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Ward D. Robertson, III, Probate Judge
Tuscaloosa County, Alabama
Term/Cashier: PRO-RECORDING3/JMCATEER
Tran: 1524147
Probate Judge Fee \$2.00
Recording Fee - By Page Count \$81.00
Mortgage Tax \$55,500.00
Source of Title \$2.00
Total: \$55,585.00

This Instrument was prepared by:
Ashley Hugunine
Baker Donelson Bearman Caldwell & Berkowitz
420 20th Street North, Ste. 1400
Birmingham, AL 35203

Notice to Recorder:

Source of Title: Deed Book 2009 at page 7053, Deed Book 2011 at page 19327, Deed Book 2013 at page 2901, Deed Book 2013 at page 1448, Deed Book 2019 at page 27696
Deed Book 2019 Page 23975

(ABOVE SPACE FOR RECORDER'S USE)

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

by

ENCORE TUSCALOOSA, LLC,
an Alabama limited liability company,
as Mortgagor,

to and in favor of

TIG ROMSPEN US MASTER MORTGAGE LP,
an exempt Cayman Island limited partnership,
as Lender

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN
ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF
ALABAMA.

THIS IS A FUTURE ADVANCE MORTGAGE AND A CONSTRUCTION MORTGAGE

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

This Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Mortgage") is made as of the 9th day of December, 2019, by **ENCORE TUSCALOOSA, LLC**, an Alabama limited liability company (herein referred to as "Mortgagor"), whose address is 1301 Industrial Park Drive, Tuscaloosa, AL 35401, to **TIG ROMSPEN US MASTER MORTGAGE LP**, an exempt Cayman Island limited partnership ("Lender"), whose address is 162 Cumberland Street #300, Toronto, ON M5R 3N5, Canada.

Preliminary Statements

Mortgagor and Lender have entered into a Construction Loan Agreement of even date herewith, as same may be amended or modified (the "Loan Agreement") pursuant to which Lender has agreed to loan to Mortgagor up to \$37,000,000.00 (the "Loan"). As a condition precedent to making the Loan, Lender has required that Mortgagor execute and deliver this Mortgage to Lender for the benefit of Lender.

Agreements

Now, therefore, in consideration of the agreements set forth in the Loan Agreement and the other Loan Documents and in order to induce Lender to make the Loan to Mortgagor, Mortgagor agrees as follows:

Article I

Definitions.

As used in this Mortgage, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. In addition, the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, or used in connection with, the Land or Improvements, or used in or necessary to the complete and proper construction or operation thereof, or acquired for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, arising out of the use, occupancy or enjoyment of the Property.

"Additions" means any and all alterations, additions, accessions and improvements to property, and renewals and replacements thereof.

"Borrower" means, individually and collectively, BS Opelika, LLC, an Alabama limited liability company, SP, LLC, an Alabama limited liability company, Encore Tuscaloosa, LLC, an Alabama limited liability company, and Pate Tuske, LLC, an Alabama limited liability company.

"Lender" means Lender and its successors and assigns.

"Casualty" means any act or occurrence of any kind or nature that results in material damage, loss or destruction to the Property.

"Casualty Loss Limit" means Four Hundred Thousand and No/100 U.S. Dollars (\$400,000.00) for Parcels 1, 2, 3, and 6 (as defined in Exhibit A) and Fifty Thousand and No/100 U.S. Dollars (\$50,000.00) for Parcels 4 and 5 (as defined in Exhibit A).

"Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"Condemnation Awards" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"Construction Documents" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"Default" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute a Default under the provisions of this Mortgage.

"Encumbrance" means any Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any condition, covenant or restriction imposed in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

"Expenses" means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time by Lender or Lender in connection with the Loan,

including without limitation, in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including attorneys' fees.

"Impound Event" is defined in Section 4.10.

"Indemnity Agreement" means the Environmental Indemnity Agreement of even date herewith by and between Mortgagor, Guarantor, and Lender pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified.

"Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit A attached hereto and made a part hereof.

"Letter of Credit" means any letter of credit issued by Lender for the account of Mortgagor in connection with the development of the Project together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

"Lien" means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"Mortgage" means this Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Net Proceeds", when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys' fees, incurred in the collection of such gross proceeds.

"Note" means the Promissory Note of even date herewith in the original principal amount of Thirty Seven Million and No/100 Dollars (\$37,000,000.00) made by Borrower to the order of Lender, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Notice" means a notice, request, consent, demand or other communication given in accordance with the provisions of the Loan Agreement.

"Obligations" means all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, and/or on account of, the provisions of this Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this

Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Mortgagor is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; (d) to pay and perform all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and (e) all renewals, amendments, extensions and modifications of any of the foregoing. In addition to the foregoing, the Obligations shall include, without limitation, all other present or future indebtedness of Borrower to Lender whenever borrowed or incurred, whether or not related to the Loan Documents and whether or not reasonably contemplated by the parties hereto as of the date hereof, including future advances, but the total amount secured by this Mortgage shall not exceed the principal amount provided above plus all interest, costs, reimbursements, fees and expenses due.

