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Shelby Cnty Judge of Probate, AL  
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**OPEN-END MORTGAGE  
SECURES FUTURE ADVANCES**

STATE OF ALABAMA

COUNTY OF SHELBY

KNOW ALL MEN BY THESE PRESENTS, effective June 25, 2012, 2188 BUILDING, L.L.C., an Alabama limited liability company ("Mortgagor"), mortgages, conveys, assigns, grants a security interest in and warrants, grants, bargains, and sales, with power of sale to TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Mortgagee"), in consideration of the execution or procurement of the execution of certain Bonds, and the continuation of previously executed Bonds, the real estate described on the attached Exhibit A ("the Property"), together with all privileges, hereditaments, easements, and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of imminent domain, and all existing and future buildings, structures, and improvements ("the Improvements") to secure, subject to the limitations set out in Section 1.1, Loss and the performance of the covenants and agreements herein contained and contained in the Surety Agreements. Capitalized terms not otherwise defined have the meanings as described in Section 8.14 of this Mortgage. THIS INSTRUMENT IS TO ALSO CONSTITUTE A FIXTURE FILING PURSUANT TO ALA. CODE §7-9A-502. MORTGAGOR IS THE RECORD OWNER OF THE REAL ESTATE. SOME OF THE COLLATERAL DESCRIBED IN THIS INSTRUMENT IS OR MAY BECOME FIXTURES ON THE REAL ESTATE DESCRIBED HEREIN. THIS MORTGAGE IS FOR COMMERCIAL PURPOSES AND SECURES, AMONG OTHER INDEBTEDNESS, FUTURE ADVANCES.

This property is not the homestead of Mortgagor.

TOGETHER WITH all and singular riparian, or other rights (including all mineral rights) and appurtenances thereunto belonging or in any way appertaining, and the rights of Mortgagor, if any, in all adjacent roads, ways, streams, and alleys; and all of Mortgagor's rights in the reversion or reversions, remainder and remainders, rents, issues, and profits thereof (which are pledged primarily and on a parity with said real estate and not secondarily); and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof;



TOGETHER WITH all rents, issues, and profits derived from the Property or the Improvements under present or future leases, operating agreements, or otherwise which are hereby specifically assigned, transferred, and set over to Mortgagee;

TOGETHER WITH all leasehold estate, right, title, and interest of Mortgagor in any ground lease(s) covering the Property or any portion thereof, now or hereafter existing or entered into, as well as to any after acquired fee so long as it is adjacent to the Property or used relative thereto;

TOGETHER WITH a Lien and/or security interest hereby granted to Mortgagee in all right, title, and interest of Mortgagor in all machinery, apparatus, equipment, fittings, fixtures actually attached to the Property and including all trade, domestic, and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (collectively "Fixtures"), now or hereafter located in, upon, or under the Property or any part thereof and used or usable in connection with any present or future operation of the Property, including but not limiting the generality of the foregoing, all heating, air conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits; switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, security and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances; air-cooling and air-conditioning apparatus; vacuum cleaning systems; elevators, escalators; shades, awnings, screens; storm doors and windows; stoves; wall beds; refrigerators, cooking apparatus, and mechanical equipment; gas and electric fixtures; partitions; mantels; built-in mirrors; window shades, blinds; attached cabinets; ducts and compressors; carpets; together with all additions thereto and replacements thereof, including without limitation any and all property of similar type or kind, hereafter located on or at the Property (Mortgagor agreeing with respect to all additions and replacements, to execute and deliver from time to time such further instruments as may be reasonably requested by Mortgagee to confirm the conveyance, transfer, and assignment of and granting of a Lien in any of the foregoing);

TOGETHER WITH any and all right, title, and interest of Mortgagor to the proceeds of all insurance (including title insurance) in effect with respect to the Premises (as hereinafter defined) and to any and all awards or payments, including interest thereon, and the right to receive the same which may be made with respect to the Premises as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to, taking of, or decrease in the value of, the Premises to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable counsel fees, costs, and disbursements incurred by Mortgagee in connection with the collection of such proceeds, award or payment, and the rights of Mortgagor under present or future contracts involving the Premises, to the extent assignable; and

TOGETHER WITH all of Mortgagor's right to further encumber the Premises for debt and all of Mortgagor's rights to enter into any lease that is or may become subordinate to any mortgage or deed of trust other than this instrument.



TO HAVE AND HOLD the above described and granted property, all of which is collectively referred to herein as "the Premises" (whether now or hereafter acquired), unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

## ARTICLE I

### THE INDEBTEDNESS

1.1 Matters Secured by This Mortgage. This Mortgage and all rights, title, interests, Liens, security interests, powers, and privileges created hereby or arising by virtue hereof are given for the purpose of securing Loss and all other Indebtedness. This Mortgage secures all Loss and all other Indebtedness. NOTWITHSTANDING THE FORGOING, THIS MORTGAGE WILL ONLY SECURE INDEBTEDNESS UP TO THE MAXIMUM PRINCIPAL AMOUNT OF ONE MILLION DOLLARS (\$1,000,000).

1.2. Future Advances. Subject to the limitation set out in Section 1.1, this Mortgage secures the Indebtedness, including all present and future loans and disbursements made by Mortgagee, and all other sums from time-to-time owing to Mortgagee by Mortgagor, under the Surety Agreements and any extensions, renewals, or modifications thereof, that constitute Loss.

## ARTICLE II

### REPRESENTATIONS, COVENANTS, WARRANTIES, AND AGREEMENTS OF MORTGAGOR

Mortgagor represents, covenants, warrants, and agrees in favor of Mortgagee as follows:

2.1. Title. Mortgagor has good and marketable fee simple title to the Property and Fixtures and the Improvements and is lawfully seized and possessed of the same and has the full power, authority, and right to convey the same and to execute and deliver this Mortgage; the Premises are free and clear of any Liens except as expressly provided on the attached Exhibit B ("the Permitted Encumbrances"), and Mortgagor will forever warrant and defend the title to the Premises unto Mortgagee against the claims of all Persons whomsoever. This Mortgage constitutes a valid, subsisting first priority Lien on the Property, Fixtures, and Improvements.

2.2. Organizations and Power. Mortgagor is duly formed, duly organized, validly existing, and in good standing under the laws of the state of its formation or existence. To the extent it is required to do so, Mortgagor has complied with all conditions prerequisite to doing business in the state in which the Premises is located. Mortgagor has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, operate, pledge, and mortgage its properties including the Premises and to carry on its business as now being, and as proposed to be, conducted, subject in the case of proposed operations to the receipt of necessary permits.

2.3. Validity of Mortgage. The execution, delivery, and performance by Mortgagor of this Mortgage are within Mortgagor's power and have been duly authorized by Mortgagor, its



members, or other necessary parties, and all other requisite action for such authorization has been taken. Mortgagor has received any and all requisite prior governmental approvals in order for this Mortgage to be legally binding and enforceable in accordance with the terms hereof, and such execution, delivery, and performance will not violate, be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under or violation of any law, ordinance, statute, rule, regulation, opinion, or order of any governmental or quasi-governmental entity, agency, or authority or any court or administrative body (collectively, "Legal Requirements") or result in the creation or imposition of any Lien of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of this Mortgage. The Mortgage constitutes the legal, valid, and binding obligation of Mortgagor enforceable in accordance with its terms.

2.4. Legal Requirements. The Premises and the operations conducted thereon are in material compliance with all Legal Requirements. Mortgagor will comply with all legal requirements applicable to or binding upon Mortgagor or the Premises.

2.5. Payment of Loss and other Indebtedness. Mortgagor will punctually pay, in lawful money of the United States, all sums due Mortgagee at the time and in the manner set forth in the Surety Agreements, or any document evidencing a future advance or any other instrument evidencing and/or securing Loss or other Indebtedness.

2.6. Insurance Premiums and Taxes. Mortgagor will pay, when due and payable, all premiums on insurance policies required to be carried under the terms of this Mortgage or any of the Surety Agreements as well as all taxes, assessments (general or special) and other charges levied on, or assessed, placed or made against the Premises, this Mortgage or any interest of Mortgagee in the Premises or Loss, and promptly deliver to Mortgagee receipts showing payment in full of the same. Notwithstanding the foregoing, Mortgagor may contest such taxes, assessments, and other charges the payment of which is being contested in good faith by proper proceedings which stay the forfeiture or sale of the Premises and which do not impair the Lien of this Mortgage and with respect to which adequate reserves are maintained in accordance with GAAP. If Mortgagor defaults in so paying such premiums, taxes and assessments, Mortgagee at its option (but without any obligation so to do) may pay such premiums, taxes, and assessments and Mortgagor will reimburse Mortgagee therefore, from the time of payment, on demand, with interest at the lesser of ten percent (10%) and the maximum rate permitted by law ("the Default Rate") and the same will be secured by this Mortgage.

