



20050617000300690 1/22 \$75.00
Shelby Cnty Judge of Probate, AL
06/17/2005 12:05:53PM FILED/CERT

This document prepared by:
James A. Simpson, Esq.
Miller Canfield Paddock and Stone, PLC
840 West Long Lake Road
Suite 200
Troy, MI 48098-6358

Mortgage Tax	1987.50
Recording Fee	98.00
TOTAL	2085.50

Recording Requested by
and when recorded return to:

WELLS FARGO BANK, N.A.
Commercial Mortgage Origination
MAC# A0194-093
45 Fremont Street, 9th Floor
San Francisco, California 94105
Attention: CMO Loan Admin.

DML 1959 741
Recorded In Above Book and Page
06/17/2005 09:48:41 AM
Rick Allison
Judge of Probate
Walker County, Alabama

Loan No.: [REDACTED]

Walker County Parcel Identification Nos: 17-05-16-2-203-001.000,
17-05-16-2-203-002.000, 17-05-16-2-203-004.000
and 10-08-34-0-001-002.000

Shelby County Parcel Identification No: 23-6-14-2-001-001.004
MERS MIN #: 80001010000001274-9

**MORTGAGE
and
ABSOLUTE ASSIGNMENT OF RENTS
AND LEASES
and
SECURITY AGREEMENT
(AND FIXTURE FILING)**

The parties to this MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage"), dated as of June 15, 2005, are DGJASPER, LLC., an Alabama limited liability company ("Mortgagor"), with a mailing address at 1025 15th Street, Suite B, Tuscaloosa, Alabama 35401, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation ("MERS" or "Mortgagee"), with a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 48501-2300.



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RECITALS

- A. DGJASPER, LLC., an Alabama limited liability company ("Borrower") propose to borrow from Wells Fargo Bank, National Association ("Lender"), and Lender proposes to lend to Borrower, the principal sum of ONE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 Dollars (\$1,325,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Mortgage, payable to the order of Lender in the principal amount of the Loan. The loan documents include this Mortgage, the Note and any other documents described in the Note as Loan Documents ("Loan Documents"). The maturity date of the Loan is July 1, 2015

ARTICLE 1. MORTGAGE

- 1.1 **GRANT.** Upon the terms and conditions of this Mortgage, Mortgagor absolutely and irrevocably mortgages, grants, bargains, sells, conveys, assigns to Mortgagee, with right of entry and possession, with power of sale, and grants to Mortgagee a security interest in, all estate, right, title and interest which Mortgagor now has or may hereafter acquire in, to, under or derived from any or all of the following: (a) that real property ("Land") located in Shelby and Walker Counties, Alabama, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference; (b) all buildings, improvements and fixtures now or hereafter located on the Land; and (c) all additions, accretions, rents, issues, profits, royalties, appurtenances, easements, water, water rights, water stock, minerals, oil rights, gas rights, air rights and other rights now or hereafter appurtenant or related to the Land. All of the foregoing property is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"): (a) payment to Mortgagee of all sums at any time owing under the Note; (b) payment and performance of all other obligations of Borrower or Mortgagor under the Loan Documents, including, without limitation, all advances made to protect the Property; (c) payment and performance of all future advances and other obligations that the then record owner of the Property may agree to pay or perform for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage; (d) all interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and (e) all modifications, extensions and renewals of any of the obligations secured hereby. The rate of interest on one or more Secured Obligation may vary from time to time.

ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

- 3.1 **ASSIGNMENT.** Mortgagor absolutely and irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property, all licenses and agreements relating to the management, leasing or operation of the Property, and all other agreements of any kind relating to the use or occupancy of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an

assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of the Property. This assignment shall not cause Mortgagee to be: (c) a mortgagee in possession; (d) responsible for the management, care or condition of the Property or the performance of any obligations under the Leases; or (e) under any duty to produce rents or profits.

- 3.2 **LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments to any Secured Obligation or any other obligation of Borrower, Mortgagor or any other person or entity, under any document or instrument now or hereafter executed in connection with the Loan Documents. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 3.3 **COVENANTS.** Mortgagor shall, at Mortgagor's sole cost and expense: (a) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce all obligations of the tenants under the Leases; (b) use reasonable efforts to keep the Property leased at all times at market rents (including free or discounted rents to the extent the market so requires); (c) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease; and (d) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and any subordinations of any Lease to this Mortgage, in form and substance satisfactory to Mortgagee. Unless Mortgagee consents in writing, Mortgagor shall not: (e) grant any tenant under any Lease any option, right of first refusal or other right to purchase the Property under any circumstances; (f) grant any tenant under any Lease any right to prepay rent more than 1 month in advance; (g) except upon Mortgagee's request, execute any assignment of landlord's interest in any Lease; (h) collect rent or other sums due under any commercial Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due. Any attempted action in violation of this Section shall be void. Within 30 days after request by Mortgagee, Mortgagor shall deliver to Mortgagee and to any party designated by Mortgagee, estoppel certificates executed by Mortgagor and by each of the tenants, in form and substance satisfactory to Mortgagee, relating to any commercial Leases.
- 3.4 **RIGHT OF SUBORDINATION.** Mortgagee may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Mortgage to any Lease, without consent of, or notice to, Mortgagor, any tenant or any other person. No such subordination shall constitute a subordination to any lien or other encumbrance.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits



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and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Mortgagor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any Loan Document; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Alabama Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2 **DISPOSITION.** Mortgagor acknowledges and agrees that 5 days' prior notice of any disposition of the Collateral by Mortgagee is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like.
- 4.3 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.
- 4.4 **NOTICE.** Mortgagor agrees not to change its name, or, as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized, without giving Mortgagee at least 30 days' prior written notice thereof.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

- 5.1 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants to Mortgagee that, to Mortgagor's current actual knowledge, the following statements are true and correct as of the date this Mortgage is recorded:
- a. **Legal Status.** Borrower and all entities having a direct or indirect interest in Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Borrower and such entities are organized. Borrower and such entities are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as

such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.

- c. **Violations.** The execution, delivery and performance of the Loan Documents by Borrower do not violate the provisions of any contract or instrument by which Borrower is bound.
- d. **Subordination.** There is no contract or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- e. **Litigation.** There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect: (i) the financial condition or operations of Borrower; or (ii) the value, marketability or intended use of the Property, other than those previously disclosed in writing by Borrower to Mortgagee.
- f. **Financial Statements.** The financial statements of Borrower, each general partner of Borrower (if Borrower is a partnership), each member of Borrower (if Borrower is a limited liability company) and each guarantor, if any, previously delivered to Mortgagee in connection with the Loan: (i) are materially complete and correct; and (ii) disclose all liabilities that are required to be reflected or reserved against. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing to Mortgagee and approved in writing by Mortgagee.
- g. **Reports.** All reports, documents, instruments and information delivered to Mortgagee in connection with the Loan: (i) are correct and sufficiently complete to give Mortgagee accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. **Leases.** All Leases are in full force and effect and are enforceable in accordance with their respective terms. No material breach or default by any party exists under any Lease. None of the landlord's right, title or interest under any of the Leases has been transferred or assigned. No rent or other payment under any commercial Lease has been paid by any tenant for more than 1 month in advance. No tenant under any Lease has any option, right of first refusal or other right to purchase the Property under any circumstances.
- i. **Condition of Property.** Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Mortgagee, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value, marketability or intended use of the Property.
- j. **Hazardous Materials.** Except as previously disclosed in writing by Mortgagor to Mortgagee, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials (collectively, "Hazardous Materials"). No Hazardous Materials Claims (defined below) are pending or threatened.
- k. **Encroachments.** Except as shown in the survey, if any, previously delivered to Mortgagee, none of the improvements on the Property lies outside of the boundaries or building restriction lines of the Property and no improvements on adjoining properties encroach upon the Property.

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- l. **Compliance With Laws.** The Property complies in all material respects with all applicable federal, state and local laws, rules and regulations.
- m. **Permits.** Mortgagor holds all permits, franchises, licenses and other authorizations necessary to enable Mortgagor to own and operate Property in compliance with applicable law.
- n. **Condemnation.** No proceeding for the total or partial condemnation of the Property is pending or threatened.
- o. **Collateral.** Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Mortgagee by Mortgagor in writing specifically referring to this representation and warranty. Mortgagor's chief executive office (or principal residence, if applicable) is located at the address shown on page one of this Mortgage. Mortgagor is an organization organized solely under the laws of the State of Alabama. All organizational documents of Mortgagor delivered to Mortgagee are complete and accurate in every respect. Mortgagor's legal name is exactly as shown on page one of this Mortgage.
- p. **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.
- q. **Utilities; Water; Sewer.** The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.
- r. **ERISA Matters.** Mortgagor is not an employee benefit plan as defined in Section 3.(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, nor a Plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to individually and collectively as "Plan"). Mortgagor's assets do not constitute "plan assets" of any plan within the meaning of Department of Labor Regulation Section 2510.3-101. Mortgagor will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Mortgagor will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". No Lease is with a Plan or an entity whose assets constitute such "plan assets", and Mortgagor will not enter into any Lease with a Plan or an entity whose assets constitute such "plan assets." With respect to the Loan, Mortgagor is acting on Mortgagor's own behalf and will not on account of or for the benefit of any Plan.

5.2 **INTENTIONALLY OMITTED.**

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1 **PRESERVATION OF THE PROPERTY.** Mortgagor shall: (a) keep the Property in good condition and repair; (b) complete or restore the Property promptly and in a workmanlike manner after any damage or destruction; (c) comply and cause the Property to comply in all material respects with all laws, ordinances, rules, regulations, standards, covenants, conditions, restrictions, equitable servitudes and insurance requirements affecting the Property; (d) operate and manage the Property at all times in a professional manner; and (e) execute and acknowledge all documents and instruments which Mortgagee deems necessary or advisable to preserve the benefits of this Mortgage. Mortgagor shall not: (f) remove or demolish all or any material part of the Property; or (g) materially alter the type of occupancy or use of the Property; or (h) commit or permit waste of the Property.

- 6.2 **HAZARDOUS MATERIALS.** Mortgagor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations and all judgments, consent decrees, settlements or compromises relating to Hazardous Materials (collectively, "Hazardous Materials Laws"). Mortgagor shall immediately notify Mortgagee in writing of any claims or actions pending or threatened against Mortgagor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials ("Hazardous Materials Claims"). Mortgagor and Mortgagee agree that: (a) Section 5.1j constitutes Mortgagee's written request for information concerning the environmental condition of the Property (and Mortgagor's response) for purposes of California Code of Civil Procedure Section 726.5; and (b) Section 5.1j, each covenant in this Section and any indemnity applicable to a breach of Section 5.1j or any covenant in this Section constitutes an "environmental provision" for purposes of California Code of Civil Procedure Section 736.
- 6.3 **TAXES.** Mortgagor shall pay when due all taxes, assessments and other charges applicable to the Property or Collateral. Mortgagor authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract under which Mortgagee shall receive tax information on the Property during the term of the Loan.
- 6.4 **INSURANCE AND CONDEMNATION.**
- a. **Insurance Coverage.** Mortgagor shall obtain and maintain all insurance coverage required pursuant to that certain Agreement Regarding Required Insurance dated as of the date hereof by and between Mortgagor and Mortgagee.
- b. **Assignment of Claims.** Mortgagor absolutely and irrevocably assigns to Mortgagee all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation of the Property for public or private use; (ii) all other claims and awards for damages to or decrease in value of the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Property; and (iv) all interest which may accrue on any of the foregoing. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for the condemnation of, the Property. Mortgagee may commence, appear in, defend, prosecute, adjust, compromise and settle any Claims but shall not be responsible for any failure to do so.
- c. **Application of Proceeds; No Default.** So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, the following provisions shall apply:
- (i) **Condemnation.** If the Proceeds are the result of Claims described in clauses 6.4.b (i) or (ii) above, or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments.
- (ii) **Insurance.** If the Proceeds are the result of Claims described in clause 6.4.b (iii) above or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Mortgagor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments if the repair or restoration of the Property has not been completed.

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(iii) **Restoration.** Notwithstanding the foregoing Sections 6.4.c (i) and (ii), Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of all or any of the Property unless and until all the following conditions have been satisfied: (aa) delivery to Mortgagee of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (cc) delivery to Mortgagee in form and content acceptable to Mortgagee of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Mortgagee; (3) a cost breakdown for the work; (4) evidence of the continuation of all Leases unless consented to in writing by Mortgagee; (5) evidence that, upon completion of the work, the value of the Property and the income from the Property will be at least as great as the value and income which existed immediately before the damage or condemnation occurred; (6) evidence that the work can reasonably be completed on or before that date which is 6 months prior to the Maturity Date; and (7) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security.

d. **Application of Proceeds; Default.** If a Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds, or if a Default occurs at any time thereafter, Mortgagee may, at Mortgagee's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

6.5 **IMPOUNDS.** Any impounds payable by Borrower under the Note ("Impounds") shall be deposited into one or more segregated or commingled accounts maintained by Mortgagee or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Mortgagee shall not be a trustee, special depository or other fiduciary for Mortgagor with respect to such account. If no Default exists, Mortgagee shall apply all Impounds in accordance with the Note. If a Default exists, Mortgagee may apply any or all Impounds to any Secured Obligation or to cure such Default, whereupon Mortgagor shall promptly restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Mortgagor hereunder shall not be diminished by Mortgagor's deposits of Impounds, except to the extent that such obligations are actually satisfied by Mortgagee's application of such Impounds. Upon any assignment of this Mortgage, Mortgagee may assign all Impounds in its possession to Mortgagee's assignee, whereupon Mortgagee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Mortgagee may elect, Mortgagee shall pay to Mortgagor all Impounds in its possession, and no other party shall have any right or claim thereto. Mortgagor shall deliver to Mortgagee, promptly upon receipt, all bills for taxes and insurance for which Mortgagee has required Impounds.

6.6 **DUE ON SALE/ENCUMBRANCE.**

a. **Definitions.** The following terms shall have the meanings indicated:

"Restricted Party" shall mean each of (i) Borrower, (ii) Mortgagor, (iii) any entity obligated under any guaranty or indemnity made in favor of Mortgagee in connection with the Loan and (iv) any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Mortgagor or any entity obligated under a guaranty or indemnity made in favor of Mortgagee in connection with the Loan.