"Other Security" is defined in Section 2.5 of this Mortgage.

"Permitted Encumbrances" means (a) any matters set forth in any policy of title insurance issued to Lender and insuring Lender's interest in the Property which are acceptable to Lender as of the date hereof, (b) the Liens and interests of this Mortgage, and (c) any other Encumbrance that Lender shall expressly approve in its sole and absolute discretion, as evidenced by a "marked-up" commitment for title insurance initialed on behalf of Lender.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Lender shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Mortgagor's rights and interests under all Interest Rate Swap, including all rights to the payment of money from Lender under any Interest Rate Swap and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Interest Rate Swap; (f) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Lender related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Lender to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor's right, title and interest in and to all Construction Contracts.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including any contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

Article II

Granting Clauses; Condition of Grant.

Section 2.1. Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, including without limitation, any and all renewals, amendments, extensions and modifications thereof, Mortgagor (a) grants, bargains, sells and conveys the Real Property unto Lender, with right of entry and possession and power of sale, in fee simple forever; provided that Mortgagor may retain possession of the Real Property until the occurrence of a Default; (b) assigns and grants to Lender the title to and a security interest in the Personalty and any other Property, the security interest in and disposition of which is governed by the Uniform Commercial Code; (c) assigns to Lender, and grants to Lender a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) assigns to Lender, and grants to Lender a security interest in, all of Mortgagor's right, title and interest in, but not any of Mortgagor's obligations or liabilities under, all Construction Documents.

TO HAVE AND TO HOLD, the foregoing rights, interests, and properties, and all rights, estates, powers and privileges appurtenant thereto, unto the Lender and Lender's successors or, and to Lender's successors and assigns, in fee simple forever, subject to the terms and provisions set forth herein.

All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Without limiting the foregoing, Mortgagor expressly acknowledges and agrees (1) that the proceeds of the Loan may be advanced to Mortgagor from time to time, subject to the terms and conditions of the Loan Documents between Mortgagor and Lender, and this Mortgage shall secure all amounts so advanced, whether or not the full amount of the Loan shall be advanced; (2) that this Mortgage secures all sums advanced under the Loan Agreement; and (3) that this Mortgage is a Construction Mortgage as defined in Section 7-9A-334 of the Code of Alabama and secures, among other obligations, an obligation incurred for the construction of improvements on the Land.

Section 2.2. Assignment of Leases and Rents.

In consideration of the making of the Loan by Lender to Mortgagor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor absolutely and unconditionally assigns the Leases and Rents to Lender. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Lender of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Default shall exist, however, and so long as Mortgagor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of a Default or a default by Mortgagor

under the Leases) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Lender and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3. Security Agreement, Fixture Filing and Financing Statement.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Mortgagor, as debtor, to Lender, as secured party, under the Uniform Commercial Code of the State of Alabama (the "State"). In addition to all of its other rights under this Mortgage and otherwise, Lender shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Mortgage shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Mortgagor and Lender are set forth in the opening paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or any other financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Mortgagor hereby irrevocably authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Lender to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage.

Section 2.4. Release of Mortgage and Termination of Assignments and Financing Statements.

If and when Mortgagor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, then this Mortgage and all the properties, interests and rights hereby granted, bargained, sold and conveyed, and the absolute assignments set forth herein shall automatically terminate and become null and void.

Section 2.5. Other Security.

In addition to this Mortgage, the Obligations are secured by other mortgages granted by each Borrower on properties located in Tuscaloosa and Madison Counties in Alabama, as well as certain other pledges and security interests granted by the Borrowers and certain other related parties under the Loan Documents (collectively, the "Other Security"). Lender may resort for the payment and performance of the Obligations to the Other Security or any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the rights of Lender under this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the

exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded with respect to the Other Security, under the Loan Documents or at law or in equity.

Article III

Representations and Warranties.

Mortgagor makes the following representations and warranties to Lender:

Section 3.1. Title to Real Property.

Mortgagor (a) owns fee simple title to the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Mortgagor has the right and authority to convey the Real Property. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2. Title to Other Property.

Mortgagor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, or Construction Documents are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3. Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4. Independence of the Real Property.

The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5. Leases and Tenants.

The Leases are valid and are in full force and effect, and Mortgagor is not in default under any of the terms thereof.

Article IV

Affirmative Covenants.

Section 4.1. Obligations.

Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

Section 4.2. Property Assessments; Documentary Taxes.

Mortgagor (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to Lender, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent.

Section 4.3. Permitted Contests.

Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to stay the collection of the Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Lender shall not be subjected to any Claim as a result of such contest, and (d) Mortgagor provides assurances satisfactory to Lender (including the establishment of an appropriate reserve account with Lender, if required by Lender) of its ability to pay such Property Assessments or comply with such Law in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Lender harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4. Compliance with Laws.

Mortgagor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Section 4.5. Maintenance and Repair of the Property.

