

20230106000006040
01/06/2023 02:47:16 PM
ASSIGN 1/9

This Instrument Prepared By:
Lee M. Russell, Jr., Esq.
CAPELL & HOWARD, P.C.
Post Office Box 2069
Montgomery, Alabama 36101-2069
(334) 241-8000

STATE OF ALABAMA

COUNTY OF SHELBY

ASSIGNMENT OF LEASES AND RENTS

Sh **THIS ASSIGNMENT OF LEASES AND RENTS** is made and entered into as of the day of January, 2023, by **AIM HELENA DEVELOPMENT, LLC**, a Texas limited liability company (hereinafter referred to as "Borrower") in favor of **SMARTBANK** (hereinafter referred to as "Lender");

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, transfer and assign to Lender, its successors, successor-in-title and assigns, all of Borrower's right, title and interest in, to and under each and every lease, rental agreement, tenant contract, occupancy agreement and rental contract, whether written or oral, which may now exist or hereafter be made, including any and all extensions, renewals and modifications thereof and guaranties of the performance or obligations of any tenants or lessees thereunder (said leases, contracts and agreements are hereinafter referred to collectively as the "Leases" or individually as a "Lease" as the context requires, and said tenants and lessees are hereinafter referred to collectively as "Tenants" or individually as "Tenant" as context requires), which cover, affect or relate to those certain properties located in Shelby County, Alabama, more particularly described on **Exhibit A** attached hereto and made a part hereof (hereinafter referred to as the "Premises"); together with all of Borrower's rights, title and interest in and to all rents, issues and profits from the Leases and from the Premises.

TO HAVE AND TO HOLD unto Lender, its successors and assigns forever, subject to and upon the terms and conditions set forth herein.

This Assignment is made for the purpose of securing (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, either before or after maturity thereof, of all debts, liabilities and obligations of Borrower evidenced by that certain promissory note dated of even date herewith, made by Borrower to the order of Lender in

the maximum principal amount of Two Million Nine Hundred Sixty-Three Thousand Two Hundred Fifty-One and No/100 Dollars (\$2,963,251.00) (such promissory note, as same may be amended, modified, extended or renewed from time to time, hereinafter referred to as the "Note"), together with any renewals, modifications, amendments or extensions thereof, (b) the full and prompt payment and performance of any and all obligations of Borrower to Lender under the terms of the Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated of even date herewith from Borrower to Lender on, among other things, the Premises and securing the indebtedness evidenced by the Note (such instrument, as same may be amended, modified or extended from time to time, hereinafter referred to as the "Security Instrument"), and all amendments, modifications and extensions thereof, and (c) the full and prompt payment and performance of any and all other obligations of Borrower to Lender under any other instruments now or hereafter evidencing, securing, or otherwise relating to the indebtedness evidenced by the Note and all amendments, modifications and extensions of such other instruments (the Note, Security Instrument, and said other instruments are hereinafter referred to collectively as the "Loan Documents", and said indebtedness, liabilities and obligations are hereinafter referred to as the "Indebtedness"). Terms capitalized herein, but not defined herein have the meaning ascribed to them in the Construction and Term Loan Agreement between Borrower and Lender dated of even date herewith ("Loan Agreement").

1. Warranties of Borrower. Borrower hereby warrants and represents as follows:

(a) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the rents, issues and profits from the Leases and from the Premises, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;

(b) Borrower has made no assignment other than this Assignment of any of the rights of Borrower under any of the Leases or with respect to any of said rents, issues or profits;

(c) Borrower has neither done any act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment;

(d) Neither the execution and delivery of this Assignment or any of the Leases, the performance of each and every covenant of Borrower under this Assignment and the Leases, nor the meeting of each and every condition contained in this Assignment, conflicts with, or constitutes a breach or default under any agreement, indenture or other instrument to which Borrower is a party, or any law, ordinance, administrative regulation or court decree which is applicable to Borrower; and

(e) No action has been brought or, so far as is known to Borrower, is threatened, which would interfere in any way with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases.

2. Covenants of Borrower. Borrower hereby covenants and agrees as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every material covenant and condition of each of the Leases to be performed or observed by the Tenant thereunder; and (iii) appear in and defend any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantor thereunder;

(b) Borrower shall not, without the prior written consent of Lender, (i) use a form of lease agreement other than that which has been approved by Lender; (ii) enter into a Lease having a term of less than six (6) months; (iii) terminate the term or accept the surrender of a Lease except where the lessee thereof is in default; (iv) waive or release a Tenant from the performance or observance by Tenant of any material obligation or condition of a Lease; (v) permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the accrual thereof; or (vi) assign its interest in, to or under the Leases or the rents, issues and profits from the Leases and from the Premises to any person or entity other than Lender;

(c) Borrower shall take no action which will cause or permit the estate of the Tenant under any of the Leases to merge with the interest of Borrower in the Premises or any portion thereof;

(d) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment. In the exercise of the powers herein granted to the Lender, no liability shall be asserted or enforced against the Lender by the Borrower, all such liability being expressly waived and released by the Borrower. Borrower shall protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney's fees and expenses actually incurred) imposed upon or incurred by Lender by reason of this Assignment and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment. In the event Lender incurs any liability, loss or damage by reason of this Assignment, or in the defense of any claim or demand arising out of or in connection with this Assignment, the amount of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the default rate specified in the Note from the date incurred until paid and shall be payable on demand; and

(e) Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Lender upon receipt of written demand from Lender to so pay the same.

