

20230125000021280  
01/25/2023 03:30:49 PM  
MORT 1/28

**STATE OF ALABAMA  
COUNTY OF SHELBY**

This Security Instrument was prepared by,  
and after recording return to:

Troutman Pepper Hamilton Sanders LLP  
301 South College Street, Suite 3400  
Charlotte, NC 28202  
Attention: Keith Mrochek

---

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY INSTRUMENT AND FIXTURE FILING**

**PROJECT CAPRICORN FUND V LLC,**  
(Mortgagor)

a Delaware limited liability company  
(Mortgagor)

to

**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
as Administrative Agent for the Benefit of the Lenders Referred to Below  
(Mortgagee)

Dated: As of January 24, 2023

THE WITHIN MORTGAGE SECURES A MAXIMUM PRINCIPAL INDEBTEDNESS OF  
\$2,625,650.00.

**THIS INSTRUMENT COVERS GOODS WHICH ARE OR ARE TO BECOME  
FIXTURES RELATED TO THE REAL ESTATE DESCRIBED HEREIN AND IS TO BE  
RECORDED IN THE DEED RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX  
OF FINANCING STATEMENTS OR OF FIXTURE FILINGS.**

**MORTGAGE, SECURITY INSTRUMENT,  
FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES**

This **MORTGAGE, SECURITY INSTRUMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES** (as amended, restated, replaced, supplemented, or otherwise modified from time to time, this “Security Instrument” or “Mortgage”) is made as of January 24, 2023, by **PROJECT CAPRICORN FUND V LLC**, a Delaware limited liability company having an address of 30 North LaSalle Street, Suite 4140, Chicago, Illinois 60602 (the “Mortgagor”), for the benefit of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, its successors and assigns, as administrative agent, with an address of 222 South Riverside Plaza, 29<sup>th</sup> Floor, Chicago, IL 60606 (“Mortgagee” or “Administrative Agent”) for itself and those certain financial institutions that are, or may become from time to time, parties to the Loan Agreement (hereinafter defined) (collectively, the “Lenders”).

**WITNESSETH:**

1. Mortgagor is the fee owner of the Land (defined below).

2. Pursuant to the terms of a Loan Agreement of even date herewith (as the same may be from time to time amended, restated, supplemented, extended, or otherwise modified, the “Loan Agreement”) by and among Mortgagor, Project Capricorn Spring TX LLC, Project Capricorn Haltom City TX LLC, Project Capricorn Hurst TX LLC, Project Capricorn Huntsville TX LLC, Project Capricorn Denton TX LLC, Project Capricorn Port Arthur TX LLC, and Project Capricorn Carrollton TX LLC (each a Delaware limited liability company and collectively, the “Other Borrowers” and together with Mortgagor, collectively, the “Debtors”), the Mortgagee and the Lenders, the Lenders are making a loan to Debtors (the “Loan”) in an amount not to exceed \$117,675,000.00, as evidenced by the Notes (as such term is defined in the Loan Agreement). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

3. This Security Instrument encumbers certain real estate located in Shelby County, Alabama legally described on **Exhibit A** attached hereto, and, subject to the terms and conditions set forth herein, payment of the Notes and the other Obligations is secured by this Security Instrument, each of the other “Security Instruments” referenced in the Loan Agreement by the Other Borrowers for the benefit of Mortgagee, financing statements and the other Loan Documents.

TO SECURE: the Obligations (as defined in the Loan Agreement), subject to the terms and conditions set forth herein, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, HYPOTHECATE, PLEDGE, MORTGAGE, ASSIGN AND WARRANT unto Mortgagee, its successors and assigns forever (with power of sale) all right, title and interest of Mortgagor in and to the following, in each case subject to the Permitted Encumbrances (all of same being collectively referred to herein as the “Mortgaged Property”):

All estate, right, title and interest of Mortgagor in the land located in Shelby County, Alabama, which is legally described on **Exhibit A** attached hereto and made a part hereof (the “Land”);

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing (collectively, the “Improvements”);

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the “Appurtenant Rights”);

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the “Fixtures”; the Land, Improvements, Appurtenant Rights and Fixtures being sometimes referred to collectively as the “Real Property”); it being agreed that all of said property owned by the Mortgagor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) by Mortgagor shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Security Instrument;

TOGETHER WITH a security interest in and to the Mortgagor’s interest in the following (collectively, the “Personal Property”):

1. All personal property of every nature whatsoever now or hereafter owned by Mortgagor or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property

together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Alabama (as amended from time to time, the "Code"), located on the Land or in the Improvements which are now or in the future owned by the Mortgagor and used or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements;

2. All proceeds of the foregoing received by Mortgagor, including, without limitation, all judgments, awards of damages and settlements hereafter made to Mortgagor resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or the Improvements or proceeds of any sale, option or contract to sell the Land or the Improvements or any portion thereof;

3. Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing; and

4. All of the books and records pertaining to any of the foregoing;

TOGETHER WITH all right, title and interest which the Mortgagor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Real Property and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes, license fees, revenues, charges, accounts, general intangibles and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights (provided, that the assignment of Leases and Rents affected hereby shall include, without limitation an assignment by Mortgagor to Mortgagee, on behalf of the Lenders, of the right to receive and apply the Rents arising from the Mortgaged Property located in the State of Alabama, or relating to any business conducted by the Mortgagor thereon, under present or future Leases, which are hereby specifically assigned and transferred to the Mortgagor, on behalf of the Lenders);

TOGETHER WITH any and all Awards and Insurance Proceeds, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof) in each case, to the extent received by Mortgagor; and the Mortgagor hereby authorizes, directs and empowers the Mortgagee, at its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable, documented attorneys' fees, costs and disbursements, to apply the net proceeds, to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement, to payment of the Obligations,

notwithstanding the fact that the same may not then be due and payable or that the Obligations are otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be reasonably requested by the Mortgagee to confirm such assignment to the Mortgagee of any such proceeds;

TOGETHER WITH all rights reserved to or granted to the developer or declarant under the provisions of any development rights or other similar agreement, or any declaration of restrictive covenants and easements affecting the Land or the Mortgaged Property; and

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well as in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Mortgagee;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Mortgagee, and its successors and assigns (and, as noted above, for the benefit of the Lenders), IN FEE SIMPLE FOREVER; subject, however, to the Permitted Encumbrances;

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, subject to all applicable notice and cure periods as set forth in the Loan Documents, the Mortgagor shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Mortgagor shall pay and perform in full when due the Obligations and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Mortgagor, and (ii) the Mortgagee and Lenders shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Mortgagor under the provisions of the Loan Agreement, then this Security Instrument and the estate hereby granted shall cease and become void, and the Mortgagee shall, at the expense of the Mortgagor, execute and deliver to the Mortgagor such instruments as may be reasonably requested in writing by the Mortgagor which are sufficient to release this Security Instrument.

## **MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:**

### **Article I Mortgagor's Covenants.**

Section 1.1 Payment of Obligations. The Mortgagor shall, prior to the expiration of any applicable notice or grace period expressly set forth in the Loan Documents: (a) pay the Obligations when due and payable, and (b) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in, and subject to the terms and conditions of, the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 1.2 Repair/Maintenance. Mortgagor shall cause the Mortgaged Property to be maintained in accordance with Section 5 of the Loan Agreement.

Section 1.3 Compliance with Laws. Subject to the terms and conditions of the Loan Documents, Mortgagor shall comply in all material respects with all Applicable Laws. Mortgagor shall obtain and maintain (or cause Tenant to obtain and maintain) any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership, operation, and maintenance of the Mortgaged Property and the conduct of its business and as may be required from time to time by Applicable Law, subject to the terms and conditions of the Loan Documents.

Section 1.4 Insurance. The Mortgagor shall obtain and maintain or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Mortgagor and the Mortgaged Property as required pursuant to the Loan Agreement.

Section 1.5 Reserved.

Section 1.6 Restrictive Covenants; Zoning. Without the prior written consent of Mortgagee, Mortgagor shall not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property, except as may otherwise be expressly set forth in Section 5.3 of the Loan Agreement. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the material terms and conditions of all agreements affecting the Mortgaged Property as required pursuant to the Loan Agreement and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any appurtenances and other interests and rights in favor of, or constituting any portion of, the Mortgaged Property as required pursuant to the Loan Agreement.

Section 1.7 Liens; Contest; Defense of Title.

(a) The Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Security Instrument, including liens for labor or materials with respect to the Mortgaged Property (collectively, "Mechanic's Liens"), except in accordance with the Loan Agreement.

(b) If the lien and security interest of the Mortgagee in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Mortgagor, upon obtaining knowledge of same, and subject to the terms and conditions of the Loan Documents, shall promptly notify the Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions reasonably necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

Section 1.8 Reserved.

Section 1.9 Additional Security. All right, title and interest of Mortgagor in and to all Improvements hereafter constructed or placed on the Mortgaged Property shall, without any further mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may be reasonably required by the terms of the Loan Agreement and the other Loan Documents.

