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Shelby Cnty Judge of Probate,AL
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED MAIL TO:

Seyfarth Shaw LLP
1545 Peachtree Street, N.E.
Suite 700
Atlanta, Georgia 30309-2401
Attention: Lori H. Whitfield, Esq.

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "**Mortgage**") dated as of August 31, 2007 is made by **PERA LEE BRANCH, INC.**, a Colorado nonprofit corporation, having offices at 1225 17th Street, Suite 2750, Denver, Colorado 80202, as mortgagor ("**Mortgagor**"), in favor of **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation, having an office at 2200 Ross Avenue, Suite 4900-E, Dallas, Texas 75201, as mortgagee, ("**Mortgagee**").

WITNESSETH:

1. Mortgagor, by the terms of its Note (hereinafter defined) executed on the same date as this Mortgage and in connection with the loan from Mortgagee to Mortgagor, is indebted to Mortgagee in the principal sum of TEN MILLION SIXTY THOUSAND FIVE HUNDRED AND NO/100 U.S. DOLLARS (\$10,060,500.00), with interest thereon from the date of the Note at the rates set forth in the Note, such principal and interest to be paid in installments as provided in the Note, with the final installment being due and payable not later than September 5, 2014; and

2. Mortgagor desires to secure the payment of and the performance of all of its obligations under the Note and certain additional Obligations (as hereinafter defined).

IN CONSIDERATION OF THE PRINCIPAL SUM OF THE NOTE AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, MORTGAGOR HEREBY IRREVOCABLY MORTGAGES,



GRANTS, BARGAINS, SELLS, ALIENS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST WITH POWER OF SALE, TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS in all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired, together with the Personalty (as hereinafter defined), all of which is hereinafter collectively defined as the "**Property**":

A. That certain real property (the "**Land**") located in the County of Shelby, State of Alabama, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference;

B. All Improvements (as hereinafter defined), and all appurtenances, easements, rights and privileges of the Land, including all minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, water rights and development rights, and any land lying in the streets, roads or avenues adjoining the Land or any part thereof;

C. All Fixtures (as hereinafter defined), whether now or hereafter installed, being hereby declared to be for all purposes of this Mortgage a part of the Land; and

D. All Rents and Proceeds (as hereinafter defined);

TO HAVE AND TO HOLD the Property unto Mortgagee and its successors and assigns forever, subject to the Permitted Exceptions and the provisions, terms and conditions of this Mortgage;

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Mortgagor of the Obligations (as hereinafter defined).

The total amount of Obligations secured hereby may increase or decrease from time to time, but the total unpaid principal balance of the Obligations secured hereby (including disbursements that Mortgagee may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less than, but shall not exceed, Ten Million Sixty Thousand Five Hundred and no/100ths US Dollars (US \$10,060,500.00), plus accrued and unpaid interest. This Mortgage also secures advances for the payment of taxes and municipal assessments, maintenance charges, insurance premiums, costs and any other charges incurred for the protection of the Property or the lien of this Mortgage, expenses incurred by Mortgagee (as defined below) by reason of an Event of Default (as defined below) under this Mortgage (including, without limitation, attorneys fees and costs) and advances for erection, construction, alteration, improvements and repair of the Property. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

PROVIDED, HOWEVER, if Mortgagor shall pay and perform the Obligations as provided for in the Loan Documents and shall comply with all the provisions, terms and conditions in the

Loan Documents, these presents and the estates hereby granted (except for the obligations of Grantor set forth in Sections 9.18 and 9.19 hereof) shall cease, terminate and be void.

ARTICLE 1 DEFINITIONS

Certain Defined Terms: As used in this Mortgage the following terms shall have the following meanings:

Alabama Uniform Commercial Code: The Uniform Commercial as adopted and in effect in the State of Alabama, as amended or replaced from time to time.

Allocated Loan Amount: The unamortized portion of the portion of the Loan allocated to a Release Parcel as set forth in Schedule I attached hereto and incorporated herein by reference.

Application: The Application, dated July 12, 2007, executed by Mortgagor (referred to as "Applicant" therein), which Application includes the mortgage loan conditions attached thereto.

Articles: The Articles of Incorporation for Mortgagor dated June 12, 2007.

Assignment of Leases: The Assignment of Lessor's Interest in Leases of even date herewith executed by Mortgagor in favor of Mortgagee.

Bylaws: The Bylaws of Mortgagor, certified by the Secretary of Mortgagor as being the Bylaws currently in effect as of the date hereof.

Collateral: As defined in Paragraph 7.1 hereof.

Debt Service Coverage: The ratio, as determined by Mortgagee, of (a) Net Operating Income for the Property for the applicable twelve-month period being measured, to (b) the sum of (i) the annual debt service payments on the Loan for such twelve-month period, and (ii) the annual debt service payments (including principal and interest) on all other indebtedness secured by a lien on all or part of the Property for such twelve-month period.

Event of Default: As defined in Paragraph 6.1 hereof.

Fixtures: All fixtures (other than those included in the Personalty) located upon or within the Improvements or now or hereafter installed in, or used in connection with any of the Improvements, whether or not permanently affixed to the Land or the Improvements.

Hazardous Substances Agreement: The Hazardous Substances Remediation and Indemnification Agreement of even date herewith executed by Mortgagor in favor of Mortgagee.

Impositions: All real estate and personal property and other taxes and assessments, and any and all other charges, expenses, payments, claims, mechanics' or material suppliers' liens or assessments of any nature that at any time prior to or after the execution of the Loan Documents may be assessed, levied, imposed, or become a lien upon the Property or the rent or income received therefrom, or any use or occupancy thereof.

Impound Account: The account that Mortgagor may be required to maintain pursuant to Paragraph 3.4 hereof.

Improvements: All buildings and other improvements and appurtenances located on the Land, or at any time hereafter constructed or placed upon the Land and all additions to, modifications of and replacements thereof.

Indebtedness: The indebtedness evidenced by the Note (including, without limitation, any Prepayment Premium, Breakage Fee and/or other prepayment charges due thereunder) and all other amounts due from Mortgagor to Mortgagee evidenced or secured by the Loan Documents, plus interest on all such amounts as provided in the Loan Documents.

Inventory: The personal property inventory attached hereto as Exhibit B.

Land Use Certification: The Land Use Certification of even date herewith executed by Mortgagor in favor of Mortgagee.

Laws and Restrictions: All laws, regulations, orders, codes, ordinances, rules, statutes and policies, restrictive covenants and other title encumbrances, permits and approvals, leases and other rental agreements, relating to the development, occupancy, ownership, management, use, and/or operation of the Property or otherwise affecting the Property or Mortgagor.

Leases: Any and all leasehold interests now or hereafter affecting or covering any part of the Property.

Loan: The loan from Mortgagee to Mortgagor evidenced by the Note.

Loan Documents: The Note, this Mortgage, the Application, the Assignment of Leases, the Land Use Certification, the Hazardous Substances Agreement and all other documents evidencing, securing or relating to the Loan, the payment of the Indebtedness or the performance of the Obligations.

Loan Parties: Any Mortgagor, any guarantor, any general partner of any Mortgagor, managing member of any Mortgagor.

Loan to Value Ratio: The ratio, as reasonably determined by Mortgagee, of (i) the aggregate principal balance, together with all accrued but unpaid interest, of all encumbrances against the Property, to (ii) the fair market value of the Property, as determined by Mortgagee.

Major Lease(s): Means, the Leases with the Major Tenants.

Major Tenant(s): Means, Publix Alabama, LLC, an Alabama limited liability company, and Academy, Ltd., a Texas limited partnership, and any tenant occupying in excess of thirty-five thousand (35,000) square feet of the Improvements.

Material Adverse Change: Any material and adverse change in (i) the financial condition of any of the Loan Parties which reasonably could be expected to cause Mortgagor to be unable to

meet its financial obligations under the Loan, or (ii) the condition or operation of the Property which reasonably causes the security of Mortgage for the Loan to be impaired.

Net Operating Income: For the applicable twelve-month period being measured, gross income from operations of the Property derived from arm's length, market rate rents from Leases with unaffiliated third parties, service fees or charges, and additional rent resulting from operating expense, common area maintenance and tax escalation pass through provisions (excluding capital gains income derived from the sale of assets and other items of income which Mortgagee reasonably determines are unlikely to occur in any subsequent period) for such period, less operating expenses (such as cleaning, utilities, administrative, landscaping, security and management expenses, repairs and maintenance and reserves for replacements) and less fixed expenses (such as insurance, real estate and other taxes (on a fully-assessed basis after transfer of the Property)) for such period, assuming, for each of the foregoing categories of expenses, for any period during which ninety-five percent (95%) of the net rentable area of the Property is not leased and occupied, a ninety-five percent (95%) occupancy level, which expenses shall be related to the Property, shall be for services from arm's length third party transactions or equivalent to the same, and shall exclude all expenses for capital improvements and replacements, debt service and depreciation or amortization of capital expenditures and other similar noncash items. Gross income shall not be anticipated for any greater period than that approved by customary and sound cash-basis accounting principles, nor shall operating expenses be prepaid. Gross income shall be reduced by such amounts as Mortgagee reasonably determines are unlikely to recur in a subsequent period.

Note: The Promissory Note of even date herewith executed by Mortgagor in the original principal amount of Ten Million Sixty Thousand Five Hundred Dollars (\$10,060,500.00), payable to Mortgagee or its order, and all modifications, renewals or extensions thereof.

Obligations: Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Mortgagor to Mortgagee as provided in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Mortgagor to any other Person relating to the Property.

Partial Lien Release: The partial release of the lien of this Mortgage with respect to one or more of the Release Parcels to be made in compliance with Section 9.30 of this Mortgage.

Permitted Exceptions: All of those title exceptions set forth in the title insurance policy in favor of the Mortgagee that insures the priority of this Mortgage.

Person: Any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

Personalty: Mortgagor's right, title and interest in all personal property (other than Fixtures) now or hereafter located in, upon or about or collected or used in connection with the Property, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor, and the cash and noncash Proceeds and Products thereof, including, without limitation, all Goods, Equipment, furniture, fixtures and furnishings (including, without limitation, all appliances, satellite television equipment, light fixtures, drapes and window

coverings, floor coverings, laundry equipment, and office equipment), all property listed in the Inventory, the Impound Account, the Agreements, all drawings, plans and specifications, and all Accounts, Deposit Accounts, Contract Rights and General Intangibles (including any insurance proceeds and condemnation awards or compensation), Payment Intangibles and Letter of Credit Rights arising out of or incident to the ownership, development or operation of the Property owned by or in which Mortgagor has an interest. The terms "Accounts", "Deposit Account", "Equipment", "fixture", "General Intangible", "Goods", "Inventory", "Letter-of-Credit Right", "Payment Intangible", "Proceeds and Products" have the respective meanings ascribed thereto in Article 9 of the Alabama Uniform Commercial Code. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Alabama Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

Principal Party(ies): As defined in Paragraph 6.1.B hereof.

Property: As defined in the above Granting paragraph of this Mortgage.

Receiver: Any trustee, receiver, custodian, fiscal agent, liquidator or similar officer.

Release Parcel or Release Parcels: That certain real property located in the County of Shelby, State of Alabama, and more particularly described in Exhibit C attached hereto and incorporated herein by this reference.

Remaining Property. Any portion of the Property that remains subject to the lien of the Mortgage following a Partial Lien Release.

