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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
Real Estate Banking Group (AU # 55329)
11601 Wilshire Blvd., 17th Floor
Los Angeles, CA 90025

Attn: Trisha Jones-Brooks
Loan No. 1004460

**MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

MAXIMUM PRINCIPAL INDEBTEDNESS NOT TO EXCEED \$3,052,000

THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Mortgage**”) is made as of September 15, 2011, by 3500 PELHAM LLC, a California limited liability company (“**Mortgagor**”), to WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (“**Mortgagee**”), pursuant to that certain Loan Agreement (said Loan Agreement, as same may be further amended and modified from time to time, being hereinafter referred to as the “Loan Agreement”), by and between Mortgagee, as lender, and Mortgagor, as borrower.

ARTICLE 1. GRANT

- 1.1 **GRANT**. For the purposes of and upon the terms and conditions in this Mortgage and to secure the full and timely payment, performance and discharge of the Secured Obligations (as herein defined), Mortgagor irrevocably GRANTS, CONVEYS, ASSIGNS, BARGAINS, MORTGAGED and SELLS and has by these presents GRANTED, CONVEYED, ASSIGNED, BARGAINED, MORTGAGED and SOLD, to

Mortgagee all of that real property located in the County of Shelby, State of Alabama, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Mortgagor in and to all streets, ways, roads and alleys used in connection with or pertaining to such real property or the improvements thereon, all development rights or credits, air rights, water, water rights and water stock related to the real property, all timber, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all licenses, appurtenances, reversions, remainders, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the “**Improvements**”); all rights of Mortgagor as declarant under any and all covenants, conditions and restrictions now or hereafter pertaining to such real property, provided, however, that Mortgagee shall have no liability under such rights unless and until Mortgagee forecloses on such real property; all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the “**Subject Property**”); the listing of specific rights or property shall not be interpreted as a limit of general terms; TO HAVE AND TO HOLD the Subject Property unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Subject Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) and shall perform and discharge (or cause to be performed and discharged) the Secured Obligations on or before the date same are to be paid, performed and discharged, then the liens, security interests, estates, rights and titles granted by this Mortgage shall terminate in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Mortgagee confirming that the Secured Obligations have not been fully and finally paid, performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED**. Mortgagor makes this Mortgage for the purpose of securing the following obligations (“**Secured Obligations**”):

- (a) Payment of all sums at any time owing under that certain Promissory Note Secured by Mortgage (“**Note**”) (as the same may be amended, supplemented, replaced or modified from time to time), of even date herewith, from time to time outstanding, in the principal aggregate original amount of Three Million Fifty-Two Thousand and 00/100 Dollars (\$3,052,000.00), with interest at a variable rate as provided therein, executed by Mortgagor, and payable to the order of

Mortgagee pursuant to the Loan Agreement and with an initial maturity date of March 10, 2013, which initial maturity date may be extended to March 10, 2014 or March 10, 2016 pursuant to the terms of the Loan Agreement; and

- (b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage; and
- (c) Payment and performance of all covenants and obligations on the part of Mortgagor under the Loan Agreement and all other "Loan Documents" as defined in the Loan Agreement; and
- (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Mortgage; and
- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage; and
- (f) Payment and performance of all covenants and obligations of Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Loan, as defined in the Loan Agreement; and
- (g) Payment of any and all amounts advanced by Mortgagee with respect to the Subject Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Subject Property; and
- (h) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

All Secured Obligations shall be secured by the Collateral (as defined below) and the Subject Property on a pari passu basis for the benefit of the holders thereof.

- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "**Leases**" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Mortgagor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the lessees from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury

or death to any lessee, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Mortgagee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) the Schedule of Leases attached hereto as Schedule 1 is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and Mortgagor has no actual knowledge of any breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.

