

County Division Code: AL039 Inst. # 2024013161 Pages: 1 of 38 I certify this instrument filed on: 2/15/2024 1:39 PM
Doc: MTG Judge of Probate Jefferson County, AL Rec: \$127.00 MtgTx: \$23,841.75
Clerk: CSBESS

This Instrument Prepared By:
Miller & Martin PLLC
Suite 1200 Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289
Attn: R. Grant Dobson, Esq.

STATE OF ALABAMA)
COUNTIES OF JEFFERSON AND SHELBY)

NOTE: Portion of Property located in Jefferson County is 25.4 acres or 97%
Portion of Property located in Shelby County is 0.8 acres or 3%

ALABAMA
MORTGAGE
AND
SECURITY AGREEMENT
(Includes Fixture Filing)

Effective Date: February 15th, 2024
Borrower: HENDON URBAN RIVERCHASE LLC, a Georgia limited liability company, as mortgagor, having an address of 3445 Peachtree Road, Suite 465, Atlanta, Georgia 30326
Lender: Protective Life Insurance Company, a Tennessee corporation, having an address at 2801 Highway 280 South, Birmingham, Alabama, 35223, Attention: Investment Department
Loan Amount: \$15,894,401.00
Maturity Date: March 1, 2033

THIS INSTRUMENT ALSO SERVES AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT WHICH IS BEING FILED AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF ALABAMA. BORROWER IS THE RECORD OWNER OF THE REAL ESTATE HEREIN DESCRIBED. THE COLLATERAL IS DESCRIBED HEREIN, SOME OF WHICH IS OR MAY BECOME FIXTURES ON THE REAL ESTATE DESCRIBED HEREIN. THE NAMES AND ADDRESSES OF THE DEBTOR ("BORROWER" HEREIN) AND SECURED PARTY ("LENDER" HEREIN) ARE SET FORTH ABOVE.

ALABAMA
MORTGAGE
AND
SECURITY AGREEMENT
(Includes Fixture Filing)

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as "Mortgage"), made to be effective as of the 15th day of February, 2024, by and between **HENDON URBAN RIVERCHASE LLC**, a Georgia limited liability company, as mortgagor, having an address of 3445 Peachtree Road, Suite 465, Atlanta, Georgia 30326 (hereinafter referred to as "Borrower"), and **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee corporation, as mortgagee, having an address at 2801 Highway 280 South, Birmingham, Alabama, 35223, Attention: Investment Department ("Lender").

WITNESSETH, that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, the parties hereto agree as follows:

1. **Definition of Terms.** As used herein, the following terms shall have the following meanings:

1.1 **Borrower's Notice Address:** 3445 Peachtree Road, Suite 465, Atlanta, Georgia 30326.

1.2 **Casualty:** as defined in Paragraph 5.1.

1.3 **Commitment:** as defined in Paragraph 3.7.

1.4 **Contested Sum:** as defined in clause (e) of Paragraph 4.1.

1.5 **Events of Default:** as defined in Paragraph 7.1.

1.6 **Improvements:** all buildings, structures, and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personalty.

1.7 **In its Sole Unfettered Discretion:** as defined in Paragraph 9.8.

1.8 **Insurance Premiums:** as defined in Paragraph 4.3.

1.9 **Insurance Proceeds:** as defined in clause (a) of Paragraph 5.3.

1.10 **Laws**: as defined in clause (c) of Paragraph 4.2.

1.11 **Land**: the land described in **Exhibit "A"** attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy, and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or hereafter appertaining to, the Land.

1.12 **Leases**: all leases, rental agreements, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.13 **Lease Assignment**: a certain Assignment of Rents and Leases by Borrower in favor of Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.14 **Loan Documents**: this Mortgage, the Note, the Lease Assignment, the Commitment and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender including, without limitation, that certain Escrow and Security Agreement (Tenant Improvement Escrow) of even date herewith executed by and between Lender and Borrower, that certain Holdback Agreement of even date herewith executed by Borrower and Lender (the "Holdback Agreement"), and the "Additional Interest Agreement" (as defined in the Note). The Additional Interest Agreement provides for payments of "Additional Interest" to Lender based on Lender's "NCF Interest" and "Lender's Appreciation Interest" (as such terms are defined in the Additional Interest Agreement. Terms used in this Mortgage and not defined herein shall have the meaning given to them in the Note or Holdback Agreement.

1.15 **Maturity Date**: March 1, 2033.

1.16 **Note**: a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the amount of \$15,894,401.00 and all amendments, restatements, modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date subject to any call option of Lender to accelerate the principal due as may be set forth in the Note. The Note constitutes a business or commercial loan and is not a consumer loan.

1.17 **Parties in Interest**: as defined in clause (d) of Paragraph 7.1.

1.18 **Personalty**: all of Borrower's interest, whether now owned or hereafter acquired, in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a "fixture" or attached to the Realty, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), equipment, general intangibles (including payment intangibles and software), goods (including consumer goods, inventory, equipment and farm products), letter-of-credit rights and deposit accounts (as all such terms are defined in the Uniform Commercial Code as now adopted or amended from time to time in the State of Alabama), those items, types and categories of personal property listed on **Exhibit "B"** attached hereto, all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.19 **Property**: the Realty and Personalty or any portion thereof or interest therein, except as the context otherwise requires.

1.20 **Property Liabilities**: as defined in clause (d) of Paragraph 4.1.

1.21 **Property Taxes and Charges**: as defined in clause (b) of Paragraph 4.1.

1.22 **Realty**: the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.23 **Secured Debt**: to the extent not prohibited by applicable Laws, all principal, interest, additional interest, interest at the After-Maturity Rate set forth in the Note on all sums applicable thereto, late charges and other sums, charges, prepayment fees, premiums or amounts due or to become due under the Loan Documents including, without limitation, all amounts payable under or pursuant to the Additional Interest Agreement, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.24 **Taking**: as defined in Paragraph 5.1.

1.25 **Taking Proceeds**: as defined in clause (a) of Paragraph 5.3.

2. **Granting Clauses**. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents

and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Lender, in fee simple all of Borrower's estate, right, conveys title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

- (a) All Leases;
- (b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;
- (c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and
- (d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents at the After-Maturity Rate set forth in the Note, even if the sum of the amounts outstanding at any time exceeds the amount of the Note; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Mortgage is also intended to be a Security Agreement under the Uniform Commercial Code as in force from time to time in the State of Alabama as well as a Mortgage. Accordingly, Borrower (as Debtor) hereby grants to Lender (as Secured Party) a security interest in all items, types and categories of Personalty described hereinabove to secure the items listed in clauses (1), (2) and (3) of this Paragraph 2. Borrower hereby authorizes Lender to file, without execution by Borrower where permitted by law, one (1) or more financing statements or continuation statements and amendments thereto relating to the Personalty and further authorizes Lender to file such other documents and to take such other action as deemed necessary by Lender to perfect and continue Lender's security interest granted pursuant hereto. Time is of the essence of the obligations of the parties hereunder. The address of Borrower set forth above constitutes the mailing address of Borrower as of the Debtor hereunder and the address of Lender set forth above constitutes the mailing address of Lender as the Secured Party hereunder from which information concerning the security interest herein granted may be obtained.

