


20121205000465760 1/27 \$2490.00
Shelby Cnty Judge of Probate, AL
12/05/2012 02:14:49 PM FILED/CERT

THIS INSTRUMENT WAS
PREPARED BY AND WHEN RECORDED
RETURN TO:

Wells Fargo Bank, National Association
1700 Lincoln Street, 3rd Floor
Denver, CO 80203-4500
MAC C7300-033
Attention: Doc Team 4
Obligor No.: 6214041358
Unit No.: 004409
Property: See Exhibit A
Shelby County

**THIS MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT SERVES AS
A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO
SECTION 7-9A-502, CODE OF ALABAMA, 1975, AS AMENDED.**

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage") is entered into effective as of November 30, 2012, by **TACALA, LLC**, a Delaware limited liability company, having its principal place of business at 3750 Corporate Woods Drive, Vestavia Hills, Alabama 35242 (the "Debtor"), for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as administrative agent for itself and on behalf of the other Holders of Secured Obligations (as defined in the hereinafter defined Credit Agreement) to the extent and in the manner provided in Article XII of the Credit Agreement, having an office at 1808 Aston Avenue, Suite 250, Carlsbad, California 92008 (in such capacity, together with its successors and assigns, the "Secured Party").

NOTE TO PROBATE JUDGE: The indebtedness secured by the lien of this Mortgage shall never exceed ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00). Secured Party hereby elects to pay recording privilege tax based upon this maximum amount of indebtedness, and submits such tax herewith. Accordingly, no additional recording privilege tax will become due and no annual reporting will be required.

Terms used herein and not otherwise defined herein have the meanings accorded to such terms in the DEFINITIONS SCHEDULE attached hereto, and if any such term is not defined in the DEFINITIONS SCHEDULE attached hereto, then such term shall have the meaning accorded to such term in the Credit Agreement.

The obligations secured by this Mortgage are comprised of the following:

(i) the full and punctual payment when due of any Indebtedness owed by Debtor to the Holders of Secured Obligations pursuant to the Loan Documents, in lawful money of the United States of America, to be paid with interest and periodic charges (said indebtedness, interest and periodic charges, along with all other sums which may or shall become due hereunder or under any of the other Loan Documents, being hereinafter collectively referred to as the "Debt") according to the Credit Agreement and the Note;

(ii) the full and punctual payment and performance of all amounts payable under this Mortgage, the Credit Agreement and all other Loan Documents, including, without limitation, indemnification and expense reimbursement obligations;

(iii) the timely and full payment and performance and observance of each other Obligation, however and whenever incurred, due or to become due, and whether Debtor is obligated alone, or with others on a joint, several or solitary basis, as a principal obligor or as a surety (including any interest, costs, fees and expenses which at any time accrue or are otherwise payable on or with respect to the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Debtor), and each other term, covenant, agreement, requirement, condition and other provision under or in connection with any Loan Document; and

(iv) the full and punctual payment and performance of any other Secured Obligations of Debtor to Secured Party.

GRANTING CLAUSE

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for the purpose of securing the prompt payment and performance in full when due, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise of the Secured Obligations and intending to be bound hereby, Debtor has MORTGAGED, WARRANTED, GRANTED, BARGAINED, SOLD, CONVEYED and CONFIRMED, and by these presents does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY and CONFIRM, unto Secured Party, its successors and assigns, as administrative agent for itself and on behalf of the other Holders of Secured Obligations, for the purposes and on the terms and conditions hereinafter set forth, with power of sale and right of entry and possession, all right, title, interest and estate of Debtor now owned or existing, or hereafter acquired or arising, in and to the following property, rights and interests, wheresoever located, subject however to the Permitted Encumbrances, if any (such property, rights and interests being hereinafter collectively referred to as the "Mortgaged Property"):

- (1) The real property described in Exhibit A attached hereto (the “Premises”) and all of the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the “Improvements”);
- (2) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, riparian, littoral and water rights and powers, air rights, access rights, development rights and parking rights and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof;
- (3) All machinery, furnishings, appliances, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other personal and other property of every kind and nature (hereinafter collectively referred to as the “Equipment”), whether tangible or intangible, whatsoever owned by Debtor and now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Debtor and now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements, including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Debtor in and to any of the Equipment which may be subject to any security interests under the UCC that are or may be superior in priority to the Liens granted by this Mortgage;
- (4) All Loss Proceeds and other awards or payments (including, without limitation, tax refunds), including interest thereon, which may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or Condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and the Improvements;
- (5) All leases, subleases and other agreements (including, without limitation, any and all security interests, contractual Liens and security deposits thereunder) affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore and hereafter entered into (the “Leases”), and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness and other Secured Obligations of Debtor to Secured Party;
- (6) All Insurance Proceeds and other proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property (whether or not such insurance is required hereunder), including, without limitation, the right to receive and apply the

proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Mortgaged Property in accordance with this Mortgage;

- (7) The right, in the name and on behalf of Debtor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Secured Party in the Mortgaged Property;
- (8) All accounts, payment intangibles, escrows, documents, instruments, chattel paper, claims, deposits, General Intangibles, Certificates of Title, Fixtures, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, Letter-of-Credit Rights, Supporting Obligations, Commodity Accounts, Commodity Contracts, Health-Care Insurance Receivables, Commercial Tort Claims, Promissory Notes, Certificated and Uncertificated Securities, Financial Assets, Securities Accounts, Securities Entitlements, Payment Intangibles and Software (as the foregoing terms are defined in the UCC), all Contractual Obligations and all other contract rights, franchises, books, records, plans, specifications, maps, surveys, permits and licenses (to the extent assignable without the approval or consent of any other Person), approvals, actions and causes of action, trade, service and business marks and names which now or hereafter relate to, are derived from, or are used in connection with the Premises, or the use, operation, maintenance, occupancy or employment thereof or the conduct of any business or activities thereon;
- (9) To the extent assignable by Debtor without the approval or consent of any other Person, all Consents and Other Action and all other permits, licenses (including alcoholic beverage licenses), agreements (including all license, operating, management, service, supply and maintenance agreements), and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by Debtor with respect to the ownership, operation, maintenance and administration of the Mortgaged Property, including, without limitation, those documents and agreements described in that certain Assignment of Licenses, Permits and Contracts dated February 21, 2012, executed by Debtor in favor of Secured Party; and
- (10) Any and all proceeds, products and commingled goods of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Secured Obligations, including the performance of Debtor's obligations under the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Property, and Debtor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Secured Party, its successors and assigns, under and subject to the terms and conditions of this Mortgage, and for security and enforcement of the prompt and complete payment and performance when due of all Secured Obligations, provided, however, that, with respect to any portion of the Mortgaged Property which constitutes real property fixtures or personal property, this Mortgage also shall constitute a security agreement creating a security interest in such real property fixtures and personal property in favor of Secured Party under the UCC, and Debtor hereby grants to Secured Party a Lien upon and security interest in all of

Debtor's right, title and interest in and to such real property fixtures and personal property constituting a portion of the Mortgaged Property.

