

A. The tract(s) or parcel(s) of land located in Shelby County, Alabama, and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "***Property***");

B. All Improvements (as defined in Article I hereof);

C. All Appurtenant Rights (as defined in Article I hereof); and

D. All Rents (as defined in Article I hereof); and

E. All Proceeds (as defined in Article I hereof).

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay to the Lender the Obligations, at the times and in the manner stipulated herein, in the Note and in the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall cause all other obligated parties to, keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents expressed to be kept, performed, and observed, all without fraud or delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

ARTICLE I **DEFINED TERMS**

1.1 **Defined Terms.** As used herein, the following terms will have the following meanings:

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, flowers, shrubs, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Property, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any other Mortgaged Property, or any part thereof.

"Improvements" means all buildings, structures, fixtures and improvements of every nature whatsoever now or hereafter situated on the Property, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, air conditioning equipment, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, signs, landscaping, and parking areas, which are or shall be attached to the Property or said buildings, structures or improvements.

"Loan Documents" means, collectively, this Mortgage, the Note, together with any and all other documents executed by Borrower or others, evidencing, securing, or otherwise relating to the Loan, as the same may be amended from time to time.

"Obligations" means the aggregate of all principal and interest owing from time to time under the Note and all expenses, charges and other amounts from time to time owing under the Note, this Mortgage,

or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents.

"Permitted Encumbrances" means all matters set forth as exceptions to the title policy insuring the lien of this Mortgage or as otherwise approved by Lender.

"Proceeds" means all proceeds (whether cash or non-cash, moveable or immovable, tangible or intangible), including proceeds of insurance and condemnation, from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Mortgaged Property.

"Rents" means all rent and other payments of whatever nature from time to time payable pursuant to any lease of the Property.

1.2 **Singular and Plural.** Singular terms shall include the plural forms and vice versa, as applicable of the terms defined.

1.3 **References.** All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

All other capitalized terms not otherwise defined in this Mortgage shall have the meanings set forth in the Loan Documents.

ARTICLE II

COVENANTS, AGREEMENTS, AND REPRESENTATIONS OF BORROWER

2.1 **Performance of Loan Documents.** The Borrower will perform, observe, and comply with all provisions hereof and of each of the other Loan Documents and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower. The payment and performance of all Obligations are secured by this Mortgage.

2.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged and has good and absolute title to all other Mortgaged Property in which a security interest is herein granted 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, except for Permitted Encumbrances the same are free and clear of all liens, charges, and encumbrances whatsoever. Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

2.3 **Taxes, Liens and Other Charges.**

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and, upon request, shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law.

(b) Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees, if any, which may now or hereafter be levied upon, or assessed or charged against the Note, this Mortgage or any other Loan Documents.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Mortgaged Property, as required by the Loan Documents; and all utility charges which are incurred by Borrower for the benefit of the Mortgaged Property, or which may become a charge or lien against the Mortgaged Property for gas, electricity, water and sewer services and the like furnished to the Mortgaged Property, and all other public or private assessments or charges of a similar nature affecting the Mortgaged Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Borrower shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may reasonably require.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other Lien (except as may be expressly permitted by the Loan Documents) to be created or remain outstanding against the Mortgaged Property; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded off and removed as an encumbrance upon the Mortgaged Property.

2.4 **Insurance Proceeds.** After the happening of any casualty to the Mortgaged Property or any part thereof, Borrower shall give prompt written notice thereof to Lender.

(a) In the event of any damage to or destruction of the Mortgaged Property, Lender shall have the option, in its sole discretion, of applying or paying all or part of any insurance proceeds (i) to any Obligations and in such order as Lender may determine, or (ii) to Borrower for the purpose of restoration of the Improvements, or (iii) to Borrower, or (iv) to any combination of the foregoing.

(b) In the event of such loss or damage, all proceeds of insurance shall be payable to Lender, and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. Lender is hereby authorized and empowered by Borrower to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

(c) Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Mortgaged Property as provided in this Mortgage or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

2.5 **Condemnation.**

(a) 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 authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Mortgaged Property which does not in Lender's reasonable opinion adversely affect access to or use of the Mortgaged Property or operation of the Mortgage Property, the entire Obligations secured hereby shall at the option of the Lender become immediately due and payable.

2.6 **Care of Mortgaged Property.**

(a) Borrower will keep the Improvements in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Mortgaged Property or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Property.

(b) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(c) If all or any part of the Mortgaged Property deemed material in Lender's sole discretion shall be damaged by fire or other casualty, the entire Obligations secured hereby shall at the option of Lender become immediately due and payable.

2.7 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be reasonably deemed necessary by Lender (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable the Lender to exercise and enforce its rights and remedies hereunder in respect of the Mortgaged Property; or (iii) to effect otherwise the purposes of this Mortgage, including, without limitation: (A) filing such financing or continuation statements, or amendments thereto, as may be reasonably necessary or that the Lender may request in order to perfect and preserve the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower; (B) if certificates of title are now or hereafter issued or outstanding with respect to any of the Mortgaged Property, by immediately causing the interest of Lender to be properly noted thereon at Borrower's expense; and (C) furnishing to the Lender from time to time statements and schedules further identifying and describing the Mortgaged Property and such other reports in connection with the Mortgaged Property as the Lender may reasonably request, all in reasonable detail. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, continuation statements, or amendments thereto, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

2.8 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage, the Note or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage, the Note, or any other Loan Document that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Mortgage, the Note and any other Loan Documents.

2.9 Legal Actions. In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, the Note, the Obligations or the validity or priority of this Mortgage, Borrower shall immediately, upon demand, reimburse Lender for all out-of-pocket costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Obligations and shall be secured by this Mortgage.

2.10 **Assignment of Rents.** This Mortgage constitutes a present assignment to Lender of all Rents; provided, however, unless an Event of Default exists Borrower shall have a revocable license to collect the Rents as they become due (but not further in advance than one (1) month). Upon the occurrence of an Event of Default, the license of Borrower to collect Rents shall be automatically revoked and terminated, and any lessee or assignee is authorized and directed by Borrower to pay all Rents thereafter accruing directly to Lender. Rent so received by Lender, unless released to Borrower at Lender's sole option, shall be applied to the Obligations in such order as Lender may elect. Lender shall not be liable to any lessee, assignee or sublessee by virtue of its collection of Rents and shall not be liable to Borrower for its failure to collect Rents or failure to exercise diligence in attempting to collect Rents, but shall be accountable only for Rents actually received.

ARTICLE III **EVENTS OF DEFAULT; REMEDIES**

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

(a) The failure of the Borrower properly and timely to perform or observe any covenant or condition set forth in this Mortgage or any other Loan Document which is not cured within applicable cure periods as set forth herein or therein or, if no cure period is specified therefor, is not cured within thirty (30) days of Lender's notice to Borrower of such default; or

(b) The occurrence of any Event of Default (as therein defined) under any other Loan Documents; or

(c) The sale, transfer, assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or any part thereof or any interest therein, including a sale or transfer in lieu of condemnation, or, except for Permitted Encumbrances, any further encumbrance of the Mortgaged Property, unless the prior written consent of Lender is obtained (which consent may be withheld with or without cause in Lender's discretion). Borrower consents to providing notice of any lease, execution, termination, default, etc.

3.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Obligations shall, at the option of the Lender, immediately become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.3 **Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the default rate of interest set forth in the Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby 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 term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

3.4 **Receiver.** If any Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Obligations, 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 and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Property is situated. Borrower will pay unto Lender upon demand all reasonable expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Obligations and shall be secured by this Mortgage.

3.5 **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as herein 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 Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable Alabama law, and (c) to pursue any other remedy available to it hereunder, or under any other Loan Documents, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

3.6 **Purchase by Lender.** Upon any foreclosure sale of the Mortgaged Property, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

3.7 **Application of Foreclosure Proceeds.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees and expenses (and attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges, including utility charges and any other amounts advanced by Lender hereunder, and interest thereon; then to payment of the Obligations in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower or to the person or entity lawfully entitled thereto.

3.8 **Waiver of Exemption.** Borrower hereby waives and renounces all exemption rights, if any, provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part thereof.

3.9 **Suits to Protect the Mortgaged Property.** The Lender shall have power (a) to 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 any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents, and profits arising therefrom, and (c) to 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 the Lender.

3.10 **Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred, Borrower, 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 itself, or by such officers or agents as it may appoint, may enter and take

possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Obligations and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, 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 insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Anything in this Section to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender; and

(d) Whenever all the Obligations shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Borrower and its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.11 **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property (or any part thereof) at public outcry to the highest bidder for cash in front of the Court House door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, 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 Lender may elect.

3.12 **Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, 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 Property and Improvements, 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 the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale.

3.13 **Borrower as Tenant Holding Over.** In the event of any such foreclosure sale, Borrower (if it shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession

to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

3.14 Waiver of Appraisal, Valuation, Etc. Borrower agrees, to the full extent permitted by law, that in case of a Default hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under Borrower, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

3.15 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power 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 in every such case, Borrower 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 proceedings had occurred.

3.16 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and it may pursue inconsistent remedies.

3.17 Waiver.

(a) No delay or omission by Lender or by 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 this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage, other Loan Documents, or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-

signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Obligations; (ii) take other or additional security for the payment of any of the Obligations; (iii) waive or fail to exercise any right granted herein, in the Note, in other Loan Documents; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Mortgage, other Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. 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, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property, the Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, 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 liabilities, obligations or undertakings of Borrower, any guarantors or others.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, marshalling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower or its representatives, successors or assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that it may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

(d) The Borrower, for itself and all other parties claiming under the Borrower, hereby waives all claims for marshalling-of-assets under applicable law.

(e) Borrower makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Borrower.

3.18 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE IV
SECURITY AGREEMENT; MISCELLANEOUS

4.1 **Security Agreement.** This Mortgage creates a lien on and a security interest in that part of the Mortgaged Property which constitutes personal property under any applicable Uniform Commercial Code, and shall constitute a security agreement under the applicable Uniform Commercial Code or other law applicable to the creation of liens on personal property. This Mortgage shall constitute a financing statement under the applicable Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party." If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the applicable Uniform Commercial Code. Written notice shall be mailed to Borrower as provided herein five (5) days prior to the date of public sale of the Mortgaged Property or prior to the date after which private sale of the Mortgaged Property will be made shall constitute reasonable notice. Any sale of all or any part of the Mortgaged Property shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with, or included with, the sale of real property described herein under power of sale as provided in this Mortgage.

4.2 **Assembly of Mortgaged Property.** Upon the occurrence of an Event of Default, the Borrower shall assemble, if requested by the Lender, at its expense, all of the personal property which is part of the Mortgaged Property and the documents evidencing such personal property and the books and records applicable thereto and make them available to the Lender at a place to be designated by the Lender.

4.3 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

4.4 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

4.5 **Severability; Complete Agreement.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the other Loan Documents constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

4.6 **Applicable Law.** This Mortgage shall be governed by the laws of the State of Alabama. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

4.7 **Limitation of Interest.** It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.

4.8 **Notices, etc.** All notices and other communications provided hereunder shall be in writing and shall be given in accordance with the provisions of the Loan Documents.

4.9 **Replacement of Note.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

4.10 **Assignment.** This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

4.11 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and all other Loan Documents.

4.12 **Controlling Law.** **THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN MADISON COUNTY IN THE STATE OF ALABAMA, AND THE BORROWER AGREES THAT THE LOAN SHALL BE FUNDED FROM AND THIS MORTGAGE SHALL BE HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS MORTGAGE BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF BORROWER WITH MADISON COUNTY AND THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH COUNTY AND STATE. BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF THE STATE OF ALABAMA, MADISON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS MORTGAGE. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.**

4.13 Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[Signatures appear on following page]

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

BORROWER:

BC PALMER COVE, LLC,
an Alabama limited liability company

By: Built Capital, LLC, its sole member

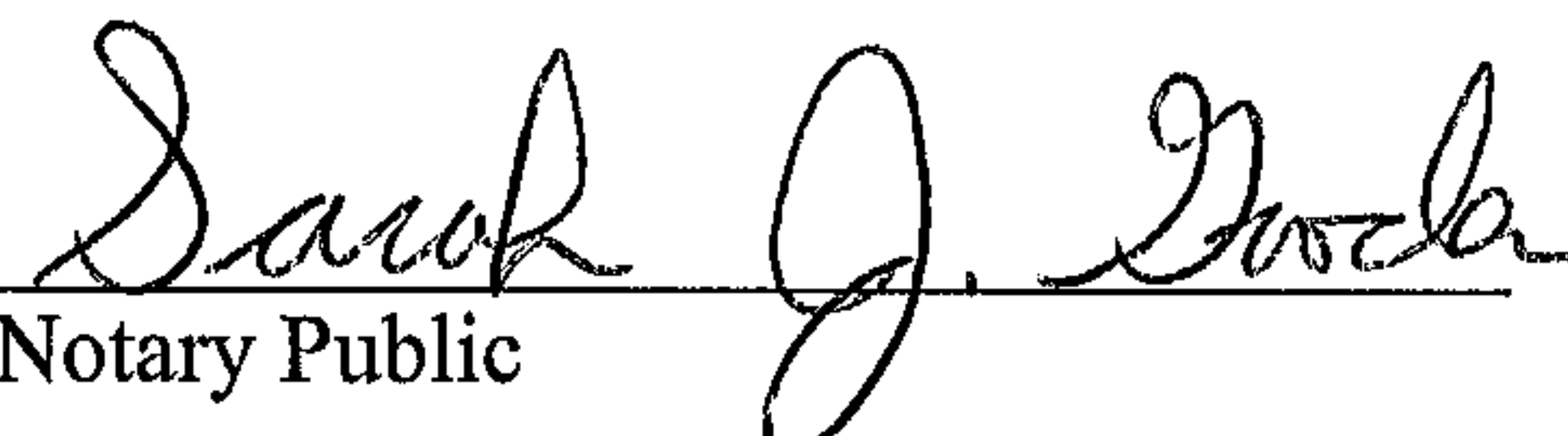
By: 
Levi Mixon, Authorized Officer

STATE OF Alabama §
COUNTY OF Jefferson §

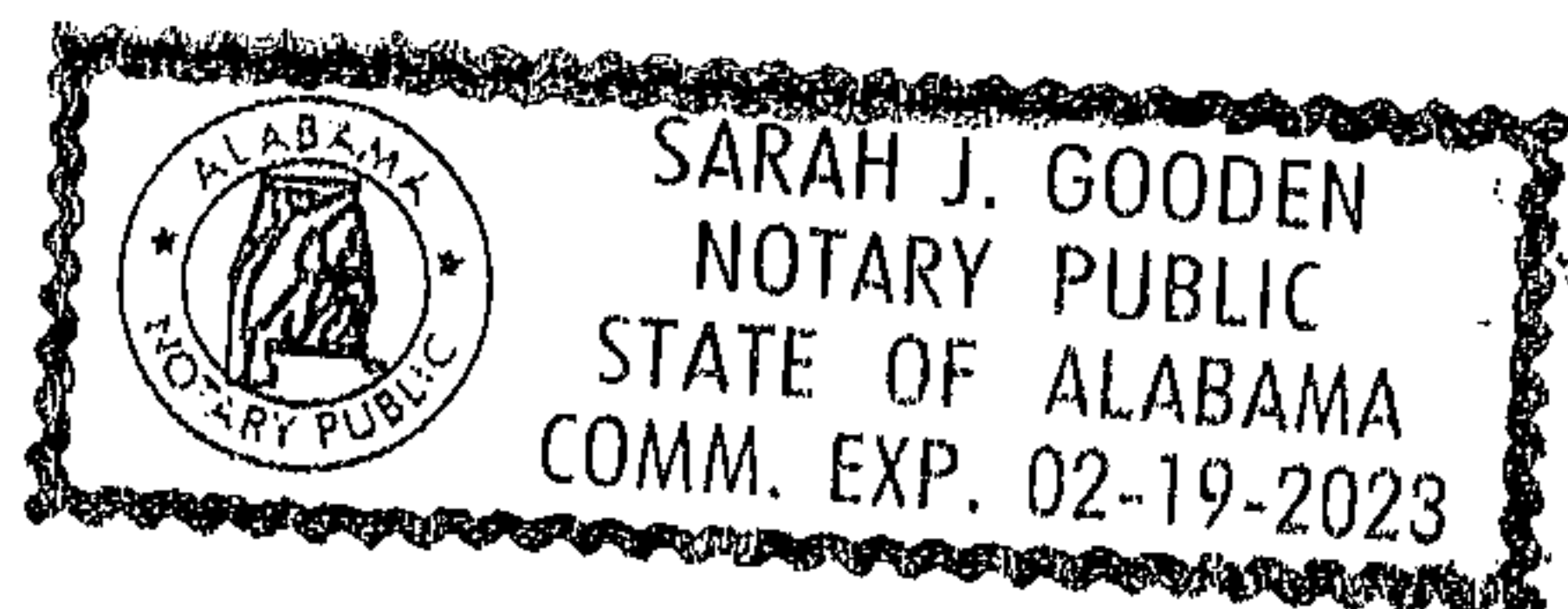
I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that Levi Mixon, the Authorized Officer of Built Capital, LLC, the Sole Member of BC Palmer Cove, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Officer of the Sole Member and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand this the 16th day of September, 2022.

(Affix Seal)


Notary Public

Commission Expires: 02-19-2023



20220930000374910 09/30/2022 11:16:47 AM MORT 15/15

Units 1-44, and 55-64, of Palmer Cove, a Condominium, as set out in that Declaration of Condominium of Palmer Cove, A Condominium, as recorded in Instrument Number 20220801000299160 and also that final plat of PALMER COVE, BEING A CONDOMINIUM SUBDIVISION, as recorded as Instrument Number 20220712000274230 in the Office of the Judge of Probate of Shelby County.



**Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
09/30/2022 11:16:47 AM
\$1548.55 BRITTANI
20220930000374910**

Allie S. Bayl