Rents and Proceeds: All rents, royalties, revenues, issues, profits, security deposits, termination payments, proceeds and other income from the Property.

Secondary Interest Rate: As defined in the Note.

Transfer: As defined in Paragraph 4.2 hereof.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Mortgagor hereby represents and warrants to Mortgagee that as of the date of this Mortgage and as of the date of any subsequent disbursement pursuant to the Loan Documents:

2.1 Title, Authorization and Organization. Mortgagor (i) is the lawful owner of the Property and holds good and marketable title to the Property free and clear of all defects, liens, encumbrances, easements, exceptions and assessments, except the Permitted Exceptions; (ii) has the power and authority to grant the Property as provided in and by this Mortgage and to own and operate the Property; (iii) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business in the State in which the Land is located; and (iv) is in compliance with all Laws and Restrictions.

2.2 Validity of Loan Documents. The execution, delivery and performance by Mortgagor of the Loan Documents and the borrowings evidenced by the Note (i) are within the power of Mortgagor, (ii) have been authorized by all requisite action and (iii) will not violate any Laws and Restrictions or any agreement or other instrument.

2.3 Financial Statements and Other Information. All financial statements and other reports, papers, data and information given to Mortgagee with respect to the Property any Loan Party or the Mortgagor are true, accurate, complete and correct in all material respects and except as expressly noted to the contrary therein, have been prepared in accordance with customary and sound cash-basis accounting principles consistently applied throughout the periods covered thereby. There has been no Material Adverse Change since the date of the most recent financial statement given to Mortgagee.

2.4 Litigation. There is not now pending against or affecting any Loan Party, Mortgagor or the Property, nor to the best of Mortgagor's knowledge is there threatened, any action, suit or proceeding that might result in a Material Adverse Change.

2.5 Additional Representations and Warranties. (i) The Property is not used principally or primarily for agricultural or grazing purposes; (ii) all costs for labor and materials for the construction of the Improvements have been paid in full; (iii) Mortgagor is not aware of any assessment for public improvements which is pending and which could become a lien upon the Property; (iv) no event has occurred which with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents; (v) Mortgagor is not in default under any material agreement or instrument to which it is a party which default would have a material and adverse effect on the Property or Mortgagor's ability to timely perform the Obligations; (vi) neither the Property, nor any part thereof, has sustained, incurred or suffered any material damage or destruction; and (vii) subject to the Permitted Exceptions, the Personalty and the Fixtures are owned by Mortgagor free and clear of any liens, encumbrances, mortgages, security interests, claims and rights of others; (viii) the Property and the current use thereof complies with all Laws and Restrictions; (ix) Mortgagor has received no notices of violations of any Laws and Restrictions; (x) Mortgagor has not received any notice of any violation with respect to, and to Mortgagor's knowledge the Improvements are in material compliance with, The Americans With Disabilities Act of 1990 (42 U.S.C. §§12101-12213), including, without limitation, Title III thereof; (xi) Mortgagor has not received any notice of any violation with respect to, and to Mortgagor's knowledge the Improvements are in material compliance with, the Fair Housing Amendments Act of 1988 (42 U.S.C. §3610 et seq.), as amended, and the rules and regulations implementing such legislation; and (xii) the Land and Improvements are not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law (collectively, the "**Flood Acts**") or, if located within any such area, Mortgagor has and will maintain the insurance prescribed in Section 3.2 below.

2.6 Bankruptcy. No petition in bankruptcy, petition or answer seeking assignment for the benefit of creditors or appointment of a Receiver or similar proceeding with respect to any Principal Party has occurred or is contemplated.

2.7 FIRPTA Certification. Mortgagor declares and certifies, under penalty of perjury, that: (i) Mortgagor's U.S. Taxpayer I.D. Number is 26-0339650; (ii) the business address of Mortgagor is 1225 17th Street, Suite 2750, Denver, Colorado 80202; (iii) Mortgagor is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended (the "Code"); and (iv) Mortgagor understands that the information and certification contained in this Paragraph 2.7 may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Mortgagor agrees to provide Mortgagee with a new certification containing the provisions of this Paragraph 2.7 immediately upon any change in such information.

2.8 Illegal Activity. No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity and, to the best of Mortgagor's knowledge, there are no illegal activities at or on the Property.

2.9 Executive Order 13224. Mortgagor and all persons or entities holding any legal or beneficial interest whatsoever in Mortgagor are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

2.10 Property as Single Asset. That (i) Mortgagor's only asset is the Property, and (ii) the Property generates substantially all of the gross income of Mortgagor and there is no substantial business being conducted by Mortgagor other than the business of operating the Property and the activities incidental thereto.

ARTICLE 3 AFFIRMATIVE COVENANTS

Mortgagor hereby covenants and agrees as follows:

3.1 Obligations of Mortgagor. Mortgagor will timely perform, or cause to be timely performed, all the Obligations.

3.2 Insurance.

A. Property and Time Element Insurance. Mortgagor shall keep the Property insured for the benefit of Mortgagor and Mortgagee (with Mortgagee named as mortgagee) by (i) an "all risk" property insurance policy with an agreed amount or replacement endorsement for full replacement cost (defined below) without any coinsurance provisions or penalties, or the broadest form of coverage available, in an amount sufficient to prevent Mortgagee from ever becoming a coinsurer under the policy or

Laws, and with a deductible not to exceed Twenty-Five Thousand Dollars (\$25,000.00); (ii) a policy or endorsement insuring against acts of terrorism, so long as such policy or endorsement remains available at rates which are no more than twice Mortgagor's cost for such endorsement as of the date hereof; (iii) a policy or endorsement insuring against claims applicable to the presence of Microbial Matter (as defined in the Hazardous Substances Agreement), so long as such endorsement remains available at rates which are no more than twice Mortgagor's cost for such endorsement as of the date hereof; (iv) a policy or endorsement providing business income insurance (including business interruption insurance, extra expense insurance and rent insurance) on an actual loss sustained basis in an amount equal to at least one (1) year's total income from the Property including all rents plus all other pro forma annual income such as percentage rent and tenant reimbursements of fixed and operating expenses; (v) a policy or endorsement insuring against damage by flood if the Property is located in a Special Flood Hazard Area identified by the Federal Emergency Management Agency or any successor or related government agency as a 100 year flood plain currently classified as Flood Insurance Rate Map Zones "A", "AO", "AH", "A1-A30", "AE", "A99", "V", "V1-V30", and "VE", under which flood insurance has been made available under the Flood Acts, in an amount equal to the lesser of (1) the original amount of the Note or (2) the maximum limit of coverage available for the Property under the Flood Acts; (vi) a policy or endorsement covering against damage or loss from (A) sprinkler system leakage and (B) boilers, boiler tanks, HVAC systems, heating and air-conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, in the amount reasonably required by Mortgagee; (vii) during the period of any construction, repair, restoration, or replacement of the Property, a standard builder's risk policy with extended coverage in an amount at least equal to the full replacement cost of such Property; and (viii) a policy or endorsement covering against damage or loss by earthquake and other natural phenomenon in the amounts reasonably required by Mortgagee. **"Full replacement cost"** shall mean the one hundred percent (100%) replacement cost of the Property, without allowance for depreciation and exclusive of the cost of excavations, foundations, footings, and value of land, and shall be subject to verification by Mortgagee. Full replacement cost will be determined, at Mortgagor's expense, periodically (but at least once per year) by Mortgagor using industry standard practices (**"Mortgagor's Calculation"**). Mortgagor shall deliver Mortgagor's Calculation to Mortgagee within fifteen (15) days of final calculation. Notwithstanding the foregoing, in the event Mortgagee reasonably believes that Mortgagor's Calculation does not accurately reflect the full replacement cost, Mortgagee shall have the right, at Mortgagor's sole cost and expense, to have the full replacement cost calculated by an insurance company, appraiser, engineer, architect or contractor (**"Mortgagee's Calculation"**), in which case, Mortgagee's Calculation shall be binding.

B. Liability and Other Insurance. Mortgagor shall maintain commercial general liability insurance with per occurrence limits of \$1,000,000, a products/completed operations limit of \$2,000,000, and a general aggregate limit of \$2,000,000, with an excess/umbrella liability policy of not less than \$10,000,000 per occurrence and annual aggregate covering Mortgagor, with Mortgagee named as an additional insured, against claims for bodily injury or death or property damage occurring in, upon, or about the



Property or any street, drive, sidewalk, curb, or passageway adjacent thereto. In addition to any other requirements, such commercial general liability and excess/umbrella liability insurance shall provide insurance against acts of terrorism and against claims applicable to the presence of Microbial Matter, or such coverages shall be provided by separate policies or endorsements, so long as such coverages remain available at rates which are no more than twice Mortgagor's cost for such coverages as of the date hereof. The insurance policies shall also include operations and blanket contractual liability coverage which insures contractual liability under the indemnifications set forth in Section 9.19 below (but such coverage or the amount thereof shall in no way limit such indemnifications). Upon request, Mortgagor shall also carry additional insurance or additional amounts of insurance covering Mortgagor or the Property as Mortgagee shall reasonably require, provided such other coverage or limits are customarily required by institutional lenders for comparable properties in the State of Alabama and available at commercially reasonable rates.

C. Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, endorsements, and expiration dates as Mortgagee shall reasonably require. Mortgagee may obtain such coverage under a master insurance policy covering multiple properties provided comparable coverage is obtained for the Property as required hereunder. The policies shall be issued by insurance companies authorized to do business in the state in which the Property is located, approved by Mortgagee, and must have and maintain a current financial strength rating of "A-, VIII" (or higher) from A.M. Best or equivalent (or if a rating by A.M. Best is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) include a standard mortgagee clause, without contribution, in the name of Mortgagee, (ii) provide that they shall not be canceled without at least thirty (30) days' prior written notice to Mortgagee except in the event of cancellation for non-payment of premium, in which case only ten (10) days' prior written notice will be given to Mortgagee, and (iii) include a waiver of subrogation clause substantially equivalent to the following: "The Company may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Company, but the Company shall not acquire any rights of recovery which the Insured has expressly waived prior to loss, nor shall such waiver affect the Insured's rights under this policy". Mortgagor shall (i) provide Mortgagee at least thirty (30) days prior written notice of any amendment or material alteration (including any reduction in the scope or limits of coverage) to any policy of insurance required to be maintained by Mortgagor under this Section, and (ii) use commercially reasonable efforts to cause each insurance company issuing the policies of insurance maintained by Mortgagor under this Section to perform the same.

D. Insurance Certificates. Mortgagor shall deliver to Mortgagee (i) ACORD 27 and ACORD 25-S certificates (or equivalent certificates) evidencing that all policies of insurance required under this Section are in full force and effect (collectively, the "Certificates") and (ii) receipts evidencing payment of all premiums on such policies at least thirty (30) days prior to their expiration. If the Certificates do not provide sufficient information to determine whether Mortgagor is maintaining the requisite amount of

insurance required to be maintained by Mortgagor under this Section, as reasonably determined by Mortgagee, Mortgagee shall have the right to request original or certified copies of all policies (and renewals) required under this Section.