**Article II Reserved.**

**Article III Security Agreement.**

Section 3.1 Grant of Security Interest. Mortgagor hereby grants to Mortgagee (as noted above, for the benefit of the Lenders) a security interest in the Personal Property to secure the Obligations. Mortgagor and Mortgagee agree: (i) that this Security Instrument shall constitute a Security Agreement within the meaning of Article 9 of the Code with respect to all sums on deposit with the Mortgagee pursuant to this Security Instrument ("Deposits") and with respect to any property included in the definition herein of the word "Personal Property," which property may or may not constitute a "fixture" within the meaning of the Code, and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (all of which shall be included in the meaning of the term "Personal Property"); (ii) that a security interest in and to the Personal Property is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Mortgagor hereby authorizes Mortgagee to file any financing statements, continuation statements or other statements in connection therewith which Mortgagee deems necessary or reasonably advisable to preserve and maintain the priority of the lien hereof, or to extend the effectiveness thereof, under the Code or any other laws which may hereafter become applicable. Subject to the terms and conditions of the Loan Documents, Mortgagor shall pay to Mortgagee, from time to time, upon demand, any and all costs and expenses incurred by Mortgagee in connection with the filing of any future financing or continuation statements including, without limitation, reasonable, documented attorneys' fees and all disbursements and such amounts shall be part of the secured Indebtedness secured by this Security Instrument. Mortgagor and Mortgagee also agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Mortgaged Property" herein are or are to become fixtures on the Land; and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code.

Section 3.2 Perfection. Mortgagor hereby consents to any instrument that may be required by Mortgagee to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Security Instrument or the interest of Mortgagee in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Mortgagor shall pay or cause to be paid (a) all filing and recording taxes and fees incident to each such filing or recording, (b) all expenses, including without limitation, reasonable,

documented attorneys' fees and costs, incurred by Mortgagee in connection with the preparation and acknowledgement of all such instruments, and (c) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Mortgagor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the attorney-in-fact of Mortgagor, to file with the appropriate filing office any such instruments. In addition, Mortgagor hereby authorizes Mortgagee to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the further consent of Mortgagor.

Section 3.3 Fixture Filing. This Security Instrument is intended to be a financing statement within the purview of Section 9-502(b) of the Code and shall be recorded as a "fixture filing" in accordance with the Code.

#### **Article IV Restrictions on Transfer.**

Mortgagor shall comply with the provisions of the Loan Agreement relating to transfers of the Mortgaged Property and the ownership interests in Mortgagor.

#### **Article V Events of Default.**

Subject to the applicable notice and cure periods under the Loan Agreement, an Event of Default under the Loan Agreement shall also constitute an "Event of Default" under this Security Instrument.

#### **Article VI Remedies.**

Upon the occurrence and during the continuance of an Event of Default, and pursuant to the terms and conditions of the Loan Agreement and any other Loan Document, but subject at all times to any mandatory legal requirements and Applicable Laws:

Section 6.1 Acceleration. Mortgagee may declare the outstanding principal balance of the Notes and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable pursuant to the terms and conditions of the Loan Agreement with prior written notice to Mortgagor. Additionally, neither Mortgagee nor any Lender shall be required to make any further advances on the Notes or the other Loan Documents upon the occurrence and during the continuance of an Event of Default.

Section 6.2 Uniform Commercial Code. Mortgagee shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth in Section 22 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged

Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Mortgagee elects. The Mortgagor hereby agrees that if the Mortgagee makes a written demand for possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor shall promptly turn over and deliver possession thereof to the Mortgagee, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Mortgagee, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located), in each case, only to the extent Mortgagor has such authority under applicable law and the Loan Documents, and in accordance with such entry the Mortgagee may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable, documented attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations and, if not paid within ten (10) days of demand therefor, shall bear interest at the Default Rate until paid to Mortgagee.

Section 6.3 Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Security Instrument. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by the foreclosure laws of the State of Alabama, as from time to time amended (the "Foreclosure Laws") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee, in each case as and to the extent not prohibited to be recovered by Mortgagee under the Foreclosure Laws or any other Applicable Laws, for reasonable, documented attorney's fees of outside counsel, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and reasonable out-of-pocket costs actually incurred to procure all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All reasonable expenditures and expenses of the nature mentioned in this paragraph, and such other reasonable expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable documented fees of any third-party attorney employed by Mortgagee in any litigation or proceedings affecting this Security Instrument, the Note, any of the other Loan Documents or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be additional Obligations

and, if not paid within ten (10) days of demand therefor, shall bear interest at the Default Rate until paid to Mortgagee.

Section 6.4 Appointment of Receiver. Mortgagee shall, as a matter of right, without notice to any Person (other than as may be required by Foreclosure Laws or other Applicable Laws), and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Foreclosure Laws of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under Applicable Laws, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

Section 6.5 Taking Possession, Collecting Rents, Etc. Upon written demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its reasonable discretion may be required to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor (unless required by Foreclosure Laws or other Applicable Laws);

(b) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property made subsequent to this Security Instrument without Mortgagee's prior written consent;

(d) extend or modify any then-existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure

sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(e) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as required to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom;

(f) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Insurance Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Obligations in such order and manner as Mortgagee shall select, in its sole discretion; and

(g) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Mortgagor agrees to consent to a receiver if it is believed necessary by the Mortgagee to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Mortgagee shall in no way waive the right of the Mortgagee to foreclose this Security Instrument in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The reasonable, out-of-pocket expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon written demand, and which expenses shall bear interest at the Default Rate if not paid within ten (10) days of such written demand. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Mortgagee. Without taking possession of the Mortgaged Property, Mortgagee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems necessary or as required by any Applicable Laws to register, maintain, repair, protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Obligations which Mortgagor promises to pay upon written demand, and which shall bear interest at the Default Rate if not paid within ten (10) days of such written demand.

