

**MORTGAGE AND SECURITY AGREEMENT**

between

**OHD, LLLP,  
an Alabama limited liability limited partnership  
(the "Mortgagor")**

and

**SYNOVUS BANK,  
a Georgia state banking corporation  
(the "Mortgagee")**

April 26<sup>th</sup>, 2024

**This instrument prepared by  
and after recordation should  
be returned to:**

**Michael J. Brandt  
Wallace, Jordan, Ratliff & Brandt, LLC  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209**



to or located on the Real Estate, and other improvements (such building or buildings and other improvements being hereinafter called the Project) now or hereafter erected, constructed or developed on the Real Estate which are necessary or useful for complete and comfortable use and occupancy of the Real Estate for the purposes for which they were or are to be erected, constructed or developed, or which are or may be used in or related to the planning, development, financing or the operation thereof; all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate in any manner; all building materials now or hereafter delivered to the Real Estate and intended to be installed therein including but not limited to all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general, all building materials of every kind and character used or useful in connection with said improvements; all plans and specifications for the Project; all contracts and subcontracts relating to the Project, all deposits (including tenant's security deposits), funds, accounts, contract rights, instruments, documents, and notes or chattel paper arising from or by virtue of any construction or leasing related to the Project; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Project; all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real property, Fixtures, Inventory, or interest therein described herein; all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; all proceeds arising from the taking of all or a part of the Real Estate or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, 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; all good will and books and records relating to the business or businesses operated on the Real Estate; 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, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property, unto Mortgagee, its successors and assigns forever. It is agreed hereby that to the extent permitted by law, the foregoing personal property and fixtures are to be deemed and held to be a part of and affixed to the Real Estate. The foregoing-described real and personal property, and interests in real and personal property are hereinafter collectively called the "Mortgaged Property".

TO HAVE AND TO HOLD, said Mortgaged Property, unto Mortgagee, its successors and assigns forever.

Capitalized terms not defined in this Mortgage shall have the same meanings as given them in the Loan Agreement, as defined below.

This Mortgage is made to secure and enforce the following described indebtedness, obligations and liabilities (herein called the "Secured Debt"); provided, however, at no time shall the Secured Debt hereunder exceed the maximum principal amount of **ONE MILLION EIGHT HUNDRED SIXTY-ONE THOUSAND, FIVE HUNDRED AND 00/100 DOLLARS (\$1,861,500.00** (the "Maximum Principal Amount") as hereinafter set forth. Subject to the Maximum Principal Amount, the Secured Debt includes among other things:

(i) Payment of a certain promissory note in the principal sum of One Million Eight Hundred Sixty-One Thousand Five Hundred and No/100 Dollars (\$1,861,500.00) (the "Term Note") of even date herewith, and that certain promissory note in the principal sum of One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) (the "Revolving Note") of even date herewith (the Term Note and Revolving Note are sometimes collectively referred to herein as the "Note"), said Note executed by Mortgagor, payable to the order of Mortgagee, bearing interest as provided in said Note, and any and all renewals, extensions, modifications, substitutions or increases of said Note, or any part thereof;

(ii) Payment of all funds hereafter advanced by Mortgagee pursuant to the Note or to or for the benefit of Mortgagor, pursuant to any covenant or provision herein contained;

(iii) Performance of all obligations of Mortgagor under the Revolving Credit, Term Loan and Security Agreement dated of even date herewith (herein called the "Loan Agreement") and Mortgagor's punctual and proper performance of all of Mortgagor's covenants, obligations and liabilities under any other security 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 Secured Debt, or any part thereof (hereinafter referred to as the "Loan Documents");

(iv) Payment of all other indebtedness (including future advances) now or hereafter owed by Mortgagor to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, as guarantor or otherwise, joint or several, and otherwise secured or not;

(v) Complete and full performance of each and every obligation, covenant, duty and agreement of Mortgagor contained in this Mortgage;

(vi) Complete and full performance of all obligations of Mortgagor under any other instrument evidencing, securing or pertaining to the Secured Debt, or evidencing any renewal or extension or modification or increase of the Secured Debt, or any part thereof, and Mortgagor's punctual and proper performance of all of Mortgagor's covenants, obligations and liabilities under any other security 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 Secured Debt, or any part thereof (hereinafter referred to as the Loan Documents).

All Secured Debt shall be payable to Mortgagee at Mortgagee's address specified above, or at such other address as may be designated by Mortgagee from time to time; and, unless otherwise provided in the instrument evidencing or creating 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 any Secured Debt 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 after maturity, whether matured by the expiration of time or by any option given to Mortgagee to mature same, Mortgagor agrees to pay Mortgagee's reasonable attorneys' and collection fees, whether suit

be brought or not, and such fees shall be a part of the Secured Debt. This Mortgage shall also secure all renewals, extensions, modifications, substitutions and increases of any of the Secured Debt.

THE MAXIMUM PRINCIPAL AMOUNT SECURED BY THIS MORTGAGE SHALL IN NO EVENT EXCEED THE MAXIMUM PRINCIPAL AMOUNT. Notwithstanding the foregoing or anything to the contrary contained herein, the following provisions shall apply:

(a) Maximum Principal Amount. Notwithstanding anything contained herein to the contrary, the maximum principal amount of Secured Debt which is or under any contingency may be secured by this Mortgage is the Maximum Principal Amount, which in addition to the indebtedness under the Notes, secures and includes all (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, and (iii) all enforcement costs, liabilities, expenses and other sums which Mortgagor is required to pay to Mortgagee or in which Mortgagee incurs in enforcement of its hereunder or under any Loan Document, and all other expenses incurred in upholding the lien of this Mortgage, including, but not limited to, (aa) the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (bb) any amount, cost or charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or express statutory authority, and (cc) interest at any default rate of interest (or regular interest rate) and penalties provided for herein.

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

This instrument is intended to operate and is to be construed as a Mortgage and Security Agreement, assignment of rents and leases, and fixture filing under the laws of the State of Alabama.

And for the purpose of further securing the payment of said Secured Debt Mortgagor covenants and agrees as follows:

**1. MORTGAGOR'S WARRANTIES OF TITLE.** Except for the Permitted Encumbrances, Mortgagor is lawfully seized in fee and possessed of said Mortgaged Property and has a good right to convey the same as aforesaid, that Mortgagor will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said Mortgaged Property is free and clear of all encumbrances, easements and restrictions, except the Permitted Encumbrances.

**2. PAYMENT AND PERFORMANCE.** Mortgagor will pay all of the Secured Debt, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note and the Loan Documents.

**3. MORTGAGEE'S RIGHT TO PERFORM.** Upon Mortgagor's failure to make any payment or perform any act required by the Note or Loan Documents, then at any time thereafter, and without notice to or demand upon Mortgagor, except as required by the Loan Agreement, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon as Mortgagee may deem necessary or appropriate.

**4. ORGANIZATION AND POWER OF MORTGAGOR.** Mortgagor is a duly organized Alabama limited liability limited partnership, is validly existing under applicable state laws, and the transaction contemplated hereby is within Mortgagor's powers, has been duly authorized by all requisite action and is not in contravention of law or the certificate of formation or partnership agreement of Mortgagor.

**5. EXISTENCE OF MORTGAGOR.** Mortgagor will preserve and keep in full force and effect its existence, rights, franchises, if any, and trade names.

**6. INSURANCE.** Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, extended coverage perils, vandalism, malicious mischief, and any such other hazards, casualties, or other contingencies as from time to time may be required by Mortgagee in such manner and in such companies and amounts as Mortgagee may approve. All such policies shall name Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to Mortgagee, to be attached to each policy) be payable to Mortgagee to the extent of the Secured Debt, and provide that the insurance provided thereby, as to the interest of Mortgagee, shall not be invalidated by any act or neglect of Mortgagor, nor by the commencement of any proceedings by or against Mortgagor in bankruptcy, insolvency, receivership or any other proceeding for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. All such insurance shall be replacement cost coverage rather than actual cash value coverage. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee. At least ten (10) days prior to the date the premiums on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Mortgagor will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to Mortgagee) to give Mortgagee at least ten (10) days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. Mortgagor agrees that Mortgagor will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. If Mortgagor fails to keep the Mortgaged Property insured as above specified, Mortgagee may at its option and sole discretion, and at Mortgagor's expense, insure the Mortgaged Property for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Mortgagee.

Mortgagee is hereby authorized, but not required, on behalf of Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Secured Debt, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Secured Debt, or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to Mortgagor, but no such application, holding in reserve or release shall cure or waive any default by Mortgagor. Provided, however, notwithstanding the foregoing, Mortgagor may settle and adjust any claim provided that (a) no Default then exists, (b) the loss or the applicable claim is for less than One Hundred Thousand and No/100 Dollars (\$100,000.00) so long as Mortgagor shall continue to pay the Obligations at the time and in the manner provided for herein, in the Loan Agreement, the Note and the other Loan Documents.

In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the Secured Debt, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

If the Mortgaged Property or any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, then Mortgagor will obtain such insurance as is required by such governmental authority in amounts required by Mortgagee.

**7. TAXES AND ASSESSMENTS.** Mortgagor will pay all taxes and assessments against or affecting the Mortgaged Property prior to the delinquency thereof, and, if Mortgagor fails to do so, Mortgagee may pay them, together with all costs and penalties thereon, at Mortgagor's expense. Notwithstanding the foregoing, Mortgagor may in good faith by appropriate proceedings contest the validity of such taxes and assessments and, pending such contest, Mortgagor shall not be deemed in default hereunder due to such nonpayment if (i) prior to delinquency of the asserted tax or assessment, Mortgagor furnishes Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein 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, and (ii) 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.

**8. CONDEMNATION.** All judgments, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Mortgagee, who may apply the same to the Secured Debt in such manner as it may elect; and 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. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceedings for the condemnation of the Mortgaged Property, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage.

Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as it may request from time to time to permit such participation. In the event Mortgagee, as a result of any such judgment, decree, or award, believes that the payment or performance of any obligation secured by this Mortgage is impaired, Mortgagee may, without notice, declare all of the Secured Debt immediately due and payable.

**9. MORTGAGOR'S INTEREST IN THE MORTGAGED PROPERTY.** If, while this Mortgage is in force, the interest of Mortgagor or the lien of Mortgagee in the Mortgaged Property hereby conveyed or any part thereof, shall be subjected to adverse claims to title, directly or indirectly, and if Mortgagor is not defending said claims or otherwise protecting the lien of this Mortgage, Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all necessary and proper steps for the defense of its interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against its interest.

**10. TAXES ON NOTE OR MORTGAGE.** Except as set forth in Section 33 enabling Mortgagee to avoid duplicative mortgage recording tax, if at any time any other 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 (excluding income or similar taxes of Mortgagee for payments under the Note), or any part thereof, Mortgagor shall immediately pay all such taxes; provided that, in the event it is unlawful for Mortgagor to pay such taxes or to legally reimburse Mortgagee for payment of such taxes, as determined by Mortgagee based upon commercially reasonable standards and applicable laws and regulations then existing, then Mortgagee shall provide written notice to Mortgagee of such occurrence detailing such determination by Mortgagee that one or more of the foregoing events has occurred, and upon receipt thereof by Mortgagor, Mortgagor shall within one hundred and twenty (120) days thereof, pay the entire Secured Debt. If Mortgagor does not pay the entire Secured Debt within such timeframe, then an Event of Default shall be deemed to have occurred.

**11. STATEMENTS BY MORTGAGOR.** 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 that there are no offsets or defenses against full payment of the Note, or if there are any such offsets and defenses, specifying them. Mortgagor waives any claim against Mortgagee for such offsets or defenses if not specified as provided herein and agrees to hold Mortgagee harmless therefor.