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender and its successors and assigns forever subject, however, to the terms and conditions herein. Borrower covenants that it will warrant and defend the title to the Property except to the extent set forth herein.

3. **Representations and Warranties.** It is a condition of this Mortgage that the warranties and representations below in this Paragraph be true, correct and complete at all times, and Borrower hereby represents and warrants to Lender as follows:

3.1 **Due Organization, Authority.** If Borrower is a corporation, partnership (general, limited or joint venture), limited liability company, trust or other form of entity or organization, Borrower is duly organized and validly existing, and in good standing under the laws of the State of Georgia and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2 **Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3 **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instrument or obligation relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of the Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4 **Construction and Completion of Improvements.** The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with all Laws and the plans and specifications previously delivered to Lender. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for

the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Property, whether located on the Land as described in **Exhibit "A"** or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to the Lender, and that the Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5 **Legal Actions.** There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and previously fully disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity are now solvent.

3.7 **Solvency of Tenants.** To Borrower's knowledge and belief after due investigation and inquiry, no Tenant (as specified in that certain Amended and Restated Loan Commitment dated December 18, 2023, issued by Lender to Borrower for the Loan, as amended and/or modified, (the "Commitment") for the loan secured hereby) of the Realty or any

part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment.

3.8 **Adverse Change to Property.** No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9 **Title to Property.** Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personalty and Borrower shall and will warrant and forever defend the title thereto and Lender's first and prior lien thereto unto Lender, its successors and assigns, against the claims of all persons whomsoever.

3.10 **Compliance with Laws and Private Covenants.** The Property complies with all Laws. The Land is located in Jefferson County and Shelby County but is a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.

3.11 **Independence of the Property.** Borrower has not by act or omission permitted any building or other improvements on property not covered by this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no Improvement on the Property shall rely on any property not covered by this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

3.12 **Environmental.** Borrower is a party to and has executed this date in favor of Lender an Environmental Indemnity Agreement which is one of the Loan Documents described herein and which is incorporated herein by reference. For purposes of this Mortgage, Borrower hereby restates and confirms the representations and warranties contained in the Environmental Indemnity Agreement and hereby covenants to comply with and perform the obligations contained in the Environmental Indemnity Agreement.

3.13 **Compliance with ERISA and State Statutes on Governmental Plans.** Borrower is not an "employee benefit plan" as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), nor a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Borrower represents and warrants to Lender that, as of the date of this Mortgage and throughout the term of this Mortgage, (i) Borrower is not a "governmental plan" within the meaning of ERISA, and (ii) transactions by or with Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

4. **Borrower's Covenants.**

4.1 **Payments.**

(a) **Secured Debt.** Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) **Property Taxes and Charges.** Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Lender, Borrower shall cause to be furnished to Lender reports from a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Lender.

(c) **Taxes on Lender.** If any Law of the State of Alabama or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Lender, then Borrower shall pay the Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

(d) **Liabilities.** Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) **Right to Contest.** Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) **Expenses.** Borrower shall, to the extent allowed by Law, pay on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof; and (iii) Lender's protection of the Property and its interest therein.

(g) **Servicing Fees.** Borrower shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Lender or its third-party loan servicer for any servicing-related matter arising during the term of the loan secured hereby. Borrower agrees to immediately reimburse Lender or such servicer upon Lender's request for any such legal and/or processing fees and costs.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

4.2 **Operation of the Property.**

(a) **Maintenance and Alterations.** Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the

replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Mortgage.

(b) **Liens.** Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property. Pursuant to applicable law, Lender refuses to consent to the furnishing of any labor or materials on the Property which might be deemed to create a lien or liens superior to this Mortgage.

(c) **Compliance with Laws and Private Covenants.** Borrower shall truly keep, observe and satisfy all, and not suffer violations of, any federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority court or arbitrator (herein collectively "Laws") and private covenants affecting the Property.

(d) **Use and Management.** The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by a leasing and management agent which has been approved by the Lender prior to execution of any management agreement with the same provided, however, that Borrower may manage the Property itself until the occurrence of an Event of Default hereunder. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Lender.

(e) **Inspection.** Borrower shall permit Lender to enter upon and inspect the Property at reasonable times without delay, hindrance or restriction.

(f) **Unlawful Use and Prohibited Activities.** Borrower shall not use, occupy, or permit the use or occupancy of any Property by Borrower or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy or possession of any Property (collectively a "lease") with any third person ("lessee") entered into after the date of this Mortgage shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. Borrower shall upon demand from Lender provide Lender with a written statement setting forth Borrower's compliance with this clause (f) and stating whether any Prohibited Activities are occurring in or on the Property. If Borrower becomes aware that any lessee is engaged in any Prohibited Activities, Borrower shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities.

This clause (f) is a material consideration and inducement upon which Lender relies in extending credit and other financial accommodations to Borrower. Failure by Borrower to comply with this clause (f) shall constitute a material non-curable Event of Default. Notwithstanding anything in this Mortgage, the Note or any of the other Loan Documents regarding rights to cure Events of Default, Lender is entitled upon breach of this

clause (f) to immediately exercise any and all remedies under this Mortgage, the Note, any of the other Loan Documents, and by law.

In addition and not by way of limitation, Borrower shall indemnify, defend and hold Lender harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Property, Prohibited Activities by Borrower or any lessee of the Property, or Borrower's breach, violation, or failure to enforce or comply with any of the covenants set forth in this clause (f). This indemnity includes, without limitation, any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property (with or without compensation to Lender, and whether or not Property is taken free of or subject to Lender's lien or security interest).

4.3 **Insurance.** Borrower shall obtain and keep in force, with one or more insurers acceptable to Lender, such insurance as Lender may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement in an amount at least equal to \$1,000,000.00 each occurrence and a combined single limit of at least \$2,000,000.00 (ii) protection against fire, "extended coverage" and other "All Risk" perils within a special form policy (or its equivalent), including, where required, flood, to the full replacement value of the Property with a waiver of subrogation, replacement cost, and difference in conditions endorsements, without any exclusion for mold conditions or acts of terrorism, (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months' rental income from all Leases, and (iv) such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy. Notwithstanding the foregoing, in no event shall the amount of insurance maintained by Borrower on the Property under clause (ii) above ever be less than the outstanding principal amount of the Note without the prior written waiver by Lender of that requirement; and if the policy limit is based on the outstanding principal amount of the Note, the policy must provide an agreed amount endorsement. All property insurance policies shall include a standard mortgagee clause naming Lender as the first mortgagee with loss payable to Lender as such mortgagee, shall not be cancelable or modifiable without thirty (30) days' prior written notice to Lender, and shall not have more than a \$25,000.00 deductible for any single Casualty. Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3, in such forms as required from time to time by Lender, upon notice from Lender or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment has been made shall be delivered by Borrower to Lender.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of

subrogation against Lender. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses. Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon. Upon foreclosure of this Mortgage or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.4 **Escrow.** Unless waived by Lender and subject to the ongoing satisfaction of all conditions to any such waiver, Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges before becoming past due and Insurance Premiums plus up to two (2) months' additional deposits. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding the year for which such payments are being made as adjusted to reflect for any anticipated or known increases for the coming year. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 7.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

4.5 **Sales and Encumbrances.**

(a) Borrower shall not, without the prior written consent of Lender, which consent, if given in Lender's sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the terms of the Note, delivery of a management contract approved by Lender with a management company approved by Lender, and/or the satisfaction of other conditions required by Lender or one or more of the foregoing or other requirements of Lender:

(i) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom; or

(ii) sell, assign, or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of, any

legal or beneficial ownership interest in Borrower, or in any entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, including, without limitation, in the stock of Borrower, or such other entity, if a corporation, in any general or limited partnership interest in Borrower, or such other entity, if a general or limited partnership or joint venture, or in any limited liability company member interest in Borrower, or such other entity, if a limited liability company.

