



20220616000242510 1/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

This Instrument Prepared By:

Steffanie M. Speck, Esq.
Brock Shipe Klenk PLC
265 Brookview Centre Way, Ste 604
Knoxville, Tennessee 37919
Tel. (865) 338-9700

Purchase Money

STATE OF ALABAMA)
)
COUNTY OF SHELBY) **MORTGAGE, ASSIGNMENT OF RENTS AND LEASES
 AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (herein this "**Mortgage**") effective as of the 14th day of June, 2022, between **UNIVERSITY COMMUNITY LLC**, an Alabama limited liability company (the "**Mortgagor**") and **CITIZENS BANK**, a Tennessee banking corporation (the "**Mortgagee**").

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

WITNESSETH:

WHEREAS, Mortgagee and Mortgagor are parties to that Loan Agreement dated as of the date hereof (as such may be amended, restated, or otherwise modified from time to time, the "**Loan Agreement**"), pursuant to the terms of which Mortgagee extended to Mortgagor a loan in the principal sum of TWO MILLION FOUR HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$2,480,000.00) (the "**Loan**"), as evidenced by a promissory note dated as of even date herewith, in the principal amount of the Loan and payable to the Mortgagee with interest thereon as provided therein (as such may be amended, restated, or otherwise modified from time to time, the "**Note**"); and

WHEREAS, Mortgagor may hereafter become indebted to the Mortgagee or to a subsequent holder of this Mortgage on loans or otherwise (the Mortgagee and any subsequent holder of this Mortgage being referred to herein as the "**Lender**"); and

WHEREAS, Lender is willing to make the Loan to Mortgagor only on the condition that Mortgagor grant to Lender a mortgage on certain real property owned by Mortgagor commonly known as 5606 Highway 25, Montevallo, Alabama 35115, as more particularly described in attached Exhibit A, together with any other property more particularly described herein; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Mortgagor to Lender, including, but not limited to, all indebtedness and obligations of Mortgagor to Lender (or an affiliate of Lender) under any interest rate swap transaction, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements made in connection with the Loan, the terms of which are incorporated herein by reference, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise (herein "**Other Indebtedness**").

NOW, THEREFORE, Mortgagor, in consideration of Mortgagee making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications, and refinancings of the same, and any charges herein incurred by Lender on account of Mortgagor including, but not limited to, attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth in the Loan Agreement, the Note and in all other documents evidencing, securing or executed in connection with the Loan (the Loan Agreement, this Mortgage, the Note and such other documents are sometimes referred to herein as the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**"), has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture and personal property (which, together with any additional such property in the possession of Lender or hereafter acquired by Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time, is hereinafter sometimes referred to as the "**Mortgaged Property**") to wit:

(a) All that tract or parcel or parcels of land and estates particularly described on Exhibit A, attached hereto and made a part hereof (collectively the "**Land**");

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements, and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings, and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**");

(c) All accounts, general intangibles, contracts and contract rights relating to the Land and the Improvements, whether now owned or existing or hereafter created, acquired, or arising, including without limitation all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;

(d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating, or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and 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 Mortgagor of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Land and the Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and

(ii) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and the Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or

otherwise) to the Land and the Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums, or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released.

(e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing; and

(f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if Mortgagor shall fully pay or cause to be fully paid to Lender the principal and interest payable with respect of the Loan and the Note, and any extensions, renewals, modifications, and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall pay all charges incurred herein by Lender on account of Mortgagor, including, but not limited to, attorneys' fees, and shall pay any and all Other Indebtedness, and shall keep, perform, and observe all and singular the covenants, conditions, and agreements in this Mortgage, in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of Mortgagor, all without fraud or delay, and (ii) Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document or any Other Indebtedness Instrument (including, without limitation, advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect;

AND, Mortgagor further represents, warrants, covenants, and agrees with Lender as follows:

ARTICLE I GENERAL

1.1 **Performance of Mortgage, Note, and Loan Documents.** Mortgagor, to the full extent applicable, shall perform, observe and comply with all provisions hereof and of the Loan Documents, and shall duly and punctually pay to Lender all sums required to be paid pursuant to the provisions of this Mortgage and of the Loan Documents.