**12. MORTGAGEE'S EXPENSES.** If, in pursuance of any covenant contained herein or in any other Loan Document, Mortgagee shall expend any money chargeable to Mortgagor or subject to reimbursement by Mortgagor under the terms of such covenant or agreement, Mortgagor will repay the same to Mortgagee immediately at the place where the Note or other Secured Debt is payable, together with interest thereon at the rate of interest payable on account of the Note or such other indebtedness in the event of a default thereunder from and after the date of Mortgagee's making such payment. The sum of each such payment shall be added to the Secured Debt and thereafter shall form a part of the same, and it shall be secured by this Mortgage and by subrogation to all the rights of the person or entity receiving such payment. Mortgagee may make advances,

but shall not be obligated to do so, for any of the following: (i) insurance, (ii) payment of taxes or any part thereof, (iii) repair, maintenance and preservation of the Mortgaged Property, or of any buildings or other structures thereon, including fixtures, (iv) for the discharge of any liens or encumbrances on the Mortgaged Property, (v) for perfecting the title thereto, (vi) for enforcing collection of the Secured Debt, (vii) for any water, gas or electric charge imposed for any services rendered to the Mortgaged Property and any timber, crops and minerals thereon, (viii) for the protecting or preserving of any use being made of the Mortgaged Property, (ix) for advances to any trustee or receiver of the Mortgaged Property, and (x) for any additions or improvements to the Mortgaged Property or to any buildings or other structures thereon, including fixtures, considered desirable by Mortgagee while it or any receiver or trustee is in possession thereof. Mortgagee may make and is hereby authorized to pay any payment herein, according to any bill, statement or estimate without inquiry into the accuracy of the bill, statement or estimate or into the validity thereof. Mortgagee in making any payment herein authorized, relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, mortgage, claim or charge, shall be the sole judge of the legality or validity of same.

**13. WASTE, DEMOLITION, ALTERATION, REPLACEMENT OR REPAIR OF MORTGAGED PROPERTY.** Mortgagor will cause the Mortgaged Property and every material component thereof to be maintained, preserved, in good repair, and in good working condition (ordinary wear tear excluded) using all commercially reasonable good faith efforts accounting for the utility, value and age of the Mortgaged Property. Mortgagor shall not commit or permit any actual physical waste thereon. Mortgagor shall not remove, demolish or alter the design or structural character of the Real Estate or the Mortgaged Property now or hereafter erected on the Real Estate without the express prior written consent of Mortgagee (the foregoing shall exclude all interior modifications and improvements made in good faith in connection with Mortgagor's improvements to the Mortgaged Property to operate its business). Mortgagor shall comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mortgagor will discharge all claims for labor performed and material furnished therefor and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property.

Mortgagee and other persons authorized by Mortgagee shall have access to and the right to enter and inspect the Real Estate and the Mortgaged Property at all reasonable times, and upon reasonable notice to Mortgagor, including monthly inspections if deemed necessary by Mortgagee. In the event Mortgagee finds that Mortgagor is not maintaining the Mortgaged Property as referenced herein, Mortgagee shall notify Mortgagor in writing of the needed repairs and Mortgagor shall have ten (10) business days to make satisfactory arrangements to bring the Mortgaged Property back to good condition. If after such time, satisfactory arrangements have not been made to bring the Mortgaged Property back to good condition as determined by the sole discretion of Mortgagee, Mortgagee shall have the right to make the repairs required at the expense of Mortgagor as previously enunciated in this Mortgage, or shall have the right to declare the Secured Debt to be at once due and payable under the terms of this Mortgage.

**14. IMPAIRMENT.** Mortgagor will not do, or omit to do, any act or thing which would materially impair the security of this Mortgage.

**15. SALE OF MORTGAGED PROPERTY.** Mortgagor shall not convey, assign, encumber, grant a security interest in or options with respect to, or otherwise dispose of all or any part of the Mortgaged Property (other than Permitted Transfers) whether by operation of law or otherwise without the prior written consent of Mortgagee (provided, however, the foregoing shall further exclude any restrictions of Mortgagor to offer for sale, or sale the entire Mortgaged Property in which such sale would result in the repayment in full of all Obligations secured hereby). If Mortgagee should, in its discretion, consent to any sale, conveyance or encumbrance of the Mortgaged Property, such consent may be conditioned upon one or more of the following: (i) the transferee's express agreement in writing to assume the payment of the Secured Debt; (ii) the transferee's express agreement in writing that the title and rights of such transferee are and shall remain unconditionally subject to all of the terms of this Mortgage for the complete fulfillment of all obligations of Mortgagor hereunder; (iii) payment of a transfer fee or (iv) a change in the interest rate or term of the Note. Mortgagor shall not grant any easement whatever with respect to any of the Mortgaged Property without the joinder therein of Mortgagee or rent or lease any of the Mortgaged Property for any purpose whatever for a period longer than one year without the prior written consent of Mortgagee. The provisions of this Paragraph 15 shall apply to any and all sales, transfers, conveyances, exchanges, leases, assignments or other dispositions by Mortgagor, its successors and assigns, and any subsequent owners of the Mortgaged Property, or any part thereof.

**16. SUCCESSORS.** 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 Secured Debt in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or upon the Secured Debt. 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 Secured Debt, given by Mortgagee, shall operate to release, discharge, modify, change or affect the original liability of Mortgagor or the liability of any guarantors or sureties of Mortgagor, either in whole or in part.

**17. SUBSEQUENT EASEMENTS.** The purchaser at any foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract hereafter made, without the express written consent of Mortgagee or in violation of any provision of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

**18. SUBORDINATE MORTGAGES.** Mortgagor shall not execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property without the prior written consent of Mortgagee.

**19. USE OF PROCEEDS.** Mortgagor shall use the proceeds of the Loans as set forth in and otherwise pursuant to the Loan Agreement and such other uses as approved by Mortgagee.

**20. LIMITATION ON INTEREST.** If any payments required to be made hereunder or under the Note or any of the Loan Documents shall be in excess of the amount allowed by law, such payments shall be reduced to the maximum amounts allowed by law, and if any interest received by Mortgagee under the Note or this Mortgage or otherwise is in an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other Secured Debt and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note and such other indebtedness, such excess shall be refunded to Mortgagor. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Secured Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread throughout the full term of such indebtedness until payment in full to the end that the rate of interest on account of such indebtedness never exceeds the maximum lawful rate at any time in effect and applicable to such indebtedness. The terms and provisions of this paragraph 20 shall control and supersede every other provision of all agreements between Mortgagor and Mortgagee.

