


Recording requested by:  
And when recorded mail to:

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Los Angeles, CA 90067-3012  
Attention: Adam J. Engel, Esq.

  
20130322000119670 1/68 \$18513.00  
Shelby Cnty Judge of Probate, AL  
03/22/2013 10:03:03 AM FILED/CERT

**FUTURE ADVANCES MORTGAGE,**  
**SECURITY AGREEMENT, FIXTURE FILING,**  
**FINANCING STATEMENT**  
**AND ASSIGNMENT OF LEASES AND RENTS**

MORTGAGOR: MBCP, LLC, a Delaware limited liability company  
c/o Colliers International  
420 North 20th Street, Suite 2750  
Birmingham, Alabama 35203

MORTGAGEE: CONTINENTAL CASUALTY COMPANY,  
an Illinois insurance company  
333 South Wabash Avenue  
Chicago, Illinois 60604  
Attention: David B. Lehman, Director - Commercial Mortgage  
Lending

AMOUNT SECURED: \$12,200,000.00


GOVERNING LAW: See Section 9.19

LOCATION: Meadow Brook Park  
2500 and 2600 Corporate Drive  
Birmingham, Alabama 35342

COUNTY: Shelby County

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

**This Future Advances Mortgage, Security Agreement, Fixture Filing, Financing Statement and Assignment of Leases and Rents (this "Mortgage") is given to secure the Secured Obligations (as defined in Article 1 hereof); provided, however, that notwithstanding anything to the contrary contained herein: (i) the maximum principal amount of the Secured Obligations secured by this Mortgage (the "Principal Indebtedness") shall not exceed \$12,200,000.00 (the "Maximum Principal Amount") at any one time outstanding; (ii) the Maximum Principal Amount of the Principal Indebtedness secured by this Mortgage shall be deemed to be the first Secured Obligation to be advanced and the last Secured Obligation to be repaid; (iii) the security afforded by this Mortgage for the Secured Obligations shall not be reduced by any payments or other sums applied to the reduction of the Secured Obligations so long as the total amount of outstanding Principal Indebtedness exceeds the Maximum Principal Amount and thereafter shall be reduced only to the extent that any such payments and other sums are actually applied by Mortgagee, in accordance with the Note, this Mortgage, and the other Loan Documents, to reduce the outstanding Principal Indebtedness to an amount less than the Maximum Principal Amount; (iv) if at any time after the reduction of the Principal Indebtedness to an amount less than the Maximum Principal Amount, Principal Indebtedness should subsequently be incurred that increase the total outstanding Principal Indebtedness to an amount equal to or exceeding the Maximum Principal Amount, the security afforded by this Mortgage shall thereupon be increased to the Maximum Principal Amount; and (v) the limitation contained in this paragraph on the Maximum Principal Amount shall only pertain to Principal Indebtedness and shall not be construed as limiting the amount of interest, fees, expenses, indemnified amounts and other Secured Obligations secured hereby that are not Principal Indebtedness, it being the intention of the parties to this Mortgage shall secure any Principal Indebtedness remaining unpaid at the time of foreclosure up to the Maximum Principal Amount, plus interest thereon, all costs of collection and all other amounts (except Principal Indebtedness in excess of the Maximum Principal Amount) included in the Obligations.**

  
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**THIS FUTURE ADVANCES MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS** (this "Mortgage") is executed as of March 19, 2013, by MBCP, LLC, a Delaware limited liability company ("Mortgagor"), in favor of, and for the use and benefit of CONTINENTAL CASUALTY COMPANY, an Illinois insurance company ("Mortgagee").

## **ARTICLE 1**

### **PARTIES, PROPERTY, AND DEFINITIONS**

The following terms and references shall have the meanings indicated:

**1.1 Access Agreement:** Any easement agreement, reciprocal easement agreement, access agreement, right or way agreement or similar agreement affecting the Property.

**1.2 Additional Payment Date:** As defined in Section 10.1(d).

**1.3 Affiliate:** With respect to a specified Person, (a) a Person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person, (b) any Person who is an officer, director, partner, manager, employee, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person who, directly or indirectly, has an ownership interest in the specified Person, (d) any Person (excluding any entities whose stock is publicly traded) in which the specified Person has an ownership interest, (e) the spouse, issue, sibling or parent of the specified Person, (f) any Guarantor, if the specified Person is Mortgagor, any other Guarantor or any other Mortgagor Owner Person, (g) Mortgagor, if the specified person is any Guarantor or any Mortgagor Owner Person, (h) any Mortgagor Owner Person if the specified person is Mortgagor or any Guarantor, and (i) any Person that would constitute an Affiliate of any such Person described in subdivisions (a) through (h) above.

**1.4 Assignment of Leases:** The Assignment of Leases and Rents of even date herewith executed by Mortgagor for the benefit of Mortgagee, as the same may be amended, modified or supplemented from time to time.

**1.5 Budget:** As defined in Section 10.2 (a).

**1.6 Business Day:** Any day that is not a Saturday, Sunday or public holiday or the equivalent for banks generally under the laws of the State of Alabama or Illinois.

**1.7 Chattels:** All goods (including, without limitation, all "Goods" as defined in the UCC, fixtures (including, without limitation, all "Fixtures" as defined in the UCC), inventory (including, without limitation, all "Inventory" as defined in the UCC), equipment (including, without limitation, all "Equipment" as defined in the UCC), building and other materials, supplies, and other tangible personal property of every nature (but excluding all chattels, "trade" fixtures and personal property of the tenants under Leases that do not become the property of Mortgagor under the Leases and all personal property leased or licensed by



Mortgagor pursuant to equipment leases or license agreements with third parties), whether now owned or hereafter acquired by Mortgagor, used, intended for use, or reasonably required in the construction, development or operation of the Property, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof.

**1.8 Collateral:** As defined in Section 2.2 hereof.

**1.9 Contracts:** As defined in Section 3.3 hereof.

**1.10 Control, Controlled by or Controlling:** The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Person in question, whether through the ownership of voting securities, by contract or otherwise.

**1.11 Debt Service Coverage Ratio:** The ratio, as reasonably determined by Mortgagee, of (i) Net Operating Income for the Property for the preceding twelve (12) calendar months, to (ii) the annual debt service payments due under the Loan Documents and on all other Indebtedness secured, or to be secured, by a lien on all or any part of the Property and the other Collateral. Debt Service Coverage Ratio shall be calculated on a cash flow basis. As of the date hereof, the Debt Service Coverage Ratio is 1.95 to 1.0.

**1.12 Default:** Any matter that, with the giving of notice, passage of time, or both, would constitute an Event of Default.

**1.13 Default Rate:** Means the Default Rate specified in the Note.

**1.14 Disbursement:** As defined in Section 10.1(h).

**1.15 Environmental Indemnity Agreement:** The Environmental Indemnity Agreement of even date herewith made by Mortgagor and Guarantor for the benefit of Mortgagee, as the same may be amended, modified or supplemented from time to time.

**1.16 ERISA:** The Employee Retirement Income Security Act of 1974, as amended, together with all rules and regulations issued thereunder.

**1.17 Event of Default:** As defined in Article 6.

**1.18 Extension Term:** As defined in Section 10.1(a).

**1.19 Extension Term Deposit Account:** As defined in Section 10.1(a).

**1.20 Extension Term Excess Funds:** Shall mean, on any Additional Payment Date during the Extension Term, the amount of funds then existing in the Deposit Account (including any Extension Term Net Operating Income due on the applicable Additional Payment Date), less an amount equal to the sum of three regularly scheduled payments of principal and interest due as set forth in the Note.



**1.21 Extension Term Gross Revenue:** Shall mean, during the Extension Term, Gross Revenues in respect of the Property, for the relevant period for which the calculation of Extension Term Gross Revenue is being made.

**1.22 Extension Term Net Operating Income:** Shall mean, for any particular period of time during the Extension Term, Extension Term Gross Revenue for the relevant period, less Extension Term Operating Expenses for the relevant period; provided, however, that if such amount is equal to or less than zero (0), then Extension Term Net Operating Income shall equal zero (0).

**1.23 Extension Term Operating Expenses:** Shall mean, during the Extension Term, the sum of all ordinary and necessary operating expenses actually paid by Mortgagor in connection with the operation of the Property during the relevant period for which the calculation of Extension Term Operating Expenses is being made, including, but not limited to, (a) payments made by Mortgagor for taxes and insurance required under the Loan Documents, and (b) monthly debt service payments as required under the Note.

**1.1 Gross Revenue:** Shall mean all payments and other revenues (exclusive, however, of any payments attributable to sales taxes) received by or on behalf of Mortgagor from all sources related to the ownership or operation of the Property, including, but not limited to, rents, income, receipts, revenues, issues, profits, advances, rebates, prepaid rents, lease termination payments, parking fees, interest, security deposits (to the extent that such security deposits are applied to tenant obligations or are no longer subject to being returned to the applicable tenant), business interruption insurance proceeds, operating expense pass-through revenues, direct expense reimbursements and common area maintenance charges, for the relevant period for which the calculation of Gross Revenue is being made.

**1.2 Guarantor(s):** Collectively, Kim Campbell ("Campbell"), an individual, having an address at 14914 Via La Senda, Del Mar, California 92014, Albina C. Keefer ("Keefer"), an individual, having an address at 3830 Horizon View Way, Santa Rosa, California, Daniel Maloof ("Maloof"), an individual, having an address at 83 Eagle Lane, Somerset, Massachusetts 02726, Donald R. Vick ("Vick"), an individual, having an address at 3334 Georld Drive, #30, Cincinnati, Ohio 45238, and Carol Eglin ("Eglin"), or any substitute guarantor pursuant to the terms of this Mortgage.

**1.3 Guaranty Agreement or Guaranty:** The Guaranty Agreement executed by Guarantor for the benefit of Mortgagee, as the same may be amended, modified or supplemented from time to time.

**1.4 Improvements:** All buildings, structures and improvements, now or hereinafter located on the Land.

**1.5 Indebtedness:** As of the date of any determination thereof, (i) all indebtedness for borrowed money or purchase money financing, (ii) all indebtedness evidenced by a note, bond, debenture or similar instrument, (iii) the face amount of all letters of credit and, without duplication, all unreimbursed amounts drawn thereunder, (iv) all payment obligations under any interest rate protection agreements and currency swaps and similar agreements, and



(v) all other indebtedness (except for normal and customary amounts owed to trade creditors in the ordinary course of business).

**1.6 Insurance Agreement:** The Agreement Concerning Insurance Requirements of even date herewith executed by Mortgagor for the benefit of Mortgagee, as the same may be amended, modified or supplemented from time to time.

**1.7 Intangible Personalty:** All trademarks and trade names and symbols or logos used in connection therewith, or any modifications or variations thereof or any licenses permitting Mortgagor to use any of the foregoing, in connection with the operation of the improvements existing or to be constructed on the Property, together with all rents, issues, income and profits, accounts, deposit accounts, letter of credit rights, investment property, monies in the possession of Mortgagee (including without limitation proceeds from insurance and condemnation proceeds, retainages and deposits for taxes and insurance), Permits, contract rights (including, without limitation, rights to receive condemnation and insurance proceeds) and general intangibles (whether now owned or hereafter acquired, and including proceeds thereof) relating to or arising from Mortgagor's ownership, use, operation, leasing, or sale of all or any part of the Property, specifically including but in no way limited to any right that Mortgagor may have or acquire to transfer any development rights from the Property to other real property, and any development rights that may be so transferred (excluding, however, any intangible property owned by any tenant under any Lease).