Mortgagor, at Mortgagor's sole expense, will (a) keep and maintain the Improvements and Accessories in good condition, working order and repair, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition for the respective purposes for which they were originally intended.

Section 4.6. Additions to Security.

All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further Mortgage, conveyance, assignment or other act by Mortgagor or Lender, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Lender such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

Section 4.7. Subrogation.

To the extent permitted by Law, Lender shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Lender whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Lender to pay or discharge any Lien.

Section 4.8. Insurance.

Mortgagor shall maintain, at its sole cost and expense, insurance in compliance with the Insurance Requirements in the Loan Agreement.

In addition to the foregoing, Mortgagor shall cause the Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the Contractor to the extent required by applicable law or contract.

Mortgagor acknowledges receiving Lender's insurance requirements. Each policy of insurance shall meet Lender's insurance requirements and be otherwise acceptable to Lender.

Mortgagor acknowledges and agrees that if Mortgagor fails to provide any required insurance on the terms set forth herein or in any other Loan Documents, or fails to continue such insurance in force in compliance with the requirements of this agreement or any other Loan Documents, Lender may purchase insurance at Mortgagor's expense as provided therein. Such insurance may protect Lender's interests, and may otherwise protect none of, or less than all of, Mortgagor's interests. The cost of any such insurance shall become a part of the Obligations and shall be payable on demand or added to the Note as provided herein, at Lender's option. MORTGAGOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE MAY PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO THE BALANCE OF THE LOAN; HOWEVER, MORTGAGOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

Section 4.9. Adjustment of Condemnation and Insurance Claims.

Mortgagor shall give prompt Notice to Lender of any Casualty or any Condemnation or threatened Condemnation. Lender is authorized, at its option, to commence, appear in and

prosecute, in its own or Mortgagor's name, any proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any claim in connection therewith, or to permit Mortgagor to do so. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any or all of its reasonable Costs. If any Condemnation Awards or Insurance Proceeds are paid to Mortgagor, Mortgagor shall receive the same in trust for Lender. Within ten (10) days after Mortgagor's receipt of any Condemnation Awards or Insurance Proceeds, Mortgagor shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Mortgagor agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be requested by Lender to confirm the grant and assignment to Lender of any Condemnation Awards or Insurance Proceeds.

So long as no Default has occurred, all insurance proceeds recovered by the Mortgagor and/or Lender on account of damage or destruction to the Property or the Improvements, less the cost, if any, to the Lender of such recovery and of paying out such proceeds (including reasonable attorney's fees and costs allocable to inspecting the Work and the plans and specifications therefor), shall (i) if the amount of the casualty loss is less than or equal to the Casualty Loss Limit, at Mortgagor's option to be exercised in Mortgagor's reasonable discretion, be applied to the Obligations or be applied by the Lender to the payment of the costs of repairing, restoring or rebuilding the Property so damaged or destroyed (herein sometimes referred to as the "Work"), and (ii) if the amount of the casualty loss is greater than the Casualty Loss Limit, at Lender's option to be exercised in Lender's reasonable discretion, be applied to the Obligations or be applied by the Lender to the Work. In applying any such proceeds to the Work, all such proceeds shall be paid out from time to time to the Mortgagor as the Work progresses, but subject to the satisfaction of the following conditions:

(a) there shall then exist no event, circumstance or condition which constitutes, or would, with the giving of notice, the lapse of time, or both, constitute a Default;

(b) the Lender is reasonably satisfied that sufficient funds are available to completely repair and restore the damage or destruction by such casualty;

(c) if such loss, damage or taking occurs prior the Maturity Date (as defined in the Note), the complete construction and equipping of the Improvements (including the repair or restoration required by such casualty loss) can be completed, in any event, not later than three (3) months prior to such date;

(d) all applicable governmental authorities and requirements will allow the repair and restoration of the Improvements in accordance with the plans and specifications, if any, approved by the Lender;

(e) no lease with respect to the Improvements has or may be terminated as a result of the loss, damage or destruction and all such leases remain in full force and effect;

(f) subject to the satisfaction of those conditions set forth in subparagraphs (a), (b), (c), (d) and (e) hereinabove, such proceeds shall be held in escrow by the Lender and released to the Mortgagor in keeping with the progress of such restoration or repair;

(g) if the Work is structural (i.e., involving supporting members of the building), or if the cost of the Work, as estimated by the Lender, shall exceed the sum of Five Hundred Thousand Dollars (\$500,000.00), the Work shall be in the charge of an architect or engineer, and before the Mortgagor commences any Work, other than temporary Work to protect property or to prevent interference with business, the Lender shall have approved the plans and specifications for the Work, to be submitted by the Mortgagor, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that, to the extent feasible, said plans and specifications shall provide for such Work, that, upon completion thereof, the improvements shall be at least equal in value and general utility to the Improvements which were on the Property prior to the damage or destruction or taking;

