

MORTGAGE Book 2024 Page 30665
Recorded: 5/24/2024 10:49:47 AM
Ward D. Robertson, III, Probate Judge

**MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS AND FIXTURE FILING**

Dated as of
May 16, 2024,
FROM

Tuscaloosa County, Alabama
Term/Gashier: PRO-RECORDING9/sfreeman
Tran: 90703
Probate Judge Fee \$2.00
Recording Fee - By Page Count \$102.00
Mortgage Tax \$22,500.00
Source of Title \$1.00
Recording Fee - Cross Reference \$2.00
Total: \$22,607.00

RPB Book:2024 Page:4607
I certify this instrument was filed
6/26/2024 4:10:21 PM
Judge of Probate
Stephanie W. Kemmer
Bibb County, AL
34 Page(s)
Total: \$108.50

KENT STORE DEVELOPMENT, LLC,
a Delaware limited liability company,

TO

CAPITAL ONE, NATIONAL ASSOCIATION,
a national banking association, as agent for the Secured Parties
hereinafter identified and defined

County Division Code: AL040
Inst. # 2024067640 Pages: 1 of 35
I certify this instrument filed on
7/19/2024 12:38 PM Doc: MTG
Judge of Probate
Jefferson County, AL. Rec: \$120.00
Clerk: CRONANL

NOTE TO PROBATE COURT: THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY SHALL NOT EXCEED FIFTEEN MILLION AND 00/100 DOLLARS (\$15,000,000.00) UNLESS A SUPPLEMENT CHANGING SUCH AMOUNT IS FILED IN THE RECORDS WHERE THIS MORTGAGE IS RECORDED (THE "PRINCIPAL AMOUNT"). THEREFORE MORTGAGE TAX IN THE AMOUNT OF \$22,500.00 SHALL BE PAID IN CONNECTION WITH THE RECORDING OF THIS MORTGAGE.

NOTE TO RECORDER: This Mortgage covers properties located Bibb, Jefferson, Shelby and Tuscaloosa Counties, Alabama. The value of the collateral encumbered by this Mortgage can be allocated as follows: 23.70% to Bibb County, 37.10% to Jefferson County, 15.67% to Shelby County and 23.53% to Tuscaloosa County. As such, Mortgagor requests that: (i) Tuscaloosa County collect the mortgage recording privilege tax due on the full amount of the principal indebtedness secured hereby upon the recording hereof (\$22,500.00), and make the appropriate distribution of such recording privilege tax to each of Bibb, Shelby and Jefferson Counties in accordance with said percentages; and (ii) that each of Bibb, Shelby and Jefferson Counties accept this Mortgage for recording without payment of additional recording privilege tax upon receipt of evidence of payment of the full tax amount in Tuscaloosa County.

THIS MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND LEASES, FIXTURE FILING AND FINANCING STATEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502, CODE OF ALABAMA (1975), AS AMENDED.

This instrument was prepared by and when recorded return to:

Sean T. Maloney, Esq.
Chapman and Cutler LLP
320 South Canal Street
Suite 2700
Chicago, Illinois 60606

**MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS AND FIXTURE FILING**



20240729000231850 2/35 \$125.00
Shelby Cnty Judge of Probate, AL
07/29/2024 10:13:36 AM FILED/CERT

This **MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND FIXTURE FILING** (the "*Mortgage*") dated as of May 16, 2024 from **KENT STORE DEVELOPMENT, LLC**, a Delaware limited liability company ("*Borrower*") with its principal place of business and mailing address at 3510 N. A Street, Midland, Texas 79705, to **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association with its principal place of business at 1680 Capital One Drive, McLean, Virginia 22102 ("*Capital One*"), acting as agent hereunder for the Secured Parties hereinafter identified and defined (Capital One acting as such agent and any successor or successors to Capital One in such capacity being hereinafter referred to as "*Mortgagee*");

WITNESSETH THAT:

WHEREAS, Borrower and Capital One (individually and as Agent for the Secured Parties identified and defined below) have entered into that certain Credit Agreement dated as of May 16, 2024 (such Credit Agreement, as the same has been and may further from time to time be amended, modified or restated, being hereinafter referred to as the "*Credit Agreement*"), pursuant to which Capital One and other lenders and letter of credit issuers which from time to time become party to the Credit Agreement (Capital One and such other lenders being hereinafter referred to as the "*Lenders*" and individually as a "*Lender*" and such letter of credit issuers being hereinafter referred to collectively as the "*L/C Issuers*" and individually as a "*L/C Issuer*"; and Mortgagee, the L/C Issuers, and the Lenders, together with any Secured Swap Provider (as hereinafter defined) and/or Secured Cash Management Bank (as hereinafter defined), being hereinafter referred to collectively as the "*Secured Parties*" and individually as a "*Secured Party*"), have agreed, subject to certain terms and conditions, to make available to the Borrowers: (i) a revolving credit facility (the "*Revolving Loan Commitment*") in a maximum principal amount of \$2,000,000 with advances under the Revolving Loan Commitment and bearing interest thereon at the rates and payable at the times provided in the Credit Agreement (such advances under the Revolving Loan Commitment being referred to herein as "*Revolving Loans*"), (ii) a term credit facility (the "*Term Loan Commitment*") available to the Borrowers in a maximum principal amount of \$10,000,000 with advances under the Term Loan Commitment and bearing interest thereon at the rates and payable at the times provided in the Credit Agreement (such advances under the Term Loan Commitment being referred to herein as "*Term Loans*"), (iii) a delayed draw term loan facility (the "*Delayed Draw Term Loan Commitment*") in a maximum principal amount of \$3,000,000 with advances under the Delayed Draw Term Loan Commitment and bearing interest thereon at the rates and payable at the times provided in the Credit Agreement (such advances under the Delayed Draw Term Loan Commitment being herein referred to as "*DDTL*"), and (iv) additional Incremental Facilities (whether in the form of an increase in the Term Loans or as an additional class of term loans or an increase in the Revolving Loan) in a maximum principal amount of up to \$20,000,000 and bearing interest thereon at the rates and payable at the times provided in the Credit Agreement (such advances being referred to herein as the "*Additional Incremental Facilities*"; such advances under the Delayed Draw Term Loan Commitment being herein referred to as

Signature page to Mortgage and Security Agreement with
Assignment of Rents and Fixture Filing (Alabama)



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"DDTL"; the Revolving Loans, Term Loans, DDTL and the Additional Incremental Facilities being referred to herein as the "*Loans*";

WHEREAS, the Loans made by the Lenders shall be evidenced by the Credit Agreement and, if requested by a Lender, the Borrowers shall execute and deliver one or more promissory notes payable to such Lender in an amount equal to the Revolving Loan Commitment, the Term Loan Commitment, the Delayed Draw Term Loan Commitment of such Lender and, if applicable, the Additional Incremental Facilities of such Lender ("*Notes*");

WHEREAS, pursuant to the terms of the Credit Agreement, the L/C Issuers may from time to time issue letters of credit (the "*Letters of Credit*") for the account of a Borrower or a Borrower and subsidiary thereof in an aggregate face amount which, when combined with the principal amount of loans outstanding under the Revolving Credit, as defined in the Credit Agreement, from time to time, shall not at any one time exceed the Revolving Loan Commitment;

WHEREAS, pursuant to the terms of the Credit Agreement, any Lender or Lenders may, from time to time, assign to other Lenders portions of the indebtedness evidenced by the Credit Agreement then owned by such assigning Lender together with an equivalent proportion of such assigning Lender's obligation to make advances under the Credit Agreement and to participate in Letters of Credit (each such assignment being hereinafter referred to as an "*Assignment*");

WHEREAS, Borrowers and their subsidiaries may from time to time enter into (i) agreements with a Lender or an affiliate of such Lender (each a "*Secured Cash Management Bank*") to provide one or more of the following types of services or facilities: (a) Automated Clearing House (ACH) transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, credit or debit card, stored value card, electronic funds transfer services, and (c) foreign exchange facilities or other cash management arrangements in the ordinary course of business (each a "*Secured Cash Management Agreement*"; and all obligations of the Borrowers and their subsidiaries under such Secured Cash Management Agreement (whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) being referred to herein as "*Secured Cash Management Obligations*"), and (ii) swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) with a Lender or an affiliate of such Lender (each a "*Secured Swap Provider*") designed to provide protection against fluctuations in interest or currency exchange rates and commodity prices and any other agreements or arrangements designed to provide such protection (each a "*Secured Rate Contract*"; and all obligations of the Borrowers and their subsidiaries under such Secured Rate Contracts (whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) being referred to herein as "*Secured Rate Contract Obligations*"); and

WHEREAS, as a condition to extending credit to the Borrowers under the Credit Agreement or entering into any Secured Cash Management Agreement or Secured Rate Contract, the Secured Parties have required, among other things, that Borrower grants to Mortgagee a lien on the real property of Borrower described herein and to Mortgagee a security interest in the personal property of Borrower described herein, in each case subject to the terms and conditions hereof.



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NOW, THEREFORE, for and in consideration of the execution and delivery by the Lenders of the Credit Agreement, and other good and valuable consideration, receipt whereof is hereby acknowledged, in order to secure (i) the payment of the principal and premium, if any, of and interest on the Loans as and when the same become due and payable (whether by lapse of time, acceleration or otherwise) and all Loans now or hereafter made thereon, (ii) the payment of all sums due or owing with respect to Secured Cash Management Obligations, (iii) the payment and performance of all obligations arising under any applications executed by the Borrowers, or any one of them, in connection with any of the Letters of Credit, including the obligation of the applicable Borrower to reimburse the relevant L/C Issuer for any draws under the Letters of Credit, (iv) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms, and (v) the performance and observance of the covenants and agreements contained in this Mortgage, the Credit Agreement, the Notes and any other instrument or document securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations, agreements and liabilities described in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter collectively referred to as the "*indebtedness hereby secured*"), Borrower does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, its successors and assigns, **WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION**, a security interest in, all of Borrower's right, title and interest in and to all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, and VII below, all of the same being collectively referred to herein as the "*Mortgaged Premises*":

GRANTING CLAUSE I

That certain real estate lying and being in the Counties of Bibb, Jefferson, Shelby and Tuscaloosa, State of Alabama, more particularly described in Schedule I attached hereto and made a part hereof.

GRANTING CLAUSE II

All right, title and interest of Borrower now owned or hereafter acquired in and to all of the following: all buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and



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equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Mortgage, to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a security agreement under the provisions of the Uniform Commercial Code of the State of Alabama ("*Uniform Commercial Code*") for the purpose of creating hereby a security interest in said property, which is hereby granted by Borrower as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Borrower (debtor) and Mortgagee (secured party) appear at the beginning hereof.

GRANTING CLAUSE III

All right, title and interest of Borrower now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Borrower in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Borrower under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Borrower that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Borrower may collect, receive (but not more than 30 days in advance) and enjoy such rents.

GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount



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thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, "Condemnation Awards").

GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this Mortgage required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter be subjected to the lien hereof by Borrower or by anyone on Borrower's behalf.

GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Borrower and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

GRANTING CLAUSE VII

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever;

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; *provided, however*, that this Mortgage is upon the express condition that if the principal of and interest on the Loans shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, all commitments contained in the Credit Agreement to extend credit thereunder shall have terminated and no Letter of Credit shall remain outstanding, then this Mortgage and the estate and rights hereby granted shall cease and this Mortgage shall be released upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

Borrower hereby covenants and agrees with Mortgagee as follows:

1. *Payment of the Indebtedness.* The indebtedness hereby secured will be promptly paid as and when the same becomes due.



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2. *Further Assurances.* Borrower will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

3. *Ownership of Mortgaged Premises.* Borrower covenants and warrants that it is lawfully seized of and has good and marketable title to the Mortgaged Premises free and clear of all liens, charges and encumbrances except those exceptions to title listed on Schedule II attached hereto and Liens permitted by Section 6.1 of the Credit Agreement (the "*Permitted Exceptions*") and Borrower has good right, full power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage; and Borrower will warrant and forever defend the title to the Mortgaged Premises subject to the Permitted Exceptions against all claims and demands whatsoever.

4. *Possession.* Provided no Event of Default has occurred and is continuing hereunder, Borrower shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Mortgage.

5. *Payment of Taxes.* Borrower shall pay before any penalty attaches, all material general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other material charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Borrower shall have furnished such security, if any, as may be required in the proceedings or requested by Mortgagee.

6. *Recordation and Payment of Taxes and Expenses Incident Thereto.* Borrower will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder and, without limiting the foregoing, Borrower will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax, intangibles tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.



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7. *Insurance.* Borrower will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Borrower or Mortgagee from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Mortgagee and at Borrower's expense by the insurer or insurers or by an expert approved by Mortgagee, all under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Borrower shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Borrower shall also obtain and maintain public liability, property damage and workmen's compensation insurance in each case in form and content reasonably satisfactory to Mortgagee and in amounts as are customarily carried by owners of like property and reasonably approved by Mortgagee. Borrower shall also obtain and maintain such other insurance with respect to the Mortgaged Premises in such amounts and against such insurable hazards as Mortgagee from time to time may reasonably require, including, without limitation, boiler and machinery insurance, insurance against flood risks, if the Mortgaged Premises is located in a Special Flood Hazard Area (as defined in the Credit Agreement), and insurance against loss of rent due to fire and risks now or hereafter embraced by so-called "*extended coverage*." All insurance required hereby shall be maintained with financially sound and reputable insurance companies and shall not provide for any deductible amount in excess of the amount customarily maintained for similar properties for similarly situated companies, shall provide that any losses shall be payable notwithstanding any act or negligence of Borrower, shall provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Borrower and Mortgagee of written notice thereof, and shall be reasonably satisfactory to Mortgagee in all other respects. Upon the execution of this Mortgage and thereafter not less than fifteen (15) days prior to the expiration date of any policy delivered pursuant to this Mortgage, Borrower will deliver to Mortgagee copies (and if requested by Mortgagee, originals) of any policy or renewal policy, as the case may be, required by this Mortgage, bearing notations evidencing the payment of all premiums. In the event of foreclosure, Borrower authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

UNLESS BORROWER PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE MORTGAGED PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS IN THE MORTGAGED PREMISES. THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIMS THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PREMISES. BORROWER MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF MORTGAGEE PURCHASES INSURANCE FOR THE MORTGAGED PREMISES, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE



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INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE INDEBTEDNESS HEREBY SECURED. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN.

8. *Damage to or Destruction of Mortgaged Premises.*

(a) *Notice.* In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Borrower shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) *Restoration.* In case of any damage to or destruction of the Mortgaged Premises or any part thereof and unless the Mortgaged Premises are Disposed of in a transaction permitted pursuant to the Credit Agreement, Borrower, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, at Borrower's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Borrower) the restoration, replacement or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

(c) *Adjustment of Loss.* Borrower hereby authorizes the Mortgagee, at the Mortgagee's option, to adjust, compromise, and settle any losses under any insurance afforded at any time after the occurrence and during the continuation of any Event of Default, and Borrower does hereby irrevocably constitute the Mortgagee, its officers, agents, and attorneys, as Borrower's attorneys-in-fact, with full power and authority after the occurrence and during the continuation of any Event of Default to effect such adjustment, compromise, and/or settlement and to endorse any drafts drawn by an insurer of the Mortgaged Premises or any part thereof and to do everything necessary to carry out such purposes and to receive and receipt for any unearned premiums due under policies of such insurance. Unless the Mortgagee elects to adjust, compromise or settle losses as aforesaid, any adjustment, compromise, and/or settlement of any losses under any insurance shall be made by the Borrower subject to final approval of the Mortgagee (such approval not to be unreasonably withheld, delayed or conditioned) (regardless of whether or not an Event of Default shall have occurred) in the case of losses exceeding \$500,000.

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied as a prepayment on the Notes (and Mortgagee is hereby irrevocably authorized and directed to make such an application whether or not the Notes or any other indebtedness hereby secured may then be due or otherwise adequately secured) and shall thereafter be applied to the reduction of any other indebtedness hereby secured; *provided, however*, that such proceeds shall be made available for the restoration of the portion of the Mortgaged Premises damaged or destroyed if written application for



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such use is made within thirty (30) days of receipt of such proceeds and the following conditions are satisfied to the satisfaction of the Mortgagee: (i) Borrower has in effect business interruption insurance covering the income to be lost during the restoration period as a result of the damage or destruction to the Mortgaged Premises or provides Mortgagee with other evidence satisfactory to it that Borrower has cash resources sufficient to pay its obligations during the restoration period; (ii) the effect of the damage to or destruction of the Mortgaged Premises giving rise to receipt of the insurance proceeds is not to terminate, or give a lessee the option to terminate (unless lessee waives the option to terminate), any lease of all or any portion of the Mortgaged Premises; (iii) no Event of Default, shall have occurred or be continuing (and if such an event shall occur during restoration Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Notes and the other indebtedness hereby secured); (iv) Borrower shall have submitted to Mortgagee plans and specifications, if applicable, for the restoration which shall be satisfactory to it; and (v) Borrower shall submit to Mortgagee fixed price contracts or guaranteed maximum price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Borrower shall have deposited the amount of such deficiency with Mortgagee; *provided further* that such proceeds may also be available for other investment permitted pursuant to the Credit Agreement. Any insurance proceeds to be released for restoration pursuant to the foregoing provisions shall be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may at Mortgagee's option be made directly to Borrower or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer acceptable to Mortgagee. Mortgagee may impose such further conditions upon the release of insurance proceeds for restoration (including confirmation that no mechanic's liens have been filed) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All title insurance charges and other costs and expenses paid to or for the account of Borrower in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand with interest at the Default Rate (as hereinafter defined). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time in its possession. If Borrower fails to request that insurance proceeds be applied to the restoration of the improvements or if Borrower makes such a request but fails to complete restoration within a reasonable time, Mortgagee shall have the right, but not the duty, to restore or rebuild said Mortgaged Premises or any part thereof for or on behalf of Borrower in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by Borrower as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the Default Rate. Notwithstanding anything to the contrary in the foregoing, if the damage is less than \$500,000 and no Event of Default exists, the insurance proceeds shall be released directly to Borrower for restoration or other investment permitted pursuant to the Credit Agreement without using the process described above.



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9. *Eminent Domain.* Borrower acknowledges that Condemnation Awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and, if an Event of Default has occurred and is continuing at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby secured in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured; *provided, however*; that a Condemnation Award in respect of any taking of a portion (but not all or any material portion) of the Mortgaged Premises shall be made available for the restoration of such Mortgaged Premises in the same manner and subject to the same conditions as are imposed on the release of insurance proceeds set forth in Section 8(d) hereof as if the Mortgaged Premises so taken were destroyed and the Condemnation Award for such taking was actually insurance proceeds in respect of the Mortgaged Premises so deemed as having been destroyed and may also be available for other investment permitted pursuant to the Credit Agreement for such proceeds. In the event that any proceeds of a Condemnation Award shall be made available to Borrower for restoring the Mortgaged Premises so taken, Borrower hereby covenants to promptly commence and complete such restoration of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such taking. Borrower covenants and agrees that Borrower will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Borrower further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Borrower for any taking, either permanent or temporary, under any such proceeding.

10. *Construction, Repair, Waste, Etc.* Borrower agrees, subject to the terms of the Credit Agreement, (i) that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, except as (A) required by a Material Contract applicable to such Mortgaged Premises, (B) required by applicable law, (C) permitted by the Credit Agreement, or (D) consented to by Mortgagee (such consent not to be unreasonably withheld, delayed or conditioned), and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, Borrower covenants that the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof, except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; (iii) not to initiate or acquiesce in any changes to or



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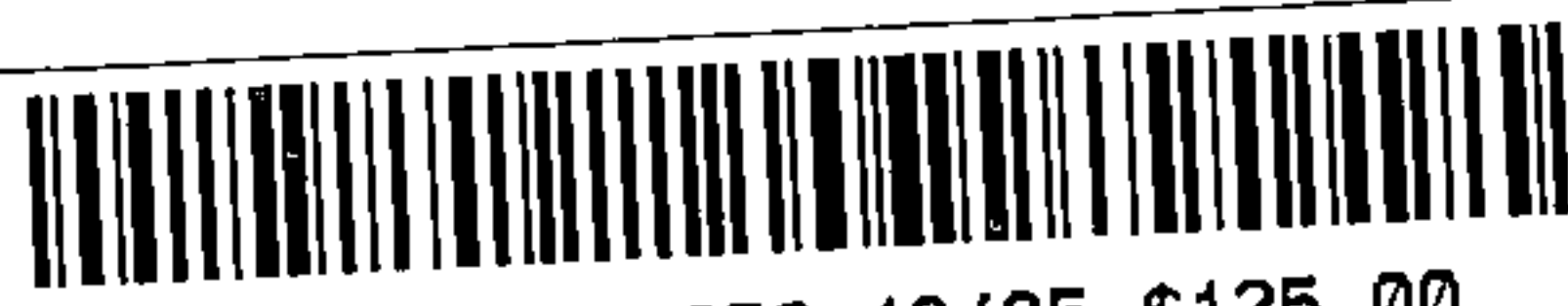
terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee (such consent not to be unreasonably withheld, delayed or conditioned), except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and (iv) to make no material alterations in or improvements or additions to the Mortgaged Premises except as (A) required by governmental authority, (B) pursuant to a supply agreement, (C) as permitted by the Credit Agreement or (D) as permitted by Mortgagee.

11. *Liens and Encumbrances.* Borrower will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this Mortgage and the Permitted Exceptions.

12. *Right of Mortgagee to Perform Borrower's Covenants, Etc.* If Borrower shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Borrower to Mortgagee on demand Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Borrower is required to perform same under the terms of this Mortgage.

13. *After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall *ipso facto*, and without any further conveyance, assignment or act on the part of Borrower, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Borrower shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

14. *Inspection by Mortgagee.* Mortgagee, any Secured Party, their respective representatives and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times and, in the absence of an Event of Default, with reasonable notice, and access thereto shall be permitted for that purpose.



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15. *Subrogation.* Borrower acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of any extension of credit evidenced by the Notes or out of any advance by Mortgagee hereunder, irrespective of whether or not any such lien may have been released of record.

16. *Events of Default.* The occurrence of any event or the existence of any condition specified as an "Event of Default" under the Credit Agreement shall constitute an "Event of Default" hereunder.

17. *Remedies.* When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument and of the adequacy of the security for the indebtedness hereby secured) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) *Acceleration.* Mortgagee may, by written notice to Borrower, declare the Notes and all unpaid indebtedness hereby secured, including the reimbursement obligations in connection with Letters of Credit and any interest then accrued on the indebtedness hereby secured, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) *Uniform Commercial Code.* Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Borrower at its address above set forth at least 10 days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Rate.

(c) *Foreclosure.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage, or (iii) by sale under the power of sale. Borrower agrees that the agreements of Borrower herein contained shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purpose of any suit brought under this subparagraph, Borrower hereby waives the defense of laches and any applicable statute of limitations. In the event of foreclosure, Borrower authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in amounts aforesaid for a period covering the time of



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redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

(d) *Power of Sale.* If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Premises in accordance with applicable state law to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Premises so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of Section 17(b) of this Mortgage shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Mortgaged Premises hereunder.

Mortgagee may conduct or cause the conduct of any number of sales from time to time with respect to the Mortgaged Premises or any part thereof. The power of sale shall not be exhausted by any one or more such sales as to any part of the Mortgaged Premises not heretofore lawfully sold, but shall continue unimpaired until all of the Mortgaged Premises shall have been sold or all indebtedness hereby secured shall have been fully paid. Subject to the provisions of applicable law in any particular jurisdiction, Mortgagee may postpone or cause the postponement of the sale of all or any portion of the Mortgaged Premises by announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by announcement made at the time of sale fixed by the preceding postponement. Upon the completion of any sale or sales made under or by virtue of the power of sale herein contained, Mortgagee, or auctioneer at such sale, is hereby irrevocably authorized and empowered to execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, and other instruments conveying, assigning and transferring all their estate, right, title and interest in and to the properties, privileges and rights so sold. Mortgagee is hereby appointed the true and lawful irrevocable attorney of Mortgagor, in its name and stead or in the name of Mortgagee, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Premises and the properties, privileges and rights so sold and for that purpose the Mortgagee may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. The recitals contained in any conveyance made by Mortgagee or such auctioneer to any purchaser at any sale made pursuant hereto shall, conclusively to the extent permitted by law, establish the truth and accuracy of the matters therein stated, including, without limiting the generality of the foregoing, the amounts of any unpaid indebtedness hereby secured, the non-payment thereof and advertisement and conduct of



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such sale in the manner provided herein and by applicable law of any of the Mortgaged Premises, and all prerequisites to such sale shall be presumed to have been satisfied and performed.

(e) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law and under Material Contracts relating to the Mortgaged Premises with the Borrower's franchisor, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or Mortgagee's sale under the power of sale granted herein or otherwise or until any right of redemption shall expire or otherwise.

