

**This Instrument Prepared by:**

Matthew D. Evans Esq.  
Evans PLLC  
19 Inverness Center Parkway, Suite 150  
Birmingham, Alabama 35242

THIS MORTGAGE IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ALABAMA CODE SECTION 7-9A-502(C). PORTIONS OF THE GOODS AND PERSONAL PROPERTY COMPRISING A PART OF THE MORTGAGED PROPERTY ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN *EXHIBIT A* ATTACHED HERETO. THE ADDRESSES OF BORROWER (DEBTOR) AND BANK (SECURED PARTY) ARE SPECIFIED IN THIS MORTGAGE. THIS MORTGAGE IS ALSO A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9A-334(H) OF THE CODE OF ALABAMA, AND SECURES AMONG OTHER OBLIGATIONS, AN OBLIGATION INCLUDED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

THE MAXIMUM PRINCIPAL AMOUNT SECURED BY THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING SHALL IN NO EVENT EXCEED ONE MILLION SEVEN HUNDRED THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$1,735,000.00), IN ACCORDANCE WITH THE TERMS OF SECTION 1.07 OF THIS MORTGAGE.

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

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (the "Mortgage") is made and entered into as of January **26**, 2024, by and among **MANCHA HARDSCAPES, L.L.C.**, an Alabama limited liability company (the "Borrower"), whose address is 1821 Drennan Street, Birmingham, AL 35234, and who is one and the same entity as MANCHA HARDSCAPES, LLC, an Alabama limited liability company, in favor of **RENASANT BANK**, a Mississippi banking corporation, whose address is c/o Renasant Bank, Attn: Mr. Patrick Lavette, 2001 Park Place North, Suite 600, Birmingham, AL 35203 (the "Bank"). Any capitalized term used herein but not defined shall have the meaning ascribed to such term in that certain Credit Agreement dated as of even date herewith between Borrower and Bank (as amended as of the date hereof and from time to time, the "Credit Agreement").

THE BORROWER REPRESENTS AND WARRANTS THAT MANCHA HARDSCAPES, L.L.C., AN ALABAMA LIMITED LIABILITY COMPANY, IS ONE AND THE SAME AS MANCHA HARDSCAPES, LLC, AN ALABAMA LIMITED LIABILITY COMPANY, WHO IS THE GRANTEE UNDER THAT CERTAIN WARRANTY DEED EXECUTED BY SUNSET PROPERTIES, LLC, AN ALABAMA LIMITED LIABILITY COMPANY, AS RECORDED IN THE REAL ESTATE RECORDS OF THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA ON MARCH 4, 2022, IN INSTRUMENT NO. 20220304000090600.

**WITNESSETH:**

**WHEREAS**, Borrower is justly indebted to Bank in the principal amount of **ONE MILLION SEVEN HUNDRED THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$1,735,000.00)**, or such portion thereof as has been disbursed from time to time under the provisions of the Credit Agreement, such indebtedness being evidenced by the Notes, and payable to Bank with interest thereon as provided for in the Credit Agreement;

**WHEREAS**, Borrower desires to secure the Obligations, including, but not limited to, the obligations to (i) pay the principal of and interest on the Notes in accordance with the respective terms thereof, including any and all extensions, modifications, and renewals thereof and substitutions therefor, (ii) pay, repay or reimburse Bank for all amounts owing under any of the Loan Documents, including all Indemnified Losses and Default Costs; (iii) to pay, repay or reimburse Bank Parties for all other obligations pursuant to any of the other Loan Documents; and (iv) pay, repay or reimburse Bank Parties all Indemnified Losses and Default Costs.