1.2 **Warranty of Title.** Mortgagor hereby warrants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on Exhibit A hereto, and has good and absolute title to all existing personal



property hereby granted as security, and has good right, full power, and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of Mortgagor to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications, and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.4 Monthly Deposits. At the option of the Lender and further to secure the payment of the taxes, assessments and other sums referred to in Paragraph 1.5 and the premiums on the insurance referred to in Paragraph 1.6, the Mortgagor shall deposit with the Lender, on the due date of each installment under the Note, such amounts as, in the estimation of the Lender, shall be necessary to pay such charges as they become due; said deposits to be held by the Lender, and to be used by the Lender to pay current taxes and assessments, insurance premiums and other charges on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by the Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of the Lender. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, the Mortgagor will deposit with the Lender such additional sum or sums as may be required in order for the Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon the occurrence of any Event of Default hereunder, the Lender may, at its option, apply any money in the fund relating to said deposits to the payment of the Loan and the Other Indebtedness in such manner as it may elect.

1.5 Other Taxes, Utilities, and Liens.

(a) Mortgagor shall pay or cause to be paid promptly, when and as due, and, if requested, will exhibit promptly to Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.4 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) Mortgagor promptly shall pay or shall cause to be paid and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon their portion of any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws

now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Lender.

1.6 Insurance.

(a) Upon the request of Lender, Mortgagor, at its sole cost and expense, shall procure for, deliver to and maintain for the benefit of Lender during the term of this Mortgage, original paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee lender loss payable endorsement in favor of Lender, providing the following types of insurance covering the Mortgaged Property and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) at Lender's request upon completion of any improvements, insurance against loss or damage by such hazards as are presently included in so-called "all risk" coverage and such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Mortgaged Property without deduction for depreciation or, if less, the balance of the Note and the Other Indebtedness plus an amount equal to the interest that will accrue on the Note and the Other Indebtedness during the following year; and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) during the course of any development, construction or repair of the Mortgaged Property, builder's risk insurance to the extent of the full insurable value of the Improvements;

(iii) comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury," including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to name Lender as additional insured thereunder and to afford immediate minimum protection to a limit of not less than that required by Lender with respect to personal injury or death to any one or more persons or damage to property;

(iv) worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Mortgagor and Mortgagor's general contractor, if any, engaged on or with respect to the Mortgaged Property, in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;

(v) if the Land is located in an area designated by the United States Department of Housing and Urban Development as having special flood hazards, a flood insurance policy in form, substance and amount satisfactory to Lender; and

(vi) such other insurance on the Mortgaged Property or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties, which at the time are commonly insured against in the case of Mortgaged Property similarly situated, due regard being given to the height and type of the

Improvements, the construction, location, use and occupancy thereof and of any replacements or substitutions therefor.

(b) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor.

(c) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.6, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Mortgagor shall, upon request, deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or Lender, as the case may be, and Lender is hereby irrevocably appointed by Mortgagor as attorney-in-fact for Mortgagor to assign any such policy to said purchaser or to Lender without accounting to Mortgagor for any unearned premiums thereon.

(d) All policies of insurance required pursuant to the terms of this Paragraph 1.6 shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Paragraph 1.6, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by Mortgagor, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Note and the Other Indebtedness and shall be secured by this Mortgage.

1.7 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the respective Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. Mortgagor promptly shall notify Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. Lender shall be entitled to retain, at the expense of the respective Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to Mortgagor or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

20220616000242510 6/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

1.8 Care of Mortgaged Property.

(a) Mortgagor will preserve and maintain, or cause to be preserved and maintained, the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect Mortgagor's or Mortgagor's agent's records, with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor will give immediate written notice thereof to Lender. If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagor will promptly restore, or cause to be restored, the Mortgaged Property to the equivalent of its original condition; provided, however, Mortgagor shall not be obligated so to restore unless, in each instance, Lender agrees to make available to Mortgagor (pursuant to a procedure satisfactory to Lender) any net insurance proceeds actually received by Lender hereunder in connection with such casualty loss, to the extent such proceeds are required to defray the expense of such restoration. The insufficiency of any such insurance proceeds to defray the entire expense of restoration shall in no way relieve Mortgagor of its obligation to restore. In the event all or any portion of the Mortgaged Property shall be damaged or destroyed by fire or other casualty, Mortgagor shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Mortgaged Property (as determined by Lender in its good faith judgment) exceeds the actual net insurance proceeds with respect to such damage or destruction. Notwithstanding the foregoing, in the event Mortgagor has an obligation to restore the Mortgaged Property under the terms of this Paragraph, in lieu of such work, Mortgagor may, upon the written consent of Lender, grant Lender a first lien security interest on other real or personal property acceptable to Lender which is valued at such time in an amount equal to or greater than the value of the Mortgaged Property on the date hereof.