3.5 **COVENANTS.** Mortgagor covenants and agrees at Mortgagor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and, to the extent commercially reasonable, enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Mortgagee prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) exercise Mortgagor's best efforts to keep all leaseable portions of the Subject Property leased at all times at rentals not less than the fair market rental value; (d) deliver to Mortgagee fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Mortgage, in form and substance acceptable to Beneficiary, as Beneficiary may request. To the extent prohibited by the Loan Agreement, Mortgagor shall not, without Mortgagee's prior written consent: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect any rents in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases and other than collecting 1/12 of insurance premiums and real property taxes in advance of their respective due dates; (iv) terminate (unless the tenant is in material default), modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee under any Lease other than pursuant to Mortgagor's obligations under any lease; or (vi) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance. Any such attempted action in violation of the provisions of this Section shall be null and void. Without in any way limiting the requirement of Mortgagee's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any

Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.

- 3.6 **ESTOPPEL CERTIFICATES.** Except as otherwise provided under any leases within the longer of any period set forth in a lease for a tenant to respond or thirty (30) days of written request by Mortgagee, Mortgagor shall obtain and shall deliver to Mortgagee and to any party designated by Mortgagee, estoppel certificates executed by Mortgagor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Mortgagor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Mortgagee.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

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

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein or (ii) any existing or future improvements on the real property (which real property and improvements are collectively referred to herein as the "**Subject Property**"), together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies (but with respect to any blanket policies maintained by Mortgagor, only with respect to that portion of the policy that relates to the real property that is encumbered by this Mortgage), insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Subject Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring

rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or all underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Subject Property; all advance payments of insurance premiums made by Mortgagor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under any swap, derivative, foreign exchange, or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Loan, as defined in the Loan Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, constitutes a fixture filing under the Alabama Uniform Commercial Code, as amended or recodified from time to time (the "UCC").

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, and will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor's principal place of business is located at the address shown in Section 7.11.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interest contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee prior written notice thereof; (c) to cooperate as requested by Mortgagee in perfecting all security interests granted herein and in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in the Collateral.
- 4.4 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice

and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC §9620, or other applicable law.

4.5 **RIGHTS OF MORTGAGEE ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Mortgage, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law.

- (a) Mortgagee may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) In disposing of Collateral hereunder, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Mortgagee to the payment of expenses incurred by Mortgagee in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Mortgagee toward the payment of the Secured Obligations in such order of application as Mortgagee may from time to time elect.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagor shall make an express written election of said remedy under UCC §9620, or other applicable law.

- 4.6 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.
- 4.7 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Mortgage or any of the Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Mortgagor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Mortgage is a first and prior lien on the Subject Property. Mortgagor hereby represents and warrants that, except as disclosed to Mortgagee in writing prior to the date hereof, the Subject Property is a single tax parcel, and there are no properties included in any tax parcel comprising the Subject Property other than the Subject Property. Mortgagor further covenants and agrees that it shall not cause all or any portion of the Subject Property to be replatted or for any lots or boundary lines to be adjusted, changed or altered for either ad valorem tax purposes or otherwise, and shall not consent to the assessment of the Subject Property in more than one tax parcel or in conjunction with any property other than the Subject Property.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** At any time following the occurrence of a Default, at Mortgagee's option and upon its demand, and in accordance with the other Loan Documents, Mortgagor shall, until all Secured Obligations have been paid in full,

pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) all taxes, assessments and levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and other insurance required or requested pursuant to the Loan Documents when same are next due. If Mortgagee determines that any amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Mortgagee shall, unless Mortgagor is otherwise in Default hereunder or under any of the Loan Documents, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence of a Default hereunder or under any Secured Obligation, Mortgagee may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Mortgage, Mortgagee shall assign all amounts collected and in its possession to its assignee whereupon Mortgagee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Mortgagee may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor and no other party shall have any right or claim thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Mortgagor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of

Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Mortgagee may, subject to the provisions of Section 5.6(b) below, at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.