(b) Notwithstanding anything herein to the contrary and provided there are no Events of Default then existing and no event has occurred which, with the passage of time, could lead to an Event of Default, a transfer of ownership interests held by a Principal (as defined in the Commitment) in Borrower, or in any entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (1) other Principals; (2) adult immediate family members of the Principal; or (3) trusts established for the benefit of the Principal and/or immediate family members of the Principal, shall be permitted; provided, however, that (A) such transfer of ownership interests will not cause a change in the management and control of Borrower (or of any entity owning an ownership interest in the Borrower) and after the transfer the Principals shall maintain the same right and ability to manage and control Borrower (or such other entity) as existed prior to the transfer, and (B) Lender shall be provided with written notice of all such transfers permitted under this paragraph no later than fifteen (15) days prior to the date of the transfer and the transferor and/or transferee shall execute such documents as Lender requires. As used herein, the term "immediate family member" shall mean an adult who is the spouse, sibling, child, or grandchild of any Principal or a trust for the benefit of one or more of the foregoing individuals. No such transfer shall relieve the transferor of liability under the Loan Documents to the extent of such liability.

(c) In addition to the transfers permitted in subparagraph (b) above, provided there are no Events of Default then existing and no event has occurred which, with the passage of time, could lead to an Event of Default, up to twenty-five percent (25%) of the aggregate ownership interests in Borrower, whether direct or indirect, may be sold, given, devised, bequeathed or otherwise transferred; provided, however, that (A) such transfer of ownership interests will not cause a change in the management and control of Borrower (or of any entity owning an ownership interest in the Borrower) and after the transfer the Principals shall maintain the same right and ability to manage and control Borrower (or such other entity) as existed prior to the transfer, (B) Lender shall be provided with written notice of any such transfer and the identity of the transferee no later than fifteen (15) days prior to the date of the transfer, (C) the identified transferee is not on the "SDN List" (as hereinafter defined) maintained by "OFAC" (as hereinafter defined) or any similar list maintained by any governmental entity or agency, and (D) the identified transferee shall execute such documents as Lender requires. No such transfer shall relieve the transferor of liability under the Loan Documents to the extent of such liability.

(d) Any breach of the foregoing by a holder of any interest (legal or beneficial) or stock in Borrower, or in any entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, shall constitute an Event of Default under Paragraph 7.1(a).

4.6 **Financial Records and Statements.** Borrower shall keep accurate books and records in accordance with generally accepted accounting principles, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within sixty (60) days after the end of each calendar year a statement of condition or balance sheet of Borrower relating solely to the Property as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy (a) by Borrower, provided no default exists hereunder, or (b) by an independent certified public accountant acceptable to Lender (said documents need not be audited but shall be reviewed), if a default occurs hereunder and Lender requests such a certification in writing; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

4.7 **Further Assurances.** Borrower shall promptly upon request of Lender (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgement thereof; and/or (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Mortgage on the Property or to subject thereto any property intended by the terms hereof to be covered hereby, including, without limitation, any renewals, additions, substitutions or replacements thereto, or (iii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8 **Indemnity.** Borrower shall indemnify, defend and hold harmless Lender from and against, and, upon demand, reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Lender, whereupon the exception shall apply only against Lender as the case may be.

4.9 **No Preferences.** Borrower shall not repay any sums borrowed from anyone other than Lender, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10 **Notices.** Borrower shall deliver to Lender at Lender's address set forth above, promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11 **Estoppel Certificates.** Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.

4.12 **Legal Existence.** If Borrower is executing this instrument as a partnership, limited liability company, corporation, trust or other form of entity or organization:

(a) The Borrower warrants that (i) it is duly organized, validly existing, and in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state where the Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender except as may be otherwise provided herein.

(c) Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied it will not change its place of business, or if it has more than one place of business, it will not change its chief executive office (i.e. the place from where the Borrower manages the main part of its business operations or affairs), unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

(d) If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of Borrower's obligations hereunder, or under the Loan Documents, remain unsatisfied, Borrower will not change his or her place of residence unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

(e) Borrower shall not change its name or identity unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13 **Defense and Notice of Actions.** Borrower shall, without liability, cost or expense to Lender, protect, preserve and forever defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.14 **Lost Note.** Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note.

4.15 **Personalty.** Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.

4.16 **SDN List.** An Event of Default shall exist if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the "SDN List"): (a) any Borrower; (b) any Principal (as defined in the Commitment or any Loan Document); (c) any guarantor or indemnitor; or (d) any person or entity related to any Borrower, any Principal, any guarantor, any indemnitor, the Secured Debt or the Property.

4.17 **Single Purpose Entity.** As of the effective date of this Mortgage and until the loan secured hereby is paid in full, Borrower shall be and shall remain a "Single Purpose Entity", which means Borrower must satisfy each of the following conditions: (i) Borrower does not and shall not engage in any business or activity other than the ownership,

operation and maintenance of the Property and activities incidental thereto, and Borrower has not acquired, owned, held, leased, operated, managed, maintained, developed or improved any assets other than the Property; (ii) Borrower shall preserve Borrower's existence as an entity duly organized, validly existing and in good standing under laws of the jurisdiction of Borrower's formation or organization and shall observe all organizational formalities to maintain Borrower's existence as a legal entity separate and apart from Borrower's owners; and (iii) Borrower has not and will not merge or consolidate with any other entity.

5. Casualties and Takings.

5.1 Notice to Lender. In the event of an act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2 Repair and Replacement. In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Lender. Provided, however, upon a Casualty or Taking, if Lender applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is practicable under the circumstances.

5.3 Proceeds.

(a) Collection. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.