(h) each request for payment shall be on at least ten (10) days' prior notice to the Lender, and shall be accompanied by a certificate to be made by such architect or engineer, if one be required under the provisions of subparagraph (f) of this agreement, otherwise by a member of the Mortgagor, stating that:

(i) all of the work completed has been done in compliance with approved plans and specifications, if any is required under subparagraph (g) hereof;

(ii) the sum requested is justly required to reimburse the Mortgagor for payments by the Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that, when added to all sums previously paid out by the Lender, does not exceed the value of the Work done to the date of such certificate; and

(iii) the amount of such proceeds remaining in the hands of the Lender will be sufficient upon completion of the Work to pay for the same in full (giving in such reasonable detail as the Lender may require an estimate of the cost of such completion);

(i) each request shall be accompanied by waivers of lien reasonably satisfactory to the Lender covering that part of the Work for which payment or reimbursement has been previously requested and by a search prepared by a title company or licensed abstractor or by the evidence satisfactory to the Lender that there has not been filed with respect to the Property any mechanic's or other lien or instrument for the retention of title in respect of any part of the Work not discharged of record;

(j) upon the completion of the Work and payment in full therefor, including the receipt of insurance proceeds, or upon any failure on the part of the Mortgagor promptly to commence or to continue the Work, or at any time upon request by the Mortgagor, the Lender will apply the amount of any such proceeds then or thereafter in the hands of the Lender to the

payment of the Obligations secured by the Loan Documents, however, that nothing herein contained shall prevent the Lender from applying at any time the whole or any part of such proceeds to the curing of any default under this Mortgage or the Note evidencing the indebtedness secured hereby; and

(k) upon the occurrence of a Default hereunder (subject to applicable grace, notice and cure periods, if any, under the Loan Agreement), the Lender may, at its option, apply any insurance proceeds then in its possession, or any part thereof, at its option, after the payment of its reasonable expenses, on the Obligations secured hereby, whether then due or not, in such manner as it elects or such proceeds or award, at the option of Lender, may be used to repair and restore the Property and Improvements, or released to Mortgagor or other party lawfully entitled thereto.

Section 4.10. Deposits.

If required or requested by Lender at any time after an Impound Event, and prior to the satisfaction of the indebtedness secured hereby, Mortgagor shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes assessed or imposed upon the Mortgaged Property, and one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the Insurance Requirements, both as estimated by Lender, in addition to each regular installment of principal and interest. Such amount shall be used by Lender to pay such yearly taxes and insurance premiums when due. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Upon demand of Lender, Mortgagor agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes or insurance premiums when due. In the event of a Default hereunder or of a default by Mortgagor under the Loan Agreement, Note, or any other Loan Documents, Lender may apply such sums to the reduction of the Obligations secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of such deposits to the Obligations secured hereby shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note or the Obligations. As used herein, the term "Impound Event" means any Borrower's failure to pay any property taxes or insurance premiums with respect to the Property or any Other Security, provided that the first instance of such a failure shall not be deemed an Impound Event if Borrower has paid such amounts within any applicable cure period under the Loan Documents.

Article V

Negative Covenants.

Section 5.1. Encumbrances.

Mortgagor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Lender's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Lender in its sole and absolute discretion, Mortgagor shall have the right to contest in good

faith any Claim, Lien or Encumbrance, provided that Mortgagor does so diligently and without prejudice to Lender or delay in completing construction of the Improvements. Mortgagor shall give Lender Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

Section 5.2. Transfer of the Property.

Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Mortgage). The Transfer of any ownership interest in Mortgagor, (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property.

Section 5.3. Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Lender. Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Mortgagor shall be deemed to have subjected such Accessories to the Lien of this Mortgage), or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Lender to be applied to the prepayment of the principal of the Loan.

Section 5.4. Additional Improvements.

Mortgagor will not construct any Improvements other than those presently on the Land and those described in the Loan Agreement without the prior written consent of Lender. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the Land. Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5. Restrictive Covenants, Zoning, etc.

Without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to

preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI

Events of Default.

The occurrence or happening, from time to time, of a Default under the Loan Agreement (subject to applicable grace, notice and cure periods, if any, under the Loan Agreement) shall constitute a Default under this Mortgage.

Article VII

Rights and Remedies.

Upon the happening of any Default, subject to applicable grace, notice and cure periods, if any, under the Loan Agreement, Lender, shall have the right, in addition to any other rights or remedies available to Lender under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1. Acceleration.

Lender may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Mortgagor).

Section 7.2. Right of Lender to Enter and Take Possession.

(a) Upon demand of Lender Mortgagor shall forthwith surrender to Lender the actual possession of the Property, and if and to the extent permitted by law, Lender may enter and take possession of all or any part of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Property insured, (iii) manage and operate the Property and exercise all the rights and powers of Mortgagor in its name or otherwise with respect to the same and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage, and Lender may collect and receive all the Rents of such Property including those past due as well as those accruing thereafter.