Section 6.6 Lawsuits. Subject to Applicable Laws, Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the Indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power

herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

Section 6.7 Termination of Commitment to Lend. Mortgagee and the Lenders may terminate any commitment or obligation to lend or disburse additional funds under any Loan Document.

Section 6.8 Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, at law or in equity or otherwise.

Section 6.9 Reserved.

#### **Article VII Compliance with Foreclosure Laws.**

Section 7.1 If any provision in this Security Instrument shall be inconsistent with any provision of Applicable Law (including the Foreclosure Laws), the provisions of Applicable Law shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with Applicable Law.

Section 7.2 If any provision of this Security Instrument shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver any powers, rights or remedies prior to, upon or following the occurrence and during the continuance of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under Applicable Law, Mortgagee and such receiver shall be vested with the rights granted in the Applicable Laws to the full extent permitted by law.

Section 7.3 The Mortgagee is authorized to foreclose this Security Instrument subject to the rights of any tenants of the Mortgaged Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor to be, a defense to any proceedings instituted by the Mortgagee to collect the unpaid Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 7.4 To the maximum extent permitted by Applicable Law, upon any sale made under or by virtue of this Security Instrument, Mortgagee may bid for and acquire the Mortgaged Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

Section 7.5 Mortgagee may institute and maintain any suits and proceedings as the Mortgagee may deem advisable (i) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Security Instrument, (ii) to preserve or protect its interest in the Mortgaged Property, and (iii) to restrain the enforcement of or compliance with any laws that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such laws might impair the security hereunder or be prejudicial to the Mortgagee's interest.

Section 7.6 Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy provided under the Loan Documents or by Applicable Laws against Mortgagor.

Section 7.7 Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Applicable Law (including the Foreclosure Laws), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the Obligations.

**Article VIII Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc.**

If and to the extent permitted by Applicable Laws, Mortgagor shall not and shall not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, and hereby, if and to the extent permitted by Applicable Laws, waives the benefit of such Moratorium Laws. If and to the extent permitted by Applicable Laws, Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine in its sole discretion. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Obligations, if not previously due, shall be and become immediately due and payable without demand or notice to Mortgagor unless required by Applicable Laws. If and to the extent permitted by Applicable Laws, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Security Instrument, and on behalf of all other persons to the extent permitted by Applicable Laws, hereby voluntarily and knowingly waives (i) any and all rights of redemption, both equitable and statutory and (ii) any and all rights of reinstatement.

**Article IX Reserved.**

**Article X Protective Advances.**

Section 10.1 Advances, disbursements and expenditures made by Mortgagee and/or Lenders in accordance with the express terms of the Loan Documents, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Security Instrument, constitute "Protective Advances":

(a) all advances by Mortgagee and/or Lenders in accordance with the terms of this Security Instrument necessary to: (A) register, preserve or maintain, repair, restore or rebuild the

Improvements upon the Mortgaged Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument in accordance with Applicable Laws;

(b) payments by Mortgagee and/or Lenders of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property;

(c) advances by Mortgagee and/or Lenders in settlement or compromise of any claims asserted by claimants under any prior liens;

(d) reasonable, out-of-pocket attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Security Instrument in accordance with Applicable Laws; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee and/or Lenders for the enforcement of this Security Instrument or arising from the interest of the Mortgagee and/or Lenders hereunder or under any of the other Loan Documents; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's and/or Lenders' out-of-pocket fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing, to the extent permitted by Applicable Laws;

(f) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and Insurance Premiums as may be authorized by this Security Instrument;

(g) expenses properly deductible from proceeds of sale in accordance with Applicable Laws; and

(h) expenses incurred and expenditures made by Mortgagee and/or Lenders for any one or more of the following: (A) Insurance Premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof; (B) repair or Restoration of damage or destruction in excess of available Insurance Proceeds or Awards; (C) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; or (E) pursuant to any Lease or other agreement for occupancy of the Mortgaged Property.

Section 10.2 All Protective Advances shall be additional Obligations and shall be secured hereby and by all other collateral securing the Obligations.

Section 10.3 This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded.

Section 10.4 All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Laws, apply to and be included in the:

- (a) determination of the amount of Obligations at any time;
- (b) indebtedness found due and owing to the Mortgagee and/or Lenders in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) determination of amounts deductible from sale proceeds;
- (d) application of income in the hands of any receiver or Mortgagee in possession; and
- (e) computation of any deficiency judgment.

#### **Article XI Application of Proceeds.**

The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to the terms hereof shall be distributed in the following order of priority: First, to pay all costs and expenses incidental to the leasing, foreclosure, sale or other disposition of the Mortgaged Property. These costs and expenses shall include (without duplication), without limit, reasonable compensation to the Mortgagee, its agents and attorneys (as and to the extent not prohibited by Applicable Law) and any taxes and assessments or other liens and encumbrances prior to the lien of this Security Instrument. Second, to all sums expended or incurred by the Mortgagee directly or indirectly in carrying out any term, covenant or agreement under this Security Instrument or any related document, together with interest as provided in this Security Instrument. Third, to the payment of the Obligations. If the proceeds are insufficient to fully pay the Obligations, then application shall be made first to late charges and interest accrued and unpaid, then to any applicable prepayment premiums, then to unpaid fees and other charges, and then to the outstanding principal balance. Fourth, any surplus remaining shall be paid to Mortgagee or to whomsoever may be lawfully entitled.

#### **Article XII Mortgagee's Actions.**

Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any Guarantor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) waive any of the terms, covenants or conditions of this Security Instrument or any of the other "Security Instruments" referenced in the Loan Agreement, the Guaranty and the other Loan Documents, or any of them; (b) forbear or

extend the time for the payment or performance of any or all of the Obligations; (c) subject to the terms and conditions of the Loan Agreement, apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Mortgaged Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Security Instrument upon the Mortgaged Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Security Instrument or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee shall join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; or (j) generally deal with any obligor or any other party as Mortgagee may see fit (or, as applicable, as the Lenders may direct).

### **Article XIII Rights Cumulative.**

Section 13.1 Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Mortgagee (or, as applicable, as the Lenders may direct).

Section 13.2 Subject to the terms and conditions of the Loan Documents, by accepting payment of any sums secured by this Security Instrument after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Mortgagee (and/or the Lenders) shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations under this Security Instrument, the Notes, and all other Loan Documents. No waiver or modification of any of the terms of this Security Instrument shall be binding on the Mortgagee (and/or Lenders) unless set forth in writing signed by the Mortgagee and any such waiver by the Mortgagee of any Event of Default by the Mortgagor under this Security Instrument shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Mortgagee (and/or Lenders) holds any additional security for any of the Obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

Section 13.3 No act or omission by the Mortgagee or the Lenders shall release, discharge, modify, change or otherwise affect the liability of Mortgagor under the Loan Agreement, the Notes, this Security Instrument, or any of the other Loan Documents, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any

maker, co-signer, endorser, surety or guarantor, or preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Security Instrument or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Mortgagee and/or Lenders. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee and/or Lenders in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein or by Applicable Laws, notice of the exercise of any right, remedy or power granted to the Mortgagee by this Security Instrument is not required to be given.

#### **Article XIV Successors and Assigns; Assignment.**

Section 14.1 This Security Instrument and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Mortgagee, the Lenders, any other secured parties identified in the Loan Documents, and each of their respective successors and assigns.

Section 14.2 All of the covenants of this Security Instrument shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than Mortgagor, the Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Security Instrument and the Obligations in the same manner as with the Mortgagor, without in any way releasing or discharging the Mortgagor from its obligations hereunder.

Section 14.3 Except as set forth in the Loan Agreement, the rights and obligations of Mortgagor under this Security Instrument may not be assigned and any purported assignment by Mortgagor shall be null and void. Subject to the terms and conditions of the Loan Agreement and other Loan Documents, Mortgagee and the Lenders shall have the right to sell, assign or transfer portions of their right, title and/or interest in and to this Security Instrument and/or the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Mortgagor, and Mortgagor agrees to reasonably cooperate in all material respects with Mortgagee in connection therewith, including, without limitation, the execution, of all documents and instruments reasonably requested by Mortgagee or such transferee provided that such documents and instruments do not materially adversely affect any of Mortgagor's duties or obligations under this Security Instrument or under the other Loan Documents.

#### **Article XV Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.**

Section 15.1 At the sole cost and expense of Mortgagor, Mortgagor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and

assurances as the Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired, provided such instrument does not materially increase Mortgagor's obligations or reduce Mortgagor's rights hereunder or, with respect to Mortgagor, under the other Loan Documents. Subject to the terms and provisions of the Loan Documents, and without limitation of the foregoing, the Mortgagor shall assign to the Mortgagee, upon request, as further security for the Obligations, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon the Mortgagee any obligations with respect thereto.

Section 15.2 From time to time, the Mortgagor will furnish, within ten (10) days after written request from the Mortgagee, a written and duly acknowledged statement of the amount due under the Notes, this Security Instrument and the other Loan Documents and whether any alleged offsets or defenses exist against the Obligations.

Section 15.3 The Mortgagor and the Mortgagee shall, at the written request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and shall execute and deliver any and all additional instruments as may be requested by the Mortgagee or the Mortgagor, as the case may be, to correct such defect, error or omission, provided such instrument does not materially increase Mortgagor's obligations or reduce Mortgagor's rights hereunder or under the other Loan Documents.

#### **Article XVI Subrogation.**

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

#### **Article XVII Governing Law.**

WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE MORTGAGED 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 ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES 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 ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

**Article XVIII Business Loan.**

Section 18.1 The Mortgagor declares, represents, certifies and agrees that the proceeds of the Notes shall be used solely for business purposes and that: (i) the Loan is exempt from interest limitations, and (ii) is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

Section 18.2 All rights, remedies and powers provided by this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any Applicable Laws, and all the provisions of this Security Instrument are intended to be subject to all applicable mandatory provisions of Applicable Law which may be controlling and to be limited to the extent necessary so that they shall not render this Security Instrument invalid or unenforceable under the provisions of any Applicable Laws.

**Article XIX Absolute Assignment of Leases and Rents.**

In consideration of the making of the Loan by Mortgagee to Mortgagor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby absolutely and unconditionally assigns the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist and be continuing, Mortgagor shall have a license (which license shall, subject to the terms and conditions of the Loan Documents, terminate automatically upon the occurrence and continuance of an Event of Default) to collect, receive, enjoy and use, but not prior to accrual, all Rents. Subject to the terms and conditions of the Loan Documents, Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of operating and maintaining the Mortgaged Property and for the payment of the other Obligations before using the Rents, free of such trust or lien, for any other purpose.

The assignment of Leases and Rents contained in this Security Instrument is intended to provide Mortgagee with all of the rights and remedies of mortgagees pursuant to Applicable Law, as may be amended from time to time. However, in no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver, nor shall any provision in this Section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Mortgaged Property or without regard to the adequacy of the Mortgaged Property to serve as security for the obligations owed by Mortgagor to Mortgagee.

The terms and provisions of Sections 5.7(a) and (b) of the Loan Agreement are hereby incorporated by this reference as if more fully set forth at length herein.

**Article XX Reserved.**

**Article XXI Notices.**

All notices pursuant to this Security Instrument shall be in writing and shall be deemed to be sufficiently given for all purposes when given in accordance with the terms of the Loan Agreement.

**Article XXII Releases.**

Section 22.1 Upon payment in full of all of the Obligations with respect to the Mortgaged Property, the lien of this Security Instrument shall automatically terminate, and the Mortgagee shall, at the cost of the Mortgagor, execute and deliver a proper release of this Security Instrument.

Section 22.2 The Mortgagee may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Security Instrument without in any manner affecting or impairing the lien or priority of this Security Instrument as to the remainder of the Mortgaged Property not so released.

**Article XXIII Reserved.**

**Article XXIV State Specific Provisions.**

In the event of any conflict between the provisions of this Section and the provisions of any other Section herein contained, the provisions of this Section shall govern and control.

- (a) Mortgagor waives all rights of exemption as to personal property.
- (b) Mortgagor acknowledges receipt of a copy of this Security Instrument, the Note and the other Loan Documents.
- (c) If a Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and the Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or by law, and, without limiting the generality of the foregoing, the Mortgagee may, personally or by its agents, to the maximum extent permitted by law exercise its power of sale pursuant to Alabama law, including, without limitation:

The whole of the indebtedness hereby secured, at the option of Mortgagee or Mortgagee's assigns, shall at once become due and payable, and this Mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the Mortgagee, Mortgagee's agents or assigns shall be authorized to take possession of the premises hereby conveyed, and with or without first taking possession, after giving notice of the time, place and terms of sale, by publication once a week for three consecutive weeks, in some newspaper published in the county and state

where the real estate is located, sell the same in lots or parcels or en masse as Mortgagee, Mortgagee's agents or assigns deem best, in front of the courthouse door of the county (or the division thereof), where the real estate is located, at public outcry, to the highest bidder for cash, and apply the proceeds of sale:

First, to the expense of advertising, selling and conveying, including such attorney's fees as are allowed by law;

Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes, or the other encumbrances, with interest thereon;

Third, to the payment of the indebtedness in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and

Fourth, the balance, if any, to be turned over to the Mortgagor or such other party who may have a legal right thereto.

Mortgagor further agrees that Mortgagee, Mortgagee's agents or assigns may bid at said sale and purchase the Premises, if the highest bidder therefor. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

#### **Article XXV Miscellaneous.**

Section 25.1 Time is of the Essence. Time is of the essence of this Security Instrument.

Section 25.2 Captions and Pronouns. The captions and headings of the various Sections of this Security Instrument are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

Section 25.3 Security and Priority of Advances. Subject to the provisions of Article XXIV, Mortgagor acknowledges and agrees that this Security Instrument secures the entire principal amount of the Notes and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee and/or any Secured Party in connection with the Loan. It is agreed that any future advances made by Mortgagee and/or any Secured Party for the benefit of Mortgagor from time to time under this Security Instrument or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee and/or any Secured Party, made at any time from and after the date of this Security Instrument, and all interest accruing thereon, shall be equally secured by

this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument. This Security Instrument shall be valid and have priority to the extent of the full amount of the Obligations over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

Section 25.4 Mortgagee and Lenders Not a Joint Venturer or Partner of Mortgagor. The Mortgagor, the Mortgagee and the Lenders acknowledge and agree that in no event shall the Mortgagee or any Lender be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, neither the Mortgagee nor any Lender shall be deemed to be such a partner or joint venturer on account of any such party becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the Obligations, or otherwise.

Section 25.5 Replacement of a Note. Upon written notice to the Mortgagor of the loss, theft, destruction or mutilation of any Note, the Mortgagor shall execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the applicable Note and dated as of the date of the applicable Note and upon such execution and delivery all references in any of the Loan Documents to such Note shall be deemed to refer to such replacement note.

Section 25.6 Waiver of Consequential Damages. The Mortgagor covenants and agrees that in no event shall the Mortgagee or any Lender be liable for consequential damages, whatever the nature of a failure by the Mortgagee or the Lenders to perform their obligation(s), if any, under the Loan Documents, and the Mortgagor hereby expressly waives all claims that it now or may hereafter have against the Mortgagee and each Lender for such consequential damages.

Section 25.7 After Acquired Mortgaged Property. The lien hereof shall automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

Section 25.8 Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum, then the Mortgagee may, at its option declare the Obligations immediately due and payable.

Section 25.9 Interpretation of Agreement. Should any provision of this Security Instrument require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Security Instrument, including, without limitation, all Exhibits attached to this Security Instrument.

Section 25.10 Joint and Several Obligations; Counterparts. If this Security Instrument is executed by more than one Mortgagor, (i) the obligations and liabilities of Mortgagor under this Security Instrument shall be joint and several and shall be binding upon and enforceable against each Mortgagor and their respective successors and assigns, and (ii) this Security Instrument may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Security Instrument.

Section 25.11 Reserved.

Section 25.12 Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Mortgagee pursuant to this Security Instrument.

Section 25.13 No Merger. The parties hereto intend that the Security Instrument and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Mortgagee acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in the fee simple title and this Security Instrument may be foreclosed as if owned by a stranger to the fee simple title.

Section 25.14 Complete Agreement. This Security Instrument, the Loan Agreement, the Notes and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Mortgagee.

Section 25.15 Further Assurances. Mortgagor shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other actions, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated hereby and thereby.

Section 25.16 Waiver of Homestead. Mortgagor waives to the full extent lawfully allowed the benefit of any homestead laws now or hereinafter in force. Mortgagor expressly consents to and authorizes the sale of the Mortgage Property or any part thereof as a single unit or parcel.

Section 25.17 Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Security Instrument and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Mortgagee. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

Section 25.18 Adjustable Mortgage Loan Provision. The Notes which this Security Instrument secures are adjustable notes on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Notes.

Section 25.19 **JURISDICTION AND VENUE**. MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY AGREEMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF AGENT OR ANY LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH AGENT OR SUCH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT OR ANY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THE LOAN AGREEMENT. MORTGAGOR WAIVES ANY CLAIM THAT ANY SUCH JURISDICTION SET FORTH ABOVE IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY AGENT OR ANY LENDER AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT OR SUCH LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

Section 25.20 **Waiver of Jury Trial**. MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE AND LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

Section 25.21 **Additional Waivers**. MORTGAGOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR

PROCEEDING BROUGHT BY MORTGAGEE ON THIS SECURITY INSTRUMENT, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY MORTGAGEE OR ANY LENDER.

Section 25.22 **Compliance with Loan Agreement**. Mortgagor shall abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

Section 25.23 **Provisions of Loan Agreement**. The proceeds of the Loan are to be disbursed by the Mortgagee, as Administrative Agent for the Lenders, in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Security Instrument, the Loan Agreement, the Notes, and the other Loan Documents, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Notes, shall be secured by this Security instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, Mortgagor has executed this Security Instrument as of the day and year first above written.

MORTGAGOR:

**PROJECT CAPRICORN FUND V LLC**, a  
Delaware limited liability company

By: 

