

*This instrument prepared by
and when recorded return to:*
Andrew J. Shaver
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the “Mortgage”), dated April 27, 2023, between **KENNETH MARTIN**, an unmarried individual (hereinafter called “Borrower” or “Mortgagor”), whose address is 6230 County Road 26, Columbiana, AL 35051, and **KIRKLAND FINANCIAL LLC**, a Tennessee limited liability company (hereinafter called “Lender” or “Mortgagee”), whose address is 3000 Business Park Circle, Suite 500, Goodlettsville, TN 37072.

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ARTICLE 9A OF THE UNIFORM COMMERCIAL CODE, CODE OF ALABAMA, 1975, AS AMENDED.

WITNESSETH:

WHEREAS, pursuant to that certain Promissory Note of even date herewith, and as hereinafter described (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called, the “Note”), Borrower is justly indebted to Lender in the aggregate principal sum of Four Hundred Thirty-One Thousand Seven Hundred and 00/100 Dollars (\$431,700.00) (the “Loan”), or so much thereof as shall have been advanced from time to time, with the principal balance of the Note, with interest, being due not later than the Maturity Date, as set forth in the Note; and

WHEREAS, as a condition to its making the loan to be evidenced by the Note, Lender has required that Borrower agree that this Mortgage secures the Note and obligations as set forth in that certain Loan Restructuring Agreement dated of even date herewith by and between Borrower and Lender (the “Loan Agreement”). All capitalized terms not specifically defined herein shall have the meaning ascribed to such terms in the Note or Loan Agreement.

WHEREAS, in addition to the indebtedness evidenced by the Note, this Mortgage shall also secure all other indebtedness, obligations and liabilities of Borrower to Lender, whether now existing or hereafter arising; and

WHEREAS, as a condition precedent to making, extending and/or modifying the Loan, Lender has required that Borrower execute this Mortgage as security for the Loan; and

WHEREAS, Borrower is affiliated with Borrower and has agreed to grant to Lender a Mortgage and Security Agreement on the property described in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower under the Loan Agreement, the Note, this Mortgage and all other Loan Documents, and to secure all other indebtedness, obligations and liabilities of Borrower to Lender, including without limitation all indemnification obligations of Borrower under the Loan Agreement (all of such indebtedness and obligations secured hereby being referred to herein as the **"Secured Indebtedness"**), Borrower has bargained and sold and does hereby grant, bargain, sell, alien and convey unto Lender, its successors and assigns, all of the foregoing described land and interests in land, estates, easements, rights, improvements, , fixtures, equipment, appliances and appurtenances, including replacements and additions thereto (which property is hereinafter referred to collectively as the **"Premises"**):

(a) All those certain tracts or parcels of land located in Shelby County, Alabama commonly known as 6230 County Road 26, Columbiana, AL 35051, and as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the **"Land"**); and

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, of the Premises, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the **"Improvements"**), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(c) Intentionally Deleted; and

(d) All policies of hazard insurance now or hereafter in effect that insure the Premises, or any Improvements, or any other property conveyed or encumbered hereby, together with all right, title and interest of Borrower in and to each and every such policy, and all proceeds thereof; and

(e) All rents, issues, profits and revenues of the Premises from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(f) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(g) All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to Borrower or any subsequent owner of the Premises, or the Improvements, or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Premises, or the Improvements, or any other such property; and

(h) Only in the event of default, All general intangibles relating to the development or use of the Premises, the Improvements or any other property conveyed or encumbered hereby, and

(i) All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing; and

(j) All proceeds of any of the foregoing.

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

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

AND Borrower covenants and agrees with Lender as follows:

ARTICLE I

1.01 **Performance of Note and Mortgage.** Borrower will perform, observe and comply, or cause to be performed, observed and complied, with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02 **Warranty of Title.** As identified on Exhibit A, Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges and encumbrances whatsoever, including, as to the fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

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

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever, (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues,

income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Premises, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note or this Mortgage.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 1.04, below; and all utility charges which are incurred by Borrower for the benefit of the Premises, or which may become a charge or lien against the Premises for gas, electricity, water and sewer services and the like furnished to the Premises, and all other public or private assessments or charges of a similar nature affecting the Premises or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Borrower shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) Borrower shall not suffer or allow any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Premises; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

1.04 **Insurance.**

(a) Borrower shall procure for its respective property, and deliver to and maintain for the benefit of Lender during the term of this Mortgage, certificates of insurance evidencing paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable endorsement in favor of Lender, providing the following types of insurance covering the Premises and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Premises without deduction for depreciation, and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) such other insurance on the Premises or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

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

(c) Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under this Section 1.04, and Borrower does hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender to the extent of Lender's interest therein. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsement or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair and restoration of the property so damaged, without affecting the lien of this Mortgage, or Lender may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys then remaining shall be paid to Borrower.

