

STATE OF ALABAMA

BALDWIN COUNTY

CERTIFICATE OF CITY CLERK

_____, 2019

I, the undersigned, do hereby certify that: (1) I am the duly elected, qualified and acting Clerk of the City of Foley, Alabama (the "City"), (2) as City Clerk of the City I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf, (3) the attached pages constitute a complete, verbatim and compared copy of a resolution as introduced and adopted by the City Council at a regular meeting thereof duly called, held, and conducted on _____, 2019 with quorum present and acting throughout, and (4) said resolution is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the City of Foley, Alabama, and have affixed the official seal of the City, on the above date.

Clerk of the City of Foley, Alabama

SEAL

RESOLUTION NO. _____

**A RESOLUTION OF CONSENT TO ASSIGNMENT OF SPECIAL ECONOMIC
DEVELOPMENT GRANT AGREEMENTS BY FOLEY SQUARE, LLC**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA (the "Council"), AS GOVERNING BODY OF THE CITY OF FOLEY, ALABAMA (the "City"), as follows:

ARTICLE 1

Definitions

As used herein the following terms shall have the following meanings:

Agreements shall mean, collectively:

- (a) Special Economic Development Grant Agreement dated December 6, 2016 by the City and the Company;
- (b) Special Economic Development Grant Agreement dated July 13, 2018 by the City and the Company.

Assignments means, collectively, the following instruments as attached hereto as Exhibit A:

- (a) The Assignment of Contracts dated June 16, 2016 by the Company to the Bank;
- (b) The Assignment of Contracts dated June 7, 2018 by the Company to the Bank.

Bank means Trustmark National Bank.

City shall mean the City of Foley, Alabama.

Company shall mean Foley Square, LLC and its successors and assigns.

ARTICLE 2

Representations

The Council has found and determined:

- (a) The Agreements are in full force and effect on all original terms thereof.
- (b) Pursuant to the Assignments, the Company has assigned the rights of the Company in and to the economic development grant payments to be made by the City under the Agreements to the Bank as security for certain obligations of the Company to the Bank.
- (c) The Company has requested the consent of the City to the Assignments pursuant to the Agreements.

ARTICLE 3

Agreement of City

Section 3.01 Consent of City

The City consents to the assignment by the Company to the Bank of the rights of the Company in and to the economic development payments to be made by the City pursuant to the Agreements; provided, however, the City does not consent to the assignment or delegation by the Company of payment or performance of any agreement or any obligation of the Company under the Agreements.

Section 3.02 Reliance

The Company and the Bank may rely upon a certified copy of this Resolution for purposes of the Agreements.

ARTICLE 4

Provisions of General Application

Section 4.01. Other Proceedings

Any resolution, order, ordinance, or part thereof, in conflict or inconsistent with the provisions of this Resolution is hereby, to the extent of such conflict or inconsistency, repealed.

Section 4.02. Effect of this Resolution

This Resolution shall take effect immediately.

ASSIGNMENTS

ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT, is made this 16th day of June, 2016, by **FOLEY SQUARE LLC**, an Alabama limited liability company (hereinafter referred to as "Borrower"), to **TRUSTMARK NATIONAL BANK**, a national banking association (hereinafter referred to as "Lender").

W I T N E S S E T H:

WHEREAS, contemporaneously herewith Lender is making to Borrower a loan in the principal amount of up to \$12,601,000.00 (the "Loan") to improve property and building space (the "Project") on certain land in Foley, Alabama, and described on Exhibit A hereto (the "Property"), to be leased to various tenants (collectively the "Leases"), said Loan being evidenced by a promissory note of even date herewith (the "Note") and secured by, among other things, a Future Advance Mortgage, Assignment of Rents and Leases and Security Estate Mortgage (together with the Note, the related Loan Agreement and other guaranties, assignments and instruments executed in connection herewith, the "Loan Documents"); and

WHEREAS, as a condition to making the Loan, Lender has required, as additional security for the repayment of the Loan, that Borrower transfer and assign to Lender all of Borrower's right, title and interest under all contracts or agreements previously entered into or to be entered into or prepared after the date hereof and relating to the Project which are owned by Borrower or under which Borrower shall be a party, including, without limitation: (i) all construction contracts with Summit Industries, LLC related to the Project including that certain construction agreement dated May 10, 2016, (ii) all construction contracts with Coumanis Allen, LLC related to the Project including that certain construction agreement dated May 19, 2016, (iii) all architectural contracts with and plans and specifications prepared by Architectural Design Guild Corporation, a Missouri corporation, d/b/a Barry J Greenberg, Architect relating to the Project including that certain agreement for architectural / engineering services dated February 17, 2016, and (iv) all revenues, rights, and income pursuant to any now-existing or future tax incentive packages entered into by Borrower and the City of Foley, Alabama including, without limitation, that certain Special Economic Development Grant Agreement entered into by Borrower and the City of Foley, Alabama (collectively, the "Contracts"); and

WHEREAS, Borrower desires to make such transfer and assignment to Lender;

NOW, THEREFORE, for and in consideration of the making of the Loan to Borrower by Lender and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender do hereby covenant and agree as follows:

1. **Grant of Security Interest.** Borrower does hereby transfer, assign, pledge, convey and grant to Lender as additional security for the payment of the Loan, all of Borrower's right, title and interest in, to and under the Contracts, together with all proceeds thereof (the Contracts and said proceeds are hereinafter referred to collectively as the "Collateral").

2. **Warranties and Covenants.** Borrower does hereby warrant, represent, covenant and agree with Lender that, as of the date hereof, Borrower is a party to the Contracts and that Borrower has not entered into any separate contract or agreement with the parties to the Contracts that modify or affect the Contracts; that Borrower has not previously assigned, transferred, sold or conveyed its interest under

the Contracts, or any of them; that Borrower shall enter into such contracts in form and substance reasonably acceptable to Lender; and that Borrower shall not enter into, modify, amend, cancel, release, surrender or terminate the Contracts, or any of them, without the prior written consent of Lender.

3. **Further Assurances.** At any time and from time to time upon request by Lender, Borrower will make, execute and deliver to Lender any and all such other and further assignments, security agreements, financing statements, continuation statements, instruments of further assurance and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue to preserve the security interest of Lender created or intended to be created hereby in any and all Contracts. It is the intent of this Assignment that the security interest created hereby will automatically attach, without further act, to all Collateral coming into existence or obtained by Borrower after the date hereof.

4. **Present Assignment.** Although this Assignment is and shall be effective upon the execution and delivery hereof and constitutes a present and current assignment of the Collateral, Lender shall not take any actions whatsoever with respect to the Collateral unless and until an Event of Default shall have occurred hereunder, and until such time as an Event of Default shall have occurred hereunder, Borrower shall be entitled to enjoy and exercise any and all rights and privileges afforded Borrower under the Contracts.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) Any default or Event of Default shall have occurred under any one or more of the Loan Documents or any other documents now or hereafter evidencing, securing, guaranteeing, or otherwise relating to the Loan or any other indebtedness, liability, or obligation of Borrower to Lender;

(b) Any warranty, representation or statement by Borrower in this Assignment proves to be or have been untrue or misleading in any material respect; or

(c) Borrower fails to keep, observe, perform, carry out and execute in every particular the covenants, agreements and obligations of Borrower contained in this Assignment and in the Loan Documents.

6. **Rights Upon Default.** Upon the occurrence of an Event of Default, Lender shall have the right immediately to exercise any and all of its rights and remedies as a secured party under this Assignment in accordance with the Uniform Commercial Code and any and all of its rights and remedies under applicable law and under the Loan Documents, under any and all other instruments now or hereafter evidencing, securing, or otherwise relating to the Loan, and any or all of Assignor's rights under the Collateral.

7. **No Limitation of Remedies.** No remedy conferred upon or reserved to Lender herein or in the Loan Documents is intended to be exclusive of any other remedy conferred upon or reserved to Lender under such documents and instruments or under applicable law. Each such remedy shall be cumulative and concurrent and shall be in addition to each and every other remedy now or hereafter existing under such instruments or documents or at law or in equity. No delay or omission by Lender to exercise any right, power or remedy accruing upon any Event of Default shall impair in any manner any such right, power or remedy, or shall be construed to be a waiver of any such default or acquiescence

therein, and each and every right, power and remedy of Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