(f) *Taking Possession, Collecting Rents, Etc.* Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Borrower does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Borrower irrevocably acknowledging that any payment made to Mortgagee hereunder shall be a good receipt and acquittance against Borrower to the extent so made) and to apply same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The costs and expenses (including any receiver's fees, counsels' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Borrower promises to pay upon demand together with interest at the Default Rate. Mortgagee shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional



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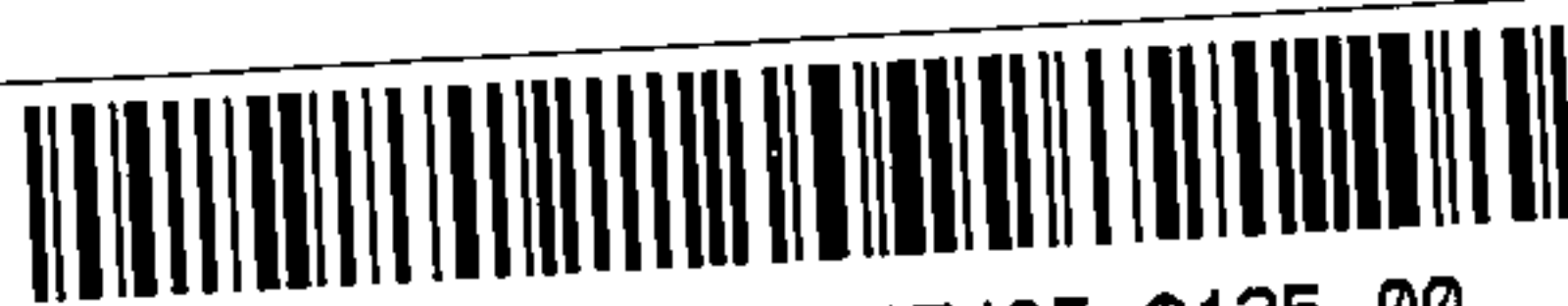
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indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

18. *Waiver of Right to Redeem From Sale — Waiver of Appraisalment, Valuation, Etc.* Borrower shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "*Moratorium Laws*," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee or any Secured Party shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage and Mortgagee or any Secured Party so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee or such Secured Party with the amount payable to Mortgagee or such Secured Party out of the net proceeds of such sale. In the event of any such sale, the Notes and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

19. *Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional indebtedness hereby secured which Borrower agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

20. *Application of Proceeds.* The proceeds of any foreclosure or other sale of the Mortgaged Premises or of any sale of property pursuant to Section 17(b) hereof shall be distributed in the following order of priority: *First*, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 17(b) and 19 hereof; *Second*, to all other items which under the terms hereof constitute indebtedness hereby secured to be applied in such order and manner as Mortgagee shall determine pursuant to the terms of the Credit Agreement, with any overplus to whomsoever Mortgagee shall reasonably determine to be lawfully entitled to the same; *provided* that notwithstanding the foregoing, such proceeds



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shall be applied to any cost incurred by Mortgagee or any Lender in connection with any Hazardous Material (as such term is defined below) on or near the Mortgaged Premises after application of such proceeds to the principal of and interest on the Notes and to the other indebtedness hereby secured.

21. *Deficiency Decree.* If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Borrower and against the property of Borrower for the amount of such deficiency; and Borrower does hereby irrevocably consent to the appointment of a receiver for the property of Borrower until such deficiency decree is satisfied in full. If the Mortgaged Premises shall be sold pursuant to the power of sale granted herein for a sum less than the indebtedness hereby secured which is then outstanding and unpaid, the judgment creditor shall be entitled to enforce the collection of such deficiency in the manner provided for by law. If the Mortgaged Premises shall be sold pursuant to the power of sale granted herein for a sum less than the indebtedness hereby secured which is then outstanding and unpaid, the judgment creditor shall be entitled to enforce the collection of such deficiency in the manner provided for by law.

22. *Mortgagee's Remedies Cumulative — No Waiver.* No remedy or right Mortgagee shall be exclusive of any other right or remedy but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

23. *Mortgagee or any Secured Party as Party to Suits.* If Mortgagee or any Secured Party shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee or any Secured Party under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee or any Secured Party employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee or any Secured Party shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which reasonably would be expected to affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Borrower agrees to pay to Mortgagee or such Secured Party, promptly upon demand, all reasonable costs, charges, expenses and attorney's fees incurred by Mortgagee or such Secured Party in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Rate.

24. *Modifications Not to Affect Lien.* Mortgagee, without notice to anyone (except the Lenders), and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may, at the direction of the Lenders, release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend



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the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Borrower to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

25. *Notices.* (a) All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed, if to Borrower or Mortgagee at their addresses as shown at the beginning of this Mortgage or at such other address as shall be designated by any such party in a written notice given to such other such party pursuant to this Section.

(b) The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements.

- | | |
|--|---|
| (a) Name of Mortgagor: | Kent Store Development, LLC |
| Address of Mortgagor: | 3510 N. A Street
Midland, Texas 79705 |
| (b) Name of Mortgagee: | Capital One, National Association, as Agent |
| Address of Mortgagee: | 1680 Capital One Drive
McLean, Virginia 22102 |
| (c) Record Owner of Real Estate
described on Schedule I hereto: | Kent Store Development, LLC
3510 N. A Street
Midland, Texas 79705 |

26. *Revolving Credit Loans.* This Mortgage is given to secure, among other things, revolving credit loans and shall secure not only presently existing indebtedness under the Credit Agreement but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness hereby secured outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness hereby secured, including future advances, from the time of its filing for record in the recorder's or registrar's office in the county in which the Mortgaged Premises are located. The total amount of indebtedness hereby secured



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may increase or decrease from time to time, but the total unpaid balance of indebtedness hereby secured (including disbursements which Mortgagee may make under this Mortgage, the Credit Agreement or any other documents related thereto) at any one time outstanding shall not exceed a maximum principal amount of Fifteen Million and No/100 Dollars (\$15,000,000.00) *plus* interest thereon and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements (all such indebtedness being hereinafter referred to as the "*maximum amount secured hereby*"). This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises, to the extent of the maximum amount secured hereby.

27. *Multisite Real Estate Transaction.* Borrower acknowledges that this Mortgage is one of several deeds of trust and other security documents (the aforesaid being together called the "*Other Security Documents*") which secure the indebtedness evidenced by the Notes and certain of the other indebtedness hereby secured. Borrower agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the indebtedness hereby secured of any security for or guarantors upon any of the indebtedness hereby secured or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the indebtedness hereby secured to realize upon or protect any of the indebtedness hereby secured or any collateral or security therefor including the Other Security Documents. The lien and security interest hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the indebtedness hereby secured, or of any of the collateral or security therefor, including, without limitation, the Other Security Documents or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Security Documents shall not in any manner impair the indebtedness hereby secured, except to the extent of payment, or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Security Documents or any of Mortgagee's rights and remedies thereunder. Borrower specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Security Documents separately or concurrently and in any order that it may deem appropriate.

28. *Default Rate.* For purposes of this Mortgage, the term "*Default Rate*" means, for any day, the rate per annum established pursuant to the Credit Agreement to be in effect during Events of Default.

29. *Governing Law.* WITH RESPECT TO MATTERS RELATING TO THE CREATION, TRANSFER AND PERFECTION OF THE LIEN AND SECURITY INTEREST OF THIS MORTGAGE IN THE PROPERTY, THE NATURE OF THE INTEREST OF MORTGAGEE CREATED WITH RESPECT TO THE PROPERTY, THE METHOD



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OF FORECLOSURE OF THE LIEN IN THE PROPERTY AND OTHER REMEDIES AGAINST THE PROPERTY, AND THE NATURE OF THE INTEREST IN REAL PROPERTY, LEASES, RENTS OR OTHER PROPERTY OF BORROWER COVERED BY THIS MORTGAGE AND LOCATED IN THE STATE OF ALABAMA RELATING TO THE RECORDATION, FORECLOSURE OR ENFORCEMENT OF THIS MORTGAGE AS PROVIDED HEREIN AND BY THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. OTHERWISE, AND TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF THE STATE OF ALABAMA, THE PROVISIONS OF THIS MORTGAGE, INCLUDING ALL OBLIGATIONS OF THE BORROWER (INCLUDING BUT NOT LIMITED TO, THE LIABILITY OF THE BORROWER FOR ANY DEFICIENCY FOLLOWING A FORECLOSURE OF ALL OR ANY PART OF THE PROPERTY) AND RIGHTS OF THE MORTGAGEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

30. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

31. *Agent.* Mortgagee has been appointed as agent pursuant to the Credit Agreement. In acting under or by virtue of this Mortgage, Mortgagee shall be entitled to all the rights, authority, privileges and immunities provided in the Credit Agreement, all of which provisions are incorporated by reference herein with the same force and effect as if set forth herein. Mortgagee hereby disclaims any representation or warranty to Secured Parties concerning the perfection of the mortgage lien and security interest granted hereunder or the value of the Mortgaged Premises.

32. *Restrictions on Secured Parties' Right to Enforce.* No Secured Party shall have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Mortgage or for the execution of any trust or power hereof or for the appointment of a receiver, or for the enforcement of any other remedy under or upon this Mortgage; it being understood and intended that no one or more of the Secured Parties shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Mortgage by its or their action or to enforce any right hereunder, and that all proceedings at law or in equity shall be instituted, had and maintained by Mortgagee in the manner herein provided and for the ratable benefit of the Secured Parties.

33. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Borrower, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

34. *Headings.* The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.



