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STATE OF ALABAMA BY AND MAIL TO:

Michael Weinberger, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006


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STATE OF ALABAMA

COUNTY OF SHELBY

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL ASSIGNMENT
OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this “Mortgage”) is made, and is executed as of October 8, 2009, by GS II BROOK HIGHLAND LLC, a Delaware limited liability company (together with its permitted successors and permitted assigns, “Mortgagor”), whose address for all purposes hereunder is 3300 Enterprise Parkway, Beachwood, Ohio 44122, for the benefit of GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P., a Delaware limited partnership (together with all its successors and assigns, the “Mortgagee”), whose address for all purposes hereunder is 6011 Connection Drive, Suite 550, Irving, Texas 75039.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

“Borrower”: Collectively, Mortgagor, together with the other Persons executing the Loan Agreement as “Borrower”.

“Indebtedness”: The sum of all principal, interest and other amounts due from Borrower under, or secured by, the Loan Documents, which sum, for purposes of this Mortgage, shall not exceed \$450,000,000.

“Loan Agreement”: The Loan Agreement, dated as of the date hereof, by and between Mortgagee, as lender, and Borrower, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

“Loan Documents”: The (1) Loan Agreement, (2) that certain promissory note, dated as of the date hereof, executed by Borrower pursuant to the Loan Agreement to evidence the Indebtedness (as the same may be amended, supplemented, modified, replaced and/or divided into multiple Notes and in effect from time to time, the “Note” or “Notes”, as applicable), (3) this Mortgage and the other mortgages and deeds of trust executed by Borrower pursuant to the Loan Agreement, (4) all other documents now or hereafter executed by Mortgagor and/or Borrower or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, renewals and replacements of the foregoing.

“Obligations”: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower under the Loan Documents.

“Mortgaged Property”: All of the following, or any interest therein (whether now owned or hereafter acquired):

(1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”),

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”),

(3) all right, title and interest of Mortgagor in and to all materials, machinery, supplies, equipment, fixtures, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including, without limitation, any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, securities systems, art work, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing (the “Fixtures”),

(4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, accounts receivable, chattel paper, investment property, securities accounts and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or which may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including, without limitation, furniture,



furnishings, equipment, machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Land and/or Improvements as a result of tax certiorari or any applications or proceedings for reduction (the "Personalty"),

(5) all reserves, escrows or impounds required under the Loan Agreement and all unrestricted deposit accounts (including tenant's security and cleaning deposits and deposits with respect to utility services) maintained by or on behalf of Mortgagor with respect to the Land and/or Improvements,

(6) all right, title and interest of Mortgagor in and to all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Plans"),

(7) subject to the rights of Mortgagor hereunder and under the Loan Agreement, all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Leases"),

(8) subject to the rights of Mortgagor hereunder and under the Loan Agreement, all right, title and interest of Mortgagor in and to all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(9) all right, title and interest of Mortgagor in and to all other contracts and agreements in any way relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements or the sale of

goods or services produced in or relating to the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), including, without limitation, all right, title and interest of Mortgagor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) all material agreements and instruments under which Mortgagor or any of its affiliates or the seller of the Mortgaged Property have remaining rights or obligations in respect of Mortgagor's acquisition of the Mortgaged Property, (c) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (d) all rights of Mortgagor to receive monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Mortgagor for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Mortgagor to terminate, amend, supplement, modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (g) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing,

(10) all right, title and interest of Mortgagor in and to all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof,

(11) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(12) subject to the rights of Mortgagor hereunder or under the Loan Agreement, all insurance policies, unearned premiums therefor and proceeds from such policies, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Mortgagor,

(13) all right, title and interest of Mortgagor in and to all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Land and/or Improvements,

(14) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, and

(15) all after acquired title to or remainder or reversion in any of the property (or any portion thereof) described herein.

"UCC": The Uniform Commercial Code of the state in which the Mortgaged Property is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Mortgaged Property is located then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

ARTICLE 2

HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor HAS MORTGAGED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, WARRANTED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE, GIVE, GRANT, BARGAIN, SELL, TRANSFER, WARRANT, PLEDGE, ASSIGN and CONVEY to Mortgagee, with power of trust, its heirs, successors and assigns (subject to Permitted Encumbrances) the Mortgaged Property, TO HAVE AND TO HOLD all of the Mortgaged Property (subject to Permitted Encumbrances) unto and, for the use and benefit of Mortgagee, its heirs, successors and assigns in fee simple forever, and Mortgagor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property (subject to Permitted Encumbrances) unto Mortgagee and its heirs, successors and assigns.

ARTICLE 3

DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default exists and is continuing, Mortgagee may, at Mortgagee's election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Mortgagor and to the Mortgaged Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration,

demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after the occurrence and during the continuation of an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems reasonably necessary or desirable), exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. (i) Institute proceedings for the complete foreclosure of this Mortgage, by exercise of the STATUTORY POWER OF SALE or otherwise, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner.

(ii) With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse including power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor or regard to the value of the Mortgaged Property or the solvency or insolvency of Mortgagor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Mortgagor therein, the appointment of a receiver or receivers of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and

duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Mortgage).

Section 3.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Mortgagor, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Mortgaged Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, and (c) any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter

elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order or in such other order as Mortgagee shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all ground rent, real estate taxes and assessments;

(b) to the payment of all amounts, other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the Persons legally entitled thereto.

If Mortgagee shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Mortgagor, to restore or repay to or for the account of Mortgagor or its creditors any amount theretofore received under this Section 3.7, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place Mortgagee in the same position it would have been in had such amount never been received by Mortgagee.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Mortgaged Property (subject to Permitted Encumbrances). All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default has occurred and is continuing, Mortgagee shall have the right, but not the

obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 3.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Mortgage and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

Section 3.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee, as the case may be, solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within five (5) Business Days after demand therefor.

ARTICLE 4

ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Mortgagor does hereby presently, absolutely and unconditionally assign to Mortgagee, Mortgagor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Mortgagor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagee shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Mortgagor hereby presently grants to Mortgagee an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents

and Leases, Mortgagee hereby grants to Mortgagor and its successors and not to any tenant or any other person, a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, in each case subject to the terms hereof and of the Loan Agreement. Upon the occurrence and during the continuance of any Event of Default, (a) the license granted herein to Mortgagor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (b) Mortgagee shall immediately be entitled to possession of all Rents (whether or not Mortgagee enters upon or takes control of the Mortgaged Property) and (c) at the request of Mortgagee, Mortgagor shall deliver written notice to all tenants and subtenants under any of the Leases either (i) notifying such tenants and subtenants that all Rent due under the Leases shall continue to be paid to the Cash Management Account or (ii) instructing such tenants and subtenants to remit all Rents due under the Leases to such other account as Mortgagee shall notify Mortgagor in writing; provided that, if such Event of Default ceases to exist, the license described in the foregoing clause (a) shall automatically be reinstated. Notwithstanding said license, Mortgagor agrees that Mortgagee, and not Mortgagor, shall be deemed to be the creditor of each tenant or subtenant under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option to apply in accordance with the Loan Documents any money received from such tenant or subtenant in reduction of any amounts due under the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, any portion of the Rents held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

Section 4.3 Certain Rights of Mortgagee. Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Mortgaged Property in its own name, and without the need for any other authorization or action by Mortgagor or Mortgagee, in addition to and without limiting any of Mortgagee's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any tenant or other person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for, collect, receive and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) to enter upon, take possession of and operate the Mortgaged Property whether or not foreclosure under this Mortgage has been instituted and without applying for a receiver; (e) to lease all or any part of the Mortgaged Property; and/or (f) to perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each



manager and managing agent or operator of the Mortgaged Property, and Mortgagee shall have the continuing right to do so. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Article 4 and to turn over to Mortgagee on demand all Rents which it receives. Mortgagor hereby acknowledges and agrees that payment of any Rents by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Mortgagor. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Mortgaged Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected prior to or after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) Business Days after demand.

Section 4.5 Unilateral 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, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

ARTICLE 5

COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Mortgagor does hereby collaterally assign and pledge to Mortgagee, Mortgagor's right, title and interest in, to and under all current and future Property Agreements. Such collateral assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such collateral assignment.

Section 5.2 Retained Rights of Mortgagor. Subject to the other provisions of this Article 5 and the provisions of the other Loan Documents, for so long as no Event of Default shall have occurred and be continuing, Mortgagor may exercise all of its rights and privileges under the Property Agreements and shall have the exclusive right and authority to deal with, enjoy the benefit under, grant any consents and approvals under, and amend, modify or terminate, such Property Agreements, collect, receive and retain for its own benefit all monies due or to become due under such Property Agreements, sue and enforce all claims of Mortgagor for damages arising under such Property Agreements, and retain for its own benefit all items described in clause (d) of paragraph (9) of the definition of "Mortgaged Property" above, if and to the extent not prohibited by the Loan Agreement or the other Loan Documents. Upon the occurrence and during the continuance of any Event of Default, the rights of Mortgagor described in this Section 5.2 shall immediately and automatically cease and terminate and shall be void and of no further force or effect, provided that, if such Event of Default ceases to exist, such rights shall automatically be reinstated. To the extent not prohibited by the applicable Property Agreement, any amounts held by Mortgagor as a party to the Property Agreements shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

Section 5.3 Exercise of Assigned Rights. Mortgagor hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from Mortgagee, to recognize and accept Mortgagee as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Mortgagor and the performance of Mortgagor thereunder; provided, that Mortgagee hereby covenants to Mortgagor that it will not make such demand except upon the occurrence and during the continuance of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, without further notice or demand and at Mortgagor's sole cost and expense, Mortgagee shall be entitled to exercise all rights of Mortgagor arising under the Property Agreements. Mortgagor hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Mortgagor. Any amounts collected shall be applied in accordance with the provisions of the Loan Agreement. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each grantor or licensor of or the contracting party to a Property Agreement, and Mortgagee shall have the continuing right to do so.

Section 5.4 Indemnity. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) Business Days after demand.

Section 5.5 Property Agreement Covenants. (a) Mortgagor shall perform and observe, in a timely manner, all of the covenants, conditions, obligations and agreements of Mortgagor under the Property Agreements and shall suffer or permit no delinquency on its part

to exist thereunder if such action is prohibited by the Loan Agreement, or would have a Material Adverse Effect.

(b) Mortgagor shall not (i) sell, assign, transfer, mortgage or pledge any Property Agreement or any such right or interest under any Property Agreement, or (ii) cancel, terminate, amend, supplement or modify any Property Agreement, in either case, if such action is prohibited by the Loan Agreement or would have a Material Adverse Effect.

(c) Mortgagor shall exercise all reasonable efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the franchisor, manager, licensor, grantor or other contracting party under the Property Agreements, if the failure to take such action would have a Material Adverse Effect.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 Security Interest. This Mortgage constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Mortgaged Property subject to the UCC, the "Collateral"). The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor, by executing and delivering this Mortgage, hereby grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, subject only to Permitted Encumbrances, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, during the continuance of an Event of Default, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at the Mortgaged Property. Mortgagor shall pay to Mortgagee on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise provided in the Loan Documents or required by law, be applied by Mortgagee in accordance with Section 3.7 hereof.

Section 6.2 Further Assurances. Mortgagor shall execute and deliver to Mortgagee and/or file, in form and substance satisfactory to Mortgagee, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Mortgagee may, from time to time,

reasonably consider necessary, desirable or proper to create, perfect and preserve Mortgagee's security interest hereunder and to carry out more effectively the purposes of this Mortgage, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Mortgagor from those provided for in the Loan Documents. As of the date hereof, Mortgagor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Mortgage, and Mortgagor shall promptly notify Mortgagee of any change in such address.

Section 6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Mortgaged Property which is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the city or county wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage. The organizational identification number of Debtor (Mortgagor) is 3630465.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in the manner described in the Loan Agreement.

Section 7.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Mortgaged Property, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances

be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 7.3.

Section 7.4 Successors and Assigns. For so long as any portion of the Indebtedness remains outstanding, this Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns.

Section 7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Subrogation. To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 7.7 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Obligations, or upon the sale of the Mortgaged Property in the manner permitted by the Loan Agreement, the estate hereby granted shall cease, terminate and be void and Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

Section 7.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREES TO WAIVE ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY IT RELATING TO THE SUBJECT MATTER OF THIS MORTGAGE. THE

SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. MORTGAGOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS MORTGAGE. MORTGAGOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS MORTGAGE. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) MORTGAGOR HEREBY CONSENTS FOR ITSELF AND IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR FURTHER CONSENTS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 9.8 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

Section 7.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

Section 7.12 Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. NOTWITHSTANDING THE FOREGOING, (i) THE PROVISIONS OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE, AND (ii) ARTICLE 5 HEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7.13 Hold Harmless. Mortgagor shall and does hereby agree to defend, indemnify and hold harmless Mortgagee from and against any and all claims, losses, expenses, damages and liabilities (including, without limitation, all reasonable fees and expenses of attorneys) which may arise or be incurred or accrue in connection herewith or in connection with an obligation of Mortgagor hereunder with respect to the Mortgaged Property, except, in each case, to the extent incurred as a result of the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such claim, loss, expense, damage or liability, the amount thereof, including all reasonable expenses and reasonable fees of attorneys and reasonable costs and expenses associated with actions taken by Mortgagee in defense thereof, or otherwise in protecting its interests hereunder, shall constitute additions to the Indebtedness and shall be secured hereby, and Mortgagor covenants and agrees to reimburse Mortgagee promptly upon demand.

Section 7.14 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Mortgage and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15 Severability. If any provision of this Mortgage is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Mortgage shall remain in full force and effect and shall be binding on the parties hereto.

Section 7.16 Intentionally Omitted.

Section 7.17 Lien Absolute. Mortgagor acknowledges that this Mortgage and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Mortgagor agrees that, to the extent permitted by law, the lien of this Mortgage and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by Mortgagee of any security for or guarantees of any of the Indebtedness;

(c) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Indebtedness or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness or Obligations or this Mortgage (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Mortgagee may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of Mortgagee hereunder or under any or all of the Loan Documents.

Section 7.18 Real Estate Taxes. Mortgagor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Mortgaged Property by virtue of payment of real estate taxes on the Mortgaged Property. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Indebtedness from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than 90 days, to declare the Indebtedness immediately due and payable without the payment of any prepayment premium.

Section 7.19 Incorporation by Reference. (a) All obligations of Mortgagor under this Mortgage shall be limited by the provisions of Section 1.5 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

(b) The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the prepayment of the Indebtedness, as well as restrictions on the

sale, transfer and encumbrance of the Mortgaged Property and the ownership interests of Mortgagor.

Section 7.20 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 7.21 Last Dollars Secured. The parties agree that any payments or repayments of such Indebtedness by Mortgagor shall be and be deemed to be applied first to the portion of the Indebtedness that is not secured hereby, if any, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

Section 7.22 Mortgage Recording Taxes. Mortgagor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Mortgage.

Section 7.23 Multiple Exercise of Remedies. To the extent permitted by law, Mortgagor specifically consents and agrees that Mortgagee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

Mortgagor hereby acknowledges receipt of a true copy of the within Mortgage.

[No further text on this page; Signature page follows]

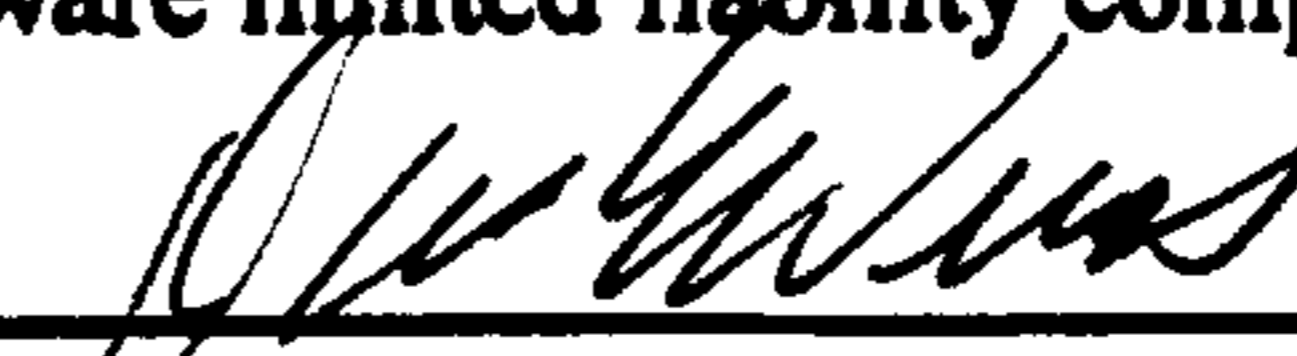


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Shelby Cnty Judge of Probate, AL
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EXECUTED as of the date first above written.

MORTGAGOR:

GS II BROOK HIGHLAND LLC, a
Delaware limited liability company

By: 

Name: DAVID E. WEISS
Title: SR. VICE PRESIDENT

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Shelby Cnty Judge of Probate, AL
10/12/2009 02:37:05 PM FILED/CERT

STATE OF Ohio)
COUNTY OF Cuyahoga) : ss

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David E. Weiss, whose name as Vice President of 11 Brook Highland LLC, a Delaware LLC, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said 11 Brook LLC.

Given under my hand and official seal this the 26 day of September, 2009.



PHEBE ELIZABETH PARKIN
Notary Public, State of Ohio
County of Residence: Cuyahoga
My Commission Expires
March 6, 2012

Phebe Parkin
Notary Public

My commission expires: 03/06/2012

EXHIBIT A

Legal Description

Parcel I:

Lot 1, according to the Survey of Brook Highland Plaza Resurvey, as recorded in Map Book 18, Page 99, in the Office of Shelby County, Alabama.

Less and Except that part of Lot 1 which is now part of Lot 2A, according to the Lowe's Addition of Brook Highland Plaza, as recorded in Map Book 31, Page 96, in the Probate Office of Shelby County, Alabama.

Parcel II:

Lot 1A, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, Page 99, in the Probate Office of Shelby County, Alabama.

Parcel III:

Lot 2A, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, Page 99, in the Probate Office of Shelby County, Alabama.

Parcel IV:

Lot 2B, according to the Amended Map of Lowe's Addition to Brook Highland Plaza, as recorded in Map Book 31, Page 96, in the Probate Office of Shelby, County, Alabama.

Parcel V:

Lot 2A, according to the Survey of Lowe's Addition of Brook Highland Plaza, as recorded in Map Book 31, Page 96, in the Probate Office of Shelby County, Alabama.

Together with all of the beneficial rights and interests in the easements under the following instruments:

Easement Parcel I:

Easement Agreement dated 10-12-1993, by and between AmSouth Bank, N.A., as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, and Brook Highland Limited Partnership, a Georgia Limited Partnership recorded in Instrument 1993-32515, in the Probate Office of Shelby County, Alabama.

Easement Parcel II:

All beneficial rights in easements granted to Developers Diversified of Alabama, Inc., an Alabama corporation by the "Easement Agreement" dated 12-30-1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc., as recorded in Instrument 1994-37773, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

Special Alabama Provisions

The following provisions are incorporated by reference into Section 7.20 of the attached Mortgage. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Mortgage, this Exhibit B shall govern.

1. Mortgagee may institute proceedings for the partial or complete foreclosure of this Mortgage and Mortgagee may, pursuant to any final judgment of foreclosure, sell the Mortgaged Property as an entirety or in separate lots, units, or parcels.
2. If an Event of Default should occur and be continuing hereunder, this Mortgage may be foreclosed as now provided by law in the case of past due mortgages. The Mortgagee, its successors or assigns shall have the right to enter upon and take possession of the Mortgaged Property and after, or without, taking such possession of the same, sell the Mortgaged Property or any portions thereof at public outcry, in front of the courthouse door of the county wherein the Mortgaged Property or any substantial part thereof is located, to the highest bidder for cash, either in person or by auctioneer, after first giving twenty-one (21) days notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper of general circulation published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased in the name and on behalf of the Mortgagor, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. The Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of the Mortgaged Property if the highest bidder therefor. Mortgagee may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property.
3. In case of a foreclosure sale of all or any part of the Mortgaged Property, the proceeds of sale shall be applied in accordance with the provisions of this Mortgage, and Mortgagee shall be entitled to seek a deficiency judgment against Mortgagor to enforce payment of any and all obligations secured hereby then remaining due and unpaid, together with interest thereon, and to recover a judgment against Mortgagor therefor, except as otherwise provided in this Mortgage.
4. At Mortgagee's option, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee

to collect the unpaid obligations secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

5. Maximum Secured Amount. Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured hereunder at execution or which under any contingency may become secured hereby at any time hereafter is the principal sum of \$450,000,000 plus interest thereon, plus amounts expended by the Mortgagor after a declaration of default hereunder to maintain the lien of this Mortgage or to protect the Mortgaged Property, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Mortgage or title to the Mortgaged Property, and any costs, charges or amounts to which Mortgagor becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts.