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STATE OF ALABAMA

COUNTY OF SHELBY

This instrument was prepared by:

Brigitte Gawenda Kimichik, Esq.
Andrews Kurth LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201

Recording requested by
and when recorded return to:

WELLS FARGO BANK, N.A.
Commercial Mortgage Origination
5938 Priestly Drive, Suite 200
Carlsbad, California 92008

Attention: CMO Loan Admin.
Loan No.: 93-0903133
Unit No.: 22749
MERS MIN #: 8000101-0000001633-6

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

Dated as of August 16th, 2005

from
LDVF1H TACO LLC, a Delaware limited liability company,
as Mortgagor
to
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC
P.O. Box 2300
Flint, Michigan 48501-2300,
as Mortgagee

DECLARATION OF MAXIMUM SECURED AMOUNT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT THE TIME OF

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EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED BY THIS MORTGAGE AT ANY TIME IS $1,230,059.00; PROVIDED THAT, SUCH LIMITATION SHALL NOT LIMIT THE SECURITY OF THIS MORTGAGE WITH RESPECT TO (A) INTEREST ON THE AFORESAID PRINCIPAL INDEBTEDNESS AT THE RATE SET FORTH IN THE NOTE AND (B) REPAYMENT TO THE MORTGAGEE AFTER THE OCCURRENCE OF A DEFAULT OF SUMS ADVANCED OR PAID FOR REAL ESTATE TAXES, CHARGES AND ASSESSMENTS THAT MAY BE IMPOSED BY LAW UPON THE MORTGAGED PROPERTY, AND (C) REPAYMENT TO THE MORTGAGEE AFTER THE OCCURRENCE OF A DEFAULT OF SUMS ADVANCED OR PAID FOR INSURANCE PREMIUMS WITH RESPECT TO THE MORTGAGED PROPERTY, AND (D) REPAYMENT TO THE MORTGAGEE AFTER THE OCCURRENCE OF A DEFAULT OF ALL REASONABLE COSTS OR EXPENSES OF COLLECTION OF THE INDEBTEDNESS SECURED BY THIS MORTGAGE OR OF THE DEFENSE OR PROSECUTION OF THE RIGHTS AND LIEN CREATED BY THIS MORTGAGE, AND (E) REPAYMENT TO THE MORTGAGEE OF SUMS ADVANCED OR PAID TO WHICH THE MORTGAGEE BECOMES SUBROGATED, UPON PAYMENT, UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY.

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5938 Priestly Drive, Suite 200
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Attention: CMO Loan Admin.
Loan No.: 93-0903133
Unit No.: 22749
MERS MIN #: 8000101-0000001633-6

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 August 16th, 2005, is executed by LDVF1H TACO LLC, a Delaware limited liability company ("Mortgagor"), with an office at 1251 Avenue of the Americas, 16th Floor, New York, New York 10020, c/o Drawbridge Special Opportunities Fund LP, Attn: John C. King, Treasurer/CFO, for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation ("MERS" or "Mortgagee"), as agent for Lender (hereinafter defined), with a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 48501-2300.

RECITALS

A. Mortgagor as "Borrower" proposes to borrow from Wells Fargo Bank, National Association ("Lender"), and Lender proposes to lend to Mortgagor, the total principal sum of SEVEN MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS ($7,150,000.00) (the "Loan"). The Loan is evidenced by that certain Secured Promissory Note of even date herewith, in the principal sum of Seven Million One Hundred Fifty Thousand and No/100 Dollars ($7,150,000.00), executed by Mortgagor to

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Mortgagee (the "Note"). Notwithstanding the foregoing, the maximum indebtedness secured by this Mortgage is as stated in the declaration at the beginning of this instrument.

B. The loan documents include this Mortgage, the Note and the other documents described in the Note as Loan Documents ("Loan Documents"). The Maturity Date of the Loan is September 1, 2015.

ARTICLE 1 MORTGAGE

1.1. **GRANT**. For the purposes of and upon the terms and conditions of this Mortgage, Mortgagor absolutely and irrevocably mortgages, grants, conveys and assigns to Mortgagee, with right of entry and possession, with power of sale, 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 Birmingham, county of Shelby, 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 mortgage, conveyance, grant and assignment and those set forth in Articles 3 and 4 hereof and elsewhere herein for the purpose of securing the following obligations ("Secured Obligations"):

a. Full and punctual payment to Lender of all sums at any time owing under the Note;

b. Payment and performance of all covenants and obligations of Mortgagor under this Mortgage including, without limitation, indemnification obligations and advances made to protect the Property;

c. Payment and performance of all additional covenants and obligations of Mortgagor under the Loan Documents;

d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Mortgage recites are secured hereby;

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e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage;

f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees;

g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes; and

h. Payment and performance of any other obligations which are defined as "Secured Obligations" in the Note.

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 or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof, including, without limitation, those certain Master Land and Building Leases, whether one or more, (collectively, the "Master Lease") dated of even date herewith, executed by Mortgagor as landlord and Tacala, LLC, a Delaware limited liability company, as tenant ("Tenant"), covering the Land, and, if applicable, other land (collectively with the Master Lease, the "Leases"); and the term "Tenants" is sometimes used to refer, collectively, to the Tenant under the Master Lease and the other Leases entered into in accordance with this Mortgage; 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, subject to the terms of this Mortgage, Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

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3.2. **GRANT OF 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 so collected by Mortgagee against any Secured Obligation or any other obligation of Mortgagor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default (unless applied against the full amount of any amounts then outstanding) or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, the License shall be deemed to be re-conferred upon Mortgagor by Mortgagee, without any further act or deed, until the occurrence of another Default.

3.3. **COVENANTS – LONG-TERM LEASES**.

a. **All Leases**. Mortgagor shall, at Mortgagor's sole cost and expense:

(i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;

(ii) use reasonable efforts to keep the Property leased at all times to tenants which Mortgagor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);

(iii) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease and all amendments thereto and waivers thereof; and

(iv) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and specific subordinations of any Lease to this Mortgage, in form and substance satisfactory to Mortgagee (and with respect to the Tenant under

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the Master Lease, subject to the terms and conditions set forth in said Master Lease).

