

\$ \_\_\_\_\_

\_\_\_\_\_, 2019  
Montgomery, Alabama

## PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, an Alabama limited liability company (herein, along with any other maker, endorser, surety or guarantor hereof, shall be called "Borrower"), promises to pay to the order of **Benjamin Cumbus** (hereinafter along with its successors and assigns called "Lender"), at Lender's office or at such other place as Lender may from time to time designate, without grace and in lawful money of the United States of America, the principal sum of \_\_\_\_\_/100 Dollars (\$ \_\_\_\_\_), together with interest and charges thereon (hereafter "Obligation"), all as evidenced by the records of Lender.

### I. INTEREST:

Borrower agrees to pay interest on the unpaid principal Obligation, in accordance with the terms hereof.

Interest on the unpaid principal Obligation shall be computed from the date hereof at a rate of 7.0%.

**Interest Calculation Method:** Interest on the outstanding unpaid principal balance evidenced by this Note shall be computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.

Both principal and accrued interest shall bear interest after maturity or default at the per annum rate of 18.00%.

### II. PRINCIPAL AND INTEREST PAYMENTS:

The Borrower promises and agrees to pay principal and interest as follows:

Twenty-Four (24) consecutive monthly principal and interest installments of \$ \_\_\_\_\_ each (which payment amount has been determined based upon a 240-month amortization schedule), with the first such installment for principal and interest being due and payable the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, with the remaining installments being due and payable on the same day of each month thereafter, followed by

**Maturity Date:** Any provisions of this Note to the contrary notwithstanding, all outstanding and unpaid principal indebtedness evidenced hereby, plus accrued interest, shall be due and payable on \_\_\_\_\_, 20\_\_\_\_, which shall be the maturity date of this Note.

**Application of Payments:** Unless otherwise elected by Lender, all payments shall be applied as billed by Lender, and if not billed, then first to late and other charges, if any, payable hereunder or under any Loan Document, then to interest and then to principal.

**Late Charges for Overdue Payments:** Any scheduled payment of principal or principal plus interest in default ten (10) days or more will be subject to a late charge of five percent (5%) of such scheduled payment. The late charge will not be less than \$1.00, nor exceed \$250.00, for any late payment, except that such limitation shall be inapplicable if this Note is secured by real property. The late charge shall be charged only once for any late payment.

**Prepayment:** The Borrower reserves the right, privilege and option to prepay the principal indebtedness evidenced by this Note, or any part thereof, at any time without penalty, and interest shall cease to accrue on the amount or amounts of principal so prepaid. Any such prepayment shall be applied to unpaid principal installments hereunder in the inverse order of the maturities thereof. No partial principal prepayment shall defer the due date of any installment of principal and interest due hereunder.

### **III. SECURITY:**

This Note and the Obligations are secured in part by the following instruments, dated this date and delivered to Lender by Borrower, or Borrower's guarantors (hereinafter along with this Note, "Loan Documents"):

Mortgage and Security Agreement  
Assignment of Leases, Rents and Profits  
Guaranty Agreement – \_\_\_\_\_  
Guaranty Agreement – \_\_\_\_\_

and those other loan agreements, instruments and documents dated this date or any other date, which evidence, secure and guarantee the Obligations or which were executed in connection with this Note, or any part of the transaction which it evidences.

This Note and Obligations it evidences also may be secured by other property given to Lender as collateral in other agreements from time to time existing between Borrower or Borrower's guarantors and Lender. Borrower acknowledges having read and understood the Lender's rights under such separate agreements. Reference to the Loan Documents and to other agreements shall not affect or impair the absolute and unconditional obligation of Borrower to pay the principal and interest on this Note when due.

To the extent permitted by applicable law, Lender may, but shall not be required to, apply to or set off against any amount owed under this Note, without notice to Borrower, any funds, credit or property held by, in transit to or in possession of, Lender for the account of any Borrower.

This right of set-off applies without Lender first telling Borrower that Lender is going to use it. It applies matter what sort of value of collateral secures the Obligation, and it also applies no matter who else has agreed to pay this Obligation. Upon exercise of this right, Lender will not be liable for wrongful dishonor of a check where such dishonor occurs because of this set-off.

#### **IV. EVENTS OF DEFAULT AND DEFAULT:**

The occurrence of any of the following events shall constitute an Event of Default hereunder, time being of the essence, entitling Lender, at Lender's option, and without further notice to the Borrower, to declare the entire Obligation (principal plus accrued interest and charges) [and, if so elected by Lender, all other indebtedness of Borrower to Lender] immediately due and payable at once and in full with interest to date:

1. Borrower's failure to pay when due or to perform or comply with any of the (i) obligations or provisions under this Note and any renewals, modifications, refinancing and extensions thereof, (ii) obligations or provisions under any Loan Document, or (iii) other obligations and indebtedness of Borrower to Lender now existing or hereafter incurred or arising, direct or indirect, and however incurred or any part thereof; or
2. Failure by Borrower's guarantors, or any other parties to perform or comply with any obligation or provision of the Loan Documents, or of any other agreements executed by Borrower or Borrower's guarantors in favor of Lender; or
3. In the event Borrower shall (i) become insolvent, (ii) make an assignment for the benefit of Borrower's creditors, (iii) call a meeting of Borrower's creditors, or (iv) fail to meet Borrower's obligations as they mature.
4. In the event that there shall be filed by or against Borrower (i) a Petition for Relief under the Bankruptcy Code, (ii) an application in court for a trustee or receiver of or for any part of Borrower's property, (iii) a judgment against Borrower, or (iv) a writ of garnishment or attachment in suit or action against any of the assets of Borrower.

Failure of the Lender to declare such indebtedness to be due and payable in the Event of a Default shall not constitute a waiver of the right later to declare the entire indebtedness to be at once due and payable.