1.9 Further Assurance; After-Acquired Property.

(a) At any time, and from time to time, upon request by Lender, Mortgagor, at Mortgagor's expense, will make, execute, and deliver, or cause to be made, executed, and delivered, to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by Lender any and all such other and further mortgages, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Mortgagor under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney in fact of Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

(b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.9, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by

Mortgagor by whatsoever means, including that in the event Mortgagor is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage, Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of Mortgagor or Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Mortgagor hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. Lender also shall have and hereby is granted a security interest in all monies, securities, and other property of Mortgagor, now or hereafter assigned, held, received, or coming into the possession, control, or custody of Lender by or for the account of Mortgagor (including indebtedness due from Lender to Mortgagor, and any and all claims of Mortgagor against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as Lender may determine, any such monies, securities or other property held or controlled by Lender. No such application of funds shall, unless otherwise expressly agreed by Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.11 Contracts Affecting Mortgaged Property. As additional collateral and further security for the Note and the Other Indebtedness, Mortgagor does hereby assign to Lender Mortgagor's interest in any and all franchise agreements, management contracts, development contracts, construction contracts, and other contracts, licenses and permits now or hereafter affecting the Mortgaged Property, or any part thereof, and Mortgagor agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Lender to any lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract or other contract, license or permit, or to impose upon Lender any obligation with respect thereto. Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder.

1.12 Expenses. Mortgagor shall pay or reimburse Lender for all reasonable attorneys' fees, costs, and expenses incurred by Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Mortgagor, Mortgagor or the Mortgaged Property including, but not limited to, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.



1.13 **Performance by Lender of Defaults by Mortgagor.** If Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.4 and 1.5 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or if Mortgagor shall default in the performance or observance of any other covenant, condition, or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note, plus two percentage points (2%). Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor for trespass or otherwise.

1.14 **Books and Records.** Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of Lender, Mortgagor shall furnish to Lender, within ninety (90) days after the end of the respective fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender.

1.15 **Estoppel Affidavits.** Mortgagor shall, within ten (10) days after written request from Lender, furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.16 **Alienation or Sale of Mortgaged Property.** Mortgagor shall not directly or indirectly encumber, pledge, convey, transfer, or assign any or all of its interest in the Mortgaged Property without the prior written consent of Lender. At the option of Lender, the Note and Other Indebtedness shall be immediately due and payable in the event that Mortgagor conveys all or any portion of the Mortgaged Property or any interest therein, or in the event that Mortgagor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, including, without limitation, the transfer or conveyance of any interest in Mortgagor, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Note and Other Indebtedness due and payable for any subsequent transfer. For purposes of this Paragraph, any sale or transfer of membership interests in Mortgagor shall be deemed a transfer of the Mortgaged Property.

1.17 **Environmental Compliance Matters.** Mortgagor represents, warrants and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property, except in compliance with all applicable environmental laws, rules, regulations, and court and administrative orders. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials



defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. Sections 6901, et seq.), the Clean Water Act (33 U.S.C. Sections 1251, et seq.), the Clean Air Act (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("OSHA") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property, except in compliance with all applicable environmental laws, rules, regulations, and court and administrative orders;

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

(e) Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, Mortgagor represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("ADA") (42 U.S.C. Sections 12101, et seq.) and the Rehabilitation Act of 1973 ("Rehabilitation Act") (29 U.S.C. Sections 749, et seq.), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto; and

(f) Mortgagor shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Mortgagor agrees to and does hereby indemnify and hold Lender harmless from all loss, cost, damage, claim, and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Mortgagor's failure to perform, or cause to be performed, any obligations of this Paragraph 1.17, (iii) Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules, and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.