**NOW, THEREFORE**, for and in consideration of the foregoing premises and Bank making the Loan, and to secure the prompt payment and performance of the Obligations, Borrower does hereby irrevocably CONVEY, MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Bank, and the successors and assigns of Bank, all of Borrower's right, title and interest of whatever kind, nature and description, whether now owned or hereafter acquired, and wherever located (the "Borrower's Interest") in and to all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, whether now owned or hereafter acquired, and including replacements and additions thereto (herein referred to collectively as the "Mortgaged Property"):

(a) All those certain tracts, pieces or parcels of land, and interests in land, located in Shelby County, Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

(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, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used



or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, 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 Mortgaged Property 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;

(c) Any and all Tangible Property, including, without limitation, all of the following: (i) furniture, furnishings, equipment, machinery Goods, personal property, and all other Tangible Property (the “Personal Property”) and goods located within, used in the operation of or derived from the Improvements, (ii) crops, farm products, timber and timber to be cut; (iii) general intangibles (including payment intangibles), money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, fixtures, or other Mortgaged Property, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) the Construction Documents, Plans and Specifications, and all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code (Article 9 - Secured Transactions) (“UCC”); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof;

(d) 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, timber, 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 Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(e) All Economic Incentives;

(f) Any and all Contracts, including, without limitation: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) all Construction Documents, contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, permits, rights and entitlements are now or at any time thereafter existing, including without limitation, any and all certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property; (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable; and (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) economic incentives or similar agreements or understandings; (v) agreements relating in any way to the construction, development or rehabilitation of the Land or Improvements or provision of materials therefor including, without limitation, all Construction Documents; (vi) contracts with architects or engineers or others for the preparation or provision of any Plans and Specifications, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Assigned Leases);

(g) All Assigned Documents;

(h) All Rents, monies, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant 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; and

(i) 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 any of the foregoing.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Bank and the successors, successors-in-title and assigns of Bank, forever; and Borrower covenants that Borrower is lawfully seized and possessed of Borrower's Interest in the Mortgaged Property as aforesaid and has good right to convey the



same, that the same are unencumbered except for those matters expressly approved by Bank as Permitted Liens, and Borrower does hereby warrant and will forever defend the title thereto against the claims of all persons whomsoever, except Permitted Liens.

The Lien of this Mortgage automatically will attach to any further, greater, additional or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time hereafter acquired by Borrower by whatsoever means and without any further action or filing or recording on the part of Borrower or Bank or any other Person.

**BORROWER HEREBY COVENANTS AND AGREES WITH BANK AS FOLLOWS:**

**ARTICLE I**

**1.01 Payment and Performance of Loan Documents.** Borrower will perform, observe and comply with all the provisions hereof, and of each of the other Loan Documents, including, but not limited to, the due and punctual payment of the principal amount due under the Notes, together with interest thereon, and all other sums of money required to be paid by Borrower pursuant to any one or more of the Loan Documents.

**1.02 Assignment of Rents and Leases.** To further secure the Obligations, Borrower hereby sells, assigns, transfers and sets over unto Bank, its successors and assigns, all of Borrower's Interest in and to all Assigned Leases including, without limitation, all the Rents under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or replacement provision), all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief. Notwithstanding the foregoing, so long as there shall not exist any Event of Default, then Borrower shall have the right to continue to exercise all its rights and perform its obligations under the Assigned Leases, including the right to collect each payment of Rents at the time provided in the applicable Assigned Leases.

**1.03 Security Agreement.** With respect to all Personal Property constituting part of the Mortgaged Property which is subject to the provisions of the UCC in the state wherein the Land is situated, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Personal Property in compliance with the provisions of the UCC, and Borrower hereby grants to Bank a security interest in said Personal Property. Borrower authorizes Bank to file a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such Personal Property. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default, shall be (a) as prescribed herein or in any other Loan Document with respect thereto, or (b) as prescribed by applicable Law, including the UCC, all at Bank's sole election. Borrower agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Bank that

everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for taking or for loss of value, or (C) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Bank as determined by this instrument or affect the priority of Bank's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Bank in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Bank's priority of interest, to be effective against a particular class of persons, must be filed in the UCC records. This Mortgage may be filed as a financing statement in any office where Bank deems such filing necessary or desirable and Borrower will promptly upon demand reimburse Bank for the costs therefor.

