

20240327000082670
03/27/2024 10:12:19 AM
MORT 1/18

PREPARED BY:
NELSON MULLINS RILEY SCARBOROUGH
5830 Granite Parkway, Suite 1000
Plano, TX 75024
Attention: W. Brian Memory

SHELBY COUNTY

WHEN RECORDED MAIL TO:
TEXAS CAPITAL BANK, N.A.
HBCF - LOAN OPERATIONS
2350 Lakeside Blvd., Ste. 800
Richardson, Texas 75082

OBLIGATIONS SECURED HEREBY PROVIDE FOR A MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (ALABAMA)

by and from

NEWCASTLE CONSTRUCTION, INC., an Alabama corporation "Mortgagor"

To

TEXAS CAPITAL BANK, A TEXAS STATE BANK,
"Mortgagee"

THIS INSTRUMENT IS ALSO TO BE FILED AS A FIXTURE FILING IN THE INDEX OF FINANCING STATEMENTS AND SHOULD BE INDEXED UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA THIS INSTRUMENT SECURES, AMONG OTHER OBLIGATIONS, FUTURE ADVANCES BY THE MORTGAGEE TO THE MORTGAGOR.

Documentary Stamp Tax Paid

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (ALABAMA) (this "Mortgage") is dated and effective as of March 3, 2024 (the "Effective Date"), and NEWCASTLE CONSTRUCTION, INC., (the "Mortgagor"), whose address is 121 Bishop Circle, Pelham, Alabama 35124 and TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, whose address at 2350 Lakeside Blvd., Suite 800, Richardson, Texas 75082 (the "Mortgagee").

This Mortgage is made to secure and enforce the payment of a loan in the amount of **ONE MILLION SEVENTY NINE FOUR HUNDRED THIRTEEN AND 46/100 DOLLARS (\$1,079,413.46)** (the "Loan") financed pursuant to that certain Promissory Note payable to the order of Mortgagee in the principal amount of **TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00)** dated **OCTOBER 14, 2020** (as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time, the (the "Note"), executed by Mortgagor, as Borrower.

**ARTICLE 1
DEFINITIONS**

1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in that certain Loan and Security Agreement between Mortgagee and Borrower dated October 14, 2020 (as may be further amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), which is incorporated herein by reference, among Mortgagor and Mortgagee. As used herein, the following terms shall have the following meanings:

1.1.1 "Indebtedness": (1) (a) all funds advanced by Mortgagee to or for the benefit or account of Borrower and/or Mortgagor, including, without limitation, the Loan, as contemplated by any covenant or provision herein contained in the Note, the Loan Agreement, the Project Loan Sheet, and/or any other document or instrument evidencing, governing, securing, guaranteeing or pertaining to the indebtedness evidenced by the Note (all of such agreements, documents and instruments, together with the Note, are referred to herein as the "Loan Documents"), and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Borrower, Mortgagor to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Borrower or Mortgagor may hereafter become indebted to Mortgagee for further sums, and any security given or pledged in connection with any such other indebtedness or hereafter owing by Borrower or Mortgagor to Mortgagee shall likewise secure all indebtedness evidenced by the Note and this Mortgage. All indebtedness secured hereby shall be payable at Mortgagee's address above, and, unless otherwise provided in the instrument evidencing such indebtedness, shall bear interest at the same rate per annum as the Note bears, from the date of accrual of such indebtedness until paid. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection following default or after maturity, whether matured by the expiration of time or by any option given to the Mortgagee to accelerate the maturity, Mortgagor agrees to pay Mortgagee 's reasonable attorneys' and collection fees, and such fees shall be a part of the indebtedness secured hereby.

1.1.2 "Mortgaged Property": All of Mortgagor's interest in all and singular the property of Mortgagor, both real and personal, situated in the County of Jefferson, State of Alabama, which is described on Exhibit A attached hereto and incorporated herein by reference, together with all improvements thereon or hereafter placed thereon with all equipment, fixtures and articles of personal property now or hereafter attached to or used in and about the buildings and other improvements located upon the property; all renewals or replacements thereof or in substitution therefor, whether or not the same are or shall be attached to the property in any manner; all building materials and equipment now or hereafter delivered to the property and intended to be installed therein; all plans and specifications for the property; all deposits, funds, accounts, rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the property; all permits, licenses, certificates, and other rights and privileges obtained in connection with the property; all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein; all proceeds (including premium refunds) payable or to be payable under

each policy of insurance relating to the property; all proceeds arising from the taking of all or a part of the real property or any rights appurtenant thereto, for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof; and all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above-described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress and all revisionary rights or interests of Mortgagor with respect to such property, unto the Trustee, his successors in this trust and his assigns forever.