20220616000242510 10/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

1.18 **Inspection Rights and Easements.** In addition to other inspection rights of Lender, Mortgagor shall and hereby does grant and convey to Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration, and testing and groundwater testing (herein “**Inspections**”), as Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to Lender, Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by Lender with respect to any Inspections which Lender may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid or cause to be repaid by Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 **Use, Governmental Compliance, etc.** Mortgagor shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement, or otherwise as permitted in writing by Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a “**Governmental Authority**” means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) “**Governmental Requirements**” means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.1 **Assignment.** Mortgagor, in consideration of Lender’s making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications, and refinancings of same, and any charges herein incurred by Lender on account of Mortgagor, including, but not limited to, attorneys’ fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto Lender all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including, without limitation, those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues, and profits now due and which may hereafter become due under or by



20220616000242510 11/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Lender, and Mortgagor does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth. Mortgagor shall furnish to Lender, within thirty (30) days after a request by Lender to do so, a sworn statement setting forth the names of all lessees and tenants of the Mortgaged Property, the terms of their respective leases, tenant contracts or rental agreements, the space occupied and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements.

2.2 Prepayment of Rent. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. Lender shall not be bound by any payment of rental or additional rental for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee or tenant of its obligations under said lease, tenant contract or rental agreement. Mortgagor agrees that they will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.3 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Mortgagor.

2.4 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagor shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Mortgagor's respective right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

2.5 No Obligation of Lender under Leases. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and Mortgagor shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should Lender incur any such

liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said leases, subleases or agreements, Mortgagor agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.6 **Instruction to Lessees.** Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to Lender upon receipt of demand from the said Lender to pay the same.

2.7 **Default (Assignment).** Upon the occurrence of any Event of Default, as described in Paragraph 4.1 of this Mortgage, then, in addition to the right to demand and collect directly from tenant's rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT



20220616000242510 13/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

3.1 **Grant of Security Interest.** Mortgagor ("debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "secured party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Mortgagor, including, but not limited, to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral").

3.2 **Definitions.** All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein.

3.3 **Financing Statements.** No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Mortgagor and Lender. At Lender's request, Mortgagor will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable. Mortgagor authorizes Lender to prepare and to file financing statements covering the Collateral signed only by Lender and to sign Mortgagor's signatures to such financing statements in jurisdictions where Mortgagor's signature is required. Mortgagor promises to pay or cause to be paid to Lender the fees incurred in filing the financing statements, including, but not limited to, mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.4 **Representations of Mortgagor (Collateral).** With respect to all of the Collateral, Mortgagor, represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes.

(b) All the Collateral will be kept at the address of Mortgagor shown in Paragraph 5.8(a) or, if not, at the real property described in Exhibit A hereto. Mortgagor promptly shall notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Mortgagor's business, Mortgagor, its agents or employees, will not remove the Collateral from said locations without the prior written consent of Lender.

(c) If certificates of title are issued or outstanding with respect to any of the Collateral, Mortgagor shall cause Lender's interest to be properly noted thereon.


(d) Mortgagor's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to Lender. Mortgagor promptly shall advise Lender in writing of any change in its name.

3.5 **Assignment of Liabilities.** If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

3.6 **No Obligation of Lender under Assigned Contracts.** Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and Mortgagor shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said contracts or agreements, Mortgagor agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Mortgagor all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

3.7 **Default (Security Agreement).** Upon the occurrence of any Event of Default, as described in Paragraph 4.1 of this Mortgage, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES


20220616000242510 14/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

4.1 **Events of Default.** The terms "Default" or "Event of Default," wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

4.1.1 Failure by Mortgagor to duly observe or perform any other term, covenant, condition, or agreement of this Mortgage; or

4.1.2 Any warranty of Mortgagor contained in this Mortgage proving to be untrue or misleading in any material respect; or

4.1.3 Except with respects to any encumbrances which Lender has previously approved, as set out in Schedule B of the title insurance policy and endorsements insuring this Mortgage, any claim of priority to this Mortgage, by title, lien or otherwise, is asserted in any legal or equitable proceeding, except as otherwise expressly permitted by Lender; or

4.1.4 Subject to any applicable cure periods expressly set forth therein, any default or event of default, whether by Mortgagor or any guarantor of the Loan occurring under any of the other Loan Documents, each of which is incorporated herein by this reference, including, but not limited to, the Note and the Loan Agreement.