(d) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.04, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. If requested by Lender, Borrower shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or Lender, and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser or to Lender without accounting to Borrower for any unearned premiums thereon.

(e) All policies of insurance required pursuant to the terms of this Section 1.04 shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope of limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender evidence of policies of insurance required by this Section 1.04, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Borrower will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by Borrower, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.05 Intentionally Deleted.

1.06 **Condemnation.** If all or any Material Part (as herein defined) of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the indebtedness secured hereby shall at the option of Lender become immediately due and payable. For purposes hereof, a “**Material Part**” of the Premises shall be any part thereof, which, if damaged or taken, shall prevent the cash flow available from the remaining portions of the Premises after such taking from supporting the remaining debt secured hereby in substantially the same ratio of coverage as the debt is being supported prior to such damage or taking. Borrower, immediately upon obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Premises or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in such Borrower’s name, any action or proceeding relating to any condemnation. Borrower may compromise or settle any claim for compensation but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of Lender. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittance therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds of all its expenses incurred in the collection and administration of such sums, including reasonable attorney’s fees, Lender may release any moneys so received by it for the repair or restoration of the Premises taken, or may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys shall be paid to Borrower.

1.07 **Care of Premises.**

(a) Borrower will keep the buildings, parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) Intentionally Deleted.

(c) If the Premises or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.

(d) Lender or its representative is hereby authorized, upon reasonable written notice to Borrower, to enter upon and inspect the Premises during normal business hours.

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

(f) If all or any part of the Premises shall be damaged by fire or other casualty, Borrower will promptly restore the Premises to the equivalent of its original condition; and if a part of the Premises shall be damaged through condemnation, Borrower will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to Lender. Notwithstanding the foregoing, Borrower shall not be obligated so to restore unless in each instance Lender agrees to make available to Borrower any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Borrower of its obligation to restore. In

the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises (as determined by Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.08 **Leases.** Borrower will comply with and observe their obligations as landlord under all leases affecting the Premises or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Premises, and will enter into leases only upon a lease form previously approved by Lender and for a fair market rental, unless Borrower first obtains Lender's written approval of changes to such form or the execution of a lease not on such form. If requested by Lender, Borrower will separately assign to Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Premises from time to time accruing.

1.09 **Intentionally Deleted.**

1.10 **Intentionally Deleted.**

1.11 **Indemnity; Expenses.** Borrower will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Premises, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that Borrower shall not be required to indemnify Lender for matters directly caused by Lender's gross negligence or willful misconduct.

1.12 **Estoppel Affidavits.** Upon ten (10) days prior written notice, Borrower shall furnish to Lender a written statement, duly acknowledged, based upon its records, setting for the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

1.13 **Subrogation.** To the full extent of the Secured Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby preserved and shall pass to and be held by Lender as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that the same may be satisfied and canceled of record.

1.14 **Books, Records, Accounts and Reports.**

(a) [Intentionally Deleted.]

(b) For as long as any portion of the Secured Indebtedness shall remain outstanding, Borrower will provide to Lender the financial information as set forth in the Note executed of even date herewith.

1.15 **Licenses and Permits Obtained.** Borrower represents and warrants that all necessary permits, licenses and certificates have been obtained to permit Borrower to operate the Premises in the manner contemplated, and Borrower will maintain in effect all such licenses, permits and certificates, together with any other agreements necessary for the use and operation of the Premises.

1.16 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.16 shall control every other provision of this Mortgage and of the Note.

1.17 **Intentionally Deleted.**

1.18 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Premises, the Note, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), Borrower shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.19 **Compliance with Zoning and Restrictions.** Borrower shall at all times operate the respective Premises in accordance with all applicable restrictions and zoning ordinances.

