for debtors, be filed by Mortgagor; or should Mortgagor be adjudicated as bankrupt or insolvent; or should Mortgagor be liquidated or dissolved; or should an involuntary petition seeking to adjudicate Mortgagor as a bankrupt or to reorganize Mortgagor, be filed against Mortgagor and remain un-dismissed for a period of ninety (90) days after the filing date thereof; or if Mortgagor fails to maintain its existence in good standing in the State of Florida; or

(i) Should any action or proceeding be instituted seeking the forfeiture of the Premises or any portion thereof or any interest as a result of any criminal or quasi-criminal activity by Mortgagor; or

(j) Should Mortgagor fail in a material way to keep, observe, perform, carry out, and execute in every particular any of the other covenants, agreements and obligations of Mortgagor under the Loan Documents, including this Mortgage, or if any other default occurs under the Loan Documents, including this Mortgage, and Mortgagor fail to cure such default within thirty (30) days after notice from Mortgagee thereof.

14. REMEDIES UPON DEFAULT. Upon default, Mortgagee shall, after notice and right to cure given to Mortgagor, in addition to all other rights and powers of the Mortgagee under this Mortgage and the Loan Documents, have the right to:

(a) Take any action deemed expedient by Mortgagee to protect the security of this Mortgage or to cure any default hereunder;

(b) Declare all amounts evidenced and secured by the Loan Documents immediately due and payable;

(c) Foreclose this Mortgage judicially in the manner provided by applicable law. Mortgagor hereby waives all rights of marshaling in the event of foreclosure of any lien or security interest created by this Mortgage; and

(d) Intentionally omitted.

(e) Notwithstanding anything to the contrary, Mortgagee's remedy in the event of default is first foreclosure on the Premises. No suit on the Note or any Guarantor will be brought by Mortgagee until after the Premises are foreclosed upon and credit given on the Loan for net proceeds based upon the value of the Collateral at the time of such sale that is received from the sale of the Premises. Upon payment in full

of the Loan, the Mortgagor and Guarantors will be released from all obligations to Mortgagee and the Loan Documents will be cancelled and satisfied.

(e) POWER OF SALE. After notice and opportunity to cure given to Mortgagor as set forth in the Note, the Mortgagee shall be authorized to take possession of the Mortgaged Property and with or without having taken possession, after giving at least twenty-one days' notice of the time, place and terms of sale by publication once a week for three consecutive weeks in a newspaper of general circulation published in the county in which the Land is located, to sell the Property or any portion thereof, as Mortgagee may determine in its sole discretion, in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Property and foreclosing this Mortgage, including a reasonable attorneys' fee; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, Liens or other encumbrances, with interest thereon; third, to the payment in full of the balance of the Debt whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of the sale, or entitled to receive such excess proceeds, or as a court of competent jurisdiction may direct. The Mortgagor agrees that the Mortgagee may bid at any sale had under the terms of this mortgage and may purchase the Mortgaged Property if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold enmasse without first offering it in any other manner or it may be offered for sale and sold in any other manner the Mortgagee may elect.

(f) Any other rights and remedies available to Mortgagee in law or equity.

15. TAXES UPON MORTGAGE, ETC. In the event of the passage or adoption of any law, or in the event of any decision by a court of competent jurisdiction, creating or providing for any tax, assessment, or charge against the Premises, against this Mortgage, or against the indebtedness on undertakings secured hereby, or against any interest of Mortgagee in the Premises, then, unless such tax be promptly paid by Mortgagor and, in any event, if payment of such tax by Mortgagor is prohibited by law, the entire indebtedness secured hereby shall, at the option of Mortgagee, become immediately due and payable and, in the event payment of such indebtedness is not made by Mortgagor forthwith, Mortgagee may take, or cause to be taken, such action or proceeding as may be taken hereunder in the case of any other default in the payment of the indebtedness secured hereby; provided, that in respect to any taxes on Mortgagee's interest in the Premises, or in this Mortgage, or in the indebtedness secured hereby, Mortgagor shall not be required or bound to pay any amount which together with interest on the indebtedness secured, shall exceed the maximum interest rate allowed by applicable and enforceable law. The remedies provided for in this paragraph shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in Mortgagee under this Mortgage.