"Transfer" shall mean any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

b. **Property Transfers.**

- (i) **Prohibited Property Transfers.** Mortgagor shall not cause or permit any Transfer of all or any part of or any direct or indirect legal or beneficial interest in the Property or the Collateral (collectively, a "Prohibited Property Transfer"), including, without limitation, (A) a Lease or all or a material part of the Property for any purpose other than actual occupancy by a space tenant; and (B) the Transfer of all or any part of Mortgagor's right, title and interest in and to any Leases or Payments.
- (ii) **Permitted Property Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Property Transfer: (A) a Transfer which is expressly permitted under the Note; (B) a Lease which is permitted under Article 3; and (C) the sale of inventory in the ordinary course of business.

c. **Equity Transfers.**

- (i) **Prohibited Equity Transfers.** Mortgagor shall not cause or permit any Transfer of any direct or indirect legal or beneficial interest in a Restricted Party (collectively, a "Prohibited Equity Transfer"), including without limitation, (A) if a Restricted Party is a corporation, any merger, consolidation or other Transfer of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (B) if a Restricted Party is a limited partnership, limited liability partnership, general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (C) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Transfer of a non-managing membership interest or the creation or issuance of new non-managing membership interests; or (D) if a Restricted Party is a trust, any merger, consolidation or other Transfer of any legal or beneficial interest in such Restricted Party or the creation or issuance of new legal or beneficial interests.
- (ii) **Permitted Equity Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Equity Transfer: (A) a Transfer by a natural person who is a member, partner or shareholder of a Restricted Party to a revocable inter vivos trust having such natural person as both trustor and trustee of such trust and one or more immediate family members of such natural person as the sole beneficiaries of such trust ("Revocable Family Trust"); (B) a Transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party; (C) a Transfer, in one or a series of transactions, of not more than 49% of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfers shall result in a change in management control in the Restricted Party.

- d. **Certificates of Ownership.** Mortgagor shall deliver to Mortgagee, at any time and from time to time, not more than 5 days after Mortgagee's written request therefor, a certificate, in form

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acceptable to Mortgagee, signed and dated by Borrower and Mortgagor, listing the names of all persons and entities holding direct or indirect legal or beneficial interests in the Property or any Restricted Party and the type and amount of each such interest.

- 6.7 **INDEMNITY.** Mortgagor shall defend, indemnify and hold harmless each member of the Mortgagee Group (defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) any failure of Mortgagor or Borrower to perform Mortgagor's or Borrower's obligations under the Loan Documents; (b) any inaccuracy in any representation or warranty of Mortgagor or Borrower under the Loan Documents; (c) any alleged obligation on the part of any member of the Mortgagee Group to pay or perform any obligations contained in any other document related to the Property (other than this Mortgage); (d) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property; or (e) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination). The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Mortgagee Group. "Mortgagee Group", as used herein, shall mean: (f) Mortgagee and Lender under the Note (including, without limitation, any purchaser or assignee of or participant in the Loan); (g) any entity controlling, controlled by or under common control with Mortgagee; (h) the directors, officers, employees and agents of Mortgagee and such other entities; and (i) the successors, heirs and assigns of the entities and persons described in foregoing clauses (f) through (h). Mortgagor shall pay immediately upon Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Mortgagor agrees to use legal counsel reasonably acceptable to the Mortgagee Group in any action or proceeding arising under this indemnity.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS DEED OF TRUST, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE LIMITED LIABILITY PROVISIONS OF THE NOTE.

- 6.8 **RIGHT OF ENTRY.** Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of: (a) inspecting the Property or any work for which Impounds are required, (b) ascertaining Mortgagor's compliance with the terms of this Mortgage, or (c) determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- 6.9 **ACCOUNTING RECORDS.** Mortgagor shall maintain and cause Borrower to maintain adequate books and records. Mortgagor shall permit and shall cause Borrower to permit any representative of Mortgagee, at any reasonable time and from time to time, to inspect, audit and examine such books and records and make copies of same.
- 6.10 **SALE OR PARTICIPATION OF LOAN.** Mortgagee may at any time sell, assign or participate all or any portion of Mortgagee's rights and obligations under the Loan Documents to any person or entity, including, without limitation, one or more financial institutions or private investors in connection with a securitization. Mortgagee may disseminate to any actual or potential purchasers, assignees or participants (and to any investment banking firms, rating agencies, accounting firms, law firms and other third party advisory firms and investors involved with the Loan and the Loan Documents or the applicable sale, assignment, participation or securitization) all documents and financial and other information then possessed by or known to Mortgagee with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Borrower, any partner or member of Borrower, any constituent partner or member of Borrower, any guarantor and any non-borrower trustor). Mortgagor shall, within 15 days after request by Mortgagee; (c) deliver to Mortgagee such information and documents

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relating to Mortgagor, the Property and its operation and any party connected with the Loan as Mortgagee or any rating agency may request; (d) deliver to Mortgagee an estoppel certificate for the benefit of Mortgagee and any other party designated by Mortgagee verifying the status and terms of the Loan, in form and content satisfactory to Mortgagee; (e) enter into such amendments to the Loan Documents as may be requested in order to facilitate any such sale, assignment, participation or securitization without impairing Mortgagor's rights or increasing Mortgagor's obligations; and (f) if, as a condition to the closing of the Loan, Mortgagor was required to be a special-purpose bankruptcy-remote entity, enter into such amendments to the organizational documents of Mortgagor as any rating agency may request to preserve or enhance Mortgagor's special-purpose bankruptcy-remote status.

- 6.11 **INTENTIONALLY OMITTED.** All of the covenants and agreements of Trustor herein shall survive the execution and delivery of this document and shall continue in force until an express written release hereof is executed by Beneficiary.

ARTICLE 7. DEFAULT

- 7.1 **DEFAULT.** For all purposes hereof, "Default" shall mean either an "Optional Default" (defined below) or an "Automatic Default" (defined below).

- a. **Optional Default.** An "Optional Default" shall occur, at Mortgagee's option, upon the occurrence of any of the following events: (i) Borrower or Mortgagor shall fail to (aa) pay when due any sums which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note; (ii) Borrower or Mortgagor shall fail to observe, perform or discharge any of Borrower's or Mortgagor's obligations, covenants, conditions or agreements, other than Borrower's or Mortgagor's payment obligations, under the Note, this Mortgage or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Mortgagor, as the case may be, by Mortgagee or (bb) if such failure is of such a nature that it cannot be cured within such 30-day period, Borrower or Mortgagor shall fail to commence to cure such failure within such 30-day period or shall fail to diligently prosecute such curative action thereafter; (iii) any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Mortgagor, or a guarantor, if any, to Mortgagee or in connection with any of the Loan Documents, or as an inducement to Mortgagee to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; (iv) the condemnation, seizure or appropriation of any material portion of the Property (as reasonably determined by Mortgagee); (v) the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided under any of the Loan Documents, or any material portion of the other assets of Borrower or Mortgagor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; (vi) the sale of any assets affected by any of the foregoing; (vii) the occurrence of an uninsured casualty with respect to any material portion of the Property, as reasonably determined by Mortgagee.
- b. **Automatic Default.** An "Automatic Default" shall occur automatically upon the occurrence of any of the following events: (i) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); (ii) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; (iii) Borrower's making a general assignment for the benefit of creditors; (iv) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its



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property; (v) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower; (vi) Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Mortgagee regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition; (vii) the occurrence of an event specified in any of clauses (i) through (vi) as to Mortgagor, any general partner or managing member of Borrower or Mortgagor, or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents.

7.2 **RIGHTS AND REMEDIES.** Upon the occurrence of an Optional Default, Mortgagee may, at its option, declare all sums owing to Mortgagee under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Mortgagee under the Note and the other Loan Documents shall automatically become immediately due and payable. In addition, at any time after any Default, Mortgagee shall have all of the following rights and remedies:

- a. **Entry on Property.** Mortgagee shall have the right to enter upon the Property from time to time, with or without notice, and without releasing Mortgagor from any Secured Obligation and without becoming a mortgagee in possession, and do such other acts and things as Mortgagee deems necessary or desirable, in order to inspect, investigate, assess and protect the security hereof or to cure any Default.
- b. **Appointment of Receiver.** Mortgagee shall have the right to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, with or without notice or hearing, for any purpose, including, without limitation, to enforce Mortgagee's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Borrower, Mortgagor or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents.
- c. **Judicial Foreclosure; Injunction.** Mortgagee shall have the right to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder. For the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.
- d. **Foreclosure Sale.** Upon the occurrence of any Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in a newspaper published in the county or counties wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of

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marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Secured Obligations shall have been paid in full. Subject to requirements and limits imposed by law, Mortgagee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Mortgagee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

- e. **Multiple Foreclosures.** Mortgagee shall have the right to resort to and realize upon the Property and Collateral and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or nonjudicial proceedings, or both.

All rights and remedies of Mortgagee under this Mortgage are cumulative and in addition to such other rights as Mortgagee may have at law or in equity or pursuant to the Loan Documents. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently.

- 7.3 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property or the Collateral, waives all rights to a sale in inverse order of alienation or to have the Property, the Collateral or any other security for any Secured Obligation, marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations. In connection with any action taken by Beneficiary pursuant to this section, Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property unless such loss is caused by the willful misconduct of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under and lease or under or by reason hereof or the exercise of rights or remedies hereunder. **TRUSTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR, AND TO HOLD BENEFICIARY HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY BENEFICIARY UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN SUCH LEASE.**
- 7.4 **NO WAIVER.** Mortgagee's acceptance of late payment or performance of any Secured Obligation shall not be construed to waive Mortgagee's right to require prompt payment or performance in the future. Mortgagee's failure to exercise any right or remedy hereunder after a Default shall not be construed to prejudice Mortgagee's rights or remedies after any other Default. No delay by Mortgagee in exercising any such right or remedy shall preclude Mortgagee from the exercise thereof at any time while that Default is continuing. Mortgagee's delivery of any notice or demand to Mortgagor shall not of itself entitle Mortgagor to any notice or demand in similar circumstances.
- 7.5 **EXCULPATION.** Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of: (a) the exercise or failure to exercise any of the rights or remedies granted to Mortgagee in this Mortgage (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability

of Mortgagor under any agreement related to the Property or under any Loan Document; (c) any loss, claim, cause of action, liability, indebtedness, damage or injury to any person or property arising from the occupancy or use of the Property by Mortgagor or any other person or entity; or (d) any loss resulting from any act or omission of Mortgagee in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

- 7.12 **CERTAIN RIGHTS OF TRUSTEE.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. Trustor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by him in the performance of his duties. Trustor's obligations under this Section shall not be reduced or impaired by principles of comparative or contributory negligence.
- 7.13 **RETENTION OF MONEY.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.
- 7.14 **SUCCESSOR TRUSTEES.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.
- 7.15 **PERFECTION OF APPOINTMENT.** Should any deed, conveyance or instrument of any nature be required from Trustor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Trustor.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **CONSENTS AND APPROVAL.** Wherever Mortgagee's consent, approval, acceptance or satisfaction is required under any provision of this Mortgage or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Mortgagee unless such provision expressly so provides.
- 8.2 **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under any Loan Document, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees).
- 8.3 **RELATIONSHIP OF PARTIES.** The relationship of Mortgagor and Mortgagee under the Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS hereunder being solely that of nominee as set forth in Section 8.14 below and not that of a lender).

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- 8.4 **SEVERABILITY.** If any term of any Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of the Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of the Loan Document shall be valid and enforceable to the fullest extent permitted by law.
- 8.5 **JOINT AND SEVERAL LIABILITY.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 8.6 **SEPARATE AND COMMUNITY PROPERTY.** Any married person who executes this Mortgage as a "Mortgagor" agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon any separate property or community property of that person.
- 8.7 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.8 **SUCCESSORS IN INTEREST.** The terms, covenants and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as permitted under the Loan Documents.
- 8.9 **GOVERNING LAW.** This Mortgage was accepted by Mortgagee in the State of California and the proceeds of the Note were disbursed from the State of California, which state the parties agree has a substantial relationship to the parties and the Loan. Accordingly, in all respects, including, without limitation, matters of construction, validity, enforceability and performance, all Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for the creation, perfection and enforcement of the liens and security interests and all other remedies created pursuant hereto and to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed in accordance with the laws of the state where the Property is located.
- 8.10 **CONSENT TO JURISDICTION.** Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the State of California over any suit, action, or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to the Loan or any Loan Document; (b) any state or federal court sitting in the state where the Property is located or the state in which Mortgagor's principal place of business is located over any suit, action or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to the Loan or any Loan Document; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise any of its remedies under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral.
- 8.11 **ADDRESSES; REQUEST FOR NOTICE.** All notices and other communications that are required or permitted to be given to a party under the Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number

below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses of the parties are set forth on page 1 of this Mortgage and the facsimile numbers for the parties are as follows:

Mortgagee:

MORTGAGE ELECTRONIC REGISTRATIONS
SYSTEMS INC.
FAX No.: (703) 748-0183

Mortgagor:


DGJASPER, LLC.
FAX No.: (205) 759-4994

Mortgagor's principal place of business is at the address set forth on page 1 of this Mortgage.

Any Mortgagor whose address is set forth on page 1 of this Mortgage hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Mortgagor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

- 8.12 **COUNTERPARTS.** This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.
- 8.13 **WAIVER OF JURY TRIAL.** MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.
- 8.15 **SPREADING CLAUSE.** All sums contracted for, charged, taken or received by Lender for the use, forbearance or detention of any debt evidenced by the Note and/or the Loan Documents shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note does not exceed the maximum legal rate from time to time in effect and applicable to the Note. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note.
- 8.16 **NOMINEE CAPACITY OF MERS.** MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and its successors and assigns and only holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Secured Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of Mortgagee herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to

foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Mortgage. Subject to the foregoing, all references herein to "Mortgagee" shall include Lender and its successors and assigns.


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Shelby Cnty Judge of Probate, AL
06/17/2005 12:05:53PM FILED/CERT

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

Witnessed:

DGJASPER, LLC.,
an Alabama limited liability
company

Name:

MEB

By:

RT AB

Robert W. Buchalter,
Manager

Name:

Swan Coffey

This document prepared by:
James A. Simpson, Esq.
Miller Canfield Paddock and Stone, PLC
840 West Long Lake Road
Suite 200
Troy, MI 48098-6358

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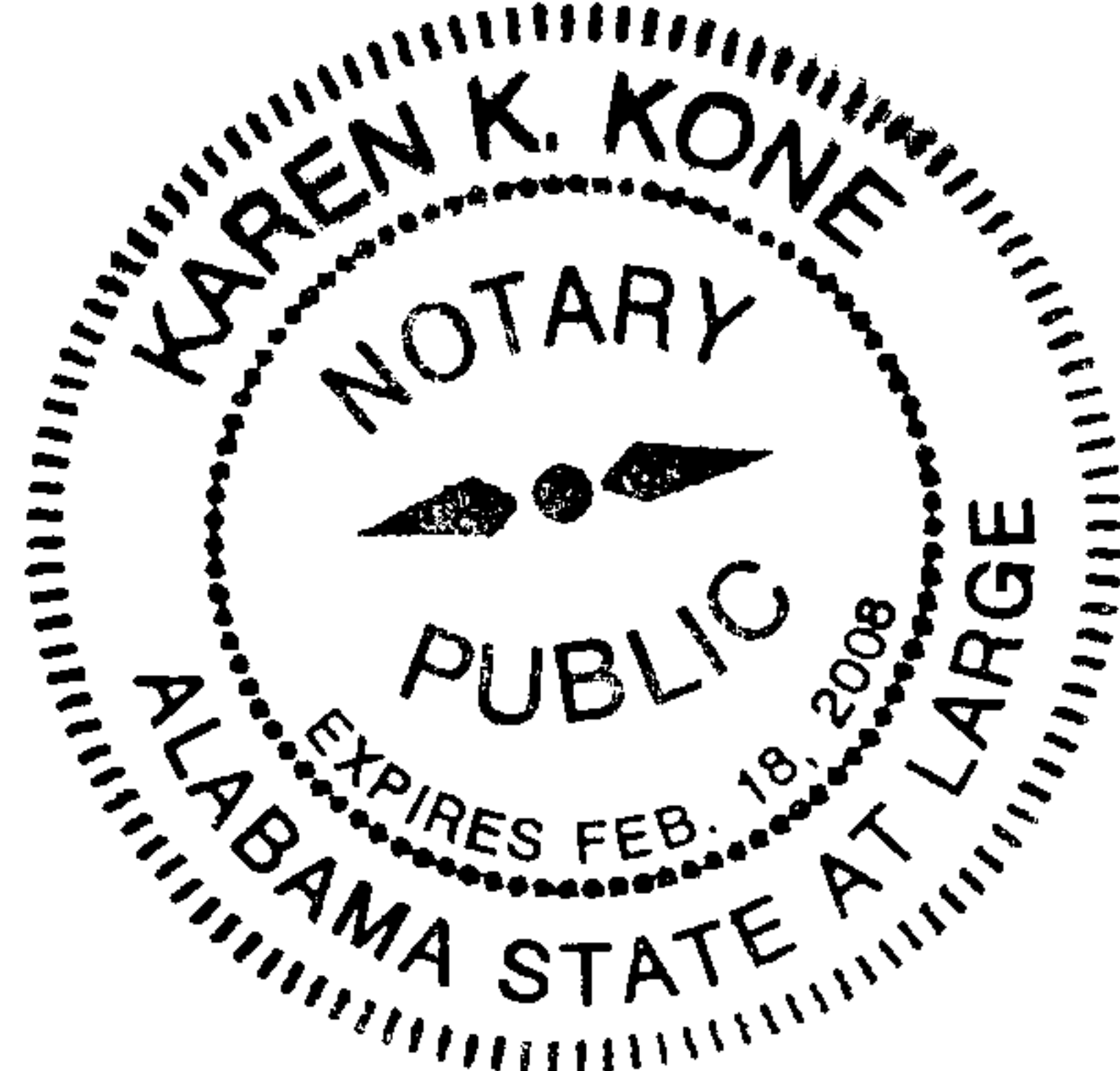
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06/17/2005 12:05:53PM FILED/CERT

ACKNOWLEDGMENT

STATE OF Alabama }
COUNTY OF Tuscaloosa } ss.

On this 9th day of June, 2005, the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, Robert W. Buchalter, personally known to me or proved to me on the basis of satisfactory evidence, to be the sole Manager of DGJASPER, LLC, an Alabama limited liability company, who, having been duly authorized, signed and executed the foregoing instrument as on behalf of said limited liability company and, being informed of the contents of said instrument, acknowledged the due execution of the said instrument before me this date to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein stated.

Witness my hand and Notarial Seal.



Karen K. Kone
Print Name: Karen K. Kone
County of Tuscaloosa
State of Alabama
My Commission Expires: 2-18-08

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Rick Allison, Judge of Probate, Walker County, Alabama

Loan No. [REDACTED]

EXHIBIT A
Description of Land
Shelby County, Alabama

The parties to this MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage"), dated as of June 15, 2005, are DGJASPER, LLC., an Alabama limited liability company ("Mortgagor"), and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as "Mortgagee".

Description of Land. The Land referred to in this Mortgage is situated in Shelby County, Alabama and is described as follows:

SHELBY COMPOSITE OF PARCELS I-VII

Lot 8B, according to the Survey of White Stone Center Subdivision as recorded in Map Book 33, Page 138A and 138B, in the Probate Office of Shelby County, Alabama.

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Loan No. [REDACTED]

EXHIBIT A
Description of Land
Walker County, Alabama

The parties to this MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage"), dated as of June 15, 2005, are DGJASPER, LLC., an Alabama limited liability company ("Mortgagor"), and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as "Mortgagee".

Description of Land. The Land referred to in this Mortgage is situated in Walker County, Alabama and is described as follows:

WALKER PARCEL I:

A parcel of land located in a part of the Northwest ¼ of the Southwest ¼ of Section 34 Township 13 South, Range 7 West, Walker County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Northwest ¼ of the Southwest ¼, said point being a 4 by 4 inch concrete monument and run South 86 degrees 53 minutes 30 seconds West along the North line of said Northwest ¼ of the Southwest ¼ for a distance of 87.57 feet; thence run South 02 degrees 03 minutes 11 seconds East for a distance of 214.03 feet, to a 5/8 inch capped iron and the point of beginning; thence continue South 02 degrees 03 minutes 11 seconds East for a distance of 137.57 feet to a 5/8 inch capped iron; thence run 88 degrees 50 minutes 01 second West for a distance of 372.93 feet to a 5/8 inch capped iron on the Easterly right of way of Airport Road; thence run North 09 degrees 58 minutes 44 seconds West, along said Easterly right of way for a distance of 139.49 feet to a 5/8th inch capped iron; thence run North 88 degrees 52 minutes 39 seconds East for a distance of 382.09 feet to THE POINT OF BEGINNING.

WALKER PARCEL II:

A parcel of land located in the part of the Northwest ¼ of the Southwest ¼ of Section 34, Township 13 South, Range 7 West, Walker County, Alabama, being more particularly described as follows: Commence at the Northeast corner of said Northwest ¼ of Southwest ¼, said point being a 4 by 4 inch concrete monument and run South 86 degrees 53 minutes 30 seconds West along the North line of said Northwest ¼ of the Southwest ¼ for a distance of 87.57 feet; thence run South 02 degrees 03 minutes 11 seconds East for a distance of 351.60 feet, to a 5/8 inch capped iron and the point of beginning; Thence continue South 02 degrees 03 minutes 11 seconds East for a distance of 44.52 feet, to a capped iron; Thence run South 88 degrees 58 minutes 37 seconds West for a distance of 109.92 feet to a capped iron; Thence run South 02 degrees 04 minutes 18 seconds East for a distance of 70.66 feet, to a capped iron; Thence run South 88 degrees 53 minutes 30 seconds West for a distance of 247.11 feet to a point on the Easterly right of way of Airport Road; Thence run North 09 degrees 56 minutes 44 seconds West, along said Easterly right of way for a distance of 116.00; Thence run North 88 degrees 50 minutes 01 second East for a distance of 372.93 feet to the point of beginning.

WALKER PARCEL III:

Being a part of Block 220, according to the Jasper Land Company Map of the City of Jasper, Alabama, as the same appears of record in Map Book 1, Page 38, in the Probate Office of Walker County, Alabama and being more particularly described as follows:

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Commencing at the Southeast corner of said Block 220 and run North 01 degree 08 minutes 15 seconds East along the East line of said Block 220 and West right-of-way line of 7th Avenue for a distance of 80.04 feet to the point of beginning. Thence run North 88 degrees 51 minutes 48 seconds West for a distance of 115.00 feet; thence run North 37 degrees 57 minutes 28 seconds West for a distance of 119.48 feet; thence run North 01 degree 01 minutes 25 seconds East for a distance of 83.15 feet; thence run North 89 degrees 31 minutes 16 seconds East for a distance of 86.28 feet; thence run North 01 degree 19 minutes 12 seconds East for a distance of 88.07 feet, to a point on the North boundary of said Block 220; thence run South 86 degrees 12 minutes 18 seconds East on the North boundary of said Block 220 and the South right-of-way line of 19th Street for a distance of 29.01 feet; thence run South 01 degree 08 minutes 12 seconds West for a distance of 229.03 feet; thence run South 88 degrees 51 minutes 48 seconds East for a distance of 75.00 feet to a point on the East boundary of said Block 220; thence run South 01 degree 08 minutes 15 seconds West along said East line of said Block 220 for a distance of 36.00 feet to the Point of Beginning

WALKER PARCEL IV:

Being a part of Block 220, according to the Jasper Land Company Map of the City of Jasper, Alabama, as the same appears of record in Map Book 1, Page 38, in the Office of the Judge of Probate of Walker County, Alabama and being more particularly described as follows:

Begin at the Southeast corner of said Block 220 and run North 01 degree 08 minutes 15 seconds East along the East line of said Block 220 and West right-of-way line of 7th Avenue for a distance of 341.59 feet to the Northeast corner of said Block 220; thence run North 86 degrees 12 minutes 18 seconds West along the North line of said Block 220 and the South right-of-way line of 19th Street for a distance of 104.09 feet; thence run South 01 degree 19 minutes 12 seconds West for a distance of 88.07 feet; thence run South 89 degrees 31 minutes 16 seconds West for a distance of 148.08 feet; thence run north 89 degrees 54 minutes 52 seconds West for a distance of 109.88 feet; thence run South 00 degrees 41 minutes 57 seconds West for a distance of 150.88 feet; thence run South 88 degrees 37 minutes 10 seconds East for a distance of 180.79 feet; thence run South 01 degree 01 minutes 25 seconds West for a distance of 99.91 feet to a point on the South boundary of said Block 220 and a point on the North right-of-way line of 20th Street; thence run South 88 degrees 40 minutes 16 seconds East, along said North right of way and South boundary of Block 220, for a distance of 180.00 feet, to the Point of Beginning.

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Rick Allison, Judge of Probate, Walker County, Alabama