1.20 **Conveyance of Premises.** Borrower shall not directly or indirectly encumber (by lien, junior mortgage or otherwise), pledge, convey, transfer or assign any or all of its interest in the Premises or any ownership interests of Borrower without the prior written consent of Lender. Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of Borrower or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of Lender, the Secured Indebtedness shall be immediately due and payable in the event that Borrower conveys all or any portion of the Premises or any interest therein, or in the event that Borrower's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.21 **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or asbestos, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. §6901 et seq.; and the Superfund Amendments and Reauthorization

Act of 1986, as codified at 42 U.S.C. §9671, et seq.; the terms “hazardous substance” and “release” shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for “hazardous substance” or “release” which is broader than that specified in CERCLA, such broader meaning shall apply. Borrower represents and warrants to Lender that the Premises and Borrower are not in violation of or subject to any existing, pending or, to the best of Borrower’s knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law, and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the respective Premises; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the respective Premises by reason of any Applicable Environmental Law; that Borrower has taken all steps necessary to determine and has determined that no asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the respective Premises; and that the use which Borrower has made, makes or intends to make of the respective Premises will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the respective Premises. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lender to have access to the respective Premises at all reasonable times in order to conduct any tests which Lender deems are necessary to ensure that Borrower and the respective Premises are in compliance with all Applicable Environmental Laws. Borrower acknowledges that, pursuant to that certain Environmental Indemnity Agreement of even date herewith, it has agreed to pay any fines, charges, fees, expenses, damages, losses, liabilities or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the respective Premises and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs or attorneys’ fees and expenses arising from the application of any such Applicable Environmental Law to the respective Premises or Lender, and that such Environmental Indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure; provided, however, that such Environmental Indemnity shall not extend to acts of Lender which result in such fines, charges, fees, expenses, damages, losses, liabilities or response costs.

1.22 **Appraisals.** At Lender’s request, Borrower will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Premises at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals. At any time while the Secured Indebtedness remains outstanding, Lender may have the Premises reappraised at Lender’s expense if (a) an Event of Default shall then exist under the Loan Documents, or (b) such appraisal shall be required by any regulatory guideline or authority to which Lender is subject, or (c) Lender shall have determined, in the exercise of its sole discretion, that the aggregate value of a respective Premises, or all, has materially declined since the date of the last such appraisal, or (d) Lender shall have determined, in the exercise of its sole discretion, that a material adverse change in the financial condition of Borrower has occurred; provided that Borrower shall in no event be responsible for the cost of more than one such reappraisal during any twelve (12) month period.

1.23 **Future Advances.** Lender, at its option, may make future advances to Borrower, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Documents, if applicable. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a)

at the request of Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.24 **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the Loan to Borrower, that:

(a) Except as previously disclosed to Lender, there are no actions, suits or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any guarantor of the Note or which might impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Neither Borrower nor any guarantor of the Note is in violation of any agreement, the violation of which might reasonably be expected to have a materially adverse effect on Borrower's or such guarantor's business or assets, and neither Borrower nor any guarantor of the Note is in violation of any order, judgment or decree of any court, or any statute or governmental regulation to which Borrower or such guarantor is subject. Neither the execution and performance of this Mortgage, the Note or any other Loan Document will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any guarantor of the Note.

(b) [Intentionally Deleted].

(c) All utility and sanitary sewage services necessary for the use of the Premises and all roads necessary for the use of the Premises are available pursuant to permanent private or public easements which are not subject to the exclusive rights of any other persons which could interfere with Borrower's use thereof.

(d) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire by power of condemnation or eminent domain any portion of the respective Premises, or any interest therein, or to enjoin or similarly prevent the use of any of the respective Premises as presently used.

(e) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to any commitment letter issued by Lender are true, correct, complete, and accurately represent the matters to which they pertain.

(f) The Premises do and shall at all times comply with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations to zoning, building codes, set back requirements and environmental matters.

1.25 **Restoration and Repair of Property Damaged or Taken.** Notwithstanding the provisions of Sections 1.04 and 1.06 hereof, Lender agrees that the net proceeds of insurance or condemnation (after payment of costs and expenses pursuant to Sections 1.04 and 1.06) shall be deposited into an interest-bearing account and shall be applied to repair or restoration of the Premises, provided the following conditions are met:

(a) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Event of Default and no uncured event, which, but for expiration of any applicable grace period, would constitute an Event of Default on the part of Borrower under this Mortgage:

(b) The property, buildings, improvements and fixtures so damaged must be capable of being restored to substantially their pre-existing condition and utility (with a value equal to or greater than prior to such loss or damage), not later than one hundred eighty (180) days following the receipt of the applicable insurance or condemnation proceeds;

(c) Within thirty (30) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(d) Within thirty (30) days following the receipt of applicable insurance or condemnation proceeds, and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage,

(ii) if the loss or damage exceeds \$50,000, a fixed-price or guaranteed maximum cost construction contract, providing for repair or restoration of the improvements so damaged or taken, with a contractor and on terms satisfactory to Lender,

(iii) payment and performance bonds with respect to such contract, on standard AIA forms, naming Lender as obligee,

(iv) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause,

(v) such additional funds as in Lender's opinion are necessary to complete the repair and restoration, and

(vi) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications (or evidence that such permits and licenses have been applied for and will be issued in due course);

(e) Lender may, at Lender's expense, retain an independent inspector to review plans and specifications and completed construction and to certify all requests for disbursement;

(f) Borrower shall use all reasonable efforts to commence such work within sixty (60) days of such loss or damage and shall diligently pursue such work to completion;

(g) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures then used by Lender for its construction loans; and

(h) Intentionally Deleted.

ARTICLE II

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

(a) Failure of Borrower (i) to make any scheduled payment of interest or principal under the terms of the Note on or before the due date thereof, or (ii) to pay any other sum due, whether by acceleration or otherwise, under the terms of any Loan Document within ten (10) days after written demand therefor by Lender (in each case, a “**Monetary Default**”); or

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

(c) The occurrence of any “**Event of Default**” under, and as defined in, the Note or any other Loan Document.

2.02 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

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

(a) If an Event of Default shall have occurred and be continuing, Borrower upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom.

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

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons

employed by such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Borrower, his successors and assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

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

2.05 **Receiver.** If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all expenses, including reasonable receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

2.06 **Lender's Power of Enforcement and Power of Sale.**

(a) If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county where the property is located, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, so purchased. Lender may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07 **Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

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

2.09 **Borrower as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily disposed according to provisions of law applicable to tenants holding over.

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

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

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

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

2.14 **Waivers.** After consulting with and considering the advice of independent legal counsel selected by Borrower, makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

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

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage.

In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

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

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

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

2.17 **Due on Sale.** Lender may declare the Secured Indebtedness immediately due and payable upon any transfer or further encumbrance without Lender's consent without regard to whether any impairment of its security or any increased risk of default hereunder can be demonstrated. This provision shall apply to every transfer or further encumbrance of the Premises or any part thereof or interest in the Premises or in Borrower regardless of whether voluntary or not, or whether or not Lender has consented to any previous transfer or further encumbrance of the Premises or interest in Borrower.

ARTICLE III

3.01 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-

in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

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

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

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

3.05 **Notices.** All notices given under this Agreement shall be in writing, shall be effective and deemed received the following business day when sent by overnight mail, upon transmission if sent by facsimile or e-mail, or the third (3rd) business day after deposited in first class United States mail, postage prepaid, and shall be addressed to the addresses in the preamble hereof, or to such other addresses as the parties may designate by like notice.

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

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

3.08 **Commercial Purposes.** Borrower acknowledges and warrants that (a) the indebtedness secured by this Mortgage is incurred for the purpose of acquiring or carrying on a business or commercial enterprise; (b) all proceeds arising from such indebtedness will be used solely in connection with such business or commercial enterprise; and (c) the proceeds of such indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors at the Federal Reserve System..

3.09 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.10 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA (EXCLUDING THE CHOICE OF LAW RULES THEREOF). MORTGAGOR CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS MORTGAGE. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

3.11 **Waiver of Jury Trial.** MORTGAGOR WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR MORTGAGOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. MORTGAGOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, INCLUDING LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND MORTGAGOR ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO MAKE THE LOAN TO BORROWER IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

3.11 **Authorization to File Financing Statements.** Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral (i) as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State of Alabama or such jurisdiction, or (ii) as being

of any equal or lesser scope or with greater detail, and (b) provide any other information required by Section 7-9A-502(b) of Article 9 of the Uniform Commercial Code of the State of Alabama, or such other jurisdiction, for the sufficiency or filing-office acceptance of any financing statement or amendment, including (i) whether Borrower is an organization, the type of organization and any organizational identification number issued to Borrower and, (ii) in the case of a financing statement filed as a fixture filing or indicating collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the collateral relates. Borrower agrees to furnish any such information to Lender promptly upon Lender's request.

[Remainder of Page Intentionally Left Blank]

Exhibit A**Legal Description of the Land**

A parcel of land situated in Section 19, Township 21 South, Range 1 West, Shelby County, Alabama, being a portion of the NE 1/4 of the NW 1/4 of said Section 19, more particularly described as follows:

Begin at the SE corner or the NE 1/4 of the NW 1/4 of said Section 19; thence run South 86°23'06" West for a distance of 1325.99 feet to the SW corner of said quarter section; thence run North 02°40'01" East for a distance of 1410.59 feet to the NW corner of said quarter section; thence run North 86°51'05" East for a distance of 371.99 feet to a point on the Southerly right of way line of Highway 26 (80' right of way); thence run South 46°39'27" East for a distance of 460.64 feet to the Point of Curvature of a curve to the left, said curve having a radius of 1684.88 feet; thence run Southeasterly along the arc of said curve for an arc length of 243.37 feet (Delta=08°16'33", Chord Length=243.15 feet, Chord Bearing=South 53°24'03" East) to a Point of Tangency of said curve; thence run South 58°31'53" East for a distance of 417.47 feet along said Southerly right of way line to a point on the East line of said 1/4-1/4 section; thence run South 00°00'00" West for a distance of 666.81 feet to the Point of Beginning.

LESS AND EXCEPT:

A parcel of land situated in Section 19, Township 21 South, Range 1 West, Shelby County, Alabama, being a portion of the NE 1/4 of the NW 1/4 of said Section 19, more particularly described as follows:

Begin at the NE corner of the NE 1/4 of the NW 1/4 of said Section 19; thence run South 00°00'00" West for a distance of 634.25 feet to a point on the North right of way line of Highway 26 (80" right of way); thence run North 58°31'05" West for a distance of 365.97 feet to the Point of Curvature of a curve to the right, said curve having a radius of 1684.88 feet; thence run Northwesterly along the arc of said curve for an arc length of 243.37 feet (Delta=08°16'33", Chord Length=243.15, Chord Bearing=North 53°24'03" West) to a Point of Tangency of said curve; thence run North 46°01'45" West for a distance of 378.09 feet; thence run North 86°51'05" East for a distance of 771.56 feet to the Point of Beginning.

IN WITNESS WHEREOF, Borrower has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

MORTGAGOR:

Kenneth Martin
KENNETH MARTIN

STATE OF ALABAMA)