3. Covenants of Lender. Lender hereby covenants and agrees with Borrower as follows:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits from the Premises, so long as there shall exist no Event of Default, as defined in Paragraph 4 below, Lender shall not demand that such rents, issues and profits be paid directly to Lender, and so long as no Event of Default, as hereinafter defined, has occurred, Borrower shall have the right to collect, but not more than one (1) month prior to accrual, all such rents from the Premises; and

(b) Upon the recording or filing of an instrument of satisfaction or full release of the Security Instrument executed by Lender without the recording of another security instrument in favor of Lender affecting the Premises, this Assignment shall be terminated and released of record by Lender and shall thereupon be of no further force or effect.

4. Event of Default. The term, "Event of Default", wherever used in this Assignment, shall mean any one or more the following events:

(a) The occurrence of any "default" beyond any applicable notice and cure period, if any, or "Event of Default" (as therein defined) under the Note, the Loan Agreement or any of the Loan Documents;

(b) The failure by Borrower duly and fully to comply with any covenant, condition or agreement of this Assignment; provided, however, except with respect to a default elsewhere addressed in this Section 4, Borrower shall have ten (10) days after delivery of written notice of such failure is given by Lender to Borrower in which to cure such failure and if such failure is not susceptible to being cured within such ten (10) day period and thereafter Borrower diligently and expeditiously proceeds to cure same, such initial ten (10) days cure period shall be extended for an additional and consecutive thirty (30) days; or

(c) The breach of any warranty by Borrower contained in this Assignment.

5. Remedies. Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

(a) Declare any part or all of the Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: Enforcing, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Premises on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a

part of the Indebtedness, shall bear interest from the incurring thereof at the default rate specified in the Note, and shall be due and payable on demand;

(c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

(d) Collect the rents, issues and profits and any other sums due under the Leases and with respect to the Premises, and apply the same in such order as Lender in its sole discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all the costs and expenses, including reasonable attorney's fees, incurred in the collection of any or all of the Indebtedness, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness; and (iii) any or all unpaid principal and interest on the Indebtedness, whether or not same are then due and payable, in such order of application determined by Lender in its discretion.

Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use and operate all or any portion of the Premises which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies. Notwithstanding such rights, Lender may also apply for the appointment of a receiver of the rents, incomes, issues and profits of or from the Premises, without notice to Borrower. Borrower hereby consents to the appointment of such receiver and agrees that Lender shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Premises as security for the debt secured hereby or the solvency of any person or legal entity liable for the payment of all or any part of such debt.

6. Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective successors and assigns.

7. Terminology. All personal pronouns used in this Assignment, whether used in the masculine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.

8. Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment 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.

9. Applicable Law. This Assignment shall be interpreted, construed and enforced according to the laws of the state in which the Premises is situated.

10. No Third-Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No Tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

11. No Oral Modifications. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

12. Cumulative Remedies. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or current resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the Indebtedness shall have been indefeasibly paid in full.

13. Cross-Default/Cross Collateralization. The occurrence of an Event of Default under this Assignment shall constitute the occurrence of an Event of Default under all other Loan Documents.

14. Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

15. Further Assurance. 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 re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, financing statements, continuation statements, 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 (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest and lien upon the Leases and the rents, issues and profits from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation

statements, instruments, 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.

16. Notice. Any and all notices, elections or demands permitted or required to be made under this Assignment shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, or sent by registered or certified United States Mail, postage prepaid, or sent by a nationally recognized overnight courier provided a receipt for delivery is obtained from the recipient to the other party at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing to the other party. Any such notice or other document shall be deemed delivered (i) if personally delivered, when actually received by the party to whom directed at the address specified pursuant to this Section, or (ii) if sent by U.S. Mail, three (3) days after such notice of document is deposited in the United States Mail, addressed as provided above, or (iii) if sent by overnight courier, addressed, as provided, on the date of receipt or refusal to accept delivery, as evidenced on the return receipt or other shipping invoice. For the purposes of this Assignment:

The address of Lender is: SmartBank
Attention: Haven Duff
337 Airport Road, Suite A
Auburn, Alabama 36830

The address of Borrower is: AIM Helena Development, LLC
Attention: Stephen P. Brown
5801 Tennyson Parkway, Suite 150
Plano, Texas 75024

17. Modifications, etc. Borrower hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Indebtedness; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modification of the terms of the Note or the Loan Documents; extend or renew the Note or any of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, the Security Instrument, or any other Loan Documents; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Indebtedness or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender.