It is hereby agreed that to the extent permitted by law all of the foregoing personal property and fixtures (hereinafter collectively referred to as "Collateral") are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Mortgagor in and to any of the above-described property is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Mortgagor in or to the property demised under the lease creating such leasehold estate and including Mortgagor's rights, if any, to purchase the property demised under such lease, and if fee simple title to any of such property shall ever become vested in Mortgagor, such fee simple interest shall be encumbered by this Mortgage in the same manner as if Mortgagor had fee simple title to such property as of the date of execution hereof.

1.1.3 "Obligations": All of the agreements, covenants, conditions, warranties, representations and other obligations of Borrower and Mortgagor (including, without limitation, the obligation to repay the Indebtedness) under the Loan Agreement and the other Loan Documents.

1.1.4 "UCC": The Uniform Commercial Code of ALABAMA or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than ALABAMA, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

1.1.5 "Incorporation by Reference": The Loan Agreement, Project Loan Sheet and the Loan Documents and the terms contained therein are hereby incorporated by reference into this Mortgage as if set forth verbatim. In executing this Mortgage, Mortgagor agrees to be bound by all provisions of the Loan Agreement, Project Loan Sheet and the Loan Documents.

ARTICLE 2 GRANT

2.1 Grant.

2.1.1 To secure the full and timely payment of the Loan and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee and its successors and assigns forever, subject, however, to the terms and conditions herein, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

2.1.2 Mortgagor covenants the Mortgagor is lawfully seized of the Mortgaged Property in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey or encumber the same, and that the Mortgaged Property is free and clear of all encumbrances except as expressly provided herein. Mortgagor further covenants to warrant and forever defend all and singular Mortgagee and the successors and assigns of Mortgagee from and against Mortgagor and all persons whomsoever lawfully claiming the Mortgaged Property or any part of the Mortgaged Property.

2.1.3 PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Mortgagor and Mortgagee, that if Mortgagor pays or causes to be paid to Mortgagee the Indebtedness and Obligations, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect.

2.1.4 The lien and estate of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part of the Mortgaged Property.

2.2 Future Advances. In addition to all other indebtedness secured by this Mortgage, this Mortgage shall also secure and constitute a first-position mortgage and lien on the Mortgaged Property for present and future obligations of Borrower and/or Mortgagor to Mortgagee, and this Mortgage is executed to secure all such obligations. Any future obligations and advances may be made in accordance with the Loan Agreement or the Loan Documents, at the option of the Mortgagee. The total amount of the indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but shall never exceed the amount of the Loan. Mortgagee's reservation of the right to make future advances in excess of the face amount of the Obligations is not an indication that the Mortgagee intends to make such future advances.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

3.1 Title to Mortgaged Property and Priority of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any mortgages, liens, claims or interests other than the Permitted Liens (as such term may be defined in the Loan Agreement). This Mortgage creates a valid, enforceable first priority mortgage, lien and security interest against the Mortgaged Property, subject only to the Permitted Liens. No part of the Mortgaged Property constitutes any part of Mortgagor's business or residential homestead.

3.2 First Priority Status. Mortgagor shall preserve and protect the first priority mortgage, lien and security interest status of this Mortgage, the Loan Agreement and the other Loan Documents. If any mortgage, lien or security interest is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such mortgage, lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

3.3 Payment and Performance. Mortgagor shall pay the Indebtedness, all Future Advances, and satisfy all Obligations when the same shall become due, in accordance with the terms of the Mortgage, the Note, the Loan Agreement, the Project Loan Sheet and/or any other instrument evidencing, securing, or pertaining to such indebtedness, or evidencing any renewal or extension of such indebtedness, or any part thereof, and further, Borrower and/or Mortgagee will punctually and properly perform all of their covenants, obligations, and liabilities hereunder and under any other security agreement, Hypothecation Agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness, or any part thereof.

3.4 Replacement of Fixtures. Except as may be permitted by the Loan Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (said consent not to be unreasonably withheld or delayed), permit any of the Fixtures to be removed at any time from the Collateral or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the mortgage, liens and security interests of this Mortgage, the Loan Agreement and the other Loan Documents, and free and clear of any other mortgage, lien or security interest except Permitted Liens.

3.5 Inspection. Mortgagor shall permit Mortgagee and its respective agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as provided in the Loan Agreement.

3.6 Other Covenants. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, - Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

3.7 Condemnation Awards and Insurance Proceeds.

3.7.1 Condemnation Awards. Mortgagee shall be entitled to be made a party to, be notified by Mortgagor of and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Mortgaged Property. Mortgagor assigns to Mortgagee the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Mortgaged Property. Any such payment or award received by Mortgagee may, at Mortgagee's option, (i) be applied by Mortgagee to payment of any Indebtedness or any Obligations in such order as Mortgagee may determine or (ii) be applied in a manner determined by Mortgagee to the replacement of the portion of the Mortgaged Property taken and to the repair or restoration of the remaining portion of the Mortgaged Property or (iii) be released to Mortgagor upon such conditions as Mortgagee may determine or (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration of any portion of the Mortgaged Property or which is released to Mortgagor shall be deemed a payment against any Indebtedness or any Obligations. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. In the event Mortgagee, as a result of any such judgment, decree or award, believes that the payment or performance of any indebtedness or obligation secured by this Mortgage is impaired, Mortgagee may, without notice, declare all of the indebtedness secured hereby immediately due and payable.