Unless consented to in writing by Mortgagee (in its sole and absolute discretion) or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(v) Except in accordance with a Property Substitution (as defined in that certain Note executed by Mortgagor and Mortgagee of even date herewith) grant any tenant under any of the Leases any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;

(vi) grant any tenant under any of the Leases any right to prepay rent more than 1 month in advance;

(vii) except upon Mortgagee's request, execute any assignment of landlord's interest in any of the Leases; or

(viii) collect rent or other sums due under any of the Leases in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

b. **Major Leases**. Unless consented to in writing by Mortgagee (in its sole and absolute discretion) or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(i) enter into any Major Lease (defined below) which (aa) is not on commercially reasonable terms and conditions similar to those found in similarly situated commercial or retail properties, as applicable; (bb) does not contain subordination, attornment and other mortgagee protective provisions, including a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request, and at a minimum the provisions as set forth in the Master Lease; (cc) does not contain environmental compliance and reporting provisions reasonably satisfactory to Mortgagee and its counsel, and at a minimum the provisions as set forth in the Master Lease; or (dd) allows the tenant to assign or sublet the premises, except in accordance with and subject to the terms as set forth in the Master Lease;

(ii) reduce any rent or other sums due from the tenant under any Major Lease;

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(iii) terminate or modify or amend any Major Lease or any guaranty executed by any guarantor in connection therewith;

(iv) allow the Tenant to assign or sublet the Lease, except in accordance with and subject to the terms of the Approved Major Lease (defined below);

(v) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder; or

(vi) subordinate or agree to subordinate any Major Lease to any other deed of trust, deed to secure debt or mortgage (other than this Mortgage) and any other Mortgage (as such term is defined in the Loan Documents).

Any such attempted action in violation of the provisions of this Section shall be null and void.

Without limiting the generality of the foregoing, each Major Lease (i) shall be an absolute triple-net lease for a minimum non-contingent lease term of no less than the term provided under the Master Lease, and (ii) shall provide for a minimum annual base rent of no less than as provided under the Master Lease existing as of the date hereof for (A) such individual Demised Property (as defined in the Master Lease) or (B) such Demised Properties (as defined in the Master Lease), as the case may be.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Aggregate Properties (defined below), as reasonably determined by Mortgagee; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases relating to the Aggregate Properties (excluding all Leases under which the tenant is then in default), as reasonably determined by Mortgagee. Mortgagor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4.a. as well as by the provisions of this Section. For ease of reference, a Major Lease approved in accordance with the provisions of this Section 3.4.b. and the Master Lease described below are referred to as "Approved Major Leases," and the term "Aggregate Properties" refers collectively to the Property and all other properties for which mortgages or deeds of trust have been granted to secure the Secured Obligations.

c. **Lease Default**. Mortgagor shall, at Mortgagor's sole cost and expense, give Mortgagee prompt written notice of any Lease Default (defined below). The term "Lease Default" shall mean there shall exist (i) any "Event of Default" as defined in Section 16.01(a) through (g) of the Master Lease (or similar provisions of any Major Lease), provided, however, that with respect to Section 16.01(a) of the Master Lease with respect to failure to pay Rent or Additional Rent (or similar

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provision of any other Major Lease), such Event of Default shall not be deemed an "Automatic Default" as defined in Section 7.1.b(v) herein below for a continuous period of up to six (6) months, provided Mortgagor is timely paying such Rent or Additional Rent under the Master Lease (or applicable Major Lease) in to the Restricted Account (as such term is defined in the Cash Management Agreement) during such six (6) month period, or (ii) any Event of Default as defined in Section 16.01(h) of the Master Lease (or any similar provision of any Major Lease) after the expiration of any applicable notice or cure periods as set forth therein, in respect of a covenant, misrepresentation, violation or other occurrence that Mortgagee, in its reasonable discretion, determines to be a material Event of Default under such Major Lease, provided, however, such Event of Default shall not be deemed an "Automatic Default" as defined in Section 7.1.b(v) herein below, if Mortgagor is diligently pursuing the Tenant's cure of such default.

d. **Master Lease**. It is understood that Mortgagor's execution and delivery of this Mortgage, together with Mortgagee's disbursement of the proceeds of the Loan, shall constitute Mortgagee's written consent to the terms of the Master Lease, approval of the Tenants thereunder and an acknowledgment that the Master Lease complies (or is deemed by Mortgagee to comply) with the provisions of this Section and the other provisions of this Mortgage. As of the date of this Mortgage, the Property is subject to the Master Lease which constitutes a Major Lease and is the only Major Lease affecting the Aggregate Properties.

3.4. **ESTOPPEL CERTIFICATES**. Within 30 days after request by Mortgagee, Mortgagor shall deliver to Mortgagee and to any party designated by Mortgagee, estoppel certificates relating to the Leases executed by Mortgagor and by each of the tenants, in form and substance acceptable to Mortgagee; provided, however, if any tenant shall fail or refuse to so execute and deliver any such estoppel certificate upon request, Mortgagor shall use reasonable efforts to cause such tenant to execute and deliver such estoppel certificate but such tenant's continued failure or refusal to do so, despite Mortgagor's reasonable efforts, shall not constitute a default by Mortgagor under this Section. Notwithstanding the foregoing, during the term of the Master Lease, delivery to Mortgagee of the completed estoppel certificate in substantially the form executed in favor of Mortgagee in connection with the Master Lease shall satisfy the requirements of this Section 3.5.

3.5. **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 joinder or consent of, or notice to, Mortgagor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of

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any junior lienholder. Nothing herein shall be construed as subordinating this Mortgage to any Lease.

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 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 ownership and use of 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 (the "UCC"). This Mortgage constitutes a fixture filing under the UCC. For purposes of the foregoing (i) the Mortgagor is the "debtor" and its address is as set forth in Section 8.14 of this Mortgage, (ii) the Mortgagee is the "secured party" and its address is as set forth in Section 8.14 of this Mortgage and (iii) the name of the record owner of the Property is the Mortgagor.

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4.2. **COVENANTS**. Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name or the jurisdiction in which it is organized without giving Mortgagee at least 30 days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder (and with respect to such third party being the Tenant under the Master Lease, subject to the terms and conditions set forth in the Master Lease).

4.3. **RIGHTS OF MORTGAGEE**. In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Collateral (and during the term of any Approved Major Lease) and provided there does not then exist an uncured default thereunder (after applicable notice and cure periods, subject to any specific restrictions or prohibitions under any such leases). Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

4.4. **RIGHTS OF MORTGAGEE UPON DEFAULT**. Upon the occurrence and continuation of a Default, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

a. **Disposition of Collateral**. Mortgagee may: (i) upon written notice, require Mortgagor to assemble the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property (and during the term of any Approved Major Lease affecting the Property) and provided there does not then exist an uncured default thereunder (after applicable notice and cure periods, subject to any specific restrictions or prohibitions under any such lease) or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and

b. **Other Rights**. Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or

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all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of the Collateral.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that twenty (20) days' prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitations, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Mortgagee may from time to time elect.

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 UCC.

4.5. **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.

4.6. **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 Effective Date:

a. **Legal Status**. Mortgagor is duly formed and validly existing and in good standing under the laws of the state(s) in which Mortgagor is organized.

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Mortgagor is qualified or licensed or has filed all applications to qualify or be licensed to do business in all jurisdictions in which such qualification or licensing is required and is diligently pursuing the issuance by the applicable secretary of states of such certificates of authority or qualifications.

b. **Permits**. Mortgagor possesses all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Mortgagor to conduct the business(es) in which Mortgagor is now engaged in compliance with applicable law, excepting those permits, franchises, and licenses (i) being applied for in the ordinary course of business as of the date hereof, or (ii) where Mortgagor's failure to possess such permits, franchises, or licenses does not give rise to a Material Adverse Effect.

c. **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 Mortgagor, 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.

d. **Violations**. The execution, delivery and performance by Mortgagor of each of the Loan Documents does not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Mortgagor is a party or by which Mortgagor is bound.

e. **Litigation**. Except as otherwise disclosed in that certain Disclosure Agreement Regarding Representations, Covenants and Warranties of even date herewith, executed by Mortgagor for the benefit of Mortgagee (the "Disclosure Agreement"), there are no pending or threatened (in writing) actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Mortgagor other than those previously disclosed in writing by Mortgagor to Mortgagee.

f. **Financial Statements**. The Financial Statements (as such term is defined in that certain Borrower's Certificate of even date herewith, executed by Mortgagor in favor of Lender) of Mortgagor, of the sole member and/or manager of Mortgagor, DBH Taco LLC, a Delaware limited liability company, and of the guarantor, Drawbridge Special Opportunities Fund LP, a Delaware limited partnership ("Guarantor"), previously delivered by Mortgagor to Mortgagee: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Mortgagor to prepare the financial statements delivered to and approved by

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Mortgagee in connection with the making of the Loan, or other accounting standards approved by Mortgagee. 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 disclosed in the Disclosure Agreement.

g. **Reports**. All reports, documents, instruments and information delivered by Mortgagor to Mortgagee or otherwise prepared by, for or at the direction of Mortgagor and 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. **Income Taxes**. There are no pending assessments or adjustments of Mortgagor's income tax payable with respect to any year.

i. **Subordination**. There is no agreement or instrument to which Mortgagor is a party or by which Mortgagor is bound that would require the subordination in right of payment of any of Mortgagor's obligations under the Note to an obligation owed to another party.

j. **Title**. Mortgagor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, as disclosed in the Disclosure Agreement.

k. **Mechanics' Liens**. Except as disclosed in the Disclosure Agreement, there are no mechanics' or similar liens or claims which have been filed for work, labor or material affecting the Property which are or may be prior to or equal to the lien of this Mortgage. Except as disclosed in the Disclosure Agreement, there are no rights outstanding that under law could give rise to any liens) affecting the Property which are or may be prior to or equal to the lien of this Mortgage.

l. **Encroachments**. Except as shown in the survey for the Property subject of this Mortgage issued in connection with the closing of the Loan and previously delivered to Mortgagee, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no

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buildings or other improvements located on adjoining properties encroach upon the Property.

m. **Leases**. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. No material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. No rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.

n. **Collateral**. Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, disclosed in the Disclosure Agreement. 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 Delaware. 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.

o. **Condition of Property**. Except as set forth in the Environmental Reports (as such term is defined in the Disclosure Agreement), or as otherwise set forth in the Disclosure Agreement, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

p. **Hazardous Materials**. Except as shown in the Environmental Reports, or as otherwise set forth in the Disclosure Agreement, or as otherwise permitted in Section 6.2.a. below, 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 Hazardous Materials (as hereinafter defined).

q. **Hazardous Materials Laws**. Except as shown in the Environmental Reports, the Property complies with all Hazardous Materials Laws (as hereinafter defined), except for any noncompliance that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

r. **Hazardous Materials Claims**. Except as shown in the Environmental Reports, there are no pending or threatened (in writing) Hazardous Materials Claims (as hereinafter defined) that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

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s. **Wetlands**. Except as shown on any survey of the Property issued in connection with the closing of the Loan that has been delivered to Mortgagee, no part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

t. **Compliance With Laws**. Except as reflected in the Environmental Reports, or as otherwise set forth in the Disclosure Agreement, all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 *et seq.*) have been satisfied or complied with in all material respects and any non compliance will not materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property. All material certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.

u. **Property Taxes and Other Liabilities**. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid or arrangements, acceptable to Mortgagee, have been made for their payment contemporaneously with the execution of this Mortgage.

v. **Condemnation**. There is no proceeding pending or overtly threatened for the total or partial condemnation of the Property.

w. **Homestead**. There is no homestead or other exemption available to Mortgagor which would materially interfere with the right to sell the Property or the right to foreclose this Mortgage (or if there is such an exemption available, Mortgagor hereby waives its rights that would materially interfere with the right to sell the Property or the right to foreclose this Mortgage).

x. **Solvency**. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Mortgagor, and Mortgagor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Mortgagor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Mortgagor is able to pay its debts as they become due.

y. **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.

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z. **Utilities; Water; Sewer**. The Property is served by public or private utilities (including water and sewer systems) required and adequate for the current or contemplated use thereof.

aa. **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 a "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 not on account of or for the benefit of any Plan.

As used in this Section 5.1, to "Mortgagor's current actual knowledge" shall mean to the current actual knowledge of Constantine Michael Dakolias, Josh Pack and David Pettijohn.

5.2. **RESERVED**.

5.3. **REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING ENTITY STATUS**.

In connection with the Loan, Mortgagor hereby represents, warrants and covenants to Mortgagee as follows with respect to both Mortgagor and the sole member of Mortgagor, and for so long as the Secured Obligations remain outstanding:

a. each such entity was organized solely for the purpose of owning the Property or an interest in Mortgagor, as applicable;

b. each such entity has not engaged in, and will not engage in, any business unrelated to the ownership of the Property;

c. each such entity has not had, and will not have, any assets other than the Property and the Aggregate Properties (and personal property incidental to the ownership and operation of the Aggregate Properties) or an interest in Mortgagor, as applicable;

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d. each such entity has not engaged in, and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or partnership agreement, as applicable;

e. each such entity, without the unanimous consent of all of its directors, general partners or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings;

f. each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan, and (ii) that certain unsecured trade debt not to exceed 2% of the aggregate amount of the Loan, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property and is paid within 30 days from the date incurred;

g. each such entity has not failed to correct, and will not fail to correct, any known misunderstanding regarding the separate identity of such entity;

h. each such entity has maintained, and will maintain, its accounts, books and records separate from any other person or entity;

i. each such entity has maintained, and will maintain, its books, records, resolutions and agreements as official records;

j. each such entity (i) has not commingled, and will not commingle, its funds or assets with those of any other entity; and (ii) has held, and will hold, its assets in its own name or in such fictitious business name as may be required to qualify to do business in any state;

k. each such entity has conducted, and will conduct, its business in its own name or in such fictitious business name as may be required to qualify to do business in any state;

l. each such entity has maintained, and will maintain, its accounting records and other entity documents separate from any other person or entity;

m. each such entity has prepared, and will prepare, separate financial statements, or if part of a consolidated group, is shown as a separate member of such group;

n. each such entity has prepared and will prepare separate tax returns to the extent required by applicable law;

o. each such entity has paid, and will pay, its own liabilities and expenses out of its own funds and assets;

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p. each such entity has held, and will hold, regular meetings, as appropriate, to conducts its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;

q. each such entity as of the date of this Mortgage has not assumed or guaranteed, and will not assume or guarantee or become obligated for, the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity, except for the pledge by the member of Mortgagor of its ownership interests in Mortgagor to Mortgagee, pursuant to that certain Pledge and Security Agreement of even date herewith, executed by DBH Taco, LLC, a Delaware limited liability company, the sole member of Mortgagor, for the benefit of Mortgagee (the "Pledge Agreement");

r. each such entity has not acquired, and will not acquire, obligations or securities of its shareholders, partners or members, as applicable;

s. each such entity has allocated, and will allocate, fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used, and will use, separate stationery, invoices and checks;

t. each such entity has not pledged, and will not pledge, its assets for the benefit of any other person or entity, except in favor of Mortgagee in connection with the Loan;

u. each such entity has held and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in such fictitious business name as may be required to qualify to do business in any state and not as a division or part of any other person or entity;

v. each such entity has not made, and will not make, loans to any person or entity;

w. each such entity has not, and will not, identify its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, as a division or part of it;

x. each such entity has not entered into, and will not enter into or be a party to, any transaction with its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

y. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;

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z. each such entity has paid, and will pay, the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

aa. each such entity has maintained, and will maintain, adequate capital in light of its contemplated business operations;

bb. if any such entity is a partnership with more than one general partner, its partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;

cc. if any such entity is a limited liability company, its operating agreement, if any such entity is a partnership, its partnership agreement and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.3 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;

dd. Mortgagor has maintained, and will continue to maintain, at least one Independent Director (as defined below); and

ee. Mortgagor has not caused or allowed, and will not cause or allow, the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

As used herein, the term "Independent Director" shall mean an individual who, except in his or her capacity as an Independent Director of the Mortgagor, is not, and has not been during the five (5) years immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the Mortgagor or its Affiliates (other than his or her service as an Independent Director or similar capacity of the Mortgagor or any of its Affiliates); (ii) affiliated with a customer or supplier of the Mortgagor or the Affiliates (other than an Independent Director provided by a corporate services company that provides independent directors in the ordinary course of its business); or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above. As used herein, the term "Affiliate" shall mean any person or entity other than the member which (x) owns beneficially, directly or indirectly, any outstanding units or equity interests of the Mortgagor, or (y) controls, is controlled by or is under common control with the Mortgagor. The term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

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ARTICLE 6 RIGHTS AND DUTIES OF THE PARTIES

6.1. **MAINTENANCE AND PRESERVATION OF THE PROPERTY**. Mortgagor shall (or shall cause a Tenant, in accordance with a Major Lease) to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed; (c) comply or cause the Property to comply with, (i) all laws, ordinances, regulations and standards, in each case to avoid a Material Adverse Effect (defined below), (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value (subject to any restrictions of any Approved Major Lease); (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Mortgagee deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Except as identified in the Cash Management Agreement of even date herewith executed by Lender and joined for the limited purposes as set forth in the joinder attached thereto by Tenant and Fortress Realty Management LP, a Delaware limited partnership, as the property manager of Borrower ("**Property Manager**"), Mortgagor shall not: (A) remove or demolish all or any material part of the Property except in connection with any remedial or other action required to comply with applicable Hazardous Materials Laws, provided that any Property removed shall be removed in accordance with any applicable laws and such Property be replaced with property of equal or greater value; (B) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (C) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (D) materially alter the type of occupancy or use of all or any part of the Property; or (E) commit or permit waste of the Property.

6.2. **HAZARDOUS MATERIALS**. Without limiting any other provision of this Mortgage, Mortgagor agrees as follows:

a. **Prohibited Activities**. Mortgagor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release,

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discharge, disposal, transportation or presence of any of the following (collectively, "Hazardous Materials") which are either in violation of Hazardous Materials Laws (defined below) or which exist in quantities in excess of what is permitted under Hazardous Materials Laws: oil or other petroleum products; flammable explosives; asbestos; urea formaldehyde insulation; radioactive materials; hazardous wastes; fungus, mold, mildew, spores or other biological or microbial agents the presence of which may affect human health, impair occupancy or materially affect the value or utility of the Property; toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations.

Notwithstanding the foregoing, (i) Mortgagor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants in similar lines of business on properties similar to the Property; and (iii) any person undertaking an investigation or remediation of Hazardous Materials in, on at or under the Property may temporarily maintain, store and/or handle such Hazardous Materials at the Property, provided, such person is fully authorized by applicable law to handle such materials, such Hazardous Materials are reasonably necessary to the investigation or remediation, and such Hazardous Materials are brought upon the Property and are upon completion of such investigation or remediation promptly removed, in accordance with applicable Hazardous Materials Laws.

b. **Hazardous Materials Laws**. Mortgagor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the

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Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

c. **Notices**. Except as set forth in the Environmental Reports, Mortgagor, upon obtaining knowledge thereof, shall promptly notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2.a); (ii) any knowledge by Mortgagor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened (in writing) against Mortgagor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could reasonably be expected to cause the Property or any part thereof to become contaminated by or with Hazardous Materials (other than Hazardous Materials permitted under Section 6.2.a); provided that said discovery, non-compliance or claim would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

d. **Remedial Action**. In response to the presence of any unlawful Hazardous Materials on, under or about the Property, Mortgagor shall immediately take or cause to be taken, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

e. **Inspection By Mortgagee**. Upon reasonable prior notice to Mortgagor (and with respect to an Approved Major Lease, provided there does not then exist an uncured default under such lease, subject to any restrictions or prohibitions set forth in such lease), Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a non-judicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of 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.

f. **Monitoring**. Upon notice to Mortgagor or Mortgagor's acquiring actual knowledge that the Property has violated Hazardous Materials Laws, Mortgagor shall comply with the terms and conditions regarding remediation and monitoring as set forth in the Environmental Liabilities Agreement of even date herewith, executed by Mortgagor in favor of Mortgagee.

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g. **Underground Storage Tanks**. Mortgagor shall not install or permit to be installed any asbestos or underground or above ground storage tanks, whether filled, empty, or partially filled with any substance ("Storage Tanks") at the Property, except to the extent reasonably necessary for the operation of the Mortgagor's or any Tenant's business in the ordinary course as a restaurant, Storage Tanks may be installed in accordance with applicable Hazardous Materials Laws. Mortgagor shall remedy or cause the remedy of all violations of Hazardous Materials Laws with respect thereto including, but not limited to, removal of Storage Tanks in the manner and as required by applicable Hazardous Materials Laws. If required by applicable Hazardous Materials Laws, Mortgagor or its predecessor in interest has registered all Storage Tanks which are now located on the Property and has paid all fees assessed by the applicable authority in connection with such tanks (and Mortgagor will so register and pay said fees with respect to any Storage Tanks hereafter located on the Property), as required by Hazardous Materials Laws. To the extent any such Storage Tanks have not been registered, Mortgagor will hereafter promptly register such Storage Tanks and pay any fees assessed by the applicable authority in connection therewith, as required by Hazardous Materials Laws. Mortgagor will fully comply, or cause compliance, with the above mentioned laws, the Federal Solid Waste Disposal Act, and 40 C.F.R. Part 280, as supplemented and amended, including without limitation, requirements for financial assurance, tank replacement and monitoring.

6.3. **COMPLIANCE WITH LAWS**. Mortgagor shall comply, or cause compliance (in each case to avoid a Material Adverse Effect, with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), as amended from time to time. Mortgagor shall possess and maintain or cause Mortgagor's tenant to possess and maintain in full force and effect at all times, in each case to avoid a Material Adverse Effect: (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Mortgagor to conduct the business(es) in which Mortgagor is now engaged. The term "Material Adverse Effect" means (a) a material and adverse effect on (i) five percent (5%) or more of the Aggregate Properties as security for the Loan or (ii) the intended use of five percent (5%) or more of the Aggregate Properties, (b) resulting fines in excess of $25,000.00, (c) resulting penalties or sanctions that could impair the business, operations, properties, assets or condition (financial or otherwise) of Mortgagor's Tenant when considered with respect to five percent (5%) or more of the Aggregate Properties, (d) material impairment of the ability of Mortgagor's Tenant to perform its obligations under the Approved Major Lease, (e) material impairment of the landlord's rights under the Approved Major Lease, or (f) imposition of liens upon the Property (not promptly removed or bonded as provided in this Mortgage). In determining

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whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

6.4. **LITIGATION**. Mortgagor shall promptly notify Mortgagee in writing of any litigation pending or threatened against Mortgagor claiming damages in excess of $50,000.00 and of all pending or threatened litigation against Mortgagor if the aggregate damage claims against Mortgagor exceed $100,000.00.

6.5. **MERGER, CONSOLIDATION, TRANSFER OF ASSETS**. Mortgagor shall not: (a) merge or consolidate with any other entity; (b) make any substantial change in the nature of Mortgagor's business or structure; (c) acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Mortgagor's assets except in the ordinary course of Mortgagor's business or in accordance with Sections 4 and 5 of Exhibit A of the Note.

6.6. **ACCOUNTING RECORDS**. Mortgagor shall maintain adequate books and records in accordance with the same accounting standard used by Mortgagor to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan or other accounting standards approved by Mortgagee. Mortgagor shall 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.

6.7. **COSTS, EXPENSES AND ATTORNEYS' FEES**. Mortgagor shall pay to Mortgagee the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property or Collateral required by Mortgagee as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Mortgagor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Mortgagee may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee together with late charges thereon as set forth in Section 5.1 of the Note if not paid by Mortgagor on or before the fourth day after the demand for payment is made by Mortgagee.

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6.8. **LIENS, ENCUMBRANCES AND CHARGES**. Mortgagor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.13. Subject to Mortgagor's right to contest such matters under this Mortgage or as expressly permitted in the Loan Documents, Mortgagor shall pay when due or cause to be paid when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise). So long as it complies with the provisions of this Section 6.8 and any other relevant provisions of an Approved Major Lease, a Tenant under an Approved Major Lease shall have the right to perform the Mortgagor's obligations under this Section 6.8.

6.9. **TAXES AND OTHER LIABILITIES**. Subject to the rights to contest such taxes and assessments under Section 8.4 of this Mortgage or as expressly permitted in the other Loan Documents, Mortgagor shall pay and discharge or cause to be paid and discharged when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Mortgagor shall promptly provide to Mortgagee copies of all tax and assessment notices pertaining to the Property. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.

6.10. **INSURANCE COVERAGE**. Mortgagor shall obtain and maintain, or shall cause Tenant to obtain and maintain, all insurance coverage as and when required pursuant to that certain Agreement Regarding Required Insurance dated as of the date hereof by and between Mortgagor and Mortgagee.

6.11. **CONDEMNATION AND INSURANCE PROCEEDS**.

a. **Assignment of Claims**. Subject to any restrictions contained in an Approved Major Lease, and provided there is not then an uncured default under any such Lease after applicable notice and cure periods, 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 for public or private use affecting all or

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any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing; any such awards, proceeds, interest and other sums of the Claims herein collectively called, "Proceeds." Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time (and subject to any restrictions contained in an Approved Major Lease, provided there is not then an uncured default under any such lease after any applicable notice and cure periods), (i) Mortgagor shall have the right to adjust, compromise and settle any Claim or group of related Claims of $100,000 or less without the participation or consent of Mortgagee and (ii) Mortgagee shall have the right to participate in and consent to any adjustment, compromise or settlement of any Claim or group of related Claims exceeding $100,000. If a Default has occurred and is continuing at the time (and subject to any restrictions contained in an Approved Major Lease, provided there is not then an uncured default under any such lease after any applicable notice and cure periods), Mortgagor hereby irrevocably empowers Mortgagee, in the name of Mortgagor, as Mortgagor's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all Claims; provided, however, Mortgagee shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. All Proceeds shall, in all cases, be payable to Mortgagee.

b. **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 and no Default occurs thereafter, the following provisions shall apply (subject to the rights of Tenant under any Approved Major Lease, provided that there does not then exist a continuing default under any such lease after any applicable notice and cure periods):

(i) **Condemnation**. If the Proceeds are the result of Claims described in clauses 6.11.a (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.

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(ii) **Casualty and Other Insurance**. If the Proceeds are the result of Claims described in clause 6.11.a (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, (aa) if the repair or restoration of the Property has been completed and all costs incurred in connection with the repair or restoration have been paid in full, to Mortgagor or (bb) in all other circumstances, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments.

(iii) **Restoration**. Notwithstanding the foregoing Sections 6.11.b.(i) and (ii) (and subject to any restrictions contained in an Approved Major Lease, provided there is not then an uncured default under any such lease after any applicable notice and cure periods), Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of all or any portion 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) if required by Mortgagee, a payment and performance bond for the work; (5) evidence of the continuation of all Leases unless consented to in writing by Mortgagee; (6) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; (7) evidence that the work can reasonably be completed on or before that date which is 6 months prior to the Maturity Date; and (8) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security. Mortgagor acknowledges that the specific conditions described above are reasonable.

c. **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

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Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

6.12. **IMPOUNDS**.

a. **Post-Default Impounds**. After receipt of notice from Mortgagee of (a) the occurrence of a Default under the Loan that continues beyond any applicable notice and cure periods, or (b) the occurrence of a Lease Default, and regardless of whether the default under (a) or (b) is cured, Mortgagor shall deposit with Mortgagee such amounts ("Post-Default Impounds") on such dates (determined by Mortgagee as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Mortgagee. Mortgagee in its sole discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Mortgagee not exceeding 1 year and shall determine the fractional portion thereof that Mortgagor shall deposit with Mortgagee on each date specified by Mortgagee during such period. If the Post-Default Impounds paid by Mortgagor are not sufficient to pay the related Costs, Mortgagor shall deposit with Mortgagee upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Mortgagor in addition to (but without duplication of) any other Impounds (as defined below).

b. **All Impounds**. The Post-Default Impounds and any other impounds that may be payable by Mortgagor under the Note (including, without limitation, the Minimum Account Balance, the Construction Reserve, the Tax Reserve (if applicable), and the Insurance Reserve (if applicable), as such terms are defined in the Note) are collectively called "Impounds." All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Mortgagee or its servicing agent as set forth in the Note. 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, and the existence of such account shall not limit Mortgagee's rights under this Mortgage, any other agreement or any provision of law. If no Default exists, Mortgagee shall apply all Impounds to the payment of the related Costs, or in Mortgagee's sole discretion may release any or all Impounds to Mortgagor for application to and payment of such Costs. If a Default exists, Mortgagee may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Mortgagor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Mortgagor hereunder shall not be diminished by deposits of Impounds made by Mortgagor, except to the extent that such obligations have actually been met by application of such Impounds.

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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. "Costs" means (i) all taxes and other liabilities payable by Mortgagor under Section 6.9, (ii) all insurance premiums payable by Mortgagor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Mortgagor shall deliver to Mortgagee, promptly upon receipt, all bills for Costs for which Mortgagee has required Post-Default Impounds.

6.13. **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS**. Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property (subject to the rights of a Tenant under an Approved Major Lease, provided there is not then an uncured default under any such lease after any applicable notice and cure periods), the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14. **RIGHT OF INSPECTION**. Subject to any restrictions or prohibitions set forth under an Approved Major Lease (with respect to access to the Property) and provided that there is not then an uncured default under any such lease after any applicable notice and cure periods. Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage. Mortgagee shall use reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property.

6.15. **DUE ON SALE/ENCUMBRANCE**.

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

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

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any direct or indirect legal or beneficial owner of Mortgagor or any entity obligated under item (ii) hereinabove.

"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, the Transfer of all or any part of Mortgagor's right, title and interest in and to the Property, any Leases or any Payments, or the Transfer by Tenant of its leasehold interest under the Master Lease (or a tenant under any other Major Lease).

(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 the business at the Property.

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 limited liability company interest, or the Transfer of a non-managing limited liability company interest or the creation or issuance of new non-managing limited liability company interests; or (D)

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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. Notwithstanding the foregoing, in no event shall a Transfer or proposed Transfer of any direct or indirect legal or beneficial interest in Mortgagor (whether by a Restricted Party or a non Restricted Party) be done in a manner that would violate the USA Patriot Act of 2001, Pub. L. No. 107-56 (the "Patriot Act").

(ii) **Permitted Equity Transfers**. Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Equity Transfer so long as the Minimum Equity Requirement (defined below) remains satisfied following such 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 to one or more family members of such member, partner or shareholder; and (C) a Transfer, in one or a related 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 where such Transfer does not result in a change in management control in the Restricted Party; (D) the pledge by DBH Taco, LLC, a Delaware limited liability company, of its member interests in Mortgagor to Mortgagee pursuant to the terms of the Pledge Agreement, (E) a Transfer of 100% of the Restricted Party's interests to one or more wholly owned subsidiaries; and (F) a Transfer of any of the stock and/or interest whether direct or indirect (regardless of the number of tiers of ownership) in Guarantor; provided, that in all of the foregoing cases shall such Transfer be done in a manner that would not violate the Patriot Act. "Minimum Equity Requirement" shall mean that Drawbridge Special Opportunities Fund LP, a Delaware limited partnership ("**Drawbridge**"), either directly or indirectly, owns 100% of Grantor.

(iii) **Entity Status**. Nothing contained in this Section 6.15.c. shall be construed to permit any Transfer which would result in a breach of any representation, warranty or covenant of Mortgagor under Section 5.3 above. Notwithstanding anything to the contrary contained in this Section 6.15.c., if a non-consolidation opinion was required as a condition to closing of the Loan, (1) Mortgagor shall deliver to Mortgagee at least 60 days' prior written notice of any Transfer under Section 6.15.c.(ii)(A)

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above or 60 days after and Transfer under Section 6.15.c.(ii)(B), and (2) if required by Mortgagee and provided said Transfer, in one or a related series of transactions, exceeds 45% of the stock, limited partnership interests or non-managing membership interests (as the case may be), it shall be a condition precedent to any Transfer under Section 6.15.c.(ii)(C) above that Mortgagor deliver to Mortgagee a current nonconsolidation opinion, such opinion in form and content substantially similar to the form rendered upon closing of the Loan and rendered by counsel satisfactory to Mortgagee. A Transfer under Section 6.15.c.(ii)(D), (E), or (F) shall not require a current nonconsolidation opinion.

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 acceptable to Mortgagee, signed and dated by 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, except for the ownership of Drawbridge, for which a certificate shall not be required.

6.16. **INTENTIONALLY OMITTED**.

6.17. **INTENTIONALLY OMITTED**.

6.18. **EXCULPATION**. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers 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 this Mortgage; or (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after a Default (hereafter defined) or from any other 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 and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

6.19. **INDEMNITY**. Without in any way limiting any other indemnity contained in this Mortgage, Mortgagor agrees to defend, indemnify and hold harmless the Mortgagee Group (hereinafter defined) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Mortgagee Group; (b) this Mortgage, including, without limitation, all recording costs, taxes, documentary stamp taxes, intangible taxes, and costs of title insurance endorsements; (c) the execution of this trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan

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Documents; (e) any alleged obligation or under-taking on the Mortgagee Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) 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); or (ii) the breach of any covenant, representation or warranty of Mortgagor under Sections 5.1.p., 5.1.q., 5.1.r., or 6.2 above. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Mortgagee Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Mortgagee Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. The foregoing to the contrary 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, or any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Mortgage on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Mortgage, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. "Mortgagee Group", as used herein, shall mean (1) Mortgagee and Lender (including, without limitation, any participant in the Loan and any of their respective successors or assigns, whether by sale, a secondary market transaction, or otherwise), (2) any entity controlling, controlled by or under common control with Mortgagee and Lender, (3) the directors, officers, employees and agents of Mortgagee and Lender and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). 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 SATISFACTION AND RELEASE OF THIS MORTGAGE, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE

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PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20. **INTENTIONALLY OMITTED**.

6.21. **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY**. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Mortgagor increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.

6.22. **SALE OR PARTICIPATION OF LOAN**. Mortgagee may at any time sell, assign, participate or securitize all or any portion of Mortgagee's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, or into the public securities market, in Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may, subject to the limitations contained in Section 6.23 below, disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) (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 heretofore or hereafter provided to or known to Mortgagee with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Mortgagor, any partner or member of Mortgagor, any constituent partner or member of Mortgagor, any guarantor and any non-borrower). In the event of any such sale, assignment, participation or securitization, Mortgagee and the other parties to the same shall share in the rights and obligations of Mortgagee set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Mortgagor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Mortgagor to each purchaser, assignee or participant, and Mortgagor shall, within 15 days after request by Mortgagee; (c) deliver to Mortgagee such information and documents 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

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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; (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; and (g) if, as a condition to the closing of the Loan, Mortgagor was required to provide Mortgagee with any nonconsolidation opinions, provide Mortgagee with such amendments and restatements of such opinions as any rating agency may request. The preparation and delivery of the foregoing items shall be at Mortgagor's sole cost and expense except for items that are not prepared and/or provided regularly pursuant to the terms of the Loan Documents, and provided further that Mortgagor obtains Mortgagee's consent to the cost of any extraordinary item to be paid by Mortgagee prior to incurring such expense. The indemnity obligations of Mortgagor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23. **LIMITATION ON DISCLOSURE OF INFORMATION**. Notwithstanding the foregoing as contained in Section 6.22 above, or any provision of any other Loan Document, Mortgagee agrees (i) to maintain the confidentiality of the Information (as defined below) and (ii) to use such Information exclusively for the purpose of administering and enforcing its rights under the Loan Documents (the "Permitted Use"), except that Information (other than the Asset Management Report, as defined below) may be disclosed (A) to Mortgagee and its Affiliates and their respective directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made and will be informed of the confidential nature of such Information and its Permitted Use, and instructed to keep such Information confidential and to use it only for Permitted Uses), (B) to the extent requested by any regulatory authority having authority over such Person (including any internal or external self-regulatory authority), (C) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (D) to any other party hereto, (E) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Mortgage or any other Loan Document the enforcement of rights hereunder or thereunder, (F) subject to an agreement containing provisions substantially the same as those of this Section, to any purchaser or assignee acquiring a portion of the Loan in a secondary market transaction, or (H) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to Mortgagee on a non-confidential basis from a source (other than Mortgagor) that did not result from the breach of any applicable confidentiality provision; provided, however, that the Asset Management Report may be disclosed only to those parties referred to in the foregoing clauses (A), (B) and (C), and Lender may not make any copies thereof.

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For purposes of this Section, "Information" means all information received from Mortgagor or any other Person, relating to Drawbridge or Fortress Realty Investments LLC, a Delaware limited liability company ("Fortress Realty"), other than any such information that is available to Mortgagee on a non-confidential basis prior to disclosure by Mortgagor or such Person; and "Asset Management Report" means the two-volume Asset Management Report prepared monthly by or for the benefit of each of Drawbridge and Fortress Realty in the ordinary course of its business. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

6.24. **RESERVED**.

6.25. **SUBROGATION**. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

ARTICLE 7 DEFAULT

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

a. **Optional Default**. An "Optional Default" shall occur, at Mortgagee's option, upon the occurrence of any of the following events:

(i) **Monetary**. 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, excluding with respect to (aa) or (bb) any monthly payment of principal or interest due under the Note which is an Automatic Default as set forth in Section 7.1.b.(i) of this Mortgage.

(ii) **Failure to Perform**. Mortgagor shall fail to observe, perform or discharge any of Mortgagor's obligations, covenants, conditions or agreements, other than Mortgagor's payment obligations, under the Note, this Mortgage or any of the other Loan Documents (including, without limitation, any of the other mortgages and deeds of trust executed as part of the Loan Documents and securing the Note), and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Mortgagor by Mortgagee or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Mortgagor shall fail to commence to cure such failure within such 30 day period or shall fail to

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diligently prosecute such curative action thereafter (so long as Mortgagor is diligently, and in good faith, prosecuting such curative action under this Section 7.1.a.(ii)(bb), an Optional Default shall not have occurred). If Mortgagor pays any fines in excess of $25,000.00 described in clause (b) of the definition of Material Adverse Effect set forth in Section 6.3, such payment shall be deemed a cure of such default.

(iii) **Representations and Warranties**. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of 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) **Seizure; Attachment**. The seizure of any material portion (as reasonably determined by Mortgagee) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Mortgagor under any of the Loan Documents, or any material portion of the other assets of Mortgagor, other than a condemnation, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets effected pursuant to any of the foregoing (other than pursuant to a condemnation).

(v) **Uninsured Casualty**. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Mortgagee) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Mortgagor promptly notifies Mortgagee of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Mortgagor delivers to Mortgagee immediately available funds in an amount sufficient, in Mortgagee's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of such funds and no Default occurs thereafter, Mortgagee shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Mortgagee shall have no obligation to make funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (bb) and (cc) of Section 6.11.b.(iii) of this Mortgage have been satisfied. Mortgagor acknowledges that the specific conditions described above are reasonable.

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b. **Automatic Default**. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

(i) **Monetary**. Mortgagor shall fail to pay when due any monthly payment of principal and interest due under the Note.

(ii) **Voluntary Bankruptcy, Insolvency, Dissolution**. (aa) Mortgagor'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"); or (bb) Mortgagor'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 Mortgagor or the Property or admits to the petition's material allegations regarding Mortgagor's insolvency; or (cc) Mortgagor's making a general assignment for the benefit of creditors; or (dd) Mortgagor's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Mortgagor or any of its property; or (ee) the filing by or against Mortgagor of a voluntary petition seeking the liquidation or dissolution of Mortgagor.

(iii) **Involuntary Bankruptcy**. Mortgagor's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law, or any other procedure to liquidate or dissolve Mortgagor, that is filed against Mortgagor or in any way restrains or limits Mortgagor 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.

(iv) **Partners, Guarantors**. The occurrence of an event specified in Sections (ii) or (iii) as to Mortgagor, any general partner or any member of Mortgagor, as applicable, or any guarantor obligated to Mortgagee under the Loan Documents.

(v) **Major Lease.** With respect to a Major Lease, including the Master Lease, the Mortgagor defaults under Section 3.4.a.(v) through (viii) or 3.4.b. of this Mortgage, or a Lease Default occurs under any Major Lease.

7.2. **ACCELERATION**. 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.

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7.3. **RIGHTS AND REMEDIES**. In addition to the rights and remedies in Section 7.2 above, at any time after a 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 of 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 Mortgagor, or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents;

c. **Judicial Foreclosure**. Mortgagee shall have the right to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a 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. **Nonjudicial Foreclosure**. Mortgagee may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The foregoing power of sale shall in no way impair or limit any remedies otherwise available to Mortgagee. Mortgagee may credit bid all or any portion of the

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Secured Obligations at any such sale. 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 of any facts in any such deed shall be conclusively deemed true.

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.

7.4. **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.

7.5. **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.

7.6. **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.

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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 8.17 below and not that of lender).

8.4. **PERMITTED CONTESTS**. After prior written notice to Mortgagee, Mortgagor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Mortgagor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Mortgagor pursues the contest diligently, in a manner which Mortgagee determines is not prejudicial to Mortgagee, and does not impair the lien of this Mortgage; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Mortgagee shall not be in any danger of any civil or criminal liability; and (d) if required by Mortgagee, Mortgagor deposits with Mortgagee any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Mortgagee to protect Mortgagee from the consequences of the contest being unsuccessful. Mortgagor's right to contest pursuant to the terms of this provision shall in no way relieve Mortgagor of its obligations under the Loan or to make payments to Mortgagee as and when due. So long as it complies with the provisions of this Section 8.4 and any other relevant provisions of an approved Major Lease, a Tenant under an Approved Major Lease shall have the right to contest liens, levies, taxes and assessments, provided there is not then a default under such lease after any applicable notice and cure periods.

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8.5. **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.

8.6. **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.

8.7. **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.

8.8. **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. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

8.9. **CAPITALIZED TERMS**. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.

8.10. **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. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.

8.11. **GOVERNING LAW**. This Mortgage was accepted by Mortgagee in the state of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance this Mortgage, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts made and

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performed in such state and any applicable law of the United States of America, except that at all times the provisions for enforcement of Mortgagee's STATUTORY POWER OF SALE and all other remedies granted hereunder and the creation, perfection and enforcement of the liens and security interests created pursuant hereto and pursuant 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 according to the law of the state where the Property is located except to the extent that under the UCC perfection may be governed by the laws of a different jurisdiction. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than New York governs this Mortgage, the Note and other Loan Documents.

8.12. **CONSENT TO JURISDICTION**. Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of New York over any suit, action, or proceeding, brought by Mortgagor against Mortgagee, arising out of or relating to this Mortgage, the Note or the Loan; (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 this Mortgage, the Note or the Loan; 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 Mortgagee to exercise its STATUTORY POWER OF SALE under this Mortgage or any action brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

8.13. **EXHIBITS**. Exhibit A is incorporated into this Mortgage by this reference as if fully set forth herein.

8.14. **ADDRESSES; REQUEST FOR NOTICE**. All notices and other communications that are required or permitted to be given to a party under this Mortgage or the other 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:

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Mortgagee:

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

Mortgagor:

LDVF1H TACO LLC
FAX No.: (212) 202-3685

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.

8.15. **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.

8.16. **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.

8.17. **NOMINEE CAPACITY OF MERS**. MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, as agent for Lender and its successors and assigns and only holds legal title to the interests granted, assigned, and transferred herein on behalf of Lender. 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.

[SIGNATURE PAGE FOLLOWS]

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

MORTGAGOR:

LDVF1H TACO LLC,
a Delaware limited liability company

By: _____
David Pettijohn
Vice President

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STATE OF TEXAS §
§
COUNTY OF DALLAS §

I, the undersigned Notary Public in and for said County, in said State, hereby certify that David Pettijohn, whose name as Vice President of LDVF1H TACO LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 12th day of August, 2005.

_____
NOTARY PUBLIC

My Commission Expires:

SANDRA J. SMITH
Notary Public, State of Texas
My Commission Expires
07/21/2007

_____

Mortgage (Alabama)
Wells Fargo/Tacala, LLC/Permanent Loan
Loan No. 93-0903133 / Unit No. 22749

DAL:569187.6

Loan No. 93-0903133

EXHIBIT A

DESCRIPTION OF LAND

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Unit No.: 22749

Property Address: 4623 Highway 280 East, Birmingham, AL 35242

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

[Legal Description Attached Hereto]

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EXHIBIT A

Store #: 22749

Address: 4623 Highway 280, Birmingham, Alabama
County: Shelby

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 2 WEST, AND RUN SOUTH ALONG THE WEST LINE OF SAID SECTION A DISTANCE OF 277.41 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280; THENCE 53 DEGREES 01 MINUTE 13 SECONDS TO THE LEFT IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280 A DISTANCE OF 254.49 FEET TO A POINT; THENCE 0 DEGREES 32 MINUTES 45 SECONDS TO THE RIGHT IN A SOUTHEASTERLY DIRECTION ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF U. S. HIGHWAY 280 A DISTANCE OF 190.23 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE LAST STATED COURSE A DISTANCE OF 135.00 FEET TO A POINT; THENCE 92 DEGREES 30 MINUTES TO THE LEFT IN A NORTHEASTERLY DIRECTION OF 275.00 FEET TO A POINT; THENCE 87 DEGREES 30 MINUTES TO THE LEFT IN A NORTHWESTERLY DIRECTION A DISTANCE OF 135.00 FEET TO A POINT; THENCE 92 DEGREES 30 MINUTES TO THE LEFT IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 275.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH Reciprocal Easement Agreement dated 7th August 1985 and recorded in Real Volume 038, Page 59, in the Probate office of Shelby County, Alabama.

Being the same property as set forth on that certain survey dated July 5, 2005, prepared by Derek L. Harvel of Harvel & Associates, Inc. and described as follows:

SURVEYOR'S LEGAL DESCRIPTION

Lot 2, Cahaba South Park as recorded by map or plat of said subdivision on file and of record in the Office of the Judge of Probate of Shelby County, Alabama, said tract situated, lying and being a part of the County of Shelby, State of Alabama, and being more particularly described as follows:

Beginning at a pk nail on the Northeast right-of-way margin of U.S. Highway 280 East, said point being the Southwest Corner of said Lot 2, Cahaba Park South, said point also being the TRUE POINT OF BEGINNING; thence run North 35°00'48" East along the west boundary of said Lot 2 for a distance of 275.00 feet to an iron pin on the Northwest

Corner of said Lot 2; thence run South 52°41'12" East along the North boundary of said Lot 2 for a distance of 135.00 feet to an iron pin on the Northeast Corner of said Lot 2; thence run South 35°00'48" West along the east boundary line of said Lot 2 for a distance of 275.00 feet to an iron pin on the Southeast Corner of said Lot and the Northeast right-of-way margin of U.S. Highway 280 East; thence run North 52°41'12" West along the south boundary of said Lot 2 and said right-of-way margin for a distance of 135.00 feet to a point and back to the TRUE POINT OF BEGINNING.

Land containing 37,095.09 sq. ft. and 0.85 acres.

Parcel #02-73-60-0-010-08-004.

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