

*This instrument was prepared by
and after recording return to:*

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MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

This MORTGAGE (With Power of Sale) ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereafter referred to as "Mortgage") made as of June 17, 2010, by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 360 Interstate North Parkway, 5th Floor, Atlanta, Georgia 30339, Attention: Homebuilder Banking Group ("Bank"), as successor by merger to Wachovia Bank, National Association, and **HPH PROPERTIES, LLC**, whose address is 2236 Cahaba Valley Drive, Suite 100, Birmingham, Alabama 35242 ("Mortgagor").

WITNESSETH:

MMM Properties, LLC, Oakwood Properties, LLC and Mortgagor (individually, a "Borrower" and collectively, the "Borrowers") are all wholly owned affiliates of

THIS MORTGAGE IS GIVEN AS ADDITIONAL SECURITY FOR REVOLVING INDEBTEDNESS IN A MAXIMUM PRINCIPAL SUM UPON WHICH THE RECORDING TAX HAS BEEN PAID UPON RECORDING OF SEPARATE MORTGAGES AND SECURITY AGREEMENTS (A) FROM HPH PROPERTIES, LLC, RECORDED AT BOOK LR200705, PAGE 24096 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA, AS AMENDED, INSTRUMENT NO. 20070406000158880 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, AS AMENDED, AND INSTRUMENT NO. 20070406000243910 AND 20070426000291070 IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, AS AMENDED, (B) FROM OAKWOOD PROPERTIES, LLC, RECORDED AT INSTRUMENT NO. 20070220000121130 IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, AS AMENDED, AND (C) FROM MMM PROPERTIES, LLC, RECORDED AT INSTRUMENT NOS. 20061130000583080 AND 20070727000350690 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, AND BOOK LR200712, PAGE 13288 AND BOOK LR 200708 PAGE 12805 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA, AS AMENDED. PURSUANT TO ALA. CODE § 40-22-2(4), BECAUSE THIS MORTGAGE IS GIVEN SOLELY AS ADDITIONAL COLLATERAL ON INDEBTEDNESS FOR WHICH THE TAX HAS BEEN PAID, NO ADDITIONAL RECORDING TAX IS DUE.

HPHB II, LLC ("Owners"). Owners have requested certain accommodations from Bank, and as a condition thereof, Bank requires, among other things, that all Borrowers grant mortgages, assignments of rents and security agreements (including, without limitation, this Mortgage) to Bank in order to cross-collateralize and cross-default their respective obligations now or from time to time owing to Bank.

Therefore, in order to secure payment and performance of obligations under certain Promissory Notes from Borrowers to Bank and all extensions, renewals, modifications and amendments heretofore or hereafter made (individually, a "Note" and collectively, the "Notes"), as follows:

(a) Promissory Note from Oakwood Properties, LLC to Bank dated February 13, 2007 in the stated principal sum of \$5,500,000;

(b) Promissory Note from MMM Properties, LLC to Bank dated September 2, 2008 in the stated principal sum of \$7,500,000 (being a reduction and restatement of a Promissory Note dated May 31, 2007, which was a consolidation of Promissory Notes dated November 21, 2006 and February 12, 2007); and

(c) Promissory Note from HPH Properties, LLC to Bank dated March 8, 2007, in the stated principal sum of \$30,000,000;

and also to secure all obligations of Mortgagor under this Mortgage, any present or future letters of credit issued by Bank for the account of a Borrower or Mortgagor, all obligations from time to time owing to Bank pursuant to any other Loan Documents as defined in a Note (the "Loan Documents"), all obligations owing by a Borrower or Mortgagor to Bank or any affiliate of Bank under any swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time, and all other indebtedness of a Borrower or Mortgagor to Bank, whenever borrowed or incurred, primary or secondary, fixed or contingent, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (all of the foregoing are collectively referred to as the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant, bargain, sell and convey, with power of sale unto Bank (for itself and its affiliates), its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land (the "Improvements"); (iii) all fixtures, machinery, equipment, inventory and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any Improvements, whether or not such real, personal or mixed property is or shall be affixed to the Land; (iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and other Improvements situated or to be situated thereon; (v) all leases, licenses or occupancy agreements of all or any part of the Land and all security deposits and other deposits relating thereto and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto and all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising



from the Land; (vi) all contract rights, accounts receivable, general intangibles and deposits (including deposit accounts) relating to the Land, the Improvements or the sale, use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies; (vii) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights; (viii) all rights under swap agreements relating to any indebtedness secured hereby, including any refunds or reimbursements from time to time due Mortgagor; and (ix) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Mortgage is recorded (the "UCC"), whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.

In the event that Mortgagor is the owner of a leasehold estate or other estate less than a fee estate with respect to any portion of the Property and Mortgagor obtains a fee estate or other greater estates in such portions of the Property, then, such fee estate or other greater estates shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor **WARRANTS AND REPRESENTS** that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations, including, without limitation, all future advances, to the extent secured hereby, and any termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

1. **Payment of Obligations.** That the Obligations shall be timely paid and performed.

2. **Future Advances.** This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements to the same

extent as if such future advances and obligations under swap agreements are made on the date of the execution of this Mortgage. The principal amount (including future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed the aggregate stated principal amount of the Notes, plus any obligations under swap agreements plus all interest, costs, reimbursements, fees and expenses from time to time due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage. Nothing herein obligates Bank to make any future advance except as expressly set forth in a separate written agreement signed by Bank.

3. **Grant of Security Interest in Personal Property.** This Mortgage constitutes a security agreement under the UCC and shall be deemed to constitute a fixture financing statement, and Mortgagor hereby grants a security interest in any personal property included in the Property. On request of Bank, Mortgagor will file one or more Financing Statements in form satisfactory to Bank and will pay all costs and expenses of filing the same in all public filing offices, where filing is deemed desirable by Bank. Bank is authorized to file Financing Statements relating to the Property (without Mortgagor's signature or further authorization, where permitted by law) and Mortgagor will reimburse Bank for all costs thereof. Mortgagor appoints Bank as its attorney-in-fact to execute such documents necessary to perfect Bank's security interest on Mortgagor's behalf. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding.

4. **Leases, Subleases and Easements.** Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank (which consent shall not be unreasonably withheld or delayed), enter into any new lease or easement affecting all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, change the terms of any renewal option under any lease or modify any easement; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

5. **Required Insurance.** Mortgagor shall maintain with respect to the Property: (a) during construction of any Improvements on the Land, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting completed value with special cause of loss form), in an amount not less than the completed replacement value of the Improvements from time to time under construction, naming Bank as mortgagee and loss payee; (b) upon completion of construction, upon occupancy of any Improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risk" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as lender loss payee and mortgagee; (c) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, or any successor federal flood legislation, or any regulations promulgated thereunder, Mortgagor will obtain flood insurance equal to the value of the Improvements located in a flood hazard area unless a lesser amount is approved in writing by Bank, but not less than the maximum coverage available under the



National Flood Insurance Program, naming Bank as mortgagee and lender loss payee. If the Property (or any part thereof) is remapped and if the Improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor shall provide sufficient evidence of flood insurance; (d) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (e) liability insurance providing coverage in such amount as Bank may require but in no event less than \$3,000,000.00 combined single limit, naming Bank as an additional insured; and (f) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least thirty (30) days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor. All costs thereof shall bear interest at the rate of twelve percent (12%) per annum (the "Default Rate") from the date advanced until repaid and such costs together with such interest shall constitute a part of the Obligations and be secured by this Mortgage.

6. **Insurance Proceeds.** After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction Mortgagor shall have no claim against the insurance proceeds, or be entitled to any



portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

In the event of any damage to or destruction of any Improvements or other part of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (a) the Obligations in such order as Bank may determine, (b) restoration, replacement or repair of the Improvements and other Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (c) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Improvements and other Property as required herein.

7. **Impositions; Escrow Deposit.** Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall pay in substantially equal installments due on the first (1st) day of each calendar month an amount that Bank estimates will be sufficient to enable Bank to pay, one (1) month prior to the date due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

8. **Use of Property.** Mortgagor shall use and operate, and require any lessees, licensees or occupants of the Property to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

9. **Maintenance, Repairs and Alterations.** Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Land (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

10. **Eminent Domain.** Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or



settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation, including proceeds from any settlement (collectively, the "Condemnation Proceeds"), are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Condemnation Proceeds as Bank may require. Bank shall have the option of applying or paying the Condemnation Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Condemnation Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

11. **Environmental Condition of Property and Indemnity.** Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (a) Mortgagor has inspected and is familiar with the environmental condition of the Property; (b) the Property and Mortgagor, and any lessees, sublessees or other occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (c) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (d) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (e) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (f) no notice has been received with regard to any Hazardous Material on the Property; (g) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (h) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default (as hereinafter defined) or which are required by laws or regulations applicable to Bank



shall be borne by Mortgagor. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to general indemnification provisions set forth hereafter. Mortgagor's obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

12. **Appraisals.** Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within ten (10) days after receiving an invoice for such appraisal and until paid, the cost thereof shall bear interest at the Default Rate and such cost together with such interest shall constitute part of the Obligations and be secured by this Mortgage.

13. **Inspections.** Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

14. **Liens and Subrogation.** Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (a) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (b) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (c) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

15. **Waiver of Mortgagor's Rights.** To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Property, (b) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal,



valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

16. **Payments by Bank.** In the event of Default (as hereinafter defined) in the timely payment or performance of any of the obligations under this Mortgage, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the Default Rate and such amounts together with such interest shall constitute a part of the Obligations and be secured by this Mortgage.

17. **Indemnification.** Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (a) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (b) the Property or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (c) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages, (d) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (e) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (f) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall bear interest, to the extent permitted by law, at the Default



Rate from the date incurred until paid, and shall be payable on demand, and such Damages shall together with such interest be a part of the Obligations and shall be secured by this Mortgage.

18. **Assignment of Rents.** Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (a) to enter upon and take possession of the Property, (b) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (c) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

19. **Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor.** Without the prior written consent of Bank in each instance, Mortgagor shall not (a) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (b) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (c) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (i) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (ii) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (iii) if Mortgagor or any general partner, manager or managing member of Mortgagor is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly, except as otherwise expressly permitted in any other Loan Documents between Mortgagor and Bank; (iv) if Mortgagor, or any general partner, manager or managing member of Mortgagor is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (v) an agreement by Mortgagor leasing all or a substantial part of the Property without Bank's prior written consent or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.



Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in one or more Notes (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of Notes or this Mortgage.

20. **Defaults; Remedies of Bank on Default.** The occurrence of any one or more of the following shall constitute a default ("Default") hereunder and under the Notes and other Loan Documents:

(a) Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations as and when due, whether by acceleration, at stated maturity or otherwise;

(b) Any default or event of default pursuant to any Note, other Loan Documents or swap agreements secured hereby;

(c) Any representation or warranty herein should be false or materially misleading;

(d) Failure of Mortgagor to perform or observe any other covenant or agreement contained in this Mortgage and, if the same is capable of being cured, such failure is not cured within thirty (30) days following written notice from Bank;

(e) Mortgagor's failure to comply with or observe any covenant of this Mortgage that prohibits or restricts a particular action or event;

(f) Mortgagor, any Borrower or any guarantor or obligor of any Obligations (a "Guarantor") shall default (following the giving of applicable notice and the expiration of applicable cure periods, if any) in connection with any agreement for borrowed money or other credit with any creditor other than Bank involving a debt in excess of \$100,000.00 pursuant to which such indebtedness is then due or is accelerated and becomes due and payable in full or has matured and remains unpaid for more than thirty (30) days;

(g) Mortgagor, any Borrower or any Guarantor shall file a voluntary petition in bankruptcy or a voluntary petition or answer seeking liquidation, reorganization, arrangement, readjustment of its debts, or for any other relief under the Federal Bankruptcy Code, or under any other act or law pertaining to insolvency or debtor relief, whether state, Federal or foreign, now or hereafter existing; Mortgagor, any Borrower or any Guarantor shall enter into any agreement indicating its consent to, approval of, or acquiesces in, any such petition or proceeding; Mortgagor, any Borrower or any Guarantor shall apply for or permit the appointment by consent or acquiesces of a receiver, custodian or trustee of such person or entity or a substantial part of its property (except for the agreement to the appointment of a receiver as contained in this Mortgage); Mortgagor, any Borrower or any Guarantor shall make an assignment for the benefit of creditors; Mortgagor, any Borrower or any Guarantor shall be unable or shall fail to pay such Person's debts generally as such debts become due; or Mortgagor, any Borrower or any Guarantor shall admit, in writing, its inability or failure to pay such Person's debts generally as such debts become due;

(h) There shall have been filed against Mortgagor, any Borrower or any Guarantor an involuntary petition in bankruptcy or seeking liquidation, reorganization,



arrangement, readjustment of its or their debts, or for any other relief under the Federal Bankruptcy Code, or under any other act or law pertaining to insolvency or debtor relief, whether state, federal or foreign, now or hereafter existing, and said petition is not dismissed within ninety (90) days from the date of filing thereof, Mortgagor, any Borrower or any Guarantor shall suffer or permit the involuntary appointment of a receiver, custodian or trustee of such person or entity for all or a substantial part of its or their property; Mortgagor, any Borrower or any Guarantor shall suffer or permit the issuance of a warrant of attachment, execution or similar process against all or any substantial part of the property of such person or entity;

(i) Bank, at any time and in good faith, shall deem itself insecure and for the purpose of this Mortgage, the Notes, other Loan Documents or any Obligations, Bank shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which significantly impairs the prospects that any of the Obligations will be paid when due, which significantly impairs the value of any material part of the Property to Bank or which significantly affects the financial or business condition of Mortgagor, any Borrower or any Guarantor;

(j) The dissolution, whether voluntary or by operation of law, of Mortgagor, any Borrower or any Guarantor that is not a natural person;

(k) The occurrence of a material adverse change in Mortgagor's or any Borrower's business or business prospects, including, without limitation, its ownership, management, or financial condition, which in Bank's reasonable opinion, could materially impair payment or performance of any Obligations; or

(l) Failure of Mortgagor to pay and provide proof of payment of any tax, assessment, rent, insurance premium, or escrow on or before its due date.

Any Default hereunder shall also, at Bank's option, constitute a default or event of default under all other indebtedness or obligations owing to Bank by Mortgagor and all notes, loan agreements and security agreements to which Mortgagor is a party with Bank or which Mortgagor has granted to Bank or for its benefit. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees ; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for



the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may sell all or part of the Property (referred to as "Sale") pursuant to power of sale (which is hereby granted) by public sale conducted at the courthouse door in the county in which any part of the Property is located after publishing once a week for three successive weeks in some newspaper published in such county notice of such sale providing the time of such Sale, and republish and conduct in the same manner additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) with respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at a Sale and may, as successful bidder, apply as credit against the bid amount such part of the Obligations as it may direct as payment of all or a portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations in such order as Bank may elect in its discretion, and any remaining proceeds as required by law.

21. **Miscellaneous Provisions.** Mortgagor agrees to the following: (a) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (b) Mortgagor represents that Mortgagor (i) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party; (c) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (d) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Bank at its address on page 1, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all



charges prepaid. Notices to Bank must include the mail code. (e) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (f) All references to "Bank" shall mean to "Bank (for itself and its affiliate)"; (g) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (h) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (i) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; and (j) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof.

22. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and 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.

23. **Minimum Standards.** In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Mortgagor upon request.

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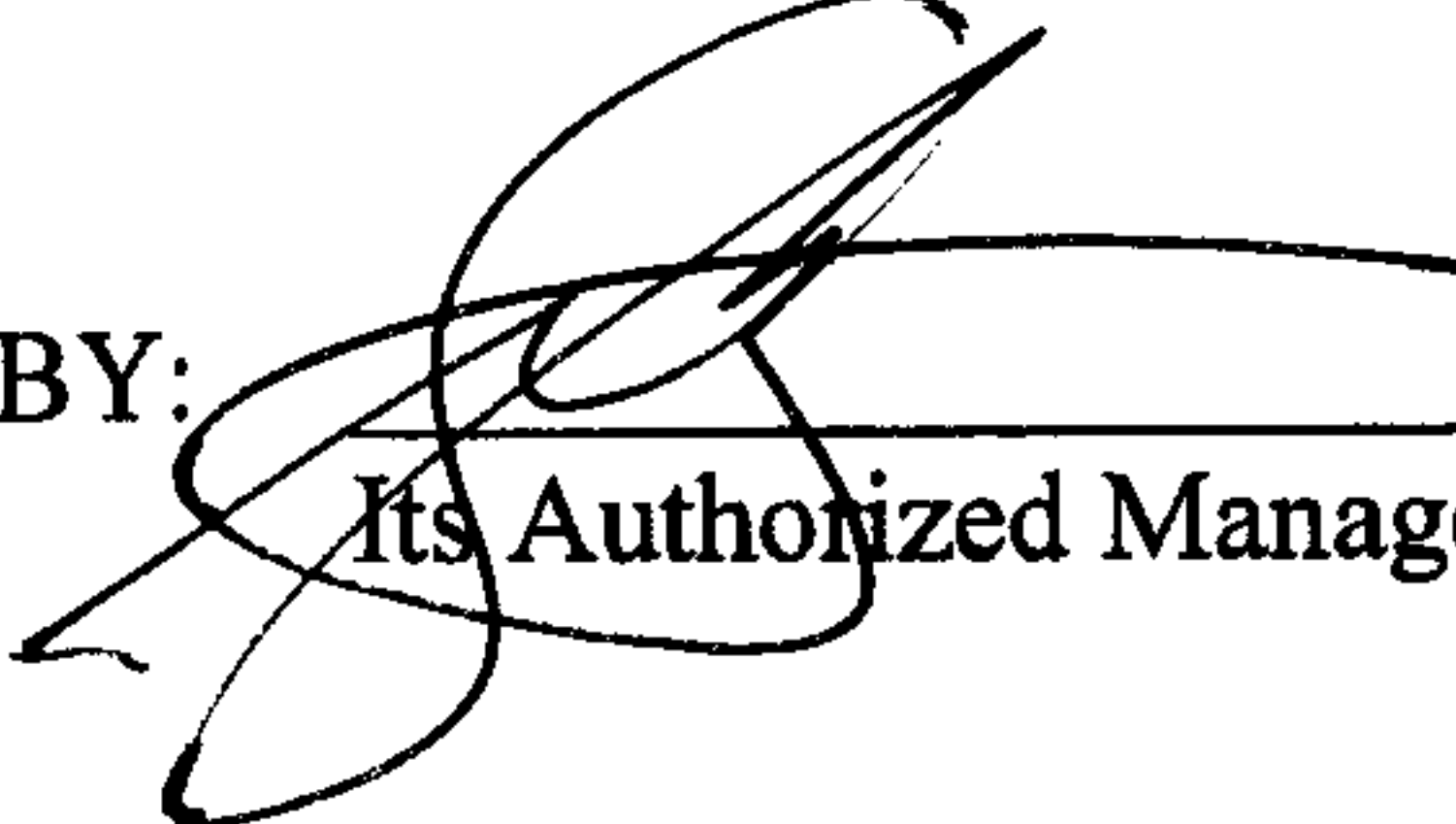


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IN WITNESS WHEREOF, Mortgagor has duly signed and sealed this instrument as of the day and year first above written.

HPH PROPERTIES, LLC,
an Alabama limited liability company [Seal]

BY: HPHB II, LLC,
an Alabama limited liability company,
Its Sole Member [Seal]

BY:  [Seal]
Its Authorized Manager


STATE OF ALABAMA)

COUNTY OF Shelby)

Before me, the undersigned, a Notary Public in and for said County in said State, hereby certify that R David Bonamy, whose name as Authorized Manager of HPHB II, LLC, an Alabama limited liability company, acting in its capacity as Sole Member of HPH Properties, LLC, an Alabama 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 such instrument, he, as such Authorized Manager and with full authority, executed the same voluntarily for and as the act of said HPHB II, LLC, in its capacity as Sole Member of HPH Properties, LLC.

Given under my hand and seal, this 17 day of June, 2010.

[NOTARY SEAL]


NOTARY PUBLIC
My Commission Expires: February 8, 2014



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EXHIBIT A

PARCEL I:

Lot 333, according to the Map of Lexington Park, 3rd Sector, Phase II, as recorded in Map Book 217, Page 77, in the Probate Office of Jefferson County, Alabama.

Lots 2109, 2110, and 2121, according to the Map of Lexington Park, 2nd Sector, Phase III, as recorded in Map Book 219, Page 24, in the Probate Office of Jefferson County, Alabama.

PARCEL II:

Lots 7, 8, 9, 10, 12, 13, 14, 38, 39, 40 & 43 according to the Plat of Hawthorn Heights at Lake Forest as recorded in the Office of the Judge of Probate of Madison County, Alabama, in Document Number 20060616000396800.

PARCEL III:

Lots 1, 21, 55, 56, and 57, according to the Plat of Maple Grove at Lake Forest, as recorded in the Office of the Judge of Probate of Madison County, Alabama, in Document Number 20060616000396790.

PARCEL IV:

Lots 39, and 223, according to the Map of Hillsboro Subdivision, Phase I, as recorded in Map Book 37, Pages 104, A, B, & C, in the Probate Office of Shelby County, Alabama.

Lots 4A, 18A, 19A, 30A, 40A, 41A, 44A, and 45A, according to the Amended Map of Hillsboro Subdivision, Phase I, as recorded in Map Book 39, Pages 140 A, B & C, in the Probate Office of Shelby County, Alabama.

Lots 307, 308, 309, 310, 326, 330, 341, 342, 343, 344 and 345 according to the Amended Map of Hillsboro Subdivision, Phase II, as recorded in Map Book 38, Pages 147 A & B, in the Probate Office of Shelby County, Alabama.

Lots 76A, 218A, 219A, and 220A, according to the 2nd Amended Map of Hillsboro Subdivision, Phase II, as recorded in Map Book 39, Pages 141 A & B, in the Probate Office of Shelby County, Alabama.

Lots 102, 103, 118, and 120, according to the Map of Hillsboro Subdivision, Phase III, as recorded in Map Book 39, Pages 123 A, B, & C, in the Probate Office of Shelby County, Alabama.

Lot 230B, according to a Resurvey of Lots 228A and 230A of the Amended Map of Hillsboro Subdivision, Phase I, as recorded in Map Book 41, Page 39, in the Probate Office of Shelby County, Alabama.



PARCEL V:

Lots 23 and 24, in Block 1, according to the Map of Oakwood, Phase 1 at Lake Forest, as recorded in Document Number 20071205000851640, in the Probate Office of Madison County, Alabama.

PARCEL VI:

Lots 28A, 29A, 30A, 31A, 32A, 33A, 34A, 35A, 36A, and 37A according to the Map of Trussville Springs Phase I Resurvey as recorded in Map Book 229, Page 40, in the Probate Office of Jefferson County, Alabama.



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