8. **No Obligation of Lender.** It is specifically understood and agreed that this Assignment shall not operate to place any responsibility, liability, or obligation whatsoever upon Lender, and that in accepting the foregoing assignment of the Collateral, Lender neither assumes nor agrees to perform at any time whatsoever any obligation of Borrower under the Contracts, all of which obligations and duties shall be and remain with and upon Borrower, unless and until Lender shall have assumed in writing certain obligations or duties under the Contracts, and then only to the extent of such written assumption. Borrower agrees to, and does hereby, indemnify and hold harmless Lender from and against any and all liabilities, obligations, claims, damages, penalties, actions, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by Lender by reason of the acceptance hereof, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under or by reason hereof. In the event that Lender incurs any such liability, obligation, claim, damage, penalty, cost or expense under or by reason hereof, or in the defense of any claims or demands arising out of or in connection herewith, the amount of such liability, obligation, claim, damage, penalty, cost or expenses shall be added to the Loan, shall bear interest at the rate provided in the Note from the day incurred until paid and shall be due and payable immediately upon demand by Lender.

9. **Termination.** This Assignment shall automatically terminate, and be of no further force or effect whatsoever at such time as the Loan and all other indebtedness of Borrower to Lender related to the Loan are paid in full. Upon such termination, Lender shall execute and deliver to Borrower such documents as may be reasonably requested by Borrower to evidence such termination and the reassignment to Borrower of all right, title and interest of Borrower in and to the Collateral.

10. **Notices.** All notices and elections permitted or required to be made hereunder shall be in writing, signed by the party giving the same, and shall be delivered personally or sent by certified mail, return receipt requested, to the other parties at the addresses set forth in the Loan Documents. The date of personal delivery or three (3) business days from the date of mailing, as the case may be, shall be the date of such notice or election.

11. **Successors and Assigns.** This Assignment shall be binding upon the respective heirs, estates, administrators, executors, successors, successors-in-title, legal representatives and assigns of the Assignor and shall inure to the benefit of Lender and its successors and assigns.

12. **Captions.** Titles or captions of articles or sections contained in this Assignment are provided for convenience of reference only and in no way define, limit, extend, or describe the scope of this Collateral Assignment or the intent of any provision hereof.

13. **Severability.** In the event that any provision of this Assignment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

[signature page follows]

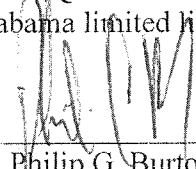
BORROWER:

FOLEY SQUARE LLC

An Alabama limited liability company



WITNESS

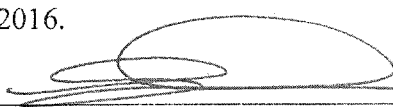
By:  _____ [SEAL]
Philip G. Burton
Manager

STATE OF ALABAMA)
)
COUNTY OF MOBILE)

I, a Notary Public, in and for said County in said State, hereby certify that Philip G. Burton whose name as Manager of Foley Square LLC, an Alabama limited liability company, is signed to the foregoing instrument or conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of same, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 16th day of June 2016.





LAWRENCE GIARDINA Notary Public
Notary Public Print Name Lawrence Giardina
Alabama State At Large My commission expires: 12-31-2019
My Commission Expires 12-31-2019

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1A, 1B, and 2A, Resubdivision of Foley Square Subdivision, according to plat thereof recorded on Slide No. 2561-C of the records of the Judge of Probate, Baldwin County, Alabama.

ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT, is made this 7 day of June, 2018, by **FOLEY SQUARE LLC**, an Alabama limited liability company (hereinafter referred to as "Borrower"), to **TRUSTMARK NATIONAL BANK**, a national banking association (hereinafter referred to as "Lender").

WITNESSETH:

WHEREAS, contemporaneously herewith Lender is making to Borrower a loan in the principal amount of up to \$9,561,215.00 (the "Loan") to improve property and building space (the "Project") on certain land in Foley, Alabama, and described on Exhibit A hereto (the "Property"), to be leased to various tenants (collectively the "Leases"), said Loan being evidenced by a promissory note of even date herewith (the "Note") and secured by, among other things, a Future Advance Mortgage, Assignment of Rents and Leases and Security Estate Mortgage (together with the Note, the related Loan Agreement and other guaranties, assignments and instruments executed in connection herewith, the "Loan Documents"); and

WHEREAS, as a condition to making the Loan, Lender has required, as additional security for the repayment of the Loan, that Borrower transfer and assign to Lender all of Borrower's right, title and interest under all contracts or agreements previously entered into or to be entered into or prepared after the date hereof and relating to the Project which are owned by Borrower or under which Borrower shall be a party, including, without limitation: (i) all construction contracts with Cunningham Delaney Construction, LLC related to the Project, including that certain construction agreement dated April 30, 2018, (ii) all architectural contracts with and plans and specifications prepared by Architectural Design Guild Corporation, a Missouri corporation, d/b/a Barry J Greenberg, Architect relating to the Project including that certain agreement for architectural / engineering services dated November 15, 2017, and (iii) all revenues, rights, and income pursuant to any now-existing or future tax incentive packages entered into by Borrower and the City of Foley, Alabama including, without limitation, that certain Special Economic Development Grant Agreement entered into by Borrower and the City of Foley, Alabama dated December 6, 2016, excluding that portion partially assigned to RSII, LLC as it relates to Lot 4, Riviera Square subdivision (collectively, the "Contracts"); and

WHEREAS, Borrower desires to make such transfer and assignment to Lender;

NOW, THEREFORE, for and in consideration of the making of the Loan to Borrower by Lender and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender do hereby covenant and agree as follows:

1. **Grant of Security Interest.** Borrower does hereby transfer, assign, pledge, convey and grant to Lender as additional security for the payment of the Loan, all of Borrower's right, title and interest in, to and under the Contracts, together with all proceeds thereof (the Contracts and said proceeds are hereinafter referred to collectively as the "Collateral").

2. **Warranties and Covenants.** Borrower does hereby warrant, represent, covenant and agree with Lender that, as of the date hereof, Borrower is a party to the Contracts and that Borrower has not entered into any separate contract or agreement with the parties to the Contracts that modify or affect the Contracts; that Borrower has not previously assigned, transferred, sold or conveyed its interest under

the Contracts, or any of them; that Borrower shall enter into such contracts in form and substance reasonably acceptable to Lender; and that Borrower shall not enter into, modify, amend, cancel, release, surrender or terminate the Contracts, or any of them, without the prior written consent of Lender.

3. **Further Assurances.** At any time and from time to time upon request by Lender, Borrower will make, execute and deliver to Lender any and all such other and further assignments, security agreements, financing statements, continuation statements, instruments of further assurance and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue to preserve the security interest of Lender created or intended to be created hereby in any and all Contracts. It is the intent of this Assignment that the security interest created hereby will automatically attach, without further act, to all Collateral coming into existence or obtained by Borrower after the date hereof.

4. **Present Assignment.** Although this Assignment is and shall be effective upon the execution and delivery hereof and constitutes a present and current assignment of the Collateral, Lender shall not take any actions whatsoever with respect to the Collateral unless and until an Event of Default shall have occurred hereunder, and until such time as an Event of Default shall have occurred hereunder, Borrower shall be entitled to enjoy and exercise any and all rights and privileges afforded Borrower under the Contracts.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) Any default or Event of Default shall have occurred under any one or more of the Loan Documents or any other documents now or hereafter evidencing, securing, guaranteeing, or otherwise relating to the Loan or any other indebtedness, liability, or obligation of Borrower to Lender;

(b) Any warranty, representation or statement by Borrower in this Assignment proves to be or have been untrue or misleading in any material respect; or

(c) Borrower fails to keep, observe, perform, carry out and execute in every particular the covenants, agreements and obligations of Borrower contained in this Assignment and in the Loan Documents.

6. **Rights Upon Default.** Upon the occurrence of an Event of Default, Lender shall have the right immediately to exercise any and all of its rights and remedies as a secured party under this Assignment in accordance with the Uniform Commercial Code and any and all of its rights and remedies under applicable law and under the Loan Documents, under any and all other instruments now or hereafter evidencing, securing, or otherwise relating to the Loan, and any or all of Assignor's rights under the Collateral.

7. **No Limitation of Remedies.** No remedy conferred upon or reserved to Lender herein or in the Loan Documents is intended to be exclusive of any other remedy conferred upon or reserved to Lender under such documents and instruments or under applicable law. Each such remedy shall be cumulative and concurrent and shall be in addition to each and every other remedy now or hereafter existing under such instruments or documents or at law or in equity. No delay or omission by Lender to exercise any right, power or remedy accruing upon any Event of Default shall impair in any manner any such right, power or remedy, or shall be construed to be a waiver of any such default or acquiescence

therein, and each and every right, power and remedy of Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

8. **No Obligation of Lender.** It is specifically understood and agreed that this Assignment shall not operate to place any responsibility, liability, or obligation whatsoever upon Lender, and that in accepting the foregoing assignment of the Collateral, Lender neither assumes nor agrees to perform at any time whatsoever any obligation of Borrower under the Contracts, all of which obligations and duties shall be and remain with and upon Borrower, unless and until Lender shall have assumed in writing certain obligations or duties under the Contracts, and then only to the extent of such written assumption. Borrower agrees to, and does hereby, indemnify and hold harmless Lender from and against any and all liabilities, obligations, claims, damages, penalties, actions, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by Lender by reason of the acceptance hereof, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under or by reason hereof. In the event that Lender incurs any such liability, obligation, claim, damage, penalty, cost or expense under or by reason hereof, or in the defense of any claims or demands arising out of or in connection herewith, the amount of such liability, obligation, claim, damage, penalty, cost or expenses shall be added to the Loan, shall bear interest at the rate provided in the Note from the day incurred until paid and shall be due and payable immediately upon demand by Lender.

9. **Termination.** This Assignment shall automatically terminate, and be of no further force or effect whatsoever at such time as the Loan and all other indebtedness of Borrower to Lender related to the Loan are paid in full. Upon such termination, Lender shall execute and deliver to Borrower such documents as may be reasonably requested by Borrower to evidence such termination and the reassignment to Borrower of all right, title and interest of Borrower in and to the Collateral.

10. **Notices.** All notices and elections permitted or required to be made hereunder shall be in writing, signed by the party giving the same, and shall be delivered in the manner and to the other parties at the addresses set forth in the Loan Documents.

11. **Successors and Assigns.** This Assignment shall be binding upon the respective heirs, estates, administrators, executors, successors, successors-in-title, legal representatives and assigns of the Assignor and shall inure to the benefit of Lender and its successors and assigns.

12. **Captions.** Titles or captions of articles or sections contained in this Assignment are provided for convenience of reference only and in no way define, limit, extend, or describe the scope of this Collateral Assignment or the intent of any provision hereof.

13. **Severability.** In the event that any provision of this Assignment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

[signature page follows]

BORROWER:

FOLEY SQUARE LLC

An Alabama limited liability company

By: _____

Philip G. Burton
Authorized Signatory

[SEAL]

WITNESS

STATE OF ALABAMA)
)
COUNTY OF MOBILE)

I, a Notary Public, in and for said County in said State, hereby certify that Philip G. Burton whose name as Authorized Signatory of Foley Square LLC, an Alabama limited liability company, is signed to the foregoing instrument or conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of same, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said company.

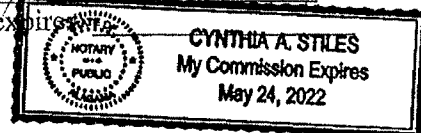
Given under my hand this the 7 day of June 2018.

Notary Public

Print Name

My commission expires

Cynthia A. Stiles



[SIGNATURE PAGE TO ASSIGNMENT OF CONTRACTS]

EXHIBIT A

PROPERTY DESCRIPTION

Parcel A

Lot 1, Riviera Square Subdivision, according to plat thereof recorded in Slide 2578E of the records in the Office of the Judge of Probate of Baldwin County, Alabama.

Together with the beneficial interests constituting an interest in real property created by the following instruments:

Reciprocal Easement Agreement by and between Foley Square, LLC and H&M, LLC dated August 22, 2014 and recorded in Instrument No. 1475232 and amended in Instrument No. 1500782.

Declaration of Easement by Riviera Square, LLC dated December 21, 2016 and recorded in Instrument No. 1609274 and amended in Instrument No. 1693248.

Parcel B

Lot 2A, Resubdivision of Foley Square Subdivision, according to plat thereof recorded in Slide 2561-C of the records in the Office of the Judge of Probate of Baldwin County, Alabama.

Together with the beneficial interests constituting an interest in real property created by the following instruments:

Reciprocal Easement Agreement by and between Foley Square, LLC and H&M, LLC dated August 22, 2014 and recorded in Instrument No. 1475232 and amended in Instrument No. 1509031 and as shown on survey by Goodwyn, Mills and Cawood dated January 22, 2018.

Declaration of Easement by Riviera Square, LLC dated December 21, 2016 and recorded in Instrument No. 1609274 and amended in Instrument No. 1693248.