2.7. Insurance Coverage.

(a) Mortgagor will keep the Improvements insured on a full restoration or replacement cost basis (with full replacement cost endorsement) in an amount equal to the full insurable replacement value of the Improvements for the benefit of Mortgagee and Mortgagor against "all risks," including but not limited to loss or damage by fire, lightning, windstorm, hail, vandalism, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, flood, and water damage and collapse; and full contents coverage on the Fixtures as required by Mortgagee, all in amounts approved by Mortgagee;



(b) Mortgagor will also acquire and maintain premises liability coverage in the amount of Two Million Dollars (\$2,000,000) per occurrence for combined single limit bodily injury and property damage with defense appearance cost coverage and naming Mortgagee as an additional insured;

(c) Prior to the commencement of construction of any Improvements on the Property and until such Improvements are completed, Mortgagor will acquire and maintain Builder's Risk Insurance on an "all risk" basis (including as a minimum, fire, extended coverage, vandalism, water damage and collapse), in an amount equal to the full insurable replacement value of the Improvements;

(d) Mortgagor will also acquire and maintain insurance against any other risk including public liability and property damage coverage if required under the terms of any contracts by which Mortgagor is bound;

(e) Mortgagor will also carry boiler and machinery insurance on all equipment and objects customarily covered by such insurance in an amount equal to the value thereof;

(f) Mortgagor will also carry flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973 (or any replacement or similar legislation) if the area in which the Premises are situated is designated as "flood prone," "a flood risk area," "within a flood plain" or similar designation so as to require flood insurance protection except that Mortgagor may, in lieu of such flood insurance, furnish Mortgagee with a certification, in form acceptable to Mortgagee, from a surveyor approved by Mortgagee that the Improvements are not located inside any special flood hazard areas as shown on the published Flood Hazard Boundary Map or on the Flood Insurance Rate Map Zones A, A1A30, AH, AO, A99, V1-V30, or M;

(g) Mortgagor will acquire and maintain business interruption insurance or loss of earnings coverage in an amount equal to that necessary to pay for a twelve-month period the continuing expenses of the business being conducted at the Premises, including all mortgage payments, real estate taxes, hazard insurance premiums and costs of adequate cleaning, lighting, heating, air conditioning, and maintenance of the Premises;

(h) All insurance herein provided for will be on an occurrence basis and be in form and content and be issued by carriers reasonably acceptable to Mortgagee;

(i) Replacement value will be subject to annual adjustment based on reconstruction indices published by an appraisal organization such as Marshall Swift, E.H. Boekh, or another recognized entity which values items similar to the Improvements or the Fixtures;

(j) At the request of Mortgagee, Mortgagor will deliver to Mortgagee true and correct copies of all policies of insurance which insure against any loss or damage to the Premises with (i) a standard mortgagee clause in favor of the Mortgagee, giving Mortgagee thirty



(30) days' prior written notice of cancellation or material modification of any of said policies, (ii) a replacement cost or restoration endorsement, (iii) a provision stating that the waiver of subrogation rights of the insured does not void the coverage, and (iv) an agreed amount endorsement;

(k) If Mortgagor defaults in so insuring the Premises or in so delivering the policies, Mortgagee at its option (but without an obligation so to do) may effect such insurance from year to year and pay the premiums, therefor and Mortgagor will reimburse Mortgagee for any premiums so paid, from the time of payment, on demand, with interest at the Default Rate and the same will be secured by this Mortgage;

(l) Not less than two (2) days prior to the expiration dates of each policy required of Mortgagor pursuant to this Section, Mortgagor will deliver to Mortgagee a paid renewal or replacement policy (except that Mortgagor will be permitted to pay premiums in installments as they come due, if permitted by the policy);

(m) In the event of a foreclosure of this Mortgage or deed in lieu of foreclosure or other transfer of title to the Premises in extinguishment, in whole or in part, of Loss and the Indebtedness, Mortgagor agrees to request the insurance company to pay any unearned premiums to Mortgagee. If Mortgagor receives any such unearned premiums, Mortgagor agrees to remit any such unearned premiums to Mortgagee; and

(n) Mortgagor will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor will promptly notify Mortgagee whenever any such separate insurance is taken out and will promptly deliver to Mortgagee the policy or policies or such insurance.

2.8. Encumbrance. Mortgagor will not assign, mortgage, hypothecate, or otherwise encumber the Premises, or any part thereof, except as agreed to in writing by the Mortgagee. Except for existing or future Permitted Encumbrances, Mortgagor will not sell, convey, transfer, or dispose of all or any part of the Premises without Mortgagee's written consent.

2.9. Prohibition against Removal or Material Alterations. No Improvement, now or hereafter covered by the Lien of this Mortgage, will be removed, demolished, or altered, if as a consequence of such removal, demolition, or alteration, after taking into account any replacements thereof, there results a material diminution in the fair market value of the Improvements, without prior written consent of Mortgagee.

2.10. Maintenance; No Waste; Repair; Restoration; No Zoning Changes. Mortgagor will maintain the Premises in good condition and repair (normal wear and tear excepted), and will not commit or suffer any waste of the Premises. Should Mortgagor fail to so maintain the Premises, Mortgagee, at its option, may repair the Premises and any costs associated therewith will constitute so much additional Loss. Mortgagor will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the Lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any eminent



domain or similar proceeding in accordance with the terms of Articles V and VI. Mortgagor will complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Premises. Mortgagor will not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, materially limiting or defining the uses which may be made of the Premises or any part thereof (except in the ordinary course of business) without the prior written consent of Mortgagee which consent will not be unreasonably withheld or delayed.

2.11. No Drilling. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any minerals from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof.

2.12. Further Instruments. Mortgagor will execute and deliver (and pay the costs of preparation and recording thereof) to Mortgagee and to any subsequent holder of Indebtedness from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, continuation statements, and lease assignments so as to reaffirm, to correct and to perfect the evidence of Loss, Indebtedness and the Lien of Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and any extensions or modifications thereof.

2.13. No Liens. Except as expressly provided herein, Mortgagor will not permit any mechanics', laborers', or materialmen's Liens to stand against the Premises. Notwithstanding the foregoing, Mortgagor may contest such Liens, the payment of which is being contested in good faith by proper proceedings which stay the forfeiture or sale of the Premises and which do not impair the Lien of this Mortgage and with respect to which adequate reserves are maintained in accordance with GAAP. If Mortgagor fails to discharge any such Lien then Mortgagee, in addition to any other right or remedy hereunder, will have the option (but not the obligation) to procure the discharge of such Lien either by depositing the amount claimed to be due in court, or by bonding or insuring. Any amount paid or deposited by Mortgagee to discharge such Lien, and all costs and other expenses, including all reasonable attorneys' fees, incurred in defending any action to foreclose such Lien, will be deemed a part of Loss and will be immediately due and payable, upon demand with interest thereon at the Default Rate and will be secured hereby.

2.14. Utilities. Mortgagor agrees to pay when due all utility charges which are incurred for the benefit of the Premises or which may become a Lien against the Premises for energy, fuel, gas, electricity, water, or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such assessments or charges are Liens thereon. Notwithstanding the foregoing, Mortgagor will be able to contest such utility charges and assessments, so long as such contest is in good faith, does not impair the Lien of this Mortgage and adequate reserves (the necessity and adequacy of which will be determined in accordance with GAAP) for the costs of such utility charges or assessments are made on the books of Mortgagor.



2.15. Surety Agreements. Mortgagor will promptly, without prior demand (unless demand is required under the express terms of the Surety Agreements) from Mortgagee, fully perform each and every material agreement, covenant, or undertaking to be performed by Mortgagor under any and all of the Surety Agreements, subject to any applicable notice and cure periods.

### ARTICLE III

#### LEASES, RENTS, AND PROFITS; ASSIGNMENT THEREOF

3.1. Assignment of Rents. Mortgagor absolutely, unconditionally, and irrevocably grants, bargains, sells, transfers, conveys, and assigns to Mortgagee all the present and future leases of, the rents, issues, and profits from the Premises and gives to and confers upon Mortgagee the right, power, and authority to collect such rents, issues, and profits. The leases, rents, issues, and profits subject to the assignment of rent provisions of this Article III are referred to as "Assigned Leases." Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive, and enforce payment, to give receipts, releases, and satisfactions and to sue in the name of Mortgagor or Mortgagee, for and otherwise collect all such rents, issues, and profits and apply the same to Loss; provided, however, that Mortgagor will have the right to collect such rents, issues, and profits, but not more than one month in advance (unless any such Assigned Lease expressly provides for additional prepayments), prior to or at any time there is no Default (as defined in Section 4.1) hereunder. Mortgagor's right to collect rents, issues, and profits will automatically terminate upon the occurrence of a Default. The assignment of the leases, rents, issues, and profits from the Premises in this Article III is intended to be a present and absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. From time to time, upon Mortgagee's reasonable request, Mortgagor will execute, acknowledge, and deliver to Mortgagee further assignments of leases, rents, issues, and profits and deliver to Mortgagee fully executed originals of the Assigned Leases.

3.2. Negative Covenants Regarding Assigned Leases. Mortgagor will not:

(a) Execute any further assignment of any of its right, title, or interest in the Assigned Leases (except to Mortgagee);

(b) terminate or consent to the cancellation or surrender of any Assigned Lease now existing or hereafter to be made of the Premises or of any part thereof except in the ordinary course of business;

(c) permit any Assigned Lease or any part thereof to become subordinate to any Lien other than the Lien of this Mortgage. All Assigned Leases or any part thereof are subject to the approval of Mortgagee except those Assigned Leases entered into in the ordinary course of Mortgagor's business.

3.3. Breaches Regarding Assigned Leases. Any violation on Mortgagor's part of any covenant or agreement in any material Assigned Lease or any part thereof that is to be kept or



performed by Mortgagor as lessor will constitute a Default under this Mortgage and thereupon Mortgagee may exercise its rights and remedies set out in Article IV.

3.4. Existing and Future Leases. Mortgagor will, upon Mortgagee's request, assign to Mortgagee promptly upon the execution of this Mortgage all existing leases of any part of the Premises. Mortgagor will advise Mortgagee promptly of the execution hereafter of any lease of any part of the Premises and, upon Mortgagee's request, Mortgagor will assign such lease (to the extent such lease is assignable by its terms) to Mortgagee, such assignment to be in form satisfactory to Mortgagee; and it is further agreed that the provisions of this Mortgage with regard to Mortgagor's obligations and Mortgagee's rights with respect to leases and assignments of Assigned Leases will apply to all such additional leases and assignments thereof.

3.5. Accountability for Rents. Mortgagee will be required to account for only such rentals and payments as are actually collected by it. Mortgagee will have no liability for failure to rent the Premises or any part thereof, or for failure to make collections of rentals, or for failure to do any of the things which are authorized herein. This provision is Mortgagor's express agreement to grant all of its rights and privileges to Mortgagee and will not be held to create any duties or liabilities except as herein expressly set forth. For the purpose of accounting, the books and records of Mortgagee will be deemed prima facie correct.

3.6. Liability for Rents. Mortgagee will not be liable for the act or omission of any agent and/or manager, if Mortgagee will have used reasonable care in the selection of such agent or manager.

3.7. Liability for Premises. Mortgagee will, in the exercise of its control and management (which control and management will be at Mortgagee's sole option) of the Premises, be deemed the agent of Mortgagor and will not be liable (except for Mortgagee's gross negligence or willful misconduct) for any damage to any Person or property, where such damage arises out of the operation of, or in connection with, the Premises.

3.8. Status of Assigned Leases; Notice of Default. Mortgagor represents and warrants that any and all Assigned Leases covering all or a portion of the Premises are in full force and effect, rent thereunder has not been paid more than one month in advance (except in any instance where such Assigned Lease expressly provides for additional prepayments), Mortgagor and the lessees thereof are in all respects in good standing thereunder and neither Mortgagor nor, to Mortgagor's knowledge, said lessees are in default with respect to any provisions thereof. Subsequent to a Default, Mortgagor will not consent to, cause, or allow any modification or alteration of any of the terms (including without limitation, the amount of rent), conditions, or covenants of the Assigned Leases or any lease hereafter effected, or the termination of any such lease, without the prior written approval of Mortgagee; provided, however, that Mortgagor may, without Mortgagee's consent, modify or alter any of the terms, conditions, and covenants of any Assigned Lease so long as such modification or alteration does not result in (a) surrender or termination of such lease, (b) decrease in the amount of any payments due under such lease, (c) a change in the size of the leased premises, or (d) decrease in the term of such lease. Mortgagor covenants and agrees that in the event Mortgagor will receive from any of the lessees of said Assigned Leases written notice of any default by Mortgagor under the terms or provisions of any



of said leases, or written notice of a default or alleged default or failure of performance which could become a default after lapse of time, or otherwise, under said leases, Mortgagor will promptly, and not later than two (2) business days after receipt of such notice, mail (special delivery in the case of a notice of default), postage prepaid, or deliver in person to Mortgagee a true, exact, and full copy of said notice or communication. Mortgagor hereby agrees that all future leases will be, by their express terms, subject to and subordinate to the lien created by this Mortgage in favor of Mortgagee. Additionally, upon Mortgagee's request, Mortgagor will obtain and deliver to Mortgagee a subordination agreement from each of the future tenants or lessees of any part of the Premises evidencing the priority of Mortgagee's lien.

3.9. Mortgagee's Right to Perform for Mortgagor/Lessor. Mortgagor agrees that for the purpose of curing any default under any Assigned Lease, Mortgagee may, but will not be obligated to, do any act, pay any sum or execute any document in the name of Mortgagor or as its attorney-in-fact, as well as in Mortgagee's own name, as Mortgagee in its discretion may determine, and Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, in its names or otherwise, to do any and all acts, pay any sum and/or execute any and all documents that may in the opinion of Mortgagee be necessary or desirable to cure any such default or preserve any right of Mortgagor under any of the Assigned Leases, or to preserve any rights of Mortgagor whatsoever, or to protect Mortgagee's Lien. If Mortgagee, acting under its authority herein granted, should reasonably pay, suffer or incur any expense, costs, charge, fee, obligation, damage, or liability of any nature, or be a party to any action or proceeding, whether any of the same be for the purpose of curing any such default or protecting Mortgagee's security or the rights of Mortgagor under any of the Assigned Leases, or otherwise, all of the same and all sums paid by Mortgagee for prosecution or defense of such actions or proceedings, including in any case reasonable attorneys' fees, will be payable by Mortgagor to Mortgagee immediately, upon demand, together with interest thereon at the Default Rate and will be Loss secured hereby.

## ARTICLE IV

### DEFAULTS AND REMEDIES

4.1. Events of Default. Time is of the essence hereof, and the term "Default," as used in this Mortgage, will mean any Event of Default as defined in the Surety Agreements or the failure to perform each and every covenant contained therein subject to applicable notice and cure periods. It is specifically intended that an Event of Default or Default under any one of the Surety Agreements will constitute an Event of Default or Default under each of the other Surety Agreements. In addition to the foregoing, the following will constitute a Default under this Mortgage:

(a) Failure to pay when due any amount due and payable under this Mortgage; provided, however, the foregoing will not be deemed a default hereunder if such failure or event (excluding items payable pursuant to subparagraph (ii) of the definition of Loss and other attorneys fees and similar fees and professional and consulting fees incurred in the ordinary course of business that are promptly reimbursed to Surety by any of Indemnitors) does not give rise to any Loss and is curable and Mortgagor effects such cure within ten (10) days of Surety's notice to cure; all cure periods permitted hereunder and under any of the Surety Agreements will



run contemporaneously;

(b) default in the observance or performance of any covenant or agreement contained in this Mortgage; and

(c) any representation or warranty made by Mortgagor herein proves incorrect in any material respect as of the date of the making thereof.

4.2. Remedies. In every such case, if any Default will have occurred and is continuing, Mortgagee at its option will have, in addition to any rights at law or in equity, each and all of the following rights and remedies:

(a) Remedies under the Surety Agreements. Mortgagee will have all rights specified under any of the Surety Agreements.

(b) Entry on Premises. Mortgagee may, with or without bringing any action or proceeding, and without regard to the adequacy of any security for Loss, in Person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Premises, excluding Mortgagor and its agents and servants wholly therefrom; Mortgagor will on demand peaceably surrender possession thereof to Mortgagee. Upon every such entry, Mortgagee, personally or by its agents or in the name of Mortgagor, at the expense of Mortgagor, from time to time, may maintain and restore the Premises, whereof it will become possessed as aforesaid; and, from time to time, at the expense of Mortgagor, Mortgagee may make all necessary or proper repairs, renewals, and replacements and such useful alterations, additions, betterments, and improvements thereto as it may deem reasonably advisable or necessary to preserve the value, marketability, or rentability of the Premises; and in every such case Mortgagee will have the right to make, cancel, modify, or enforce leases or contracts, obtain and evict or terminate tenants or operators, rent, lease, and grant operating rights in the same to such Persons, for such periods of time, and on such terms and conditions as Mortgagee in its reasonable discretion may determine, and with or without taking possession of the Premises, may sue for or otherwise collect any and all of the rents, issues, and profits thereof, including those past due and unpaid, and apply same, less costs and expenses of management, operation and collection, including reasonable attorneys' fees (including allocated costs of in-house counsel, accountants, and engineers), upon any Loss, all in such order as Mortgagee may determine. In dealing with the Premises as a Mortgagee in, or not in, possession, Mortgagee will be without any liability, charge, or obligation therefor to Mortgagor other than for gross negligence or willful misconduct, and will be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Mortgagor (and all net losses, costs, and expenses thereby incurred will be advancements, and will be immediately due and payable and if not paid become part of Loss secured hereby), to the same extent as the owner thereof could do. The entering upon and taking possession of the Premises, the collection of such rents, issues, and profits, and the application thereof as aforesaid will not cure or waive any Default or notice of Default under this Mortgage or invalidate any act done in response to any such Default or pursuant to any such notice and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues, and profits, Mortgagee will be entitled to enforce every



right and exercise every remedy provided for in the Surety Agreements or by law upon the occurrence of any Default.

(c) Advances. In the event of the noncompliance of any duty or duties required of Mortgagor under the terms of this Mortgage and after expiration of applicable notice and cure periods or the occurrence of any event which, in the reasonable judgment of Mortgagee, materially impairs the value of the Premises herein taken as security for Loss, Mortgagee reserves the right, at its own election, to advance sufficient funds to accomplish said performance or maintain such security. Said sums, on notice from Mortgagee to Mortgagor, will become immediately due and repayable to Mortgagee and will be added to Loss and will bear interest at the Default Rate.

(d) Power of Sale. In furtherance of the power of sale granted by this Mortgage, and without limiting any other remedies provided herein, upon the occurrence of Default, or at any time thereafter, this Mortgage will be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee will be authorized, at its option, whether possession of the Premises is taken, to sell the Premises (or such part or parts thereof as Mortgagee may from time to time elect to sell) under power of sale, which Mortgagor hereby grants to Mortgagee, at the front or main door to the courthouse of the county where the Premises, or a substantial and material part thereof, is located, at public outcry, to the highest bidder for cash, after giving notice by publication once a week for three successive weeks of the time, place, and terms of each such sale, together with a description of the Premises to be sold, in a newspaper published in the county or counties in which the Premises, or any part thereof, is located. If there is property to be sold under this Mortgage in more than one county, publication will be made in all counties where such property is located, but if no newspaper is published in the county where the property to be sold, or any part thereof, is located, the notice will be placed in a newspaper published in an adjoining county and the notice will be published in said adjoining county for three successive weeks. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Premises, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales will be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Premises, real, personal, or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Premises in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein will not be fully exercised until all of the Premises not previously sold will have been sold or all Indebtedness and Loss will have been paid in full, Mortgagor will have no exposure under any Bonds, and all other obligations under the Surety Agreements, or any of them, will have been performed.

(e) Legal Proceedings. Mortgagee, personally or by its agents or attorneys, as applicable, will have the following rights:

(i) Mortgagee may institute proceedings for the complete or partial



foreclosure of this Mortgage. In any suit to foreclose the Lien hereof, there will be allowed and included, as additional Loss in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to costs to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance policies, torrens certificates, and similar data and assurances with respect to title, as Mortgagee may deem to be reasonably necessary either to prosecute such suit, or to evidence to bidders at any sale pursuant thereto the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this clause (i) mentioned will become so much additional Loss and immediately due and payable with interest thereon at the Default Rate from the date of the expenditure until paid;

(ii) Mortgagee will have the right from time to time to enforce any legal or equitable remedy against Mortgagor and to sue for any sums whether interest, damages for failure to pay principal or interest or any installment thereof, taxes, installments of principal or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the sums secured by this Mortgage will be due and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor including any action of foreclosure, or any other action, for a Default or Defaults by Mortgagor existing at the time such earlier action was commenced;

(iii) Mortgagee may enforce its rights, whether by action, suit, or proceeding in equity or at law for the specific performance of any covenant, condition, or agreement in the Surety Agreements contained, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee will deem most advisable to protect and enforce any of its right hereunder or under the Surety Agreements. Mortgagee, at its option, will have the power of sale, if any, provided for by statute or otherwise permitted under the laws of the state where the Property is located and such power of sale is specifically granted; and/or

(iv) Mortgagee is appointed the true and lawful attorney of Mortgagor, in its name and stead or in the name of Mortgagee, to make all necessary conveyances, assignments, transfers, and deliveries of the property rights so sold, and, for that purpose, Mortgagee may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more Persons with like power. Mortgagor will, nevertheless, if so requested in writing by Mortgagee, ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose and as may be designated in such request. Any such sale or sales made under or by virtue of this Article IV will operate to divest all the estate, right, title, interest, claim, and demand, including without limitation Mortgagor's equity of redemption, whether at law or in equity, of Mortgagor in and to the property and rights so sold, and will be a perpetual bar both at law and in equity against Mortgagor and its successors and assigns.



(f) Appointment of Receiver. If a Default under this Mortgage occurs and is continuing Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Premises or the interest of Mortgagor therein, will have the right to apply to any court having jurisdiction of the Premises for the appointment of a receiver; Mortgagee irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers will have all the usual powers and duties of receivers in like or similar cases including the power to collect the rents, issues, and profits of the Premises during the pendency of a foreclosure suit, and in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits. The court having jurisdiction may authorize the receiver to apply the net income in hand, to payment in whole or in part to (i) Loss, or any obligation imposed by any decree foreclosing this Mortgage, or any tax, special assessment, or other Lien which may be or become superior to the Lien hereof or such decree, provided such application is made prior to foreclosure sale and (ii) the deficiency in case of a sale and deficiency. Said receiver will continue as such and exercise all such powers until the date of sale of the Premises, unless such receivership is sooner terminated. Mortgagee may be appointed as such receiver.

(g) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator, or trustee of Mortgagor, or of any of Mortgagor's property, or of all Premises or any part thereof, Mortgagee will be entitled to retain possession and control of all property now or hereafter granted, bargained, sold, mortgaged, warranted, conveyed, pledged, and/or assigned to or held by Mortgagee under this Mortgage.

(h) Remedies Not Exclusive. The cumulative rights of Mortgagee arising under the clauses and covenants contained in this Mortgage will be separate, distinct, and cumulative and none of them will be construed to be exclusive nor an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding. In addition to any remedies provided herein for Default hereof, Mortgagee will have all other remedies allowed under the laws of the state where the Property is located, and the laws of the United States. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default will be construed to prejudice its rights in the subsequent Default. No delay on the part of Mortgagee in exercising any of such rights will be construed to preclude it from the exercise thereof at any time during the continuance of such Default. Mortgagee may enforce any one or more remedies or event of default or any other rights hereunder in such order and manner as it may determine, successively or concurrently at its option. By accepting payment or partial payment of any Loss after the due date, Mortgagee will not make an accommodation or thereby waive the agreement herein contained that time is of the essence, nor will Mortgagee waive either any of its remedies or options or its right to require prompt payment when due of all Loss or to consider failure so to pay a Default hereunder. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to other powers herein contained, will prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee.



## ARTICLE V

### DAMAGE OR DESTRUCTION; INSURANCE PROCEEDS

5.1. Notice. In case of casualty to all or part of the Premises resulting in damage or destruction, Mortgagor will promptly give written notice thereof to Mortgagee.

5.2. Assignment of Insurance Proceeds; Authority to Settle Claims. To the extent assignable, Mortgagor grants, transfers, and assigns to Mortgagee any insurance proceeds which Mortgagor is otherwise entitled to receive in connection with any damages to the Premises or part thereof and the same will be paid to Mortgagee. Mortgagor authorizes and directs any affected insurance carrier to make payment of such proceeds directly to Mortgagee, and Mortgagee is authorized and empowered by Mortgagor to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance.

5.3. Mortgagee's Election Regarding Insurance Proceeds. The insurance loss proceeds will be delivered to Mortgagee and be applied (pursuant to the provisions of this Article) to reduction or the full payment of Loss and the other Indebtedness unless Mortgagee in its sole discretion elects to make said proceeds available for restoration purposes. Within ninety (90) days after receipt of the written notice referred to in Section 5.1, Mortgagee will advise Mortgagor in writing as to whether Mortgagee elects to apply the insurance loss proceeds to Loss for restoration of the Premises. Notwithstanding anything to the contrary contained in this Article V or elsewhere in this Mortgage, if there is no Loss or Indebtedness at the time of damage or destruction, then Mortgagee will allow Mortgagor to apply any such insurance proceeds to the restoration of the Premises. If the insurance proceeds are in excess of the restoration costs of the Premises, then as long as no Event of Default has occurred, then Mortgagor will be permitted to retain any excess insurance loss proceeds.

5.4. Total Destruction. If at any time during the term of this Mortgage all or substantially all of any distinct portion of the Premises are damaged or destroyed, and if Mortgagee does not elect to make such insurance proceeds available for restoration, all such proceeds will be delivered to Mortgagee to be applied to Loss and other Indebtedness and remainder remitted to Mortgagor.

5.5. Applications of Proceeds. If Mortgagee elects to have the insurance loss proceeds applied to pay in full or reduce the unpaid balance of Loss and other Indebtedness, said proceeds will, promptly after receipt by Mortgagee, be applied by Mortgagee, first, to pay the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss, and, second, to satisfy Loss and other Indebtedness and remainder remitted to Mortgagor.

5.6. Restoration. If the insurance proceeds are made available for restoration, Mortgagor will at its sole cost and expense, whether or not the insurance proceeds, if any, will be sufficient for the purpose, restore, repair, replace, and rebuild ("Restoration") the Premises as nearly as possible to their value, condition, and character immediately prior to such damage or destruction subject to necessary environmental regulatory approval. In such event, all insurance proceeds paid to Mortgagee on account of such damage or destruction, less the actual costs, fees



and expenses, if any, incurred in connection with adjustment of the loss, will be released by Mortgagee to be applied to payment (to the extent of actual Restoration performed) of the cost of the aforesaid Restoration, including the cost of temporary repairs or for the protection of property pending the completion of permanent Restoration. If the insurance proceeds are so made available by Mortgagee for Restoration, any surplus which may remain out of said proceeds after payment of the cost of Restoration will be paid by Mortgagee to be applied to Loss and other Indebtedness and, as long as no Event of Default has occurred, remainder to Mortgagor. Insurance proceeds released for Restoration will, at Mortgagee's option, be paid out from time to time as such Restoration progresses subject to the following conditions:

(a) that Mortgagor is not then in default under any of the terms, covenants, and conditions hereof or under any of the other Surety Agreements;

(b) that Mortgagee will first be given satisfactory proof that all Property, Improvements, and Fixtures affected by the loss or damage have been fully restored, or that by the expenditure of such proceeds together with any funds of Mortgagor used to pay part of the costs of the Restoration will be fully restored, free and clear of all Liens except the Lien of this Mortgage, the Surety Agreements, and Permitted Encumbrances;

(c) that in the event such proceeds will be insufficient to restore or rebuild the Property, Improvements, and Fixtures, Mortgagor will either (i) deposit promptly with Mortgagee funds which, together with the insurance proceeds, will be sufficient to restore and rebuild same, or (ii) provide other assurance satisfactory to Mortgagee of such Restoration; and

(d) that in the event Mortgagor will fail within a reasonable time to restore or rebuild or cause to be restored or rebuilt the Property, Improvements, and Fixtures, Mortgagee, at its option, may restore or rebuild the same or cause the same to be restored or rebuilt for or on behalf of Mortgagor.

In the event any of such conditions are not or cannot be satisfied, then the alternate disposition of such proceeds as provided herein will again become applicable. Under no circumstances will Mortgagee become personally liable for the fulfillment of the terms, covenants, and conditions contained in any of the Assigned Leases with respect to the matters referred to in this Section 5.6 nor obligated to take any action to restore the Premises. Mortgagee will not be obligated to see to the proper application of any funds released hereunder, nor will any amount so released or used be deemed a payment of any Loss or other Indebtedness. To the extent that Mortgagee, in its sole discretion, advances any funds (other than insurance proceeds) for such Restoration, the advances made by Mortgagee will be added to Loss, will accrue interest at the Default Rate and will be payable to Mortgagee upon demand.

5.7. Payment of Deposited Funds. Upon (a) completion of all the Restoration in good workmanlike manner and substantially in accordance with the plans and specifications therefor prepared by a licensed architect and/or engineer, as appropriate, and (b) receipt by Mortgagee of satisfactory evidence of the character required by conditions (b) and (c) of Section 5.6, that the Restoration has been completed and paid for in full (or, if any part of such Restoration has not been paid for, adequate security for such payment will exist in form satisfactory to Mortgagee)



and that there are no Liens of the character referred to in said condition (b), then as long as no Event of Default has occurred, any balance of the insurance proceeds at the time held by Mortgagee will be remitted to Mortgagor.

5.8. Application of Insurance Proceeds in Default. If, while any insurance proceeds are being held by Mortgagee to reimburse Mortgagor for the cost of Restoration or prior to Mortgagee's application of any insurance proceeds to the Indebtedness, Mortgagee will accelerate all or any part of the Indebtedness, then and in such event, Mortgagee will be entitled to apply all such insurance proceeds then held by it in reduction of the Indebtedness and remainder to Mortgagor.

## ARTICLE VI

### EMINENT DOMAIN; CONDEMNATION AWARDS

6.1. Notice. In the event that the Premises or any part thereof will be taken in condemnation proceedings or by exercise of any right or eminent domain or by conveyance(s) in lieu of condemnation (collectively, "condemnation proceedings"), or should Mortgagor receive any notice or information regarding any such condemnation proceedings, Mortgagor will give prompt written notice thereof to Mortgagee. Mortgagor and Mortgagee will have the right to participate in any such condemnation proceedings and the proceeds thereof will be deposited with Mortgagee and be distributed in the manner set forth in this Article VI. Mortgagor agrees to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit.

6.2. Assignment of Condemnation Awards. Mortgagor grants, transfers, and assigns to Mortgagee the proceeds of any and all awards or claims for damages, direct or consequential, which Mortgagor is otherwise entitled to receive, in connection with any condemnation of or injury to the Premises, or part thereof, or for conveyances in lieu of condemnation, and the same will be paid to Mortgagee. Mortgagor authorizes and directs any such condemning authority to make payment of such award(s) and claim(s) directly to Mortgagee. If there is not any outstanding Loss or other Indebtedness, as long as no Event of Default has occurred, proceeds may be remitted to Mortgagor with Mortgagee's prior written consent.

6.3. Total Taking. If, at any time during the term of this Mortgage, title to all or substantially all of any distinct portion of the Premises will be permanently taken in condemnation proceedings or by agreement among Mortgagor, Mortgagee, and those authorized to exercise such right, Mortgagee will apply such award or proceeds which it receives pursuant to Section 6.2, first, to pay the actual costs, fees, and expenses, if any, incurred in connection with the collection of the award, and, second, to Loss and other Indebtedness and, as long as no Event of Default has occurred, remainder to Mortgagor. For the purposes of this Section, "substantially all of any distinct portion of the Premises" will be deemed to have been taken if the portion of the Premises not so taken cannot be so repaired or reconstructed as to constitute a complete structure or structures capable of producing a fair and reasonable net annual income.



6.4. Partial Taking; Mortgagee's Election. If at any time during the term of this Mortgage, title to less than all or substantially all of a distinct portion of the Premises is taken as aforesaid, then Mortgagee will notify Mortgagor, within ninety (90) days after receipt of notice of such taking, whether it elects to have the proceeds of the award applied to reduction of Loss or to have such proceeds made available to Mortgagor for the repair and reconstruction necessary to restore the Premises. If Mortgagee elects to have the award of proceeds applied to reduce Loss and other Indebtedness, said proceeds will, promptly after such election and the receipt by Mortgagee, be applied by Mortgagee, first, to pay the actual costs, fees, and expenses, if any, incurred in connection with the collection of the award, and, second, to Loss and other Indebtedness. If Mortgagee elects to have the proceeds of the award used for repair and restoration, all of the award or proceeds collected by Mortgagee will be applied first to pay the actual cost, fees and expenses, if any, incurred in connection with the collection of the award, and the balance will be paid toward the cost of repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Section 5.6 with respect to insurance proceeds. Any balance of such award remaining in the hands of Mortgagee after payment of such costs of repair and restoration as aforementioned, will be retained by Mortgagee and applied to Loss and other Indebtedness and thereafter, as long as no Event of Default has occurred, the remainder will be remitted to Mortgagor.

6.5. Abandonment; Failure of Mortgagor to Respond to Offer, etc. If the Premises are abandoned by Mortgagor or, if after notice to Mortgagee and/or Mortgagor, the condemner offers to make an award or settle a claim for damages and Mortgagor fails to respond to the offer and fails to advise Mortgagee within thirty (30) days of the date of such notice, then Mortgagee is authorized to collect and apply the proceeds at Mortgagee's option either to restoration or repair of the Premises or to Loss and other Indebtedness and, as long as no Event of Default has occurred, remainder to Mortgagor.

6.6. Expenses. In the case of any taking covered by the provisions of this Article VI, Mortgagor and Mortgagee will be entitled to reimbursement from any award or awards of all reasonable costs, fees, and expenses incurred in the determination and collection of any such awards.

6.7. Application of Condemnation Award, in Default. If, while any condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of improvements on the Premises or prior to Mortgagee's applying such awards to any of the Indebtedness, Mortgagee will accelerate any of Loss or other Indebtedness, then and in such event, Mortgagee will be entitled to apply all such condemnation awards then held by it in reduction of Loss or other Indebtedness and as long as no Event of Default has occurred, remainder to Mortgagor.

6.8 Temporary Taking. As long as there is not any unsatisfied Loss or other Indebtedness and no Event of Default has occurred, any condemnation proceeds payable with respect to a temporary taking of the Premises will be paid to Mortgagor for deposit into a deposit account over which Mortgagee has a perfected security interest pursuant to the Surety Agreements.



## ARTICLE VII

### ENVIRONMENTAL PROVISIONS

7.1. Warranties and Representations. As used herein and in any of the Surety Agreements, "Hazardous Materials" will mean and include, but will not be limited to, any and all hazardous, toxic, or dangerous chemical, substance, waste, or material defined as such in the (1) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. ("CERCLA"); (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6901 et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. 1251 et seq.; (4) Toxic Substances Control Act of 1976 as amended, 15 U.S.C. 2601 et seq.; (5) Emergency Planning and Community Right-To-Know-Act of 1986, 42 U.S.C. 11001 et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7401 et seq.; (7) National Environmental Policy Act of 1970, as amended, 42 U.S.C. 4321 et seq.; (8) Rivers and Harbors Act of 1899, as amended, 33 U.S.C. 401 et seq.; (9) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.; (10) Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq.; (11) Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300(f) et seq.; (12) Defense Environmental Restoration Act, as amended, 10 U.S.C. 2701 et seq.; (13) any similar laws enacted by any State in which the assets or properties of Mortgagor are located or otherwise subject to such laws; (14) all applicable standards, rules, policies, and other binding governmental requirements, including judicial or administrative orders; and (15) any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, decree, or other requirement of any governmental body regulating, relating to, or imposing liability or standards of conduct concerning any hazardous materials or toxic or dangerous chemical, waste, substance or material (all such laws, rules, and regulations being referred to collectively as "Environmental Laws"). Mortgagor warrants, represents, and covenants as follows:

(a) Except as set forth on Exhibit C, neither Mortgagor nor the Premises (i) are subject to any private or governmental Lien or judicial or administrative notice, order, or action relating to Hazardous Materials or environmental problems, impairments, or liabilities with respect to the Premises, or (ii) are, or with any applicable notice and/or lapse of time, and/or failure to take certain curative or remedial actions, will be in either direct or indirect violation of any Environmental Laws.

(b) Except strictly in accordance with all applicable Environmental Laws (i) except as set forth on Exhibit C, no Hazardous Materials are located on or have been stored, processed, or disposed of on or released or discharged from (including ground water contamination) the Premises and no above or underground storage tanks exist on the Premises, and (ii) Mortgagor will not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises and will comply in all material respects with all Environmental Laws affecting the Premises.



(c) Mortgagor will notify Mortgagee should Mortgagor become aware of (i) any environmental problems or liability with respect to the Premises, including, but not limited to, the release of any contaminant which may migrate, leach, or travel on or off the Premises from any source, or breach of any Environmental Laws, (ii) any Lien, action, or notice of the nature described in the above subparagraph (a), or (iii) any litigation or threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or the existence of any Hazardous Materials in noncompliance with applicable Environmental Laws or other environmental contamination, liability, or problem with respect to or arising out of or in the connection with the Premises. Said notification will be made on the first (1st) day of each month and will include all notices of the nature described in subparagraph (a) that occurred since the prior notification made to Mortgagee. Mortgagor will, at its own cost and expense, take all actions as will be necessary, or advisable for the clean-up of the Premises, including all identification, investigation, removal, containment, and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to Mortgagee), and, will further pay or cause to be paid at no expense to Mortgagee all clean-up, administrative, and enforcement costs of applicable governmental agencies or the third parties which may be asserted against the Premises, the owner thereof, or a lienholder secured thereby. All costs (including, without limitation, those costs set forth above), damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which reasonably are incurred by Mortgagee, without the requirement that Mortgagee wait for the ultimate outcome of any litigation, claim, or other proceedings, will be paid by Mortgagor to Mortgagee within ten (10) days after notice to Mortgagor from Mortgagee itemizing the amounts incurred to the effective date of such notice.

(d) Mortgagor covenants and agrees not to do or take any action or omit or fail to take any such action which will result in the release of any Hazardous Materials or the existence of any Hazardous Materials in noncompliance with applicable Environmental Laws. Upon any such release or discovery of the existence of any such Hazardous Material in material noncompliance with applicable Environmental Laws, Mortgagor will give written notice as provided in the above subparagraph (c) to Mortgagee of the exact nature, scope, and extent thereof.

(e) Mortgagor has obtained and will obtain all necessary approvals and clearances for use of the Premises from all governmental authorities, utility companies and development-related entities in regard to Mortgagor's use of the Premises, Mortgagor's discharge of chemicals, liquids, and emissions, if any, and other chemicals into the atmosphere, soil, ground water or surface water, from Mortgagor's operations on the Premises.

(f) Mortgagor covenants and agrees that it will indemnify and save harmless Mortgagee, its officers, directors, shareholders, employees, agents, and attorneys from any loss, claim, action, costs, attorneys' fees (including allocated costs of in-house counsel, accountants, and engineers) and expenses arising from any environmental matter described in this Mortgage, and Mortgagor further agrees and covenants that Mortgagee will not assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of wastes or materials on or relating to the Premises, regardless of any inspections or other action made or taken by Mortgagee on the Premises or as a result of any conveyance of title of the Premises to



Mortgagee or otherwise. Mortgagor agrees to remain fully liable and will indemnify and hold harmless Mortgagee from any costs, expenses, clean-up costs, waste disposal costs, litigation costs, fines, penalties, including without limitation those costs, expenses, penalties, and fines within the meaning of CERCLA, and other related liabilities, upon the occurrence of a breach of any of Mortgagor's foregoing covenants, representations, and warranties. Notwithstanding the foregoing, in the event Mortgagee takes possession of the Premises or forecloses on the Premises and Mortgagee causes an environmental matter to exist on the Premises that did not previously exist, then Mortgagor will not be required to indemnify and save harmless Mortgagee from such environmental matter to the extent that it was caused by Mortgagee.

(g) Mortgagee will not participate in any operational or environment compliance decisions related to Mortgagor's business.

(h) Mortgagee will not be deemed an "arranger," "owner," or "operator," as defined in "CERCLA."

7.2. Survival. All covenants, warranties, and representations above will be deemed to be continuing and will remain true and correct in all material respects until Loss and all other Indebtedness has been fully satisfied, and any limitations period with respect to any claims under each of the Environmental Laws has expired. Mortgagor's covenants above will survive any exercise of any remedy by Mortgagee under the Mortgage or any of the Surety Agreements, including foreclosure of the Lien of this Mortgage (or deed in lieu thereof or similar actions to the same effect), even if, as a part of such foreclosure, deed in lieu of foreclosure or similar actions, Loss and other Indebtedness is satisfied in full and any limitations period with respect to any claims under each of the Environmental Laws has expired.

## ARTICLE VIII

### MISCELLANEOUS

8.1. Maximum Interest Payable. The provisions of this Mortgage will not have the effect of, or be construed as requiring or permitting Mortgagor to pay interest in excess of the highest rate per annum allowed by the laws of the state where the Property is located on any item or items of Indebtedness referred to in this Mortgage.

8.2. Certain Additional Powers of Mortgagee; Sale No Effect on Liability. Mortgagor consents to any and all renewals and extensions in the time of payment of Loss and other Indebtedness, and agrees further that at any time and from time to time without notice, the terms of payment provided for in Loss and other Indebtedness may be modified or the security described in this Mortgage released (in whole or in part) or increased, changed, or exchanged by agreement between Mortgagee and any owner of the Premises affected by this Mortgage without in any way affecting the liability of any party for Loss and other Indebtedness, or any Person liable or to become liable with respect to Loss. No sale of the Premises, or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, will be a waiver of or preclude the exercise of any right or remedy hereunder. Nor will any sale of the Premises in anywise affect the liability of any party for Loss and the Indebtedness, or any



Person liable or to become liable with respect to Loss and the Indebtedness.

8.3. Mortgagor's Duty to Defend and Pay Expenses. Mortgagor, at its sole expense, will appear in and affirmatively defend all actions or proceedings purporting to affect the security hereof or any right or power of Mortgagee hereunder. Mortgagor will save Mortgagee harmless from all costs and expenses, including but not limited to reasonable attorney's fees (including allocated costs of in-house counsel, accountants, and engineers), costs of title search, continuation of abstract(s) and preparation of survey reasonably incurred by reason of any action, suit, proceeding, hearing, motion, or application before any court or administrative body in which Mortgagee may be or become a party by reason of this Mortgage, including but not limited to condemnation, bankruptcy, and administrative proceedings, as well as any other of the foregoing where a proof of claim is by law required to be filed, or in which it becomes necessary to defend or uphold the terms or Lien of this Mortgage. Except in cases where this Mortgage gives Mortgagor the specific right to contest, Mortgagee, in its sole discretion, may appear in and defend any such action or proceeding, and Mortgagee is authorized to pay, purchase, or compromise on behalf of Mortgagor any encumbrance or claim which in its judgment appears to or purports to affect the security hereof or to be superior hereto. All expenditures and expenses of the nature in this paragraph mentioned and collection efforts regarding Mortgage payments, costs of exercising the rights granted under the Surety Agreements, as well as recordkeeping costs resulting therefrom and such expenses and fees as may be reasonably incurred in the protection of the Premises and the maintenance of the Lien of this Mortgage, including the reasonable fees of any attorneys (including allocated costs of in-house counsel, accountants, and engineers) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Surety Agreements, or the Premises, including appellate, probate, and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, will be immediately due and payable by Mortgagor. All sums expended or costs incurred by Mortgagee referred to in this Section will bear interest at the Default Rate and be deemed a part of Loss.

8.4. Documentary or Internal Revenue Stamps. If at any time the state where the Property is located will determine that documentary stamps should be affixed, Mortgagor will pay for the same, together with any interest or penalties imposed in connection with such determination; provided, however, Mortgagee may elect to purchase and affix such stamps and pay any penalties and interest, and, if Mortgagee so elects, the amount of money needed to pay for such stamps and penalties will, from the time that such stamps are purchased and affixed, be a portion of Loss and will bear interest from the date of such determination at the Default Rate. The same provisions and obligations will apply with respect to any Internal Revenue Stamps or similar stamps that may be required at any time to be affixed to this Mortgage. Notwithstanding the foregoing, Mortgagor may contest any laws requiring such stamps so long as such contest is in good faith, does not impair the Lien of this Mortgage and adequate reserves for the costs of such stamps are made on the books of Mortgagor.

8.5. Tax on Mortgage. In the event of the passage of any state, federal, municipal, or other governmental law, order, rule, or regulation in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect materially and adversely Mortgagee, the entire balance of Loss



secured by this Mortgage and all interest accrued thereon and premiums due in connection therewith will upon ninety (90) days' notice to Mortgagor become due and payable forthwith at the option of Mortgagee. Provided, however, if Mortgagor is permitted by law to pay the same, and provided such payment will not make Loss usurious, then and so long as Mortgagor in fact pays and continues to pay same to Mortgagee's satisfaction, Mortgagee agrees not to exercise its rights under this Section 8.5.

8.6. Forbearance, etc. Not a Waiver. Failure to accelerate the maturity of any Loss upon the occurrence of any Default hereunder, or acceptance of any sum after the same is due, or acceptance of any sum less than the amount then due, or failure to demand strict performance by Mortgagor of the provisions of this Mortgage or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by law will not constitute a waiver by Mortgagee of any provision of this Mortgage nor nullify the effect of any previous exercise of any such option to accelerate or other right or remedy.

8.7. Mortgagee's Expenses. If Mortgagee will incur or expend any sums including reasonable attorneys' fees, whether or not in connection with any action or proceeding, to sustain the Lien of this Mortgage or its priority, or to protect, or enforce any of its rights hereunder, or to recover any Loss, or for any title examination or title insurance policy relating to the title to the Premises or as provided for in the Surety Agreements, all such sums will on notice (to include supporting documentation) and demand be paid by Mortgagor, together with interest at the Default Rate and will be deemed to be secured by this Mortgage.

8.8. Filing and Recording Fees. Mortgagor will pay all filing, registration, or recording fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all federal, state, county and municipal taxes, and other taxes, duties, impositions, assessments, and charges arising out of or in connection with the execution, delivery, or recordation of this Mortgage and the other Surety Agreements.

8.9. Notices. It is mutually agreed that any and all notices herein provided for must be given in writing and will be deemed given if and when delivered in Person or duly deposited in the United States Mails, postage prepaid for regular or certified mail, properly addressed to the party to whom given at the address of such party shown in this Agreement, provided however, that any party may specify any other post office address in the United States by giving at least five (5) days written notice thereof to the other party.

Notice to Surety will be sent to: Travelers Casualty and Surety Company of America  
Bond & Financial Products  
Construction Services Claim – Mail Code 1166  
1500 Market Street – West Tower, Suite 2900  
Philadelphia, Pennsylvania 19102  
Attn: Dennis E. McDonnell



With a copy to:

Manier & Herod  
2200 One Nashville Place  
150 Fourth Avenue, North  
Nashville, Tennessee 37219  
Attn: Jeffrey S. Price  
Mary Paty Lynn LeVan

Notice to Mortgagor

2188 Building, L.L.C.  
4527 Parkway Lake Drive  
Birmingham, Alabama 35244  
Attn: Gary C. Wyatt

With a copy to:

Burr & Forman  
The Heritage Building  
401 East Capitol Street, Suite 100  
Jackson, Mississippi 39201  
Attn: Cheri Turnage Gatlin

8.10. Waiver of Rights by Mortgagor. 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 Premises, or (b) extension of the time for the enforcement or collection of Loss, or (c) creation of an extension of the period of redemption from or a moratorium on any sale made pursuant to this Mortgage. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption, or moratorium, and Mortgagor, for Mortgagor, Mortgagor's successors and assigns, and for any and all Persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waive and release all rights of redemption, valuation, appraisal, moratorium, stay of execution, notice of election to mature or declare due any of Loss and marshalling in the event of a foreclosure of the Liens hereby created. If any law referred to in this Section 8.10 and now in force of which Mortgagor, Mortgagor's successors or assigns or other Person might take advantage despite this Section 8.10, will hereafter be repealed or cease to be in force, such law will not thereafter be deemed to preclude the application of this Section 8.10. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws pertaining to the rights and remedies of sureties. Mortgagor waives, to the full extent permitted by law, all statutes of limitations as a defense to this Mortgage and any obligation secured by this Mortgage. Mortgagor for itself and all who may claim through or under it waive any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the Lien hereof and agree that any court having jurisdiction to foreclose such Lien may order the Premises sold as an entirety. Mortgagor expressly waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor, the trust estate and all Persons beneficially interested therein if Mortgagor is a land trust, and each and every Person acquiring any interest in, or title to the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other Persons to the extent permitted by law.



8.11. Right to Inspect; Entry Upon Premises. Mortgagee and any Persons authorized by Mortgagee will have the right to enter upon and inspect the Premises from time to time during normal business hours and at any time in the event of an emergency and at Mortgagor's expense to perform such environmental inspections, audits, tests, and site assessments as Mortgagee deems necessary provided such inspections do not unreasonably interfere with Mortgagor's operations at the Premises.

8.12. Severability. In case any one or more of the covenants, agreements, terms, or provision contained herein will be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, or provisions will in no way be affected, prejudiced, or disturbed thereby, and to this end the provisions of all the Surety Agreements are declared to be severable.

8.13. Covenants "to Run with Land"; Successors and Assigns. This Mortgage and all the terms, covenants, conditions, agreements, and requirements hereof, whether stated herein at length or incorporated herein by reference, will be covenants running with the land so long as this Mortgage is in effect and will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Mortgagor and Mortgagee.

8.14. Definitions. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" will mean "Mortgagor and/or any subsequent owner or owners of the Premises"; the word "Mortgagee" will mean "Mortgagee or any subsequent holder or holders of this Mortgage"; pronouns of any gender will include the other gender; either the singular or plural will include the other; and the following terms when used in this Mortgage will have the meanings set forth below:

(a) "Advances" means any sums advanced, incurred or sustained by the Surety in connection with any of the Surety Agreements or in connection with any Bonds.

(b) "Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

(c) "Bonded Contracts" means any contract referred to or described in any Bonds.

(d) "Bond" or "Bonds" means any and all bonds, undertakings, guarantees, contractual obligations, and writings or statements of prequalification or commitment, including Modifications thereof, which the Surety has executed or procured for or on behalf of: (i) any one or more of the Indemnitors (without regard to whether any such Indemnitor signed this Agreement), their respective present or future direct or indirect parent companies, affiliates and all of their respective successors and assigns; (ii) any present or future affiliates; (iii) any other person or entity at the request of any of the Indemnitors; or (iv) any combination of (i) through (iii) above, whether executed or procured before, on, or after the execution of this Agreement, including any bond the Surety has an obligation for as a result of an asset purchase, acquisition, merger or like transaction. For the purpose of this definition, "Modifications" shall include but not be limited to renewals, substitutions, riders, endorsements, reinstatements, replacements,



increases or decreases in penal sum, continuations, and extensions.

(e) "GAAP" is defined as generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

(f) "Indebtedness" means any and all Loss, and the payment and performance of all other obligations and undertakings now or hereafter owing to Surety under the terms and conditions of the Surety Agreements, as same may now or hereafter be amended, modified, replaced, extended, or renewed.

(g) "Indemnitors" means Gary C. Wyatt General Contractor, L.L.C., Parkway Lake, L.L.C., J & J Wholesale Building Supply, Inc., Mary E. Wyatt, Gary C. Wyatt, Inc., Gary C. Wyatt, and Mortgagor.

(h) "Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement to assure payment of any indebtedness, encumbrance, lien (statutory or other), or preference, priority, or other security agreement, or preferential arrangement to assure payment of any indebtedness, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

(i) "Loss" means:

(i) All damages, costs, attorney fees and liabilities, including all related and incurred expenses that the Surety may sustain or incur by reason of issuing Bonds, which already or hereafter may be executed or procured on behalf of the Indemnitors, or any renewal or continuation thereof; or which may be sustained or incurred by reason of making any investigation on account thereof, prosecuting or defending any action in connection therewith, obtaining a release, recovering or attempting to recover any salvage in connection therewith or enforcing by litigation or otherwise any of the provisions of this Agreement, or the other Surety Agreements, including, but not limited to:

(1) money judgments, amounts paid in settlement or compromise, the full amount of reasonable attorney and other professional fees incurred or paid by the Surety, court costs and fees, with interest at the lesser of \_\_\_ percent (\_\_\_%) and the maximum legal rate allowable on all sums due the Surety from the date of the Surety's demand for such sums, whether or not interest has been awarded by a court; and

(2) any loss which the Surety may sustain or incur in connection with the Bonded Contracts or Bonds, whether that loss results from the activity of the Indemnitors solely or as part of a joint venture, partnership or other entity which has been or may be formed with the Indemnitors; and



(3) any loss which the Surety may sustain or incur as a result of any actions taken by the Surety upon information provided by the Indemnitors; and

(4) any Advances or loans made by the Surety, if any; and

(5) any amounts that have been paid to the Surety that a court of competent jurisdiction determines constitute "preferences," within the meaning of §547 of the Bankruptcy Code, and by reason thereof the Surety is required to disgorge any such amounts paid;

(ii) legal, accounting, and consulting fees and related expenses, including but not limited to, legal fees incurred in the enforcement of the Surety Agreements; and

(iii) all premiums, fees, interest and other charges due the Surety in connection with the Surety Agreements or the Bonds.

(j) "Person" means any entity, whether an individual, trustee, corporation, limited liability company, partner, joint stock company, unincorporated organization, business association or firm, joint venture, a government or any agent or instrumentality or political subdivision thereof.

(k) "Surety" means Travelers Casualty and Surety Company of America, St. Paul Fire and Marine Insurance Company and any of their present or future direct or indirect parent companies, any of the respective or future direct or indirect affiliates or subsidiaries of such companies and parent companies, and/or their successors, assigns, parent companies and subsidiaries, whether in existence now or formed hereafter, including any predecessors in interest.

(l) "Surety Agreements" means collectively, the General Agreement of Indemnity executed by Indemnitors on or about December 12, 2003, this Mortgage, the Collateral/Reimbursement Agreement by and between Indemnitors and Surety dated March 16, 2012, the Trust Agreement dated January 25, 2012, by and between Indemnitors and Surety, each Bond, and any and all modifications, amendments, substitutions, or other documents related to any of the foregoing, whether executed by any Indemnitor, and any other instrument, document, or agreement delivered by any Indemnitor in connection therewith.

8.15. Modification Procedure. This Mortgage cannot be modified except by an instrument in writing executed by the party against whom enforcement of the change is sought. No requirement of this Mortgage or any of the Surety Agreements can be waived at any time except by a writing signed by Mortgagee nor will any waiver be deemed a waiver of any subsequent breach or Default or Mortgagor.

8.16. Captions. The headings or captions of the Articles, Sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only and are not to be considered a part hereof, and will not limit or otherwise affect any of the terms hereof.



8.17. Governing Law. This Mortgage will be governed by and construed in accordance with the laws of the state where the Property is located.

8.18. Entire Agreement. THIS MORTGAGE EMBODIES THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF 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.

8.19. Continuing Effect. This Mortgage will continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any Loss is rescinded or must otherwise be restored or returned by Mortgagee as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided, that, in the event payment of all or any part of Loss is rescinded or must be restored or returned, all costs and expenses (including without limitation any legal fees and disbursements) incurred by Mortgagee in defending and enforcing such reinstatement will be deemed to be included as a part of Loss.

8.20. Jury Waiver. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS MORTGAGE OR THE SUBJECT MATTER HEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING OR WHETHER IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED THAT THE PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH THE OTHER PARTIES HAVE RELIED, ARE RELYING, AND WILL RELY IN ENTERING INTO THIS MORTGAGE. THE PARTIES HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF SUCH OTHER PARTY TO THE WAIVER OF ITS RIGHTS TO TRIAL BY JURY.

8.21 Counterparts. This Mortgage may be executed simultaneously in one or more counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

8.22 Defeasance. This Mortgage is made upon the condition that if Mortgagor pays all of the Indebtedness and Loss (including without limitation (i) future advances made by Mortgagee to Mortgagor, (ii) all sums advanced and expenses incurred by Mortgagee hereunder, under any of the other Surety Agreements, or under applicable law, and interest thereon, and (iii) all costs and expenses for which Mortgagor is obligated to reimburse Mortgagee hereunder, under any of the other Surety Agreements, or under applicable law), if Mortgagor performs all of



the obligations of Mortgagor under all Surety Agreements, if Mortgagee has no further obligation or commitment to advance funds, incur obligations or give value to Mortgagor, if Mortgagor has no exposure under any Bonds, and if Mortgagor fulfills all of its other obligations under this Mortgage and the other Surety Agreements, this conveyance will be null and void, but will otherwise remain in full force and effect.

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

MORTGAGOR:

MORTGAGEE:

2188 BUILDING, L.L.C.

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA

By: Gary C Wyatt  
Its: Managing Member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF Shelby    )

The undersigned, a Notary Public in and for said County in said State, hereby certify that Gary C Wyatt, whose name as managing member of 2188 Building, L.L.C., 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 said instrument, he/she, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 25<sup>th</sup> day of June, 2012.

Ginger L Thompson  
NOTARY PUBLIC

Print Name: Ginger L. Thompson

My commission expires: MY COMMISSION EXPIRES AUGUST 22, 2015

(Affix Notarial Seal)



the obligations of Mortgagor under all Surety Agreements, if Mortgagee has no further obligation or commitment to advance funds, incur obligations or give value to Mortgagor, if Mortgagor has no exposure under any Bonds, and if Mortgagor fulfills all of its other obligations under this Mortgage and the other Surety Agreements, this conveyance will be null and void, but will otherwise remain in full force and effect.

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

MORTGAGOR:

MORTGAGEE:

2188 BUILDING, L.L.C.

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: *[Signature]*  
Its: Manager, Director

STATE OF ALABAMA     )  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of 2188 Building, L.L.C., 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 said instrument, he/she, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the \_\_\_\_ day of June, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

(Affix Notarial Seal)



STATE OF PA )  
COUNTY OF Chester )

The undersigned, a Notary Public in and for said County in said State, hereby certify that Dennis McDonnell, whose name as Manager Director of Travelers Casualty and Surety Company of America, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Manager Director and with full authority, executed the same voluntarily for and as the act of said company.

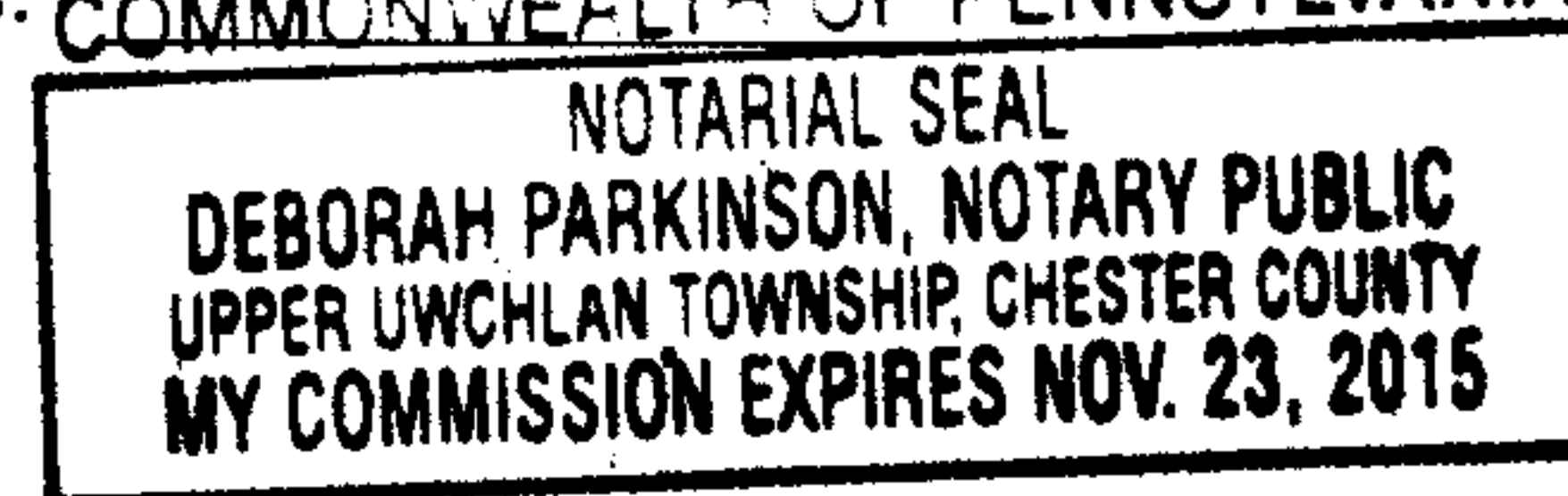
Given under my hand and official seal this the 6 day of June, 2012.

Deborah Parkinson  
NOTARY PUBLIC

Print Name: Deborah Parkinson

My commission expires: COMMONWEALTH OF PENNSYLVANIA

(Affix Notarial Seal)





## LEGAL DESCRIPTION

Part of Lot 3, Revised Map of Wyatt's Subdivision No. 2., as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 24, Page 6, being more particularly described as follows:

Beginning at an existing iron rebar, being the locally accepted Northeast corner of said Lot 3, run in a Southerly direction, along the East line of said Lot 3, for a distance of 459.63 feet, to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 70 degrees 30 minutes and run in a Southwesterly direction, along the South line of said Lot 3, for a distance of 259.13 feet to an existing iron rebar; thence turn an angle to the right of 47 degrees 31 minutes 30 seconds and a run in a Northwesterly direction along the South line of said Lot 3, for a distance of 117.16 feet, to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 67 degrees 30 minutes and run in a Northerly direction for a distance of 210.0 feet, to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 40 degrees 01 minutes 09 seconds and run in a Northeasterly direction for a distance of 94.13 feet, to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 48 degrees 54 minutes 32 seconds and a run in a Northerly direction for a distance of 270.0 feet, to an existing iron rebar set by Laurence D. Weygand, and being on the North line of said Lot 3 and being on the South right-of-way line of Parkway Lake Drive; thence turn an angle to the right of 98 degrees 30 minutes and run in an Easterly direction, along the Southerly right-of-way line of said Parkway Lake Drive, for a distance of 60.0 feet, to the point of beginning of a curve, said curve being concave in a Southerly direction and having a central angle of 10 degrees 54 minutes 53 seconds and a radius of 755.03 feet; thence turn an angle to the right and run in an Easterly and Southeasterly direction, along the arc of said curve, for a distance of 143.83 feet, to the point of ending of said curve; thence run in a Southeasterly direction, along the South right-of-way line of said Parkway Lake Drive and along the North line of said Lot 3 and along the line tangent to the end of said curve, for a distance of 78.25 feet, more or less, to the point of beginning.

The above described property also known as Lot 3-AB, Resurvey of Lots 2-B & 3, Revised Map of Wyatt's Subdivision, No. 2, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 27, Page 45.

BEING THE SAME PROPERTY conveyed to Mortgagor by Parkway Lake, L.L.C. pursuant to Statutory Warranty Deed dated July 19, 2000, filed of record as Instrument No. 2000-25850, in the records of the Judge of Probate, Shelby County, Alabama.



## PERMITTED ENCUMBRANCES

1. Liens for taxes, assessments, or governmental charges not yet past due or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.
2. Inchoate non-perfected mechanics', workmen's and repairmen's Liens or other like Liens arising by operation of law in the ordinary course of business of Mortgagor and not past due.
3. Easements, rights of way, covenants, restrictions, reservations, exceptions, encroachments, zoning and similar restrictions and other similar encumbrances or title defects, in each case which are not substantial in amount and which do not in any case materially detract from the value or usefulness of the property subject thereto.
4. Construction Mortgage with Assignment of Rents, Security Agreement and Fixture Filing dated August 25, 2000, by and between Mortgagor and First Commercial Bank, filed of record as Instrument No. 2000-29202, together with Assignment of Leases dated August 25, 2000, by and between Mortgagor and First Commercial Bank, filed of record as Instrument No. 2000-29203, and UCC-1 Financing Statement filed of record as Instrument No. 2000-29203, all in the records of the Judge of Probate, Shelby County, Alabama; provided, however, the outstanding principal amount secured by said Mortgage will not be increased from the principal amount outstanding as of the date hereof without the prior written consent of Mortgagee.
5. Mortgage, by and between Mortgagor and First Commercial Bank, filed of record as Instrument No. 2004-0506000239980, together with Assignment of Rents and Leases, by and between Mortgagor and First Commercial Bank, filed of record as Instrument No. 2004-0506000239990, and UCC-1 Financing Statement filed of record as Instrument No. 2004-0506000240010, all in the records of the Judge of Probate, Shelby County, Alabama; provided, however, the outstanding principal amount secured by said Mortgage will not be increased from the principal amount outstanding as of the date hereof without the prior written consent of Mortgagee.




**ENVIRONMENTAL EXCEPTIONS**

NONE

645830.1

**EXHIBIT C**

  
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Shelby Cnty Judge of Probate, AL  
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