3.7.2 Insurance Proceeds. Mortgagor will keep the Collateral, Improvements, Fixtures and Personalty (collectively, the "Insured Premises") insured by such company or companies as Mortgagee may reasonably approve for the full insurable value thereof in accordance with the Loan Agreement, with loss made payable to Mortgagee by way of a standard form of mortgage clause or such other form of mortgage clause as may be required by Mortgagee and will not be cancelable by either the insurer or the insured without at least thirty days' prior written notice to Mortgagee. Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed to Mortgagor upon any policy of insurance insuring any portion of the Insured Premises, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Mortgagee from any such policy of insurance shall be applied as set forth in the Loan Agreement. No portion of any indemnity payment which is applied to the replacement, repair or restoration of any portion of the Insured Premises or which is released to Mortgagor shall be deemed a payment against any Indebtedness or any Obligations. Mortgagor will keep the Insured Premises continuously insured as herein required and will deliver to Mortgagee the original of each policy of insurance required hereby. Mortgagor will pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor will furnish to Mortgagee at least ten days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements of this Mortgage. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Insured Premises which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Insured Premises at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable. In case of loss, (a) if Borrower and/or Mortgagor is in default hereunder, Mortgagee, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same to the indebtedness secured hereby or Mortgagee may apply such proceeds to restore the Mortgaged Property, and (b) if Mortgagor is not in default hereunder, Mortgagor may, at its option, apply such proceeds to the indebtedness secured hereby or apply such proceeds to the restoration of the Mortgaged Property. If Mortgagor elects to apply such proceeds to the restoration of the Mortgaged Property, such restoration shall be promptly completed in accordance with plans and specifications approved by Mortgagee, and the costs and expenses thereof, to the extent they exceed the proceeds of the insurance policies, shall be borne by Mortgagor.

3.8 Maintenance. Mortgagor will maintain the Mortgaged Property in good condition and repair and will neither permit nor allow waste of any portion of the Mortgaged Property. Mortgagor will promptly repair or restore any portion of the Mortgaged Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Mortgaged Property and will cut no timber on the Mortgaged Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.

3.9 Taxes and Assessments. Mortgagor will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property, as the same become due and payable, and will deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent. If Mortgagor fails to pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property, Mortgagee may pay them (but shall have no obligation to do so), together with all costs and penalties thereon, at Mortgagor's expense, provided however, that, upon strict compliance by Mortgagor of the requirements stated below, Mortgagor may in good faith, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, contest the validity thereof, and pending such contest Mortgagor shall not be deemed in default hereunder because of such nonpayment, if (a) prior to delinquency of the asserted tax or assessment, Mortgagor furnishes the Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as therein stipulated secured by a deposit in cash, or security acceptable to Mortgagee, or with surety acceptable to Mortgagee in the amount of the tax or assessment being contested by Mortgagor and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, (b) Mortgagor promptly pays any amount adjudged by a court of competent jurisdiction to be due with all costs, penalties and interest thereon, before such judgment becomes final, and (c) in any event, each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

3.10 Due on Sale. Mortgagor agrees that if the Mortgaged Property or any part thereof or interest therein if sold assigned, transferred, conveyed or otherwise alienated by Mortgagor, whether voluntarily or involuntarily or by operation of law other than in accordance with the Loan Agreement, Mortgagee, at its own option, may declare the Indebtedness secured hereby and all other Obligations hereunder to be forthwith due and payable.

3.11 Defense of Title. If, while this Mortgage is in force, the interest of Mortgagee in the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attacked directly or indirectly. Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Mortgagor shall immediately pay all such taxes, or cause same to be paid or reimburse Mortgagee for the payment of same immediately upon written notice from Mortgagee. Mortgagor shall at any time and from time to time furnish promptly, upon request a written statement or affidavit, in such form as may be required by Mortgagee, stating the unpaid balance of the Note, and stating that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

3.12 Reimbursement. If, in pursuance of any covenant contained herein or in any other instrument executed in connection with the Loan evidenced by the Note or in connection with any other indebtedness secured hereby, Mortgagee shall expend any money chargeable to Mortgagor or subject to reimbursement by Mortgagee under the terms of such covenant or agreement, Mortgagor will repay the same to Mortgagee immediately upon demand at the place where the Note or other indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable under the Note or on account of such other indebtedness in the event of a default thereunder from and after the date of Mortgagee's expenditure. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same, and it shall be secured by this Mortgage and by subrogation to all of the rights of the person or entity receiving such payment.