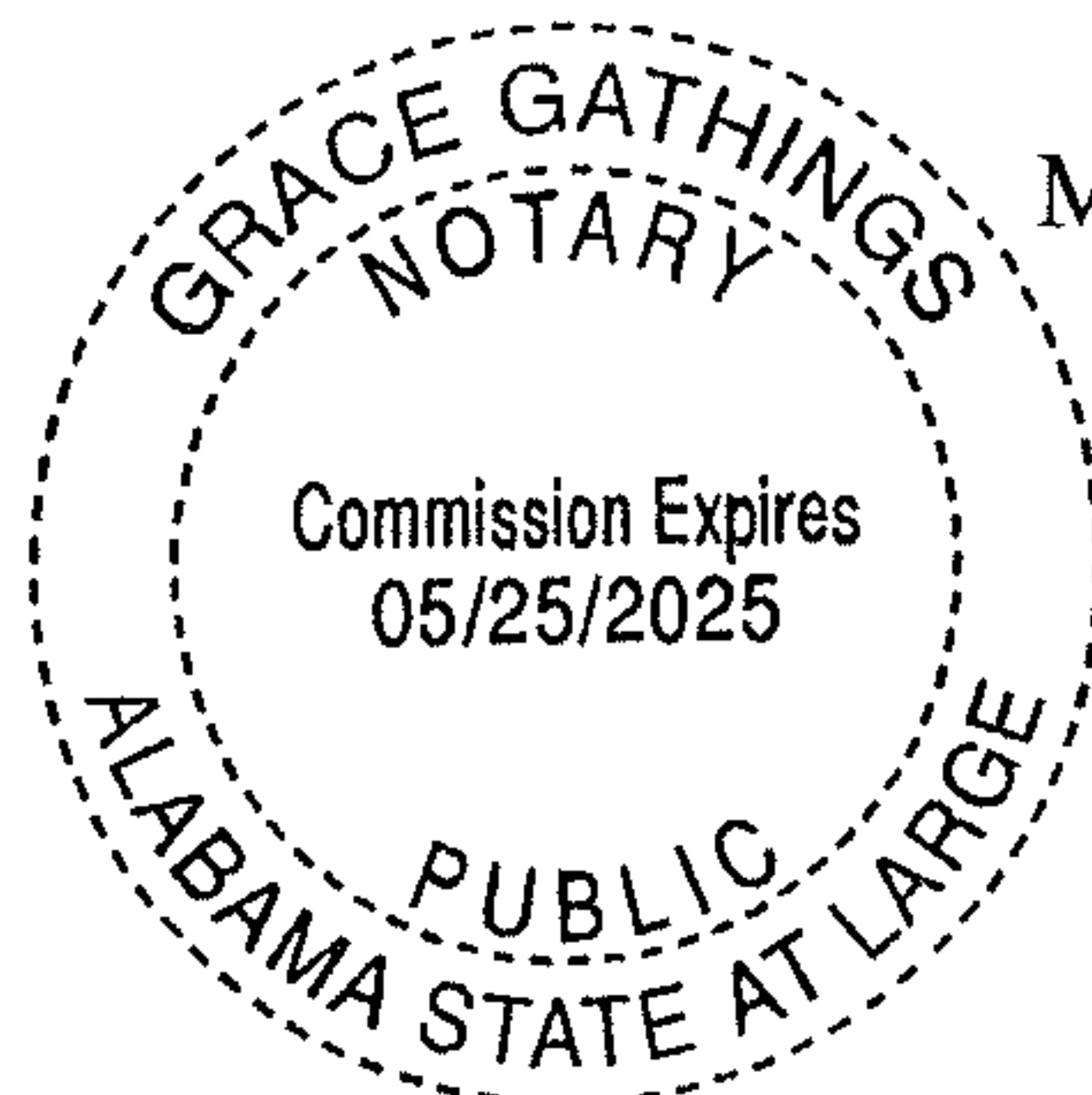
Shelby COUNTY)

I, the undersigned, hereby certify that KENNETH MARTIN, whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing document, he executed the same voluntarily on the day the same bears date.

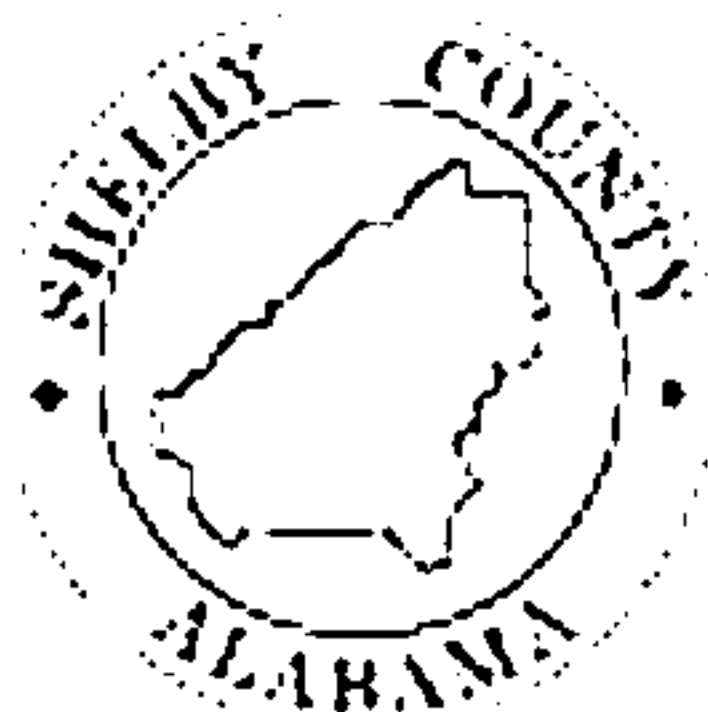
Given under my hand and official seal this 27 day of April, 2023.

Grace Gathings
Notary Public

[NOTARIAL SEAL]



My commission expires: 05/25/2025



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
05/02/2023 01:47:16 PM
\$729.55 BRITTANI
20230502000129600

Alvin S. Bayl