(c) Lender may deduct from such Rents (i) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons

employed for such purposes), (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (iii) the cost of such insurance, (iv) such taxes, assessments and other charges prior to the lien of this Mortgage as Lender may determine to pay, (v) other proper charges upon the Property or any part thereof, and (vi) the reasonable compensation, expenses and disbursements of the attorneys and agent of Lender. Lender shall apply the remainder of the moneys so received to the payment of Obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions Lender elects in its absolute discretion and without regard to the adequacy of its security.

(d) Whenever all such Defaults have been cured and satisfied, Lender may, at its option, surrender possession of the Property to Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Default shall occur.

Section 7.3. Collection of Rents.

The license granted under Section 2.2 hereof shall automatically be revoked and Lender may, with or without first taking possession of the Property, collect the Rents itself or by an agent or receiver. No action taken by Lender to collect any Rents will make Lender a "mortgagee-in-possession" of the Property, and possession by a court-appointed receiver will not be considered possession by Lender. All Rents collected by Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the payment of Obligations secured by this Mortgage in whatever order and proportions Lender elects in its absolute discretion and without regard to the adequacy of its security.

Section 7.4. Power of Sale.

Lender may, with or without first taking possession of the Property, sell the Property at public outcry to the highest bidder for cash at the appropriate courthouse door considered the front or main door to the courthouse in the county where the Land, or a substantial and material part thereof, 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 a newspaper of general circulation in the county or counties in which the Property is located. Upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the property so purchased. Lender may bid at said sale and purchase said property or any part thereof if it is the highest bidder therefor and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative of the other remedies provided hereby or by law for the collection of the Obligations. One or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Property is sold or the Obligations and other indebtedness and obligations secured hereby are fully satisfied.

Section 7.5. Lender's Option on Foreclosure.

At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in either event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and in the event Lender exercises its option to foreclose the Mortgage in equity, the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be a defense to any proceedings instituted by Lender to collect the sums secured hereby.

Section 7.6. Waiver of Manner of Sale.

Mortgagor waives all rights to direct the order or manner in which any of the Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Property, or the Other Security, marshalled upon any sale. Lender may in its discretion sell any real and personal property together or in parts, in one or more sales, and in any sequence Lender selects. Lender may offer the Property for sale and sell the Property as a whole without first offering it for sale in separate parcels or may offer the Property for sale and sell the Property in any other manner Lender may elect in its sole discretion.

Section 7.7. Application of Sale Proceeds.

The proceeds of any sale under this Mortgage will be applied first, to the payment of the costs and expenses of the sale, including but not limited to Lender's fees, reasonable legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest at the rate provided under the Note on all advances made by Lender; second, to the payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided herein; third, to the payment of the Obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions Lender elects in its absolute discretion and without regard to the adequacy of its security; and fourth, the remainder, if any, to the person or persons appearing of record to be entitled thereto. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

Section 7.8. Receiver.

Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect the Rents, without the necessity of posting a bond or other surety. Mortgagor will pay to Lender upon demand all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph. All such expenses will be additional Obligations secured by this Mortgage, will bear interest as specified in the Note and will be payable upon demand.

Section 7.9. Suits to Protect the Property.

Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Property and in the Rents and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

Section 7.10. Remedies under Uniform Commercial Code.

With respect to the Personalty, Lender may exercise any one or more of the remedies and shall have all the rights of a secured party under the Uniform Commercial Code as enacted in Alabama, including but not limited to the right to take possession of the Personalty in satisfaction of the Obligations. Any requirement for reasonable notice under the Uniform Commercial Code as enacted in Alabama shall be met if such notice is mailed, postage prepaid, to Mortgagor at its address shown in the introductory preamble hereof, or to Mortgagor's most recent changed address on file with Lender, at least ten (10) days prior to the time of the sale, disposition or other event or thing giving rise to the requirement of notice. Without limiting the foregoing, Lender may, in its discretion after an Event of Default: (i) terminate, on notice to Mortgagor, Mortgagor's authority to sell or lease inventory, or any other Personalty as to which such permission has been given; (ii) require Mortgagor to give possession or control of the Personalty to Lender at Lender's designated location; (iii) endorse as Mortgagor's agent any instruments or chattel paper which is part of the Personalty; (iv) notify account debtors and obligors on instruments to make payment directly to Lender; (v) contact account debtors directly to verify information furnished by Mortgagor but not to discount accounts receivable; (vi) take control of proceeds and use cash proceeds to reduce any part of the Obligations; (vii) take any action Mortgagor is required to take or as is otherwise necessary to obtain, preserve, and enforce this security interest, and maintain and preserve the Personalty, without notice to Mortgagor, and add costs of same to the Obligations (but Lender is under no duty to take any such action); (viii) release Personalty in its possession to Mortgagor, temporarily or otherwise; (ix) take control of funds generated by the Personalty, such as dividends, interest, proceeds or refunds from insurance, and use same to reduce any part of the Obligations; (x) waive any of its rights hereunder without such waiver prohibiting the later exercise of the same or similar rights; (xi) revoke any permission or waiver previously granted to Mortgagor.

Section 7.11. Other Remedies.

Lender may exercise any other rights or remedies available to it under the Loan Documents or applicable law, including, without limitation, any rights or remedies with respect to the Other Security, without prejudice to the rights of Lender under this Mortgage.

Article VIII

Miscellaneous.

Section 8.1. Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Lender as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Lender of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights, powers or remedies.

Section 8.2. No Waiver by Lender.

No course of dealing or conduct by or between Lender and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Lender to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lender from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Lender shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare a Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Lender to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Lender, or (c) Lender's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Lender may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Lender may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole discretion.

Section 8.3. Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases, to the extent allowed by applicable law, all rights of redemption (including statutory and equitable rights of redemption), valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Borrower, including the Property and the Other Security, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Lender to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

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

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

Section 8.4. Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property) and inure to the benefit of Lender and its successors and assigns.

Section 8.5. No Warranty by Lender.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Lender pursuant to this Mortgage or any of the other Loan Documents, Lender shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Lender.

Section 8.6. Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7. Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Lender, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.8. Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if given in accordance with the provisions of the Loan Agreement.

Section 8.9. Joint and Several Liability.

If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Mortgage as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Lender may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

Section 8.10. Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise; (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term

used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 8.11. Governing Law.

This Mortgage shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State of Alabama, except for those provisions in this Mortgage pertaining to the creation, perfection or validity of or execution on liens or security interests in Property located in the state, which provisions shall be governed by and where the Property is located.

Section 8.12. Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Mortgagor and Lender with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Mortgagor and Lender with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Lender to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 8.13. Waiver of Jury Trial.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first written above.

MORTGAGOR:

ENCORE TUSCALOOSA, LLC

By: 

Name: Luther S. Pate, IV

Title: Manager

STATE OF ALABAMA)
COUNTY OF Tuscaloosa)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Luther S. Pate, IV**, whose name as the Manager of Encore Tuscaloosa, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this 6th day of December, 2019.

KIMBERLY A. OSBORN
Notary Public, Alabama State at Large
My Commission Expires February 5, 2023

[SEAL]

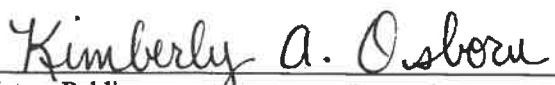

Notary Public
My commission expires: 02/05/2023

Exhibit ALegal Description

PARCEL 1:

A parcel of land located in the Southwest Quarter of Section 31, Township 21 South, Range 9 West Tuscaloosa County, Alabama and being more particularly described as follows: As a starting point, start at the Southeast corner of said Southwest Quarter; thence Northwardly and along the Eastern boundary of said Southwest Quarter for a distance of 308.15 feet to a point on the Northern boundary of Skyland Boulevard (U.S Highway No.11 Bypass); thence with a deflection angle of 95 degrees and 13 minutes to the left run in a Westerly direction and along the Northern boundary of said Skyland Boulevard (U.S Highway No.11 Bypass) for a distance of 598.26 feet to a point; thence with a deflection angle of 90 degrees and 00 minutes to the right run in a Northerly direction for a distance of 20.00 feet to a point; thence with a deflection angle of 90 degrees and 00 minutes to the left run in a Westerly direction and along the Northern boundary of said Skyland Boulevard (U.S. Highway No.11 Bypass) for a distance of 126.30 feet to the POINT OF BEGINNING of the property herein described, said point being the Northwest corner of the intersection of Skyland Boulevard (U.S. Highway No.11 Bypass) and Andrew Street; thence continue Westerly and along the North boundary of said Skyland Boulevard (U.S. Highway No.11 Bypass) for a distance of 174.42 feet deed, 173.50 feet ground to a point; thence with a deflection angle of 90 degrees and 00 minutes to the left run in a Southerly direction for a distance of 20.00 feet to a point; thence with a deflection angle of 90 degrees and 00 minutes to the right run in a Westerly direction and along the Northern boundary of said Skyland Boulevard (U.S. Highway No.11 Bypass) for a distance of 714.72 feet to a point, said point being the Southeast corner of Lot 1 of McFarland Mall as recorded in Plat Book 19, Page 315 in the Probate Office of Tuscaloosa County, Alabama; thence with a deflection angle of 90 degrees and 00 minutes to the right run in a Northerly direction and along the Eastern boundary of said Lot 1 for a distance of 101.04 feet to a point; thence with an interior angle of 229 degrees and 25 minutes run in a Northwesterly direction and along the Northeastern boundary of said Lot 1 for a distance of 29.98 feet to a point; thence with an interior angle of 219 degrees and 09 minutes run in a Westerly direction and along the Northern boundary of said Lot 1 for a distance of 177.27 feet to a point; thence with an interior angle of 271 degrees and 26 minutes run in a Southerly direction and along the Western boundary of said Lot 1 for a distance of 125.00 feet to a point, said point being on the North boundary of Skyland Boulevard (U.S. Highway No.11 Bypass); thence with an interior angle of 90 degrees and 00 minutes run in a Westerly direction and along the Northern boundary of said Skyland Boulevard (U.S. Highway No.11 Bypass) for a distance of 465.93 feet to a point; thence with an interior angle of 129 degrees and 38 minutes deed and 129 degrees and 50 minutes ground run in a Northwesterly direction for a distance of 127.57 feet to a point, said point being on the Eastern boundary of McFarland Boulevard (U.S. Highway No.82 Bypass); thence with an interior angle of 129 degrees and 38 minutes run in a Northerly direction and along the Eastern boundary of said McFarland Boulevard (U.S. Highway No.82 Bypass) for a distance of 398.00 feet to a point; thence with an interior angle of 90 degrees and 00 minutes deed and 90 degrees and 03 minutes ground run in an Easterly direction for a distance of 150.00 feet to a point; thence with an interior angle of 270 degrees and 00 minutes deed and 269 degrees and 58 minutes ground run in a Northerly direction for a distance of 424.80 feet to a point, said point being on the Southern boundary of U.S. Interstate Highway No.I-59; thence with an interior angle of 122 degrees and 24 minutes deed and 122 degrees and 19 minutes ground run in a Northeasterly direction and along the Southern boundary of said U.S. Interstate Highway No.I-59 for a distance of 747.79 feet to a point; thence with an interior angle of 168 degrees and 15 minutes continue in a Northeasterly direction and along the Southern boundary of said U.S. Interstate Highway No.I-59 for a distance of 768.70 feet to a point; thence with an interior angle of 74 degrees and 52 minutes run in a Southerly direction and along the prolongation of the western boundary of Andrew Street for a distance of 1,275.91 feet deed, 1,276.49 feet ground to the POINT OF BEGINNING, at which point the interior angle being 95 degrees and 13