3.13 Prohibition of Transfer or Encumbrance. The sale, transfer, disposition or encumbrance, whether by operation of law or otherwise, of all or any part of the Mortgaged Property (other than items of personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new) without the written consent of Mortgagee shall constitute a default hereunder. Mortgagor shall not grant any easement or encumbrance or impose any restriction whatever with respect to any of the Mortgaged Property without the joinder therein of Mortgagee, nor shall Mortgagor rent or lease any of the Mortgaged Property for any purpose whatever without the prior written consent of Mortgagee. In the event Mortgagor is a corporation or a limited liability company, it agrees that the sale, conveyance, hypothecation, transfer or disposition of more than ten percent (10%) of its issued and outstanding capital stock or ownership interests, without the prior written consent of Mortgagee, shall constitute a default; or, that in the event Mortgagor is a limited or general partnership, or a joint venture, a change of any general partner or any joint venturer, either voluntarily or involuntarily, or the sale, conveyance, transfer, disposition or encumbrance of any such general partner or joint venture interests or of more than twenty percent (20%) of the partnership or venture interests, without the prior written consent of Mortgagee, shall constitute a default. In the event Mortgagee should consent to any sale or conveyance of the Mortgaged Property, Mortgagor will not sell all or any portion of the Mortgaged Property unless the purchaser, as a part of the consideration, either (a) expressly agrees to assume the payment of the indebtedness hereby secured or (b) expressly agrees that the title and rights of purchaser are and shall remain unconditionally subject to all of the terms of this Mortgage for the complete fulfillment of all obligations of the Mortgagor hereunder, and the deed effecting such transfer shall expressly set forth such agreement of the purchaser.

3.14 No Discharge Upon Transfer. If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness hereby secured in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Mortgagee, and no extension of the time for the payment of the indebtedness hereby secured, given by Mortgagee, shall operate to release, discharge, modify, change or affect the original liability of Mortgagor or the liability.

3.15 No Subordinate Mortgage. Mortgagor will not, without the prior written consent of Mortgagee, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "Subordinate Mortgage"). In the event of consent by Mortgagee to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Mortgagor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Mortgagee not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(a) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Mortgage and each term and provision thereof;

(b) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Mortgagee;

(c) That the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Mortgage, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and/or maintenance of the Mortgage Property; and

(d) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding.

ARTICLE 4
DEFAULT AND FORECLOSURE

4.1 Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

4.1.1 Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, opportunity to cure, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower and Mortgagor), whereupon the same shall become immediately due and payable.

4.1.2 Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

4.1.3 Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alternations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.6.

4.1.4 Foreclosure and Sale; Power of Sale. Commence proceedings to collect such sums, foreclose this Mortgage and sell the Mortgaged Property. If default shall be made in the payment of any amount due under this Mortgage, the Loan Agreement or any other Loan Document, then, upon Mortgagee's demand, Mortgagor will pay to Mortgagee the whole amount due and payable under the Loan Agreement and the other Loan Documents and all other Indebtedness or Obligations; and if Mortgagor shall fail to pay such sums upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal of such suit. Mortgagee shall be entitled to sue and recover judgment, as set forth above, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale under this Mortgage, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of this Mortgage. At the option of the Mortgagee this Mortgage may be foreclosed by judicial proceedings, or by non-judicial foreclosure sale in accordance with applicable laws, and to sell and dispose of the Mortgaged Property and all the right, title, and interest of Mortgagor therein, by sale at any place authorized by law as may be specified in the notice of such sale to the highest bidder. If this Mortgage is foreclosed by non-judicial foreclosure sale pursuant to the power of sale, Mortgagee shall give notice of the foreclosure by publication once a week for 3 successive weeks. Such notice shall state the time, place and terms of each such sale by publication in some newspaper published in the county or counties in which the Mortgaged Property to be sold, or a substantial and material part thereof, is located. At such foreclosure sale, Mortgagee may sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of the courthouse door of such county, at public outcry, to the highest bidder for cash. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgaged Property may be sold as a whole or in separate parts, parcels, or tracts, including separate parts, parcels or tracts located in the same county, and in such manner and order as the Mortgagee in its sole discretion may elect. The exercise of the power of sale with respect to a separate part, parcel, or tract of the Mortgaged Property in one county does not extinguish or otherwise affect the right to exercise the power of sale with respect to the other parts, parcels, or tracts of the Mortgaged Property in that or another county to satisfy the obligation secured by the Mortgage, and the right and power of sale arising out of any Event of Default shall not be exhausted by one or more sales of the Mortgaged Property. At the foreclosure, Mortgagee shall be entitled to bid and to purchase the Mortgaged Property and shall be entitled to apply the Indebtedness or Obligations, or any portion thereof, in payment for the Mortgaged Property. The Mortgagee shall be authorized to retain an attorney to represent him in such proceedings. Upon such sale, Mortgagee or the attorney conducting said sale is hereby authorized and empowered to make due conveyance to the purchaser or purchasers in the name of Mortgagor. The Mortgagor hereby irrevocably appoints Mortgagee to be the attorney in fact of the Mortgagor and in the name and on behalf of the Mortgagor to execute and deliver any deeds, transfers, conveyances, assignments,