E. General Provisions. Mortgagor shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Mortgagee as per this Section and approved by Mortgagee in all respects. In the event of foreclosure of this Instrument or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Mortgagor in and to all proceeds payable under all policies of insurance then in force regarding the Property and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property. No approval by Mortgagee of any insurer shall be construed to be a representation, certification, or warranty of its solvency. No approval by Mortgagee as to the amount, type, or form of any insurance shall be construed to be a representation, certification, or warranty of its sufficiency. Mortgagor shall comply with all insurance requirements and shall not cause or permit any condition to exist which would be prohibited by any insurance requirement or would invalidate the insurance coverage on the Property.

F. Waiver of Subrogation. A waiver of subrogation shall be obtained by Mortgagor from its insurers and, consequently, Mortgagor for itself, and on behalf of its insurers, hereby waives and releases any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for any loss of or damage to Mortgagor, other Persons, the Property, Mortgagor's property or the property of other Persons from any cause required to be insured against by the provisions of this Instrument or otherwise insured against by Mortgagor.

3.3 Maintenance, Waste and Repair. Mortgagor will (i) maintain the Property in good order and condition; (ii) promptly make all necessary structural and non-structural repairs to the Property; (iii) not diminish or materially alter the Improvements, nor erect any new buildings, structures or building additions on the Land, without the prior written consent of Mortgagee; (iv) not remove or permit to be removed any of the Fixtures or Personalty from the Property without the prior written consent of Mortgagee unless replaced by articles of equal suitability and value owned by Mortgagor free and clear of any lien or security interest; and (v) not permit any waste of the Property or make any change in the use thereof, nor do or permit to be done thereon anything, that may in any way impair the security of this Mortgage.

3.4 Impositions; Impounds. Mortgagor will pay when due all Impositions. Mortgagor will deliver to Mortgagee, within seven (7) days after demand therefor, receipts showing the payment of any Impositions. Upon an Event of Default, Mortgagor will pay monthly to Mortgagee an amount equal to one-twelfth (1/12th) of the annual cost of Impositions together with an amount equal to the estimated next premiums for hazard and other required insurance. These funds will be held by Mortgagee without interest and will be released to Mortgagor for payment of Impositions and insurance premiums, or directly applied to such costs by Mortgagee, as Mortgagee may elect.

3.5 Compliance with Law. Mortgagor will promptly and faithfully comply with all present and future Laws and Restrictions.

3.6 Records, Reports, and Audits.

A. Records and Reports. Mortgagor shall maintain complete and accurate books and records with respect to all operations of or transactions involving the Property in accordance with customary and sound cash-basis accounting principles consistently applied. Annually, Mortgagor shall furnish Mortgagee financial statements for the most current fiscal year (including a schedule of all related Obligations and contingent liabilities) for (i) Mortgagor, (ii) any general partner(s) of Mortgagor and any general partners of such partners, (iii) any guarantors or sureties of the Note, and (iv) any Major Tenants, to the extent available through commercially reasonable efforts by Mortgagor. Annually, Mortgagor shall furnish Mortgagee (i) operating statements showing cash flow and capital expenditures for the Property including income and expenses (before and after Obligations service), major capital improvements, a schedule showing tenant sales and percentage rent for retail properties where sales are reported, and the average daily rate and average daily occupancy for hotel properties; (ii) copies of paid tax receipts for the Property; (iii) a certified rent roll including security deposits held, the expiration of the terms of the Leases, and identification and explanation of any Tenants in default; (iv) a budget showing projected income and expenses (before and after Obligations service) for the next twelve (12) month budget period; (v) upon Mortgagee's written request, any appraisals of the Property performed during the previous year, and (vi) upon Mortgagee's request, (A) a schedule showing Mortgagor's tax basis in the Property, (B) the distribution of economic interests in the Property, and (C) copies of any other Loan Documents affecting the Property.

B. Delivery of Reports. All of the reports, statements, and items required under this Paragraph shall be (i) certified as being true, correct, and accurate by an authorized person, partner, or officer of the delivering party or, at the deliverer's option, audited by a Certified Public Accountant; (ii) satisfactory to Mortgagee in form and substance; and (iii) delivered within one hundred twenty (120) days after the end of Mortgagor's fiscal year for annual reports. If any one report, statement, or item is not received by Mortgagee on its due date, a late fee of Two Hundred and No/100 Dollars (\$200.00) per month shall be due and payable by Mortgagor. If any one report, statement, or item is not received within thirty (30) days after written notice by Mortgagee to Mortgagor that such report was not received, Mortgagee may immediately declare an Event of Default under the Loan Documents. Mortgagor shall (i) provide Mortgagee with such additional financial, management, or other information regarding Mortgagor, any general partner of Mortgagor, or the Property, as Mortgagee may reasonably request and (ii) upon Mortgagee's request, deliver all items required by Section 3.6 in an electronic format (i.e. on computer disks) or by electronic transmission acceptable to Mortgagee.

C. Inspection of Records. Mortgagor shall allow Mortgagee or any person designated by Mortgagee to examine, audit, and make copies of all such books and records and all supporting data at the place where these items are located at all reasonable

times after reasonable advance notice; provided that no notice shall be required after any default under the Loan Documents which remains uncured after any applicable cure period. Mortgagor shall assist Mortgagee in effecting such examination. Upon five (5) days' prior notice, Mortgagee may inspect and make copies of Mortgagor's or any general partner of Mortgagor's income tax returns with respect to the Property for the purpose of verifying any items referenced in this Section. If an audit discloses a variance of five percent (5%) or more in income or expenses, the cost of such audit shall be paid by Mortgagor.

3.7 Further Assurances. Mortgagor, at any time upon the reasonable request of Mortgagee, will at Mortgagor's expense, execute, acknowledge and deliver all such additional papers and instruments (including, without limitation, a declaration of no setoff) and perform all such further acts as may be reasonably necessary to perform the Obligations and, as Mortgagee deems necessary, to preserve the priority of the lien of this Mortgage and to carry out the purposes of the Loan Documents.

3.8 Litigation. Mortgagor will promptly give notice in writing to Mortgagee of any litigation or other event or occurrence which might result in a Material Adverse Change.

3.9 Inspection of Property. Mortgagor hereby grants to Mortgagee, its agents, employees, consultants and contractors, the right to enter upon the Property upon reasonable advance notice and during normal business hours (except in the case of an emergency) for the purpose of making any and all inspections, reports, tests, inquiries and reviews as Mortgagee (in its sole and absolute discretion) deems reasonably necessary to assess the then current condition of the Property, or for the purpose of performing any of the other acts Mortgagee is authorized to perform hereunder or under the Hazardous Substances Agreement. Mortgagor shall cooperate with Mortgagee to facilitate such entry and the accomplishment of such purposes. Mortgagor shall pay all costs, fees and expenses (including those of Mortgagee's legal counsel and consultants) incurred by Mortgagee with respect to such inspections, reports, tests, inquiries and reviews which are obtained (i) from time to time, not to exceed one time during each twelve (12) consecutive month period during the term of the Loan, whether or not there exists an Event of Default under any of the Loan Documents, (ii) at any time after the occurrence of an Event of Default under any of the Loan Documents or under the Mortgage, (iii) at any time Mortgagee becomes aware of the occurrence of an event on or near the Property which could have a material adverse effect on the condition of any portion of the Property, or (iv) at any time Mortgagee believes that any report it has received concerning the Property is materially inaccurate upon demand, with such costs, fees and expenses accruing interest at the Secondary Interest Rate until paid, and secured by this Mortgage.

3.10 Contest. Notwithstanding the provisions of Paragraphs 3.4 and 3.5, Mortgagor may, at its expense, contest the validity or application of any Impositions or Laws and Restrictions by appropriate legal proceedings promptly initiated and diligently conducted in good faith, provided that (i) Mortgagee is reasonably satisfied that the priority of this Mortgage shall be maintained and neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Mortgagor shall have posted a bond or furnished such other security as may be reasonably required from time to time by Mortgagee.

3.11 Additional Information. Mortgagor will furnish to Mortgagee, within seven (7) days after written request therefor, any and all information, to the extent in Mortgagor's possession, that Mortgagee may reasonably request concerning the Property or the performance by Mortgagor of the Obligations.

3.12 Prepayment. Mortgagor may prepay the Loan only on the terms and conditions set forth in the Note and Mortgagor shall pay Mortgagee prepayment charges in respect of any prepayment, whether voluntary or involuntary, as required by and on the terms and conditions set forth in the Note.

3.13 FIRPTA Certificate. In the event of any transfer by Mortgagor of its rights hereunder or of any interest in the Property otherwise permitted under this Mortgage, such transferee shall, as an additional condition to such transfer, under penalty of perjury, execute and deliver to Mortgagee a certificate concerning the non-foreign status of Mortgagor substantially in the form of Paragraph 2.7 hereof. Nothing in this paragraph shall be deemed a modification or waiver of any other provision of any of the Loan Documents limiting, prohibiting or otherwise relating to any transfer of any interest in the Property or Mortgagor.

3.14 Tax Service Contract. On or before the closing of the Loan, at Mortgagor's sole expense, Mortgagee shall be furnished tax service contracts issued by a tax reporting agency satisfactory to Mortgagee, providing service throughout the Loan term.

3.15 Notice re Death or Incapacity of Loan Party. Mortgagor agrees to promptly notify Mortgagee in writing of the occurrence of the death or incapacity of any individual who constitutes a (i) Mortgagor, (ii) general partner or member of any Mortgagor or any guarantor, and/or (iii) Loan Party.

3.16 Compliance With Anti-Terrorism Regulations. Neither Mortgagor nor any persons holding any legal or beneficial interest whatsoever in Mortgagor shall at any time during the term of the Loan be described in, covered by or specially designated pursuant to or be affiliated with any person described in, covered by or specially designated pursuant to Executive Order 13224, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, Mortgagor hereby confirms that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an "**OFAC Violation**"), Mortgagor will immediately (i) give notice to Mortgagee of such OFAC Violation, and (ii) comply with all Laws applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the "**Anti-Terrorism Regulations**"), and Mortgagor hereby authorizes and consents to Mortgagee's taking any and all reasonable steps Mortgagee deems necessary, in its sole discretion, to comply with all Laws applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations.

Notwithstanding anything to the contrary in this Section 3.16, Mortgagor shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section 3.16 if Mortgagor timely complies with all requirements imposed by the foregoing sentence and all requirements of the Anti-Terrorism Regulations and all other applicable Laws relating to such OFAC Violation.

3.17 Mortgagor's Certificates. Within ten (10) days after Mortgagee's request, Mortgagor shall furnish a written certification to Mortgagee and any Investors (defined below) as to (a) the amount of the Obligations outstanding; (b) the interest rate, terms of payment, and maturity date of the Note; (c) the date to which payments have been paid under the Note; (d) whether any offsets or defenses exist against the Obligations and a detailed description of any listed; (e) whether all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications); (f) the date to which the Rents have been paid; (g) whether, to the best knowledge of Mortgagor, any defaults exist under the Leases and a detailed description of any listed; (h) the security deposit held by Mortgagor under each Lease and that such amount is the amount required under such Lease; (i) whether there are any defaults (or events which with the passage of time and/or notice would constitute a default) under the Loan Documents and a detailed description of any listed; (j) whether the Loan Documents are in full force and effect; and (k) any other matters reasonably requested by Mortgagee related to the Leases, the Obligations, the Property, or the Loan Documents. For all non-residential properties and promptly upon Mortgagee's request, Mortgagor shall use its best efforts to deliver a written certification to Mortgagee and Investors from all Major Tenants specified by Mortgagee that: (a) their Leases are in full force and effect; (b) there are no defaults (or events which with the passage of time and/or notice would constitute a default) under their Leases and a detailed description of any listed; (c) none of the Rents have been paid more than one month in advance; (d) there are no offsets or defenses against the Rents and a detailed description of any listed; and (e) any other matters reasonably requested by Mortgagee related to the Leases; provided, however, that Mortgagor shall not have to pay money to a Major Tenant to obtain such certification. In addition to the Major Tenant certifications, Landlord shall execute a landlord's certification for all non-Major Tenants and all certifications it cannot obtain from any Major Tenant.