#### **V. PURPOSE OF LOAN:**

This Note evidences a loan to be used by Borrower to refinance existing commercial debt, and Borrower agrees to use the proceeds of this loan for only those purposes. Notwithstanding the foregoing, the Borrower hereby represents and warrants to Lender that the money which is the subject of the credit transaction is not for personal, family, household or agricultural purposes within the meaning of the Federal Truth-in-Lending Act or Regulation Z of the Federal Reserve Board issued pursuant thereto, and that said extension of credit is for business or commercial purposes (other than agricultural purposes).

## VI. WAIVERS, COST OF COLLECTION, MISCELLANEOUS:

The Borrower hereby agrees to pay all costs of collecting or attempting to collect this Note and the Obligation, including court cost, expenses of collection and including a reasonable attorney's fee, if the same be collected by an attorney consulted with reference to suit or otherwise.

The Borrower and all sureties, endorser and guarantors of this Note, to the extent not prohibited by applicable law or regulation, hereby jointly and severally (a) waives as to this debt or any renewal, modification, extension or refinancing thereof all rights of exemption under the Constitution or laws of Alabama or any other state as to real or personal property; (b) waives demand, presentment, notice of non-payment, protest, notice of protest, notice of dishonor, all other notice, suit against any party, diligence in collection of this Note, the release of any party primarily or secondarily liable thereon or any collateral pledged as security, and all other requirements necessary to hold Borrower liable hereunder; and (c) agree and consent to any one or more extensions or postponements of time of payment of this note or any other indulgences with respect hereto, without notice thereof to any of them, and without release of liability as to any Borrower or any of them.

Borrower agrees to provide Lender, upon request, any financial statements or information Lender may deem necessary, and Borrower warrants that all financial statements and information so provided shall be accurate, correct and complete.

Lender's books and records showing the account between Borrower and Lender shall be admissible in evidence in any action or proceeding, shall be binding upon us for the purposes of establishing the items therein set forth and shall constitute prima facie proof thereof.

The Lender shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies, and no waiver of any kind shall be valid against the Lender, unless in writing and signed by the Lender. All rights and remedies hereunder and under any statute or rule of law shall be cumulative and may be exercised successively or concurrently. This Note shall be governed by and construed in accordance with the laws of the State of Alabama. **BORROWER CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN MONTGOMERY, ALABAMA AND WAIVES ANY OBJECTION WE MAY HAVE BASED UPON IMPROPER VENUE OR FORUM NON CONVENIENS OR TO THE CONDUCT OF ANY PROCEEDS IN ANY SUCH COURT. IN ANY JUDICIAL PROCEEDING BROUGHT WITH RESPECT TO, RELATING TO OR PERTAINING TO THIS NOTE, THE LOAN DOCUMENTS, THE OBLIGATIONS, THE ADMINISTRATION, HANDLING OR COLLECTION OF THE OBLIGATIONS, OR THE ACTIONS OF LENDER, THE BORROWER WAIVES ANY RIGHT TO TRIAL BY JURY.** Borrower covenants and agrees that Borrower will furnish Lender a prompt written notice of any action or inaction by Lender or any of Lender's agents or attorneys in connection with this Note, the Loan Documents, or the advances or obligations thereunder, that may be actionable against Lender, Lender's agents, Lender's attorneys or a defense to payment of the Borrower's obligations to Lender for any reason, including, but not limited to, commission of a tort or violation of any contractual duty or duty implied by law. Borrower further agrees that, unless this notice is duly given as promptly as possible (and in any event within ten (10)

days) after Borrower has knowledge or with the exercise of reasonable diligence should have had knowledge of any such action or inaction, Borrower will not assert and shall be deemed to have waived, any claim or defense arising therefrom.

The Borrower understands that the Lender may from time to time sell this Note to other institutions or enter into a participation agreement or agreements with one or more participants pursuant to which such participant or participants shall be given participation in advances made under this Note and that such participants may from time to time similarly grant to other participants or subparticipants in such advances. Any purchaser, participant or subparticipant may exercise any and all rights of banker's lien or set-off with respect to the Borrower or any other party liable hereon, as fully as if such purchaser, participant or subparticipant had made a loan directly to the Borrower or such other party in the amount of the purchase, participation or subparticipation given to such purchaser, participant or subparticipant in the advances on this Note. For the purposes of this paragraph only, the Borrower and every other party liable hereon shall be deemed to be directly obligated to each purchaser, participant or subparticipant in the amount of its participating interest in the amount of the principal of, and interest on, advances made under this Note. In order to assist Lender in the selling of this Note or these participations, Borrower acknowledges, agrees and gives permission to Lender, in its sole discretion, to share certain information about Borrower and its guarantors (including financial information) with such purchaser, participant or subparticipant, or any potential purchaser, participant or subparticipant.

Singular or plural words used herein shall be taken to refer to the undersigned, whether one or more than one, and this Note shall bind each of the undersigned, jointly and severally.

If any provision of this Note is or becomes invalid or unenforceable, the remaining provisions shall not be affected thereby.

Any change or modification to this Note must be in writing and signed by both Lender and Borrower.

## **VII. EXECUTION:**

This Note has been executed by the Borrower without condition that anyone else should sign or become bound hereunder and without any other conditions whatever being made. The provisions hereof are binding on the successors and assigns of the Borrower and shall inure to the benefit of the Lender and its successors and assigns, and every subsequent holder of this Note. Borrower acknowledges receipt of a completed copy hereof, and of any other instrument executed by Borrower before this transaction is consummated.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed by its duly authorized Manager on the day and year first above written.

\_\_\_\_\_  
a(n) \_\_\_\_\_,

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_