**1.04 Use of Mortgaged Property.** Borrower shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Bank from owner occupied commercial real estate, unless otherwise agreed to in writing by Bank, and at all times in compliance with the Credit Agreement, this Mortgage, and each other Loan Document.

**1.05 Conveyance of Mortgaged Property.** Except for Permitted Leases and Other Transfers of Collateral or as otherwise expressly permitted by the Credit Agreement, 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 Mortgaged Property without the prior written consent of Bank. Borrower will protect the first lien and security interest status of this Mortgage in favor of Bank and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Liens.

**1.06 Acquisition of Collateral.** Except as otherwise expressly permitted by the Credit Agreement, Borrower shall not acquire any Personal Property subject to any Lien taking precedence over the Lien of this Mortgage.

**1.07 Maximum Principal Indebtedness.** SUBJECT TO THE PROVISIONS OF THIS SECTION 1.07, THE OBLIGATIONS SECURED BY THIS MORTGAGE SHALL IN NO EVENT EXCEED THE MAXIMUM PRINCIPAL AMOUNT OF **ONE MILLION SEVEN HUNDRED THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$1,735,000.00)** (the "Maximum Principal Amount"). Notwithstanding the foregoing or anything to the contrary contained herein, the following provisions shall apply:



(a) Maximum Principal Amount. Notwithstanding anything contained herein to the contrary, the maximum principal amount of Obligations which is or under any contingency may be secured by this Mortgage is the Maximum Principal Amount, which in addition to the indebtedness under the Notes, secures and includes all (i) Impositions, taxes, charges or assessments which may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, and (iii) Default Costs, Indemnified Losses and all other expenses incurred in upholding the lien of this Mortgage, including, but not limited to, (aa) the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (bb) any amount, cost or charge to which the Bank becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, and (cc) interest at the Default Rate (or regular interest rate) and penalties provided for herein.

(b) Reduction of Maximum Principal Amount. The Maximum Principal Amount shall be reduced only by the last and final sums that a Borrower Party repays with respect to the Obligations secured hereby and shall not be reduced by any intervening repayments of such Obligations by any Borrower Party otherwise. Borrower and Bank understand and agree that the Maximum Principal Amount may, from time to time, be a sum which is significantly less than the total Obligations secured by this Mortgage outstanding.

**1.08 Use Violations.** Except to the extent permitted under the Credit Agreement, Borrower shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Borrower shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Bank, except to the extent permitted under the Credit Agreement. Borrower will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (i) materially violates any legal requirement; (ii) may be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (iii) constitutes a public or private nuisance; (iv) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto; (v) changes the use of the Mortgaged Property; (vi) permits or suffers to occur any material waste on or to the Mortgaged Property; or (vii) converts the Mortgaged Property to a condominium or cooperative form of ownership.

**1.09 Construction Mortgage and Fixture Filing.** This Mortgage secures future advances for construction of Improvements on the Land pursuant to the Credit Agreement. Accordingly, this Mortgage constitutes a "construction mortgage" under Alabama law. This Mortgage shall also constitute a "fixture filing" for the purposes of Alabama law. All or part of the Mortgaged Property is or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Borrower) and the address of the Secured Party (Bank) is set forth in the first paragraph of this Mortgage.

## ARTICLE II

**2.01 Events of Default.** The term “Event of Default,” wherever used in this Mortgage, shall mean an “Event of Default” as defined in the Credit Agreement together with any one or more of the following:

- (a) Borrower shall fail to observe or perform any other obligation, condition or covenant to be observed or performed by it hereunder;
- (b) The Mortgaged Property is subjected to actual waste, or any material part thereof is removed, demolished or altered without the prior written consent of Bank; or
- (c) Any material adverse claim relating to the Mortgaged Property, by title, lien or otherwise is established in any legal or equitable proceeding; or
- (d) Unless the written consent of Bank is first obtained (which consent may be withheld in Bank's sole discretion), there occurs any lease or transfer of the Mortgaged Property, or any interest therein, or any further encumbrance of the Mortgaged Property (other than Permitted Leases and Other Transfers of Collateral).