3.18 Compliance with Property as Single Asset. Mortgagor hereby covenants and agrees that (i) during the term of the Loan, Mortgagor shall not own any assets in addition to the Property, (ii) the Property shall remain as a single property or project, and (iii) during the term of the Loan, the Property shall generate substantially all of the gross income of Mortgagor and there shall be no substantial business being conducted by Mortgagor other than the business of operating the Property and the activities incidental thereto.

ARTICLE 4 NEGATIVE COVENANTS

Mortgagor hereby covenants to and agrees as follows:

4.1 Restrictive Uses. Mortgagor will not initiate, join in, or consent to any change in the current use of the Property or in any zoning ordinance, private restrictive covenant, assessment proceedings or other public or private restriction limiting or restricting the uses that may be made



of the Property or any part thereof or in any way change the boundaries of the Property (except in strict compliance with the provisions of Section 9.30 hereof) without the prior written consent of Mortgagee.

4.2 Prohibited Transfers. It shall be an Event of Default and, at the sole option of Mortgagee, Mortgagee may accelerate the Indebtedness and the entire Indebtedness (including any Prepayment Premium) shall become immediately due and payable, if, without Mortgagee's prior written consent (which may be withheld for any or no reason, including the possibility of an ERISA violation or the proposed transferee's failure to agree in writing to Mortgagee increasing the interest payable on the Indebtedness to any rate, changing any other terms (including maturity) of the Indebtedness or Loan Documents, or requiring the payment of a transfer fee) any of the following shall occur (a "Transfer"):

1. Mortgagor shall sell, convey, assign, transfer, dispose of or be divested of its title to, convey security title to the Property, mortgage, encumber or cause to be encumbered (except for the imposition of mechanics' or materialmen's liens) the Property or any interest therein, in any manner or way, whether voluntary or involuntary; or
2. in the event of any merger, consolidation, sale, transfer, assignment, or dissolution involving all or substantially all of the assets of Mortgagor or any managing general partner or managing member of the original Mortgagor; or
3. in the event of the assignment, transfer, pledge, voluntary or involuntary sale, or encumbrance (or any of the foregoing at one time or over any period of time) of:
 - (i) twenty percent (20%) or more of (1) the ownership interest of Mortgagor, regardless of the type or form of entity of Mortgagor, (2) the voting stock or ownership interest of any corporation or limited liability company which is, respectively, general partner or managing member of Mortgagor or any corporation or limited liability company directly or indirectly owning twenty percent (20%) or more of any such corporation or limited liability company, (3) the ownership interests of any owner of twenty percent (20%) or more of the beneficial interests of Mortgagor if Mortgagor is a trust; or
 - (ii) any general partnership interest in (1) Mortgagor, (2) a partnership which is in Mortgagor's chain of ownership and which is derivatively liable for the obligations of Mortgagor, or (3) any general partner who has the right to participate directly or indirectly in the control of the management or operations of Mortgagor; or
4. in the event of the conversion of any general partnership interest in Mortgagor to a limited partnership interest; or

5. in the event of any change, removal, or resignation of any general partner of Mortgagor; or
6. in the event of any change, removal, addition or resignation of a managing member (or if no managing member, any member) if Mortgagor is a limited liability company; or
7. Mortgagor shall obtain any unsecured debt except for customary and reasonable short-term trade payables obtained and repaid in the ordinary course of Mortgagor's business.

The provisions set forth above shall not apply to transfers under any will or applicable law of descent. Any permitted transferee (including, without limitation, a transferee permitted below) shall, as a condition of the effectiveness of any consent or waiver by Mortgagee hereunder, assume all of Mortgagor's obligations under the Loan Documents and the Hazardous Substances Agreement and agree to be bound thereby. Such assumption shall not, however, release Mortgagor from any liability under the Loan Documents or the Hazardous Substances Agreement. Consent to any such Transfer by Mortgagee shall not be deemed a waiver of Mortgagee's right to require such consent to any further or future Transfers.

Notwithstanding the foregoing, commencing twenty-four (24) months subsequent to the date of this Mortgage, if no Event of Default or event which with the passage of time or the giving of notice or both would constitute an Event of Default has occurred, Mortgagee agrees, upon thirty (30) days prior written request, to consent to two transfers of the entire Property if (i) the proposed transferee of the Property is a Person which, in the judgment of Mortgagee, has financial capability and creditworthiness, reputation and experience in the ownership, operation, management and leasing of similar properties, equal to or greater than Mortgagor and the Mortgagor's principals, it being understood, without limiting the foregoing, that the proposed transferee shall not be acceptable if (x) upon assumption of the Loan, such transferee's, its affiliates', or related entities' credit obligations shall exceed Mortgagee's individual or related borrower limits established by Mortgagee from time to time in its sole discretion or (y) the proposed transferee is related to Mortgagee or advised by Mortgagee or any affiliate of Mortgagee; (ii) at the time of Transfer the Loan to Value Ratio does not exceed forty percent (40%); (iii) Mortgagor pays to Mortgagee a non-refundable service fee (as specified by Mortgagee) at the time of such request and (A) an additional fee equal to one-half of one percent (0.5%) of the then outstanding principal balance of the Loan at the time of the first such Transfer, less the amount of the non-refundable servicing fee paid to Lender and (B) an additional fee equal to one percent (1.0%) of the then outstanding principal balance of the Loan at the time of the second such Transfer, less the amount of the non-refundable servicing fee paid to Lender; (iv) at Mortgagee's option, Mortgagee has received an endorsement to Mortgagee's title policy at Mortgagor's expense, which endorsement states that this Mortgage remains a first and prior lien against the Property; (v) Debt Service Coverage is at least 2.8 to 1.00 for the preceding twelve (12) month period and Mortgagee receives satisfactory evidence that such Debt Service Coverage will be maintained for the next succeeding twelve (12) months; (vi) the transferee expressly assumes all the obligations under the Loan Documents, the Obligations, and the obligations under the Hazardous Substances Agreement and executes any documents reasonably required by

Mortgagee, and all such documents are satisfactory in form and substance to Mortgagee and a recourse guarantor, satisfactory to Mortgagee in all respects, executes and delivers a guaranty and indemnities (in form and substance satisfactory to Mortgagee) guaranteeing the recourse carve-outs under the Note and the obligations of Mortgagor under Section 9.18 and Section 9.19 of the Mortgage and under the Hazardous Substances Agreement is provided to Mortgagee; (vii) Mortgagee reasonably approves the form and content of all transfer documents and Mortgagee is furnished with a certified copy of the recorded transfer documents; (viii) the proposed transferee complies with and delivers the ERISA certification and indemnification agreements required under Paragraph 9.18 hereof; (ix) Mortgagor shall provide Mortgagee a copy of (A) the purchase and sale agreement (and all amendments thereto) ("**Purchase and Sale Agreement**") for the Property at the earlier of the date of the transfer request or within five (5) days of the execution the Purchase and Sale Agreement, (B) all amendments to the Purchase and Sale Agreement after delivery of the same to Mortgagee, and (C) a fully executed closing statement upon the closing of the transfer; (x) the transferee under the Purchase and Sale Agreement (the "**Transferee**") shall sign and deliver to Mortgagee it's current credit certification at the time of Mortgagee's request, which shall include a representation that the Transferee and all persons or entities holding any legal or beneficial interest whatsoever in the transferee are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended from time to time; and (xi) Mortgagor or the transferee pays all reasonable fees, costs and expenses incurred by Mortgagee in connection with such proposed Transfer, including, without limitation, all legal fees and disbursements (both for outside counsel and Mortgagee's staff attorneys), accounting, title insurance, documentary stamp or transfer taxes, intangible taxes, mortgage taxes, recording fees, and appraisal fees, whether or not such Transfer is actually consummated.

4.3 No Cooperative or Condominium. Mortgagor shall not operate the Property or permit the Property to be operated as a cooperative or condominium or otherwise such that the tenants or occupants participate in ownership, control, or management of the Property.

4.4 Organizational Documents. Mortgagor will not terminate, alter, modify or amend or permit the termination, alteration, modification or amendment of its Articles or Bylaws without Mortgagee's prior written consent, except for changes in officers and such other changes required for internal governance of Mortgagor which do not materially alter the organization of Mortgagor or its ability to perform its obligations under the Loan.

ARTICLE 5 CASUALTIES AND CONDEMNATION

5.1 Insurance and Condemnation Proceeds.

A. Mortgagor shall notify Mortgagee in writing immediately upon the occurrence of any loss or damage by fire or other casualty to the Property or upon obtaining knowledge of the commencement of any proceedings for condemnation of any portion of the Property. Mortgagee shall be entitled to (i) participate in any such condemnation proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments

reasonably necessary to permit such participation, and (ii) settle and adjust all insurance claims relative to any such damage or destruction, deducting from any insurance proceeds the amount of all expenses incurred by Mortgagee in connection with any such settlement or adjustment. Notwithstanding anything to the contrary contained in any insurance policies, all proceeds paid to Mortgagor under any insurance policies required to be maintained by Mortgagor pursuant to Paragraph 3.2 or otherwise relating to the Property and any insurance proceeds received by Mortgagor under insurance policies maintained by tenants pursuant to a lease obligation shall immediately be delivered to Mortgagee. All condemnation proceeds from the Property are hereby assigned to and shall be paid to the Mortgagee and the cost of any legal representation of Mortgagee in any such condemnation proceedings shall be borne by Mortgagor.

B. If Mortgagee elects or is required to make insurance proceeds or condemnation awards available for repair or reconstruction, Mortgagee shall, through a disbursement procedure established by Mortgagee, make available to Mortgagor the net amount of all insurance proceeds or condemnation awards received by Mortgagee after deduction of Mortgagee's reasonable costs and expenses, if any, in collection of the same (the "**Net Proceeds**"). Mortgagee shall make the Net Proceeds available to Mortgagor for repair or reconstruction provided that (i) there shall then be no Event of Default, or event which with the passage of time or the giving of notice or both would constitute an Event of Default, under any Loan Document; (ii) Mortgagee shall be satisfied that (a) the Property can and will be repaired or reconstructed within 12 months to the condition of the Property immediately prior to the damage, destruction or condemnation in accordance with plans and specifications approved by Mortgagee and (b) no Major Leases are terminated or terminable as a result of such damage or destruction and the other Leases which are terminated or terminable as a result of such damage, destruction or condemnation cover an aggregate rentable square footage of less than ten percent (10%) of the balance total rentable square footage contained in the Property at the closing of the Loan; (iii) Mortgagor shall have entered into a general construction contract acceptable in all respects to the Mortgagee for completion of the repair or reconstruction, which contract must include provision for retainage of not less than ten percent (10%) until full completion of the repair or reconstruction and a final completion date which is at least 24 months prior to the maturity of the Loan, and (iv) in Mortgagee's reasonable judgment, the security for the Loan has not been materially impaired as a result of such damage, destruction or condemnation. In the event Mortgagee elects not, or is not required, to make the Net Proceeds available for repair or reconstruction, Mortgagee, at its sole option, may apply the Net Proceeds in payment of the Indebtedness or in satisfaction of any other Obligation in such order as Mortgagee may determine. Notwithstanding any provision of this Mortgage to the contrary, under no circumstance shall the Mortgagee be obligated to make any portion of the Net Proceeds available for repair or reconstruction unless at the time of the request for any disbursement it has determined in its reasonable discretion that the repair or reconstruction can be completed at a cost (which cost shall include all payments coming due under the terms of the Loan) which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited with Mortgagee by Mortgagor.

C. The Net Proceeds and any additional funds deposited by Mortgagor with Mortgagee, plus any loss of rental income insurance proceeds which have been deposited with Mortgagee or which the carrier has acknowledged to be payable, shall constitute additional security for the Loan. Mortgagor shall execute, deliver, file and/or record, at its own expense, such documents and instruments as Mortgagee requires to grant to Mortgagee a perfected, first priority security interest in the Net Proceeds and such additional funds.

D. Notwithstanding the foregoing, in the event the insurance proceeds or condemnation awards are less than \$100,605.00, Mortgagor shall be entitled to handle and administer such proceeds and awards as long as the full amount thereof is used to restore the Property.

5.2 Additional Provisions Relating to Condemnation. Mortgagor, immediately upon obtaining knowledge of the commencement of any proceedings for the condemnation of the entire Property or any material part thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by Mortgagee to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings the Mortgagee may be represented by counsel selected by the Mortgagee, the cost of such counsel to be borne by Mortgagor. The proceeds of any award or compensation so received shall, at the option of Mortgagee but subject to release or disbursement to Mortgagor pursuant to Paragraph 5.1 above, either be applied to the prepayment of the Indebtedness or satisfaction of any Obligation or be paid over to the Mortgagor for restoration of the Improvements in accordance with the provisions of Paragraph 5.1.B.

ARTICLE 6 EVENTS OF DEFAULT AND REMEDIES OF MORTGAGEE

6.1 Events of Default.

A. It shall constitute an Event of Default hereunder if any of the following events shall occur and Mortgagee, by written notice delivered to Mortgagor, declares an Event of Default: (1) Mortgagor shall fail to pay within five (5) days of the date when due any part of the Indebtedness; (2) Mortgagor shall fail to timely observe, perform or discharge any Obligation, other than as described in Paragraphs 6.1.A.(1), (3), (4), (5), (6), (7), (8), and (9) and any such failure shall remain unremedied for thirty (30) days or such lesser period as may be otherwise specified in the applicable Loan Document or agreement (the "**Grace Period**") after notice to Mortgagor of the occurrence of such failure; provided, however, that Mortgagee may extend the Grace Period up to ninety (90) days if (a) Mortgagee determines in good faith that (i) such default cannot be cured within the Grace Period but can be cured within ninety (90) days, (ii) no lien or security interest created by the Loan Documents shall be impaired prior to the completion of such cure, and (iii) Mortgagee's immediate exercise of any remedies provided hereunder or by law

is not necessary for the protection or preservation of the Property or Mortgagee's security interest therein, and (b) Mortgagor shall immediately commence and diligently pursue the cure of such default; (3) Mortgagor, as lessor or sublessor, as the case may be, shall assign the Rents and Proceeds without first obtaining the written consent of Mortgagee; (4) default by Mortgagor after the expiration of all applicable grace or cure periods under any agreement to which Mortgagor is a party, other than the Loan Documents, which agreement relates to the borrowing of money by Mortgagor from any Person, and such default might give rise to a Material Adverse Change or adversely affect the security for the Loan; (5) any representation or warranty made by Mortgagor in, under or pursuant to the Loan Documents was false or misleading in any material respect as of the date on which such representation or warranty was made or deemed remade; (6) any of the Loan Documents shall cease to be in full force and effect or be declared null and void, or shall cease to constitute valid and subsisting liens and/or valid and perfected security interests in and to the Property, or Mortgagor shall contest or deny in writing that it has any further liability or obligation under any of the Loan Documents; (7) any declaration of an Event of Default pursuant to Section 6 of the Hazardous Substances Agreement; (8) the occurrence of a Material Adverse Change; or (9) the occurrence of a default under any guaranty of the Obligations.

B. It shall constitute an Event of Default hereunder without the requirement of any notice if any of the following events shall occur: (i) any Mortgagor, any other Loan Party, any general partner of any Loan Party which is a partnership, any parent company of any such general partner, any Person directly or indirectly owning 50% or more of the outstanding shares of any Loan Party which is a corporation and any parent company of such Person, any trustee or beneficiary with a beneficial interest of 50% or more in any Loan Party, any owner of the Property, or any guarantor of Mortgagor's obligations under the Loan Documents (each a "**Principal Party**," and collectively, the "**Principal Parties**") shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall have made a general assignment for the benefit of creditors; (ii) any Principal Party shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking to have an order for relief entered against it as debtor, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property (collectively, a "**Proceeding**"); (iii) any Principal Party shall take any action to authorize any of the actions set forth above in clauses (i) or (ii); (iv) any Proceeding shall be commenced against any Principal Party, and such Proceeding (a) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (b) remains undismissed for a period of forty-five (45) days; (v) any Principal Party shall liquidate, dissolve or otherwise terminate their corporate, limited liability company, partnership or other entity organizational structure without the prior written consent of Mortgagee; (vi) failure to comply with the provisions of Paragraph 3.2 hereof on or before the date fifteen (15) days prior to the expiration date of any policy furnished pursuant to the terms of the Loan Documents, and/or the lapse or expiration of any insurance policy or policies required to be obtained or maintained under the terms of the Loan Documents; or (vii) failure to

timely observe, perform or discharge any provision of Paragraph 4.2 hereof or the occurrence of a Transfer without Mortgagee's prior written consent.

6.2 Remedies.

A. Upon the occurrence of any Event of Default, Mortgagee may at any time declare all of the Indebtedness to be due and payable and the same shall thereupon become immediately due and payable, together with all payments due in accordance with the terms of the Note, without any further presentment, demand, protest or notice of any kind. Mortgagee may, in its sole discretion, also do any of the following: (1) in person, by agent, or by a Receiver, without regard to the adequacy of security, the solvency of Mortgagor or the condition of the Property, without obligation so to do and without notice to or demand upon Mortgagor, enter upon and take possession of the Property, or any part thereof, do any acts which Mortgagee deems necessary to preserve the value or marketability of the Property; sue for or otherwise collect the Rents and Proceeds, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses), against the Obligations, all in such order as Mortgagee may determine; appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Obligations, the security hereof or the rights or powers of Mortgagee; pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Mortgagee is prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses); (2) as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Property, apply ex parte to any court having jurisdiction to appoint a Receiver to enter upon and take possession of the Property, and Mortgagor hereby waives to the extent permitted by Law notice of any application therefor, provided a hearing to confirm such appointment with notice to Mortgagor is set within the time required by law (any such Receiver shall have all the powers and duties of Receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale, unless such Receivership is sooner terminated); (3) commence an action to foreclose this Mortgage in any manner provided hereunder or by law; and/or (4) with respect to any Personalty, proceed as to both the real and personal property in accordance with Mortgagee's rights and remedies in respect of the Land, or proceed to sell said Personalty separately and without regard to the Land in accordance with Mortgagee's rights and remedies as to personal property.

B. If Mortgagor shall at any time fail to perform or comply with any of the terms, covenants and conditions required on Mortgagor's part to be performed and complied with under any of the Loan Documents or any other agreement that, under the terms of this Mortgage, Mortgagor is required to perform, then Mortgagee may, in its sole discretion: (1) make any payments hereunder or thereunder payable by Mortgagor and

take out, pay for and maintain any of the insurance policies provided for herein or therein; and/or (2) after the expiration of any applicable grace period and subject to Mortgagor's rights to contest certain obligations specifically granted hereby, perform any such other acts thereunder on the part of Mortgagor to be performed and enter upon the Property for such purpose.

C. Upon the occurrence and during the continuance of an Event of Default which has not been waived by the Mortgagee in writing, the Mortgagee is hereby granted the right, if and to the extent permitted by law, to sell or cause to be sold at public auction the Property and to convey the same by the execution and delivery to the purchaser at such sale of good and sufficient deeds and instruments of conveyance in law, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the moneys due under the terms of this Mortgage, the costs and charges of such sale and also the reasonable attorneys' fees, if and to the extent required by law, rendering the surplus moneys (if any) to the Mortgagor.

D. In the event of a sale of the Property, or any part thereof, and the execution of a deed therefor, the recital therein of default, and of recording the notice of default and notice of sale, and of the elapse of the required time (if any) between the recording and the notice, and of the giving of notice of sale, and of a demand by Mortgagee, or its successors or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapse of time, and giving of such notice, and that the sale was regularly and validly made on due and proper demand by Mortgagee, its successors or assigns. Any such deed or deeds with such recitals therein shall be effective and conclusive against Mortgagor, its successors and assigns, and all other Persons. The receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money. Mortgagor hereby requests that a copy of any notice of default and of any notice of sale under this Mortgage be mailed to Mortgagor at the address of Mortgagor set forth in this Mortgage as required by applicable law.

E. All remedies of Mortgagee provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the other Loan Documents or by law, including any right of offset. The exercise of any right or remedy by Mortgagee hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Loan Documents, or invalidate any act done pursuant to any notice of default, or prejudice Mortgagee in the exercise of any of its rights hereunder or under the Loan Documents.

F. All sums expended by Mortgagee in the exercise of any of their rights or remedies under this Mortgage, and all reasonable costs and expenses incurred in connection therewith shall (i) be immediately due and payable on demand, (ii) accrue interest at the Secondary Interest Rate from the date of expenditure by Mortgagee, and (iii) be added to the Indebtedness and secured by the Loan Documents prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage.

ARTICLE 7
SECURITY AGREEMENT AND FIXTURE FILING

7.1 Grant of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in and to all Mortgagor's right, title and interest now owned or hereafter acquired in and to the Personalty and the Fixtures (collectively, the "**Collateral**") and all Proceeds (as defined in the Alabama Uniform Commercial Code) thereof, to secure payment and performance of the Obligations.

7.2 Remedies. This Mortgage constitutes a security agreement with respect to the Collateral in which Mortgagee is hereby granted a security interest. In addition to the rights and remedies provided under this Mortgage, Mortgagee shall have all of the rights and remedies of a secured party under the Alabama Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Mortgagor hereby agrees to execute and deliver on demand and irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor (which appointment is coupled with an interest) to, at Mortgagor's expense, execute, deliver and, if appropriate, to file with the appropriate filing officer or office such instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default, Mortgagee shall have (i) the right to cause any of the Collateral which is personal property to be sold at any one or more public or private sales as permitted by applicable law and to apply the proceeds thereof to the Indebtedness or the satisfaction of any Obligation and (ii) the right to apply to the Indebtedness or the satisfaction of any Obligation any Collateral which is cash, negotiable documents or chattel paper. Any such disposition may be conducted by an employee or agent of Mortgagee. Any Person, including both of Mortgagor and Mortgagee, shall be eligible to purchase any part or all of such Personalty at any such disposition.