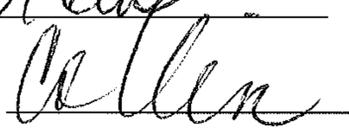
18. Renewals; Extensions; Etc. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Note and/or Loan Documents, and any and all references herein to the Note and/or Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

IN WITNESS WHEREOF, Borrower has executed and delivered this Assignment as of the day and year first above written.

BORROWER:

AIM HELENA DEVELOPMENT, LLC
a Texas limited liability company

By: 
Stephen P. Brown
Its Manager

STATE OF 
COUNTY OF 

I, the undersigned Notary Public in and for said jurisdiction, hereby certify that Stephen P. Brown, whose name as Manager of **AIM HELENA DEVELOPMENT, LLC**, a Texas limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in aforesaid capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company as of the date hereof.

GIVEN under my hand and official seal this the 27th day of December, 2022.

[SEAL]

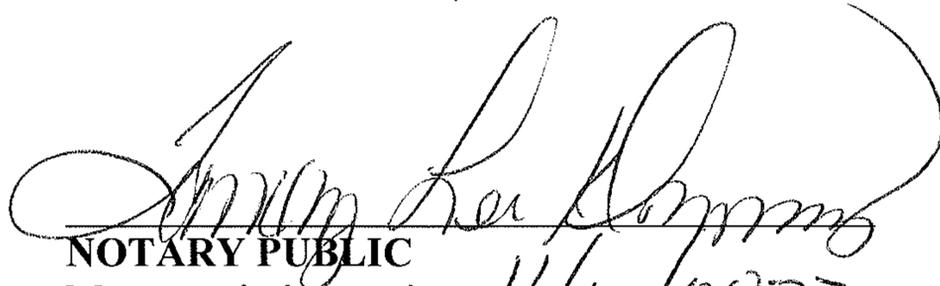

NOTARY PUBLIC
My commission expires: 11/16/2023

Exhibit A

Commence at a 3" capped pipe in place being the Northeast corner of the Northeast one-fourth of the Northwest one-fourth of Section 21, Township 20 South, Range 3 West, Shelby County, Alabama; thence proceed North 88° 30' 28" West along the North boundary of said quarter-quarter section for a distance of 498.55 feet to a 1/2" rebar in place, said point being the point of beginning. From this beginning point proceed South 00° 14' 33" West along the West boundary of Tocoa Parc Subdivision as shown by map of said subdivision on record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 26 at page 65 for a distance 833.31 feet to a "A" rebar in place; thence proceed South 14° 17' 56" East along the West boundary of said subdivision for a distance of 87.89 feet to a 1/2" capped rebar in place (JAM III), said point being located on the flare back of Shelby County Road No. 52; thence proceed Northwesterly along the flare back of said highway along the curvature of a concave curve right having an arc length of 12.55 feet and a radius of 29.58 feet for a chord bearing and distance of North 80° 34' 40" West, 12.45 feet to a point on the Easterly right-of-way of said Shelby County Road No. 52; thence proceed North 38° 06' 12" West along the Easterly right-of-way of said road for a distance of 171.76 feet to the P. C. of a concave curve right having an arc distance of 398.64 feet and a radius of 2062.85 feet; thence proceed Northwesterly along the Easterly right-of-way of said road and along the curvature of said curve for a chord bearing and distance of North 33° 08' 19" West, 398.02 feet to a capped rebar in place (Arrington) which is also the Southeast corner of Lot No. 2 of the Mediterranean Express Survey #1 as shown by map of said subdivision on record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 49 at Page 49; thence proceed North 30° 58' 11" East along the Easterly boundary of said Lot No. 2 for a distance of 80.0 feet to a capped rebar in place (Arrington); thence proceed North 27° 07' 35" West along the boundary line of said Lot No. 2 for a distance of 10.94 feet to a magnetic nail in place; thence proceed North 30° 47' 44" East along the Easterly boundary of said Lot No. 2 for a distance of 137.12 feet to a magnetic nail in place being the Southeast corner of Lot No. 1 of said subdivision; thence continue North 30° 47' 44" East along the Easterly boundary of said Lot No. 1 for a distance of 295.03 feet to a 3/4" rebar in place being located on the North boundary of the Northeast one-fourth of the Northwest one-fourth; thence proceed South 88° 30' 28" East along the North boundary of said quarter-quarter section for a distance of 60.32 feet to the point of beginning.

The above described land is located in the Northeast one-fourth of the Northwest one-fourth of Section 21, Township 20 South, Range 3 West, Shelby County, Alabama and contains 3.77 acres.



Filed and Recorded
 Official Public Records
 Judge of Probate, Shelby County Alabama, County
 Clerk
 Shelby County, AL
 01/06/2023 02:47:16 PM
 \$46.00 JOANN
 20230106000006040

Allie S. Bayl