16. TIME IS OF THE ESSENCE OF THIS MORTGAGE. No waiver of any obligation hereunder or of any obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the terms of the Note secured hereby.

17. RIGHTS CUMULATIVE. The rights and powers of Mortgagee granted and arising under this Mortgage and the Loan Documents shall be separate, distinct, and cumulative of each other and of all other rights which Mortgagee may have in law or equity, and none of them shall be in exclusion of any other except as otherwise provided herein. No act of Mortgagee shall be construed as an election to proceed under any provision of the Loan Documents to the exclusion of any other provisions, or an election of remedies to the bar of any other remedy allowed in law or equity.

18. NOTICE. Every provision for notice and demand or request hereunder, if any, by Mortgagee or Mortgagor shall be deemed fulfilled by compliance with the Notices provision in the Loan Agreement.

19. RELEASES BY MORTGAGEE. Mortgagee may, from time to time, without notice to any person and without affecting the liability of Mortgagor or of any other person (other than any person expressly released by Mortgagee in writing) for the payment of any indebtedness secured hereby or for the performance of any obligation contained herein, and without affecting the priority or extent of the lien of this Mortgage (except as to property specifically released by Mortgagee in writing) do any of the following:

(a) Release, voluntarily or by operation of law, any person liable for payment of any indebtedness secured hereby or for performance of any obligation provided for herein;

(b) Extend the time or agree to alter the terms of payment of any of the indebtedness secured hereby;

(c) Accept additional security of any kind;

(d) intentionally omitted: and

(e) Release or otherwise deal with any property, real or personal, which secures the indebtedness secured hereby, including, without limitation, all or any part of the Premises.

20. CHANGE OF OWNERSHIP. If all or any part of the Premises or an interest therein is sold, transferred (except as contemplated by the Loan Agreement) or further encumbered (including any leasehold interest and the Subordinated Debt as defined in the Loan Agreement) by Mortgagor without Mortgagee's prior written consent, subject to notice and opportunity to cure given to Mortgagee, it shall constitute a default under the Mortgage and Mortgagee may, at its option, declare all the sums secured by this Mortgage to be immediately due and payable. For purposes of this paragraph, a sale or transfer shall be a change of ownership of shareholder, partnership, or member interests in Mortgagor (if such is a corporation, limited liability company, trust, or partnership) or a material change in the structure of Mortgagor (if such is a corporation, limited liability company, trust, or partnership), including without limitation, a change in shareholders, members, managers, trustees, beneficiaries, or their respective interests; provided, however, and notwithstanding the foregoing, changes in ownership of Mortgagor for estate planning purposes that do not result in a loss of control of Mortgagor shall be permitted.

21. SUCCESSORS AND ASSIGNS. All covenants and stipulations in these presents contained shall bind the heirs, executors, administrators, legal representatives, successors, and assigns, as the case may be, of Mortgagor and shall inure to the benefit of and be available to the successors and assigns of Mortgagee.

22. GOVERNING LAW. Except as preempted by applicable Federal law, the terms and provisions of this Mortgage and enforcement of this Mortgage are to be governed by the laws of the State of Alabama.

23. SEVERABILITY. If any provision of this Mortgage, or the other Loan Documents shall to any extent be finally found by a court of competent jurisdiction to be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities, or circumstances, nor any other instrument referred to herein, shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law or equity.

24. DEFENSE OF ACTIONS BY MORTGAGOR. Mortgagor shall, at its own cost and expense, defend, indemnify and hold Mortgagee and the lien and first priority of this Mortgage harmless from any action, proceeding or claim affecting the Premises or affecting the indebtedness secured hereby. If Mortgagor neglects or refuses to carry out the covenants contained in this paragraph, Mortgagee at its option may afford such defense and pay reasonable attorneys' fees, costs and expenses incurred in any such defense at trial or appellate or in private settlement proceedings. All such payments, plus interest thereon from the time of payment at the rate applicable under the Note upon sums outstanding thereunder after maturity shall be deemed a part of the indebtedness secured hereby and shall be immediately due and payable by Mortgagor to Mortgagee.