7.3 Expenses. Expenses of retaking, holding, preparing for sale, selling or the like pertaining to the Collateral shall be borne by Mortgagor and shall include Mortgagee's reasonable attorneys' fees and legal expenses (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses). Mortgagor, upon demand of Mortgagee shall assemble the Collateral and make it available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to Mortgagee and Mortgagor. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time after which any private sale or any other intended disposition is to be made. Any such notice sent to Mortgagor in the manner provided for the mailing of notices herein is hereby deemed to be reasonable notice to Mortgagor.

7.4 Fixture Filing. This Mortgage covers certain goods which are or are to become fixtures related to the Land and constitutes a fixture filing under Article 9 of the Alabama Uniform Commercial Code with respect to such goods executed by Mortgagor as debtor in favor of Mortgagee as secured party. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage. Mortgagor is the record owner of the Land, and Mortgagor's organizational identification number is 20071275799.

7.5 Waivers. Mortgagor waives (a) any right to require Mortgagee to (i) proceed against any Person, (ii) proceed against or exhaust any Collateral or (iii) pursue any other remedy in its power; and (b) any defense arising by reason of any disability or other defense of Mortgagor or any other Person, or by reason of the cessation from any cause whatsoever of the liability of Mortgagor or any other Person. Until the Indebtedness shall have been paid in full, Mortgagor shall not have any right to subrogation, and Mortgagor waives any right to enforce any remedy which Mortgagee now has or may hereafter have against Mortgagor or against any other Person and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Mortgagee.

7.6 Further Assurances. Mortgagor hereby agrees that, immediately upon Mortgagee's demand, Mortgagor shall execute and deliver to Mortgagee (and cause any necessary third parties to execute and deliver to Mortgagee) all documents and filings (including, without limitation "control agreements"), and otherwise take all other actions as may be requested by Mortgagee, in order to maintain and provide to Mortgagee a first priority perfected security interest in the Personalty provided hereby and by the Loan Documents, and Mortgagor hereby agrees to pay all fees and costs associated therewith (including, without limitation, the reasonable fees and costs of Mortgagee's outside counsel). Mortgagor expressly authorizes Mortgagee to file any and all UCC financing statements and/or amendments relating to the Loan and/or the Property.

ARTICLE 8 ASSIGNMENT OF RENTS AND PROCEEDS AND AGREEMENTS

8.1 Assignment of Rents and Proceeds. Mortgagor absolutely and unconditionally assigns and transfers the Rents and Proceeds to Mortgagee, whether now due, past due or to become due, and gives to and confers upon Mortgagee the right, power and authority to collect such Rents and Proceeds, and apply the same to the Indebtedness or the satisfaction of any Obligation. Mortgagor irrevocably appoints Mortgagee its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Mortgagor or in the name of Mortgagee, for all such Rents and Proceeds. Neither the foregoing assignment of Rents and Proceeds to Mortgagee or the exercise by Mortgagee of any of its rights or remedies under this Mortgage shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof, unless and until Mortgagee, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Mortgagee or by agreement with Mortgagor or the entering into possession of the Property by such Receiver be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation thereof. Concurrently with the execution of this Mortgage, Mortgagor has executed, delivered and recorded the Assignment of Leases in favor of Mortgagee. In the event of any inconsistency between the terms and provisions of this Article 8 and the terms and provisions of the Assignment of Leases, the latter shall control.

8.2 Assignment of Agreements. Mortgagor hereby sells, assigns, transfers, sets over and delivers to Mortgagee all of Mortgagor's right, title and interest in and to any and all agreements,



contracts, reports, surveys, plans, drawings and governmental approvals whatsoever pertaining to the operation of the Property or to the construction of the Improvements, as the same may be amended or otherwise modified from time to time (collectively, the “**Agreements**”). The foregoing assignment encompasses the right of Mortgagor to (i) terminate any of the Agreements, (ii) perform or compel performance and otherwise exercise all remedies under the Agreements, and (iii) collect and receive all sums which may become due Mortgagor or which Mortgagor may now or shall hereafter become entitled to demand or claim, under the Agreements.

8.3 Revocable License. Notwithstanding anything to the contrary contained herein or in the Note, so long as no Event of Default shall have occurred, Mortgagor shall have a license to collect all Rents and Proceeds and all other sums which may become payable to Mortgagor under the Agreements, and to first apply the same to the payment or performance of the Obligations as and when due. Upon the occurrence of an Event of Default, (i) Mortgagee shall have the right, on written notice to Mortgagor, to terminate and revoke the license herein granted to Mortgagor and shall have the right and authority then or thereafter to exercise and enforce any and all of its rights and remedies provided in this Article 8 or by law or at equity, and (ii) Mortgagor shall immediately forward and turn over to Mortgagee all Rents and Proceeds (including, without limitation, all security deposits and termination payments) then held or thereafter received by Mortgagor.

8.4 Nonresponsibility. The acceptance by Mortgagee of the assignments with all the rights, powers, privileges and authority so granted shall not obligate Mortgagee to assume any obligations in respect of the Rents and Proceeds or under the Agreements or take any action thereunder or to expend any money or incur any expense or perform or discharge any obligation, duty or liability in respect of the Rents and Proceeds or under the Agreements or to assume any obligation or responsibility for the nonperformance of the provisions thereof by Mortgagor.

ARTICLE 9 MISCELLANEOUS

9.1 Intentionally Omitted.

9.2 No Waiver. No failure by Mortgagee to insist upon strict, full and complete (i) payment when due of any portion of the Indebtedness or (ii) performance of any Obligation, nor failure to exercise any right or remedy hereunder, shall constitute a waiver of any such failure to pay or breach of any such Obligation, or of the later exercise of such right or remedy.

9.3 Abandonment. Any and all Personalty that upon foreclosure of the Property is owned by Mortgagor and is used in connection with the operation of the Property shall be deemed at the option of Mortgagee to have become on such date a part of the Property and abandoned to Mortgagee in its then condition.

9.4 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one business day after having been deposited for overnight delivery with Federal Express or another comparable overnight courier service, or (iii) three business days

after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Mortgagor: PERA Lee Branch, Inc.
1225 17th Street, Suite 2750
Denver, Colorado 80202
Attention: Ms. Meridith L. Witucki

If to Mortgagee: The Prudential Insurance Company of America
Prudential Asset Resources
2200 Ross Avenue, Suite 4900E
(after 2/15/08; 2100 Ross Avenue, Suite 2500)
Dallas, Texas 75201
Attention: Asset Management Department
Reference Loan No. 706107527

With a copy to: The Prudential Insurance Company of America
Prudential Asset Resources
2200 Ross Avenue, Suite 4900E
(after 2/15/08; 2100 Ross Avenue, Suite 2500)
Dallas, Texas 75201
Attention: Legal Department
Reference Loan No. 706107527

or addressed as such party may from time to time designate by written notice to the other parties.

9.5 Severability. If any provision hereof should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare the Indebtedness immediately due and payable.

9.6 Joinder of Foreclosure. Should Mortgagee hold any other or additional security for the performance of the Obligations, its sale or foreclosure, upon any default in such performance, in the sole discretion of Mortgagee, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure hereunder.

9.7 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the state in which the Land is located.

9.8 Subordination. At the option of Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any insurance proceeds, damages, awards, or compensation resulting from damage to the Property or condemnation or exercise of power of eminent domain), to any and all contracts of sale and/or any and all Leases upon the execution by Mortgagee and recording thereof in the Official

Records of the county where the Land is located of a unilateral declaration to that effect. Mortgagee may require the issuance of such title insurance endorsements to the title policy in connection with any such subordination as Mortgagee, in its reasonable judgment, shall determine are appropriate, and Mortgagor shall pay any cost or expense incurred in connection with the issuance thereof.

9.9 Waiver of Statute of Limitations. Mortgagor hereby waives, to the full extent allowed by law, the right to plead any statute of limitations as a defense to any obligation secured by this Mortgage.

9.10 Entire Agreement. The Loan Documents and the Hazardous Substances Agreement set forth the entire understanding between Mortgagor and Mortgagee relative to the Loan and the same shall not be amended except by a written instrument duly executed by each of Mortgagor and Mortgagee. The foregoing notwithstanding, the terms and the conditions of the Application shall survive the funding of the Loan but in the event of any conflict between the provisions of the Application and any of the other Loan Documents or the Hazardous Substances Agreement, except as otherwise specifically provided herein, the terms of such other Loan Documents and Hazardous Substances Agreement shall control.

9.11 Copies. Mortgagor will promptly give to Mortgagee copies of all (i) notices of violation relating to the Property that Mortgagor receives from any governmental agency or authority, and (ii) notices of default that Mortgagor shall give or receive under any agreement that Mortgagor covenants to perform hereunder.

9.12 Personalty Security Instruments. If Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the Indebtedness without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security.

9.13 Suits to Protect Property. Mortgagor shall appear in and defend any action or proceeding purporting to affect the security of the Mortgage, or of any additional or other security for the Obligations, the interest of Mortgagee or the rights, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses), in any action or proceeding in which Mortgagee may appear or be made a party, including foreclosure or other proceeding commenced by those claiming a right to any part of the Property in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not the sale is actually consummated. In any such action or proceeding in which Mortgagee is made a party, Mortgagee may at its option defend such action, and all costs of such defense, including all court costs and reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses), shall be borne and paid by Mortgagor.

9.14 Charges for Statements. Mortgagor agrees to pay Mortgagee's charge, up to the maximum amount permitted by law, for any statement regarding the Obligations requested by Mortgagor or on its behalf.

9.15 Usury. If at any time the applicable interest rate on the Loan together with all fees and charges that are treated as interest under applicable law as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, taken, received or reserved by Mortgagee shall exceed the maximum lawful rate that may be contracted for, charged, taken, received or reserved by Mortgagee in accordance with applicable law (the "**Maximum Lawful Rate**"), then so long as the Maximum Lawful Rate would be so exceeded, the rate of interest and all such charges payable, contracted for, charged, taken, received or reserved in respect of the Loan shall be equal to the Maximum Lawful Rate, and any amounts actually paid in excess of the Maximum Lawful Rate shall be applied by Mortgagee to reduce the outstanding principal balance of the Loan. The parties intend that Mortgagor shall not be required to pay, and Mortgagee shall not be entitled to collect, interest in excess of the Maximum Lawful Rate.

9.16 Publicity. Mortgagor hereby agrees that Mortgagee, at its expense, may publicize the financing of the Property.

9.17 Information Reporting Under IRS Section 6045(e). Any information returns or certifications that must be filed with the Internal Revenue Service and/or provided to other parties pursuant to Internal Revenue Code Section 6045(e) shall be prepared, filed by and sent to the appropriate parties by Mortgagor. To the extent permitted by law, Mortgagee shall have no responsibility to perform such services; provided however, that upon demand Mortgagor shall reimburse Mortgagee for any costs incurred by Mortgagee in doing so and shall also pay such fee as Mortgagee may reasonably and lawfully request. Mortgagee shall, where requested by Mortgagor, promptly supply Mortgagor with all information pertaining to Mortgagee reasonably required by Mortgagor to prepare and file any such return or certification.