- (b) Mortgagee shall permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration provided that the following conditions are met and, at the time of each such disbursement no Default exists, nor does any event exist which, with the giving of notice or passage of time or both would constitute a Default: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed in excess of net insurance or condemnation proceeds, as applicable, to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and, if such cost breakdown indicates that such work will cost in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00), a payment and performance bond for the work all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, except in the event of condemnation the size, capacity and total value of the Subject Property will be at least as great as it was before the

damage; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor since the date of this Mortgage; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within forty-five (45) days of receipt by Mortgagee of such insurance or condemnation proceeds (or within ninety (90) days of receipt by Mortgagee of such insurance or condemnation proceeds if within such initial forty-five (45) day period Mortgagor shall have commenced and continued in good faith to satisfy such conditions), then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

5.7 MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.

Mortgagor covenants: (a) to insure the Subject Property and Collateral against such risks as Mortgagee may require as set forth in the Loan Agreement and any supplemental insurance provisions or requirements provided to Mortgagor by Mortgagee, and, at Mortgagee's request (but not more than fifteen (15) days prior to the termination date of any existing coverage), to provide evidence of such insurance to Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Mortgagee's prior written consent or as provided in the Loan Agreement; (d) provided that Mortgagee makes insurance or condemnation proceeds, as applicable, available, to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit and to exercise commercially reasonable efforts to not permit waste by any tenant of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

5.8 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any

claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

- 5.9 **POWERS OF MORTGAGEE.** Mortgagee may, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby and without liability therefor and without notice: (a) release all or any part of the Subject Property; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage.
- 5.10 **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest in the corporate stock, general partnership interests or limited liability company interests of Mortgagor), mortgaged, assigned, further encumbered (other than by lease) whether directly or indirectly, whether voluntary or involuntary or by operation of law, without the prior written consent of Mortgagee or as expressly permitted by and in accordance with the Loan Agreement, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.11 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities (other than Mortgagor) having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations (“**Interested Parties**”), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Subject Property and Collateral.
- 5.12 **RELEASES.** If the Secured Obligations are paid, performed and discharged in full in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, then this conveyance shall be released by Mortgagee at Mortgagor’s request and expense, and Mortgagee shall have no further obligation to make advances pursuant to the provisions hereof or in the other Loan Documents. Additionally, Mortgagor shall have the right to partial releases of the Subject Property from the lien of this Mortgage in accordance with the provisions of the Loan Agreement.
- 5.13 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.

- 5.14 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof; provided, however, Mortgagee shall not unduly interfere with any tenant's business in connection with such inspections.
- 5.15 **CONTRACTS.** Mortgagor will deliver to Mortgagee a copy of each Contract promptly after the execution of same by all parties thereto and subject to any approval of Mortgagee required by any of the Loan Documents. Within twenty (20) days after a request by Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and other information specified by Mortgagee, of or with respect to each of such Contracts, together with a copy thereof (if so requested by Mortgagee). Mortgagor represents and warrants that none of the Contracts encumber or create a lien on the Subject Property, but are personal with Mortgagor. As used herein, the term "**Contract**" shall mean any management agreement, leasing and brokerage agreement, and operating or service contract with respect to the Subject Property or Collateral.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean (a) at Mortgagee's option, the failure of Mortgagor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; (b) the failure of Mortgagor to perform any non-monetary obligation hereunder (or the failure to be true of any representation or warranty of Mortgagor contained herein) and the continuance of such failure for ten (10) days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure; or (c) the existence of any Default as defined in the Loan Agreement.
- 6.2 **MORTGAGEE'S REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable.
 - (b) With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage,

the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (v) to employ counsel, accountants, contractors and other appropriate persons;

- (c) Mortgagee may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Subject Property, or any part thereof, and take exclusive possession of the Subject Property and Collateral and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Subject Property and Collateral, including without limitation the right to rent the same for the account of Mortgagor and to deduct from such Payments all costs, expenses, and liabilities of every character incurred by the Mortgagee in collecting such Payments and in managing, operating, maintaining, protecting, or preserving the Subject Property and Collateral and to apply the remainder of such Payments on the Secured Obligations in such manner as Mortgagee may elect. All such costs, expenses, and liabilities incurred by the Mortgagee in collecting such Payments and in managing, operating, maintaining, protecting, or preserving the Subject Property and Collateral, if not paid out of Payments as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the rate of interest then applicable on the outstanding principal balance of the Note, all of which shall constitute a portion of the Secured Obligations. If necessary to obtain the possession provided for above, the Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Mortgagee pursuant to this subsection, the Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Subject Property, or any part thereof, or from any other act or omission of the Mortgagee in managing the Subject Property and Collateral unless such loss is caused by the willful misconduct of the Mortgagee, nor shall the Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD HARMLESS MORTGAGEE FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, EXCEPT TO THE

EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MORTGAGEE. Should Mortgagee incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the rate of interest then applicable on the outstanding principal balance of the Note, shall be secured hereby, and Mortgagor shall reimburse the Mortgagee therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Mortgagee for the control, care, management, leasing, or repair of the Subject Property and Collateral, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Subject Property and Collateral by the tenants or by any other parties, or for any Hazardous Materials as defined in the Loan Agreement on or under the Subject Property or Collateral, or for any dangerous or defective condition of the Subject Property or Collateral or for any negligence in the management, leasing, upkeep, repair, or control of the Subject Property or Collateral resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Mortgagee with respect to the Subject Property and Collateral taken under this subsection.

The remedies in this subsection are in addition to other remedies available to the Mortgagee and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to the Mortgagee. The remedies in this Section 6.2 are available under and governed by the real property laws of Alabama and are not governed by the personal property laws of Alabama. No action by Mortgagee, taken pursuant to this subsection, shall be deemed to be an election to dispose of personal property under Ala Code Section 7-9A-604. Any receipt of consideration received by Mortgagee pursuant to this subsection shall be immediately credited against the Secured Obligations (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Secured Obligations.

- (d) Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment, performance and discharge of the Secured Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Subject Property and Collateral, and to have all or any part of the Subject Property and Collateral sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Mortgagee with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Mortgagee.

- (e) Mortgagee, as a matter of right and without regard to the sufficiency of the security for payment, performance and discharge of the Secured Obligations, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Subject Property and Collateral or any part thereof, and of the Payments, and Mortgagor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters. Mortgagor will pay to Mortgagee upon demand (with interest thereon at the Alternate Rate) all expenses, including receiver's fees, attorneys' fees, costs and agent's compensations, incurred pursuant to the provisions of this Section 6.2(e), and all such expenses shall be secured by this Mortgage and shall bear interest at the Alternate Rate.
- (f) Mortgagee may exercise its rights of enforcement with respect to the Collateral under the UCC, and in conjunction with, in addition to or in substitution for the rights and remedies under the UCC the Mortgagee may, and Mortgagor agrees, as follows: (i) without demand or notice to Mortgagor, enter upon the Subject Property to take possession of, assemble, receive, and collect the Collateral, or any part thereof, or to render it unusable; (ii) require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; (iii) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public or private sale of the Collateral will be made shall constitute reasonable notice; (iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Subject Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Subject Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Ala Code Section 7-9A-604; (v) in the event of a foreclosure sale, the Collateral and the Subject Property may, at the option of the Mortgagee, be sold as a whole; (vi) it shall not be necessary that the Mortgagee take possession of the Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (vii) prior to application of proceeds of disposition of the Collateral to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by the Mortgagee; (viii) after notification, if any, hereafter provided in this subsection, Mortgagee may sell,

lease, or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at Mortgagee's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Mortgagee, Mortgagor shall assemble the Collateral and make it available to Mortgagee at any place designated by Mortgagee that is reasonably convenient to Mortgagor and Mortgagee. Mortgagor agrees that Mortgagee shall not be obligated to give more than ten (10) days' written notice of the time and place of any public or private sale and that such notice shall constitute reasonable notice of such matters. Mortgagor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Mortgagee in connection with the collection of the Secured Obligations and the enforcement of Mortgagee's rights under the Loan Documents. Mortgagee shall apply the proceeds of the sale of the Collateral against the Secured Obligations in accordance with the requirements of this Mortgage. Mortgagor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay, perform and discharge the Secured Obligations in full. Mortgagor waives all rights of marshalling in respect of the personalty; (ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Default, the Mortgagee having declared all or a portion of such Secured Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (x) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee. Without limiting any other provisions of this Mortgage, Mortgagee shall have the right to conduct any such sale on the Subject Property, and Mortgagee shall have such right of possession of the Collateral as shall be necessary or convenient for such purpose or any other purpose under this Section 6.2. Mortgagee may sell the Collateral without giving any warranties relating to title, possession, quiet enjoyment, merchantability, fitness or the like as to the Collateral and may specifically disclaim any warranties, which shall not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Mortgagee has no obligation to clean up or otherwise prepare the Collateral for sale.