With respect to a Default Condition described in Sections 4.1.1 and 4.1.2, above, that is capable of being cured (a "Curable Default"), the occurrence of such Curable Default shall not constitute a Default Condition hereunder if such Curable Default is fully cured and/or corrected within thirty (30) days (or within fifteen (15) days, if such Curable Default may be cured by payment of a sum of money) of notice thereof to Mortgagor given in accordance with the provisions hereof; provided, however, that this provision shall not require notice to Mortgagor and an opportunity to cure any Curable Default of which Mortgagor has had actual knowledge for the requisite number of days corresponding thereto as hereinabove set forth.

4.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the indebtedness (including, but not limited to, the Loan and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or on such parts as Lender may elect) shall, at the option of Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.3 **Rights of Lender to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender, as attorney in-fact or agent of Mortgagor or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as

Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys so received by Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.4; third to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.4 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) Mortgagor shall pay to Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.4; and all such expenses shall be secured by this Mortgage.

4.5 **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as Lender may elect.

4.6 **Rights of a Secured Party.** Upon the occurrence of an Event of Default, Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

(a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;



20220616000242510 16/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

(b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;

(c) The right to require Mortgagor, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Mortgagor and Lender; and

(d) The right to notify account debtors and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Mortgagor does hereby irrevocably appoint Lender attorney-in-fact for Mortgagor with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Mortgagor could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.7 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, 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 Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged 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 as Lender may elect. The provisions of Paragraph 4.6 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.8 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.7, or any sale pursuant to Paragraph 4.6, shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

(c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

4.9 **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 a reasonable attorneys' 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 this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, 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 to be by Mortgagor, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

4.11 **Suits to Protect the Mortgaged Property.** Lender shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

4.12 **Mortgagor to Pay the Note on any Default in Payment; Application of Moneys by Lender.** If default shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of Lender, Mortgagor shall pay to Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case Mortgagor shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of Lender's agents and attorneys.

4.13 **Delay or Omission No Waiver.** No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

4.14 **No Waiver of One Default to Affect Another.** No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then-existing default or shall impair any rights, powers or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, any of the other Loan Documents or the Other

Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the other Loan Documents, or the Other Indebtedness Instruments of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice to any person, corporation or other entity hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 **Discontinuance of Proceedings — Position of Parties Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

4.16 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

ARTICLE V MISCELLANEOUS

5.1 **Binding Effect.** Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, Mortgagor shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of Lender.

5.2 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.3 **Gender; Number.** Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.4 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, in the other Loan Documents and in the Other Indebtedness Instruments shall be in no way be affected, prejudiced or disturbed thereby.

5.5 **Loan Documents.** Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.6 **Instrument under Seal.** This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

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

(a) Name of Mortgagor:	University Community LLC
Address of Mortgagor:	1325 Timbergrove Dr Knoxville, TN 37919
(b) Name of Lender (Secured Party):	Citizens Bank
Address of Lender	5426 Homberg Drive Knoxville, TN 37919 Attn: Mr. Andrew Ford, Vice President

5.8 **Applicable Law.**


(a) Governing Law; Jurisdiction; Service of Process. **WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS CREATED UNDER THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF TENNESSEE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TENNESSEE, AS SET FORTH IN THE GOVERNING LAW PROVISIONS OF THE LOAN AGREEMENT.**

(b) Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Rate (as defined in the Note), (b) in calculating whether any

interest exceeds the Maximum Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal Indebtedness of Mortgagor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding Indebtedness of Mortgagor to Lender, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

(c) Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

5.9 **Mortgagor.** Wherever in this Mortgage Mortgagor agrees or consents to a matter relating to the Mortgaged Property, such agreement or consent shall be deemed to be made "to the extent of Mortgagor's interests," whether or not so stated.



20220616000242510 21/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

[Remainder of page intentionally left blank; signatures on the following page.]