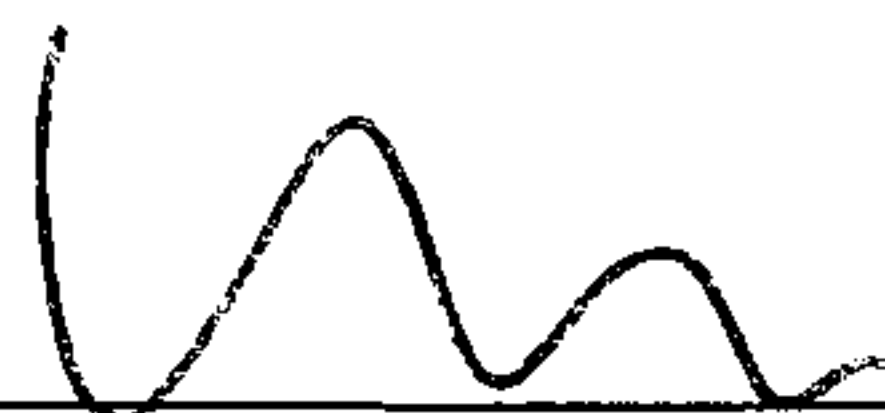
Name: Michael Reiter

Title: Authorized Representative

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

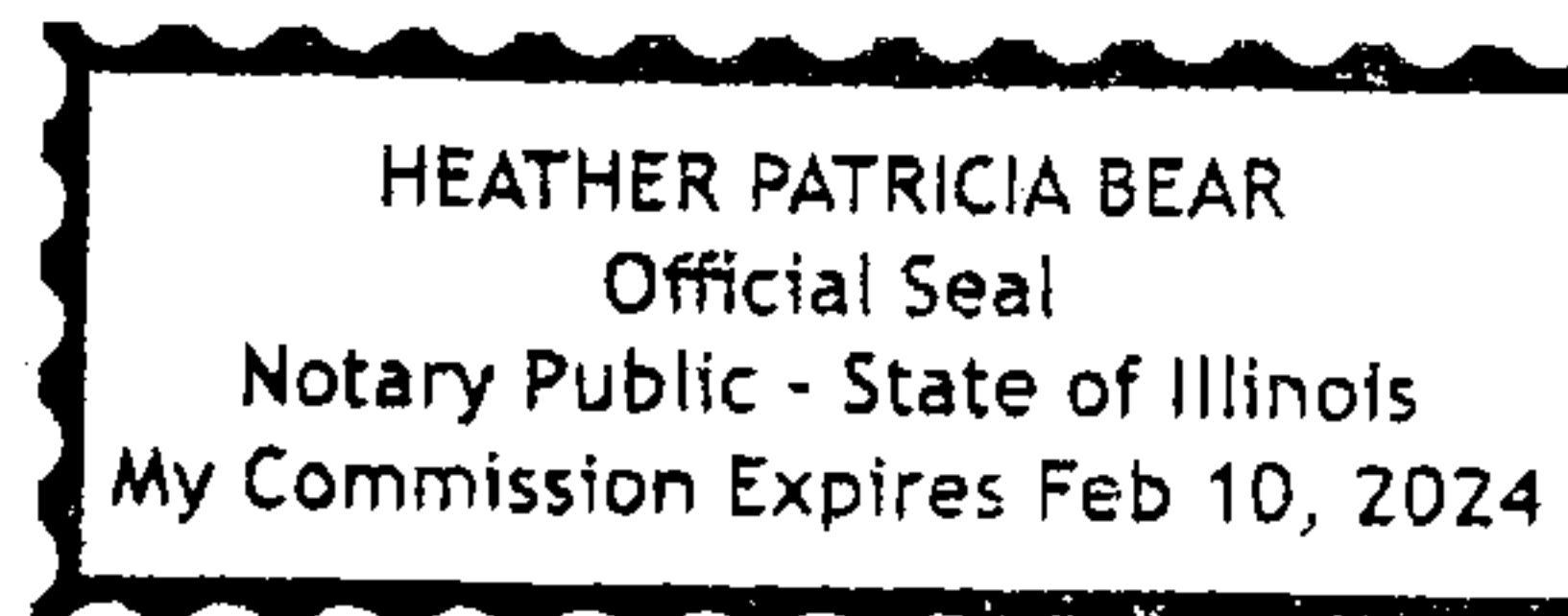
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **MICHAEL REITER**, whose name as Authorized Representative of **PROJECT CAPRICORN FUND V LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 23 day of January, 2023.



NOTARY PUBLIC

[Seal]



Signature Page

**EXHIBIT A**

**LEGAL DESCRIPTION**

PARCEL 1:

LOTS 4-A AND 4-B, ACCORDING TO THE SURVEY OF STONEHAVEN ADDITION TO PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 38, PAGE 22 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA. BEING A RESURVEY OF LOT 4 OF LOTS 3 AND 4 PELHAM PARKWAY COMMERCIAL SUBDIVISION RECORDED IN MAP BOOK 27, PAGE 86 SHELBY COUNTY, ALABAMA AND ACREAGE.

PARCEL 2:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT LOCATED ON LOT 2 AS SHOWN ON THE MAP AND SURVEY OF PELHAM PARKWAY NORTH COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 113 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 3:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 1, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 26, PAGE 116 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 4:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 2, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 44 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 5:

A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 3, PELHAM PARKWAY COMMERCIAL SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 86 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

For Informational Purposes Only:

20230125000021280 01/25/2023 03:30:49 PM MORT 28/28

Address: 3340 Pelham Parkway, Pelham, AL

Tax Number: 13-6-24-3-002-001.006 & 13-6-24-3-002-012.008



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**01/25/2023 03:30:49 PM**  
**\$4041.55 JOANN**  
**20230125000021280**

*Allen S. Bayl*

Exhibit A – Page 2