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35. *Changes, Etc.* This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

36. *No Liability on Mortgagee.* Notwithstanding anything contained herein, this Mortgage is only intended as security for the indebtedness hereby secured, and Mortgagee shall not be obligated to perform or discharge, and Mortgagee does not undertake to perform or discharge, any obligation, duty or liability of Borrower with respect to any of the Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in their exercise of the powers herein respectively granted to them, and Borrower expressly waives and releases any such liability. Borrower shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which any of them may or might incur under or by reason of the exercise of their respective rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against any of them by reason of any alleged obligations or undertakings on any or their parts to perform or discharge any of the terms, covenants or agreements of Borrower contained herein or with respect to any of the Mortgaged Premises, except in the case of actions by the Mortgagee that constitute gross negligence or willful misconduct. Mortgagee shall have no responsibility for the control, care, management or repair of the Mortgaged Premises, nor shall they be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any licensee, employee, tenant or stranger. Without limiting the foregoing, Mortgagee shall not be responsible for any recitals herein or for insuring the Mortgaged Premises, or for the recording, filing or refiling of this Mortgage; nor shall the Mortgagee be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Borrower contained herein.

37. *Direct and Primary Security; Liens Absolute.* The lien and security interest herein created and provided for stand as direct and primary security for all of the indebtedness hereby secured. No application of any sums received by Mortgagee in respect of the Mortgaged Premises or any disposition thereof to the reduction of the indebtedness hereby secured or any part thereof shall in any manner entitle Borrower to any right, title or interest in or to the indebtedness hereby secured or any collateral or security therefor, whether by subrogation or otherwise, unless and until all of the indebtedness hereby secured has been fully paid and satisfied and all commitments of Mortgagee to extend credit to the Borrower and the other Borrowers shall have expired. Borrower acknowledges and agrees that the lien and security interest hereby created and provided for are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the indebtedness hereby secured of any other security for or guarantors upon any of the indebtedness hereby secured or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the indebtedness hereby secured to realize upon or protect any of the indebtedness hereby secured or any collateral or security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and Mortgagee, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of



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any of the indebtedness hereby secured, or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. Mortgagee may at its discretion at any time grant credit to the other Borrowers, without notice to Borrower, in such amounts and on such terms as Mortgagee may elect (all of such to constitute additional indebtedness hereby secured) without in any manner impairing the lien and security interest created and provided for herein. In order to realize hereon and to exercise the rights granted Mortgagee hereby and under applicable law, there shall be no obligation on the part of Mortgagee or any other holder of any of the indebtedness hereby secured at any time to first resort for payment to any Borrower or to any guaranty of any of the indebtedness hereby secured or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

38. *Recovery Limitation.* Notwithstanding anything in this Mortgage to the contrary, the right of recovery against Borrower under this Mortgage shall not exceed \$1.00 less than the lowest amount which would render Borrower's obligations under this Mortgage void or voidable under applicable law, including fraudulent conveyance law.

39. *Terms defined in Credit Agreement.* Except as otherwise expressly provided for herein, all capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.



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IN WITNESS WHEREOF, Borrower has caused these presents to be signed and sealed the day and year first above written.

KENT STORE DEVELOPMENT, LLC, a Delaware
limited liability company,

By:

Name: William B Kent

Its: Manager

STATE OF

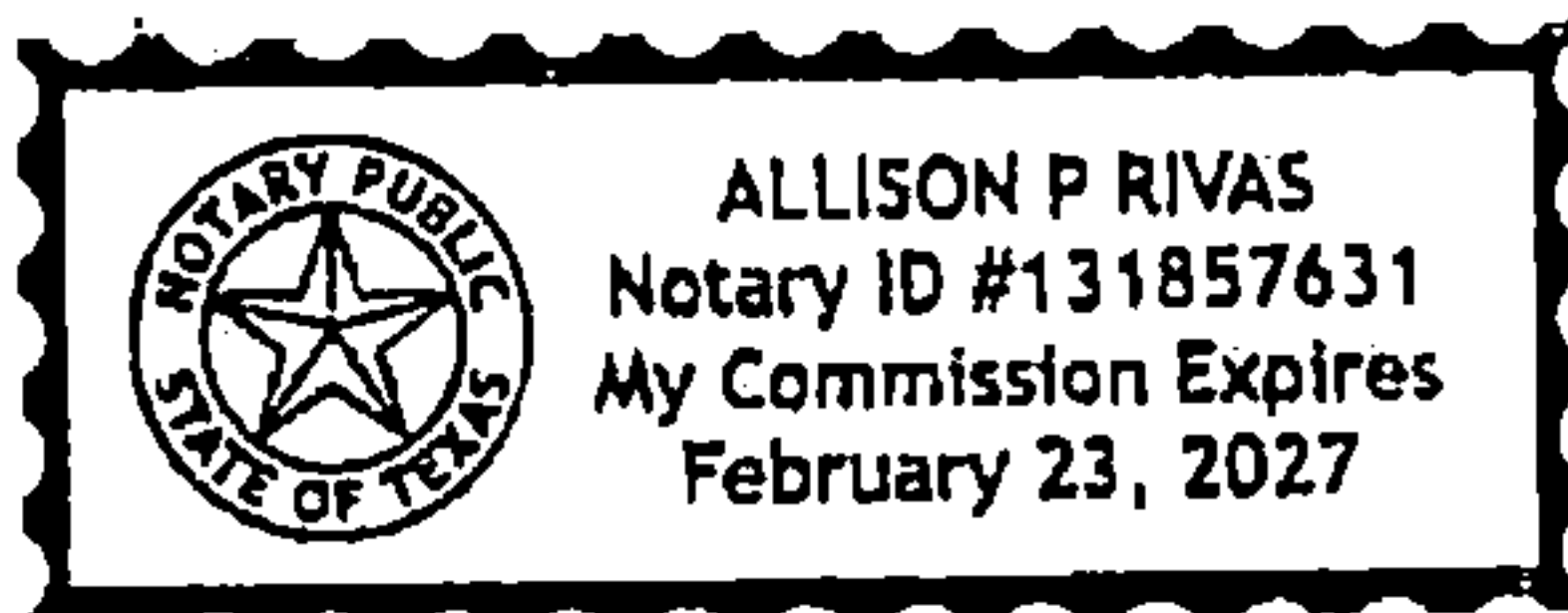
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COUNTY OF

Midland

This instrument was acknowledged before me on May 16, 2024, by William B. Kent, as Manager of Kent Store Development a Delaware limited liability company, on behalf of said limited liability company.

(Seal)



Notary Public, State of

Texas

Allison Rivas

Printed or Typed Name of Notary

My Commission Expires: 02/23/2027



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Exhibit "A"

Tract 1 – commonly known as 1565 Simmsville Road

The Land referred to herein below is situated in the County of Shelby, State of Alabama and is described as follows:

Commencing at concrete monument found at the Northeast corner of a tract of land, said point also at the intersection of the South right of way of Interstate No. 65 and the West right of way of Shelby County Road No. 11; thence South $51^{\circ}55'00''$ West along said West right of way a distance of 63.00 feet to a capped rebar found; thence continue along said West right of way with a curve turning to the left with an arc length of 344.99 feet, with a radius of 1717.04 feet, with a chord bearing of South $46^{\circ}09'39''$ West with a chord length of 344.41 feet to a $5/8''$ rebar set and the point of beginning; thence continue along said West right of way with a curve turning to the left with an arc length of 115.02 feet, with a radius 1717.04 feet, with a chord bearing of South $38^{\circ}29'09''$ West, with a chord length of 115.00 feet to a $5/8''$ rebar set; thence South $36^{\circ}34'00''$ West along said West right of way a distance of 14.71 feet to a $5/8''$ rebar set; thence South $67^{\circ}07'56''$ West along said West right of way a distance of 103.33 feet to a $5/8''$ rebar set at the intersection of the North right of way of Shelby County Road No. 68; thence North $82^{\circ}18'08''$ West along said North right of way a distance of 104.00 feet to a $5/8''$ rebar set; thence North $07^{\circ}41'52''$ East a distance of 134.03 feet to a $5/8''$ rebar set; thence North $36^{\circ}34'43''$ East a distance of 151.02 feet to a $5/8''$ rebar set; thence South $53^{\circ}33'00''$ East a distance of 212.15 feet to the point of beginning. Said described property lies in the SE 1/4 of Section 25 and the NE 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama.