20220616000242510 22/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

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

MORTGAGOR:

University Community LLC,
an Alabama limited liability company

By: Pietro Capital, LLC,
a Tennessee limited liability company
Its Manager

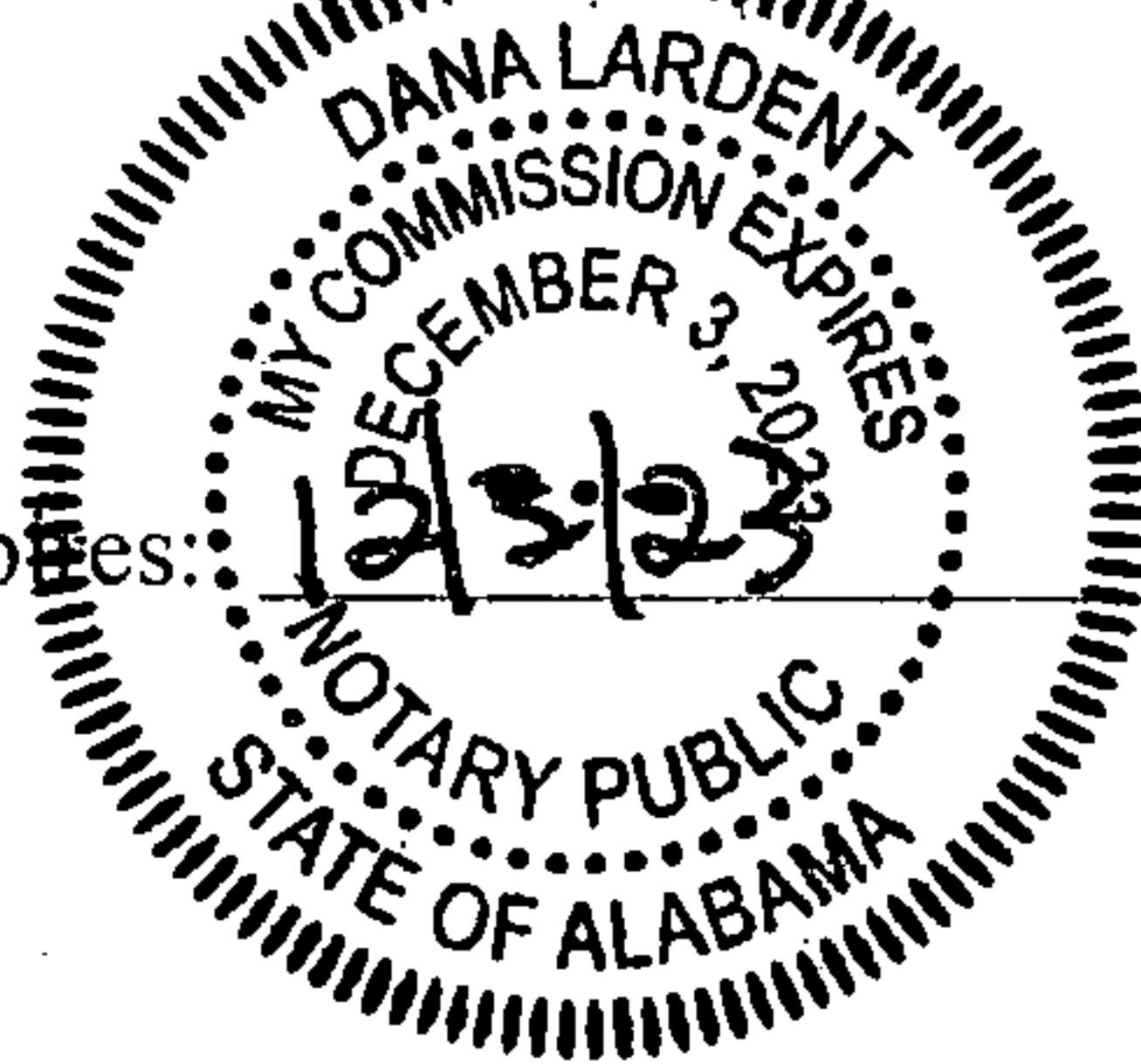
By:

Name: Peter J. Pratti, III
Title: Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Before me, the undersigned notary public of the state and county aforesaid, personally appeared PETER J. PRATTI, III, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself to be the manager of Pietro Capital, LLC, a Tennessee limited liability company, being the Manager of UNIVERSITY COMMUNITY LLC, the within-named bargainor, an Alabama limited liability company, and that he as such manager of the Manager, executed the foregoing instrument for the purpose therein contained by signing the name of University Community LLC as the manager of the Manager.