9.18 ERISA.

A. Mortgagor understands and acknowledges that, as of the date hereof, the source of funds from which Mortgagee is extending the Loan will include one or more of the following accounts: (i) an "insurance company general account," as that term is defined in Prohibited Transaction Class Exemption ("**PTE**") 95-60 (60 Fed. Reg. 35925 (Jul. 12, 1995)), as to which Mortgagee meets the conditions for relief in Sections I and IV of PTE 95-60; (ii) pooled and single client insurance company separate accounts, which are subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"); and (iii) one or more insurance company separate accounts maintained solely in connection with fixed contractual obligations of the insurance company, under which the amounts payable or credited to the plan are not affected in any manner by the investment performance of the separate account.

B. Mortgagor represents and warrants to Mortgagee that (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Mortgagor is not a "party in interest",

as defined in Section 3(14) of ERISA, other than as a service provider or an affiliate of a service provider, to any employee benefit plan that has invested in a separate account described in Paragraph 9.18A(ii) above, from which funds have been derived to make the Loan Documents, or if so, the execution of the Loan Documents and making of the Loan thereunder do not constitute nonexempt prohibited transactions under ERISA; (iii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans, or if subject to such statutes, is not in violation thereof in the execution of the Loan Documents and the making of the Loan thereunder; (iv) the assets of the Mortgagor do not constitute "plan assets" of one or more plans within the meaning of 29 C.F.R. Section 2510.3-101; and (v) one or more of the following circumstances is true: (1) equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2); (2) less than twenty-five percent (25%) of all equity interests in Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or (3) Mortgagor qualifies as an "operating company," a "venture capital operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c), (d) or (e), respectively.

C. Mortgagor shall deliver to Mortgagee such certifications and/or other evidence periodically requested by Mortgagee, in its sole discretion, to verify the representations and warranties in Paragraph 9.18.B above. Failure to deliver these certifications or evidence, breach of these representations and warranties, or consummation of any transaction which would cause this Mortgage or any exercise of Mortgagee's rights under this Mortgage to (i) constitute a non-exempt prohibited transaction under ERISA or (ii) violate ERISA or any state statute regulating governmental plans (collectively, a "**Violation**"), shall be an Event of Default. Notwithstanding anything in the Loan Documents to the contrary, no sale, assignment, or transfer of any direct or indirect right, title, or interest in Mortgagor or the Property (including creation of a junior lien, encumbrance or leasehold interest) shall be permitted which would, in Mortgagee's opinion, negate Mortgagor's representations in this Paragraph or cause a Violation. At least fifteen (15) days before consummation of any of the foregoing, Mortgagor shall obtain from the proposed transferee or lienholder (i) a certification to Mortgagee that the representations and warranties of this Paragraph 9.18 will be true after consummation and (ii) an agreement to comply with this Paragraph 9.18.

D. Mortgagor shall indemnify, protect and defend and hold Mortgagee harmless from and against all loss, cost, damage and expense (including attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses) and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Mortgagee's sole discretion, that Mortgagee may incur, directly or indirectly, as a result of a default under Paragraph 9.18. This indemnity shall survive any termination, satisfaction or foreclosure of the Mortgage.

9.19 Indemnification and Defense.

A. Mortgagor will indemnify, defend, and hold Mortgagee and its agents harmless from and against all liability, loss, claims, damage, cost or expense (including reasonable attorneys' fees, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses) that Mortgagee might incur in connection with the making or administering of the Loan, the enforcement of any of Mortgagee's rights or remedies under the Loan Documents, by reason of any failure of any representation or warranty made by Mortgagor or the failure of Mortgagor to perform any Obligation or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Mortgagee arising out of or in connection with the Property or the Loan (collectively, the "**Indemnified Claims**"). Notwithstanding anything to the contrary set forth in this Paragraph 9.19, Mortgagor shall not be required to indemnify, defend, protect and hold Mortgagee harmless from and against any Indemnified Claims if such claims were the result of Mortgagee's gross negligence or willful misconduct.

B. Whenever, under any Loan Document, Mortgagor is obligated to indemnify and/or defend Mortgagee, or Mortgagor is obligated to defend or prosecute any action or proceeding, then Mortgagee shall have the right to participate in such prosecution or defense using counsel of Mortgagee's choice, and all costs and expenses incurred by Mortgagee in connection with such participation (including reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses)) shall be reimbursed by Mortgagor to Mortgagee. In addition, Mortgagee shall have the right to approve any counsel retained by Mortgagor in connection with the prosecution or defense of any such action or proceeding by Mortgagor. Mortgagor shall give notice to Mortgagee of the initiation of all proceedings prosecuted or required to be defended by Mortgagor, or which are subject to Mortgagor's indemnity obligations, under this Mortgage, promptly after the receipt by Mortgagor of notice of the existence of any such proceeding, but in no event later than five (5) days thereafter.

C. Should Mortgagee incur any liability, loss, claim, damage, cost or expense required to be reimbursed by Mortgagor to Mortgagee hereunder, the amount thereof with interest thereon at the Secondary Interest Rate shall constitute part of the Indebtedness, shall be payable by Mortgagor upon demand and shall be secured by this Mortgage.

9.20 Destruction of Note. Mortgagor shall, if the Note is mutilated or destroyed by any cause whatsoever, or otherwise lost or stolen and regardless of whether due to the act or neglect of Mortgagee, execute and deliver to Mortgagee in substitution therefor a duplicate promissory note containing the same terms and conditions as the Note, within ten (10) days after Mortgagee notifies Mortgagor of any such mutilation, destruction, loss or theft of the Note.

9.21 Heirs and Assigns. This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

9.22 Interpretation. When the identity of the parties or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Mortgagee and of acts which they may do and of acts Mortgagor must do or not do shall not exclude or limit the general. The headings of each Article and Paragraph are for convenience and do not limit or construe the contents of any provision hereof. The provisions of the Loan Documents and the Hazardous Substances Agreement shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of such documents. Each party and its counsel has reviewed and revised the Loan Documents and the Hazardous Substances Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of such document. The use in the Loan Documents and the Hazardous Substances Agreement of the words “including”, “such as”, or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation such as “without limitation” or “but not limited to”, or words of similar import are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. The term “Mortgagor” shall be deemed to refer to each and every Mortgagor, both individually and collectively, when more than one Mortgagor exists, and to the original Mortgagor, and its or their successors and assigns (whether or not such assign assumed the Obligations hereunder); the term “Mortgagee” includes the Mortgagee named herein or any future owner or holder, including pledgees and participants, of the Note, or any other instrument secured hereby, or any participation therein. The references to the “Property” shall be deemed to refer to all or any portion of the Property and any interest therein.

9.23 Information to Third Persons. If, at any time, Mortgagee desires to sell or transfer, or grant a participation interest in, all or any portion of, or any interest in, the Note or any other Loan Document to any Person, Mortgagor shall furnish in a timely manner any and all financial information concerning the Property and Leases, and concerning Mortgagor’s financial condition, requested by Mortgagee or such person in connection with any such sale or transfer.

9.24 Commingling of Funds. Any and all sums collected or retained by Mortgagee hereunder (including insurance and condemnation proceeds and any amounts paid by Mortgagor to Mortgagee under Paragraph 3.4 hereof), shall not be deemed to be held in trust, and Mortgagee may commingle such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the extent otherwise required by law.

9.25 Intentionally Omitted.

9.26 Costs and Fees. All costs, fees and expenses (including those of Mortgagee’s legal counsel and consultants, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses) (collectively, “Costs”) incurred by Mortgagee in making, administering or collecting the Loan including, without limitation, Costs incurred by Mortgagee in connection with any inspections, reports, tests, inquiries and reviews, condemnation proceedings, endorsements to the title policy, actions

or proceedings in which Mortgagee may appear or be made a party (including foreclosure or other proceedings commenced by those claiming a right to any part of the Property or any action to partition all or part of the Property, whether or not pursuant to final judgment and exercise of the power of sale contained herein, whether or not the sale is actually consummated) and all sums expended by Mortgagee in the exercise of any of their rights or remedies under this Mortgage shall be immediately due and payable by Mortgagor to Mortgagee within ten (10) days after written demand, shall accrue interest at the Secondary Interest Rate from the date of expenditure until paid, and shall be added to the Indebtedness secured by the Loan Documents prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage. Mortgagor further agrees that the indebtedness incurred in connection with this Mortgage and the Loan Documents is not incurred for purposes that are primarily personal, family or household and confirms that the total amount owed on the contract of indebtedness exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00).

9.27 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY AGREES TO, AND DOES, WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES (EACH A "DISPUTE" AND COLLECTIVELY THE "DISPUTES") OF ANY KIND WHATSOEVER THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTERING INTO THIS MORTGAGE AND ALL OTHER AGREEMENTS AND INSTRUMENTS PROVIDED FOR HEREIN, AND THAT EACH WILL CONTINUE TO BE BOUND BY AND RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS HAVING HAS THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT ENTERED INTO BETWEEN THE PARTIES IN CONNECTION WITH THIS MORTGAGE OR ANY LOAN DOCUMENT. IN THE EVENT OF HIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A COURT WITHOUT A JURY.

9.28 Transfer of Loan. Mortgagee may, at any time, (i) sell, transfer or assign the Loan Documents and any servicing rights with respect thereto or (ii) grant participations therein or issue mortgage or deed of trust pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (collectively, the “**Securities**”). Mortgagee may forward to any purchaser, transferee, assignee, servicer, participant, or investor in such Securities (collectively, “**Investors**”), to any Rating Agency (defined below) rating such Securities and to any prospective Investor, all Loan Documents and information which Mortgagee now has or may later acquire relating to the Obligations, Mortgagor, any guarantor, any indemnitor(s), the Leases, and the Property, whether furnished by Mortgagor, any guarantor, any indemnitor(s) or otherwise, as Mortgagee determines advisable. Mortgagor shall also furnish any consent of Mortgagor, any guarantor and any indemnitor in order to permit Mortgagee to furnish such Investors or such prospective Investors or such Rating Agency with any and all information concerning the Property, the Leases, the financial condition of Mortgagor, any guarantor and any indemnitor, as may be reasonably requested by Mortgagee, any Investor, any prospective Investor or any Rating Agency and which may be complied with without undue expense. “**Rating Agency**” shall mean any one or more credit rating agencies approved by Mortgagee.

9.29 **JURISDICTION**. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS ARISING OUT OF OR RELATING TO THE LOAN, THE LOAN DOCUMENTS, THE PROPERTY OR THE RELATIONSHIP OF MORTGAGEE AND MORTGAGOR HEREUNDER (“**PROCEEDINGS**”) EACH PARTY IRREVOCABLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ALABAMA AND THE UNITED STATES DISTRICT COURTS LOCATED IN THE STATE OF ALABAMA, (B) AGREES THAT THE EXCLUSIVE VENUE FOR JUDICIAL REFERENCE PROCEEDING PURSUANT TO PARAGRAPH 9.28.B ABOVE SHALL BE THE COUNTY OF SHELBY, ALABAMA, AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING (AND NOT BE MERGED THEREIN) OR ANY EARLIER TERMINATION OF THE LOAN OR ANY LOAN DOCUMENT.