EASEMENT #1: (Permanent Ingress, Egress and Utility Easement)

Commencing at concrete monument found at the intersection of the South right of way of Interstate No. 65 and the West right of way of Shelby County Road No. 11; thence South $51^{\circ}55'00''$ West along said West right of way a distance of 63.00 feet to a capped rebar found; thence along said West right of way with a curve turning to the left with an arc length 344.99 feet, a radius of 1717.04 feet and a delta angle of $30^{\circ}30'43''$ to a point; thence North $53^{\circ}33'30''$ West and leaving said highway right of way, run a distance of 212.15 feet to a point; South $36^{\circ}34'43''$ West run 151.02 feet to a point; thence South $07^{\circ}41'52''$ West run 87.93 feet to the point of beginning of Easement #1, which is an ingress, egress and utility easement; thence continue along the last described course for 46.10 feet to a point on the North right of way line of Shelby County Highway No. 68; thence North $82^{\circ}18'08''$ West run 20.00 feet to a point; thence North $07^{\circ}41'52''$ East and leaving said right of way run 46.10 feet to a point; thence South $82^{\circ}18'09''$ East run 20.00 feet to the point of beginning.

Said described property lies in the SE 1/4 of Section 25 and the NE 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama.

EASEMENT #2: (Permanent ingress and egress)



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Commencing at concrete monument found at the intersection of the South right of way of Interstate No. 65 and the West right of way of Shelby County Road No. 11; thence South 51°55'00" West along said West right of way a distance of 63.00 feet to a capped rebar found; thence along said West right of way with a curve turning to the left with an arc length of 344.99 feet, a radius of 1717.04 feet and a delta angle of 30°34'43" to a point; thence North 53°33'30" West and leaving said highway right of way, run a distance of 212.15 feet to a point; South 36°34'43" West run 151.02 feet to a point; thence South 07°41'52" West run 87.93 feet to the point of beginning of Easement #2, which is a permanent driveway easement; thence continue along the last described course for 46.10 feet to a point on the North right of way line of Shelby County Highway No. 68; thence South 82°18'08" East run 20.00 feet to a point; thence North 07°41'52" East and leaving said right of way run 46.10 feet to a point; thence North 82°18'09" West run 20.00 feet to the point of beginning.

Said described property lies in the SE 1/4 of Section 25 and the NE 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama.

EASEMENT #3: (Ingress, egress and utility easement)

Commencing at concrete monument found at the intersection of the South right of way of Interstate No. 65 and the West right of way of Shelby County Road No. 11; thence South 51°55'00" West along said West right of way a distance of 63.00 feet to a capped rebar found; thence along said West right of way with a curve turning to the left with an arc length of 344.99 feet, a radius of 1717.04 feet and a delta angle of 30°30'43" to a point of beginning of Easement #3, an ingress, egress and utility easement; thence North 53°33'30" West and leaving said highway right of way, run a distance of 121.15 feet to a point; thence North 36°27'00" East and run 31.30 feet to a point; thence South 00°00'00" West run 75.74 feet to a point; thence South 08°31'51" West run 77.62 feet to a point on the West right of way of said Shelby County Highway #11, being a point on a curve to the left having a radius of 1717.04, a delta angle of 01°24'05", thence run along the arc of said curve and said right of way a distance of 42.90 feet to the point of beginning.

Said described property lies in the SE 1/4 of Section 25 and the NE 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama.

Source of title: deed of record in Deed Book 2024, Page 2064, in the Office of the Probate Judge for Shelby County, Alabama.

Tract 2 – commonly known as 11390 Monticello Drive

Situate, lying and being in Tuscaloosa County, Alabama, and more particularly described as follows:

A parcel of land located or situated in the East 1/2 of Section 21, Township 22 South, Range 9 West, and being more particularly described as follows:



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A part of the Southeast 1/4 of the Northeast 1/4 of Section 21, Township 22 South, Range 9 West, in Tuscaloosa County, Alabama, being more particularly described as follows:

Start at the Southeast corner of the Northeast 1/4 of the Southeast 1/4 of said Section 21; thence run in a Northerly direction along the East line of the Northeast 1/4 of the Southeast 1/4 for a distance of 462.16 feet to a point on the West right of way margin of U.S. Highway No. 82, a 198.00 foot right of way; thence with a deflection angle of 37 degrees 04 minutes 55 seconds to the left, run in a Northwesterly direction along the West right of way of said Highway for a distance of 200.09 feet to a point; thence with a deflection angle of 2 degrees 42 minutes 57 seconds to the right, continue in a Northwesterly direction along the West right of way margin of said highway for a distance of 332.95 feet to a point; thence with a deflection angle of 1 degree 39 minutes 02 seconds to the right, continue in a Northwesterly direction along said highway for a distance of 1,129.09 feet to the point of beginning, said point lying on the North right of way margin of an 80.00 foot right of way; thence continue in a Northwesterly direction along said highway for a distance of 278.50 feet to a point; thence with a deflection angle of 108 degrees 51 minutes 33 seconds to the left, run in a Southwesterly direction for a distance of 327.29 feet to a point; thence with a deflection angle of 71 degrees 31 minutes 17 seconds to the left, run in a Southeasterly direction for a distance of 278.50 feet to a point on the curving North right of way margin of the aforementioned 80.00 foot right of way; thence with a deflection angle of 105 degrees 07 minutes 00 seconds to the left, to the chord, run in a Northeasterly direction along the curving North margin of said right of way for a chord distance of 94.28 feet to a point; thence with a deflection angle of 5 degrees 10 minutes 28 seconds to the left, continue in a Northeasterly direction along said right of way for a distance of 232.91 feet to the point of beginning.

Source of title: deed of record in Book 2024, Page 2064, in the Office of the Probate Judge for Tuscaloosa County, Alabama.

Tract 3 – commonly known as 7022 Hwy 82 E

The Land Referred to Herein Below is situated in the County of Tuscaloosa, State of Alabama and is described as follows:

Lot 1 Country Mart Subdivision, a map or plat of which is recorded in Plat Book 2002, Page 136, in the Probate Office of Tuscaloosa County, Alabama.

Together with rights in and to the Easement reserved in Deed Book 2002, page 22353, in the Probate Office of Tuscaloosa County, Alabama

Source of title: deed of record in Deed Book 2024, Page 2064, in the Office of the Probate Judge for Tuscaloosa County, Alabama, dated January 16, 2024 and recorded on February 02, 2024.

Tract 4 – commonly known as 10667 Hwy 5

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

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Beginning at the Southeast corner of J.C. Odum's land, which said corner is located at the intersection of the North boundary line of the SW $\frac{1}{4}$ of Section 22, Township 23 North, Range 9 East, Bibb County, Alabama, with the West boundary line of the public road; thence South 86 degrees 30 minutes West for a distance of 363.5 feet to the intersection of West right-of-way line of Alabama Highway #5, the Point of Beginning; thence continue South 86 degrees 30 minutes West for a distance of 442.7 feet; thence turn an angle of 89 degrees 42 minutes left and go Southerly for a distance of 173.2 feet; thence turn an angle of 90 degrees 39 minutes left and go Easterly for a distance of 183.5 feet; thence turn an angle of 90 degrees 41 minutes to the right and go Southerly for a distance of 24.7 feet; thence turn an angle of 90 degrees 16 minutes to the left and go Easterly for 194.8 feet to the intersection of the West right-of-way line of Alabama Highway #5; thence Northeasterly along right-of-way line for a distance of 212.9 feet to the point of beginning. Situated in SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 22, Township 23 North, Range 9 East

Source of title: deed of record in RPB Book 2024, Page 1159, in the Office of the Probate Judge for Bibb County, Alabama.

Tract 5 – commonly known as 2290 Main St

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

Begin at a point where the East boundary line of the right-of-way of Alabama State Highway Number Five, which is also known as the Centreville and Marion Highway, intersects with the North boundary line of the right-of-way of Gulf, Mobile and Ohio Railroad, in the Town of Brent, Bibb County, Alabama; thence go North 44 degrees 19 minutes East for a distance of 164.75 feet; thence go South 43 degrees 59 minutes East for a distance of 118.55 feet; thence go South 45 degrees 41 minutes West for a distance of 39.08 feet; thence go South 87 degrees 47 minutes West for a distance of 170.30 feet to a point which is the point of beginning of the lot here conveyed; said lot being situated, lying and being in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 27, Township 23 North, Range 9 East and the NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 34, Township 23 North, Range 9 East, in the Town of Brent, Bibb County, Alabama.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

A parcel of land in the Southeast Quarter of the Southwest Quarter of Section 27, Township 23 North, Range 9 East in Bibb County, Alabama and being more particularly described as follows:

As a POINT OF BEGINNING, start at the intersection of the Southeast Right-of-Way of Alabama Highway No. 5 and the North boundary of the City of Brent Right-of-Way; thence run in a Northeasterly direction and along the Southeast Right-of-Way of said Alabama Highway No. 5 for a distance of 47.18 feet to a point; thence with an interior angle of 46 degrees 06 minutes run in a Southerly direction for a distance of 32.72 feet to a point on the North boundary of said City of Brent Right-of-Way; thence with an interior angle of 90 degrees 00 minutes run in a Westerly direction and along the North boundary of said City of Brent Right-of-Way for a distance of 34.00 feet to the POINT OF BEGINNING of the parcel herein described, at which point the interior angle is 43 degrees 54 minutes. Said parcel containing 0.01 acres.



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Source of title: deed of record in Book 2024, Page 1159, in the Office of the Probate Judge for Bibb County, Alabama.

Tract 6 – commonly known as 20055 Hwy 11

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

Commence at the Northeast Corner of Section 16, Township 21 South, Range 6 West, Bibb County, Alabama, said point being the Point of Commencement; thence run South 0°08'47" East along the East line of said Section for a distance of 655.80 feet to a point; thence run South 89°51'13" West for a distance of 1533.20 feet to an iron rod located on the West right-of-way margin of U.S. Highway No. 11; thence run North 67°49'59" West for a distance of 129.48 feet to an iron rod; thence run South 23°25'39" West for a distance of 108.27 feet to an iron rod, said rod being the Point of Beginning; thence continue South 23°25'39" West for a distance of 188.47 feet to an iron rod; thence run North 59°49'09" West for a distance of 274.81 feet to an iron rod; thence run North 30°50'37" East for a distance of 179.97 feet to an iron rod; thence run South 61°27'56" East for a distance of 250.67 feet to the Point of Beginning. Said parcel lying in the Northwest Quarter of the Northeast Quarter of Section 16, Township 21 South, Range 6 West, Bibb County, Alabama.

ALONG WITH THE FOLLOWING DESCRIBED PROPERTY:

Also, Begin at the Northeast corner of Section 16, Township 21 South, Range 6 West, Bibb County, Alabama, thence go South along the Section line of said Section 16 for a distance of 655.8 feet to a point; thence go West for a distance of 1,533.2 feet to an iron stake located on the West edge of the right of way of U.S. Highway Number 11, which is the POINT OF BEGINNING and the Northeast corner of the lot or parcel here conveyed; thence go North 67 degrees 2 minutes West for a distance of 135 feet to an iron stake which marks the Northwest corner of said lot; thence go South 22 degrees 58 minutes West for a distance of 500 feet to an iron stake which marks the Southwest corner of said lot; thence go South 67 degrees 2 minutes East for a distance of 135 feet to an iron stake located on the West edge of the right of way of U.S. Highway Number 11 which marks the Southeast corner of said lot; thence go in a Northeasterly direction along the West edge of the right of way of U.S. Highway Number 11 for a distance of 500 feet to an iron stake which is the Point of Beginning; said lot is situated, lying and being in the East half of the Northwest Quarter of the Northeast Quarter, Section 16, Township 21 South, Range 6 West, Bibb County, Alabama.

Less and except from the above-described property the property conveyed by deed recorded in Book RPB 358, page 324, in the Office of the Judge of Probate for Bibb County, Alabama.

Less and except the following described property:

Begin at the Northeast corner of Section 16, Township 21 South, Range 6 West, Bibb County, Alabama, thence go South along the section line of said Section 16 for a distance of 655.8 feet to

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a point; thence go West for a distance of 1,533.2 feet to an iron stake located on the West edge of the right of way of U.S. Highway Number 11; thence go North 67 degrees 2 minutes West for a distance of 135 feet to an iron stake; thence go South 22 degrees 58 minutes West for a distance of 500 feet to an iron stake which marks the Southwest corner of lot being conveyed and is the Point of Beginning; thence go South 67 degrees 2 minutes East for a distance of 135 feet to an iron stake located on the West edge of the right of way of U.S. Highway Number 11 which marks the Southeast corner of said lot; thence go in a Northeasterly direction along the West edge of the right of way of U.S. Highway Number 11 for a distance of 125 feet, which is the Northeast corner of lot being conveyed; thence go North 67 degrees 2 minutes West for a distance of 135 feet to a point which is the Northwest corner of lot being conveyed; thence go South 22 degrees 58 minutes West for a distance of 125 feet which is the Point of Beginning, said lot is situated, lying and being in the East half of the Northwest Quarter of the Northeast Quarter, Section 16, Township 21 South, Range 6 West, Bibb County, Alabama.

Source of title: deed of record in Book 2024, Page 1159, in the Office of the Probate Judge for Bibb County, Alabama.

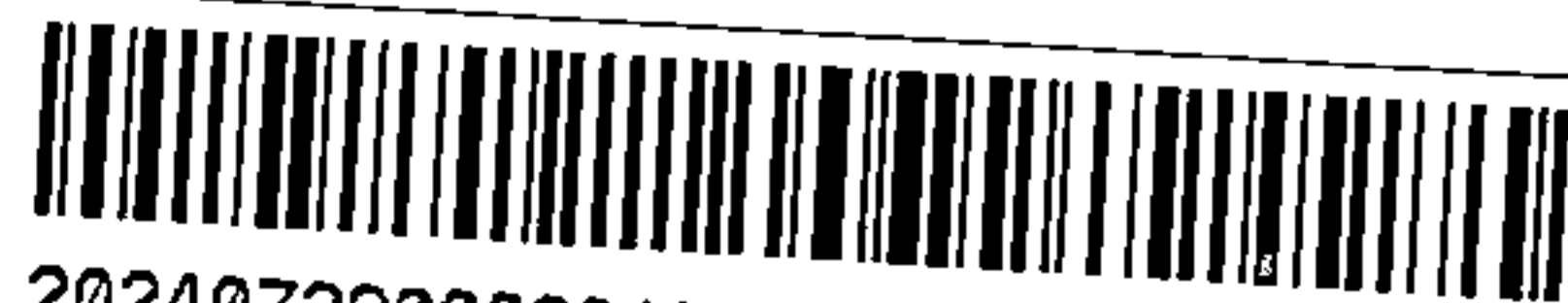
Tract 7 -- commonly known as 179 Hwy 82

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

A parcel of land containing 0.05 acres, located in the SW ¼ of Section 25, Township 23 North, Range 9 East, Bibb County, Alabama, described as follows: Commence at the Northwest corner of said ¼ section and run North 85 degrees 24 minutes 55 seconds East along the South right of way of Walnut Street 429.0 feet; thence run South 03 degrees 45 minutes 05 seconds East along the East right of way Cedar Street 772.0 feet, more or less, to an iron pipe; thence run South 84 degrees 14 minutes 05 seconds East 188.55 feet to an iron; thence run South 14 degrees 43 minutes 51 seconds East 120.06 feet to an iron; thence run South 14 degrees 54 minutes 49 seconds East 89.94 feet to an iron; thence run South 75 degrees 13 minutes 13 seconds West 178.20 feet to the Point of Beginning; thence continue on the same line 50.0 feet to an iron; thence run South 21 degrees 14 minutes 40 seconds East 93.13 feet to an iron; thence run North 08 degrees 20 minutes 35 seconds East 100.62 feet to the Point of Beginning.

ALONG WITH THE FOLLOWING DESCRIBED PROPERTY:

Beginning at a concrete monument that marks the Northwest corner of the Southwest one-quarter of Section 25, Township 23 North, Range 9 East, thence North 84 degrees 46 minutes East for a distance of 429.0 feet to a point on the South line of Walnut Street, thence South 04 degrees 14 minutes East along the East line of Cedar Street for a distance of 772.0 feet to the Point of Beginning of the property to be described; thence South 84 degrees 42 minutes East for a distance of 189.4 feet; thence South 15 degrees 16 minutes East for a distance of 210.0 feet to an iron on a barb wire fence; thence South 74 degrees 50 minutes West along said fence for a distance of 228.2 feet to an iron; thence South 21 degrees 14 minutes East for a distance of 93.0 feet; thence South 55 degrees 16 minutes West for a distance of 91.5 feet to a point on the East line of U.S. Highway 82; thence North 35 degrees 08 minutes West along East line of said highway for a distance of 100.0 feet; thence North 32 degrees 11 minutes West along the East



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line of said highway for a distance of 111.3 feet to an angle iron corner on the South bank of a deep ditch; thence along the south bank of said ditch North 60 degrees 30 minutes East for a distance of 168.3 feet to a bumper jack corner; thence North 04 degrees 14 minutes West for a distance of 160.3 feet to the Point of Beginning, containing in all 2.0 acres and being a part of the Northwest one-quarter of the Southwest one-quarter of Section 25, Township 23 North, Range 9 East, Centreville, Bibb County, Alabama

Source of title: deed of record in Book 2024, Page 1159, in the Office of the Probate Judge for Bibb County, Alabama.