(b) Assignment to Lender. Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payments of such Insurance or Taking Proceeds to be made directly to Lender. Lender may, at its sole option, apply such Insurance or Taking Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

6. **Legal Proceedings.** Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

7. **Defaults, Remedies of Lender.**

7.1 **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

(a) **Breach of Named Covenant.** Any breach by Borrower of the covenants in this Mortgage in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) **Misrepresentations.** Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled; or

(c) **Breach of Covenant.** Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents; or

(d) **Bankruptcy.** Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor or any indemnitor under the non-recourse exceptions, if any, of the Loan Documents), or, if Borrower is

a partnership, any general partner or joint venturer, or, if Borrower is a limited liability company, any managing or majority (or other controlling) member (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceedings brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent, or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) **Breach of Anchor Tenant Lease.** Default by Borrower under the terms of any tenant lease demising at least sixty-one thousand two hundred seventy-seven (61,277) square feet, whether or not subsequently cured by Lender; or

(f) **Adverse Court Action.** A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law; or

(g) **Death or Suspension.** Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) or indemnitor(s) under the Loan Documents dies (if an individual) or terminates or suspends its business (if a partnership, corporation or other entity); provided, however, that in the event of the death of J. Charles Hendon, Jr. as indemnitor under certain of the Loan Documents, Borrower shall have a period of one hundred twenty (120) days from the date of his death to provide Lender with a substitute indemnitor acceptable to Lender as determined in its sole unfettered discretion and provided further the death of such individual does not cause a dissolution of Borrower or any member of Borrower. Any such substitute indemnitor must execute and deliver to Lender an indemnity agreement and environmental indemnity agreement in the same forms and content as the Indemnity Agreement and Environmental Indemnity Agreement of even date herewith executed by such individual in connection with the loan secured hereby and such other documents as may be required by Lender in its sole unfettered discretion; or

(h) **Other Events.** Any other event occurs which under any of the Loan Documents constitutes a default by the Borrower or gives the Lender the right to accelerate the maturity of any part of the indebtedness secured by this Mortgage.

7.2 **Remedies.** In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) **Acceleration.** Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable.

(b) **Offset Rights.** Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4.

(c) **Cure of Default.** Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing. Should Lender make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid.

(d) **Possession of Property.** Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property, and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing or waiving any default. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this subparagraph (d), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender.

(e) **Foreclosure.** Lender may, at its continuing option, and without notice to or demand upon the Borrower, sell the Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where said property is located, either

in person or by auctioneer, after having first given notice of the time, place and terms of sale and a description of the Property by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county (or all counties if more than one) but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county. The sale shall be conducted between the hours of 11:00 A.M. and 4:00 P.M. on the date of the sale. 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 Property. Lender may bid at said sale and purchase said premises, or any part thereof. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering in it any other manner or it may be offered for sale and sold in any other manner Lender may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Mortgage only as to the Property sold, and if the Secured Debt is not satisfied in full, the remaining portion of the Property not sold shall continue as security therefor and there may be a further foreclosure of this Mortgage, either by power of sale or by judicial foreclosure. Borrower agrees that in case of any sale hereunder, it will at once surrender possession of the Property, and will from that moment become and be the tenant at will of the purchaser, and removable by process as upon a forcible and unlawful detainer suit, hereby agreeing to pay such purchaser the reasonable rental value of the Property after such sale. Borrower further agrees that in the event of a sale hereunder, Lender shall have the right to bid thereat and to become the purchaser. Lender may require the successful bidder at any sale to deposit immediately with Lender cash or a certified check in an amount not to exceed five percent (5%) of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. The sale of the Property or any part thereof or any interest therein, whether pursuant to foreclosure, power of sale or otherwise under this Mortgage, shall, to the extent permitted by law, forever bar any claim with respect to the Property by the Borrower. Borrower agrees that in case of any sale hereunder Borrower will at once surrender possession of the Property, and failing which Borrower will from the moment of such sale become and be a tenant at will of the purchaser removable by process pursuant to a forcible and unlawful detainer suit hereby agreeing to pay such purchaser the reasonable rental value of the Property after such sale until possession is so surrendered.

All proceeds from the foreclosure of the Property shall be applied in the following manner:

First: Payment of the costs and expense of the sale, including but not limited to, Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the After-Maturity Rate provided under the Note on all advances made by the Lender.

Second: Payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the After-Maturity Rate provided under the Note.

Third: Payment of the indebtedness and obligations of the Borrower secured by this Mortgage in any order that the Lender chooses.

Fourth: The remainder, if any, to the person or persons appearing of record to be the owner of the Property.

(f) **Receiver.** Secure the appointment of a receiver or receivers, as a matter of right for the Property, whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or pursuant to applicable Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment.

(g) **Uniform Commercial Code Remedies.** Exercise any and all rights of a secured party with respect to the Personalty under the Uniform Commercial Code of the State of Alabama and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personalty and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of the Property as provided in this Mortgage. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personalty prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

(h) **Judicial Actions.** Commence and maintain an action or actions in any court of competent jurisdiction to obtain specific enforcement of the covenants of Borrower hereunder or to foreclose this Mortgage. Borrower agrees that the covenants herein shall be specifically enforceable by injunction or any other appropriate equitable remedy.

(i) **Subrogation.** Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens,

superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record.

(j) **SDN List.** Upon an Event of Default under Paragraph 4.16 herein, Lender shall have the right to take any and all action or make any report or notification required by OFAC or any other applicable governmental agency or by applicable laws.

(k) **Other.** Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under applicable Laws.

Any sums advanced by Lender under this Paragraph 7.2 shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt. All sums realized by Lender under this Paragraph 7.2, less all costs and expenses incurred by Lender under this Paragraph 7.2, including, without limitation, attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

7.3 **Holding Over.** Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of Lender, at a reasonable rental per diem, based upon the value of the Property occupied to be computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

7.4 **General Provisions.**

(a) **Multiple Sales and Adjournment of Sale.** Several sales may be made pursuant to Paragraph 7.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made. Lender may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place approved for such sale or for such adjourned sale or sales, and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) **Cumulative Remedies.** All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.

(c) **Right to Purchase.** At any sale or sales of the Property pursuant to Paragraph 7.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid) the amount of the Secured Debt then due.

(d) **Right to Terminate Proceedings.** Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Lender, such proceedings or actions.

(e) **No Waiver or Release.** Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) **Waivers and Agreements Regarding Remedies.** To the full extent Borrower may do so, Borrower hereby:

(i) waives and agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and waives and releases all rights of redemption, exemption, valuation, appraisalment, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitation.

(g) **Lender's Discretion.** Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) **Sales.** In the event of a sale or other disposition of the Property pursuant to Paragraph 7.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Leases made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental agreement or Leases.

(i) **Defaults.** Any Event of Default under this Mortgage shall be a default under the loan secured by this Mortgage and each of the Loan Documents.

8. **Possession and Defeasance.**

8.1 **Possession.** Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

8.2 **Defeasance.** If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the

Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Mortgage shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. Lender shall not have any duty to determine the rights of persons claiming to be rightful owners of any of the Property. When the Mortgage has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

9. **General.**

9.1 **Lender's Right to Waive, Consent or Release.** Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Mortgage and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

9.2 **No Impairment.** The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

9.3 **Amendments.** The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

9.4 **No Usury.** Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 9.4 shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

9.5 **Notices.** Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable addresses of the parties set forth above or to such different addresses as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

9.6 **Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Mortgage to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns. If, in contravention of the provisions of this Mortgage or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Lender's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

9.7 **Severability.** A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9.8 **Gender and Construction.** Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Mortgage to "herein", "hereunder" or "hereby" shall refer to this entire Mortgage, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria as it chooses in approving or disapproving the requested or pending action without regard to the reasonableness of such criteria or Lender's ultimate decision. Wherever in the Loan Documents Lender's consent, approval, waiver or agreement is required such shall be deemed to be in Lender's sole unfettered discretion unless otherwise specifically stated.

9.9 **Limitation of Liability.** The personal liability of Borrower and its members for the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising hereunder, are and shall be limited, if at all, to the extent set forth in the Note. If Borrower is comprised of more than one party, then

the obligations, covenants, agreements, representations and warranties contained within the Loan Documents are and shall be joint and several as to each such party.

9.10 **Modifications**. References to any of the Loan Documents in this Mortgage shall be deemed to include all amendments, modifications, extensions and renewals thereof.

9.11 **Governing Laws**. This Mortgage shall be construed according to and governed by the laws of the State of Alabama.

9.12 **Captions**. All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

9.13 **Acknowledgment of Receipt**. Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Mortgage.

9.14 **Hazardous Waste**. Borrower covenants, represents, and warrants that (a) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls, have been or shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property, including, without limitation, the surface and subsurface waters of the Property, except for the use, storage or disposal of de minimus amounts of hazardous materials used, stored or disposed of in the normal course of the operation of the permitted business on the Realty so long as any such use, storage or disposal is in strict compliance with all federal, state and local statutes, laws, ordinances and regulations applicable to the environment and the use, storage and/or disposal of any such hazardous materials; (b) no activity has been or shall be undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§6901 et seq., as amended from time to time, or any similar state law or local ordinance, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9601 et seq., as amended from time to time, including, without limitation, by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar state law or local ordinance or any other environmental law, (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., as amended from time to time, or the Clean Air Act, 42 U.S.C. §§7401, et seq., as amended from time to time, or any similar state law or local ordinances; or (iv) the Property, or any business operated thereon to be in violation of the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq., as amended from time to time, the Safe Water Drinking Act, 42 U.S.C. §§300f et seq., as amended from time to time, or the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq., as amended from time to time, or any similar state law or local ordinances; (c) there are and shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, state or local environmental statutes, regulations, ordinances, or other environmental regulatory

requirements, and (d) there are and shall be no underground storage tanks or underground deposits located on the Property.

9.15 **Character of Property.** Borrower represents and warrants that the Property is commercial property held for investment and is not residential property. Accordingly, no party has any homestead rights to the Property or any portion thereof.

9.16 **Waiver of Jury Trial.** After consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, Borrower knowingly, voluntarily, and intentionally waives, the extent permitted by applicable law, any right to a trial by jury with respect to any litigation based upon this transaction or this instrument, or arising out of, under, or in connection with any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledges that this provision is a material inducement for entering into the loan transaction evidenced and secured by this Mortgage.

9.17 **Foreclosure.** Whenever the terms “foreclosure sale,” “foreclosure proceeding,” “foreclosure,” or similar terms are used herein, such terms shall include a sale pursuant to the power of sale granted in this Mortgage.

9.18 **Partial Release of Outparcels.** Subsequent to the recording of this Mortgage, Borrower intends to subdivide the Realty into one or more parcels (collectively, the “Outparcels” and each an “Outparcel”). Notwithstanding anything contained in this Mortgage or the Loan Documents to the contrary, in connection with the sale of any Outparcel to a third party, Borrower may obtain the release of such Outparcel from this Mortgage and the Loan Documents so long as the following release conditions (the “Release Conditions”) are satisfied to the satisfaction of Lender for such sale:

(a) The dimensions and acreage of the Outparcel is approved by Lender in Lender’s reasonable discretion.

(b) No Event of Default shall have occurred and be continuing, nor shall there have occurred any event which would, with the giving of notice or passage of time, or both, constitute an Event of Default.

(c) Borrower shall give Lender at least forty-five (45) days prior written notice of such proposed sale together with the required documentation as set forth below for Lender’s review.

(d) The Outparcel shall contain sufficient on-site parking to satisfy all parking requirements pursuant to applicable statutes, zoning ordinances and regulations and all private restrictive covenants and requirements.

(e) Lender shall have received and approved a subdivision plat of the Outparcel and the remaining Realty prior to the recordation thereof and such subdivision plat has been recorded in the appropriate public records.

(f) If requested by Lender, Lender shall have received a survey complying with Lender's survey requirements showing the location, legal description and acreage of the Outparcel and the Realty remaining after such release, all of which must be reasonably satisfactory to the Lender.

(g) Lender may require reasonably satisfactory evidence that Realty remaining after such release satisfies all zoning and subdivision requirements and is a separate tax parcel.

(h) Lender shall receive an endorsement to Lender's title insurance policy insuring the lien of this Mortgage, updating the effective date of such policy and all endorsements, changing the legal description of the insured property, insuring the easements, rights, restrictions and other benefits that Lender reserves with respect to the Outparcel, containing no additional exceptions other than those approved in writing by Lender and otherwise in form and substance reasonably satisfactory to Lender.

(i) An appropriate amendment to any existing declaration of easements and restrictive covenants is recorded, if deemed necessary by Lender to reflect the subdivision of the Outparcel.

(j) An update of Lender's appraisal, if requested by Lender.

(k) All costs incurred by Lender for providing such release and reviewing all required documents shall be borne by Borrower, including, without limitation, Lender's administrative fees, all attorneys' fees and costs and all recording costs and fees.

(l) Lender receives such other certificates or documents as may be reasonably required by Lender.

(m) Lender receives (i) a satisfactory amendment to any lease of the Property releasing the Outparcel from the leased premises covered thereby or otherwise reflecting the creation of the Outparcel as a separate lot; and (ii) satisfactory evidence that the release of the Outparcel does not violate the terms and conditions of any lease of the Property.

(n) All access, ingress, egress, utility and other easements and agreements deemed necessary by Lender in its sole unfettered discretion for the ongoing operation of the Property or compliance with any lease of the Property have been created by a recorded easement agreement in form and substance satisfactory to Lender in its sole unfettered discretion.

(o) Recordation of a declaration upon the Outparcel imposing thereon all restrictions required under any lease of the Property as well as such other restrictions as Lender may require in its sole unfettered discretion including, without limitation, a prohibition against constructing buildings or structures over any utility lines serving the existing improvements on the Property.

(p) Certification from an architect or engineer acceptable to Lender that the improvements on the remaining portion of the Realty as then constructed comply with all current building, zoning and other governmental statutes, codes, rules and regulations without reliance upon the Outparcel being released including, without limitation, any setbacks, or (if required) imposition of such restrictions on the Outparcel as necessary to cause the Realty to comply with all such codes, rules and regulations.

(q) Evidence from an architect or engineer acceptable to Lender that no alterations to the storm water drainage system on the Realty is or will be necessary as the result of construction or alteration of any improvements on the Outparcel.

(r) All net proceeds from the sale of the Outparcel are paid to Lender to pay down the loan secured by this Mortgage and the estimated amount of such net proceeds must be approved by Lender in advance of the sale.


[SIGNATURE ON FOLLOWING PAGE]

County Division Code: AL039 Inst. # 2024013161 Pages: 33 of 38

IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal to be effective as of the date first above written.

"BORROWER:"

HENDON URBAN RIVERCHASE LLC,
a Georgia limited liability company [SEAL]

By:  [SEAL]
Title: J. Charles Hendon, Jr.
Print Name: Manager

STATE OF Georgia)
COUNTY OF Fulton)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that J. Charles Hendon, Jr., whose name as manager of Hendon Urban Riverchase LLC, a Georgia 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 within instrument, he executed the same voluntarily in his capacity as manager on the day the same bears date.

February GIVEN under my hand and seal of office this 12th day of
February, 2024.


Notary Public
My Commission Expires: 3/16/26

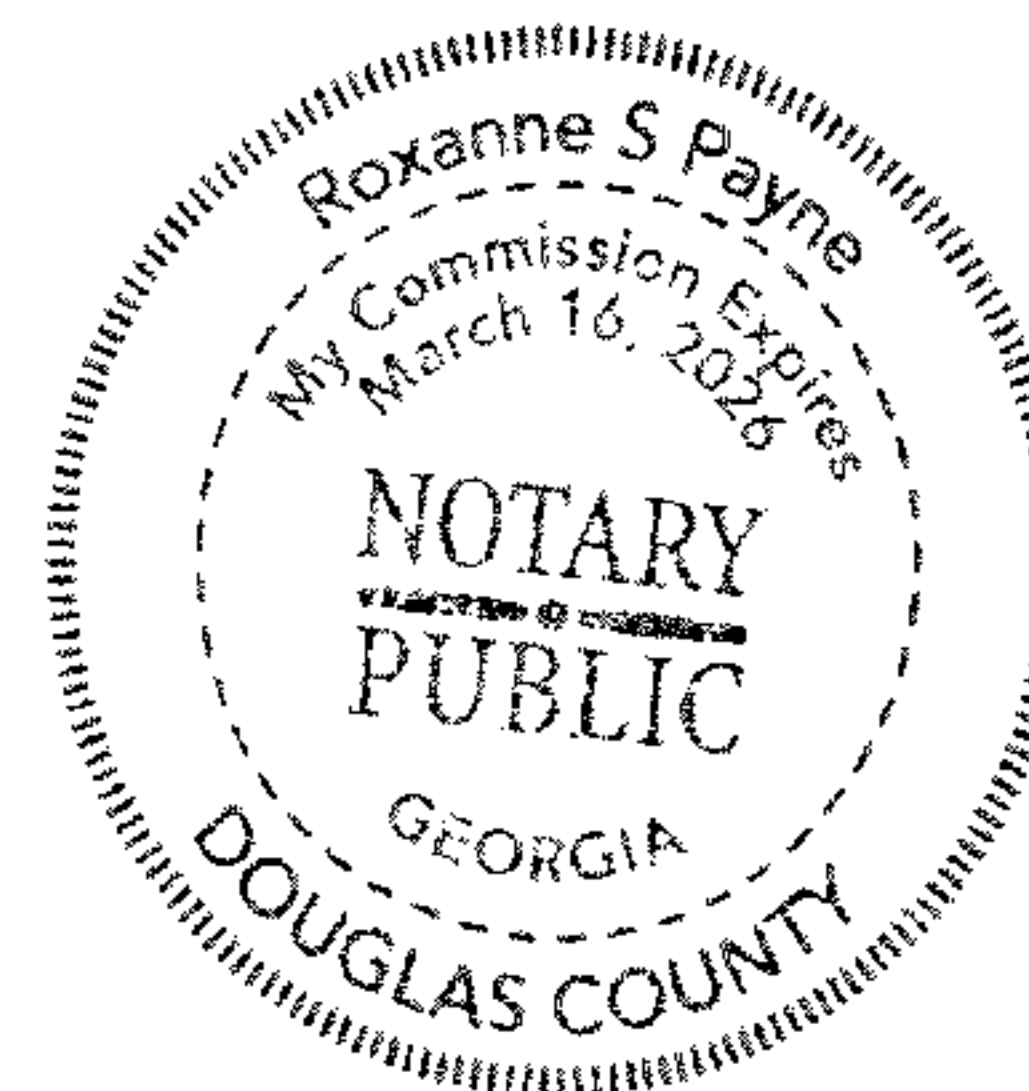


EXHIBIT A
Property

The Plaza at Riverchase as recorded in Map Book 13, Page 70 in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

A parcel of land situated in the Northeast Quarter of Section 24, Township 19 South, Range 3 West, and the West Half of Section 19, Township 19 South, Range 2 West, Jefferson County, Alabama, and in the Southeast Quarter of Section 24, Township 19 South, Range 3 West, in Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of Section 24, Township 19 South, Range 3 West, thence North 88°58'25" West along the North line of said Section 24, 618.94 feet to a point; thence South 20°02'58" East, 1059.79 feet to a point 25 feet southerly of the centerline of Data Center Drive, said point also being the POINT OF BEGINNING; thence continue along the previously described course, 433.66 feet to the approximate centerline of the Cahaba River; thence along said centerline of the Cahaba River, the following courses: South 33°20'32" West, 37.15 feet; thence South 16°23'24" West, 43.61 feet; South 15°04'56" East, 541.33 feet; South 23°08'00" East, 222.85 feet; South 01°07'08" East, 216.30 feet; South 39°34'01" West, 236.88 feet; and South 45°24'27" West, 416.19 feet to a point on the Easterly right-of-way margin of U.S. Highway 31, said point being 150 feet easterly of the centerline of said U.S. Highway 31; thence North 26°23'50" West along said Easterly right-of-way margin, 201.95 feet to a point; thence leaving said right-of-way margin, proceed North 62°07'44" East, 239.50 feet to a point; thence North 26°23'50" West and parallel to said right-of-way margin, 147.00 feet to a point; thence North 72°08'03" West, 73.98 feet to a point; thence South 62°07'44" West, 186.50 feet to a point on the Easterly right-of-way margin of U. S. Highway 31, said point being 150.00 feet easterly of the centerline of said U. S. Highway 31; thence North 26°23'50" West along said Easterly right-of-way margin, 582.72 feet to a point; thence South 63°36'10" West along said Easterly right-of-way margin, 50.00 feet to a point, said point being 100.00 feet easterly of the centerline of said U.S. Highway 31; thence North 26°23'50" West along said easterly right-of-margin 416.79 feet to a point; thence leaving said Easterly right-of-way margin, proceed North 63°52'22" East, 271.98 feet to a point; thence North 25°27'37" West, 20.00 feet to the beginning of a curve to the left, said curve having a central angle of 10°07'14", a radius of 310.00 feet, an arc of 54.76 feet and a chord which bears North 30°31'13" West for 54.69 feet; thence proceed northwesterly along the arc of said curve, 54.76 feet to the end of said curve; thence North 35°34'51" West, 121.67 feet to the beginning of a curve to the left, said curve having a central angle of 82°11'28", a radius of 25.00 feet, an arc distance of 35.86 feet and a chord which bears North 77°29'33" West for 32.87 feet; thence proceed northwesterly along the arc of said curve, 35.86 feet to a point; thence North 28°35'17" West, 5.00 feet to a point on the Southerly right-of-way margin of Data Center Drive, said point being 25.00 feet southerly of the centerline of said Data Center Drive, said point also being on a curve to the left, said curve having a central angle of 11°56'21", a radius of 429.69 feet, an arc of 89.54 feet, and a chord which bears North 55°26'33" East for 89.38 feet; thence proceed northeasterly along said Southerly right-of-way margin and along the arc of said curve, 89.54 feet to the end of said curve; thence North 49°28'23" East along said Southerly right-of-way margin, 290.58 feet to the beginning of a curve to the right, said curve having a central angle of 28°47'56", a radius of 382.42 feet, an arc of 192.22 feet and a chord which bears North 63°52'19" East for 190.20 feet; thence proceed northeasterly along said Southerly right-of-way margin and along the arc of said curve, 192.22 feet to the end of said

curve; thence North $78^{\circ}16'17''$ East, along said Southerly right-of-way margin, 125.18 feet to the beginning of a curve to the left, said curve having a central angle of $8^{\circ}19'15''$, a radius of 546.00 feet, an arc of 79.29 feet and a chord which bears North $74^{\circ}06'40''$ East for 79.22 feet; thence proceed northeasterly along said Southerly right-of-way margin and along the arc of said curve, 79.29 feet to the POINT OF BEGINNING.

The above described property being the same as that shown by survey prepared by Robert W. Easley, IV, PLS 38795, dated 2/1/2024, and designated File Name Southlake lot 3 Alta sheet.dgn, being more particularly described as follows:

The Plaza At Riverchase as recorded in Map Book 13, Page 70 in the Office of the Judge of Probate of Shelby County, Alabama being more particularly described as follows:

A parcel of land situated in the East 1/2 of the Northeast 1/4 of Section 24, Township 19 South, Range 3 West, and the Southwest 1/4 of the Northwest 1/4 of Section 19, Township 19 South, Range 2 West, Jefferson County, Alabama, and in the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 19 South, Range 3 West, in Shelby County, Alabama, and being more particularly described as follows:

BEGIN at an ALA-ENG capped iron at the Northernmost corner of The Plaza At Riverchase as recorded in Map Book 13, Page 70 in the Office of the Judge of Probate of Shelby County and run $S20^{\circ}2'58''E$ for a distance of 308.29 feet to an ALA-ENG capped iron; thence continue along the last described course for a distance of 125 feet, more or less, to the centerline of the Cahaba River; thence run in a Southwesterly, then Southerly, then Southeasterly, then Southerly, then Southwesterly direction, for a distance of 1711 feet, more or less, along said centerline, to a point on the Easterly right-of-way margin of U.S. Highway 31, said point being 150 feet Easterly of the centerline of said U.S. Highway 31; thence North $26^{\circ}25'47''$ West along said Easterly right-of-way margin, for a distance of 76 feet, more or less, to an ALA-ENG capped iron; thence continue along the last described course, and along said Easterly right-of-way margin, for a distance of 130.46 feet to an ALA-ENG capped iron at the Southernmost corner of the Jefferson County Sewer Lift Station parcel as shown on said plat of The Plaza at Riverchase; thence leaving said right-of-way margin, run North $63^{\circ}40'47''$ East for a distance of 243.52 feet to a capped iron; thence run North $27^{\circ}42'21''$ West for a distance of 147.40 feet to a DA capped iron; thence run North $73^{\circ}08'26''$ West for a distance of 73.02 feet to an uncapped $\frac{1}{2}$ inch rebar; thence run South $64^{\circ}29'52''$ West for a distance of 187.11 feet to a GSA capped iron on the Easterly right-of-way margin of U. S. Highway 31, said GSA capped iron being 150.00 feet Easterly of the centerline of said U. S. Highway 31; thence run North $26^{\circ}25'47''$ West, along said Easterly right-of-way margin, for a distance of 582.67 feet to GSA capped iron; thence run South $63^{\circ}34'13''$ West along said Easterly right-of-way margin, for a distance of 50.00 feet to a GSA capped iron, said GSA capped iron being 100.00 feet Easterly of the centerline of said U.S. Highway 31; thence run North $26^{\circ}25'18''$ West, along said easterly right-of-margin, for a distance of 416.77 feet to a Weygand capped iron at the Southernmost corner of the AmSouth Bank Property as shown on said plat of The Plaza at Riverchase; thence leaving said Easterly right-of-way margin, run North $63^{\circ}57'52''$ East for a distance of 272.10 feet to a 1/2 inch rebar; thence run North $25^{\circ}14'49''$ West for a distance of 20.00 feet to a nail in the asphalt at the beginning of a curve to the left, said curve having a central angle of $10^{\circ}09'42''$, a radius of 310.00 feet and a chord which bears North $30^{\circ}19'40''$ West for a distance of 54.91 feet; thence run Northwesterly along the arc of

said curve for a distance of 54.98 feet to a Weygand capped iron; thence run North $35^{\circ}30'01''$ West for a distance of 121.83 feet to the beginning of a curve to the left, said curve having a central angle of $80^{\circ}28'22''$, a radius of 25.00 feet, and a chord which bears North $78^{\circ}42'00''$ West for a distance of 32.30 feet; thence proceed Northwesterly along the arc of said curve for a distance of 35.11 feet to a GSA capped iron; thence run North $28^{\circ}45'34''$ West for a distance of 5.00 feet to an ALA-ENG capped iron on the Southerly right-of-way margin of Data Center Drive (also called Data Drive), said point being 25.00 feet Southerly of the centerline of said Data Center Drive, said point also being on a curve to the left, said curve having a central angle of $11^{\circ}57'48''$, a radius of 429.69 feet and a chord which bears North $55^{\circ}15'32''$ East for a distance of 89.56 feet; thence run Northeasterly along said Southerly right-of-way margin and along the arc of said curve for a distance of 89.72 feet to a nail in the asphalt ; thence North $49^{\circ}18'57''$ East along said Southerly right-of-way margin for a distance of 290.55 feet to a GSA capped iron at the beginning of a curve to the right, said curve having a central angle of $28^{\circ}47'50''$, a radius of 382.42 feet, and a chord which bears North $63^{\circ}42'10''$ East for a distance of 190.19 feet; thence run Northeasterly along said Southerly right-of-way margin and along the arc of said curve for a distance of 192.21 feet to a GSA capped iron; thence North $78^{\circ}04'34''$ East, along said Southerly right-of-way margin, for a distance of 125.15 feet to a nail in the asphalt at the beginning of a curve to the left, said curve having a central angle of $8^{\circ}20'22''$, a radius of 546.00 feet, and a chord which bears North $74^{\circ}59'08''$ East for a distance of 79.40 feet; thence run Northeasterly along said Southerly right-of-way margin and along the arc of said curve for a distance of 79.47 feet to the POINT OF BEGINNING.

EXHIBIT "B"**[Personal Property]**

(a) All interest of Borrower, whether now owned or hereafter acquired, in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a "fixture" or attached to the real property described on **Exhibit "A"** hereof and to the improvements now or hereafter located thereon (said real property and improvements are hereinafter referred to as the "Property"), which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the ownership, maintenance, use, occupancy or enjoyment of the Property, including, without limitation, all accounts, contract rights, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), equipment, general intangibles (including payment intangibles and software), goods, inventory, fixtures, letter of credit rights and deposit accounts (as those terms are defined in the Uniform Commercial Code of the State where the Property is located), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the improvements located on the Property, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, and including all building materials, machinery, apparatus, equipment, fittings and fixtures, trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever now or hereafter located in, upon or under the Property or any part thereof and used or usable in connection with any present or future operation of the Property and now owned or hereafter acquired by Borrower, including, but without limiting the generality of the foregoing, all heating, air conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, boilers, ranges, furnaces, oil burners or units thereof; appliances; air cooling and air conditioning apparatus, vacuum cleaning systems; elevators; escalators; shades; awnings; screens; oven, ranges, surface units and disposals; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; furniture and furnishings of the type customarily located in commercial, institutional, industrial and residential buildings, together with all present and future attachments, accretions, accessions, replacements, and additions thereto of any of the foregoing.

(b) All of Borrower's accounts, rents, security deposits, issues and profits which are now due or may hereafter become due from the Property, including, but not limited to accounts, rents, security deposits, issues and profits by reason of or in connection with the rents, leasing and bailment of the Property.

(c) All of Borrower's awards or payments, including interest thereon, and the right to receive the same, as a result of (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street, or (iii) any other injury to, taking of, or decrease in the value of, the Property, to the extent of all amounts which may be owed by Borrower to Lender at the date of receipt of any such award or payment by Lender and of the reasonable attorney's fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment.

(d) All of Borrower's documents, instruments and contract rights relating to the construction of the improvements now or hereafter located on the Property, and including without limitation, any and all construction contracts, architectural contracts, engineering contracts, plans, specifications, drawings, surveys, bonds, permits, licenses, and other governmental approvals.

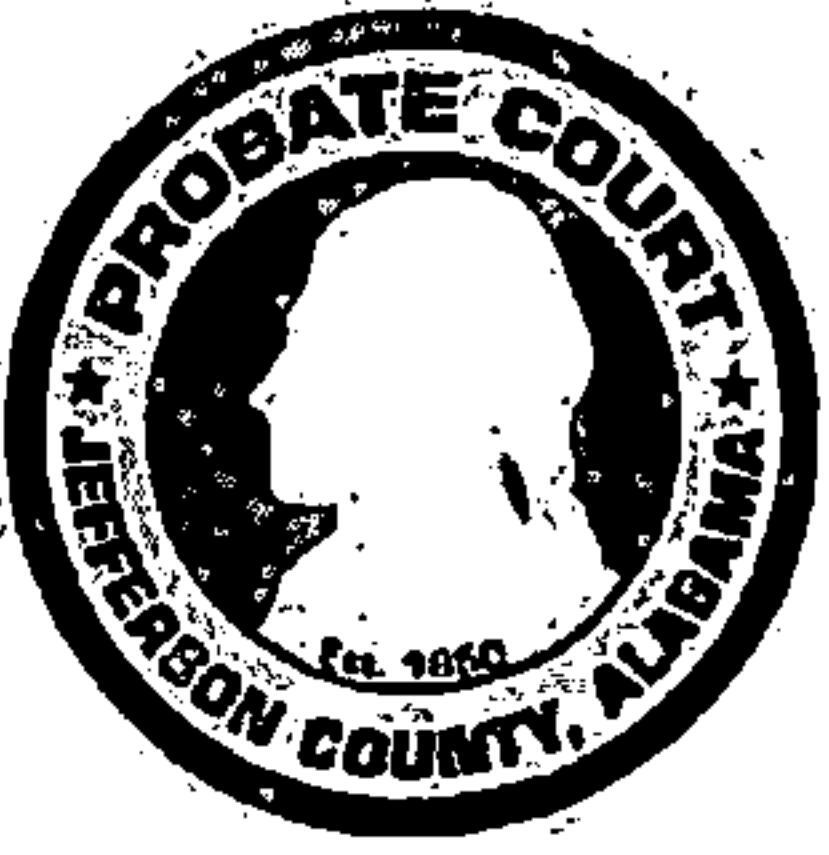
(e) All proceeds from Borrower's insurance policies which in any way relate to the Property or the other property described in this Exhibit "B" and all proceeds and payments owing to the insured under such insurance policies.

(f) All of Borrower's right, title and interest in and to all sales contracts, whether now existing or executed after the date hereof, pertaining to any portion of the real property described on Exhibit "A" hereof, and any modifications thereof.

(g) All books and records, statements of account, operating statements, periodic reports, balance sheets, profit and loss statements, financial statements, checkbooks, deposit receipts and all other business and financial records and statements of all kinds.

(h) All computer time, computer runs, computer software and services, computer programs, computer apparatus and computer hardware.

(i) All proceeds and products of any of the foregoing (a) through (h).



PROBATE COURT OF JEFFERSON COUNTY BESSEMER DIVISION

1801 THIRD AVENUE NORTH, RM. 101
BESSEMER, ALABAMA 35020

jeffcprobatecourt.com • jeffcselectionsal.com

Judge Elizabeth North
Deputy Probate Judge
northe@jccal.org
(205) 481-3253

Accounting
(205) 425-8208

Judicial
(205) 481-4102

Recording
(205) 481-4100

BIRMINGHAM DIVISION

Judge James P. Naftel, II
Presiding Judge
naftelj@jccal.org
(205) 325-5203

Judge Sherri C. Friday
fridays@jccal.org
(205) 325-5426



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
02/16/2024 01:24:38 PM
\$137.00 JOANN
20240216000041160

Allen S. Byrd

February 15, 2024

To Whom It May Concern:

I, James P Naftel II, Judge of Probate of Jefferson County, Alabama, do hereby certify that the **Mortgage from Hendon Urban Riverchase LLC to Protective Life Insurance Co** was recorded in said county on **February 15, 2024, instrument number 2024013161**. The total amount of mortgage tax collected was **\$23,841.75**.

Distributions to the following counties will be completed as follows:

Jefferson County – 97%
Shelby County – 3%

James P. Naftel II,
Chief Probate Judge
Jefferson County, Alabama

[Signature]
Judge of the
Probate Court, Jefferson County, Alabama, hereby certify that
the foregoing is a true, correct and full copy of the instrument
herewith set out as appears of record in said Court.
Witness my hand and seal of said Court this 15th day of February
2024 *[Signature]*
Judge of Probate