Witness my hand and seal in office this 14th day of June, 2022.



My Commission Expires: 12/3/23

Notary Public

EXHIBIT A

Description of Mortgaged Property

20220616000242510 23/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT

Parcel I

A parcel of land located in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 2, Township 24 North, Range 12 East, Shelby County, Alabama, being more particularly described as follows:

Beginning at the Southwest corner of the Northeast $\frac{1}{4}$ of said Section 2; thence North 00 degrees 45 minutes 48 seconds East along the West line of said Southwest $\frac{1}{4}$ of Northeast $\frac{1}{4}$ a distance of 111.13 feet to its intersection with the Southerly right of way line of Alabama highway Number 25; thence South 86 degrees 14 minutes 03 seconds East, along said right of way line a distance of 132.67 feet; thence North 04 degrees 06 minutes 20 seconds East along said right of way line a distance of 16.18 feet; thence South 86 degrees 14 minutes 03 seconds East along said right of way line, a distance of 68.16 feet to the point of beginning; thence continue along last described course a distance of 223.88 feet; thence leaving said right of way line, South 01 degrees 00 minutes 26 seconds West, a distance of 988.69 feet; thence North 88 degrees 10 minutes 13 seconds West, a distance of 126.40 feet; thence North 01 degrees 49 minutes 47 seconds East a distance of 73.74 feet; thence North 88 degrees 10 minutes 13 seconds West a distance of 111.01 feet; thence North 00 degrees 48 minutes 56 seconds East, a distance of 165.59 feet; thence North 05 degrees 42 minutes 40 seconds East a distance of 114.93 feet; thence North 00 degrees 48 minutes 56 seconds East a distance of 513.59 feet; thence North 03 degrees 28 minutes 49 seconds East a distance of 128.74 feet to the point of beginning.

Parcel II

A parcel of land located in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 2, Township 24 North, Range 12 East, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the Northeast $\frac{1}{4}$ of said Section 2, said point being the point of beginning; thence South 00 degrees 45 minutes 48 seconds West, along the West line of said Northwest $\frac{1}{4}$ - Southeast $\frac{1}{4}$, a distance of 1226.85 feet; thence South 87 degrees 14 minutes 18 seconds East, a distance of 419.69 feet; thence North 01 degrees 00 minutes 26 seconds East, a distance of 359.83 feet; thence North 88 degrees 10 minutes 13 seconds West a distance of 126.40 feet; thence North 01 degrees 49 minutes 47 seconds East, a distance of 73.74 feet; thence North 88 degrees 10 minutes 13 seconds West a distance of 111.01 feet; thence North 00 degrees 48 minutes 58 seconds East, a distance of 165.59 feet; thence North 05 degrees 42 minutes 40 seconds East a distance of 114.93 feet; thence North 00 degrees 48 minutes 56 seconds East a distance of 513.59 feet; thence North 03 degrees 28 minutes 49 seconds East a distance of 128.74 feet to a point lying on the Southerly right of way line of Alabama Highway Number 25; thence North 86 degrees 14 minutes 03 seconds West along said right of way line a distance of 68.16 feet; thence South 04 degrees 06 minutes 20 seconds West along said right of

way line a distance of 18.18 feet; thence North 86 degrees 14 minutes 03 seconds West along said right of way line a distance of 132.67 feet to its intersection with the West line of said Southwest $\frac{1}{4}$ - Northeast $\frac{1}{4}$; thence South 00 degrees 45 minutes 48 seconds West, along said $\frac{1}{4}$ - $\frac{1}{4}$ line a distance of 111.13 feet to the point of beginning.



20220616000242510 24/24 \$3811.00
Shelby Cnty Judge of Probate, AL
06/16/2022 12:28:26 PM FILED/CERT