assurances, and notices which the Mortgagor ought to execute and deliver and do and perform any and all such acts and things which Mortgagor ought to do and perform under the covenants herein contained and generally to use the name of Mortgagor in the exercise of all or any of the powers hereby conferred on Mortgagee. Upon any sale, whether under the power of sale hereby given or otherwise, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have physically present or constructively in its possession any of the Mortgaged Properties. The proceeds of the sale shall be applied in accordance with Section 4.6 herein. Fees payable herein and otherwise under this Mortgage shall be limited to those reasonable fees and expenses actually incurred at standard hourly rates without reference to a specific percentage of the outstanding balance of the indebtedness. In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the Indebtedness or Obligations, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Mortgagee in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage, the Loan Agreement or any other Loan Document, by law or in equity, all of which rights and remedies may be exercised by Mortgagee independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

Without in any way limiting the generality of the foregoing, Mortgagee shall also have the following specific rights and remedies.

(a) To make any repairs to the Mortgaged Property which Mortgagee deems necessary or desirable for the purposes of sale.

(b) To exercise any and all rights of set-off which Mortgagee may have against any account, fund, or property of any kind, tangible or intangible, belonging to Mortgagor which shall be in Mortgagee's possession or under its control.

(c) To cure such Event of Default, with the result that all costs and expenses incurred or paid by Mortgagee in effecting such cure shall be additional charges on the Indebtedness or Obligations which bear interest at the interest rate set forth in the Loan Agreement or applicable Loan Documents and are payable upon demand.

(d) To foreclose on the Mortgaged Property and to pursue any and all remedies available to Mortgagee at law or in equity, and in any order Mortgagee may desire, in Mortgagee's sole discretion.

In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Mortgagor agrees as follows. Notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time) or similar provisions found in Alabama property law, and to the extent permitted by law, Mortgagor agrees that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Mortgaged Property was sold pursuant to judicial or nonjudicial foreclosure sale. Mortgagor expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code, or similar Alabama laws, which would otherwise permit Mortgagor and other persons against whom recovery of deficiencies is sought or Mortgagor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Mortgagor, any guarantor, and others against whom recovery of a deficiency is sought. Alternatively, in the event the waiver provided for above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time), or similar Alabama property laws: (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real

estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

4.1.5 Receiver. Upon the occurrence of an Event of Default, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance of the Mortgaged Property including the execution, cancellation or modification of leases, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the construction, management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. All rents collected pursuant to this paragraph shall be applied in accordance with Section 4.6 herein. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, Borrower or anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagor under this Section 4.1.5. If the rents of the Mortgaged Property are not sufficient to meet the costs of taking control and of managing the Mortgaged Property and collecting the rents, Mortgagee, at its sole option, may advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become Indebtedness and Obligations of Mortgagor to Mortgagee, Unless Mortgagee and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Loan Agreement after the occurrence of an Event of Default. The entering upon and taking and maintaining of control of the Mortgaged Property by Mortgagee or the receiver and the application of rents as provided in this Mortgage shall not cure or waive any Event of Default or invalidate any other right or remedy of Mortgagee under this Mortgage. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash deposits or instrument at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

4.1.6 Other. Exercise all other rights, remedies and recourses granted under the Loan Agreement and the other Loan Documents or otherwise available at law or in equity.

4.2 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Agreement and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Agreement and the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.3 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate mortgage or lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the mortgage, lien or security interest created in or evidenced by the Loan Agreement and the other Loan Documents or their status as a first and prior mortgage, lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

4.4 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Agreement and the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

4.5 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Agreement and the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Agreement and the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Agreement and the other Loan Documents for such Event of Default.

4.6 Allocation of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

4.6.1 to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees, commissions and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) Mortgagee's reasonable court costs and reasonable attorneys' and accountants' fees and expenses, (3) costs of advertisement, and (4) the payment of all real estate taxes and assessments and other charges subject to which the Mortgaged Property may be sold;

4.6.2 to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

4.6.3 the balance, if any, to the payment of the persons legally entitled thereto.

4.7 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof in accordance with Section 4.1.4 will, after the expiration of any upset period, divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, with or without process of law.

4.8 Additional Advances and Disbursements; Costs of Enforcement.

4.8.1 If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee, the Loan Agreement or any of the other Loan Documents or applicable law, shall be deemed advances of principal evidenced by the Loan Agreement and the other Loan Documents and shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Mortgage.

4.8.2 Mortgagor shall pay all expenses (including reasonable attorneys' fees, expert fees and expenses) of or incidental to the perfection, foreclosure and other enforcement of this Mortgage, the Loan Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage, the Loan Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting

the rights and claims of Mortgagee in respect thereof, by litigation or otherwise. Attorneys' fees and expenses payable by Mortgagor under this Section 4.8 or otherwise under this Mortgage shall be limited to those reasonable fees and expenses actually incurred at standard rates without reference to a specific percentage of the outstanding balance of the Indebtedness.

4.9 No Mortgagee in Possession. Except as otherwise provided by law, neither the enforcement of any of the remedies under this Article, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Agreement and the other Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

4.10 Usury Savings Provisions. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as hereinafter defined), or applicable United States federal law to the extent that such law permits Mortgagee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law. For purposes of this provision, If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received in respect of the Indebtedness, including by reason of the acceleration of the maturity or the prepayment thereof, then it is Mortgagor's and Mortgagee's express intent that all amounts charged in excess of the Maximum Lawful Rate (as hereinafter defined) shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Mortgagee shall be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents shall, immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term hereof, then Mortgagor and Mortgagee agree that Mortgagee shall, with reasonable promptness after Mortgagee discovers or is advised by Mortgagor that interest was received in an amount in excess of the Maximum Lawful Rate, either credit such excess interest against the Indebtedness then owing by Mortgagor to Mortgagee and/or refund such excess interest to Mortgagor. Mortgagor hereby agrees that as a condition precedent to any claim seeking usury penalties against Mortgagee, Mortgagor will provide written notice to Mortgagee advising Mortgagee in reasonable detail of the nature and amount of the violation, and Mortgagee shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Mortgagor or crediting such excess interest against the Indebtedness then owing by Mortgagor to Mortgagee. All sums contracted for, charged, taken, reserved or received by Mortgagee for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated or spread, using the actuarial method, throughout the stated term of the Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note or any other part of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. The terms and provisions of this paragraph shall control and supersede every other term, covenant or provision contained herein, in any of the other Loan Documents or in any other document or instrument pertaining to the Indebtedness.

4.11 Maximum Lawful Rate: Ceiling Election. As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Mortgagee in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Mortgagee to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all fees, charges and any other value whatsoever made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Mortgagee is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note or any other part of the Indebtedness (hereinafter defined), Mortgagee will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Mortgagee to contract for,

charge, take, receive or reserve a greater amount of interest than under Texas law, Mortgagee will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Mortgagee may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Mortgagor as provided by such applicable law now or hereafter in effect.

ARTICLE 5 ASSIGNMENT OF RENTS AND LEASES

5.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee and its successors and assigns all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into or modified, extended, renewed or replaced, and all of its right, title and interest in and to all Rents. If permitted under applicable law, this assignment is an absolute assignment and not merely an assignment for additional security. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Indebtedness and the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Indebtedness and the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

5.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected first priority present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "Bankruptcy Code"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

5.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

5.4 No Merger of Estates. So long as part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

ARTICLE 6 SECURITY AGREEMENT

6.1 Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Leases, Rents and Property Agreements sent to Mortgagor at least 10 days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

6.2 Financing Statements. Mortgagee may prepare, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor represents and warrants that the exact legal name and address of the Mortgagor are as set forth in the first paragraph of this Mortgage; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Mortgagor represents and warrants that the location of the collateral that is Personalty is upon the Collateral. Mortgagor covenants to furnish Mortgagee with notice of any change in the name, identity, corporate structure, residence, principal place of business or mailing address of Mortgagor within ten (10) days of the effective date of any such change and Mortgagor covenants to promptly execute any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status.

6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage. The collateral is or includes fixtures.

6.4 Notice of Name, Etc. Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name, identity, or structure, and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any Mortgaged Property described or referred to herein.

ARTICLE 7

MISCELLANEOUS

7.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in accordance with the provisions of the Loan Agreement.

7.2 [Intentionally Omitted]

7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

7.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Borrower, Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Agreement and the other Loan Documents shall not be deemed to be a waiver of

same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

7.6 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern except as is otherwise stated in Section 7.9 hereinbelow.

7.7 Release or Reconveyance. Upon payment in full of the Indebtedness and performance in full of the Obligations and the Mortgagee having no further commitment or agreement to make advances, incur obligations, or give value under the Loan Agreement or any other Loan Document, this Mortgage and the grants and conveyances contained herein shall become null and void; and the Mortgaged Property shall revert to the Mortgagor; and the entire estate, right, title and interest of the Mortgagee shall thereupon cease; and, upon Mortgagor's request, Mortgagee, at Mortgagor's expense, shall release and cancel of record the mortgage, liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor; otherwise, this Mortgage shall remain in full force and effect. In addition, as long as no Event of Default has occurred and is then continuing or would be caused thereby, if Mortgagor sells or transfers for value any portion of the Mortgaged Property as permitted under the Loan Agreement, Mortgagee shall release the mortgage, liens and security interests created by this Mortgage on such Mortgaged Property or reconvey such Mortgaged Property to Mortgagor, concurrently with the consummation of such sale or other transfer. Such release or reconveyance shall be at Mortgagor's sole cost and expense, and only upon not less than thirty days' prior written notice to Mortgagee.

7.8 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

7.9 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the mortgage, liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Mortgage and the Obligations shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles.

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

7.11 Entire Agreement. This Mortgage, the Loan Agreement and the other Loan Documents embody the entire agreement and understanding between Borrower, Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This agreement may be amended only with the written consent of the Mortgagor and Mortgagee, or their respective heirs, successors and assigns.

7.12 No Subsequent Waiver. No waiver of any default on the part of Mortgagor or breach of any of the provisions of this Mortgage or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be constituted as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity, and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Mortgage shall be invalid or unenforceable, the unsecured portion of the indebtedness shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be

considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

7.13 Compliance With Regulations. Mortgagor further agrees to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Mortgagor or the Mortgaged Property or any part thereof. Mortgagor warrants, covenants and agrees to comply with all restrictions; restrictive covenants; condominium by-laws, regimes and declarations; and/or all other rules or regulations, governmental, public or private, applicable to the Mortgaged Property and the operation or ownership thereof.

7.14 Vendor's Lien. The Note secured hereby evidence funds advanced by Mortgagee at the special instance and request of Mortgagor and used in payment of all or a portion of the purchase price of the Property and Mortgagor hereby expressly confesses, recognizes and acknowledges a vendor's lien on the Mortgaged Property as security therefor.

7.15 Partial Releases. Provided that Mortgagor is not in default hereunder, Mortgagor shall be entitled to partial releases of the Mortgaged Property in accordance with the terms, provisions and conditions of the Loan Agreement.

7.16 Address. Mortgagor's mailing address as shown in the first paragraph hereof is true and correct.

ARTICLE 8

LOCAL LAW PROVISIONS

8.1 Insurance and Taxes. Mortgagor shall at all time provide, maintain and keep in force or cause to be provided, maintained and keep in force, at no expense to Mortgagee, policies of insurance in form and amounts and issued by companies, associations or organizations reasonably satisfactory to Mortgagee covering such casualties, risks, perils, liabilities and other hazards as set forth in the Loan Agreement or as Mortgagee reasonably requires. Mortgagor shall pay, or cause to be paid prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property or any part thereof, or upon any person, property, equipment or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "Impositions"); provided, however, if, by law any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. If Mortgagor does not pay such insurance premiums and Impositions in accordance with the foregoing, Mortgagee may pay such amounts and Mortgagor shall reimburse Mortgagee upon demand for such payments and such reimbursement obligation shall be added to the Obligations secured hereby.

IN WITNESS WHEREOF, Mortgagor and Borrower have on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be signed in its corporate name by its duly authorized officers AND DELIVERED by authority of its board of directors duly given.

[Signatures on the Following Pages]

EXECUTED as of the dates of the acknowledgments below but to be effective as of the Effective Date.

MORTGAGOR:

NEWCASTLE CONSTRUCTION, INC.,
an Alabama corporation

ADDRESS:

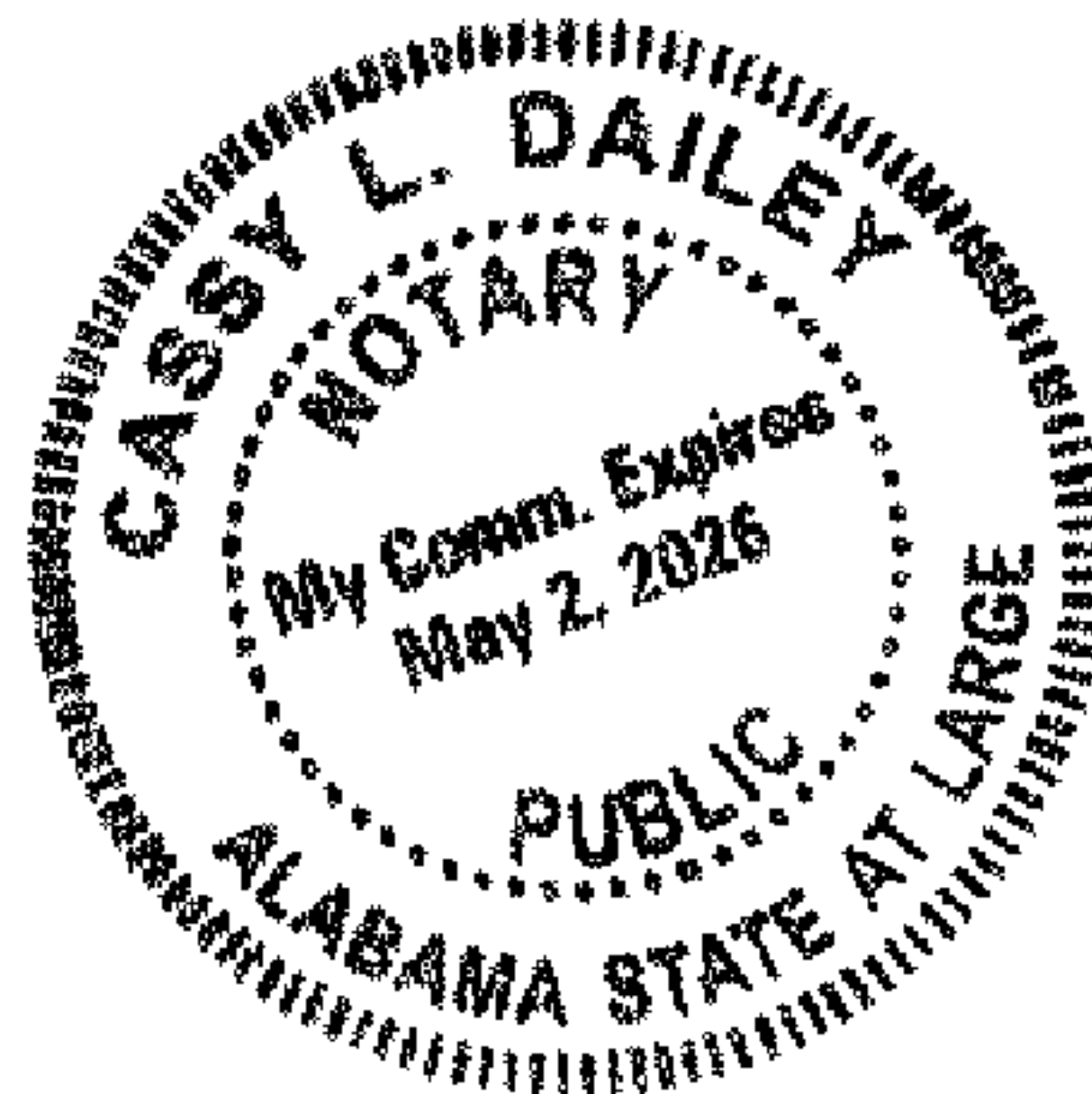
121 Bishop Circle
Pelham, Alabama 35124

By: 
Name: Robin Trimm
Title: CFO

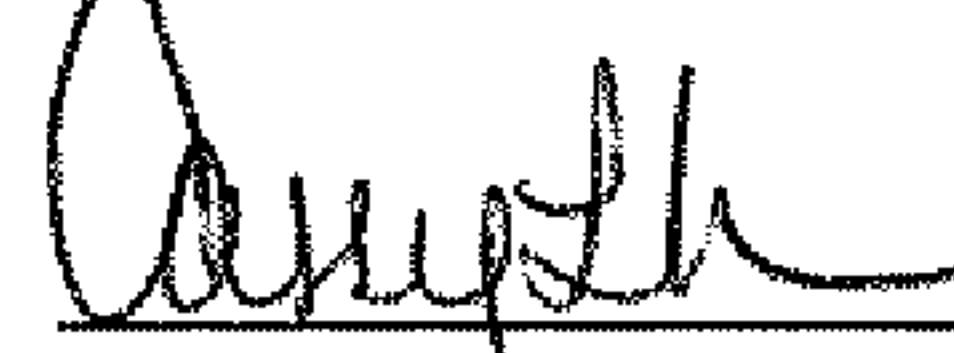
THE STATE OF Alabama §
COUNTY OF Shelby §

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robin Trimm as the CFO of NEWCASTLE CONSTRUCTION, INC., an Alabama corporation, which is the Mortgagor, signed the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, with full authority, executed the same voluntarily for and as the act of said corporation.

Date: March 3rd, 2024.



Notary Public in and for
The State of



Printed Name of Notary

My Commission Expires

5-2-26

EXHIBIT A

Legal Description

Lots 216, 219 and 221 according to the Survey of Final Plat, Melrose Landing, Phase 2, as recorded in Map Book 59, Page 5, in the Probate Office of Shelby County, Alabama.

MORTGAGE – LEGAL DESCRIPTION
TEXAS CAPITAL BANK

PL 3000656.1



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/27/2024 10:12:19 AM
\$1692.25 BRITTANI
20240327000082670

Allen S. Bayl