**1.8 Land:** The tract or tracts of land described in Exhibit A attached hereto, including all rights of way, easements and other appurtenances thereto.

**1.9 Lease Certificate:** The Certificate Concerning Leases and Financial Condition of even date herewith made by Mortgagor to Mortgagee concerning, among other things, the Leases.

**1.10 Leases:** Any and all present and future leases, licenses, subleases and other agreements under the terms of which any person other than Mortgagor has or acquires any right to occupy or use the Property, or any part thereof, including, without limitation, the Required Lease, excluding utility and other easements that are Permitted Exceptions.

**1.11 Loan:** The loan evidenced by the Note and secured by this Mortgage.

**1.12 Loan Documents:** The Note and all of the deeds of trust, mortgages and other instruments, certificates and documents securing the Note or executed and delivered in connection with the Note, including, without limitation, this Mortgage, the Environmental Indemnity Agreement, Assignment of Leases, the Guaranty Agreement, the Pledge Agreement, the Insurance Agreement, the Organizational Certificate, the Lease Certificate, the Subordination Agreement, the Reserve Agreement, the Post Closing Side Letter and each other document executed or delivered in connection with the transaction pursuant to which the Note has been executed and delivered. The term "Loan Documents" also includes all modifications, extensions, renewals, and replacements of each document referred to above.

**1.13 Loan-to-Value Ratio:** The ratio, as determined by Mortgagee, of the aggregate principal balance of the Note and all other Indebtedness secured by liens or



encumbrances against the Property to the fair market value of the Property, as such fair market value is determined by an M.A.I. appraisal satisfactory to Mortgagee and its counsel (the "Appraisal"). Upon Mortgagee's request, Mortgagor shall deliver the Appraisal to Mortgagee at Mortgagor's sole cost and expense. As of the date hereof, the Loan-to-Value Ratio is 58%.

**1.14 Maturity Date:** Means April 15, 2018.

**1.15 Management Agreement:** Means that certain Leasing & Management Agreement, dated as of March 6, 2013, between Mortgagor and Property Manager.

**1.16 Members:** Collectively, the members of Borrower as set forth in the Organizational Certificate. Each of the individuals and entities is individually referred to herein as a "Member".

**1.17 Mortgagee:** The Mortgagee named in the introductory paragraph of this Mortgage, whose legal address is 333 South Wabash Avenue, Chicago, Illinois 60604, together with any future holder of the Note.

**1.18 Mortgagor:** The Mortgagor named in the introductory paragraph of this Mortgage (Taxpayer Identification No. 46-1144116), whose legal address is c/o Colliers International, 420 North 20th Street, Suite 2750, Birmingham, Alabama 35203, together with any future owner of the Property or any part thereof or interest therein.

**1.19 Mortgagor Control Persons:** Shall mean (i) Mortgagor, (ii) each Guarantor, (iii) the managers or managing members of Mortgagor or (iv) any other Person that controls, directly or through one or more intermediaries, any of the Persons set forth in the preceding clause (i), clause (ii) or clause (iii), and any Person that is a managing member, manager, general partner or other owner of such controlling Person or intermediary. For the avoidance of doubt, as of the date of this Mortgage, the term "Mortgagor Control Persons" shall mean (i) Mortgagor and (ii) each Guarantor.

**1.20 Mortgagor Owner Persons:** Shall mean (i) Mortgagor, (ii) each Guarantor, (iii) the Members, (iv) any Person that is a Mortgagor Control Person or (v) any other Person that owns, directly or through one or more intermediaries, any interest in any Person described in the preceding clauses (i), (ii), (iii) or (iv). For the avoidance of doubt, as of the date of this Mortgage, the term "Mortgagor Owner Persons" shall mean (i) Mortgagor (ii) the Members and (iii) each Guarantor.

**1.21 Net Operating Income:** shall mean all Gross Revenues generated by the Property (excluding loans or contributions to capital), less operating expenses (other than debt service payments due under the Loan Documents), as determined on a cash accounting basis, as of the date of such calculation for the period in question, adjusted, however, so that (A) operating expenses shall be deemed to include (1) a management fee equal to the greater of the actual management fee for the Property or four percent (4%) of gross revenues, and (2) a tenant improvement, leasing commission, and capital improvement reserve equal to \$1.25 per rentable square foot, (B) payments of operating expenses, including property taxes and assessments and insurance expenses, are to be spread over the period during which they are payable and shall be adjusted for any known future changes to any such expenses, (C) prepaid rents and other prepaid



payments received are to be spread over the periods during which such rents or payments are earned or applicable, (D) security deposits shall not be included as items of income until duly applied or earned, (E) Gross Revenue shall be based on a lease-in-place analysis that reflects then current Leases in place, as determined by Mortgagee, in its reasonable discretion, in accordance with its standard underwriting criteria, consistently applied, and excluding extraordinary, or one time items, and (F) any refunds or rebates to operating expenses are to be applied and credited against the applicable operating expenses for the period that such operating expenses were incurred.

**1.22 New Amortization Period:** As defined in Section 10.1(b).

**1.23 New Rate:** As defined in Section 10.1(b).

**1.24 Non-Economic Modification:** As defined in Section 10.1(b).

**1.25 Note:** Mortgagor's Promissory Note of even date herewith from Mortgagor, payable to the order of Mortgagee in the original principal amount of \$12,200,000.00, together with all renewals, extensions and modifications of such promissory note. All terms and provisions of the Note are incorporated by this reference in this Mortgage. The Note is due and payable on the Maturity Date (subject to the right of Lender to extend the Maturity Date as set forth in the Note).

**1.26 Organizational Certificate:** The Certificate Concerning Governing Documents of even date herewith by Mortgagor for the benefit of Mortgagee.

**1.27 Permits:** All permits, licenses, certificates, franchises and authorizations necessary for the beneficial development, ownership, use, occupancy, operation and maintenance of the Property and the conduct of the business of Mortgagor.

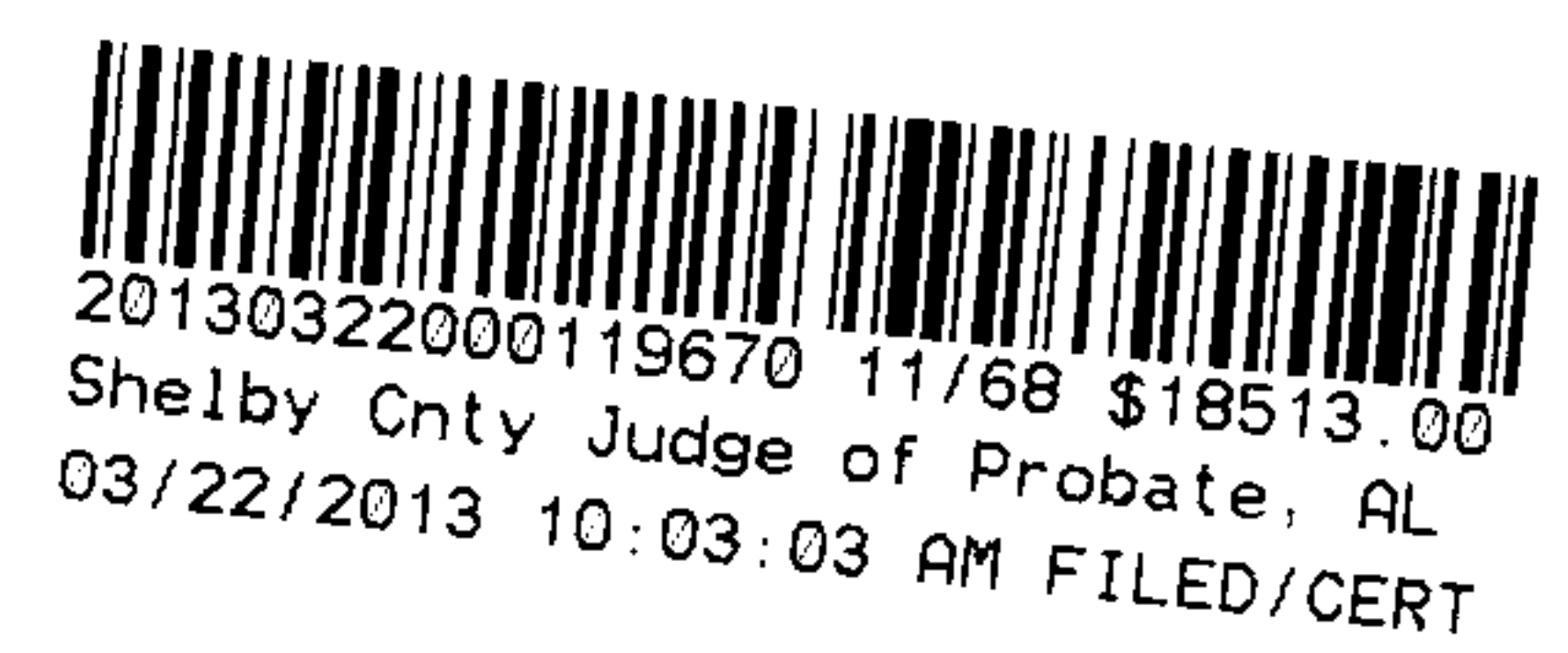
**1.28 Permitted Exceptions:** The matters set forth in Exhibit B attached hereto.

**1.29 Person:** Means an individual, a trust, a corporation, an association, a joint stock company, a business trust, a partnership, a joint venture, a limited liability company, a real estate investment trust, an unincorporated organization, or a government or any agency or political subdivision thereof or any other entity.

**1.30 Pledge Agreement:** The Pledge and Cash Collateral Agreement of even date herewith by and between Mortgagor, Mortgagee and Servicer, as the same may be amended, modified or supplemented from time to time.

**1.31 Property:** All of Mortgagor's right, title and interest, in, to and under any and all of the following described property, whether now owned or held by Mortgagor or hereafter acquired:

(b) The Land, the Improvements and the estates appurtenant thereto;





(c) Any land lying between the boundaries of the Land and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed, and any tidelands or filled lands within the boundaries of the Land;

(d) All Leases and all guaranties thereof and security deposits or other security provided in connection therewith;

(e) All Rents;

(f) All (i) water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated); (ii) ditches and ditch rights; (iii) spring and spring rights; (iv) reservoir and reservoir rights; and (v) shares of stock in water, ditch and canal companies and all other evidence of such rights, that are now owned or hereafter acquired by Mortgagor and that are appurtenant to or that have been used in connection with the Land and the Improvements;

(g) All minerals, crops, timber, trees, shrubs, flowers, and landscaping features now or hereafter located on, under or above the Land and Improvements;

(h) All machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached, and including all trade, domestic and ornamental fixtures) (excluding any such items that are owned by tenants under Leases or that are leased by Mortgagor pursuant to equipment leases with third parties) now or hereafter located in, upon, or under the Land or the Improvements and used or usable in connection with any present or future operation thereof, including but not limited to all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, cooking, and communications apparatus; boilers, water heaters, ranges, furnaces, and burners; appliances; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; and all additions thereto and replacements therefor (excluding, however, any of the foregoing to the extent owned by a tenant under a Lease for so long as the same do not become property of Mortgagor under such Lease);

(i) All development rights associated with the Land, whether previously or subsequently transferred to the Land from other real property or now or hereafter susceptible of transfer from the Land to other real property;

(j) All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any portion of the Land or Improvements;

(k) All other and greater rights and interests of every nature in the Land and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Mortgagor;



(l) All right, title and interest of Mortgagor, if any, in the balance of the property interests associated with the Land or Improvements to the extent not already included in this definition of "Property"; and

(m) Any and all contract rights with respect to, or that may in any way pertain to, the Property, and all refunds, rebates, security deposits or other expectancy under or from any such account or contract right; and

(n) The Access Agreements;

(o) All Permits; and

(p) All insurance proceeds or any other proceeds in respect of each and every of the foregoing.