Provided that with respect to any of the foregoing, such Event of Default will be deemed to have occurred upon the occurrence of such event Without Notice being required if Bank is prevented from giving notice by Bankruptcy or other applicable Law.

**2.02 Rights and Remedies.**

(a) If an Event of Default shall have occurred, then in addition to the rights and remedies provided for under any other Loan Document or under applicable Law, then at the option of Bank this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and to the extent provided or allowed by Alabama law, Bank, or its agent, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the front or main door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required by applicable Laws. At any such sale, Bank may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Bank shall have the right to enforce any of its remedies set forth herein without notice to Borrower, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Bank in its sole discretion may elect, and if Bank so elects, Bank may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Bank at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Bank may determine.



Said sale may be adjourned by Bank, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(b) **Bank's Remedies Upon Default Regarding the Assigned Leases.** Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing Borrower from any obligation under this Mortgage, at Bank's option and in its discretion, and irrespective of whether Bank shall have commenced any other remedy under applicable law or any other Loan Document, then Bank may, without notice and with or without bringing any action or proceeding except as required by applicable law, (i) exercise any and all rights available under applicable law, (ii) revoke the rights of Borrower as set forth in Section 1.02, (iii) proceed to perform any and all of the duties and obligations and exercise all the rights and remedies of Borrower contained in the Assigned Leases as fully as Borrower could itself, (iv) lease all or any portion of the Mortgaged Property and collect the Rents, and/or (v) take possession of the Mortgaged Property or the Rents and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Bank may in its discretion deem proper, and, either with or without taking possession of the Mortgaged Property in Bank's own name: (aa) make any payment or perform any act which Borrower has failed to make or perform, in such manner and to such extent as Bank may deem necessary to protect the security provided for in this Mortgage, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Mortgage, or the rights or powers of Bank; (bb) lease the Mortgaged Property or any portion thereof in such manner and for such Rents as Bank shall determine in its sole and absolute discretion; or (cc) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Mortgaged Property (or any part thereof) as may seem proper to Bank and to apply the Rents to the payment of (in such order of priority as Bank, in its sole discretion, may determine): (aa) all expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Bank may deem necessary or desirable; (bb) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which Bank may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Mortgaged Property; (cc) all or any portion of the Loan; and/or (dd) all costs and Attorneys' Fees incurred in connection therewith. Borrower hereby specifically authorizes Bank, and hereby constitutes and appoints Bank as Borrower's agent and attorney-in-fact, in Borrower's name or in Bank's name, to do any of the foregoing. The foregoing power of attorney is coupled with an interest and cannot be revoked by insolvency, Bankruptcy, death, dissolution or otherwise. The foregoing remedies are cumulative of and in addition to, and not restrictive of or in lieu of, the rights and remedies provided for or allowed by any one or more of the Loan Documents or provided for or allowed by law or in equity.

(c) **Other Rights.** Bank (i) may surrender the insurance policies maintained pursuant to the Credit Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Obligations, in accordance with the provisions hereof, and, in connection therewith, Borrower hereby appoints Bank as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; and (ii) apply any reserves for all property taxes and other Impositions and insurance premiums, if any,

required by the provisions of this Mortgage, toward payment of the Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Bank may have at law or in equity, or by virtue of any Loan Document, or otherwise.

(d) **Bank as Purchaser.** Bank may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Bank or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Bank shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Obligations. Bank, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Bank's purchase shall be applied in accordance with this Mortgage.

(e) **Other Rights of Bank.** Should any part of the Mortgaged Property come into the possession of Bank, whether before or after an Event of Default, Bank may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Bank may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Bank may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Bank in respect of the Mortgaged Property. Borrower covenants to promptly reimburse and pay to Bank on demand, at the place where the Notes are payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, property taxes, impositions or other charges) incurred by Bank in connection with Bank's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Bank at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Obligations. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Borrower, and Bank shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Bank shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Bank's possession.

(f) **Possession After Foreclosure.** If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.