9.30 **Partial Lien Release**. Upon not less than thirty (30) days’ prior written notice from Mortgagor, Mortgagee shall release (the “**Partial Release**”) from the lien of the Mortgage that portion of the Property more particularly described in Exhibit C attached hereto (the “**Release Parcel**”), provided that (i) at the time such request is made and at the time of the Partial Release, there then exists no Event of Default, or event which with the passage of time or the giving of notice or both would constitute an Event of Default, under any Loan Document; (ii) Mortgagor delivers to Mortgagee, at Mortgagor’s sole cost, such title insurance coverage as Mortgagee may deem reasonably necessary to insure that the Mortgage remains a valid first lien against the remaining portion of the Property (the “**Remaining Property**”), with access to the same publicly dedicated streets as prior to the Release, subject only to such exceptions to title as were evidenced in the title policy insuring the Mortgage, current taxes due but not yet payable, and

such other exceptions as may be approved by Mortgagee, in its reasonable discretion; (iii) Mortgagee shall have received evidence satisfactory to it that the debt service coverage for the Property (as determined by Mortgagee, in its reasonable discretion) for the preceding 12 month period shall be greater than or equal to 3.20 to 1.00 and such ratio shall be maintained for the next succeeding 12 months with respect to the Remaining Property; (iv) the outstanding principal balance of the Loan shall not exceed 40% of the fair market value of the Remaining Property, as determined by Mortgagee, in its reasonable discretion; (v) Mortgagee shall have received satisfactory evidence that both the Release Parcel and the Remaining Property shall be in compliance with all applicable Laws and Restrictions, including, but not limited to, lot split and platting requirements, building codes, and subdivision, zoning, and land use laws; (vi) Mortgagee shall have received satisfactory evidence that both the Release Parcel and the Remaining Property shall will constitute separate real estate tax parcels, and accordingly each will be separately taxed and assessed; (vii) any space lease on the Release Parcel shall be separate from all space leases applicable to the Remaining Property and any lease on the Remaining Property shall not be dependent on or tied in any way to any space lease on the Release Parcel (except for exclusive use rights of Tenants on the Remaining Property which rights extend to uses on the Release Parcel, which exclusive use rights shall be addressed by appropriate restrictive covenants encumbering the Release Parcel or otherwise to Lender's reasonable satisfaction), (viii) Mortgagor shall pay at the time of the request for the Partial Release a servicing fee of \$5,000 and shall pay Mortgagee's reasonable outside legal costs and expenses incurred in connection with the request for the Partial Release, (ix) Mortgagee shall have determined, in its reasonable discretion, that the Remaining Property will have satisfactory ingress, egress, and parking following the Partial Release, (x) Mortgagee shall have received evidence satisfactory to Mortgagee that all necessary tenant approvals (if any) have been obtained for the Partial Release, (xi) Mortgagor and any guarantors shall reaffirm their respective obligations under the Loan Documents, (xii) the Partial Release shall not affect any obligations of Mortgagor or any guarantors under the Loan Documents, (xiii) Mortgagor shall have created easements for utilities, signage, drainage, parking, ingress and egress and other appropriate purposes in, on and over the Release Parcel for the benefit of the Remaining Property to the extent required by Mortgagee and such easements shall be insured as appurtenances in Mortgagee's title insurance policy via appropriate endorsements, and (xiv) Mortgagee shall receive a survey and legal descriptions of the Release Parcel and the Remaining Property, which survey and legal descriptions shall show and provide for a common property line between the Release Parcel and the Remaining Property in a location acceptable to Mortgagee.

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

MORTGAGOR:

PERA LEE BRANCH, INC.,
a Colorado nonprofit corporation

By: [Signature]
Name: Meredith Witucki
Title: Vice President

Attest

[Signature]
Signature
Name: Kathryn G. Spritzer
Title: Assistant Secretary

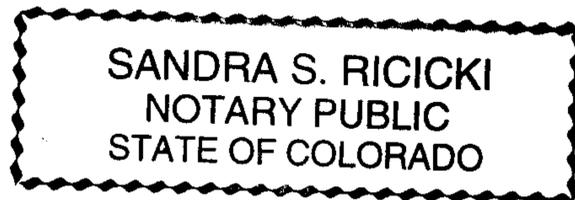
STATE OF Colorado)
)
COUNTY OF Denver)

I, Sandra S. Ricicki, a Notary Public in and for said County in said State, hereby certify that Meredith Witucki whose name as Vice President and Kathryn Spritzer whose name as Assistant Secretary of PERA Lee Branch, Inc., a Colorado nonprofit corporation, and are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 28th day of August, 2007

[Signature]
Notary Public

My Commission Expires:
July 8, 2009



My Commission Expires 07/08/2009

EXHIBIT A

(Property Description)


20070904000415080 37/40 \$15218.75
Shelby Cnty Judge of Probate, AL
09/04/2007 02:48:43PM FILED/CERT

STATE OF ALABAMA
SHELBY COUNTY

A parcel of land situated in the Southeast 1/4 of the Northwest 1/4, the Northeast 1/4 of the Southwest 1/4 and the Southwest 1/4 of the Northeast 1/4, all in Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being Lot 1C of "A Resubdivision of the Village at Lee Branch" as recorded in Map Book 31, Pages 130A and 130B in the office of the Judge of Probate of Shelby County, Alabama, and being more particularly described as follows:

Commence at an iron pin found at the Southwest corner of the Southwest 1/4 of the Northeast 1/4 of said Section 5; thence proceed N 88°49'06" E along the South line of said Southwest 1/4 of Northeast 1/4 for 204.40 feet to a point on the Westerly right of way margin of U.S. Highway 280 (right of way varies); thence leaving said South line of said Southwest 1/4 of Northeast 1/4 proceed N 07°19'16" W along said Westerly right of way margin for 382.75 feet to a point; thence proceed N 03°59'20" E along said Westerly right of way margin of U.S. Highway 280 for 44.06 feet to a point on the Northern right of way margin of Doug Baker Boulevard, said point being the POINT OF BEGINNING of the herein described parcel of land; thence leaving said Westerly right of way margin of U.S. Highway 280, proceed S 82°20'46" W, along said Northerly right of way margin of Doug Baker Boulevard, for 145.66 feet to an iron pin set; thence proceed S 82°06'07" W for 88.45 feet to an iron pin set on a curve to the left; said curve being non-tangent to the last described course and having a central angle of 41°57'11", a radius of 50.00 feet and a chord which bears N 19°44'50" E for 35.80 feet; thence, leaving said Northerly right of way margin of Doug Baker Boulevard, proceed Northeasterly along the arc of said curve for 36.61 feet to the end of said curve; thence proceed N 01°13'46" W, tangent to last described curve, for 118.44 feet to an iron pin set; thence proceed S 88°46'14" W for 355.00 feet to an iron pin set; thence proceed S 01°06'16" E for 229.00 feet to an iron pin set; thence proceed N 88°46'14" E for 115.57 feet to an iron pin set on the Northerly right of way margin of Doug Baker Boulevard, said right of way margin being in a curve to the left; said curve being non-tangent to the last described course and having a central angle of 17°59'50", a radius of 362.50 feet and a chord which bears S 42°33'12" W for 113.40 feet; thence proceed Southwesterly along said Northerly right of way margin and along the arc of said curve for a distance of 113.86 feet to an iron pin set; thence proceed S 33°33'18" W along said right of way margin of Doug Baker Boulevard and tangent to the last described curve for 110.93 feet to an iron pin set at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 45°30'10", a radius of 462.50 feet and a chord which bears S 56°18'22" W for 357.73 feet; thence proceed Southwesterly along said right of way margin of Doug Baker Boulevard and along the arc of said curve for 367.30 feet to the end of said curve; thence proceed S 82°47'09" W along said Northerly right of way margin and along a line that is non-tangent to the last described curve for 118.95 feet to an iron pin set at the beginning of a curve to the right, said curve being non-tangent to the last described course and having a central angle of 76°12'26", a radius of 470.00 feet and a chord which bears N 48°12'39" W for 580.06 feet; thence proceed Northwesterly along



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Shelby Cnty Judge of Probate, AL
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said Northerly right of way margin of Doug Baker Boulevard and along the arc of said curve for 625.13 feet to the end of said curve; thence proceed N 10°06'25"W along said Northerly right of way margin of Doug Baker Boulevard and tangent to the last described curve for 194.85 feet to an iron pin set at the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 56°30'39", a radius of 605.00 feet and a chord which bears N 38°21'45" W for 572.82 feet; thence proceed Northwesterly along said Northerly right of way margin of Doug Baker Boulevard and along the arc of said curve for 596.71 feet to the end of said curve; thence, leaving said Northerly right of way margin of Doug Baker Boulevard, proceed N 88°45'44" E along a line that is non-tangent to the last described curve for 331.81 feet to an iron pin found; thence proceed N 88°41'32" E for 1335.96 feet to an iron pin found on the East line of said Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West; thence proceed S 00°25'08" E for 520.11 feet to an iron pin set; thence proceed N 88°49'06" E for 165.30 feet to an iron pin set on the Westerly right of way margin of U.S. Highway 280; thence proceed S 03°59'20" W along said Westerly right of way margin of U.S. Highway 280 for 45.70 feet to the POINT OF BEGINNING of the herein described parcel of land.

Said parcel contains 1,111,699.40 Square Feet or 25.521 Acres more or less.

EXHIBIT B

(Inventory)

None.



20070904000415080 39/40 \$15218.75
Shelby Cnty Judge of Probate,AL
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EXHIBIT C

(Release Parcel)



20070904000415080 40/40 \$15218.75
Shelby Cnty Judge of Probate, AL
09/04/2007 02:48:43PM FILED/CERT

STATE OF ALABAMA
SHELBY COUNTY

A parcel of land in Section 5, Township 19 South, Range 1 West, Shelby County, Alabama which is situated on and being a portion of Lot 1C of "A Resubdivision of The Village at Lee Branch" as recorded in Map Book 31, Pages 130A and 130B, in the office of the Judge of Probate, Shelby County, Alabama. Said parcel being more particularly described as follows;

For a POINT OF BEGINNING, begin at a capped iron found (CA 0250) at the Westmost corner of Lot 1C of "A Resubdivision of The Village at Lee Branch" as recorded in Map Book 31, Pages 130A and 130B, in the office of the Judge of Probate, Shelby County, Alabama; thence along the North boundary of said Lot 1C proceed N 88°45'44" E for 331.81 feet to an iron rebar found; thence along the North boundary of said Lot 1C proceed N 88°39'07" E for 619.22 feet to an iron rebar set; thence departing said North boundary of Lot 1C, proceed S 52°36'04" W for 433.53 feet to an iron pin set; thence proceed S 88°46'14" W for 117.28 feet to an iron pin set; thence proceed S 01°13'46" E for 553.46 feet to an iron pin set; thence proceed S 55°47'20" W for 45.05 feet to an iron pin set on the East right of way margin of Doug Baker Boulevard, said point being on the West boundary of said Lot 1C and a curve to the right which has a central angle of 24°06'17", a radius of 470.00 feet, and a chord which bears N 22°09'32" W for 196.28 feet; thence, along said East right of way margin, along said West boundary of Lot 1C, proceed along the arc of said curve for 197.73 feet to an iron pin set; thence, along said East right of way margin, along said West boundary of Lot 1C, proceed N 10°06'25" W for 194.85 feet to an iron pin set on a curve to the left which has a central angle of 56°30'39", a radius of 605.00 feet, and a chord which bears N 38°21'45" W for 572.82 feet; thence, along said East right of way margin, along said West boundary of Lot 1C, proceed along the arc of said curve for 596.71 feet to the POINT OF BEGINNING. Said easement contains 226602.7 ± square feet or 5.2 ± acres.

I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief.