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This instrument prepared by and after recording return to:
Polsinelli PC
1401 Lawrence Street, Suite 2300
Denver, Colorado 80202
Attn: Michael Strand

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# MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS

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**THE BOYD-TUCKER COMPANY HELENA LLC,**
an Alabama limited liability company,
as mortgagor

(Borrower)

to

**THE HUNTINGTON NATIONAL BANK,**
as mortgagee

(Lender)

Dated: May 25, 2022

Location: 32 Magnolia Pkwy, Helena, AL 35080

County: Shelby

Tax Parcel: 13-8-28-1-001-021.002

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# MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS

THIS **MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** dated as of May 25, 2022 (this "Mortgage"), is executed by **THE BOYD-TUCKER COMPANY HELENA LLC**, an Alabama limited liability company, having an address at 824 Highland Avenue, Orlando, Florida 32803, as mortgagor ("Borrower"), to and for the benefit of **THE HUNTINGTON NATIONAL BANK** and its successors and assigns, having an address at 2655 Warrenville Road, Suite 100, Downers Grove, Illinois, 60515, as mortgagee (in its individual capacity and in its capacity as lead arranger and administrative agent acting for itself and the Banks, "Lender").

## RECITALS

A. Pursuant to the terms and conditions contained in that certain Syndicated Term Loan Agreement dated as of even date herewith, executed by Borrower, certain Affiliates of Borrower, and Lender (the "Loan Agreement"), Lender has agreed to loan to Borrower and certain Affiliates of Borrower the maximum principal amount of $50,000,000.00 (the "Loan"). All initial capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement. The Loan shall be evidenced by that certain Term Loan Promissory Note of even date herewith (as amended, restated or replaced from time to time, the "Note"), executed by Borrower and certain Affiliates of Borrower and made payable to the order of Lender in the maximum principal amount of the Loan and due on May 25, 2025, subject to extension as provided in the Loan Agreement (the "Maturity Date"), except as may be accelerated pursuant to the terms of the Loan Documents.

B. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Borrower of this Mortgage.

## AGREEMENTS

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Borrower hereby mortgages, warrants, grants, bargains, sells, conveys, and assigns to Lender, its successors and assigns, with power of sale, and grants a security interest in, all of Borrower's right, title and interest in and to the following described property, rights and interests (referred to collectively herein as the "Property"):

(a) The real estate located in Shelby County, Alabama and legally described on Exhibit A attached hereto and made a part hereof (the "Land");

(b) All improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and located on, or used in connection with the Land or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Borrower in and to any such personal property or fixtures together with the

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benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same;

(d) All rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases (as hereinafter defined), including those past due and unpaid (collectively, the "Rents"), and all revenues, issues, profits, proceeds, income, royalties, Letters of Credit (as defined in the Uniform Commercial Code of the State of Alabama (the "Code") in effect from time to time) rights, escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by Borrower thereon, to be applied against the Indebtedness (as hereinafter defined);

(e) All interest of Borrower in all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, whether written or oral, including any supplement, modification, amendment, renewal or extension thereto (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Borrower to collect the Rents under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Property, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Land or the Improvements, so far as permitted by Applicable Laws, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender, as a secured party, and Borrower, as debtor, all in accordance with the Code;

(g) All of Borrower's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Property, including, without limitation, all of Borrower's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Borrower is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to Borrower thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

(h) All of Borrower's accounts now owned or hereafter created or acquired as relate to the Property and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by Borrower: (i) Accounts (as defined in the Code), contract rights book debts, notes, drafts, and other obligations or indebtedness owing to Borrower arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) Borrower's rights in, to and under all purchase orders for goods, services or other property; (iii) Borrower's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to Borrower under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Borrower); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of Borrower with respect to the Property (the property, interests and rights described in Subsections (f), (g) and (h) above are collectively referred to herein as the "Collateral"); and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, unto the Lender, its successors and assigns, in fee simple forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence and during the continuance of any Event of Default.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium, if any, exit fee, if any, reimbursement obligations, fees and expenses for letters of credit issued by Lender for the benefit of Borrower, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of Borrower to Lender under and pursuant to any Swap Agreement (as defined in the Loan Agreement), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to Lender of any and all sums incurred, expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any Swap Agreements that may evidence any Swap Obligations of Borrower owing at any time to Lender, or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness"). Notwithstanding the foregoing and any provision of this Mortgage to the contrary, the obligations of Borrower and the other indemnitors under the Environmental Indemnity Agreement shall not be deemed secured by this Mortgage.

PROVIDED, ALWAYS, that if Borrower, Borrower's heirs, personal representatives, successors or assigns, shall pay unto Lender, its successors or assigns, the said sum of money mentioned in the Note and the interest thereon at the times and place and in the manner specified in the Note, and all other sums that may become due and owing to Lender pursuant to any of the terms, covenants and conditions hereof, and perform all the conditions and covenants contained in this Mortgage, Lender will provide a satisfaction and cancellation of this Mortgage and termination statements for filed financing statements, if any, to Borrower. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 3 of this Mortgage shall automatically terminate and become null and void.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Borrower represents, warrants, and covenants that (a) Borrower is the holder of the fee simple title to the Property, free and clear of all liens and encumbrances, except those Permitted Encumbrances; and (b) Borrower has legal power and authority to mortgage and convey the Property.

2. Borrower's Covenants and Agreements.

(a) Payment of Indebtedness. Borrower shall, prior to the expiration of any grace period: (i) pay the Indebtedness when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by Borrower as provided in the Note, the Loan Agreement, this Mortgage, and the other Loan Documents.

(b) Compliance with Loan Agreement. Borrower will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

(c) Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by Lender in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note,

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shall be secured by this Mortgage; provided, however, that the total Indebtedness shall not in any event exceed two hundred percent of the stated principal amount of the Note.

3. Absolute Assignment of Leases and Rents.

(a) Lease Assignment. As security for the payment of the Indebtedness, Borrower hereby grants, transfers, sets over and assigns to Lender, all of the right, title and interest of Borrower in and to (i) all of the Rents arising out of or from the Property, including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any Lease; (ii) all Leases now or hereafter existing, of all or any part of the Property together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement section thereof; and (iv) all tenant improvements and fixtures located on the Property.

(b) Representations and Warranties. Borrower hereby represents and warrants to Lender that, as of the date hereof: (i) Borrower is the absolute owner of the entire lessor's interest in each of the Leases, with absolute right and title to assign the Leases and Rents; (ii) the Leases are valid, enforceable and in full force and effect; (iii) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (iv) except as shown on the Occupancy Reports, there are no existing defaults under the provisions of the Leases on the part of the lessor and to Borrower's actual knowledge, there are no existing defaults under the provisions of the Leases on the part of the tenant thereunder; (v) to Borrower's actual knowledge, no tenant has any defense, set-off or counterclaim against Borrower; (vi) except as disclosed in writing to Lender, no tenant has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (vii) Borrower has not accepted prepayments of installments of Rents or any other charges under any Lease except in the ordinary course of business; and (viii) all work required to be performed by Borrower, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

(c) Leasing Covenants. Borrower shall not lease any portion of the Property except in accordance with the provisions of the Loan Agreement.

(d) License. Except as hereinafter set forth, Borrower shall have a license ("License") to collect the Rents accruing under the Leases as they become due, to take all actions of landlord under the Leases, and to enforce the Leases. The License shall automatically be suspended upon the occurrence of an Event of Default and shall be automatically reinstated at such time as the Event of Default no longer exists. Borrower covenants and agrees that in exercising its License it shall apply the Rents in accordance with the Loan Agreement.

(e) Rights Prior to Default. Unless or until an Event of Default shall occur, Borrower shall have the right to collect, at the time provided for the payment thereof, all Rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Borrower's right to collect such Rents, issues, income and profits shall immediately terminate without further notice thereof to Borrower. Lender shall have the right to notify the tenants under the Leases of the existence of this Mortgage at any time.

(f) Rights and Remedies Upon Default. At any time upon or following the occurrence of any Event of Default, Lender, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Borrower, without regard to the adequacy of the security for the Indebtedness secured hereby, without releasing Borrower or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents. Upon the occurrence of an Event of Default, Borrower's License to collect Rents shall immediately be suspended as provided in Section 3(e) above, unless Lender shall otherwise notify Borrower in writing that such License is not being suspended by Lender. To the extent permitted by Applicable Laws, Lender shall thereupon be authorized at its option to enter and take possession of all of part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act to the fullest extent permitted by Applicable Laws and Borrower hereby waives any right to assert that any such entry constitutes a trespass. In furtherance thereof, Lender shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify Rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Lender, promptly after any Event of Default: (i) all Rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder together with interest on all security deposits to the extent required to be paid under the Leases or by Applicable Laws; and (ii) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Lender will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Indebtedness. Lender shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

(g) Application of Proceeds. All sums collected and received by Lender out of the Rents, issues, income and profits of the Property following the occurrence of any one or more Events of Default shall be applied in accordance with Applicable Laws and, unless otherwise specified in such Applicable Laws, in such order as Lender shall elect in its sole and absolute discretion.

(h) Limitation of Lender's Liability. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property or from any other act or omission of Lender in managing, operating or maintaining the Property following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Borrower under or by reason of this Mortgage. Borrower shall and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any Lease or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Borrower be liable for any liability, loss or damage which Borrower incurs as a result of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Mortgage, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon at the Default Rate and shall be secured by this Mortgage. This Mortgage shall not operate to place responsibility upon Lender for the care, control, management or repair of the Property or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Property by any tenant, occupant or other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in this Mortgage, and no exercise by Lender of any of the rights set forth herein or in this Mortgage shall constitute or be construed as constituting Lender a "mortgagee in possession" of the Property, in the absence of the taking of actual possession of the Property by Lender pursuant to the provisions hereof or of this Mortgage.

(i) Power of Attorney. In furtherance of the purposes of this Mortgage, Borrower hereby appoints Lender as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Lender at any time after the occurrence of an Event of Default, and in the name of Borrower or Lender, to (i) collect, demand and receive the Rents and other amounts payable under any Lease; (ii) bring suit and take other action to enforce the Leases; (iii) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with tenants in relation to the Leases; (iv) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease; and (v) take such other action as Lender may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Lender under this Mortgage.

(j) Security Deposits. Borrower acknowledges that Lender has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

4. Payment of Taxes and Assessments. Borrower will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever, whether or not assessed against Borrower, if applicable to the Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby (all herein generally called "Taxes"), subject to Borrower's right to contest the same, as provided by the terms hereof; and Borrower will, upon written request, furnish to Lender duplicate receipts therefor within ten (10) days after Lender's request.

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5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower or the Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon Lender, except as provided in Section 5(c) below), or any liens on the Property created thereby, then Borrower shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Property for the purpose of taxation by creating any lien thereon, or imposing upon Lender any liability for the payment of all or any part of the Taxes required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of Lender in the Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Indebtedness, or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such Taxes, or reimburse Lender therefor on demand, unless Lender determines, in Lender's sole judgment, that such payment or reimbursement by Borrower is unlawful or that the payment might, in Lender's judgment, constitute usury or render the Indebtedness wholly or partially usurious; in which event Lender may elect to declare the Indebtedness to be due and payable within the lesser of (i) thirty (30) days after written notice to Borrower, or (ii) such shorter period as may be required to ensure compliance by Lender with Applicable Laws.

(c) Nothing contained herein shall require Borrower to pay any income, franchise or excise tax imposed upon Lender, excepting only such income, franchise or excise tax which may be levied against the income of Lender as a complete or partial substitute for Taxes required to be paid by Borrower hereunder.

6. Deposits.

(a) Maintenance Deposits. Borrower shall not abandon the Property, shall keep and maintain the Property in good condition, repair, maintenance and operating condition free from any waste or misuse, and shall promptly repair and restore any buildings, improvements or structures now or hereafter on the Property which may become damaged or destroyed to their condition prior to any such damage or destruction. Should Borrower fail to comply with the foregoing, then at Lender's option in its sole discretion, Borrower shall pay to Lender monthly installments in an amount equal to one-twelfth (1/12th) of the annual operating and maintenance costs of the Property as set forth on the most recent operating statement for the Property approved by Lender (the "Maintenance Costs"). No amount so paid to Lender shall be deemed to be trust funds, nor shall any sums paid bear interest. If, at any time, the funds being held by Lender for any Maintenance Costs are exhausted, or if Lender determines, in its sole discretion, that such funds will be insufficient to pay in full any Maintenance Costs when due, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. If an Event of Default shall occur under the terms of this Mortgage, Lender may, at its option, without being required to do so, apply any deposits on hand to the Indebtedness, in such order and manner as Lender may elect. Without the prior consent of Lender, Borrower agrees that it will not construct or expand any improvements on the Property, erect any new improvements nor make any material alterations in any improvements which shall alter the basic structure,

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decrease the market value or change the existing architectural character of the Property, nor remove or demolish any improvements.

(b) Tax and Insurance Deposits. Upon the occurrence of an Event of Default, and at Lender's request, Borrower shall deposit with Lender, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of one hundred five percent (105.00%) of (a) the most recent ascertainable annual Taxes on the Property and (b) the insurance premiums for the policies of insurance required to be maintained in effect by Borrower pursuant to the terms of the Loan Agreement (the "Premiums"). If requested by Lender, Borrower shall also deposit with Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Lender. Such deposits are to be held without allowance of interest and are to be used for the payment of Taxes and Premiums next due and payable when they become due. So long as no Event of Default shall be continuing, Lender shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Borrower) or shall release sufficient funds to Borrower for the payment thereof. Lender shall release sufficient funds to pay the Premiums when due to the extent of funds available to do so. If the funds so deposited are insufficient to pay any such Taxes or Premiums for any year (or installments thereof, as applicable) when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes and Premiums in full. If the funds so deposited exceed the amount required to pay such Taxes and Premiums for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Lender. Lender, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

7. Liens, Contest and Defense of Title.

(a) Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Property or any part thereof, or interest therein, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Property ("Mechanic's Liens"). Notwithstanding the foregoing, Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest in accordance with Section 30 hereof.

(b) If the lien and security interest of Lender in or to the Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Borrower shall immediately notify Lender and shall appear in and defend any action or proceeding purporting to affect the Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Property.

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8. Lender's Interest In and Use of Deposits. Upon an Event of Default, Lender may, at its option, apply any monies at the time on deposit pursuant to Section 6 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Borrower shall immediately, upon demand by Lender, deposit with Lender an amount equal to the amount expended by Lender from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Borrower. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Borrower. Lender shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Borrower, prior to an Event of Default, shall have requested Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

9. Insurance. Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, in accordance with the terms, coverages and provisions described in the Loan Agreement.

10. Condemnation. If all or any part of the Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any Award or other payment for such taking or damages made in consideration thereof, shall be governed by the provisions of the Loan Agreement with respect to the use of Awards and condemnation proceeds.

11. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Borrower shall pay such tax in the manner required by any such law. Borrower further agrees to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Lender.

12. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Borrower, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

13. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender. If an Event of Default has occurred, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment

or cure any default of Borrower in any lease of the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Section 11 above or to protect the Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Property, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section shall be immediately due and payable by Borrower to Lender, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Borrower in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

14. <u>Security Agreement</u>.

(a) <u>Grant of Security Interest</u>. Borrower hereby grants to Lender a security interest in the property described in Subsections (d), (e), (f), (g), (h) and (i) of the granting clause of this Mortgage (collectively, the "<u>Personal Property</u>") to secure repayment of the Indebtedness. This Mortgage constitutes a security agreement with respect to all Personal Property in which Lender is granted a security interest hereunder, and Lender shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) <u>Perfection</u>. Borrower hereby consents to any instrument that may be requested by Lender to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Lender in the Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Lender in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

(c) Place of Business. Borrower maintains its principal place of business as set forth in Section 14(e) below, and Borrower will notify Lender in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. This Mortgage is intended to be and constitutes a financing statement within the purview of the Code and will be and is recorded as a "fixture filing" in accordance with the Code.

(e) Representations and Warranties. Borrower represents and warrants that: (i) Borrower is the record owner of the Property; (ii) Borrower's principal place of business is located in the State of Florida; (iii) Borrower's state of organization is the State of Alabama; (iv) Borrower's exact legal name is as set forth on Page 1 of this Mortgage; (v) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof and Permitted Encumbrances; (vi) the Personal Property will not be removed from the Property without the consent of Lender, except for Obsolete Collateral as set forth herein; and (vii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto. The following addresses are the mailing addresses of Borrower, as debtor under the Code, and Lender, as secured party under the Code, respectively:

| | |
|---|---|
| Borrower: | The Boyd-Tucker Company Helena LLC<br>824 Highland Avenue<br>Orlando, FL 32803 |
| Lender: | The Huntington National Bank<br>2655 Warrenville Road, Suite 100<br>Downers Grove, IL 60515 |

(f) Borrower agrees that:

(i) Borrower (being the debtor as that term is used in the Code) is and will be the true and lawful owner of the Property, subject to the liens, charges or encumbrances other than the lien hereof, the Permitted Encumbrances, other liens and encumbrances benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(ii) The Personal Property is to be used by Borrower and Property Manager solely for business purposes.

(iii) The Personal Property will be kept at the Land and, except for Obsolete Collateral, will not be removed therefrom without the consent of Lender (being the

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secured party as that term is used in the Code). The Personal Property may be affixed to the Land but not be affixed to any other real estate.

(iv) The only persons having any interest in the Property are Borrower, Lender and holders of interests, if any, expressly permitted hereby and under the Permitted Encumbrances.

(v) No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Property or any proceeds thereof is on file in any public office except pursuant hereto; and Borrower, at its own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Property as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Lender and no other party, liens and encumbrances (if any) expressly permitted hereby, and the Permitted Encumbrances; and Borrower will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable. Borrower hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of Borrower that (i) indicate the Personal Property (A) is comprised of all assets of Borrower or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Borrower is an organization, the type of organization and any organizational identification number issued to Borrower, and (B) in the case of a financing statement filed as a fixture filing or indicating Property as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Property relates. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Mortgage. In addition, Borrower shall make appropriate entries on its books and records disclosing Lender's security interests in the Property.

(vi) Upon an Event of Default hereunder, Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Property or any part thereof may be situated and remove the same therefrom (provided that if the Personal Property is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Code. Lender may render the Property unusable without removal and may dispose of the Personal Property on the Land. Lender may require Borrower to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Borrower at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinafter set forth at least ten (10) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Lender so elects, the Personal Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Borrower for any surplus realized on such disposition.

(vii) Borrower hereby agrees that: (i) where Collateral is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender; (ii) Borrower will cooperate with Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Borrower will not change the state where it is located or change its name or form of organization without giving Lender at least thirty (30) days prior written notice in each instance.

15. Restrictions on Transfer. Borrower, without the prior written consent of Lender, shall not effect, suffer or permit any Prohibited Transfer. In determining whether or not to make the Loan, Lender evaluated the background and experience of Borrower and its member in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Lender's security for the Note. Borrower and its member are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Borrower recognizes that Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. Borrower further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should Lender come into possession thereof with the intention of selling same; and (iv) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (a) protecting Lender's security, both of repayment and of value of the Property; (b) giving Lender the full

benefit of its bargain and contract with Borrower; (c) allowing Lender to raise the interest rate and collect assumption fees; and (d) keeping the Property free of subordinate financing liens, Borrower agrees that if this Section is deemed a restraint on alienation, that it is a reasonable one.

16. Events of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Borrower fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note within five (5) days after the date such is due under the Note, or (ii) any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents within five (5) days after written notice from Lender; or, if another period is specified in any such Loan Document, the period specified therein; or

(b) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents and not specifically described in this Section or in the Default section of any other Loan Document; provided, however, that if such failure by its nature can be cured, then so long as the continued operation, safety and value of the Property, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents, are not materially impaired, threatened or jeopardized, then Borrower shall have a period (the "Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period; provided further that if such failure by its nature can be cured but cannot be cured by the payment of money and Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(c) the occurrence of a Prohibited Transfer; or

(d) the occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents which continues beyond any applicable grace period.

17. Acceleration. If an Event of Default occurs, Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Borrower, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

18. Foreclosure.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose upon this Mortgage and its interests hereunder and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Alabama Code § 35-10-1, et seq. regarding such foreclosure actions (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, to the extent permitted under the Act but without the consent of Borrower, to assign Lender's interest under any and all insurance policies to the

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purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs, which may be estimated as to items to be expended after entry of the decree, of procuring all such abstracts of title, title searches and examinations, title insurance policies, surveys, environmental reports, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

19. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

20. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

21. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Borrower shall, upon demand of Lender, surrender to Lender possession of the Property. Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Borrower and its employees, agents or servants therefrom, and Lender may then hold, operate, manage and control the Property, either personally or by its agents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

(a) cancel or terminate any Lease for any cause or on any ground which would entitle Borrower to cancel the same;

(b) elect to disaffirm any Lease which is then subordinate to the lien hereof;

(c) extend or modify any then existing Leases and to enter into new Leases, which extensions, modifications and Leases may provide for terms to expire, or for options to Tenants to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to Lender, to insure and reinsure the Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(e) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of taxes, premiums and other charges applicable to the Property, or in reduction of the Indebtedness in such order and manner as Lender shall select, in its sole discretion; and

(f) receive and collect the rents, issues, profits and revenues of the Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and Borrower agrees to consent to a receiver if it is believed necessary or desirable by Lender to enforce its rights under this Subsection. The collection of rents, issues, profits or revenues of the Property by Lender shall in no way waive the right of Lender to foreclose this Mortgage during after any Event of Default.

Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Property. The right to enter and take possession

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of the Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender. Without taking possession of the Property, Lender may, in the event the Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness payable upon demand with interest thereon at the Default Rate.

22. Application of Income Received by Lender. Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Lender may determine:

(a) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include compensation to Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

23. Compliance with Mortgage Foreclosure Law.

(a) If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type permitted to be added to the Indebtedness pursuant to the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

24. Rights Cumulative. Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

25. Lender's Right of Inspection. Lender and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours' prior notice to Borrower, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

26. Release Upon Payment and Discharge of the Indebtedness. Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

27. Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

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| To Lender | The Huntington National Bank<br>2655 Warrenville Road, Suite 100<br>Downers Grove, IL 60515<br>Attn: James Straka |
| With a copy to: | Polsinelli PC<br>1401 Lawrence Street, Suite 2300<br>Denver, CO 80202<br>Attn: Michael Strand |
| To Borrower: | The Boyd-Tucker Company Helena LLC<br>824 Highland Avenue<br>Orlando, FL 32803<br>Attn: Adam Mikkelson |

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next Business Day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third Business Day following the day sent or when actually received.

28. Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc. Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Property does not constitute agricultural real estate or residential real estate. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by Applicable Laws, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Applicable Laws, and (ii) any and all rights of reinstatement.

29. Protective Advances.

(a) Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage pursuant to its terms, the Act, the Code, or Applicable Laws;

(ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Property to the maximum extent permitted by Applicable Laws;

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(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens encumbering the Property;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing;

(vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as permitted pursuant to Applicable Laws; and

(viii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of all or any portion of the Property; (B) repair or restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (E) pursuant to any Lease or other agreement for occupancy of the Property or any portion thereof.

(b) All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of Applicable Laws, apply to and be included in the:

(i) determination of the amount of Indebtedness at any time;

(ii) indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Applicable Laws;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Applicable Laws.

30. Contests. Notwithstanding anything to the contrary herein contained, Borrower shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Property or which may be or become a lien thereon and any Mechanic's Liens or other liens or claims for lien upon the Property (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) Borrower shall forthwith give notice of any Contested Lien to Lender at the time the same shall be asserted;

(b) Borrower shall either pay under protest or deposit with Lender the full amount (the "Lien Amount") of such Contested Lien, together with such amount as Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Borrower may furnish to Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Lender;

(c) Borrower shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Property, and shall permit Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) Borrower shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Borrower, or (ii) forthwith upon demand by Lender if, in the opinion of Lender, and notwithstanding any such contest, the Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Borrower shall fail so to do, Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of Lender to obtain the release and discharge of such liens; and any amount expended by Lender in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Lender may in such case use and apply monies deposited as provided in Subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

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31. Expenses Relating to Note and Mortgage.

(a) Borrower will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Borrower recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Borrower or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the Indebtedness or the transfer of the Property in lieu of foreclosure; or

(vi) May enter into negotiations with Borrower or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Borrower which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

32. Statement of Indebtedness. Borrower, within seven (7) days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either

that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

33. Further Instruments. Upon request of Lender, Borrower shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

34. Additional Indebtedness Secured. All persons and entities with any interest in the Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Property or to otherwise protect the Property or the lien of this Mortgage.

35. Indemnity. Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Borrower hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of Lender. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Claims"), of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Property; and (c) the ownership, leasing, use, operation or maintenance of the Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Property to Lender in accordance with the terms of this Mortgage; provided, however, that Borrower shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender. All costs provided for herein and paid for by Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Lender and with interest thereon from the date incurred by Lender until paid at the Default Rate.

36. Subrogation. If any part of the Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Property or any part thereof, then by advancing the monies to make such payment, Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

37. Business Loan.

(a) Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and Lender and Borrower agree that the loan is exempt from interest limitations pursuant to the provisions of Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of Applicable Laws.

38. State Law Provisions.

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 38 and the terms and conditions of this Mortgage, Lender shall have the right to elect in its sole discretion which one or more provisions to enforce or rely upon; Lender's rights and remedies in this Mortgage and the Loan Documents are cumulative, and in case of any conflict between any provision within this Mortgage or between this Mortgage and those of other Loan Documents, Lender shall have the right to enforce any of the same Lender determines to be most beneficial to Lender to the end of affording Lender with maximum security and rights under Applicable Laws, the intention being that any inconsistencies may be resolved by Lender, and Lender's enforcement of any specific remedy in one case shall not bar Lender from enforcing that remedy or another remedy in a different manner in another case.

(b) Additional Definitions. For purposes of this Mortgage, the following defined terms shall have the following meanings:

(i) Borrower shall mean Mortgagor.

(ii) Lender shall mean Mortgagee.

(c) Additional Remedies. In addition to the remedies set forth in this Mortgage, Lender shall have the following additional remedies:

(i) Bring a court action at law or in equity to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the Indebtedness;

(ii) Cause any or all of the Property to be sold under the power of sale granted hereby in any manner permitted by Applicable Laws;

(iii) Exercise any other right or remedy available under law or in equity or under the Loan Documents;

(iv) Sell the Property at public outcry to the highest bidder for cash in front of the front or main door of the court house of the county where said 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 description of the Property, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county (or all counties, if more than one) in which the Property is located (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks), and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Any such sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Mortgage only as to the Property sold, and if the Indebtedness and all other sums secured hereby are not thereby satisfied in full, the other Property shall continue as security therefor and there may be a further foreclosure of this Mortgage either by sale under power of sale or by judicial foreclosure.

(d) Application of Proceeds. The proceeds of any sale under this Mortgage will be applied in the following manner:

(i) FIRST: Payment of the costs and expenses of the sale, including but not limited to, Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest at the Default Rate provided under the Note on all advances made by Lender.

(ii) SECOND: Payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the Default Rate provided under the Note.

(iii) THIRD: Payment of the Indebtedness and obligations of Borrower secured by this Mortgage in any order that Lender chooses.

(iv) FOURTH: The remainder, if any, to the Person appearing of record to be the owner of the Property at the time of such sale.

(e) Lender's Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event Lender's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any Tenants, and the failure to make any such Tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted by Borrower to be a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property.

(f) Waiver. Borrower waives all rights to direct the order or manner in which any of the Property will be sold in the event of any sale under this Mortgage and also any right to have any of the Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

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(g) Additional Waiver. AFTER CONSULTATION WITH COUNSEL AND RECOGNIZING THAT ANY DISPUTE HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS AND TIME INVOLVED IN ANY DISPUTE RESOLUTION PROCESS, THE PARTIES HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS TRANSACTION, THIS INSTRUMENT, OR ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THIS TRANSACTION, OR RESPECTING ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY AND ACKNOWLEDGE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ENTERING INTO THIS LOAN TRANSACTION BY ALL PARTIES.

39. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Borrower and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

(c) Governing Law. THIS INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS. NOTWITHSTANDING THE FOREGOING, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDING TO THE LAWS OF THE STATE OF ALABAMA. Whenever possible, each provision of this Mortgage and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such Applicable Laws, but, if any provision of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such Applicable Laws, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto.

(d) Municipal Requirements. Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental

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requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Borrower which would result in a violation of any of the provisions of this Subsection shall be void.

(e) Litigation. Borrower, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, without limitation, this Mortgage or the Property. If any action or proceeding relating to or affecting the Note, this Mortgage, the Loan Agreement or the Property is commenced or threatened, to which action or proceeding Lender is made a party, or in which it becomes necessary or desirable, in Lender's reasonable opinion, to defend or uphold, or to consider defending or upholding, the lien of this Mortgage, or to protect the Property or any part thereof, or to exercise, or to obtain the right to exercise, any of Lender's rights, powers and remedies hereunder, including, without limitation, any foreclosure or commencement of foreclosure proceedings, probate proceedings and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Lender otherwise incurs costs or expenses, all sums paid by Lender in order to determine the merits thereof, to establish or defend the rights and liens of this Mortgage, to protect the Property or any part thereof and to exercise, or to obtain the right to exercise, any of Lender's rights, powers and remedies hereunder, and/or otherwise incurred by Lender in connection therewith (including, without limitation, attorneys' fees and costs and allowances prior to trial, at trial and on appeal) and whether suit be brought or not, and whether or not Lender prevails therein, shall be paid, upon demand, to Lender by Borrower, together with interest thereon at the Default Rate from the date incurred, and any such sum or sums shall be secured thereby.

(f) Adjustable-Rate Note. The Note secured by this Mortgage provides for adjustments in its Interest Rate from time to time in accordance with its terms. Reference is made to the Note for the time, terms and conditions of the adjustments in the Interest Rate. Such times, terms and conditions are incorporated herein by reference.

(g) Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of Lender. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) Option of Lender to Subordinate. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Property upon the execution by Lender of a unilateral declaration to that effect and the recording thereof in the official records in and for the county wherein the Property are situated.

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(i) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Property by Lender pursuant to this Mortgage.

(j) Relationship of Lender and Borrower. Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Borrower and Lender hereunder is solely that of debtor/creditor.

(k) Time of the Essence. Time is of the essence of the payment by Borrower of all amounts due and owing to Lender under the Note and the other Loan Documents and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(l) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Property, and if Lender acquires any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(m) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to $50,000,000.00; provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

(n) CONSENT TO JURISDICTION. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. BORROWER WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED

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WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(o) WAIVER OF JURY TRIAL. BORROWER HEREBY ACKNOWLEDGES THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY JURY OF ANY CONTROVERSY RELATED IN ANY WAY TO THIS MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE LOAN DOCUMENTS MAY EXCEED THE TIME AND EXPENSE REQUIRED FOR A TRIAL WITHOUT A JURY, AND HEREBY KNOWINGLY AND VOLUNTARILY, AND FOR ITS OWN BENEFIT, WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF ANY LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE LOAN DOCUMENTS, AND WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF LENDER.

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents to be effective as of the date first above written.

**BORROWER**:

**THE BOYD-TUCKER COMPANY HELENA LLC**, an Alabama limited liability company

By: Liberty Storage Fund II, LLLP, a Florida limited liability limited partnership, its Sole Member

By: Liberty Storage Fund II GP, LLC, a Florida limited liability company, its General Partner

By: Liberty Investment Properties, Inc., a Florida corporation, its Manager

By: [signature]
Adam Mikkelson, President

STATE OF FLORIDA )
COUNTY OF ORANGE )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Adam Mikkelson, President of Liberty Investment Properties, Inc., a Florida corporation, the Manager of Liberty Storage Fund II GP, LLC, a Florida limited liability company, the General Partner of Liberty Storage Fund II, LLC, a Florida limited liability limited partnership, the Sole Member of The Boyd-Tucker Company Helena LLC, an Alabama limited liability company, whose name 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 company on the day the same bears date. Given under my hand and official seal this May 23, 2022.

[signature]
Notary Public

My Commission Expires: 12/14/2025

BETHANY COOKSEY
Notary Public
State of Florida
Comm# HH207655
Expires 12/14/2025

(Signature Page to Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing)

# EXHIBIT A

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## Legal Description of the Land

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 20 SOUTH, RANGE 3 WEST, AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 28, SHELBY COUNTY, ALABAMA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 20 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH 00 DEGREES 21 MINUTES 10 SECONDS WEST ALONG THE EAST LINE OF SAID SECTION LINE FOR A DISTANCE OF 887.52 FEET TO A FOUND ONE INCH CRIMP PIPE MARKING THE SOUTHEAST CORNER OF LOT 12, KINGRIDGE SUBDIVISION AS RECORDED IN MAP BOOK 6, PAGE 87 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA, SAID POINT ALSO LYING ON THE WEST LINE OF LOT 3, FOX HAVEN FIRST SECTOR AS RECORDED IN MAP BOOK 7, PAGE 35 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH 00 DEGREES 17 MINUTES 35 SECONDS WEST ALONG THE WEST LINE OF LOTS 3 THROUGH 14 OF SAID SUBDIVISION AND ALONG THE EAST LINE OF SAID SECTION FOR A DISTANCE OF 888.47 FEET TO A FOUND CAPPED REBAR STAMPED RC FARMER, SAID POINT MARKING THE NORTHEAST CORNER OF LOT 35, ROCKY RIDGE PHASE 2 AS RECORDED IN MAP BOOK 27, PAGE 16 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE LEAVING SAID SECTION LINE AND FOX HAVEN FIRST SECTOR LOT LINE RUN NORTH 88 DEGREES 40 MINUTES 45 SECONDS WEST ALONG THE NORTH LINE OF LOTS 20, 21, 34 & 35, ROCKY RIDGE PHASE 2 AS RECORDED IN MAP BOOK 27, PAGE 16 AND ALONG THE NORTH LINE OF LOTS 9 THROUGH 22, BRECKENRIDGE PARK, BLOCK 2 AS RECORDED IN MAP BOOK 9, PAGE 110 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA FOR A DISTANCE OF 1053.28 TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE AND ALONG THE NORTH LINE OF LOTS 1 THROUGH 9, BLOCK 7 OF SAID BRECKENRIDGE PARK SUBDIVISION FOR A DISTANCE OF 274.74 FEET TO A SET 5/8 INCH CAPPED REBAR STAMPED CA-560LS, SAID POINT LYING ON THE EASTERN RIGHT OF WAY OF ALABAMA HIGHWAY 17 (A/K/A MONTGOMERY ROAD 80 FOOT ROW); THENCE LEAVING SAID LOT LINE RUN NORTH 10 DEGREES 45 MINUTES 59 SECONDS EAST ALONG SAID RIGHT OF WAY FOR A DISTANCE OF 427.656 FEET TO A POINT; THENCE LEAVING SAID RIGHT OF WAY RUN SOUTH 79 DEGREES 14 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 177.98 FEET TO A POINT, SAID POINT LYING ON A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1525.56 FEET, A CENTRAL ANGLE OF 06 DEGREES 13 MINUTES 45 SECONDS, A CHORD BEARING OF SOUTH 82 DEGREES 20 MINUTES 58 SECONDS EAST AND A CHORD DISTANCE OF 165.78 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 165.86 FEET TO A POINT; THENCE RUN SOUTH 03 DEGREES 32 MINUTES 34 SECONDS WEST FOR A DISTANCE OF 1.29 FEET; THENCE RUN SOUTH 88 DEGREES 43 MINUTES 15 SECONDS EAST FOR A DISTANCE OF 20.72 FEET TO A POINT; THENCE RUN SOUTH 00 DEGREES 13 MINUTES 10 SECONDS WEST FOR A DISTANCE OF 348.15 FEET TO A POINT; THENCE RUN NORTH 88 DEGREES 40 MINUTES 45 SECONDS WEST FOR A DISTANCE OF 163.14 FEET TO A POINT; THENCE RUN SOUTH 01 DEGREES 19 MINUTES 15 SECONDS WEST FOR A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING. SITUATED IN SHELBY COUNTY, ALABAMA.

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**STATE OF ALABAMA**
**BEFORE THE ALABAMA DEPARTMENT OF REVENUE**

**IN RE:**

**THE HUNTINGTON NATIONAL BANK, as Lead Arranger and Agent for Co-Lenders, and their successors and/or assigns**

**Petitioner.**

**A proceeding authorized by §40-22-2(8), Code of Alabama 1975**

## MORTGAGE TAX ORDER

**COMES NOW** THE HUNTINGTON NATIONAL BANK, solely in its capacity as Lead Arranger and Agent for Co-Lenders (together with its successors and assigns, "**Petitioner**"), and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording privilege tax due, pursuant to § 40-22-2(8), Code of Alabama 1975, for the privilege of recording the mortgages listed in the schedule below (collectively, the "**Alabama Mortgages**"), which secure obligations of the Alabama Mortgagors (defined below) as well as certain other obligors (collectively, the "**Borrowers**") to Petitioner (the "**Obligations**"):

**Schedule of Alabama Mortgages:**

| "Alabama Mortgagors" | County to be recorded and street address | Value of Mortgaged Property |
|---|---|---|
| StoreEase Moody, LLC | **Saint Clair County**<br>5152 Barrington Parkway<br>Moody, AL 35004 | $6,100,000 |
| LSF II Fultondale, LLC | **Jefferson County**<br>3006 Decatur Highway<br>Fultondale, AL 35068 | $8,275,000 |
| The Boyd-Tucker Company Helena, LLC | **Shelby County**<br>32 Magnolia Parkway<br>Helena, AL 35080 | $9,400,000 |
| | | **Total: $23,775,000** |

In addition to the real property, fixtures and related collateral located within the State of Alabama and described in the Alabama Mortgages, the Obligations are secured by deeds to secure debt and/or other security instruments on additional real property, fixtures, inventory, accounts receivable and personal property located outside the State of Alabama.

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

1. That the total amount of the principal indebtedness of the Obligations secured by the Alabama Mortgages is $50,000,000.00.

2. That the total value of all property granted as security for the Obligations, located both within and without the State of Alabama is $75,525,000.00.

3. That the total value of all the property encumbered by the Alabama Mortgages and located within the State of Alabama is $23,775,000.00 as detailed in the schedule above.

4. That the total maximum amount of principal indebtedness of the Obligations to be secured by the Alabama Mortgages which is allocable to the State of Alabama and upon which tax is due is $15,740,000.00, being based on 31.48% of the total value of all property securing such Obligations.

5. That the amount of mortgage recording privilege tax due to be paid upon recordation of the Alabama Mortgages, calculated at the rate of $.15 per each $100.00 of such Obligations, or fraction thereof, is $23,610.00, which shall be allocated amongst the Counties as set forth in the schedule below:

| **County to be recorded and street address** | **Value of Mortgaged Property** | **Percent of all Alabama Collateral**<br><br>**Value/$23,775,000** | **Amount of mortgage tax due upon recording**<br><br>**% x $23,610.00** |
|---|---|---|---|
| **Saint Clair County**<br>5152 Barrington Parkway<br>Moody, AL 35004 | $6,100,000 | 25.66% | $6,058.33 |
| **Jefferson County**<br>3006 Decatur Highway<br>Fultondale, AL 35068 | $8,275,000 | 34.80% | $8,216.28 |
| **Shelby County**<br>32 Magnolia Parkway<br>Helena, AL 35080 | $9,400,000 | 39.54% | $9,335.39 |
| **TOTALS:** | **$23,775,000** | **100%** | **$23,610.00** |

**IT IS ORDERED, THEREFORE**, as follows:

1. That the amount of the indebtedness under the Alabama Mortgages allocable to Alabama and upon which mortgage recording privilege tax will be due under § 40-22-2, Code of Alabama 1975, as amended, is $23,775,000.00.

2. That the total amount of mortgage recording privilege tax that will be due under § 40-22-2, Code of Alabama 1975, as amended, upon the filing for

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record of all the Alabama Mortgages in the State of Alabama is $23,610.00 (the "**Recording Privilege Tax**").

3. That the amount of the Recording Privilege Tax that will be due under § 40-22-2, Code of Alabama 1975, as amended, upon the filing for record of each of the Alabama Mortgages in each County shall be:

| **Alabama Mortgage to be recorded** | **Amount of Recording Privilege Tax due upon recording:** |
|---|---|
| **Saint Clair County**<br>5152 Barrington Parkway<br>Moody, AL 35004 | $6,058.33 |
| **Jefferson County**<br>3006 Decatur Highway<br>Fultondale, AL 35068 | $8,216.28 |
| **Shelby County**<br>32 Magnolia Parkway<br>Helena, AL 35080 | $9,335.39 |
| **TOTALS:** | **$23,610.00** |

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**DONE**, this 24th day of May, 2022.

Attest:

By: Mary Martin Mitchell
Secretary

**STATE OF ALABAMA DEPARTMENT OF REVENUE**

By: Derrick Coleman
Assistant Commissioner of Revenue

W. [signature]
Legal Division