(g) **Application of Proceeds.** The proceeds from any sale, lease, or other disposition made pursuant to this Mortgage, or the proceeds from the surrender of any insurance policies pursuant to any of the Loan Documents, or any Rents collected by Bank from the Mortgaged Property (following any application of such Rents in accordance with the Credit Agreement), or sums received pursuant hereto which Bank elects to apply to the Obligations in accordance with the applicable provisions of the Credit Agreement, or proceeds from insurance received pursuant to the terms hereof which Bank elects to apply to the Obligations in accordance with the applicable provisions of the Credit Agreement, shall be applied by Bank to the Obligations in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees; (ii) to the remainder of the Obligations as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Obligations in the inverse order of maturity, and third, to prepayment of the unmatured portion, if any, of principal of the Obligations applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Obligations and full performance and discharge of the Obligations to the holder or Bank of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Bank shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Obligations like any other payment. The balance of the Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Notes or the other Loan Documents.

(h) **Prima Facie Evidence.** In the event of any sale of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**2.03 Purchase by Bank.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Bank may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

**2.04 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) and all Persons holding under Borrower shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.05 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, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage,

or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under 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. The exercise by Bank of any rights or powers under Section 1.02, including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Mortgage, shall not be considered a waiver by Bank of any default by Borrower under any Loan Document.

**2.06 Bank Not Liable Except For Its Willful Misconduct or Bad Faith.** Bank shall not be liable for any loss sustained by Borrower resulting from (1) Bank's failure to let the Mortgaged Property, or (2) any act or omission of Bank in exercising its rights and remedies hereunder, unless and to the extent such loss is caused by the willful misconduct or bad faith of Bank. Nor shall Bank be obligated to perform or discharge, nor does Bank hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Mortgage, and Borrower shall, and does hereby agree, to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against Bank by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful misconduct or bad faith of Bank. Should Bank incur any such liability under any Assigned Lease, or under or by reason of this Mortgage, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and Attorneys' Fees, shall be secured by this Mortgage and Borrower shall reimburse Bank for all such liability immediately upon demand by Bank. This Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Bank, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, nor for any dangerous or defective condition of the Mortgaged Property, nor for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any tenant, employee or others, unless and to the extent resulting from the willful misconduct or bad faith of Bank.

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

**2.08 Leases.** Bank, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceeding instituted by Bank to collect the sums secured hereby.

**2.09 Discontinuance of Proceedings.** In case Bank 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 Bank, then in every such case, Borrower and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceedings had occurred.

**2.10 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Bank by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

**2.11 Suits to Protect the Mortgaged Property.** Bank shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Lien of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the Rents; 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 Bank.

**2.12 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, Bank, 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 Bank allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

### **ARTICLE III**

**3.01 Successors and Assigns.** This Mortgage shall be binding upon Borrower and Bank and their respective successors and assigns and subsequent owners of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Borrower and Bank and their respective successors and assigns and any holder of the Obligations.

**3.02 Notices.** All notices provided for herein shall be given and deemed received when given and received in accordance with the terms of the Credit Agreement.

**3.03 Assignment.** This Mortgage is assignable by Bank and any assignment of this Mortgage by Bank shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Bank.

**3.04 Subrogation.** If any or all of the proceeds of the Notes have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Bank shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Bank and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations and the performance and discharge of the Obligations

**3.05 Rights Cumulative.** Bank shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by Alabama law and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Borrower or others obligated for the Obligations or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Bank, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Bank hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

**3.06 Performance at Borrower's Expense.** Borrower shall (i) pay all reasonable legal fees incurred by Bank in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); and (ii) reimburse Bank, promptly upon demand, for all amounts expended, advanced, or incurred by Bank to satisfy any obligation of Borrower under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Bank in connection with any such matters. Except to the extent that costs and expenses are included within the definition of "Obligations," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Obligations.

**3.07 Credit Agreement.**

(a) Incorporation and Conflicts. Reference is hereby made for all purposes to the Credit Agreement of even date herewith between Bank and Borrower pertaining to the Loan. In event of a conflict between the terms and provisions hereof and the Credit Agreement, the Credit Agreement shall govern.

(b) Incorporation of Covenants, Conditions and Agreements. All covenants, conditions and agreements contained in the Credit Agreement and all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Borrower (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all property taxes and other Impositions, and comply with all terms and conditions of the with the Credit Agreement, (iii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Credit Agreement and other Loan Documents.

(c) Incorporation of Warranties and Representations. All the warranties, representations, conditions and agreements contained in (i) the Credit Agreement, (ii) the Notes and (iii) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

**3.08 Incorporation of Restrictions on Flood Zone Property.** In addition to the foregoing Section 3.07, express reference is hereby made to incorporate Section 5.5 of the Credit



Agreement Restrictions on Flood Zone Property and the terms and conditions contained therein, including, without limitation as republished hereinafter set forth:

(a) Additional Defined Terms. As used in this section, the following defined terms shall have the meaning as set forth below:

“Building” shall have the same meaning ascribed to such term as set forth in 12 CFR § 339.1, et. seq.

“Mobile Home” shall have the same meaning ascribed to such term as set forth in 12 CFR § 339.1, et. seq.

“Real Property” shall mean real estate and improvements thereon (including any Building or Mobile Home) that is described within this Mortgage and upon which Bank is granted a lien as security for the Note, however such real estate and improvements may be described therein (i.e., land, mortgaged property, improvements, property, etc.).

“Related Indebtedness” shall mean any and all sums previously or hereafter advanced under the Note, together with the interest thereon as well as any and all other indebtedness which may arise from or come due under the Note, this Mortgage and any and all other loan agreements, environmental indemnity agreements, guaranties, security agreements, hedge agreements, assignments and any other agreement or instrument given at any time by anyone to further evidence, secure, hedge or document any obligations assumed or undertaken by Borrower Parties in connection with the Loan, now existing or hereafter arising, and all renewals, extensions, modifications, substitutions for and refinancings of the foregoing or any part of thereof.

“Tangible Personal Property” shall mean any tangible personal property upon which Bank is granted a security interest pursuant to this Mortgage.

(b) General. Notwithstanding anything to the contrary contained in this Mortgage, the Credit Agreement or any other Security Document granting a Lien on Real Property, whether now in existence or hereinafter arising or created, the following terms and conditions shall be applicable to the Lien under this Mortgage and any other Security Document granting a Lien on Real Property, whether now in existence or hereinafter arising or created:

(1) Partial Disclaimer of Security Interest on Tangible Personal Property: Except with respect to the Tangible Personal Property identified or referenced in the following Section 3.08 (B) (2), Bank disclaims any Lien or security interest on Tangible Personal Property notwithstanding any terms, provisions or statements within this Mortgage to the contrary.

(2) Tangible Personal Property Excluded from Bank's Disclaimer: Notwithstanding the preceding Section 3.08 (B)(1), Bank retains a Lien and security interest in all Tangible Personal Property that is (i) affixed to a Building or Mobile Home and integrated therewith in such a manner that flood insurance that is provided on such Building or Mobile Home will also cover loss of or damage to such Tangible Personal

Property, (ii) specified items of Tangible Personal Property that are expressly insured by the provisions of the flood insurance that has been provided on such Building or Mobile Home, or (iii) not located in such Building or Mobile Home when in use or at rest.

(3) Waiver of Cross-Collateralization. The Bank waives and disclaims its lien under this Mortgage to the extent it can be read to extend to sums other than the Related Indebtedness.

(c) Retention of Rights.

(1) Nothing in this Section 3.08 shall constitute a discharge or satisfaction of the Note, the Obligations, or the Related Indebtedness. It is the intention of Bank to retain as liable Borrower Parties and all parties to the Note or any instrument or agreement evidencing the Obligations and Related Indebtedness secured by this Mortgage unless a party is expressly released by Bank in writing. No such maker, endorser, guarantor or other accommodation party for such indebtedness shall be released by virtue of this section. Further, nothing in this section is intended to limit any Lien or security interest granted to Bank if such lien or security interest is granted by or arises under an agreement other than this Mortgage.

(2) Except as expressly stated above in section 3.08 (B), nothing in this section elsewhere shall constitute a satisfaction of the Note, the Credit Agreement or other Obligations secured by the Credit Agreement or this Mortgage, it is the intention of Bank to retain as liable all Borrower Parties and all Related Indebtedness, the Obligations under the Note, the Credit Agreement, this Mortgage or any instrument or agreement evidencing the Obligations, unless a party is expressly released by Bank in writing. No such maker, endorser, guarantor or other party is released by the application of this section. Further, nothing in this section is intended to limit any lien or security interest granted to Bank as security for the Obligations or upon the Land, the Tangible Personal Property or any other real or personal property if such lien or security interest is granted by a separate agreement other than the Credit Agreement or this Mortgage. This section is intended for the benefit of the Borrower Parties and Bank and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity and the terms in this section do not waive Bank's right to require strict performance of this Mortgage as set forth herein or therein by incorporation of this section, nor obligate Bank to make any future modifications to the Mortgage.

(3) For the avoidance of doubt, this Section 3.08 is intended to be a partial modification of the Lien granted by this Mortgage and shall not be construed as a discharge or novation of this Mortgage. Except to the extent expressly provided in Section 3.08 (B), this Section is not intended to, and shall not in any manner, impair the Lien of or affect the validity or priority of this Mortgage as security for any and all Obligations or Related Indebtedness secured thereby whether incurred, advanced or otherwise arising before or after it becomes effective as provided upon the execution of any Mortgage or other Security Document granting a Lien on Real Property.



**3.09 Survival of Obligations.** Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Obligations shall have been paid in full; provided, however, that nothing contained in this section shall limit the obligations of Borrower as otherwise set forth herein.

**3.10 Recording and Filing.** Borrower will cause this instrument and any financing statement, and if requested by Bank, such other Loan Documents, as are reasonably requested by Bank and commonly recorded for transactions similarly situated in Birmingham, Alabama along with all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Bank shall reasonably request, and will pay all such necessary recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges; provided that any exceptions, benefits or rights to paying duplicative mortgage recording tax on any Loan Document above and beyond the current secured amount of this Mortgage which is permitted under Alabama Code § 40-22-2, as amended, modified or replaced from time to time, shall not be required.

**3.11 Waiver of Any Deficiency Limitation.** Borrower agrees that Bank shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Obligations equal to the difference between the amount owing on the Obligations and the amount for which the Mortgaged Property was sold pursuant to judicial or nonjudicial foreclosure sale. Subject to all Legal Requirements, Borrower expressly recognizes that, to the extent allowed by law and subject to applicable Legal Requirements, this Section constitutes a waiver of any statutory limitation or procedural requirements with respect to any such deficiency including, without limitation, any statutory or other legal requirement, if any, that Borrower be entitled to a judicial determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Borrower, Guarantor, or any other Borrower Party, and others against whom recovery of the deficiency is sought

**3.12 Covenants Running with the Land.** All Obligations contained in this Mortgage and the other Loan Documents are intended by Borrower and Bank to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Bank.

**3.13 Construction.** All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined herein, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

**3.14 Headings.** The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

**3.15 No Waiver; Severability.** Any failure by Bank to insist, or any election by Bank not to insist, upon strict performance by Borrower or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Bank shall have the right at any time or times thereafter to insist upon strict performance by Borrower or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable legal requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**3.16 Rights Cumulative.** Bank shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by Alabama law and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Borrower or others obligated for the Obligations or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Bank, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Bank hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

**3.17 Future Advances.** THIS IS A FUTURE ADVANCE MORTGAGE. Pursuant to the Credit Agreement or otherwise upon Borrower's request and option so long as this Mortgage secures indebtedness held by Bank, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage, the Notes or the Credit Agreement, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby.

**3.18 Applicable Law.** This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

**3.19 ENTIRE AGREEMENT; AMENDMENT.** THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN



**INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.**

**3.20 WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BANK IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.**

**3.21 NOTICE OF INDEMNIFICATION: BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO CERTAIN TERMS HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST BANK'S OWN NEGLIGENCE AS STATED HEREIN.**

\*\*\*

**EXECUTED AND DELIVERED** as of the day and year first above written.

**BORROWER:**

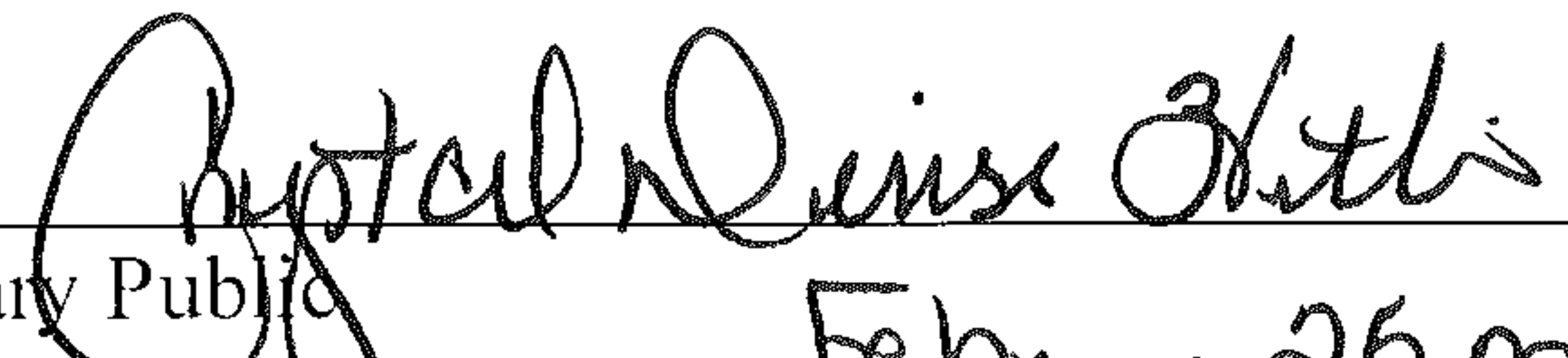
**MANCHA HARDSCAPES, L.L.C.,**  
an Alabama limited liability company

  
\_\_\_\_\_  
John N. Mancha, its Member

STATE OF ALABAMA           §  
COUNTY OF JEFFERSON   §

I, the undersigned, a notary public in and for said county in said state, hereby certify that John N. Mancha, whose name as Member of **MANCHA HARDSCAPES, L.L.C.**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 24 day of January 2024.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: February 25, 2024

[SEAL]



**EXHIBIT "A"****(DESCRIPTION OF LAND)**

Tract 7, of Jessica Ingram Survey, as recorded in Map Book 3, at page 54, in the Office of the judge of Probate of Shelby County, Alabama: being situated in Shelby County, Alabama.

**LESS AND EXCEPT:**

A portion of Tract 7, of the Jessica Ingram Survey, as recorded in Map Book 3, page 54 in the Office of Probate Judge of Shelby County, Alabama, more particularly described as follows:

Commence at the Northwest corner of said Lot 7 and run in an Easterly direction along the North line of said Lot 7 a distance of 557.40 feet to a point; thence turn a left interior angle of 92°54'42" and run parallel to the West line of said Lot 7 a distance of 135.27 feet to a point; thence turn a left interior angle of 87°04'26" and run parallel to the South line of said Lot 7 a distance of 557.41 feet to a point on the West line of said Lot 7; thence turn a left interior angle of 92°55'34" and run along the West line of said Lot 7 a distance of 135.13 feet to the Point of Beginning, making a closing left interior angle of the first described course of 87°05'18"; being situated in Shelby County, Alabama.



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**01/29/2024 09:35:15 AM**  
**\$2684.50 BRITTANI**  
**20240129000021420**

*Allen S. Bayl*