minutes deed and 95 degrees and 05 minutes ground. LESS AND EXCEPT that certain parcel of land conveyed to Tres Woodland Investment, LLC on November 27th, 2013, and recorded in Deed Book 2013, at Page 20579 in the Probate Office of Tuscaloosa County, Alabama.

PARCEL 2:

A parcel of land located in the Northeast Quarter of the Southwest Quarter of Section 31, Township 21 South, Range 9 West, Tuscaloosa County, Alabama, and being more particularly described as follows: COMMENCE at the Southeast corner of the Southeast Quarter of the Southwest Quarter of said Section 31; thence run Northwardly along the East boundary of said Southeast Quarter of the Southwest Quarter 1165.40 feet; thence, with a deflection angle left of 90 degrees, 00 minutes, 00 seconds, run Westwardly 300.00 feet; thence, with a deflection angle right of 90 degrees, 00 minutes, 00 seconds, run Northwardly 183.54 feet; thence, with a deflection angle left of 89 degrees, 28 minutes, 00 seconds, run Westwardly 373.40 feet; thence, with a deflection angle right of 89 degrees, 28 minutes, 00 seconds, run Northwardly 90.28 feet to a capped rebar set at the POINT OF BEGINNING, said POINT lying on the East right-of-way of Andrew Street, a 50 foot wide right-of-way; thence continue Northwardly along said course and along said East right-of-way 111.05 feet to a capped rebar found (McGiffert) on the South right-of-way of Interstate 20/59; thence with an interior angle left of 105 degrees, 05 minutes, 43 seconds, run Northeastwardly along said right-of-way 141.73 feet to a capped rebar found (McGiffert); thence, with an interior angle left of 74 degrees, 54 minutes, 17 seconds, run Southwardly 147.22 feet to a nail and washer set; thence, with an interior angle left of 90 degrees, 18 minutes, 35 seconds, run Westwardly 136.84 feet to the POINT OF BEGINNING, thus making a closing interior angle left of 89 degrees, 41 minutes, 25 seconds. Said Parcel containing 17,671 square feet, or 0.406 acres.

PARCEL 3:

A portion of Andrew Street, a 50 foot wide public street, said portion lying in the Northeast Quarter of the Southwest Quarter of Section 31, Township 21 South, Range 9 West, Tuscaloosa County, Alabama, and being more particularly described as follows, to-wit: COMMENCE at the Southeast corner of the Southeast Quarter of the Southwest Quarter of said Section 31; thence run Northwardly along the East boundary of said Southeast Quarter of the Southwest Quarter 1165.40 feet; thence, with a deflection angle left of 90 degrees, 00 minutes, 00 seconds, run Westwardly 300.00 feet; thence, with a deflection angle right of 90 degrees, 00 minutes, 00 seconds, run Northwardly 183.54 feet; thence with a deflection angle left of 89 degrees, 28 minutes, 00 seconds, run Westwardly 373.40 feet to a point on the East right-of-way of said Andrew Street; thence, with a deflection angle right of 89 degrees, 28 minutes, 00 seconds, run Northwardly along said right-of-way 90.28 feet to the POINT OF BEGINNING; thence continue Northwardly along said course and along said East right-of-way 111.05 feet to a point on the South right-of-way of Interstate 20/59; thence, with an interior angle right of 74 degrees, 42 minutes, 09 seconds, run Southwestwardly along said right-of-way 51.84 feet to a point on the West right-of-way of said Andrew Street; thence, with an interior angle right of 105 degrees, 17 minutes, 51 seconds, run Southwardly along said right-of-way 97.64 feet; thence, with an interior angle right of 89 degrees, 41 minutes, 25 seconds, run Eastwardly 50.00 feet to the POINT OF BEGINNING. Said portion of right-of-way containing 5,217 square feet, more or less.

PARCEL 4:

A part of the North Half of the Southeast Quarter and a part of the Northeast Quarter of the Southwest Quarter of Section 31, Township 21 South, Range 9 West Tuscaloosa County, Alabama, and being more particularly described as follows: BEGIN at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 31; thence run eastwardly along the south boundary of said Northwest Quarter of the Southeast Quarter 70.17 feet to a rebar found (McGiffert); thence with an interior angle right of 180 degrees 00 minutes 00 seconds, continue Eastwardly along said South boundary 575.73 feet to a capped rebar found (McGiffert); thence, with an interior angle right of 90 degrees 06 minutes 20 seconds, run Northwardly 349.77 feet to a capped rebar set; thence with an interior angle right of 274

degrees 34 minutes 24 seconds, run Southeastwardly 231.57 feet to a capped rebar found (McGiffert); thence, with an interior angle right of 160 degrees 26 minutes 06 seconds, run Northeastwardly 1278.77 feet to a capped rebar found (McGiffert); thence, with an interior angle right of 195 degrees 40 minutes 28 seconds, run Eastwardly 556.98 feet to a ½ " pipe found at the Northwest corner of Lot 32 Parkside Subdivision as recorded in the Probate Office of said County in Plat Book 9 at Page 63; thence, with an interior angle right of 90 degrees 00 minutes 43 seconds, run Northwardly along the West boundary of said Subdivision 50.08 feet to a ½ " pipe found at the Southwest corner of Lot 31; thence, with an interior angle right of 180 degrees 09 minutes 51 seconds, continue Northwardly along said West boundary 119.92 feet to a 1 " pipe found at the Southwest corner of Lot 30 of said Subdivision; thence, with an interior angle right of 179 degrees 54 minutes 22 seconds, continue Northwardly along said West boundary 264.82 feet to a ½ " pipe found at the Southwest corner of Lot 19 of said Subdivision; thence, with an interior angle right of 179 degrees 53 minutes 15 seconds, continue Northwardly along said West boundary 43.53 feet to a ¾ " pipe found on the South right-of-way of Interstate 20/59, said right-of-way being measured 170 feet from centerline; thence, with an interior angle right of 74 degrees 21 minutes 28 seconds, run Southwestwardly along said right-of-way 341.01 feet to a concrete right-of-way monument found, said monument being 170 feet right of centerline Station 583+00; thence, with an interior angle right of 191 degrees 18 minutes 31 seconds, run Westwardly along a right-of-way change 101.98 feet to a capped rebar found (McGiffert), said rebar being 150 feet right of centerline Station 582+00; thence, with an interior angle right of 168 degrees 43 minutes 02 seconds, run Southwestwardly along said right-of-way 2426.91 feet to a capped rebar set; thence, with an interior angle right of 104 degrees 54 minutes 18 seconds, run Southwardly 413.74 feet to a capped rebar set on the South boundary of said Northeast Quarter of the Southwest Quarter of Section 31; thence, with an interior angle right of 89 degrees 57 minutes 17 seconds, run Eastwardly along said South boundary 100.00 feet to the POINT OF BEGINNING, thus making a closing interior angle right of 180 degrees 00 minutes 00 seconds. Said parcel containing 25.302 acres, more or less.

PARCEL 5:

A parcel of land located in the Southeast Quarter of the Southwest Quarter of Section 31, Township 21 South, Range 9 West Tuscaloosa County, Alabama, and being more particularly described as follows: BEGIN at the Northeast corner of said Southeast Quarter of the Southwest Quarter of Section 31; thence run Southwardly along the East boundary of said Quarter-Quarter 155.37 feet; thence, with an interior angle left of 90 degrees 00 minutes 00 seconds, run Westwardly 100.00 feet; thence, with an interior angle left of 89 degrees 59 minutes 57 seconds, run Northwardly 154.68 feet; thence, with an interior angle left of 90 degrees 23 minutes 51 seconds, run Eastwardly 100.00 feet to the POINT OF BEGINNING. Thus making a closing interior angle left of 89 degrees 36 minutes 12 seconds. Said parcel containing 15,502 square feet or 0.356 acres, more or less.

PARCEL 6:

Lot 1 McFarland Mall, a map or plat of which is recorded in Plat Book 19, at Page 315 in the Probate Office of Tuscaloosa County, Alabama.