- (g) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceed received upon the Security Obligations all in such order and manner as Mortgagee determines in its sole discretion.

- (h) Mortgagor has, pursuant to Article 3 of this Mortgage, assigned to Mortgagee all Payments under each of the Leases covering all or any portion of the Subject Property. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Subject Property or any part thereof, and in its own name, sue for or otherwise collect the Payments. All Payments collected by Mortgagee shall be applied as provided for in this Mortgage and the Loan Agreement; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Payments collected, the excess shall be added to the Secured Obligations, shall bear interest at the rate of interest then applicable on the outstanding principal balance of the Note, and shall be immediately due and payable. The entering upon and taking possession of the Subject Property, the collection of Payments, and the application thereof as aforesaid shall not cure or waive any Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such Default is fully cured. Failure or discontinuance by Mortgagee at any time or from time to time, to collect said Payments shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Payments, with respect to the Subject Property or any other collateral given by Mortgagor to Mortgagee. In addition, from time to time Mortgagee may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Subject Property and Collateral to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.
- (i) Mortgagee (i) may surrender the insurance policies maintained pursuant hereto or the other Loan Documents or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Secured Obligations, in accordance herewith, and, in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such premiums; and (ii) apply the reserve for impositions, if any, required by the provisions of this Mortgage, toward payment

of the Secured Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document or under the UCC, or otherwise.

- (j) Mortgagee may be the purchaser of the Subject Property and Collateral or any part thereof, at any sale thereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Subject Property and Collateral so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Secured Obligations. The Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Mortgagee's purchase shall be applied in accordance with the requirements of this Mortgage.
- (k) If the liens or security interests hereof shall be foreclosed as provided herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Subject Property and Collateral so occupied or possessed and sold to such purchaser), and, subject to any subordination, non-disturbances and attornment agreements, anyone (other than any tenant who is party to a subordination, non-disturbance and attornment agreement with Mortgagee) occupying or possessing such portion of the Subject Property and Collateral, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.
- (l) To sell the Subject Property and other Collateral, or any part thereof, at public outcry to the highest bidder for cash at the main or front courthouse door in the county where the Subject Property or any substantial and material part thereof is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties in which the Subject Property is located, and, upon payment of the purchase money, Mortgagee, or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Subject Property or other Collateral so purchased; and at the foreclosure sale the Subject Property and other Collateral may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect. Mortgagee may bid at such sale and if the highest bidder

may apply all or any designated part of the Secured Obligations as a credit against the purchase price.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** The proceeds from any sale, lease, or other disposition made pursuant to Section 6.2, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Payments collected by Mortgagee from the Subject Property and Collateral or the reserve for impositions, if required by the provisions of the Loan Agreement or sums received pursuant to a condemnation or proceeds from insurance which Mortgagee elects to apply to the Secured Obligations, shall be applied by Mortgagee to the Secured Obligations in the following order and priority: (i) to the payment of all expenses of advertising, selling and conveying the Subject Property and Collateral or part thereof, and/or prosecuting or otherwise collecting Payments, proceeds, premiums, or other sums, not to exceed five percent (5%) of the proceeds thereof or sums so received; (ii) to the remainder of the Secured Obligations; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment, performance, and discharge of the Secured Obligations to the holder or beneficiary of any inferior liens covering the Subject Property and Collateral, if any, in order of the priority of such inferior liens (Mortgagee shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to the Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Secured Obligations like any other payment. The balance of the Secured Obligations remaining unpaid, if any shall remain fully due and owing in accordance with the Note and other Loan Documents.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under Section 6.2 or Section 3.2, less all costs and expenses incurred by Mortgagee or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of or failure to exercise any other right or remedy by Mortgagee or any receiver shall cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of or security interest created by this Mortgage.

- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of demand thereof until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of commencement or completion of construction of the Improvements, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Collateral, Leases and Payments in favor of the grantee of any such deed, 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) upon the occurrence of an event, act or omission which, with notice or passage of time, or both, would constitute a Default, to perform any obligation of Mortgagor hereunder; provided, however, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (ii) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Mortgagee under this Section.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee upon the occurrence of a Default provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not thereby waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either of its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.
- 6.9 **DISCONTINUANCE OF PROCEEDINGS AND RESTORATION OF THE PARTIES.** In case Mortgagee shall have proceeded to enforce any right, power or

remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

- 6.10 **WAIVER OF APPRAISEMENT, VALUATION, STAY, EXTENSION AND REDEMPTION LAWS.** Mortgagor agrees, to the fullest extent permitted by law, that if a Default occurs hereunder, neither Mortgagor nor anyone claiming through or under them shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of any Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim by, through or under them, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.
- 6.11 **MORTGAGEE MAY FILE PROOFS OF CLAIM.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or their property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Subject Property and such further rights and agreements are incorporated herein by this reference. To the extent that the provisions of this Mortgage are expressly inconsistent with the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Subject Property revenue, required insurance, tax impounds, and transfers of the Subject Property, the terms of the Loan Agreement or Note, as applicable, shall control.
- 7.2 **MERGER.** It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Subject Property, it is hereunder understood and agreed that, should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and

the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

- 7.3 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Mortgage as “Mortgagor”, the obligations of all such persons hereunder shall be joint and several.
- 7.4 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property which is now or later may be security for any Secured Obligation (“**Other Property**”) marshaled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.5 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term “Subject Property” and “Collateral” means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 7.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.6 does not waive or modify the provisions of Section 5.10.
- 7.7 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.8 **GOVERNING LAW.** This Mortgage was accepted by Mortgagee in the state of Alabama and proceeds of the Note secured hereby were disbursed from the state of Alabama, which state the parties agree has a substantial relationship to the parties and to

the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity enforceability and performance, this Mortgage, the Note and the other Loan Documents and obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of Alabama applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for the creation, perfection and enforcement of the liens and security interests created pursuant thereto and pursuant to the other Loan documents shall be governed by and construed according to the law of the state of Alabama. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than Alabama governs this Mortgage, the Note and the other Loan Documents.

- 7.9 **CONSENT TO JURISDICTION.** Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of Alabama over any suit, action, or proceeding, brought by Mortgagor against Mortgagee, arising out of or relating to the Note, the Loan Documents or the Loan; and (b) any state court sitting in the county of the state where the Subject Property is located over any suit, action, or proceeding, brought by Mortgagee to exercise any of its remedies under this Mortgage or any action brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 7.10 **INCORPORATION.** All exhibits, schedules or other items attached hereto, are incorporated into this Mortgage by this reference.
- 7.11 **NOTICES.** Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered personally, or if mailed, postage prepaid, except that notice of Default may be sent by United States registered or certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	3500 Pelham LLC c/o Silagi Development 101 Hodencamp Road, Suite 200 Thousand Oaks, California 91360 Attention: Debbie Palchanis
Mortgagee:	Wells Fargo Bank, National Association Real Estate Banking Group (AU #55329) 11601 Wilshire Blvd., 17th Floor Los Angeles, CA 90025 Attention: Trisha Jones-Brooks Loan #: 1004460
With a copy to:	Wells Fargo Bank, National Association Minneapolis Loan Center 608 2nd Avenue South, 11th Floor Minneapolis, Minnesota 55402 Attention: Laura Wyse

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, 3 Business Days (as defined in the Loan Agreement) after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the Business Day following the date of delivery to such courier. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Subject Property or to Mortgagor naming Mortgagee, “**Lender**” or any similar designation as addressee, or which could reasonably be deemed to affect the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Loan Agreement.

7.12 **DEFICIENCY.** In the event an interest in any of the Subject Property and Collateral is foreclosed upon, Mortgagor agrees, to the extent permitted by law, that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Subject Property and Collateral was sold pursuant to a foreclosure sale.

7.13 **NO THIRD PARTY BENEFICIARY.** This Mortgage is made for the sole benefit of Mortgagor and Mortgagee, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose

whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

- 7.14 **NO WAIVER.** By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Mortgagee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Mortgagee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Mortgagee in exercising any such right or remedy shall be construed to preclude Mortgagee from the exercise thereof at any time while that Default is continuing. No notice to or demand on Mortgagor shall of itself entitle Mortgage to any other or further notice or demand in similar circumstances.
- 7.15 **ENTIRE AGREEMENT; AMENDMENT.** THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Mortgage and the Loan Documents may be amended or waived only by an instrument in writing signed by the Mortgagor and Mortgagee.
- 7.16 **DELIVERY OF SUMMONS, ETC.** If any action or proceeding shall be instituted which (i) is intended to evict Mortgagor or recover possession of the Subject Property or any part thereof, or (ii) could result in a money judgment for failure to pay any obligation relating to the Subject Property or this Mortgage (which judgment would not be covered and fully paid by applicable insurance), Mortgagor, to the extent required under the Loan Agreement, shall immediately, upon service thereof on or by Mortgagor deliver, to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.
- 7.17 **WAIVER OF STATUTORY RIGHTS.** Mortgagor, to the fullest extent permitted by law, hereby voluntarily and knowingly waives its rights to the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption, reinstatement and moratorium laws under any state or federal law.


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Shelby Cnty Judge of Probate, AL
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20110916000274470 29/32 \$4683.00
Shelby Cnty Judge of Probate, AL
09/16/2011 10:48:35 AM FILED/CERT

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

MORTGAGOR:

3500 Pelham LLC,
a California limited liability company

By: [Signature]
Name: MOHIE SILABI
Title: GENERAL MANAGER

STATE OF CA)
COUNTY VENTURA) ss.

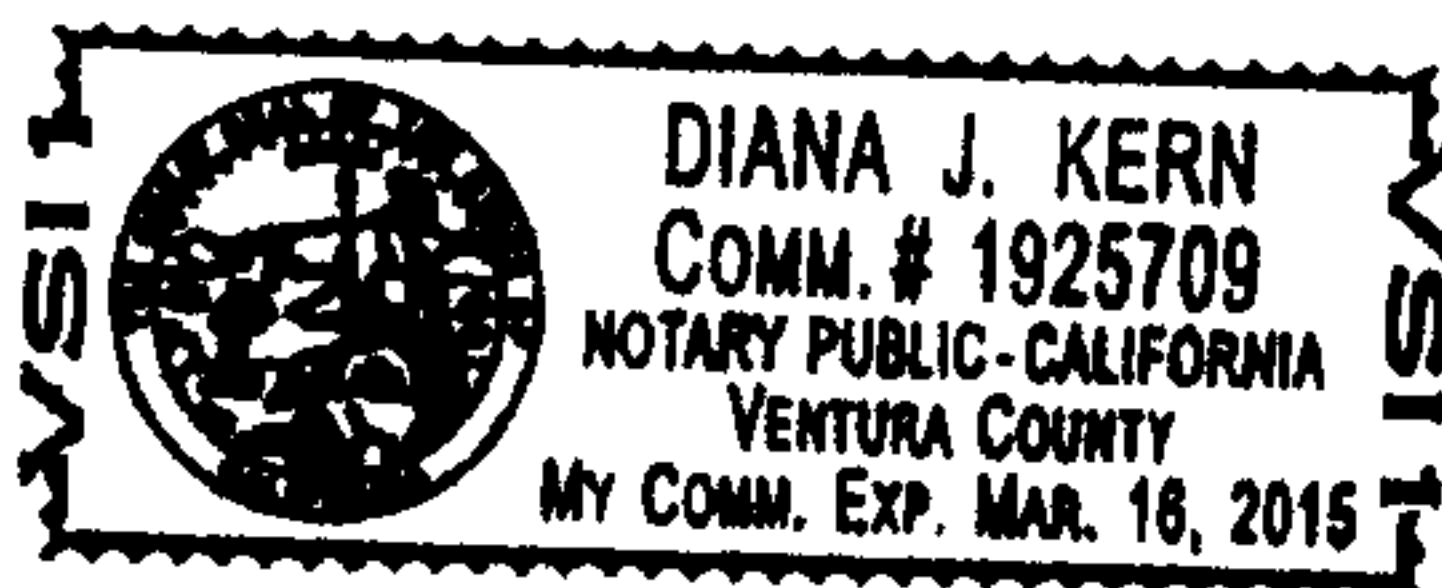
On 9-6-11, before me, DIANA J. KERN,
notary public, personally appeared MOHIE SILABI, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within
instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their
authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Notary Public

[Seal]



**EXHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY**

[TITLE CO. to confirm if plat legal description is available]

Commencing at the Northwest corner of Section 25, Township 20 South, Range 3 West; thence South 88 degrees 52 minutes 57 seconds East and along the North boundary of the Northwest Quarter of said Section a distance of 574.09 feet; thence South 08 degrees 10 minutes 22 seconds East and leaving said North boundary and run a distance of 513.53 feet; thence South 06 degrees 31 minutes 22 seconds East and run a distance of 452.08 feet; thence South 01 degrees 54 minutes 22 seconds East and run a distance of 190.04 feet; thence South 01 degrees 54 minutes 22 seconds East run a distance of 82.03 feet; thence South 88 degrees 36 minutes 58 seconds East run a distance of 26.47 feet; thence South 02 degrees 03 minutes 13 seconds East run a distance of 89.38 feet to the POINT OF BEGINNING; thence run South 02 degrees 00 minutes 28 seconds East a distance of 525.12 feet; thence run South 04 degrees 05 minutes 10 seconds West a distance of 29.85 feet; thence run South 87 degrees 40 minutes 33 seconds East a distance of 291.57 feet; thence along a curve to the right concave Westerly, with a radius of 4873.00 feet, a delta angle of 2 degrees 25 minutes 16 seconds, with a chord bearing of South 14 degrees 33 minutes 59 seconds West, with an arc length of 205.91 feet, a chord length of 205.90 feet; thence run South 15 degrees 51 minutes 43 seconds West a distance of 182.75 feet; thence run North 87 degrees 08 minutes 15 seconds West a distance of 199.97 feet; thence run South 03 degrees 16 minutes 26 seconds West a distance of 32.26 feet; thence run North 86 degrees 38 minutes 46 seconds West a distance of 52.13 feet; thence run South 02 degrees 48 minutes 45 seconds West a distance of 203.94 feet; thence run South 81 degrees 08 minutes 03 seconds East a distance of 194.00 feet; thence run South 15 degrees 56 minutes 41 seconds West a distance of 28.25 feet; thence run North 81 degrees 06 minutes 49 seconds West a distance of 173.08 feet; thence run South 08 degrees 39 minutes 36 seconds West a distance of 53.04 feet; thence run North 81 degrees 05 minutes 10 seconds West a distance of 480.54 feet; thence along a curve to the left concave Westerly, with a radius of 2899.72 feet, a delta angle of 6 degrees 25 minutes 27 seconds, a chord bearing of North 02 degrees 26 minutes 37 seconds East, an arc length of 325.13 feet, and a chord length of 324.98 feet; thence run North 00 degrees 49 minutes 09 seconds West a distance of 850.04 feet; thence run South 82 degrees 50 minutes 49 seconds East a distance of 126.27 feet; thence run North 88 degrees 02 minutes 23 seconds East a distance of 400.79 feet, which is the point of beginning.

Exhibit A


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EXHIBIT B

PERMITTED ENCUMBRANCES

1. Real Estate taxes not yet due and payable.
2. All those exceptions listed in the title policy approved by Mortgagee.

Exhibit B


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SCHEDULE 1

LEASES

1. That certain Lease dated May 6, 2010, by and between 3500 Pelham LLC, as landlord, and HLMJR, LLC, as tenant.