PROVIDED that Secured Party may from time to time release all or a portion of the Mortgaged Property, in accordance with the terms and conditions of the Credit Agreement and applicable Law.

DEBTOR ADDITIONALLY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO SECURED PARTY AS FOLLOWS:

1. Payment of Debt; Continued Effectiveness. Debtor shall pay the Debt at the time and in the manner provided for its payment in the Note, the Credit Agreement and this Mortgage, and Debtor shall pay, perform and observe the other Secured Obligations in accordance with their terms. Debtor shall cause the representations and warranties of Debtor in this Mortgage and the Loan Documents to continue to be true in each and every material respect at all times prior to the termination or release of this Mortgage, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

2. Warranty of Title and Liens. Debtor warrants the following to be free of Liens, except to the extent of Permitted Encumbrances, if any: (a) the Premises; (b) Debtor's easement estate in any portion of the Mortgaged Property consisting of easements; (c) the Improvements; (d) the Equipment; and (e) the remainder of the Mortgaged Property not described in the preceding items (a), (b), (c) and (d). The Lien created by this Mortgage constitutes a Lien on the Mortgaged Property that is valid, binding and enforceable against Debtor, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

3. Insurance. Debtor shall keep the Mortgaged Property insured in accordance with the provisions of the Credit Agreement. Subject to the terms of the Credit Agreement, sums paid to Secured Party by any insurer may be retained and applied by Secured Party toward payment of the Debt and other Secured Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Sole Discretion shall deem proper or, at the Sole Discretion of Secured Party, the same may be paid, either in whole or in part, to Debtor for such purposes as Secured Party shall designate. If Secured Party shall receive and retain such Insurance Proceeds, the Lien of this Mortgage shall be reduced only by the amount thereof received and retained by Secured Party and actually applied by Secured Party in reduction of the Debt and other Secured Obligations. Notwithstanding the foregoing, so long as no Event of Default then exists, Secured Party agrees that, except as otherwise provided in the Credit Agreement, the proceeds of any insurance received by Secured Party shall be made available to Debtor for purposes of restoring the casualty loss giving rise to such proceeds pursuant to such procedures as Secured Party may reasonably require.

4. Payment of Taxes, etc. Except as otherwise permitted by the Credit Agreement, Debtor shall pay all Taxes and Other Charges, now or hereafter levied or assessed against the Mortgaged Property to the extent that Debtor is legally obligated for the payment thereof, prior

to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. Debtor shall deliver to Secured Party, upon request, receipted bills, canceled checks or other evidence satisfactory to Secured Party evidencing the payment of such Taxes and Other Charges prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. At Secured Party's option and upon its demand and except where prohibited by Law, Debtor shall, until all Secured Obligations have been paid in full, pay to Secured Party each month an amount estimated by Secured Party in its Discretion to be an amount sufficient to pay (a) such Taxes and Other Charges, (b) all payments and premiums with respect to Insurance Requirements, and (c) any payments required under Permitted Encumbrances, if any (collectively, the "Required Payments"). Except to the extent required to satisfy the Requirements of Law or otherwise determined by Secured Party in its Sole Discretion, amounts so paid shall not bear interest. Amounts so paid shall be additions to the Collateral and subject to the terms of the Credit Agreement and, prior to the occurrence of an Event of Default, may be applied by Secured Party in its Sole Discretion to the payment of the Required Payments or released to Debtor for application to and payment of the Required Payments. Notwithstanding the foregoing, Secured Party agrees that it shall not require any Required Payments unless an Event of Default has occurred and is continuing hereunder.

5. Condemnation. Notwithstanding any Condemnation, Debtor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, the Credit Agreement and this Mortgage, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Secured Party to the discharge of the Debt. Subject to the terms of the Credit Agreement, Secured Party may apply the entire amount of any such award or payment to the discharge of the Debt or other Secured Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Sole Discretion shall deem proper. If the affected portion of the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Secured Party of such award or payment, Secured Party shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof, sufficient to pay the Debt and other Secured Obligations, whichever is less. Debtor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Secured Party in accordance with the Credit Agreement. Debtor hereby irrevocably authorizes and empowers Secured Party in the name of Debtor or otherwise, to collect and give receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Debtor shall, upon demand of Secured Party, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Secured Party, free and clear of any Lien of any kind or nature whatsoever.

6. Leases and Rents. Debtor acknowledges and confirms that it has executed and delivered to Secured Party an Assignment of Leases and Rents of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Assignment of Leases and Rents"), intending that such instrument create a present, absolute assignment to Secured Party of the Leases and the Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Leases and Rents, Debtor hereby assigns to Secured Party, as further security for the Debt and the Secured Obligations, the Leases and the

Rents. While any Event of Default exists, Secured Party shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in this Mortgage, including, without limitation, the right to have a receiver appointed (to the extent permitted by applicable Law). Subject to the terms of this Section 6, Secured Party waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Debtor the right to collect the Rents. Debtor shall hold the Rents, or an amount sufficient to cover the payment of all operating expenses of the Mortgaged Property and to discharge all current sums due on the Debt, in trust for use in payment of such current operating expenses and current sums due on the Debt until such time as such Rents are actually applied to the payment of such current operating expenses and current sums due on the Debt, provided, however, that the Rents may be commingled with other funds of Debtor. The right of Debtor to collect the Rents may be revoked by Secured Party upon any Event of Default by giving notice of such revocation to Debtor. Following such notice, Secured Party may retain and apply the Rents toward payment of the Debt or other Secured Obligations in such order, priority and proportions as Secured Party, in its Sole Discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Secured Party shall have commenced a foreclosure of this Mortgage or a sale of the Mortgaged Property pursuant to the provisions of this Mortgage or shall have applied or arranged for the appointment of a receiver. Except as otherwise permitted by the terms of the Credit Agreement, Debtor shall not, without the consent of Secured Party, make, or suffer to be made, any Leases or modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Debtor shall (a) fulfill or perform each and every provision of the Leases on the part of Debtor to be fulfilled or performed, (b) promptly send copies of all notices of default thereunder which Debtor shall send or receive under the Leases to Secured Party, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the other rights which Secured Party may have herein, in the event of any Event of Default under this Mortgage, Secured Party, at its option, may require Debtor to pay monthly in advance to Secured Party, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Debtor. Upon default in any such payment, Debtor will vacate and surrender possession of the Mortgaged Property to Secured Party or such receiver and, in default thereof, Debtor may be evicted by summary proceedings or otherwise. Nothing contained in this Section 6 shall be construed as imposing on Secured Party any of the obligations of the lessor under the Leases. Nothing in this Section 6 is intended to affect adversely in any way any rights of Secured Party pursuant to the Assignment of Leases and Rents, and in the event of any conflict between the provisions of this Section 6 and the provisions of the Assignment of Leases and Rents, the provisions of the Assignment of Leases and Rents shall control.

7. Maintenance of the Mortgaged Property. Debtor, at its sole cost and expense, shall cause the Premises, the Improvements and the Equipment to be maintained in good condition and repair, subject to ordinary wear and tear, and will not commit or suffer to be committed any waste to the Premises, the Improvements or the Equipment. Except as otherwise permitted by the terms of the Credit Agreement, the Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal repairs and replacement of the Equipment in accordance with the Credit Agreement), without the consent of Secured Party. Debtor shall promptly comply with all existing and future applicable Requirements of Law

affecting the Mortgaged Property, or any portion thereof or the use thereof. Subject to the terms of the Credit Agreement, Debtor shall promptly repair, replace or rebuild all or any part of the Mortgaged Property which has suffered any Loss, whether by casualty or Condemnation or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Subject to the terms of the Credit Agreement, Debtor shall not, without obtaining the prior consent of Secured Party, initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof. Debtor shall promptly notify Secured Party of the receipt by Debtor of notice (or of Debtor's Knowledge) of any Conflict under any Requirement of Law, or of any Conflict or threatened or actual termination of any Contractual Obligations or Consent or Other Action relating to the Premises, in each case to the extent required by the Credit Agreement.

8. Intentionally Omitted.

9. Transfer or Encumbrance of the Mortgaged Property. Except as otherwise permitted by the terms of the Credit Agreement, no part of the Mortgaged Property nor any interest of any nature whatsoever therein, nor any interest of any nature whatsoever in Debtor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be Disposed of or further encumbered, sold, transferred, assigned or conveyed, or permitted to be Disposed of or further encumbered, sold, transferred, assigned or conveyed or otherwise be subject to a Lien, without the prior consent of Secured Party, which consent in any and all circumstances may be withheld in the Sole Discretion of Secured Party. The provisions of the foregoing sentence of this Section 9 shall apply to each and every such Disposition and further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Secured Party has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous Disposition or further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such Disposition or further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of Law, or otherwise made.

10. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent in the manner specified in the Credit Agreement.

11. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the Sole Discretion of Secured Party, be sold in one or more parcels or in several interests or portions and in any order or manner.

12. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any Law of the state in which the Premises are located deducting from the value of real property for the purpose of taxation any Lien or encumbrance thereon or changing in any way the Laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Debtor shall, if permitted by Law, pay any tax imposed as a result of any such Law within the statutory period or within fifteen (15) days after demand by Secured Party, whichever is less, provided, however, that if, in the opinion of the attorneys for Secured Party, Debtor is not permitted by Law to pay such taxes, Secured

Party shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to Debtor of not less than thirty (30) days.

13. No Credits on Account of the Debt. Debtor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes and Other Charges assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt.

14. Documentary Stamps and Recording Tax. If at any time any Governmental Authority shall require revenue or other stamps to be affixed to the Note, this Mortgage or any Loan Document, or impose any recording or privilege tax on recording this Mortgage, Debtor shall pay for the same, with interest and penalties thereon, if any.

15. Performance of Other Agreements. Except as otherwise permitted by the terms of the Credit Agreement, Debtor shall observe and perform each and every term to be observed or performed by Debtor pursuant to the terms of any Contractual Obligation (including any recorded instrument) affecting or pertaining to the Mortgaged Property.

16. Events of Default. The Debt shall become due at the option of Secured Party upon the occurrence of any one or more of the following events (herein individually referred to as an "Event of Default" and collectively referred to as "Events of Default"):

- (a) if an "Event of Default", as defined in the Credit Agreement, shall occur;
- (b) if, without the consent of Secured Party, any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned, other than as permitted by the terms of the Credit Agreement;
- (c) if an event of default shall occur under any other deed of trust or mortgage covering any part of the Mortgaged Property and granted by Debtor, whether superior or inferior in Lien to this Mortgage, and including, without limitation, any such deed of trust or mortgage now or hereafter held by Secured Party, and such event of default shall continue beyond the expiration of any grace or cure period provided therein for the curing of such event of default;
- (d) if the (i) Mortgaged Property shall become subject (A) to any Lien for Taxes and Other Charges, other than a Lien for real estate and personal property taxes and assessments not due and payable, or (B) to any lis pendens, notice of pendency, stop order, the filing of a mechanic's or materialman's Lien, or other Lien of any nature whatsoever and (ii) the same shall not, within a period of thirty (30) days after Debtor receives written notice of the filing or recordation thereof, (A) be discharged of record or (B) be sufficiently bonded in accordance with applicable Law or insured over to the satisfaction of Secured Party by a title insurance company acceptable to Secured Party, irrespective of whether the same is superior or subordinate in Lien or other priority to the Lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate Lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or

(e) if an event of default shall occur under any other deed of trust or mortgage or any other Loan Document now or hereafter entered into by Debtor or an Affiliate of Debtor in favor of Secured Party, and such event of default shall continue beyond the expiration of any grace or cure period provided therein for the curing of such event of default.

17. Remedies. Upon the occurrence of an Event of Default and subject to any applicable cure period, Secured Party may, at Secured Party's option, and by Secured Party itself, or through any Person or otherwise, do any one or more of the following:

(a) Right to Perform Debtor's Covenants. If Debtor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Secured Party may, but shall not be obligated to any Person to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Secured Party that is chargeable to Debtor or subject to reimbursement by Debtor under the Loan Documents, shall be and become a part of the Debt, and Debtor promises, upon demand, to pay to Secured Party, at the place where the Note is payable, all sums so incurred, paid or expended by Secured Party, with interest from the date when paid, incurred or expended by Secured Party at the Default Rate.