**21. SECURITY AGREEMENT AND FINANCING STATEMENT.** With respect to any portion of the Mortgaged Property that constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Alabama (hereinafter called the "Code"), this Mortgage shall constitute a security agreement between Mortgagor, as the Debtor, and Mortgagee, as the Secured Party, and Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the Code. Mortgagor will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagor hereby authorizes Mortgagee to execute and file, without Mortgagor's joinder, any and all financing statements or continuation statements necessary or desirable to perfect or maintain the validity and priority of Mortgagee's security interest. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Mortgagee should proceed to dispose of such property in accordance with the provisions of the Code, five (5) business days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the Real Estate pursuant to the provisions of this Mortgage, in lieu of proceeding under the Code.

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.

Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the Real Estate, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for

record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interests created by this instrument may be obtained from Mortgagee, as secured party, at the address of Mortgagee stated above. The mailing address of Mortgagor, as debtor, is as stated above.

**22. FINANCIAL STATEMENTS.** Mortgagor shall deliver to Mortgagee such financial statements as required by the Loan Agreement.

**23. NOTICE OF LITIGATION.** Mortgagor consents and agrees that it will give notice to Mortgagee of any litigation in which Mortgagor becomes involved and will continue to thereafter provide to Mortgagee periodic statements of the status and progress of such litigation as may be requested by Mortgagee.

**24. CHANGE OF ZONING.** Mortgagor covenants and agrees not to request or consent to any change in the zoning of or restrictive covenants affecting the Mortgaged Property if such change or restrictive covenant could cause a Default under the Loan Agreement without the prior written consent of Mortgagee.

**25. COMPLIANCE WITH LAWS.** The Mortgaged Property, and the use thereof by Mortgagor, shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Mortgagor, the Mortgaged Property, and its use, and Mortgagor shall pay all fees or charges of any kind in connection therewith. Mortgagor will not use or occupy or allow the use or occupancy of the Mortgaged Property in any manner which violates any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or subject to cancellation any insurance then in force with respect thereto.

**26. HOLD HARMLESS.** Mortgagor will defend, at its own cost and expense, and hold Mortgagee harmless from, any proceeding or claim affecting the Mortgaged Property. All costs and expenses incurred by Mortgagor in protecting its interests hereunder, including all court costs and reasonable attorneys' fees, shall be borne by Mortgagor.

**27. FURTHER ASSURANCES.** Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of any of the Note, Mortgage and Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property.

**28. CONSENT.** In any instance hereunder where Mortgagee's approval or consent is required or the exercise of Mortgagee's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee and Mortgagor shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner.

**29. NO PARTNERSHIP.** Nothing contained herein is intended to create any partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

**30. NO PLEDGE OR CHANGE OF OWNERSHIP INTEREST.** Except for Permitted Transfers, the Mortgagor shall not allow or suffer any Change In Control.

**31. NOTICES BY GOVERNMENTAL AUTHORITY, FIRE AND CASUALTY LOSSES, ETC.** Mortgagor shall timely comply with and promptly furnish to Mortgagee true and complete copies of any official notice or claim by any governmental authority pertaining to the Mortgaged Property. Mortgagor shall promptly notify Mortgagee of any fire or other casualty or any notice or taking of eminent domain action or proceeding affecting the Mortgaged Property.

**32. TRADE NAMES.** At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other trade names with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said trade names, and will, upon request of Mortgagee, execute any additional financing statements and other certificates required to reflect the change in trade names and will execute and file any assumed name certificate required by applicable laws.

**33. RECORDING TAX AND FILING.** Mortgagor will cause this instrument along with all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such necessary recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges; provided that any exceptions, benefits or rights to paying duplicative mortgage recording tax on any Loan Document above and beyond the current secured amount of this Mortgage which is permitted under Alabama Code § 40-22-2, as amended, modified or replaced from time to time, shall not be required.

**34. DRILLING / EXTRACTIONS.** Subject to existing rights of other parties holding mineral and/or mining rights and Permitted Encumbrances, without written consent of Mortgagee, Mortgagor shall not conduct any drilling or exploring for, or extraction, removal or production of minerals from the surface or subsurface of the Mortgaged Property. The term "minerals" as used herein shall include, without limiting the generality of such term, oil, gas, casinghead gas, coal, lignite hydrocarbons, methane, carbon dioxide, helium, uranium and all other natural elements, compounds and substances, including sand and gravel.

**35. DEFEASANCE.** If Mortgagor shall: (A) pay in full (i) all of the Secured Debt including but not limited to all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same (including future advances); and (ii) all sums becoming due and payable by Mortgagor under the terms of this Mortgage and the Loan Documents, including but not limited to advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage; and (B) have kept and performed each and every obligation,

covenant, duty, condition and agreement imposed on or agreed to by Mortgagor herein and in the Loan Documents; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Mortgagor, and the entire estate, right, title and interest of Mortgagee will thereupon cease; and Mortgagee in such case shall, upon the request of Mortgagor and at Mortgagor's cost and expense, deliver to Mortgagor proper instruments acknowledging satisfaction of this Mortgage; otherwise, this Mortgage shall remain in full force and effect.

**36. EVENTS OF DEFAULT.** The happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default") shall constitute a default under this Mortgage:

(A) default shall be made in the prompt payment (within any applicable grace periods) of the principal of and interest payable on the Note or any of the other Secured Debt, as and when due and payable pursuant to the terms thereof; or

(B) the occurrence of any Default (as defined in the Loan Agreement) or any other failure, default or breach of any term or condition of any other Loan Document (after the passage of any grace or cure period set forth therein); or

(C) except for Permitted Transfers, Permitted Liens or Permitted Encumbrances or otherwise permitted herein, if title to all or any part of the Mortgaged Property shall become vested in any party other than Mortgagor, without the prior written consent of Mortgagee, which may be withheld in Mortgagee's sole discretion; or

(E) if the holder of any lien or security interest on the Mortgaged Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, provided, however, such event shall not be a default hereunder if the Mortgagee contests the validity or amount thereof in good faith by appropriate and lawful proceedings, so long as any such foreclosure or other proceedings, and execution thereon have been stayed and continue to be stayed

(F) there shall occur any material default or event of default (following the passage of any grace and/or cure period thereunder) or an event of default resulting in a termination event under any Bank Commercial Card Agreement for which Mortgagor is a defaulting party. As used herein, "Bank Commercial Card Agreement" means an agreement between Mortgagee and Mortgagor pursuant to which Mortgagee issues one or more commercial credit cards, purchase cards, or any other card-based commercial credit or charge product to Mortgagor or issued for the benefit of Mortgagor for amounts in which Mortgagor is responsible to repay Mortgagee amounts of at least \$50,000.00 or more) to make business purpose purchases, as the foregoing may be renewed, extended, amended or supplemented from time to time.

Acceptance by Mortgagee of any payment of less than the full amount due on the Secured Debt shall be deemed acceptance on account only, and the failure of Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter

and until the entire amount due on the Secured Debt has been paid, Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

**37. REMEDIES OF MORTGAGEE UPON DEFAULT.**

(A) Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor, declare all or any part of the Secured Debt immediately due and payable whereupon all such Secured Debt shall forthwith become due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mortgagor and Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note and any of the other Loan Documents and applicable law.

(B) Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee) may, but shall not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; and Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property.

(C) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Mortgaged property, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

(D) Power of Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder

therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Secured Debt shall have been paid in full.

(E) Inventory and Fixtures. On the happening of any Event of Default or at any time thereafter, Mortgagee shall have and may exercise with respect to any Collateral consisting of Inventory or Fixtures, all rights, remedies and powers of a secured party under the Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At Mortgagee's request, Mortgagor shall assemble the Collateral and make the Collateral available to Mortgagee at any place designated by Mortgagee. To the extent permitted by law, Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Mortgagee existing after default. To the extent that such notice is required and cannot be waived, Mortgagor agrees that if such notice is given to Mortgagor in accordance with the provisions of Paragraph (38) below, at least five (5) business days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

Mortgagor agrees that Mortgagee may proceed to sell or dispose of both the real and personal property Collateral in accordance with the rights and remedies granted under this Mortgage with respect to the Real Estate covered hereby. Mortgagor hereby grants Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Secured Debt in such order and amounts and manner as Mortgagee may elect. Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(F) Assignment of Leases and Rents. All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. § 101 *et. seq.* (hereinafter called the "Rents and Profits") are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Mortgagee to be applied by Mortgagee in payment of all proper charges and expenses including the just and reasonable compensation for the services of Mortgagee, its attorneys, agents, and others employed by Mortgagee in connection with the operation, management and control of the Mortgaged Property and the conduct of the business thereof, and such further sums as may be sufficient to indemnify Mortgagee from and against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Mortgagee hereunder. Mortgagee may, at its option, credit the remainder of the payment to the principal and interest and all other sums payable on the Note and other Secured Debt. Prior to the occurrence of any default hereunder, Mortgagor shall collect and receive all Rents and Profits for the benefit of Mortgagee and Mortgagor, and Mortgagor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other Secured Debt and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Mortgagor. Mortgagor will not (i) execute an assignment of any of its rights, title or interest in the Rents and Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Mortgagee, at least equivalent to that of the lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) modify any lease of the Mortgaged Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage. Mortgagor will not execute any lease of all or any substantial portion of the Mortgaged Property except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement contained in each lease of the Mortgaged Property now or hereafter existing, on the part of lessor thereunder to be kept and performed. Mortgagor shall furnish to Mortgagee, within ten (10) business days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Mortgaged Property, the terms of their respective leases, the spaces occupied and the rentals payable thereunder.

(G) Foreclosure Deeds. Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(H) Application of Proceeds. All payments received by Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by

Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Secured Debt that is then due and payable (including without limitation principal, accrued interest, advances and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) any other sums that might be due under this Mortgage, the Note or the Loan Documents, which have not otherwise been contemplated in (i) and (ii) above, and (iv) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(I) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure by power of sale as provided for in this Mortgage, but without declaring the whole Secured Debt due. Any such sale may be made subject to the unmatured part of the Secured Debt, and such sale, if so made, shall not in any manner affect the unmatured part of the Secured Debt, but as to such unmatured part of the Secured Debt shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Secured Debt whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Secured Debt without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the Secured Debt, whether matured at the time or subsequently maturing.

(J) Waiver of Appraisement Laws. Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Mortgaged Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Secured Debt or any creation or extension of a period of redemption from any sale made in collecting the Secured Debt (commonly known as stay laws and redemption laws).

(K) Prerequisites of Sales. In case of any sale of the Mortgaged Property as authorized by this Paragraph 37, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment of any of the Secured Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**38. NOTICE AND ADDRESSES FOR NOTICES.** All notices or other written communications hereunder shall be delivered in accordance with the Loan Agreement.

**39. PARTIAL RELEASE AND ADDITIONAL SECURITY.** Any part of the Mortgaged Property may be released by Mortgagee without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the Secured Debt or any

part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal or extension of the Secured Debt, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the obligations and Secured Debt are completely paid, performed and discharged.

**40. WAIVER.** To the extent that Mortgagor may lawfully do so, Mortgagor agrees that Mortgagor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, valuation and appraisal, the exemption of business or residential homestead, the administration of estates of decedents, dower and curtesy, the rights and remedies of sureties or other matter whatever to defeat, reduce or affect the right of Mortgagee, under the terms of this Mortgage, to sell the Mortgaged Property for the collection of the Secured Debt (without any prior or different resort for collection) or the right of Mortgagee, under the terms of this Mortgage, to the payment of such Secured Debt out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted).

**41. NO WAIVER AND SEVERABILITY.** 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 Secured Debt 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 construed 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 interests or assignment of rents created by this Mortgage shall be invalid or unenforceable, the unsecured portion of the Secured Debt shall be completely paid prior to the payment of the remaining and secured portion of the Secured Debt 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.

**42. REMEDIES CUMULATIVE.** In addition to and notwithstanding and without modifying the other remedies provided herein and without limiting the rights of Mortgagee to exercise such remedies, Mortgagee is given the additional right to enforce the covenants, agreements, and obligations of Mortgagor hereunder, by the securing of equitable remedies, including that of temporary and permanent injunction and specific performance, without the necessity of Mortgagee filing any bond or other security which would otherwise be required by the statutes of the State of Alabama or the Alabama Rules of Civil Procedure in seeking such equitable remedies, the requirement for filing of any such bond or other security being hereby expressly waived.

**43. AMENDMENTS** No amendment, modification or cancellation of this Mortgage shall be valid unless in writing and signed by the party against whom enforcement is sought.

**44. HEADINGS.** The Paragraph and Subparagraph headings hereof are inserted for convenience and reference only and shall not alter, define, or be used in construing the text of such Paragraphs or Subparagraphs.

**45. GOVERNING LAW.** This Mortgage shall be governed and construed under the laws of the State of Alabama except to the extent any law, rule or regulation of the federal government of the United States of America may be applicable, in which case such federal law, rule or regulation shall control.

**46. COPY.** Mortgagor acknowledges receipt of a true and correct copy of this Mortgage.

**47. MEANING OF PARTICULAR TERMS.** Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective heirs, personal representatives, successors and assigns. The term "Mortgagor" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, partnerships, corporations, associations, trusts or other entities or organizations.

**48. ENVIRONMENTAL PROTECTION.** Mortgagor acknowledges and agrees it has executed a certain Environmental Indemnity Agreement dated as of even date hereof in favor of Mortgagee with respect to the Real Estate. In addition to the incorporation of the Loan Agreement and all Loan Documents set forth below, the terms and conditions of the Environmental Indemnity Agreement are incorporated herein by this reference as if fully set forth herein.

**49. LOAN AGREEMENT.**

(a) Incorporation and Conflicts. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between and among Mortgagee and Mortgagor pertaining to, among other things, the Obligations. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the terms of this Mortgage shall apply.

(b) Incorporation of Covenants, Conditions and Agreements. All covenants, conditions and agreements contained in the Loan Agreement and all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein..

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

*[Remainder of page intentionally left blank]*

**EXECUTED AND DELIVERED** as of the date first above mentioned.

**MORTGAGOR:**

**OHD, LLLP,**  
an Alabama limited liability limited partnership

By: [Signature]  
Michael Hicks  
Its Vice President-Controller

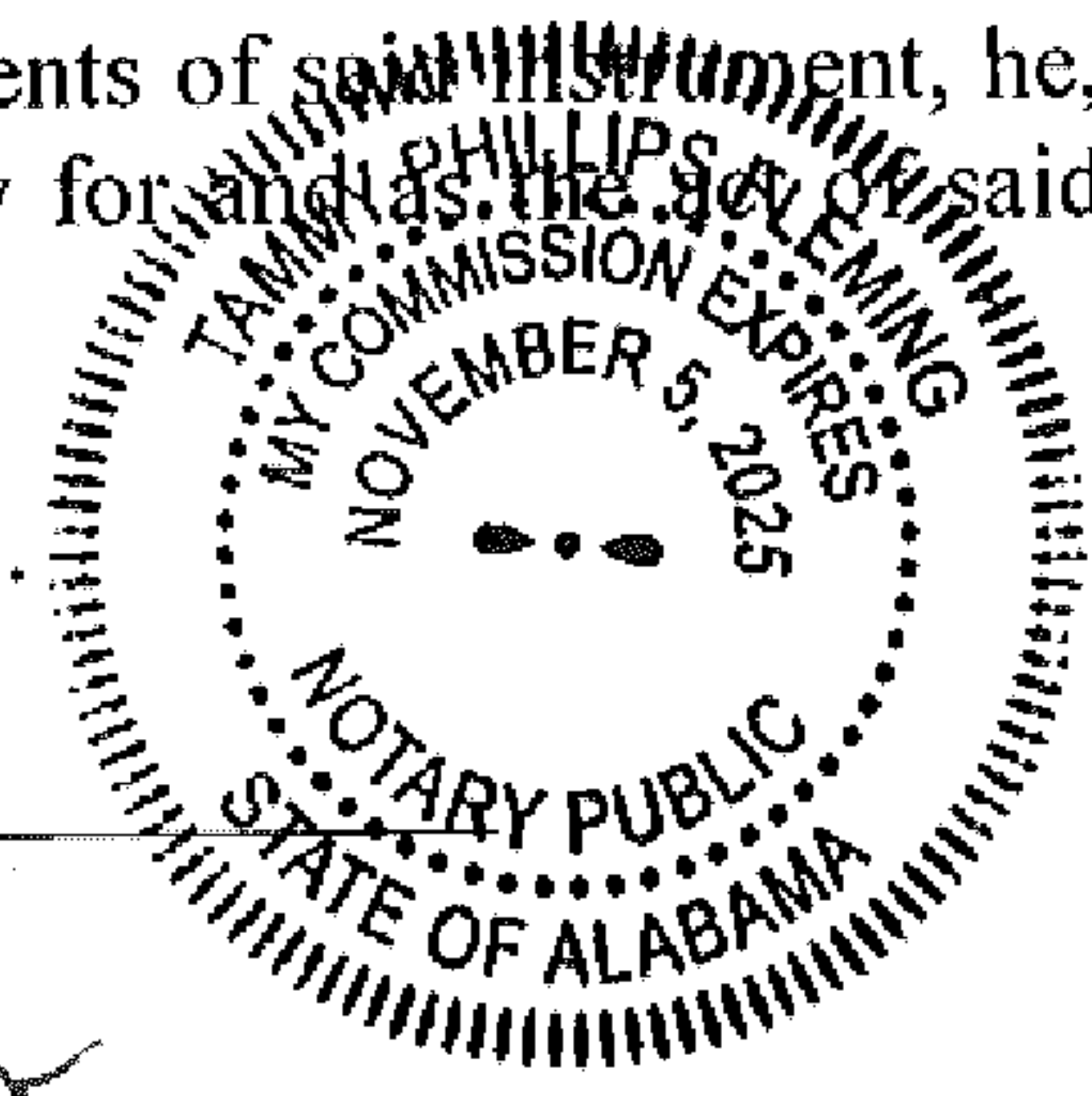
By: [Signature]  
Name: Hunter Strickler  
Its: Vice President-Business Development

STATE OF ALABAMA     )  
  )  
Delby COUNTY     )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Michael Hicks, whose name as Vice President-Controller of OHD, LLLP, an Alabama limited liability limited partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the sole said partnership.

Given under my hand and official seal this 24 of April, 2024.

[Signature]  
Notary Public



[NOTARIAL SEAL]

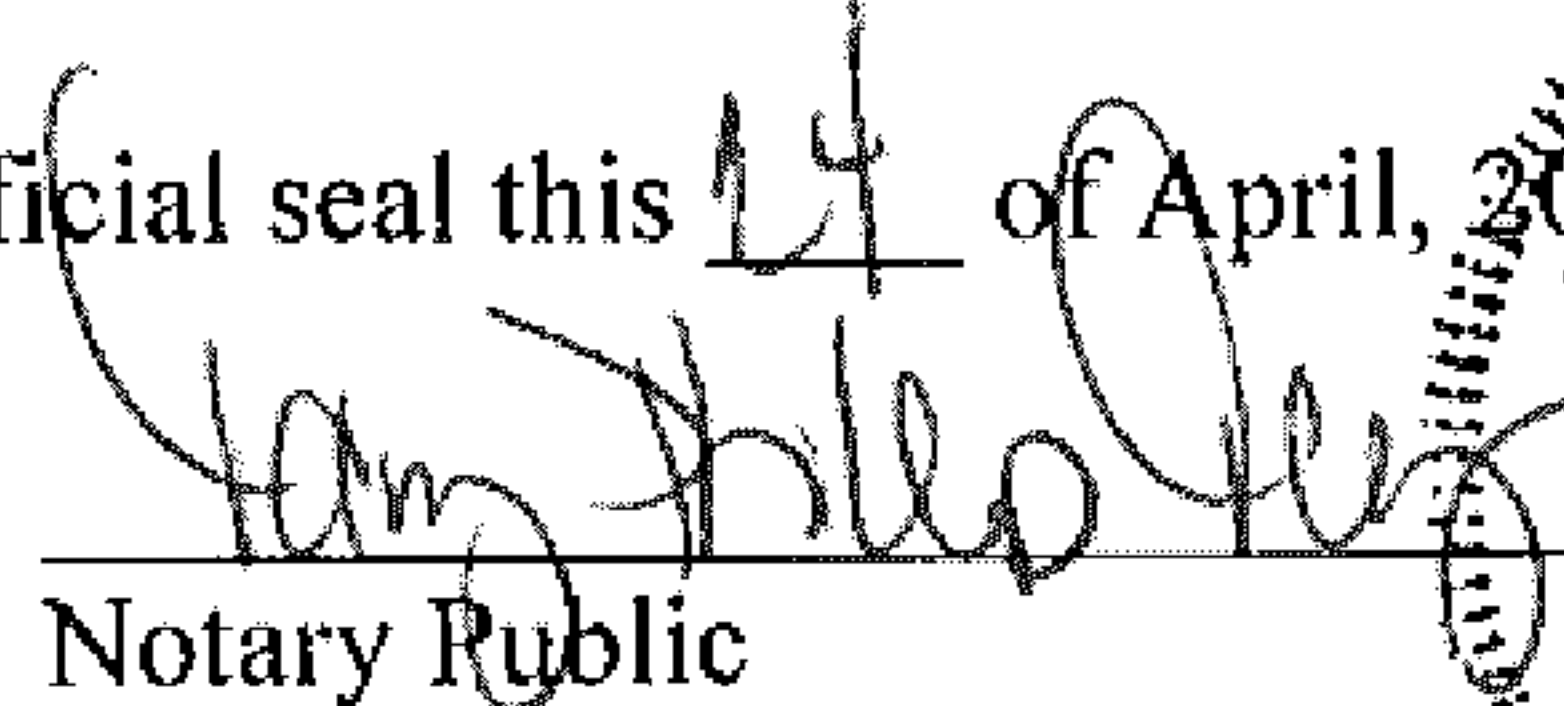
My commission expires: 11/5/25

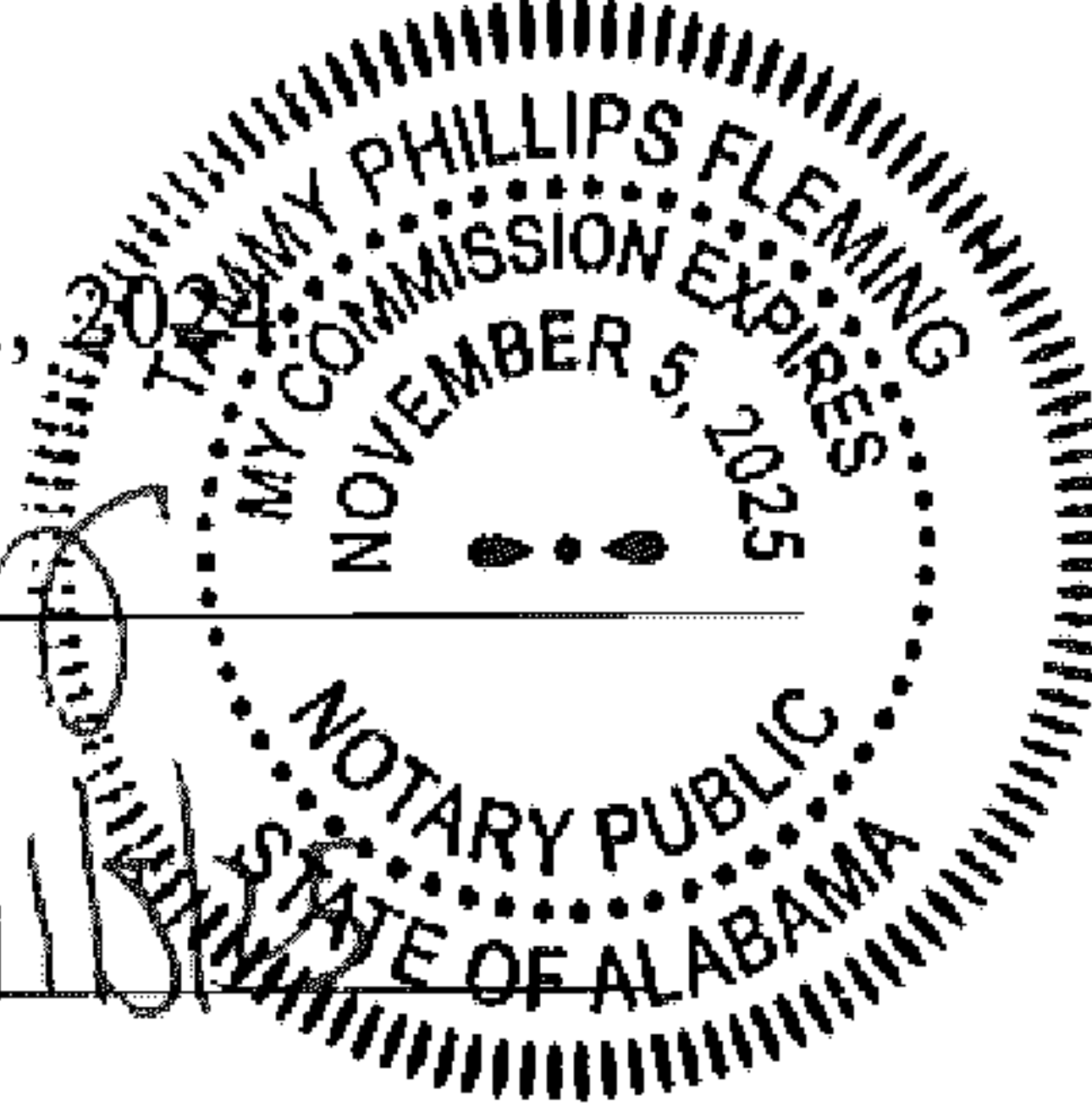
[Signature Page to Mortgage and Security Agreement]

STATE OF ALABAMA )  
 )  
Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Hunter Strickler, whose name as Vice President-Business Development of OHD, LLLP, an Alabama limited liability limited partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 24 of April, 2024.

  
\_\_\_\_\_  
Notary Public



[NOTARIAL SEAL]

My commission expires: 11/5/25

Exhibit A

to

Mortgage and Security Agreement  
between  
OHD, LLLP and Synovus Bank

Lot 9-C, according to a Resurvey of Lot 9-B-3, Meadow Brook Corporate Park South, Phase II, Resurvey No. 1, as recorded in Map Book 23, Page 52 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

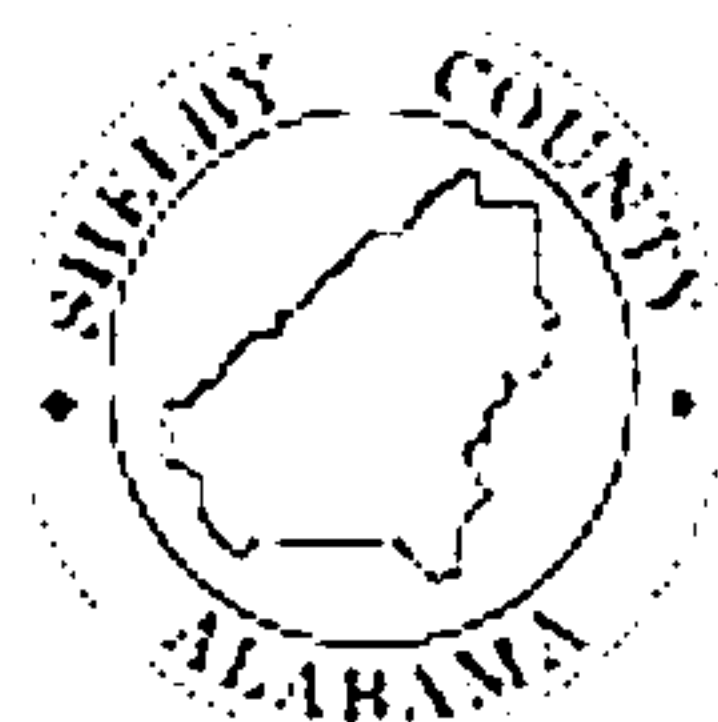
Exhibit B

to

Mortgage and Security Agreement  
between  
OHD, LLLP and Synovus Bank

Permitted Encumbrances

1. Taxes for the year 2024 and subsequent years, a lien not yet due and payable.
2. Easement, Building Line(s), Notes, and Restrictions as shown on map(s) recorded in Map Book 23, Page 52.
3. Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park South as set out in instrument(s) recorded in Real 64, Page 91, with 1st Amendment recorded in Real 96, Page 826; 2nd Amendment recorded in Real 141, Page 784; 3rd Amendment recorded in Real 177, Page 244; 4th Amendment recorded in Real 243, Page 453; 5th Amendment recorded in Real 245, Page 89; 6th Amendment recorded in Inst. # 1992-23529; 7th Amendment recorded in Inst. # 1995-03028; 8th Amendment recorded in Inst. # 1995-04188; 9th Amendment recorded in Inst. # 1996-5491; 10th Amendment recorded in Inst. # 1996-32318; 11th Amendment recorded in Inst. # 1997-30077; 12th Amendment recorded in Inst. # 1997-37856; 13th Amendment recorded in Inst. # 1998-5588; 14th Amendment recorded in Inst. # 1998-41655; 15th Amendment recorded in Inst. # 1998-46243; 16th Amendment recorded in Inst. # 1999-2935; 17th Amendment recorded in Inst. # 20021217000631360 and 18th Amendment recorded in Inst. # 20100927000316200, as affected by Assignment of Developers Rights recorded in Inst. # 2001-35829, in the Probate Office.
4. Agreement to Alabama Power Company as set out in Misc. Book 48, Page 880, in the Probate Office.
5. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Book 28, Page 581.
6. The following matters as shown on survey prepared by Laurence D. Weygand dated July 28, 2007, and designated Job No. 00029:
  - a. Failure of the fence to follow the property line to the North.
  - b. Encroachment of 2 Story Brick Building into 35' Building Setback Line along the East boundary line.
  - c. Rights of others in and to the use of the common access drive along the South boundary line.



Filed and Recorded  
 Official Public Records  
 Judge of Probate, Shelby County Alabama, County  
 Clerk  
 Shelby County, AL  
 04/29/2024 12:45:02 PM  
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 20240429000123720

*Alvin S. Bayl*