Tract 8 – commonly known as 643 Walnut St

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

Begin at the Southwest corner of the North $\frac{1}{2}$ of Section 26, Township 23 North, Range 9 East, and run East along half section line of Section 26 for a distance of 3558.2 feet; thence turn an angle of 102 degrees 32 minutes to the left and run for a distance of 39.6 feet to the intersection of the right of way line of U.S. Highway Number 82 and Alabama Highway Number 5 which is the Point of Beginning; thence continue along the West right of way line of Alabama Highway Number 5 for a distance of 81.1 feet; thence turn an angle of 90 degrees to the left and run for a distance of 50.9 feet to a point; thence turn an angle of 90 degrees 53 minutes to the left and run for a distance of 68.5 feet to the intersection of the North right of way line of U.S. Highway Number 82; thence turn an angle of 76 degrees 10 minutes to the left and run along the North right of way line of U.S. Highway Number 82 for a distance of 50.7 feet to the Point of Beginning; said land situated, lying and being in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 26, Township 23 North, Range 9 East, Bibb County, Alabama, and containing 0.09 acre, more or less.

ALONG WITH THE FOLLOWING DESCRIBED PROPERTY:

Beginning at an iron stake at the Western edge of the Blocton and Birmingham Highway 80 feet North of the NE corner of the lot of W.D. Hollifield at a point where the proposed 60 foot State Highway running back of Hollifield's lot connects the Blocton and Marion Highways; thence in a Southwesterly direction along the Southern edge of the proposed highway 87 feet to an iron stake that stands at the Northwest corner of W.D. Hollifield's dwelling house lot; thence still along the Southern edge of the said Highway 183 feet to the Centreville and Marion State Highway to an iron stake that stands on the Northern margin of said Highway; thence East 159 feet and 8 inches along the Northern margin of said highway to an iron stake at the Southwest corner of said Hollifield lot, thence North along Western boundary line of said Hollifield lot 131 feet to the iron stake at the Northwest corner of said Hollifield lot; thence East along the Northern boundary of said Hollifield lot 50 feet to an iron stake at the Northeast corner of said Hollifield lot at the Western margin of Blocton and Birmingham Highway; thence North along the Westerly boundary or margin of said highway to the iron stake at the margin of said highway which is a distance of eighty feet, being a part of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 26, Township 23, Range 9 East, Bibb County, Alabama, bounded on the North and West by a 60 foot state highway right-of-way on the South by the Marion and Centreville Highway and W.D. Hollifield lot and the Blocton and Birmingham State Highway.



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Source of title: deed of record in Book 2024, Page 1159, in the Office of the Probate Judge for Bibb County, Alabama.

Tract 9 – commonly known as 12938 Northside Road

The land referred to herein below is situated in the County of Tuscaloosa, State of Alabama and is described as follows:

Lot 2 according to the final plat of Resurvey of Lot 2 of The Crossroads, as recorded in Map Book 2019, Page 202, in the Office of the Probate Judge for Tuscaloosa County, Alabama.

Source of title: deed of record in Book 2024, Page 2064, in the Office of the Probate Judge for Tuscaloosa County, Alabama.

Tract 10 – commonly known as 10395 Hwy 5

Situate, lying and being in Bibb County, Alabama, and more particularly described as follows:

A parcel of land being a part of the Northwest Quarter of the Southwest Quarter of Section 22, and part of the Northeast Quarter of the Southeast Quarter of Section 21, all in Township 23 North, Range 9 East, Bibb County, Alabama, being more particularly described as follows:

BEGINNING at a found 5/8" iron pin marking the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 22, Township 23 North, Range 9 East; thence run North 87 degrees 44 minutes 56 seconds East along the North boundary of said Quarter-Quarter a distance of 455.54 feet to a found 3/8" iron pin located on the West right of way margin of Alabama State Highway No. 5; thence run South 16 degrees 31 minutes 39 seconds West along the West Margin of said State Highway a distance of 356.90 feet to a set P.K. Nail in pavement; thence run North 73 degrees 28 minutes 37 seconds West a distance of 201.61 feet to a set 5/8" iron pin capped C. T. Smith P.L.S. # 20895; thence run North 69 degrees 23 minutes 00 seconds West a distance of 38.79 feet to a set 5/8" iron pin capped; thence run North 65 degrees 17 minutes West a distance of 129.21 feet to a found iron pin in pavement; thence continue North 65 degrees 17 minutes West a distance of 37.25 feet to a found iron pin; thence run North 55 degrees 55 minutes 36 seconds West a distance of 121.71 feet to a found 5/8" iron pin; thence run North 4 degrees 17 minutes 25 seconds West a distance of 105.26 feet to a set 5/8" iron pin capped; thence run North 85 degrees 34 minutes 34 seconds East a distance of 136.23 feet to the POINT OF BEGINNING.

Source of title: deed of record in Book 2024, Page 2662, in the Office of the Probate Judge for Bibb County, Alabama.

Tract 11 – commonly known as 1500 Lakeshore Pkwy



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A parcel of land, minerals and mining rights excepted, situated in the Northeast 1/4 of the Southeast 1/4 of Section 29 and in the Northwest 1/4 of the Southwest 1/4 of Section 28, all in Township 18 South, Range 3 West of the Huntsville Meridian, Jefferson County, City of Birmingham, Alabama, together with all improvements situated thereon, more particularly described as follows, to wit:

Lot 1, according to the Subdivision Plat of Frankfurt Drive, as recorded in Map Book 36, Page 75, in the Probate Office of Jefferson County, Alabama (Bessemer Division) and in Map Book 205, Page 10, in the Probate Office of Jefferson County, Alabama (Birmingham Division).

Source of title: deed of record in Instrument Number 2024021589, in the Office of the Probate Judge for Jefferson County, Alabama.

Tract 12 – commonly known as 203 E College St

Situate, lying and being in Shelby County, Alabama, and more particularly described as follows:

TRACT I:

Commence on the East line of Section 26, Township 21 South, Range 1 West, Shelby County, Alabama, at a point 1010.86 feet North of the one-half mile corner of said Section 26; thence North 73 degrees 20 minutes East 16 feet to the point of beginning; run thence South 04 degrees 15 minutes East for a distance of 125 feet along the East margin of an alley leading South from East College Street to a point; thence run North 73 degrees 05 minutes East 151.23 feet to a point; run thence North 15 degrees 15 minutes West 125 feet to the North side of the paved sidewalk on the South side of East College Street; run thence South 71 degrees 45 minutes West along North margin of sidewalk a distance of 128 feet to point of beginning; being situated in the Southwest Quarter of Northwest Quarter of Section 25, Township 21 South, Range 1 West, Columbiana, Shelby County, Alabama.

TRACT II:

Commence at a 1-inch round bolt in place being the Southeast intersection of Milner Street and East College Street; thence proceed North 75 degrees 26 minutes 21 seconds East along the Southerly right of way of Alabama Highway 25 (East College Street) for a distance of 127.90 feet to a 3/4-inch square iron in place, said point being the point of beginning; from this beginning point continue North 75 degrees 26 minutes 21 seconds East along the Southerly right of way of said Alabama Highway 25 for a distance of 100.14 feet to a 3/8-inch rebar in place; thence proceed South 11 degrees 42 minutes 47 seconds East for a distance of 196.32 feet to a 1-inch pipe in place; thence proceed South 75 degrees 23 minutes 26 seconds West for a distance of 100.15 feet (set 1/2-inch rebar); thence proceed North 11 degrees 42 minutes 47 seconds West for a distance of 196.40 feet to the point of beginning. The above described land is located in the SW 1/4 of the NW 1/4 of Section 25, Township 21 South, Range 1 West, Shelby County, Alabama.



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Source of title: deed recorded in Instrument Number 20240411000103520, in the Office of the Probate Judge for Shelby County, Alabama.

Tract 13 – commonly known as 4623 and 4637 Grantswood Rd

The Land Referred to Herein Below is Situated in the County of Jefferson, State of Alabama and is Described as Follows:

Lot 1, according to the Final Plat of DC Oil Company Plat No. 1, of record in the Office of the Judge of Probate for Jefferson County, Alabama in Map Book 254, Page 15.

Source of title: deed of record in Instrument Number 2024021589, in the Office of the Probate Judge for Jefferson County, Alabama.



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SCHEDULE II

PERMITTED EXCEPTIONS

Any exception as set forth in the Loan Title Insurance Policy in favor of Mortgagee by Stewart Title Insurance Company which insures the lien of this Mortgage.



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CERTIFICATION

STATE OF ALABAMA
BIBB COUNTY

I, Stephanie W. Kemmer, Judge of Probate in and for this
State and County aforesaid do hereby certify that this
within and foregoing is a true and correct copy of:

Mortgage & Security Agreement
Book 2024 Page 4607

as the same appears and remains of record in the
Probate Office of Bibb County, Alabama.

Dated this the 8th day of July 20 24

Stephanie W. Kemmer

, Judge of Probate