(b) Right of Entry. Secured Party may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records and accounts relating thereto and exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property, including, without limitation, the right to rent the same for the account of Debtor and to deduct from such Rents all costs, expenses and liabilities of every character incurred by Secured Party in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Mortgaged Property and to apply the remainder of such Rents to the Debt in such manner as Secured Party may elect. All such costs, expenses and liabilities incurred by Secured Party in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a future advance owed and a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Secured Party pursuant to this subsection (b), Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Secured Party in managing the Mortgaged Property unless such loss is caused by the willful misconduct or gross negligence of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty or liability under any of the Leases or under or by reason hereof or the exercise of rights or remedies hereunder. Debtor shall and does hereby agree to indemnify Secured Party for, and to hold Secured Party harmless from, any and all liability, loss or damage, which may or might be incurred by Secured Party under any such Leases or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Secured Party by

reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease. Should Secured Party incur any such liability for which it is indemnified and held harmless by Debtor pursuant to the preceding sentence, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Debtor shall reimburse Secured Party therefor immediately upon demand. Nothing in this subsection (b) shall impose any duty, obligation or responsibility upon Secured Party for the control, care, management, leasing or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Secured Party responsible or liable for any waste committed on the Mortgaged Property, or for any hazardous substances or environmental conditions on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Debtor hereby assents to, ratifies, and confirms any and all actions of the Secured Party with respect to the Mortgaged Property taken under this subparagraph (b).

(c) Right to Accelerate. Secured Party may without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Debtor and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(d) Foreclosure-Power of Sale. If an Event of Default shall have occurred, Secured Party may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court-house door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Secured Party or any person conducting the sale for Secured Party is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Secured Party may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Secured Party may elect.

The proceeds of any foreclosure sale shall be applied as follows:

(i) First, to the reasonable expenses of making the sale including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(ii) Second, to the repayment of any money, with interest thereon, which Secured Party may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(iii) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale in accordance with Section 10.03 of the Credit Agreement;

(iv) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

(e) Secured Party's Option on Foreclosure. At the option of the Secured Party, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Secured Party exercises its option to foreclose the Mortgage in equity, Secured Party may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Debtor, a defense to any proceedings instituted by the Secured Party to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

(f) Judicial Remedies. Secured Party may proceed by suit or suits, at Law or in equity, to enforce the payment of the Debt or other Secured Obligations to foreclose the Liens of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Secured Party under this Mortgage or the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Secured Party.

(g) Secured Party's Right to Appointment of Receiver. As a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Debtor, (ii) without any showing of insolvency, fraud or mismanagement on the part of Debtor, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Mortgaged Property, Secured Party shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Mortgaged Property, including the power to collect the Rents. Debtor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection (g) shall have the usual powers and duties of receivers in such matters.

(h) Secured Party's Uniform Commercial Code Remedies. Secured Party may exercise its remedies and rights of enforcement under the UCC.

(i) Other Rights. Secured Party (i) may surrender the insurance policies maintained pursuant to the Insurance Requirements, and upon receipt shall apply the unearned premiums as a credit on the Debt and other Secured Obligations, and, in connection therewith, Debtor hereby appoints Secured Party as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Debtor to collect such premiums; and (ii) may apply any funds held by Secured Party toward payment of the Debt and other Secured Obligations; and (iii)

shall have and may exercise any and all other rights and remedies which Secured Party may have at Law or in equity, or by virtue of any of the Loan Documents, or otherwise.

(j) Discontinuance of Remedies. In case Secured Party shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Secured Party shall have the unqualified right so to do and, in such event, Debtor and Secured Party shall be restored to their former positions with respect to the Debt and other Secured Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Secured Party shall continue as if same had never been invoked.

(k) Remedies Cumulative. All rights, remedies and recourses of Secured Party granted in the Note, this Mortgage and the other Loan Documents, any other pledge of collateral, or otherwise available at Law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Debtor, the Mortgaged Property, or any one or more of them, at the Sole Discretion of Secured Party; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Debtor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Secured Party's exercising or pursuing any remedy in relation to the Mortgaged Property prior to Secured Party's bringing suit to recover the Debt or other Secured Obligations; and (vi) in the event Secured Party elects to bring suit on the Debt or other Secured Obligations and obtains a judgment against Debtor prior to exercising any remedies in relation to the Mortgaged Property, all security interests and other Liens, including the Lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Secured Party's option.

(l) Election of Remedies. Secured Party may release, regardless of consideration and prior to the payment in full of the Debt and other Secured Obligations, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the Lien evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Debtor or any other party to pay the Debt or other Secured Obligations. For payment of the Debt or other Secured Obligations, Secured Party may resort to any collateral securing the payment of the Debt or other Secured Obligations in such order and manner as Secured Party may elect. No collateral taken by Secured Party shall in any manner impair or affect the Lien given pursuant to the Loan Documents, and all collateral shall be taken, considered and held as cumulative.

(m) Waivers. Debtor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Debtor by virtue of any present or future Law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) except as expressly provided herein, all notices of any Event of Default or of Secured Party's exercise of any right, remedy or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets, a sale in inverse order of alienation or any other right to direct, in any manner, the order of sale of any of the Mortgaged Property.

(n) Statute of Limitations. To the extent permitted by applicable Law, Secured Party's rights hereunder shall continue even to the extent that a suit for collection of the Debt, or part thereof, is barred by a statute of limitations. Debtor hereby expressly waives and releases, to the full extent permitted by Law, the pleading of any statute of limitations as a defense to payment of the Debt or other Secured Obligations.

(o) Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against Debtor (other than an involuntary petition filed by or joined in by Secured Party), Debtor shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage, or any other rights that Secured Party has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Debtor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage against any guarantor of the Debt or other Secured Obligations. The waivers contained in this subsection (o) are a material inducement to Secured Party's willingness to enter into this Mortgage and Debtor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Secured Party of Secured Party's rights and remedies against Debtor or any guarantor of the Debt or other Secured Obligations.

(p) Bankruptcy Acknowledgment. In the event that the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Secured Party shall immediately become entitled, in addition to all other relief to which Secured Party may be entitled under this Mortgage, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so to permit Secured Party to pursue its rights and remedies against Debtor as provided under this Mortgage and all other rights and remedies of Secured Party at Law and in equity under applicable Law, and (ii) an order from the Bankruptcy Court prohibiting Debtor's use of all "cash collateral" as defined under Section 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Debtor shall not contend or allege in any pleading or petition filed in any court proceeding that Secured Party does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by Debtor to stay, condition or inhibit Secured Party from exercising its remedies are hereby admitted by Debtor to be in bad faith and Debtor further admits that Secured Party would have just cause for relief from the automatic stay in order to take such actions authorized under Law.

(q) Application of Proceeds. Except as otherwise provided herein, the proceeds from any sale, lease, or other Disposition made pursuant to this Mortgage, or the Insurance Proceeds (including proceeds from the surrender of any insurance policies pursuant hereto), or any Rents collected by Secured Party from the Mortgaged Property, and any other amounts received pursuant to the Loan Documents, shall be applied by Secured Party (or the receiver, if one is appointed), as the case may be, to the Debt or other Secured Obligations in the following order and priority: (i) to the payment of all expenses of advertising, selling and

conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and reasonable fees or commissions; (ii) to the satisfaction of the Debt and other Secured Obligations, in whole or in part (whether or not due), in such order as Secured Party may, in its Sole Discretion (subject to the provisions of Section 10.03 of the Credit Agreement), elect; (iii) to the holder or beneficiary of any inferior Liens covering the Mortgaged Property, if any, in order of the priority of such inferior Liens (Secured Party shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority) or as otherwise provided in the Credit Agreement; and (iv) lastly, the cash balance, if any, to Debtor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt or other Secured Obligations like any other payment. The balance of the Debt or other Secured Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

(r) Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Debtor or Debtor's representatives, successors or assigns, or any other Persons claiming any interest in the Mortgaged Property by, through or under Debtor (except tenants of space in the Improvements subject to Leases entered into prior to the date hereof) are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable Law, each and all shall, at the option of Secured Party or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable Law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Premises are located.

(s) Notice to Account Debtors. Secured Party may, at any time after an Event of Default hereunder that is not cured within any applicable grace, notice or cure period, notify the account debtors and obligors of any accounts, chattel paper, general intangibles or negotiable instruments or other evidences of Indebtedness to Debtor included in the Mortgaged Property to pay Secured Party directly. Debtor shall at any time or from time to time upon the request of Secured Party provide to Secured Party a current list of all such account debtors and obligors and their addresses.

(t) Payment of Expenses. Debtor shall pay on demand all of Secured Party's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, without limitation, legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Secured Party until actually paid by Debtor at the Default Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note or other Secured Obligations.

18. Non-Waiver. The failure of Secured Party to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Debtor shall not be relieved of Debtor's obligation to pay the Debt or other Secured Obligations at the time and in the manner provided for its payment in the Note, the Credit Agreement, this Mortgage or the other Loan Documents by reason of (i) failure of Secured Party to comply with any request of Debtor to take any action to foreclose this Mortgage or sell the Mortgaged Property pursuant to the provisions of this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Secured Obligations or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or other Secured Obligations, or (iii) any agreement or stipulation between Secured Party and any subsequent owner or owners of the Mortgaged Property or other Person extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Credit Agreement, this Mortgage or other Loan Documents or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Secured Obligations or any portion thereof, without first having obtained the consent of Debtor, and in the latter event, Debtor shall continue to be obligated to pay the Debt and other Secured Obligations at the time and in the manner provided in the Note, the Credit Agreement, this Mortgage and other Loan Documents, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Secured Party in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien, encumbrance, right, title or interest in or to the Mortgaged Property, Secured Party may release any Person at any time liable for the payment of the Debt or other Secured Obligations or any portion thereof or any part of the security held for the Debt or other Secured Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Credit Agreement, this Mortgage or other Loan Documents, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the Lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt and other Secured Obligations over any such subordinate Lien, right, title or interest. Secured Party may resort for the payment of the Debt or other Secured Obligations to any other security held by Secured Party in such order and manner as Secured Party, in its Sole Discretion, may elect. Secured Party may take action to recover the Debt or other Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Secured Party thereafter to foreclose this Mortgage or to effect a sale of the Mortgaged Property in accordance with the provisions of this Mortgage. Secured Party shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by any Loan Document or Law. The rights of Secured Party under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Secured Party shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

19. Further Acts, etc. Debtor will, at the cost of Debtor, and without expense to Secured Party, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Secured Party shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Secured Party, as the case may be, the property and

rights hereby conveyed or assigned or intended now or hereafter so to be, or which Debtor may be or may hereafter become bound to convey or assign to Secured Party, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering, or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Secured Party to prepare and file in the name of Debtor to the extent Secured Party may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments to evidence more effectively the Lien hereof upon the Mortgaged Property.

20. Performance and Subrogation. If Debtor shall fail to pay or perform any of its Secured Obligations under any Loan Documents (including, without limitation, any payment of expenses), Secured Party without notice to or consent of Debtor may, from time to time, but need not, pay or perform (or cause to be paid or performed) any such Obligation, in any form or manner Secured Party may determine in its Sole Discretion, and any amount so paid or expended, with interest at the Default Rate, shall be added to the Secured Obligations and shall be paid by Debtor on demand. No such action (or inaction) of Secured Party shall be considered as a waiver of an Event of Default or any right accruing to Secured Party on account of the occurrence of any Event of Default on the part of Debtor under this Mortgage. To the extent that Secured Party pays any sum due from Debtor or in respect of the Premises under any Law or Contractual Obligation, Secured Party shall be subrogated to and shall receive and enjoy all rights and benefits (including any Liens) possessed, held or enjoyed by any payee or other Person with respect thereto, and the same shall remain in existence for the benefit of Secured Party and shall secure the amount expended by Secured Party and other Secured Obligations.

21. Headings, etc. The headings, titles and captions of various sections and subsections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

22. Filing of Mortgage, etc. Debtor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any security instrument creating a Lien or evidencing the Lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and fully to protect, preserve and perfect the Lien hereof upon, and the interest of Secured Party in, the Mortgaged Property. Debtor will pay all filing, registration and recording fees and taxes, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, or any instrument of further assurance. Debtor shall hold harmless and indemnify Secured Party, and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

23. Interest and Other Charges. Notwithstanding any provision of this Mortgage to the contrary, it is the intent of Debtor, Secured Party and the other Holders of Secured Obligations that Secured Party and the other Holders of Secured Obligations shall not be entitled

to receive, collect, reserve or apply, as interest or other charges, any amounts in excess of the maximum amounts legally permitted to be charged under applicable Law or regulations. In the event this Mortgage requires a payment of interest or other charges that exceeds the maximum amounts legally permitted to be charged under applicable Law or regulations, such interest or other charges, as the case may be, shall not be received, collected, charged or reserved until such time as such interest or other charges, as the case may be, together with all other interest and other charges then payable, fall within the maximum amounts legally permitted to be charged under applicable Law and regulations. In the event Secured Party and/or any of the other Holders of Secured Obligations receives any such interest or other charges in excess of the maximum amounts legally permitted to be charged under applicable Law and regulations, the amount that would be excessive interest or other charges shall be deemed a partial prepayment of the principal obligations due hereunder and treated under this Mortgage as such, or, if the principal obligations due hereunder have been fully paid, any remaining excess funds shall immediately be paid to Debtor, and, in such event, Secured Party and the other Holders of Secured Obligations shall not be subject to any penalties provided by applicable Law or regulations for contracting for, charging, reserving, collecting or receiving interest or other charges in excess of the maximum amounts legally permitted to be charged under applicable Law and regulations.

24. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

25. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Debtor" shall mean each Debtor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word "Secured Party" shall mean Secured Party or any subsequent holder of the Note; the word "Note" shall mean the Note or any other evidence of indebtedness secured by this Mortgage; the words "Credit Agreement" shall mean the Credit Agreement; and the words "Mortgaged Property" shall include any portion of the Mortgaged Property. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

26. Waiver of Notice. Debtor shall not be entitled to any notices of any nature whatsoever from Secured Party except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Secured Party to Debtor, and Debtor hereby expressly waives the right to receive any notice from Secured Party with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Secured Party to Debtor.

27. Waiver of Statutory Rights. Debtor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption Laws, or any so-called "Mortatorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Laws to the full extent that Debtor may do so under applicable Law. Debtor, for itself and all who may claim

through or under it, waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the Lien of this Mortgage and agrees that any court having jurisdiction to foreclose such Lien may order the Mortgaged Property sold as an entirety. Debtor hereby waives, for itself and all who may claim through or under it, and to the full extent Debtor may do so under applicable Law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or granted under any Law now existing or hereafter enacted.

28. Waiver of Counterclaims. Debtor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or cross-claim of any nature with respect to this Mortgage or the obligations of Debtor under this Mortgage in any action or proceeding brought by Secured Party to collect the Debt or other Secured Obligations, or any portion thereof, or to enforce the obligations of Debtor under this Mortgage.

29. Superior Lien. If Debtor fails to pay any installment of principal or interest or any other sum due under any deed of trust or mortgage or other Lien superior to this Mortgage, as the same becomes due and payable, Secured Party may, at its option, pay the same, and Debtor shall upon demand reimburse Secured Party for all sums so expended by Secured Party, with interest at a rate per annum equal to the Default Rate. All such sums expended by Secured Party, with interest, shall be secured by this Mortgage.

30. Intentionally Deleted.

31. Solvency, Binding Effect and Enforceability. Debtor is (and, after giving effect to this Mortgage, will be) solvent. This Mortgage is the legal, valid and binding obligation of the Debtor enforceable in accordance with its terms.

32. Governing Law; Consent to Jurisdiction.

(a) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE PREMISES ARE LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND ALL OF THE INDEBTEDNESS AND OBLIGATIONS DESCRIBED HEREIN.

(b) DEBTOR AND SECURED PARTY HEREBY CONSENT, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE PREMISES ARE

LOCATED TO TAKE JURISDICTION OF ALL OR PART OF THE MORTGAGED PROPERTY. DEBTOR FURTHER CONSENTS, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE PREMISES ARE LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE PREMISES INCLUDING, WITHOUT LIMITATION, ANY FORECLOSURE. DEBTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, DEBTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF SECURED PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY JURISDICTION. To the extent that Debtor has or may hereafter acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to Debtor or Debtor's property, Debtor hereby irrevocably waives such immunity in respect of its obligations under this Mortgage to the full extent permitted by Law.

33. WAIVER OF TRIAL BY JURY. DEBTOR BY EXECUTION AND DELIVERY HEREOF AND SECURED PARTY BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY IN CONNECTION HEREWITH OR THEREWITH.

34. Intentionally Omitted.

35. Intentionally Omitted.

36. Security Agreement. (a) This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Debtor in the Mortgaged Property, and Debtor hereby grants to Secured Party a security interest in all portions of the Mortgaged Property constituting personal property or fixtures under the UCC. This Mortgage is to be filed as a fixture filing and covers goods which are or are to become fixtures on the Premises. Debtor, by executing and delivering this Mortgage, has granted to Secured Party, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC. If

an Event of Default shall occur, Secured Party, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Mortgaged Property or any part thereof, and to take such other measures as Secured Party may deem necessary for the care, protection and preservation of the Mortgaged Property. The mention in a financing statement filed in the records normally pertaining to personal property of any portion of the Mortgaged Property shall not derogate from or impair in any manner the intention of this Mortgage.

(b) This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real property records of each county where any part of the Premises (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. For such purposes, the following information is set forth:

Name of Debtor:	Tacala, LLC
State of Organization:	Delaware
Type of Entity:	Limited Liability Company
Organizational Identification No. (preceded by the U.S. Postal abbreviation of state of organization):	DE 2920056
Mailing Address:	3750 Corporate Woods Drive Vestavia Hills, Alabama 35242

Name of Secured Party:	Wells Fargo Bank, National Association
Mailing Address:	1808 Aston Avenue, Suite 250 Carlsbad, CA 92008 Attention: Loan Administration

Information concerning the types, or describing the items, of collateral is found in the granting clause of this Mortgage.

37. Intentionally Omitted.

38. Future Advances. This Mortgage is given to secure not only existing Indebtedness, but also future advances and Secured Obligations, whether such advances are obligatory or are to be made at the option of Secured Party, or otherwise, as are made by Secured Party or incurred by Debtor, to the same extent as if such future advances and Secured Obligations were made on the date of the execution of this Mortgage.

[Signature Page Follows]

IN WITNESS WHEREOF, Debtor has duly executed this Mortgage as of the date first above written.

DEBTOR:

TACALA, LLC, a Delaware limited liability company

By: _____

Name: Jerre O. Pierson, III

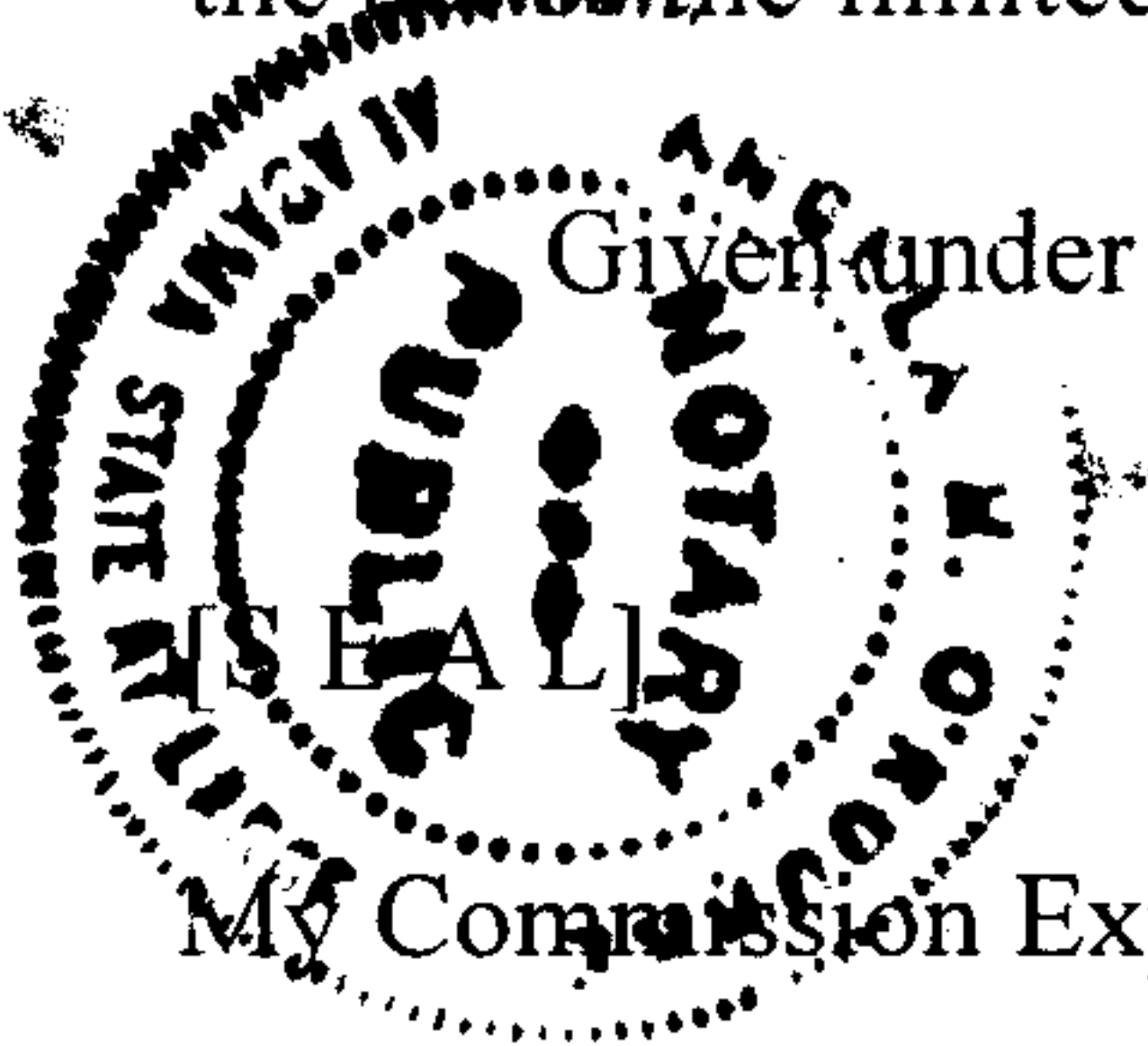
Title: Chief Financial Officer

ACKNOWLEDGMENT

STATE OF Alabama
COUNTY OF Jefferson^{SS}

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jerre O. Pierson, III, as Chief Financial Officer of TACALA, LLC, a Delaware limited liability company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Chief Financial Officer and with full authority, executed the same voluntarily for and as the act of the limited liability company.

Given under my hand and official seal, this the 20th day of November, 2012.



Angela M. O'Rourke
Notary Public, State of Alabama
Angela M. O'Rourke
Printed Name of Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 7, 2013
SIGNED: [Signature] NOTARY PUBLIC UNDERWRITERS

DEFINITIONS SCHEDULE

"Affiliate" or **"Affiliates"** shall mean, with respect to any Person; (i) any Person who controls, is controlled by, or is under common control with such Person; (ii) any Person who is a manager, director or officer of, partner in, trustee of, or blood or legal relative living in the same household, guardian or representative of, the specified Person, or any Person who acts or serves in a similar capacity with respect to the specified Person; (iii) any Person of which or whom the specified Person is a manager, director or officer, partner, trustee or blood or legal relative living in the same household, guardian or representative, or with respect to which or whom, the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls 10% or more of any class of equity securities of the specified Person; and (v) any Person who is an Affiliate as defined in the preceding clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

"Business" shall mean the business of operating a Unit in accordance with the Principal Agreements.

"Collateral" shall mean all personal property, including, without limitation, Equipment, Inventory, Fixtures, Accessions, General Intangibles (including Principal Agreements), Accounts, Certificates of Title, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, Commodity Accounts, Commodity Contracts, Health-Care-Insurance Receivables, Commercial Tort Claims, Promissory Notes, Certificated and Uncertificated Securities, Financial Assets, Securities Accounts, Security Entitlements, Payment Intangibles and Software (as all of such terms are defined in the UCC or otherwise herein or in the Loan Documents), credit balances, deposits, bankers' acceptances, guaranties, supporting obligations, letter-of-credit rights, credits, claims, choses in action, demands, liens, security interests, rights, insurance, awards, compensation, remedies, title and interest in, to and in respect of other Collateral, and all Collateral Revenues and all other personal property, now or hereafter owned, acquired, existing, arising, held, sold, used or consumed in connection with the Business or any Unit and any other property, rights and interests which at any time relate to, arise out of or in connection with the foregoing or which come into the possession, custody or control of Secured Party or any of its agents, representatives, associates or correspondents, for any purpose, and all products and Proceeds of the foregoing.

"Collateral Revenues" shall mean with respect to any Collateral all interest, income, dividends, distributions, rents, revenues, profits and earnings thereon or other monies or revenues derived therefrom, including any such property received in connection with any disposition of any Principal Agreement and all moneys which may become payable or received under any policy insuring the Collateral or otherwise required to be maintained under the Credit Agreement (including return of unearned premium).

"Condemnation" shall have the meaning accorded to such term in the Credit Agreement.

"Conflict" or **"Conflicting"** shall mean, with respect to any Contractual Obligation, organizational document, Requirement of Law, Consent or Other Action or any other item, any

conflict with, breach of, default under or any triggering of rights, benefits or obligations under or in connection with such item.

“Consent or Consents and Other Action” shall mean any consent, authorization, Judgment, directive, approval, license, certificate, registration, permit, exception, exemption, filing, notice, declaration or other action by, with or to any Person.

“Contractual Obligation” shall include any obligation under or in connection with any Instrument, Document or General Intangible.

“Credit Agreement” shall mean that certain Third Amended and Restated Credit Agreement dated as of February 21, 2012, as modified by that certain First Modification to Third Amended and Restated Credit Agreement dated September 26, 2012, and as further modified by that certain Second Modification to Third Amended and Restated Credit Agreement dated as of the date hereof, between Debtor, Secured Party and the other Holders of Secured Obligations, relating to the Loan, as amended, restated, supplemented or otherwise modified from time to time.

“Debtor’s Knowledge” shall mean the actual knowledge of the president, chief executive officer, chief operating officer, chief financial officer, any member, any vice president, or any other officer of Debtor having responsibility for the subject matter to which the statement being qualified to an actual knowledge standard pertains.

“Default Rate” shall have the meaning accorded to such term in the Credit Agreement.

“Discretion” shall mean with respect to any decision or action (including granting of any consent or approval) the discretion to make or take or fail to take or make any decision or action exercised reasonably and in good faith.

“Dispose” or **“Disposing”** or **“Disposed”** or **“Disposition”** shall include, with respect to any property, assets, obligations or other items, any sale, assignment, conveyance, pledge, Grant, encumbrance, lease, gift, abandonment or other disposition; provided, however, that the discontinuing of business operations at the Premises or any portion thereof shall not be deemed to be an abandonment, Grant or other disposition of the Premises or such portion thereof for purposes of this definition.

“GAAP” shall mean the generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

“Governmental Authority” shall have the meaning accorded to such term in the Credit Agreement.

“Grant” or **“Grants”** or **“Granting”** shall include to grant, assign, transfer, convey, set over and dispose.

“Indebtedness” shall have the meaning accorded to such term in the Credit Agreement.

“Insurance Proceeds” shall have the meaning accorded to such term in the Credit Agreement.

“Instrument” shall have the meaning accorded to such term in the UCC.

“Insurance Requirements” shall have the meaning accorded to such term in the Credit Agreement.

“Judgment” shall mean any order, decision, decree, award or injunction of any Governmental Authority.

“Law” or **“Laws”** shall mean any statute, law, code, rule, regulation, ordinance or controlling judicial decisions or case authority.

“Letter of Credit” shall have the meaning accorded to such term in the UCC.

“License” or **“Licenses”** shall mean any license, permit, directive, authorization, approval or stipulation required to operate the Business at the Premises.

“Lien” or **“Liens”** shall have the meaning accorded to such terms in the Credit Agreement.

“Loan” or **“Loans”** shall mean the indebtedness of Debtor to Secured Party as evidenced by the Loan Documents.

“Loan Document” or **“Loan Documents”** shall mean the Note, the Credit Agreement, and any other note, security agreement, mortgage, deed of trust, deed to secure debt, collateral assignments and other contractual Obligations, filings (including financing statements) and recordings executed, delivered or filed, including any amendments, supplements, renewals, extensions and replacements thereof, executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party.

“Loss” shall have the meaning accorded to such term in the Credit Agreement.

“Loss Proceeds” shall have the meaning accorded to such term in the Credit Agreement.

“Note” shall have the meaning accorded to such term in the Credit Agreement.

“Obligations” shall mean all of Debtor’s Indebtedness, obligations and liabilities to Secured Party evidenced by, arising under or in connection with the Note (including, without limitation, indebtedness, obligations and liabilities in respect of principal and interest), the Credit Agreement or any of the other Loan Documents (executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party), and any future advances thereon, renewals, extensions, modifications, amendments, substitutions and consolidations thereof, or any other agreement with Secured Party under or in connection with the Loan, including Debtor’s obligations to pay (or reimburse Secured Party for) all costs and expenses (including attorneys’ fees and disbursements) incurred by Secured Party in obtaining, maintaining, protecting and preserving its interest in the Collateral or its security interest therein, foreclosing, retaking,

holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral or in exercising its rights hereunder or as a secured party under the UCC, any other applicable Law or Loan Document, and all other indebtedness, obligations and liabilities of any kind of Debtor to Secured Party now or hereafter existing (including future advances whether or not pursuant to commitment), arising directly between Debtor and Secured Party or acquired outright, conditionally or as collateral security from another, absolute or contingent, joint and/or several, secured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of Law or otherwise, or direct or indirect, including Debtor's liabilities to Secured Party as a member, partner or equity owner of any Person or group, and whether incurred by Debtor as principal, surety, indorser, guarantor, accommodation party or otherwise, including all amounts which would be payable or owing to Secured Party but for the fact they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving Debtor or any Person.

"Permitted Encumbrance" or **"Permitted Encumbrances"** shall have the meaning accorded to such term in the Credit Agreement.

"Person" or **"Persons"** shall mean any natural person, corporation, partnership, limited liability company, trust, association, firm, entity or Governmental Authority.

"Principal Agreement" or **"Principal Agreements"** shall have the meaning accorded to such term in the Credit Agreement.

"Requirement of Law" or **"Requirements of Law"** shall mean any requirement, direction, policy or procedure of any Law or License, Judgment or Consent or Other Action.

"Secured Obligations" shall have the meaning accorded to such term in the Credit Agreement.

"Sole Discretion" shall mean with respect to any decision or action (including granting of any consent or approval) the discretion to make or take or fail to take or make any decision or action with or without any reason, taking into account such factors, if any, as the decision maker or action taker determines (including self interest), and any decision or action may be subject to any such conditions or no conditions as the decision maker or action taker determines and shall be final and conclusive.

"Taxes and Other Charges" shall have the meaning accorded to such term in the Credit Agreement.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time as adopted in the state where the Premises are located.

"Unit" or **"Units"** shall mean the Taco Bell restaurant(s) located and operated upon the Premises.

Unit No. 004409
101 Cahaba Valley Pkwy
Pelham, Alabama 35124
Shelby County

EXHIBIT A

Description of the Premises

Part of Block 1 of Cahaba Valley Park North as recorded in Map Book 13, Page 140, in the Probate Office of Shelby County, Alabama, more particularly described as follows:

Begin at the Southwest corner of said Block 1, said point being on the Northerly right of way line of Alabama Highway 119, and run Northwesterly for 150.00 feet; thence 88 degrees 04 minutes 00 seconds right and run Northeasterly for 227.16 feet to a point on the Westerly right of way line of Cahaba Valley Parkway; thence 90 degrees 00 minutes right and run Southeasterly along said right of way line for 99.56 feet to a point; said point being at the beginning of a curve to the right, subtending a central angle of 89 degrees 53 minutes 17 seconds and having a radius of 50.00 feet; thence run Southwesterly along the arc of said curve for 78.44 feet to a point on the Northerly right of way line of Alabama Highway 119 and end of said curve; thence at tangent to said curve run Southwesterly along said right of way line for 182.32 feet to the point of beginning.

Situated in Shelby County, Alabama.


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Shelby Cnty Judge of Probate, AL
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