25. SINGULAR, PLURAL, ETC. As used herein, the terms "**Mortgagor**" and "**Mortgagee**" shall include the singular and the plural, and shall include the masculine, feminine and neuter genders. The plural shall include the singular, and the singular shall include the plural in all applicable instances.

26. CURING OF DEFAULTS BY MORTGAGEE. Mortgagee shall have the right, but not the duty, to pay any sums required to be paid and to take any other action deemed by Mortgagee to be necessary or convenient to cure any default of Mortgagor under this Mortgage. Any and all sums expended or expenses incurred by Mortgagee in so curing defaults shall become immediately due and payable by Mortgagor to Mortgagee and, together with interest thereon from date of disbursement at the rate applicable to sums outstanding under the Note from and after the maturity date therein contained and shall be secured by the lien of this Mortgage. Mortgagee shall be subrogated to the interest of any lien holder paid by Mortgagee pursuant to the provisions of this paragraph.

27. ACTION ON NOTE. Mortgagee shall be entitled to sue and recover judgment upon the Note only after proceeding for, and completion of, the enforcement of this Mortgage and then such recovery shall be limited to the total of all sums due and owing to Mortgagee under the terms of the Loan Documents less the net proceeds based upon the value of the Collateral at the time of any sale that is received from the sale of the Collateral.

28. WAIVER. No delay or omission by Mortgagee to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default or acquiescence therein. Every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any right, power or remedy consequent thereon.

29. MODIFICATIONS, ETC., ONLY IN WRITING. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

30. BOOKS AND RECORDS. Mortgagor shall maintain full and correct books and records showing in detail the income, expenses and earnings relating to the Premises, and to permit Mortgagee's representative to request and be provided by Mortgagor a copy of such books and records and all supporting vouchers and data at any time and from time to time as Mortgagee may reasonably request at such place within the United States of America as such books and records are customarily kept. In addition to the foregoing provisions of this paragraph, Mortgagee shall provide or cause to be provided, at the expense of Mortgagor, all of the financial and tax information required to be provided under the terms of the Loan Agreement.

31. JOINT AND SEVERAL OBLIGATIONS. All agreements herein made by Mortgagor are binding upon and enforceable against the persons named herein as Mortgagor jointly and severally.

32. NO ILLEGAL INTEREST TO BE CHARGED. All agreements between Mortgagor and Mortgagee under the Loan Documents are expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable law. If, for any circumstances whatsoever, fulfillment of any provisions of the Loan Documents and Loan Commitment, at the time performance of such provision shall be due, shall involve payment of interest at a rate which exceeds the highest lawful rate as so determined, then ipso facto the obligation to be fulfilled shall be reduced to such highest lawful rate. If, for any circumstances whatsoever, the holder of the Note secured hereby shall ever receive interest, the amount of which would exceed such highest lawful rate, the portion thereof which would be excessive interest shall be deemed applied to the reduction of the unpaid principal balance due under such Note and not to the payment of interest or handled as otherwise provided by law.

33. STORAGE/USE OF POLLUTANTS, CONTAMINANTS, HAZARDOUS OR TOXIC SUBSTANCES. Mortgagor hereby represents and warrants to Mortgagee to the best of its knowledge, that: (a) no pollutants, contaminants, or hazardous or toxic substances, including, but not limited to, oil, petroleum by product, chemical liquids or solids, liquid or gaseous products, within the meaning of any applicable statute or regulation (hereinafter sometimes referred to as "**Substances**"), are presently stored or otherwise located on or under the Property or on or under any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliate of Mortgagor; (b) no release or discharge of any Substances has occurred on the Property or on any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliates of Mortgagor; (c) no part of the Property or any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliate of Mortgagor, including the groundwater located thereon, is presently contaminated by such Substances; and (d) Mortgagor has not received any notice from any governmental agency or authority or from any tenant under a lease with respect to any release or discharge of such Substances onto the Property or adjacent parcels of real estate. Mortgagor further covenants and agrees with Mortgagee that, throughout the term of the Note (i) all pollutants, contaminants, or hazardous or toxic substances, including, but not limited to, oil, petroleum, petroleum by product, chemical liquids or solids, liquid or gaseous products, within the meaning of any applicable statute or regulation, which may be used by any person for any purpose upon the Property, shall be used or stored thereon only in a safe and approved manner, in accordance with all industrial standards and all laws, regulations and requirements for storage, use, treatment and disposal promulgated by any applicable governmental agency or authority; (ii) other than as described in (i) above, the Property will not be used for the purpose of storing such Substances; and (iii) other than as described in (i) above, no such storage or use will otherwise be allowed on the Property which will cause, or which will increase the likelihood of causing, the release of such Substances onto the Property. Mortgagor hereby agrees to indemnify and save and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys' fees, fines, penalties and permit fees), liability and damage whatsoever incurred by Mortgagee arising out of or by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon the Property, or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any such statute or regulation, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee. A default under this paragraph shall constitute an event of default under this Mortgage. If pollutants, contaminants, or hazardous or toxic substances, including, but not limited to, oil, petroleum, petroleum by product, chemical liquids or solids, liquid or gaseous products, within the meaning of any applicable statute or regulation, are found on the Property, in addition to all other remedies granted under this Mortgage, Mortgagee may require Mortgagor to deliver to Mortgagee

additional collateral in an amount sufficient (as determined by Mortgagee) to fully secure the repayment of the Note. Mortgagor's obligations hereunder shall not be limited to any extent by the term of the Note, and, as to any act or occurrence prior to payment in full and satisfaction of the Note which gives rise to liability hereunder, shall continue, survive and remain in full force and effect. This provision is cumulative and is intended to be identical to the representations, warranties, and agreements of the Environmental Indemnity Agreement referenced in Recital D above.

34. [RESERVED].

35. CONTINUATION OF MORTGAGE. Mortgagor and Mortgagee agree that this Mortgage (i) shall remain in full force and effect even though from time to time all property encumbered hereby shall have been released by partial release and (ii) shall be terminated and discharged immediately upon payment in full, and Mortgagee shall promptly cause a full satisfaction has been filed in the public records of the Counties in which the Mortgage is recorded.

36. APPRAISALS. Mortgagor covenants and agrees that Mortgagor shall furnish an appraisal of the Mortgaged Property or portion thereof designated by Lender when required by the regulations of the Federal Reserve, the Federal Deposit Insurance Corporation or any other agency which regulates Mortgagee, or at such other times as the Mortgagee may reasonably require. Such appraisal or appraisals shall be performed by an independent third party appraiser selected by the Mortgagee. The cost of such appraisal shall be paid by the Mortgagor. If requested by the Mortgagee, the Mortgagor shall execute an engagement letter addressed to the appraiser selected by the Mortgagee; provided, however, that Mortgagor's failure or refusal to sign such engagement letter shall not impair Mortgagee's right to obtain such appraisal. Mortgagor shall pay the cost of such appraisal within ten (10) days after receipt of an invoice for such appraisal.

37. EXPENSES. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including, without limitation, reasonable attorney's fees, paralegal fees, and costs, disbursements, documentary taxes (and any penalties or interest with respect thereto) and intangibles taxes (and any penalties or interest with respect thereto), incurred or paid by Mortgagee in any pending or threatened action or proceeding in which Mortgagee is or may become a party, voluntarily or otherwise, and which affects or might affect the obligations, or the Premises or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to, the foreclosure of this Mortgage by Mortgagee, condemnation involving all or part of the Premises or any action to protect the security hereof. The amounts so incurred or paid by Mortgagee, together with interest thereon at the rate of interest set forth in the Note from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

38. REPLACEMENT OF NOTE. In the event of loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation of the Note, Mortgagor will promptly upon demand execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note.

39. INDEMNITY. Mortgagor shall protect, defend, fully indemnify and save and hold harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by Mortgagee by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Note or the obligations of Mortgagor under the Loan Documents, or (b) the condition of the Premises, or (c) failure to pay recording, mortgage, intangibles or similar taxes, roll back taxes, fees or charges relating to the Note or other obligations of the Mortgagor under the Loan Documents, or any one or more of the Loan Documents, or (d) any claim or demand whatsoever which may be asserted against

Mortgagee by reason of any alleged action, obligation or undertaking of Mortgagee relating in any way to the Mortgagor's obligations under the Loan Documents or matter contemplated by the Loan Documents, or (e) any and all liability arising from any leases of the Premises or any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. In the event Mortgagee incurs any liability, loss or damage arising out of matters Mortgagee is to be indemnified against by Mortgagor, the amounts of such liability, loss or damage shall be added to the obligations, shall bear interest at the interest rate specified in the Note from the date incurred until paid and shall be payable on demand.

40. **AFTER ACQUIRED PROPERTY AND FUTURE ACTS.** The lien of this Mortgage will automatically attach, without further act, to all after acquired property, interests or rights of whatever kind affecting or benefiting the Property or after acquired property located in or on, or attached to, or used or intended to be used in connection with or in the operation of the Property.

41. **SUBROGATION.** To the extent of the indebtedness of Mortgagor to Mortgagee, Mortgagee is subrogated to the lien or liens and to the rights of any of the owners and holders of each and every mortgage, lien or other encumbrance on the Property which is paid and/or satisfied, in whole or in part, out of the proceeds of the principal amount of the Note.

42. **JURISDICTION AND VENUE.** WITH RESPECT TO THE INTERPRETATION AND ENFORCEMENT OF THIS MORTGAGE, EACH MORTGAGOR CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION OVER THEM OR ANY OF THEM BY ANY FEDERAL OR STATE COURT IN THE STATE OF ALABAMA AND CONSENTS TO THE LAYING OF VENUE IN ANY JURISDICTION OR LOCALITY IN THE STATE OF ALABAMA.

43. **CROSS DEFAULT.** Intentionally omitted.

44. **WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE, JOINTLY AND SEVERALLY, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE'S ACCEPTING THIS MORTGAGE AND THE LOAN AGREEMENT FROM MORTGAGOR.

IN WITNESS WHEREOF, Mortgagor has duly signed, sealed and executed this Mortgage as of the date set forth below.

MORTGAGOR
GARDEN STREET COMMUNITIES SOUTHEAST, LLC,
a Florida limited liability company



By: William Bryan Adams
Its: Manager

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Acknowledged before me by means of *[select one]*

X physical presence or
online notarization

this 22nd day of April, 2022, by William Bryan Adams in his capacity as Manager of Garden Street Communities Southeast, LLC, who *[select one]*

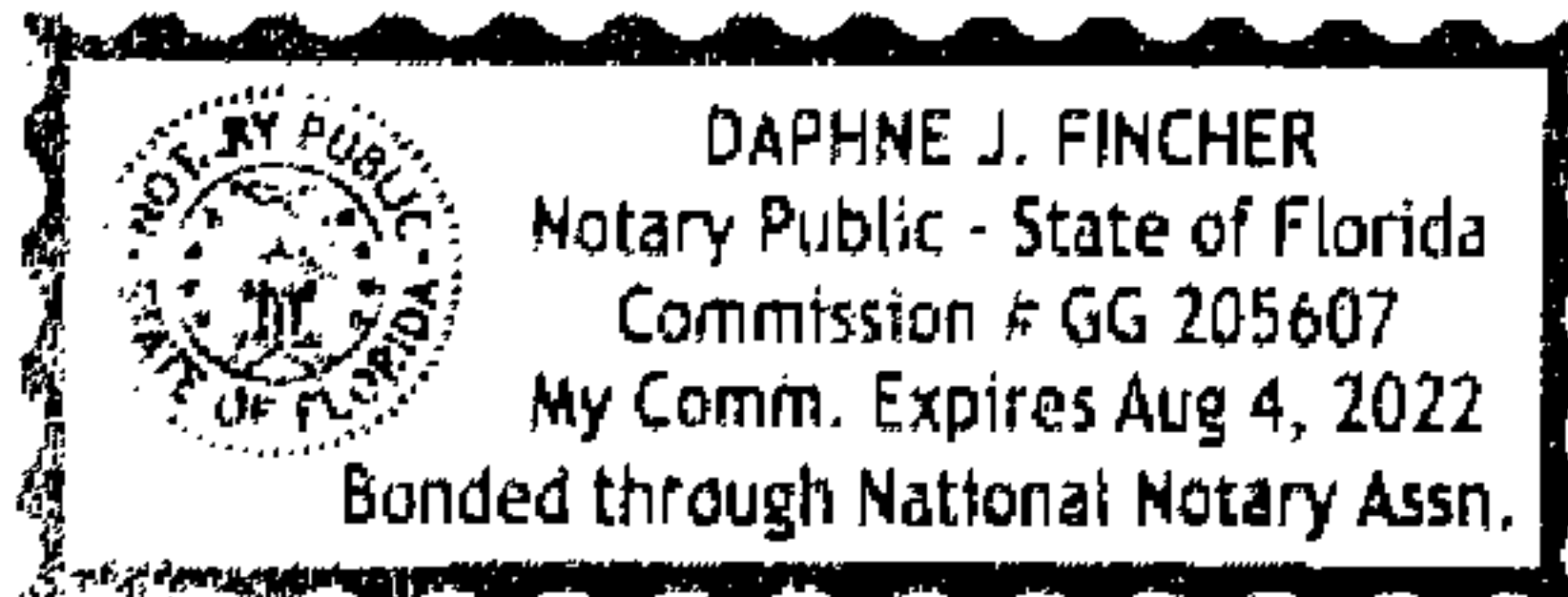
X is personally known to me or
has produced _____ as identification.

AFFIX NOTARY SEAL/STAMP:


Signature of Notary Public

Print Name: Daphne J. Fincher

Commission Expires: 8/4/22



This instrument prepared by:
Richard A. Wright
Jones Walker, LLP
RSA Battle House Tower
11 N. Water Street, Suite 1200
Mobile, AL 36602
(251) 432-1414

EXHIBIT A

Commence at a 1/2 inch iron pin in place being the Southeast corner of the Southeast One Fourth of the Northeast One Fourth of Section 35, Township 21 South, Range 3 West, Shelby County, Alabama; thence proceed North 01 degrees 00 minutes 35 seconds West along the East boundary of said Quarter section for a distance of 239.39 feet to a capped rebar in place being located on the Northerly right of way of Shelby County Highway 24, said point also being the Point of Beginning. From this beginning point proceed Southwesterly along the Northerly right of way of said road and along the curvature of a concave curve right having a delta angle of 49 degrees 50 minutes 36 seconds and a radius of 523.97 feet for a chord bearing and distance of South 68 degrees 43 minutes 11 seconds West, 441.58 feet to the Point of Tangency of said curve (set 1/2 inch rebar CA-0114-LS); thence proceed North 88 degrees 13 minutes 12 seconds West along the Northerly right of way of said road for a distance of 584.77 feet (set 1/2 inch rebar CA-0114-LS); thence proceed Northeasterly along the flare back of said Shelby County Highway 24 and along the curvature of a concave curve right having a delta angle of 90 degrees and a radius of 25.00 feet for a chord bearing and distance of North 43 degrees 13 minutes 11 seconds West, 35.36 feet to the Point of Tangency of said curve and a point on the Easterly right of way of Revolutionary Way; thence proceed North 01 degrees 46 minutes 48 seconds East along Easterly right of way of Revolutionary Way for a distance of 227.39 feet to the Point of Tangency of a concave curve right having a delta angle of 89 degrees 54 minutes 06 seconds and a radius of 20.00 feet; thence proceed Northeasterly along the curvature of said curve for a chord bearing and distance of North 46 degrees 43 minutes 54 seconds East, 28.26 feet to the Point of Tangency of said curve; thence proceed North 01 degrees 51 minutes 26 seconds East for a distance of 50.00 feet to the Point of Curvature of a concave curve right having a delta angle of 90 degrees 06 minutes 15 seconds and a radius of 20.00 feet; thence proceed Northwesterly along the curvature of said curve for a chord bearing and distance of North 43 degrees 16 minutes 06 seconds West, 28.31 feet to the Point of Tangency of said curve, said point being on the Easterly right of way of Revolutionary Way; thence proceed North 01 degrees 49 minutes 42 seconds East along the Easterly right of way of Revolutionary Way for a distance of 110.81 feet to the Point of Curvature of a concave curve left having a delta angle of 01 degrees 05 minutes 14 seconds and a radius of 4776.41 feet; thence proceed Northwesterly along the Easterly right of way of said Revolutionary Way and along the curvature of said curve for a chord bearing and distance of North 01 degrees 41 minutes 34 seconds West, 90.64 feet to the Point of Tangency of said curve which is also the Point of Curvature of a concave curve left having a delta angle of 02 degrees 25 minutes 30 seconds and a radius of 4776.41 feet; thence proceed Northwesterly along the Easterly right of way of said Revolutionary Way and along the curvature of said curve for a chord bearing and distance of North 03 degrees 26 minutes 56 seconds West, 202.14 feet to the Point of Tangency of said curve which is also the Point of Curvature of a concave curve left having a delta angle of 00 degrees 54 minutes 12 seconds and a radius of 2334.36 feet; thence proceed Northwesterly along the Easterly right of way of said Revolutionary Way and along the curvature of said curve for a chord bearing and distance of North 04 degrees 18 minutes 46 seconds West, 36.80 feet to the Point of Tangency of said curve which is also the Point of Curvature of a concave curve left having a delta angle of 04 degrees 11 minutes 30 seconds and a radius of 1025.00 feet; thence proceed Northwesterly along the Easterly right of way of said

Revolutionary Way and along the curvature of said curve for a chord bearing and distance of North 06 degrees 51 minutes 37 seconds West, 74.97 feet to the Point of Tangency of said curve: thence proceed North 08 degrees 51 minutes 04 seconds West along the Easterly right of way of said Revolutionary Way for a distance of 433.85 feet (set 1/2 inch rebar CA-0114-LS);

Thence proceed North 80 degrees 49 minutes 17 seconds East for a distance of 591.00 feet to a 1/2 inch rebar in place; thence proceed North 23 degrees 49 minutes 17 seconds East for a distance of 109.00 feet (set 1/2 inch rebar CA-0114-LS); thence proceed North 08 degrees 29 minutes 12 seconds West for a distance of 373.00 feet (set 1/2 inch rebar CA-0114-LS); thence proceed North 81 degrees 30 minutes 48 seconds East for a distance of 120.69 feet (set 1/2 inch rebar CA-0114-LS); thence proceed South 52 degrees 28 minutes 53 seconds East for a distance of 483.50 feet to a point on the East boundary of the Northeast One Fourth of the Northeast One Fourth of said Section 35; thence proceed South 00 degrees 58 minutes 41 seconds East along the East boundary of said Northeast One Fourth of the Northeast One Fourth and along the East boundary of the Southeast One Fourth of the Northeast One Fourth for a distance of 665.78 feet to 1/2 inch rebar in place; thence proceed South 01 degrees 00 minutes 35 seconds East along the East boundary of the Southeast One Fourth of the Southeast One Fourth for a distance of 764.54 feet to the Point of Beginning.

The above described and is located in the Southeast One Fourth of the Northeast One Fourth and the Northeast One Fourth of the Northeast One Fourth of Section 35, Township 21 South, Range 3 West, Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
04/26/2022 10:33:02 AM
\$4683.10 JOANN
20220426000170380

Allen S. Bayl