**1.32 Property Manager:** Means Sandner Commercial Real Estate Inc. d/b/a Colliers International.

**1.33 Recording Office:** Means the Shelby County Recorder of Deeds, State of Alabama.

**1.34 Reserve Agreement:** The Reserve Agreement of even date herewith between Mortgagor and Mortgagee, as the same may be amended, modified or supplemented from time to time.

**1.35 Rent:** Means all Gross Revenues in respect of the Property.

**1.36 Required Lease:** Means those certain leases, as amended, by and between Mortgagor, as landlord, and (i) Allstate Insurance Company, as tenant, dated September 5, 2001 and (ii) DTS Health Solutions Services, LLC, as tenant, dated May 8, 1998.

**1.37 Secured Obligations:** All present and future obligations of Mortgagor to Mortgagee evidenced by or contained in the Note, the Assignment of Leases, the Guaranty Agreement, the Pledge Agreement, the Reserve Agreement, the Insurance Agreement, the Environmental Indemnity Agreement, this Mortgage, the Subordination Agreement, and all other Loan Documents, whether stated in the form of promises, covenants, representations, warranties, conditions, or prohibitions or in any other form whether absolute or contingent, direct or indirect, joint, several or independent, now outstanding or owing or that may hereafter be existing or incurred, arising by operation of law or otherwise, due or to become due under the Loan Documents, or are in any way secured by the Property or any other collateral now or hereafter provided to Mortgagee as collateral for the Loan. If the maturity of the Note secured by this Mortgage is accelerated, the Secured Obligations shall include an amount equal to any prepayment premium that would be payable under the terms of the Note as if the Note were prepaid in full on the date of the acceleration.

**1.38 Servicer:** Means Colliers International-Atlanta, Inc. a Georgia corporation.



**1.39 Single-Purpose Entity:** Means a Person, other than an individual, that (a) is formed or organized solely for the purpose of holding, directly, an ownership interest in the Property, or any portion thereof, or an ownership interest in another Person that holds, directly or indirectly, an ownership interest in the Property, or any portion thereof, (b) does not engage in any business other than the ownership, management and operation of the Property or any portion thereof or of any such other Person described in clause (a) above, (c) does not have any (i) assets other than those related to its interest in the Property or any portion thereof or of any such other Person described in clause (a) above or (ii) Indebtedness other than as expressly permitted by this Mortgage, (d) does not guarantee or otherwise become liable on or in connection with any obligation of any other Person; (e) does not enter into any contract or agreement with any stockholder, partner, principal, member or Affiliate of such Person or any Affiliate of any such stockholder, partner, principal, member or Affiliate except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an Affiliate, (f) does not incur, create or assume any Indebtedness (except as may be expressly permitted pursuant to this Mortgage), (g) does not make any loans or advances to any other Person (including, without limitation, any Affiliate), (h) does not become insolvent or fail to pay its debts from its assets as the same shall become due, (i) does not fail to conduct and operate its business in all material respects as presently conducted and operated, (j) does not fail to maintain its books and records and bank accounts separately from those of its Affiliates, including, without limitation, its general partners or members, as may be applicable, (k) does not fail at all times to hold itself out to the public as a legal entity separate and apart from any other Person (including, without limitation, any Affiliate (including, without limitation, any stockholder, partner, member, trustee, beneficiary, or other owner of Mortgagor or any Affiliate of any such stockholder, partner, member, trustee, beneficiary, or other owner)), (l) does not fail to file its own tax returns, (m) does not fail to maintain adequate capital for its normal obligations, foreseeable in a business of its size and character and in light of its contemplated business operations, (n) does not fail to maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person, (o) does not hold itself out to be responsible for the Indebtedness of any other Person, (p) is subject to and complies with all of the limitations on powers set forth in the organizational documentation (and if a partnership, that of each general partner, and if a limited liability company, that of the managing member (or if there is no managing member, the members)) as in effect on the date hereof, (q) holds all of its assets in its own name, (r) utilizes its own letterhead, invoices and checks, (s) holds title to its interest in the Property in the name of Mortgagor, (t) allocates fairly and reasonably any overhead expenses that are shared with any Affiliate including, without limitation, paying for office space and services performed by any employee of any Affiliate, (u) does not pledge its assets for the benefit of any other Person, and (v) corrects any known misunderstandings regarding its separate identity.

**1.40 SNDA:** Any Subordination, Non-Disturbance and Attornment Agreement entered into in accordance with this Mortgage or any of the other Loan Documents.

**1.41 Subordination Agreement:** The Subordination of Management Agreement of even date herewith made by Mortgagor and Manager, for the benefit of Mortgagee, and any such Subordination of Management Agreement entered into in accordance with Section 4.23 hereof, as the same may be amended, modified or supplemented from time to time.



**1.42 Title Company:** Means Chicago Title Insurance Company.

**1.43 UCC:** Means the Uniform Commercial Code as in effect in the State of Alabama from time to time or, if the creation, perfection and enforcement of any security interest granted under any Loan Document is governed by the laws of a state other than the State of Alabama, then, as to the matter in question, the Uniform Commercial Code as in effect in that state from time to time.

## ARTICLE 2

### GRANTING CLAUSE

**2.1 Grant to Mortgagee.** As security for the Secured Obligations, Mortgagor hereby grants, bargains, sells, conveys, mortgages, and warrants unto Mortgagee, with power of sale, the entire right, title, interest and estate of Mortgagor in and to the Property, whether now owned or hereafter acquired; TO HAVE AND TO HOLD the same, together with all and singular the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Mortgagee and Mortgagee's successors, substitutes and assigns forever.

**2.2 Security Interest to Mortgagee.** As additional security for the Secured Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Property, Chattels and Intangible Personalty. To the extent any of the Property, Chattels or the Intangible Personalty may be or have been acquired with funds advanced by Mortgagee under the Loan Documents, this security interest is a purchase money security interest. This Mortgage constitutes a Security Agreement under the UCC with respect to any part of the Property, Chattels and Intangible Personalty that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all collectively hereinafter called "Collateral"). All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this Section shall not limit the generality or applicability of any other provisions of this Mortgage but shall be in addition thereto:

(a) The Collateral shall be used by Mortgagor solely for business purposes, and all Collateral (other than the Intangible Personalty) shall be installed upon the real estate comprising part of the Property for Mortgagor's own use or as the fixtures, equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Property;

(b) The Collateral (other than the Intangible Personalty) shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the UCC); and the Collateral (other than the Intangible Personalty) may be affixed to such real estate but shall not be affixed to any other real estate;

(c) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will, at its cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee and/or



authorize Mortgagee to file such financing statements and other documents in form and substance satisfactory to Mortgagee and its counsel and will do all such acts and things as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected first-priority security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances other than the Permitted Exceptions; and Mortgagor will pay the cost of filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(d) The terms and provisions contained in this Section and in Section 7.6 of this Mortgage shall, unless the context otherwise requires, have the meanings and be construed as provided in the UCC; and

(e) This Mortgage constitutes a financing statement under the UCC with respect to the Collateral. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. The filing of this Mortgage in the real estate records of the county where the Property is located shall constitute a fixture filing in accordance with the UCC. Information concerning the security interests created hereby may be obtained at the addresses set forth in Article 1 of this Mortgage. Mortgagor is the "Debtor" and Mortgagee is the "Secured Party" (as those terms are defined and used in the UCC) insofar as this Mortgage constitutes a financing statement.

### ARTICLE 3

#### MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

**3.1 Warranty of Title.** Mortgagor represents and warrants to Mortgagee that:

(a) Mortgagor owns and holds good, marketable and indefeasible fee simple title to the Property, and such fee simple title is free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions.

(b) Mortgagor is the sole and absolute owner of the Chattels, the Intangible Personalty and the other Collateral, free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions.

(c) This Mortgage is a valid and enforceable first-priority lien and security interest on the Property, Chattels, Intangible Personalty and the other Collateral, subject only to the Permitted Exceptions.

(d) Mortgagor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular of the Property and all liens, security interests and other property interests granted and conveyed pursuant to this Mortgage and the other Loan Documents, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

(e) The representations, warranties and covenants contained in this Section shall survive foreclosure of this Mortgage, and shall inure to the benefit of and be enforceable by



any person who may acquire title to the Property, the Chattels, or the Intangible Personalty (or any portion thereof) pursuant to any such foreclosure.

**3.2 Due Authorization.** If Mortgagor is other than a natural person, then each individual who executes this document on behalf of Mortgagor represents and warrants to Mortgagee that such execution has been duly authorized by all necessary corporate, partnership, limited liability company or other action on the part of Mortgagor. Mortgagor represents that Mortgagor has obtained all consents and approvals required in connection with the execution, delivery and performance of this Mortgage.

**3.3 Other Representations and Warranties.** Mortgagor represents and warrants to Mortgagee as follows:

(a) Mortgagor is (i) a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) authorized to transact business and in good standing under the laws of the State of Alabama, (iii) the sole owner of the Property, (iv) a Single Purpose Entity, (v) owned by the Members as set forth in the Organizational Certificate, and (vi) Controlled by the Guarantors.

(b) Each Guarantor is the owner of a direct interest in Mortgagor.

(c) The execution, delivery and performance by the Mortgagor Control Persons of the Loan Documents to which any of the Mortgagor Control Persons are a party are within the power and authority of each such Mortgagor Control Person and have been duly authorized by all necessary action and will not violate any provision of the certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, operating agreement or other organizational documents of any such Mortgagor Control Person.

(d) This Mortgage and the other Loan Documents to which any of the Mortgagor Control Persons are a party will, when delivered hereunder, be valid and binding obligations of each such Mortgagor Control Person enforceable against each such Mortgagor Control Person in accordance with their respective terms, except as limited by equitable principles and bankruptcy, insolvency and similar laws affecting creditors' rights.

(e) The execution, delivery and performance by the Mortgagor Control Persons of the Loan Documents to which any of the Mortgagor Control Persons are a party will not contravene any contractual or other restriction binding on or affecting such Mortgagor Control Persons and will not result in or require the creation of any lien, security interest, other charge or encumbrance (other than pursuant hereto) upon or with respect to any of its or their respective properties.

(f) The execution, delivery and performance by the Mortgagor Control Persons of the Loan Documents to which any of the Mortgagor Control Persons are a party does not contravene any applicable law or regulation.

(g) No authorization, approval, consent or other action by, and no notice to or filing with, any court, governmental authority or regulatory body is required for the due execution, delivery and performance by the Mortgagor Control Persons and the Guarantors of



any of the Loan Documents or the effectiveness of any assignment of any of Mortgagor's rights and interests of any kind to Mortgagee.

(h) No part of the Property, Chattels, Intangible Personalty or other Collateral is in the hands of a receiver, no application for a receiver is pending with respect to any portion of the Property, Chattels, Intangible Personalty or other Collateral, and no part of the Property, Chattels, or Intangible Personalty is subject to any foreclosure or similar proceeding.

(i) None of the Mortgagor Control Persons has made any assignment for the benefit of creditors, nor has any of the Mortgagor Control Persons filed, or had filed against it, any petition in bankruptcy.

(j) There is no pending or, to the best of Mortgagor's knowledge, threatened, litigation, action, proceeding or investigation, including, without limitation, any condemnation proceeding, against any of the Mortgagor Control Persons or the Property before any court, governmental or quasi-governmental, arbitrator or other authority.

(k) Each of the Mortgagor Control Persons is a "non-foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

(l) Access to and egress from the Property to a public street are available and are provided by public streets, and Mortgagor has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system in the vicinity of the Property or to restrict or change access from any such public street, highway or road to the Property.

(m) All public utility services necessary for the operation of all improvements constituting part of the Property for their intended purposes are available at the boundaries of the Land constituting part of the Property, including water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone facilities, cable television facilities and high speed Internet access facilities.

(n) The Property is located in zoning districts designated Planned Office (PO) by the Shelby County planning Commission. Such designation permits the development, use and operation of the Property as it is currently operated as a permitted, and not as a non-conforming use. The Property complies in all material respects with all zoning ordinances, regulations, requirements, conditions and restrictions, including but not limited to deed restrictions and restrictive covenants, applicable to the Property.

(o) There are no special or other assessments for public improvements or otherwise now affecting the Property, nor does Mortgagor know of any pending or threatened special assessments affecting the Property or any contemplated improvements affecting the Property that may result in special assessments. There are no tax abatements or exceptions affecting the Property. To the best knowledge and belief, after due inquiry, of Mortgagor, there are no license fees or similar charges required in respect to any filled land or in respect of any tideland or bodies of water.



(p) Each of the Mortgagor Control Persons filed or has obtained extensions to file all tax returns that are required to be filed by it, and has paid all taxes as shown on such returns or on any assessment received pertaining to the Property.

(q) Mortgagor has not received (i) any written notice from any governmental body having jurisdiction over the Property as to any violation of any applicable law, except as disclosed in Title Commitment No. ALT-130009 issued by the Title Company, or (ii) any written notice from any insurance company or inspection or rating bureau setting forth any requirements as a condition to the continuation of any insurance coverage on or with respect to the Property or the continuation thereof at premium rates existing at present, that, in either case, has not been remedied or satisfied.

(r) None of the Mortgagor Control Persons is in default, in any manner that would adversely affect its properties, assets, operations or condition (financial or otherwise), in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it is a party or by which it or any of its properties, assets or revenues are bound.

(s) Except as set forth in the Lease Certificate, there are no occupancy rights (written or oral), Leases or tenancies presently affecting any part of the Property. The Lease Certificate contains a true and correct description of all Leases presently affecting the Property. No written or oral agreements or understandings exist between Mortgagor and the tenants under the Leases described in the Lease Certificate that grant such tenants any rights greater than those described in the Lease Certificate or that are in any way inconsistent with the rights described in the Lease Certificate.

(t) There are no purchase options, purchase contracts or other similar purchase or sale agreements of any type (written or oral) presently affecting any part of the Property.

(u) There exists no brokerage agreement with respect to any part of the Property, except to the extent disclosed in the Lease Certificate and except for the Management Agreement with Property Manager.

(v) Except as otherwise disclosed to Mortgagee in the Lease Certificate, (i) there are no contracts (other than Leases) presently affecting the Property ("Contracts") having a term in excess of one hundred eighty (180) days or not terminable by Mortgagor (without penalty) on thirty (30) days' notice; (ii) Mortgagor has heretofore delivered to Mortgagee true and correct copies of each of the Contracts together with all amendments thereto; (iii) Mortgagor is not in default of any obligations under any of the Contracts; and (iv) the Contracts represent the complete agreement between Mortgagor and such other parties as to the services to be performed or materials to be provided thereunder and the compensation to be paid for such services or materials, as applicable, and except as otherwise disclosed herein, such other parties possess no unsatisfied claims against Mortgagor.

(w) Mortgagor has obtained all Permits necessary for the operation, use, ownership, development, occupancy and maintenance of the Property for its current use and



occupancy and the use and occupancy as set forth under the Leases. None of the Permits has been suspended or revoked, and all of the Permits are in full force and effect, are fully paid for, and Mortgagor has made or will make application for renewals of any of the Permits prior to the expiration thereof. Mortgagor has not received any written notice of default or notice terminating or threatening to terminate any such Permit.

(x) All insurance policies held by Mortgagor relating to or affecting the Property are in full force and effect and shall remain in full force and effect until all Secured Obligations are satisfied. Mortgagor has not received any written notice of default or notice terminating or threatening to terminate any such insurance policies prior to the expiration thereof. Mortgagor has made or will make application for renewals of any of such insurance policies prior to the expiration thereof.

(y) Mortgagor currently complies with ERISA. Neither the making of the loan evidenced by the Note and secured by this Mortgage nor the exercise by Mortgagee of any of its rights under the Loan Documents constitutes or will constitute a non-exempt, prohibited transaction under ERISA.

(z) The Access Agreements, if any, are in full force and effect and there are no defaults thereunder by Mortgagor or, to Mortgagor's actual knowledge, after due inquiry, any other party and no conditions which with the passage of time and/or notice would constitute defaults thereunder.

(aa) Mortgagor is not insolvent and the obligations of Mortgagor set forth in this Mortgage and the other Loan Documents will not render Mortgagor insolvent. Mortgagor has no outstanding debt or liabilities other than the liabilities created pursuant to this Mortgage and the other Loan Documents.

(bb) As of the date hereof, none of the Mortgagor Control Persons has any offsets, claims, counterclaims or defenses against Mortgagee or any of the Secured Obligations, and any such offsets, claims, counterclaims or defenses are hereby waived.

(cc) Mortgagor does not receive more than five percent (5%) of its revenue from business conducted in or with countries sanctioned by the U.S. Treasury Department of Foreign Assets Control, except in connection with "Country Sanction Programs" promulgated thereby.

**3.4 Continuing Effect.** Subject to Section 16 of the Note and Section 9.21 of this Mortgage, Mortgagor shall be liable to Mortgagee for any damage suffered by Mortgagee if any of the foregoing representations are inaccurate as of the date hereof, regardless of when such inaccuracy may be discovered by, or result in harm to, Mortgagee. Mortgagor further represents and warrants that the foregoing representations and warranties, as well as all other representations and warranties of Mortgagor to Mortgagee relative to the Loan Documents, shall remain true and correct during the term of the Note and shall survive termination of this Mortgage.



## ARTICLE 4

### MORTGAGOR'S AFFIRMATIVE COVENANTS

**4.1 Payment of Note.** Mortgagor will pay all principal, interest, and other sums payable under the Note or the other Loan Documents on the date when such payments are due, without notice or demand.

**4.2 Performance of Other Obligations.** Mortgagor will promptly and strictly perform and comply with all other covenants, conditions, and prohibitions required of Mortgagor by the terms of the Loan Documents.

**4.3 Other Encumbrances.** Mortgagor will promptly and strictly perform and comply with all covenants, conditions, and prohibitions required of Mortgagor in connection with any Access Agreement and any other encumbrance affecting the Property, the Chattels, the Intangible Personalty or the other Collateral or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof.

**4.4 Payment of Taxes.**

(a) Property Taxes. Mortgagor shall (i) pay, before delinquency and before the imposition of any penalty or interest, all taxes and assessments, general or special, that may be levied or imposed at any time against the Property, the Chattels, the Intangible Personalty or the other Collateral, (ii) within ten (10) days after each payment of any such tax, assessment, Mortgagor will deliver to Mortgagee, without notice or demand, an official receipt for such payment. At Mortgagee's option, Mortgagee may retain the services of a firm to monitor the payment of all taxes, assessments relating to the Property, the cost of which shall be borne by Mortgagor. Mortgagor shall provide Mortgagee with satisfactory evidence of the payment of all such taxes, assessments, general or special, that may be levied or imposed at any time against Mortgagor's interest and estate in the Property, the Chattels, the Intangible Personalty or the other Collateral not later than the date that is ten (10) days following any such payment.

(b) Deposit for Taxes. Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to make the next annual payment of taxes, assessments and similar governmental charges referred to in this Section, multiplied by the number of whole or partial months that have elapsed since the date one month prior to the most recent due date for such taxes, assessments and similar governmental charges. Thereafter, in addition to each monthly payment under the Note, Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to pay the next annual payment of taxes, assessments and similar governmental charges referred to in this Section. The purpose of these provisions is to assure Mortgagee that there will be sufficient funds to cover all of such taxes, assessments and other governmental charges thirty (30) days before the date on which they become past due. If the Mortgagee, in its sole discretion, determines that the funds escrowed hereunder are, or will be, insufficient, Mortgagor shall upon demand pay such additional sums as Mortgagee shall determine necessary and shall pay any increased monthly charges requested by Mortgagee. Provided no Event of Default exists hereunder, Mortgagee will apply the amounts so deposited to the payment of such taxes,



assessments, and other charges when due, but in no event will Mortgagee be liable for any deficiency or for any interest on any amount so deposited, and any amount so deposited may be held and commingled with Mortgagee's own funds.

(c) Intangible Taxes. If any tax, assessment, or similar charge is imposed against the Note, Mortgagee or any interest of Mortgagee in any real or personal property encumbered hereby, Mortgagor will pay such tax, assessment, or other charge before delinquency and will indemnify Mortgagee against all loss, expense, or diminution of income in connection therewith. In the event Mortgagor is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Mortgagor from doing so, then the Note will, at Mortgagee's option, become due and payable in full upon thirty (30) days' notice to Mortgagor.

(d) Right to Contest. Notwithstanding any other provision of this Section, Mortgagor will not be deemed to be in default solely by reason of Mortgagor's failure to pay any tax, assessment or similar governmental charge so long as, in Mortgagee's judgment, each of the following conditions is satisfied:

(i) Mortgagor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such tax, assessment, or charge; and

(ii) Mortgagor's payment of such tax, assessment, or charge would necessarily and materially prejudice Mortgagor's prospects for success in such proceedings; and

(iii) Nonpayment of such tax, assessment, or charge will not result in the loss or forfeiture of any property encumbered hereby or any interest of Mortgagee therein; and

(iv) Mortgagor deposits with Mortgagee, as security for such payment that may ultimately be required, a sum equal to the amount of the disputed tax, assessment or charge plus the interest, penalties, advertising charges, and other costs that Mortgagee estimates are likely to become payable if Mortgagor's contest is unsuccessful. For the avoidance of doubt, the funds required to be deposited with Mortgagee under this subsection (iv) shall be in addition to all taxes, assessments and other governmental charges that are not being contested.

If Mortgagee determines that any one or more of such conditions is not satisfied or is no longer satisfied, Mortgagor will pay the tax, assessment, or charge in question, together with any interest and penalties thereon, within ten (10) days after Mortgagee gives notice of such determination.

#### **4.5 Maintenance of Insurance.**

(a) Coverages Required. Mortgagor shall maintain or cause to be maintained, with financially sound and reputable insurance companies or associations satisfactory to Mortgagee and its counsel, all insurance required under the terms of the Insurance Agreement,



and shall comply with each and every covenant and agreement contained in such Insurance Agreement. Mortgagor shall provide Mortgagee with satisfactory evidence of the payment of the premiums of all such insurance within five (5) Business Days following the any such payment.

(b) Renewal Policies. Not less than thirty (30) days prior to the expiration date of each insurance policy required pursuant to the Insurance Agreement, Mortgagor will deliver to Mortgagee either an appropriate renewal policy (or a certified copy thereof or a certificate of insurance and the other documents required to be delivered under the Insurance Agreement), together with evidence satisfactory to Mortgagee and its counsel that the applicable premium has been prepaid.

(c) Deposit for Premiums. Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to make the next annual payments of the premiums for the policies of insurance referred to in this Section 4.5, multiplied by the number of whole and partial months that have elapsed since the date one month prior to the most recent policy anniversary date for each such policy. Thereafter, in addition to each monthly payment under the Note, Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section 4.5. The purpose of these provisions is to assure Mortgagee that there will be sufficient funds to cover all of such premiums thirty (30) days before the date on which they become past due. If the Mortgagee, in its sole discretion, determines that the funds escrowed hereunder are, or will be, insufficient, Mortgagor shall upon demand, pay such additional sums as Mortgagee shall determine necessary and shall pay any increased monthly charges requested by Mortgagee. Provided no Event of Default exists hereunder, Mortgagee will apply the amounts so deposited to the payment of such insurance premiums when due, but in no event will Mortgagee be liable for any deficiency or for any interest on any amounts so deposited, and the money so received may be held and commingled with Mortgagee's own funds.

(d) Application of Hazard Insurance Proceeds. Mortgagor shall after learning thereof promptly notify Mortgagee of any damage or casualty to all or any portion of the Property or Chattels. Mortgagee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any insurance proceeds that may be payable as a result of such casualty or damage, and may, in Mortgagee's sole discretion, compromise or settle, in the names of both Mortgagor and Mortgagee, any claim for any such insurance proceeds. Any compromise or settlement for any award or payment that may be due as a result of any such taking or damage shall be subject to the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole discretion. Any such insurance proceeds shall be paid directly to Mortgagee and shall be applied first to reimburse Mortgagee for all costs and expenses, including, without limitation, attorneys' fees, incurred by Mortgagee in connection with the ascertainment and collection of such insurance proceeds. The balance, if any, of any insurance proceeds received by Mortgagee with respect to an insured damage or casualty shall, in Mortgagee's sole discretion, either (i) be retained and applied by Mortgagee toward payment of the Secured Obligations, in such order and manner as Mortgagee deems appropriate, or (ii) be paid over, in whole or in part and subject to such conditions as Mortgagee may impose, to Mortgagor to pay for repairs or replacements necessitated by the damage or casualty; provided, however, that if all of the Secured Obligations have been performed or are



discharged by the application of less than all of such insurance proceeds, then any remaining proceeds will be paid over to Mortgagor. Notwithstanding the foregoing provisions of this Section 4.5(d), Mortgagee shall make any such insurance proceeds available to Mortgagor for restoration of the Property, provided, and on the following conditions: (A) no Default or Event of Default shall have occurred and be continuing, (B) Mortgagor demonstrates to the satisfaction of Mortgagee that Mortgagor has the financial ability to pay all principal and interest required under the Note, and perform all of the other Secured Obligations, during the period required for the restoration of the Property from the proceeds of rent loss or business interruption insurance or otherwise, (C) the damage or casualty occurs prior to the last six (6) months of the term of the Loan and the restoration is capable of being completed prior to the stated maturity date of the Loan, (D) all insurance proceeds and other funds provided by Mortgagor for the restoration are released under reserve and construction funding arrangements satisfactory to Mortgagee and its counsel, (E) the repair or restoration will return the Property to substantially the same size, design and utility as existed immediately prior to the damage or casualty, (F) in the event the proceeds of insurance are by themselves insufficient to pay for the restoration (as determined in good faith by Mortgagee), Mortgagor shall, prior to the commencement of any restoration work, deposit with Mortgagee, or as Mortgagee directs, within fifteen (15) days after the date on which the proceeds of insurance are received by Mortgagee such additional funds as in the good faith opinion of Mortgagee are necessary to complete the restoration, (G) Mortgagor undertakes and covenants and agrees (in writing) with Mortgagee to fund any and all deficiencies within fifteen (15) days after being notified in writing thereof and prior to the distribution of any further insurance proceeds, so that at all times the funds held by Mortgagee and remaining to be disbursed for purposes of the restoration shall be sufficient to complete the work, (H) the annual income from the Leases that are in existence as of the date hereof or executed in accordance with the provisions of this Mortgage and that will survive the restoration or repair of the Property produce a Debt Service Coverage Ratio of not less than 1.4 to 1.0, and Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor will be able to attain Debt Service Coverage Ratio of at least 1.6 to 1.0 from Leases (that are in existence as of the date hereof or that are executed following the date hereof in accordance with the provisions of this Mortgage) within six (6) months after completion of the restoration and (I) if any site plan amendment, variance, special use permit or other similar special approval or consent is required from any government authority or any other Person for such repair or restoration, Mortgagor shall obtain and deliver to Mortgagee such site plan amendment, variance, special use permit or other similar special approval or consent within one hundred eighty (180) days following such casualty or damage (but such one hundred eighty (180) day time period shall in all respects be subject to the foregoing provisions of this Section 4.5(d) and shall not extend or otherwise modify any time periods in such foregoing provisions). Mortgagee may, prior to the application of insurance proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion. If Mortgagee applies the insurance proceeds to the Secured Obligations due to the failure of the conditions under clause (H) of this Section 4.5(d) to be satisfied, then Mortgagor may, upon written notice delivered to Mortgagee within thirty (30) days following such application of the insurance proceeds to the Secured Obligations, elect to prepay the full principal amount of the Loan and all other amounts due under the Loan Documents, together with all accrued but unpaid interest thereon, and all other Secured Obligations, without any prepayment premium or penalty, such prepayment to be made within one-hundred eighty (180) days following such application of the insurance



proceeds; provided, however, that Mortgagor continues to pay and fulfill all of Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents up to and including the date of such full prepayment. Notwithstanding the foregoing provisions of this Section 4.5, in the event the insurance proceeds are less than the lesser of (x) five percent (5%) of the then-current principal balance of the Loan and (b) \$500,000 and there does not exist any Default or Event of Default, then (i) Mortgagor may compromise or settle the claim for such proceeds, (ii) the proceeds shall be paid directly to Mortgagor and (iii) Mortgagor shall undertake and complete the repair or restoration of the Property so as to return the Property to substantially the same size, design and utility as existed immediately prior to the damage or casualty and shall fund any deficiency in the event such proceeds are insufficient to complete such repair or restoration.

Mortgagee will have no obligation to see to the proper application of any proceeds paid over to Mortgagor, nor will any such proceeds received by Mortgagee bear interest or be subject to any other charge for the benefit of Mortgagor. If such proceeds are deposited with Mortgagee, Mortgagee may, prior to the application of such proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

(e) Successor's Rights. Any person who acquires title to the Property or the Chattels upon foreclosure or deed in lieu of foreclosure hereunder will succeed to all of Mortgagor's rights under all policies of insurance maintained pursuant to this Section.

#### **4.6 Maintenance and Repair of Property, Chattels and the Other Collateral; Contracts.**

(a) Mortgagor shall at all times maintain the Property, the Chattels and the other Collateral in good condition and repair, will diligently prosecute the completion of any building or other improvement that is at any time in the process of construction on the Property, and will promptly repair, restore, replace, or rebuild any part of the Property, the Chattels or the other Collateral that may be affected by any casualty or any public or private taking or injury to the Property, the Chattels or the other Collateral. All costs and expenses arising out of the foregoing shall be paid by Mortgagor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Mortgagor shall maintain access to and egress from the Property by public streets. Subject to the provisions of Section 4.15(b), Mortgagor will comply with (or cause compliance with) all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property, including but not limited to, any zoning requirements, any environmental or ecological requirements and any requirements regarding access for persons with disabilities. Mortgagee and any Person authorized by Mortgagee may enter and inspect the Property at all times, and may inspect the Chattels and/or the other Collateral, wherever located, at all times. Mortgagor shall take all actions necessary or required under the Leases to effect the provisions of the immediately preceding sentence. Mortgagor shall maintain all public utility services (including, without limitation, water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone, cable television and high speed internet access facilities) necessary for the operation of the Property (including, without limitation, improvements constituting part of the Property) for its intended purposes, and, without limiting such



maintenance requirement, shall maintain such services at the boundaries of the Land constituting part of the Property. Mortgagor shall comply (or cause compliance with) with all requirements of any insurance company or inspection or rating bureau in respect of the Property, including, without limitation, any requirements for the continuation of any insurance coverage or the continuation thereof at premium rates. Mortgagor shall timely pay and perform in all material respects each of its obligations under or in connection with the Contracts. Mortgagor shall not, without Mortgagee's consent, enter into any Contract that has a term in excess of one hundred eighty (180) days unless such Contract is terminable by Mortgagor (without penalty) on thirty (30) days' notice (or provides that it may be canceled upon an Event of Default under this Mortgage), except for any Contract disclosed in the Lease Certificate. Neither Mortgagor nor any of the Mortgagor Control Persons shall enter into any contract or agreement that contravenes any of the Loan Documents or that provides or has the effect that the performance of the Loan Documents constitutes a default under such contract or agreement or results in the creation of any lien, security interest, other charge or encumbrance upon or with respect to its properties. Mortgagor shall perform, observe and fulfill, in all material respects, and shall cause each Guarantor to perform, observe and fulfill, in all material respects, all of the obligations, covenants and conditions set forth in any agreement or instrument to which Mortgagor or such Guarantor, as the case may be, or any of the properties, assets or revenues of Mortgagor or such Guarantor, as the case may be, are bound, if the failure to perform, observe or fulfill any such obligation, covenant or condition would materially and adversely affect the properties, assets, operations or condition (financial or otherwise) of Mortgagor or such Guarantor, as the case may be, or the ability of any party to the Loan Documents to perform such party's obligations under the Loan Documents.

(b) On or prior to the date hereof, Borrower shall open a separate account (the "Working Capital Account") with a financial institution reasonably acceptable to Lender. At all times prior to the full indefeasible satisfaction of the Secured Obligations, the Working Capital Account shall (i) have sufficient funds to pay all operating expenses in respect of the Property as they arise and when such payments become due prior to any penalties thereon or liens or encumbrances placed on the Property and (ii) shall be under the sole dominion and control of Borrower. At all times prior to the full indefeasible satisfaction of the Secured Obligations, Borrower shall provide Lender and Servicer with electronic access to view the statements and activity of the Working Capital Account on demand. All costs and expenses for establishing and maintaining the Working Capital Account shall be paid by Borrower.

#### **4.7 Leases.**

(a) Mortgagor shall timely pay and perform each of its obligations under or in connection with the Leases, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms. Mortgagor shall within three (3) Business Days following receipt thereof, furnish to Mortgagee copies of all notices given to Mortgagor by the lessee under any Lease, alleging the default by Mortgagor in the timely payment or performance of its obligations under such Lease, or purporting to terminate or cancel any Lease or inform Mortgagee that such tenant intends to vacate or otherwise abandon all or any portion of the Property covered by such Lease prior to its stated expiration date, or requiring or demanding the expenditure of any sum by Mortgagor, demanding the taking of any action by Mortgagor or requesting any consent or



approval of Mortgagor, and any subsequent communications related thereto. Mortgagor agrees that Mortgagee, in its sole discretion, may advance any sum or take any action that Mortgagee believes is necessary or required to maintain the Leases in full force and effect, and all such sums advanced by Mortgagee, together with all costs and expenses incurred by Mortgagee in connection with action taken by Mortgagee pursuant to this Section, shall be due and payable by Mortgagor to Mortgagee upon demand, shall bear interest until paid at the Default Rate, and shall be secured by this Mortgage.

(b) Without limiting the provisions of Section 4.7(a), Mortgagor shall pay and/or perform, as applicable, each of the obligations of Mortgagor under or in connection with the Leases.

**4.8 Eminent Domain; Private Damage.** If all or any part of the Property is taken or damaged by eminent domain or any other public or private action, Mortgagor will notify Mortgagee promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to such action. Mortgagee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment that may be due as a result of such taking or damage, and may, in Mortgagee's sole discretion, compromise or settle, in the names of both Mortgagor and Mortgagee, any claim for any such award or payment. Any compromise or settlement for any award or payment that may be due as a result of any such taking or damage shall be subject to the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole discretion. Any such award or payment shall be paid directly to Mortgagee and shall be applied first to reimburse Mortgagee for all costs and expenses, including, without limitation, attorneys' fees, incurred by Mortgagee in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment received by Mortgagee with respect to a condemnation shall, in Mortgagee's sole discretion, either (i) be retained and applied by Mortgagee toward payment of the Secured Obligations, in such order and manner as Mortgagee deems appropriate, or (ii) be paid over, in whole or in part and subject to such conditions as Mortgagee may impose, to Mortgagor for the purpose of restoring, repairing, or rebuilding any part of the Property affected by the taking or damage. Notwithstanding the foregoing provisions of this Section 4.8, Mortgagee shall make any such award or payment available to Mortgagor for restoration of the Property, provided, and on the following conditions: (A) no Default or Event of Default shall have occurred and be continuing, (B) Mortgagor demonstrates to the satisfaction of Mortgagee that Mortgagor has the financial ability to pay all principal and interest required under the Note, and perform all of the other Secured Obligations, during the period required for the restoration of the Property from the proceeds of rent loss or business interruption insurance or otherwise, (C) the taking occurs prior to the last six (6) months of the term of the Loan and the restoration is capable of being completed prior to the stated maturity date of the Loan, (D) any condemnation award and other funds provided by Mortgagor for the restoration are released under escrow and construction funding arrangements satisfactory to Mortgagee and its counsel, (E) the repair or restoration will return the Property to substantially the same size, design and utility as existed immediately prior to the damage, (F) in the event the condemnation award is by itself insufficient to pay for the restoration (as determined in good faith by Mortgagee), Mortgagor shall, prior to the commencement of any restoration work, deposit with Mortgagee within fifteen (15) days after the date on which the condemnation award is received by Mortgagee such additional funds as in the good faith opinion of Mortgagee are necessary to complete the restoration; (G) Mortgagor



undertakes and covenants and agrees (in writing) with Mortgagee to fund any and all deficiencies within fifteen (15) days after being notified in writing thereof and prior to the distribution of any further portion of the condemnation award, so that at all times the funds held by Mortgagee and remaining to be disbursed for purposes of the restoration shall be sufficient to complete the work; (H) the annual income from the Leases that are in existence as of the date hereof or executed in accordance with the provisions of this Mortgage and that will survive the restoration or repair of the Property produce a Debt Service Coverage Ratio of not less than 1.4 to 1.0, and Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor will be able to attain Debt Service Coverage Ratio of at least 1.6 to 1.0 from Leases (that are in existence as of the date hereof or that are executed following the date hereof in accordance with the provisions of this Mortgage) within six (6) months after completion of the restoration; and (I) if any site plan amendment, variance, special use permit or other similar special approval or consent is required from any government authority or any other Person for such repair or restoration, Mortgagor shall obtain and deliver to Mortgagee such site plan amendment, variance, special use permit or other similar special approval or consent within one hundred eighty (180) days following such taking or condemnation (but such one hundred eighty (180) day time period shall in all respects be subject to the foregoing provisions of this Section 4.8 and shall not extend or otherwise modify any time periods in such foregoing provisions). Mortgagee may, prior to the application of any condemnation award, commingle it with Mortgagee's own funds and otherwise act with regard to such award as Mortgagee may determine in Mortgagee's sole discretion. If Mortgagee applies the condemnation award to the Secured Obligations due to the failure of the conditions under clause (H) of this Section 4.8 to be satisfied, then Mortgagor may, upon written notice delivered to Mortgagee within thirty (30) days following such application of the condemnation award to the Secured Obligations, elect to prepay the full principal amount of the Loan and all other amounts due under the Loan Documents, together with all accrued but unpaid interest thereon, and all other Secured Obligations, without any prepayment premium or penalty, such prepayment to be made within one-hundred eighty (180) days following such application of the condemnation award; provided, however, that Mortgagor continues to pay and fulfill all of Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents up to and including the date of such full prepayment. If this Mortgage has been foreclosed prior to Mortgagee's receipt of such award or payment, Mortgagee may nonetheless retain such award or payment to the extent required to reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations. Notwithstanding the foregoing provisions of this Section 4.8, in the event any condemnation award is less than the lesser of (x) five percent (5%) of the then-current principal balance of the Loan and (b) \$500,000 and there does not exist any Default or Event of Default, then (i) Mortgagor may compromise or settle the claim for such condemnation award, (ii) the condemnation award shall be paid directly to Mortgagor and (iii) Mortgagor shall undertake and complete the repair or restoration of the Property so as to return the Property to substantially the same size, design and utility as existed immediately prior to the taking and shall fund any deficiency in the event such awards are insufficient to complete such repair or restoration.

Mortgagee will have no obligation to see to the proper application of any proceeds paid over to Mortgagor, nor will any such proceeds received by Mortgagee bear interest or be subject to any other charge for the benefit of Mortgagor. If such proceeds are deposited with Mortgagee, Mortgagee may, prior to the application of such proceeds, commingle them with Mortgagee's



own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

**4.9 Mechanics' Liens.** Mortgagor will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen, and other such persons, and will cause any recorded statement of any such lien to be released of record within sixty (60) days after the recording thereof. Notwithstanding the preceding sentence, however, Mortgagor will not be deemed to be in default under this Section 4.9 if and so long as Mortgagor (a) contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, (b) provides Mortgagee with such security as Mortgagee may require to protect Mortgagee against all loss, damage, and expense, including, without limitation, attorneys' fees, that Mortgagee might incur if the asserted lien is determined to be valid (which security may, at the option of Mortgagor, be in the form of a bond over such lien, provided that such bond either removes any such lien of record or prevents the filing of or enforcement of any such lien of record).

**4.10 Defense of Actions.** Mortgagor will defend, at Mortgagor's expense, any action, proceeding or claim that affects any property, including, without limitation, the Property, encumbered hereby or any interest of Mortgagee in such property including, without limitation, the Property, or in the Secured Obligations, and will indemnify and hold Mortgagee harmless from and against all loss, damage, cost, or expense, including attorneys' fees, that Mortgagee may incur in connection therewith.

**4.11 Expenses of Enforcement.** Mortgagor will pay all costs and expenses, that Mortgagee may incur in connection with any effort or action (whether or not litigation or foreclosure is involved) to enforce or defend Mortgagee's rights and remedies under any of the Loan Documents, including but not limited to all attorneys' fees, appraisal fees, consultants' fees, and other expenses incurred by Mortgagee in securing title to or possession of, and realizing upon, any security for the Secured Obligations. All such costs and expenses (together with interest thereon at the Default Rate from the date incurred) shall constitute part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage.

**4.12 Financial Reports.** Mortgagor shall furnish to Mortgagee (a) within thirty (30) days following the end of each fiscal year and quarter of Mortgagor, Mortgagor's operating statements for the Property as of the end of and for such fiscal year and quarter, in each case prepared against the budget for such fiscal year and quarter, as may be applicable; (b) contemporaneously with the delivery of such operating statements of the Property, a rent roll certified, signed and dated by Mortgagor detailing the names of all tenants under the Leases, the portion of the improvements on the Property occupied by each tenant, the rent and any other charges payable under each Lease and the term of each Lease; (c) contemporaneously, with the delivery of the annual operating statements of the Property, the annual balance sheet and profit and loss statement of Mortgagor and each Guarantor and (d) quarterly financial statements, financial calculations and other reports and documentation demonstrating, as of the last day of the applicable calendar quarter, that the Debt Service Coverage Ratio was not less than 1.20 to 1.00. The financial statements and reports described in (a), (c) and (d) above shall be in such



form and in such detail as Mortgagee and its counsel may require, shall be prepared by a certified public accountant in accordance with generally acceptable accounting principles consistently applied, and shall be certified as true and correct by Mortgagor or the applicable Guarantor, as may be applicable (or if required by Mortgagee, such financial statements and reports of Mortgagor shall be certified as true and correct by an independent certified public accountant acceptable to Mortgagee). Mortgagor shall file and pay its annual tax returns and taxes in a timely manner. Mortgagor shall also furnish or cause to be furnished to Mortgagee within thirty (30) days after Mortgagee's request, any other financial reports or statements of Mortgagor, including, without limitation, statements with respect to the Working Capital Account, audited financial statements, balance sheets, profit and loss statements, tax returns, other financial statements, and certified rent rolls, required under any of the Loan Documents, requested by any regulatory or governmental authority exercising jurisdiction over Mortgagee, or requested by Mortgagee after the occurrence and during the continuance of any Default, certified as true and correct by Mortgagor. Following the occurrence and during the existence of any Event of Default, or if Mortgagee securitizes the Loan, Mortgagor shall deliver to Mortgagee the items required in (a) and (b) above on a monthly basis.

**4.13 Priority of Leases.** To the extent Mortgagor has the right, under the terms of any Lease, to make such Lease subordinate to the lien hereof, Mortgagor will, at Mortgagee's request and Mortgagor's expense, take such action as may be required to effect such subordination. Conversely, Mortgagor will, at Mortgagee's request and Mortgagor's expense, take such action as may be necessary to subordinate the lien hereof to any future Lease designated by Mortgagee. The standard form of Lease used by Mortgagor shall provide that the Lease is subject and subordinate to the Mortgage and all future mortgages affecting the Property. Notwithstanding the preceding sentence, however, Mortgagee shall provide a subordination, non-disturbance and attornment agreement, in Mortgagee's standard form, for each Lease that does not require Mortgagee's approval under this Mortgage or that has been approved by Mortgagee; provided, however, that if any tenant under any such Lease requests a different form of such an agreement or modifications to Mortgagee's standard form of such agreement, then Mortgagee shall use commercially reasonable efforts to negotiate a form of such an agreement that is mutually acceptable to Mortgagee and such tenant. In no event, however, shall Mortgagee be required to enter into a form of such agreement that is not commercially reasonably acceptable to Mortgagee.

**4.14 Inventories; Assembly of Chattels.** Mortgagor shall, from time to time at request of Mortgagee, deliver to Mortgagee a current inventory of the Chattels, the Intangible Personalty and the other Collateral, in such detail as Mortgage may require. Upon the occurrence of any Event of Default hereunder, Mortgagor will at Mortgagee's request assemble the Chattels and the other Collateral and make them available to Mortgagee at any place designated by Mortgagee that is reasonably convenient to both parties.

**4.15 Compliance with Laws, Existence, Etc.** Mortgagor shall comply with all applicable laws, rules, regulations and orders and other governmental or quasi-governmental requirements and private covenants, such compliance to include, without limitation, maintaining all Permits and paying before the same become delinquent all taxes, assessments and governmental charges imposed upon Mortgagor or the Property. Mortgagor shall maintain all Permits necessary or desirable for the operation, ownership, use, development, occupancy and



maintenance of the Property for its current use, and without limiting this covenant of Mortgagor, Mortgagor shall make application for renewals of any of the Permits prior to the expiration thereof. Mortgagor shall, promptly after receiving notice thereof, notify Mortgagee of any litigation, action, proceeding or investigation against Mortgagor or any Mortgagor Control Person or the Property before any court, governmental or quasi-governmental arbitrator or other authority and, upon request of Mortgagee, from time to time provide Mortgagee with status or other information in respect thereof. Mortgagor and each Mortgagor Control Person shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence as a limited liability company, corporation or other entity, as may be applicable, and to maintain its authorization to perform the obligations under the Loan Documents. Neither Mortgagor nor any Mortgagor Control Person shall amend or modify its organizational documents so as to contravene any of the Loan Documents or to prevent the observance of the obligations under the Loan Documents. Mortgagor and each Mortgagor Control Person shall comply with all applicable laws, rules, regulations and orders and other governmental or quasi-governmental requirements, and shall obtain all authorizations, approvals and consents from, and shall make all notices and filings with, any court, governmental, authority or regulatory body, in respect of its right and ability to perform, or cause the performance of, the obligations under the Loan Documents. Each Mortgagor Control Person shall maintain its status as "non-foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

(b) Right to Contest. Notwithstanding any other provision of this Mortgage, Mortgagor will not be deemed to be in default solely by reason of Mortgagor's failure to comply with any applicable law, rule, regulation or order so long as, in Mortgagee's judgment, each of the following conditions is satisfied:

(i) Mortgagor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or applicability of such law, rule, regulation or order; and

(ii) Noncompliance with any such law, rule, regulation or order will not result in the loss or forfeiture of any property encumbered hereby or any interest of Mortgagee therein or result in any fines or other punitive actions or any loss or impairment of insurance coverage; and

(iii) Mortgagor deposits with Mortgagee, as security for any payment or performance that may ultimately be required, a sum equal to the amount of any fine, assessment or charge plus the interest, penalties, and other costs that Mortgagee estimates are likely to become payable if Mortgagor's contest is unsuccessful.

If Mortgagee determines that any one or more of such conditions is not satisfied or is no longer satisfied, then Mortgagor shall comply with the law, rule, regulation or order in question, within fifteen (15) days after Mortgagee gives notice of such determination.

**4.16 Records and Books of Account.** Mortgagor shall keep accurate and complete records and books of account, in which complete entries will be made, reflecting all financial transactions relating to the Property.



**4.17 Inspection Rights.** At any time, and from time to time, upon prior notice from Mortgagee, Mortgagor shall permit Mortgagee, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit and inspect the Property and to discuss with Mortgagor the affairs, finances and accounts of Mortgagor. Without limiting the obligations of Mortgagor under this Section 4.17, Mortgagor shall take all actions necessary or required under the Leases to effect such right of Mortgagee to inspect the Property.

**4.18 Change of Executive Offices.** Mortgagor shall promptly notify Mortgagee if changes are made in the location of Mortgagor's primary executive offices.

**4.19 Further Assurances; Estoppel Certificates.** Mortgagor will execute and deliver to Mortgagee within ten (10) business days following any request by Mortgagee, and pay the costs of preparation and recording thereof, any further documents that Mortgagee may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Mortgagor will also, within ten (10) business days after any request by Mortgagee, deliver to Mortgagee a signed and acknowledged statement certifying to Mortgagee, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note and the other Loan Documents, and (b) whether Mortgagor claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

**4.20 Costs of Closing.** Mortgagor shall, upon demand, pay directly or reimburse Mortgagee for any costs or expenses pertaining to the closing of the Loan, including, but not limited to, fees of counsel for Mortgagee and costs and expenses for which invoices were not available at the closing of such loan, or costs and expenses that are incurred by Mortgagee after such closing. All such costs and expenses (together with interest thereon at the Default Rate from the date of demand by Mortgagee) shall constitute a part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage. Mortgagee shall make commercially reasonable efforts to insure that all invoices, included as closing costs and expenses, are to be delivered to Mortgagor for payment at closing.

**4.21 Fund for Electronic Transfer.** If required by Lender, all monthly payments of principal and interest on the Note, escrow deposits and other amounts due under this Mortgage or the other Loan Documents shall be made by Mortgagor by electronic funds transfer from a bank account established and maintained by Mortgagor for such purpose. Mortgagor shall establish and maintain such account until the Secured Obligations are fully paid and shall direct the depository of such account in writing to so transmit such payments on or before the respective due dates to the account of Mortgagee as shall be designated by Mortgagee in writing.

**4.22 Use.** Mortgagor shall use the Property solely for the operation of first class office buildings and any other use consistent therewith and not otherwise in violation of any applicable laws and for no other use or purpose.

**4.23 Management.** The Property shall be managed by the Property Manager, pursuant to the Management Agreement. Any substitute or replacement Property Manager or any other



change in Property Manager shall be subject to the prior written consent of Mortgagee in its sole discretion. Mortgagor shall not permit any amendment to or modification of any Management Agreement, or management of the Property by any Person other than Mortgagor or Property Manager, without the prior written consent of Mortgagee. Any such Property Manager shall execute a Subordination of Management Agreement in respect of its Management Agreement in form and substance satisfactory to Mortgagee and its counsel and any such Subordination of Management Agreement shall constitute a "Loan Document".

**4.24 Reserve Agreement.** Mortgagor covenants that it will fully comply with the terms of the Reserve Agreement.

**4.25 Single Purpose Entity.** Mortgagor shall at all times be a Single Purpose Entity. In furtherance of the preceding sentence, Mortgagor shall not engage in any business other than the ownership, development, operation and disposition of the Property, and shall not own any assets other than those related to the Property.

**4.26 Cash Management Lockbox.** At or prior to the closing of the Loan, Mortgagor shall enter into the Pledge Agreement pursuant to which Mortgagor shall cause each tenant under each Lease to remit or otherwise deposit all Rent payable pursuant to the Lease directly to Servicer and Mortgagor shall remit all Gross Revenue collected by or on behalf of Mortgagor directly to Servicer, in each case pursuant to, and in accordance with, the Pledge Agreement. All costs and expenses for establishing and maintaining the Deposit Account (as defined in the Pledge Agreement) and such other accounts as required by the Pledge Agreement shall be paid by Mortgagor.

**4.27 Patriot Act, Anti Terrorism.** Mortgagor represents, warrants and covenants to Mortgagee that:

(a) Mortgagor, the Guarantors and their respective Affiliates are not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended.

(b) Mortgagor, the Guarantors and their respective Affiliates (A) are not, and shall not become, a person subject to, or with whom Mortgagee is restricted from doing business with, under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute (including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)), executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and the Annex thereto (collectively, the "Executive Order")), or other governmental action relating to terrorism financing, terrorism support and/or otherwise relating to terrorism and (B) are not and shall not engage in any dealings or transactions or otherwise become or be associated with persons named on OFAC's Specially Designated and Blocked Persons list or persons who commit terrorism or conspire to commit or support "terrorism" as defined in the Executive Order (any person



described in the preceding clause (A) or clause (B) being referred to herein as a “Prohibited Person”).

(c) None of the Mortgagor Control Persons, (i) has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interest in property blocked pursuant to the Executive Order, or (iii) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or any statutes referred to in paragraph (f).

(d) (i) None of the funds or other assets of the Mortgagor Control Persons constitute property of, and are not beneficially owned, directly or indirectly, by any government or other person subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et. seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et. seq., and any Executive Orders or regulations promulgated thereunder or any other laws, regulations or executive orders administered by OFAC with the result that an investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan made by Mortgagee is in violation of law (“Embargoed Person”); (ii) no Embargoed Person has any interest of any nature whatsoever in any Mortgagor Control Persons with the result that the investment in any of the Mortgagor Control Person (whether directly or indirectly) is prohibited by law or the Loan is in violation of law; and (iii) none of the funds of the Mortgagor Control Persons, have been derived from any unlawful activity with the result that the investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan is in violation of law.

(e) Mortgagor shall promptly deliver to Mortgagee any certification or other evidence requested from time to time by Mortgagee confirming the compliance by all of the Mortgagor Control Persons with this Section. The representations, warranties and covenants set forth in this Section shall be deemed repeated and reaffirmed by Mortgagor as of each date that Mortgagor makes a payment to Mortgagee under the Note, this Mortgage and the other Loan Documents or receives any payment from Mortgagee. Mortgagor shall promptly notify Mortgagee in writing should Mortgagor become aware of any change in the information set forth in these representations, warranties and covenants.

**4.28 Anti-Money Laundering.** Mortgagor represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Mortgagor, to assure that funds invested by such holders in Mortgagor are derived from legal sources (“Anti-Money Laundering Measures”). Mortgagor represents that the Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. (“BSA”), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, “Anti-Money Laundering Laws”). Mortgagor covenants that it shall take Anti-Money Laundering Measures in accordance with Anti-Money Laundering Laws with respect to



each holder of a direct or indirect interest in Mortgagor. Mortgagor covenants that it shall take reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Mortgagor is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking. Without limiting the foregoing provisions of this Section 4.28, at all times throughout the term of the Loan, none of the funds of Mortgagor or any Guarantor, as applicable, that are used to repay the Loan shall be derived from any unlawful activity, with the result that the investment in Mortgagor (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.29 General Indemnity.** Mortgagor agrees that while Mortgagee has no liability to any Person in tort or otherwise as lender and that while Mortgagee is not an owner or operator of the Property, Mortgagor shall, at its sole cost and expense, protect, defend, release, indemnify and hold harmless the Indemnified Parties (defined below) from any Losses (defined below) imposed on, incurred by, or asserted against the Indemnified Parties, directly or indirectly, arising out of or in connection with the Secured Obligations, the Property (or any portion thereof), the Loan, or the Loan Documents, any and all claims for brokerage, leasing, finders or similar fees that may be made relating to the Property and the Secured Obligations, or the exercise by Mortgagee of any rights or remedies granted to Mortgagee pursuant to this Mortgage, the other Loan Documents or applicable law; provided, however, that the foregoing shall not apply (a) to any Losses caused by the gross negligence or willful misconduct of the Indemnified Parties or (b) to any disputes among the Indemnified Parties not caused in whole or in part by a breach of Mortgagor's obligations under the Loan Documents. The term "Losses" shall mean any claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses (including, without limitation, unrealized loss of value of the Property), costs, expenses, fines, penalties, charges, fees, judgments, awards, and amounts paid in settlement of whatever kind including attorneys' fees and all other costs of defense. The term "Indemnified Parties" shall mean (a) Mortgagee, (b) any prior owner or holder of the Note, (c) any existing or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing. THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO LOSSES THAT IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY.

**4.30 Duty to Defend, Costs and Expenses.** Upon request, whether Mortgagor's obligation to indemnify Mortgagee arises under Section 4.29 above or elsewhere in the Loan Documents, Mortgagor shall defend the Indemnified Parties (in Mortgagor's or the Indemnified Parties' names) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, the Indemnified Parties may, in their sole discretion, engage their own attorneys and professionals to defend or assist them and, at their option, their attorneys shall control the resolution of any claims or proceedings. Upon demand, Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse the Indemnified Parties for all Losses imposed on, incurred by, or asserted against the Indemnified Parties by reason of any items set forth in Section 4.29 above and/or the enforcement or preservation of the Indemnified Parties' rights under the Loan Documents. Any amount payable to the Indemnified Parties under this Section 4.30 shall (a) be deemed a demand obligation, (b) be part of the Secured Obligations, (c)



bear interest from the date of demand by Mortgagee at the Default Rate until paid, and (d) be secured by this Mortgage.

**4.31 Guarantor.** Within thirty (30) days after the death of an individual Guarantor, Mortgagor shall notify Mortgagee in writing of such death and provide to Mortgagee the names and current financial statements of one or more substitute guarantors reasonably acceptable to Mortgagee: (A) whose net worth and financial condition is, in Mortgagee's discretion, equivalent to or better than the deceased Guarantor based upon the financial statements and other financial information delivered to Mortgagee in respect of the individual that is the Guarantor immediately prior to such replacement, or whose net worth and financial condition is, in Mortgagee's discretion, otherwise acceptable to Mortgagee, and who owns a direct or indirect interest in Mortgage, or (B) who are the heirs, devisees and beneficiaries of all or substantially all of the deceased Guarantor's assets, own a direct or indirect interest in Mortgagor and are not the subject of any bankruptcy or insolvency proceeding. Within sixty (60) days after the death of the individual Guarantor, each substitute guarantor(s) shall (i) deliver to Mortgagee the financial reports and statements required in Section 4.12 hereof and Section 12 of the Guaranty and (ii) execute and deliver to Mortgagee a guaranty and environmental indemnity agreement in substantially the same form as the Guaranty and Environmental Indemnity Agreement and such other instruments as Mortgagee may reasonably require in connection with such substitution.

## ARTICLE 5

### MORTGAGOR'S NEGATIVE COVENANTS

**5.1 Waste and Alterations.** Mortgagor will not commit or permit any waste with respect to the Property, the Chattels or the other Collateral. Mortgagor shall not cause or permit any part of the Property, including but not limited to any building, structure, parking lot, driveway, landscape scheme, timber, or other ground improvement, to be removed, demolished, or materially altered without the prior written consent of Mortgagee, except for tenant improvement work and tenant alterations required to be performed under the Leases approved by Mortgagee pursuant to Section 5.3 hereof, which may be granted or withheld in the sole discretion of Mortgagee. Mortgagor shall not change or cause to be changed any access to or egress from the Property by public streets, easements or rights of way.

**5.2 Zoning and Private Covenants.** Mortgagor will not initiate, join in, or consent to any change in any zoning ordinance or classification, any change in the "zone lot" or "zone lots" (or similar zoning unit or units) presently comprising the Property, any transfer of development rights, any private restrictive covenant, or any other public or private restriction limiting or defining the uses that may be made of the Property or any part thereof, without the express written consent of Mortgagee. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Mortgagor will not cause such use to be discontinued or abandoned without the express written consent of Mortgagee, and Mortgagor will use its best efforts to prevent the tenant under any Lease from discontinuing or abandoning such use.



### **5.3 Certain Covenants Regarding Leases.**

(a) Mortgagor will neither do, nor neglect to do, anything that may cause or permit the termination of any Lease of all or any part of the Property, or cause or permit the withholding or abatement of any rent payable under any such Lease.

(b) All current Leases, and all other Leases entered into prior to or after the closing of the Loan (true, correct and complete copies of which fully executed leases and any guaranties therefor shall be promptly submitted by Mortgagor to Mortgagee) shall be subject to Mortgagee's prior written approval. Following the closing of the Loan, any submission by Mortgagor to Mortgagee for Mortgagee's approval of a Lease shall be accompanied by a copy of such Lease, a Lease abstract, a then-current rent roll for the Property, year-to-date and prior year operating statements for the Property, and a cover letter requesting Mortgagee's approval which contains a signature line on which Mortgagee may evidence its approval of such Lease, provided, however, that Mortgagee may provide such other form of consent satisfactory to Mortgagee and its counsel. At its option, Mortgagee may require that any or all Leases be made either subject and subordinate or superior and prior to the lien of the Mortgage.

(c) Except with the prior written consent of Mortgagee, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall not (i) collect rent from all or any part of the Property for more than one month in advance, (ii) assign the rents from the Property or any part thereof, or (iii) consent to the cancellation or surrender of all or any part of any Lease, except that Mortgagor may in good faith terminate any Lease for nonpayment of rent or other material breach by the tenant.

(d) Mortgagor shall provide Mortgagee with a certified rent roll, on a quarterly and annual basis, certified to Mortgagee detailing such information as required by Lender, including, without limitation: (a) name of tenant, (b) date of Lease, (c) rentable square footage, (d) space or unit number, (e) commencement and expiration dates, (f) monthly base rent, (g) rent abatements (if any), (h) rent escalations, (i) all other rent items (including reimbursable expenses), (j) percentage rent breakpoints (if applicable) and (k) any security deposits held.

### **5.4 Transfer or Further Encumbrance of Property.**

(a) Except as provided in Section 5.4(b) hereof, without Mortgagee's prior written consent, which consent may be granted or withheld in Mortgagee's sole and absolute discretion, Mortgagor shall not (i) sell, assign, convey, transfer or otherwise dispose of any direct or indirect legal, beneficial or equitable interest in all or any part of the Property, (ii) permit or suffer any owner of any direct or indirect beneficial or equitable interest in the Property or Mortgagor to transfer such interest, whether by transfer of partnership, membership, stock or other beneficial or equitable interest in any entity or otherwise, (iii) mortgage, hypothecate or otherwise encumber or permit to be encumbered or grant or permit to be granted a security interest in all or any part of the Property, or in any direct or indirect ownership interest in Mortgagor or (iv) accept any subordinate or mezzanine financing secured by a security interest in all or any part of the Property or in any direct or indirect ownership interest in Mortgagor. The preceding sentence shall not apply to transfers of title or interest under any will or testament or applicable law of descent, provided that Mortgagor remains Controlled by individuals acceptable



to Mortgagee in Mortgagees sole and absolute discretion. Notwithstanding anything contained herein to the contrary, Mortgagor may transfer any interest in Mortgagor provided that (i) Mortgagor shall at all times remain controlled by the Mortgagor Owner Persons and the Mortgagor Control Persons, (ii) the Mortgagor Control Persons, or any one of them, and their respective lineal descendants or trusts for the benefit of, or entities wholly owned and controlled by, the Mortgagor Control Persons and their lineal descendants, own not less than twenty percent (20%) of the direct and indirect legal and beneficial interests in Mortgagor, including, without limitation, twenty percent (20%) of any special or priority voting shares or other interests, and (iii) immediately before and immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing. Mortgagor shall be responsible for all out-of-pocket costs incurred by Mortgagee in connection with such transfer, including without limitation, reasonable attorney's fees.

(b) One-Time Transfer. Notwithstanding the "due on sale" provisions of the Loan Documents to the contrary, Mortgagee shall permit a one-time transfer of Mortgagor's entire interest in the Property provided that all of the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing (provided, however, that Mortgagee shall not be required to accept a cure of any Event of Default); (ii) Mortgagor delivers to Mortgagee search reports satisfactory to Mortgagee with respect to UCC financing statements, tax liens, civil, criminal and bankruptcy proceedings and judgments, code violations, regulatory actions and any other data base specified by Mortgagee conducted by a search firm acceptable to Mortgagee with respect to the proposed transferee; (iii) if the proposed transferee is a land trust, Mortgagee has received a first-lien collateral assignment of all beneficial interest therein; (iv) Mortgagee has received and has had a reasonable opportunity to review and approve all organizational documents (including, without limitation, certificates and articles of formation, partnership and operating agreements, bylaws, certificates of good standing and authorizing resolutions) and to review all documents and agreements executed or to be executed in connection with the proposed transfer; (v) the non-economic terms (e.g., those terms other than interest rate, payment schedule, principal balance, and non-recourse nature (subject to exceptions thereto customarily included by Mortgagee in loan documents)) of the Loan Documents have been modified as Mortgagee may request in good faith as reasonably necessitated by reason of the transfer; (vi) the proposed transferee has assumed all of Mortgagor's obligations under the Loan Documents pursuant to an assumption agreement in form and substance satisfactory to Mortgagee; (vii) Mortgagee has received at least thirty (30) days' prior written notice of the proposed transfer; (viii) the proposed transferee and, if applicable, its general partners have, in the sole judgment of Mortgagee, a net worth and liquidity equal to the net worth and liquidity of Mortgagor as of the date hereof or otherwise reasonably satisfactory to Mortgagee in its sole discretion, (ix) the proposed transferee and, if applicable, its general partners or managing members have, in the sole judgment of Mortgagee, a satisfactory history of owning, operating and leasing property similar to the Property; (x) the proposed transferee and, if applicable, its general partners or managing members have, in the sole judgment of Mortgagee, a satisfactory credit history and professional reputation and character; (xi) the Debt Service Coverage Ratio is not less than the Debt Service Coverage Ratio for the Property as of the date of the closing of the Loan, as determined by Mortgagee, and Mortgagee receives satisfactory evidence that such ratio will be maintained for the succeeding twelve (12) months; (xii) the Loan-to-Value Ratio, taking into account all obligations secured by liens on the Property, does not exceed the Loan-to-Value



Ratio of the Loan as of the date of the closing of the Loan, as determined by Mortgagee; (xiii) Mortgagor pays all costs and expenses incurred by Mortgagee in connection with such transfer, including, without limitation, all processing, accounting, title insurance, appraisal fees and reasonable legal fees, whether or not such transfer is actually consummated; (xiv) at Mortgagee's option, Mortgagee has received an endorsement to its title insurance policy at Mortgagor's expense, which endorsement re-dates the date of such title insurance policy and states that the lien of the Mortgage remains a first and prior lien against the Property subject to no exceptions other than as approved by Mortgagee; (xv) if required by the applicable title insurance company, Mortgagor delivers to Mortgagee a new or updated survey confirming that there are no survey exceptions other than those set forth in the survey exceptions in Mortgagee's title insurance policy; (xvi) principals of the proposed transferee acceptable to Mortgagee in its sole discretion execute a guaranty agreement in the form of the Guaranty and an environmental indemnity agreement in the form of the Environmental Indemnity Agreement; (xvii) has paid to Mortgagee an assumption fee of one percent (1%) of the outstanding principal balance of the Loan; (xviii) Mortgagor delivers to Mortgagee such opinions of counsel and certificates of organizational documents as Mortgagee may request in form and substance satisfactory to Mortgagee; and (xix) the proposed transferee, and any person or entity executing any Loan Documents in connection with such transfer, and their respective constituent entities, comply with the provisions of Section 4.27 and Section 4.28 of this Mortgage. Upon the satisfaction of the foregoing conditions, Mortgagee shall release Mortgagor and the Guarantors from liability under the Loan Documents except to the extent of any liability or obligation under the Loan Documents that arises or is based upon any state of affairs that exists prior to or as of the date of consummation of the proposed transfer. The foregoing right to transfer the Property shall terminate upon conveyance of the Property by the initial Mortgagor named herein.

**5.5 Further Encumbrance of Chattels or other Collateral.** Mortgagor will neither create nor permit any lien, security interest or encumbrance against the Chattels, Intangible Personalty or other Collateral or any part thereof or interest therein, other than the liens and security interests created by the Loan Documents, without the prior written consent of Mortgagee, which may be withheld for any reason.

**5.6 Assessments Against Property.** Mortgagor will not, without the prior written approval of Mortgagee, which may be withheld for any reason, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or consent to or allow the occurrence of any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property, and this provision shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Mortgagor or any other Person include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Mortgagee's express written consent, the rights of Mortgagee in the Property pursuant to this Mortgage or following any foreclosure of this Mortgage, and the rights of any Person to whom Mortgagee might transfer the Property following a foreclosure of this Mortgage, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Property or any portion thereof as a result of inclusion of the Property in such district or districts.



**5.7 Transfer or Removal of Chattels, Intangible Personalty or other Collateral.** Mortgagor will not sell, transfer or remove from the Property all or any part of the Chattels, Intangible Personalty or other Collateral, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value.

**5.8 Change of Name or Jurisdiction.** Mortgagor will not (a) change the name under which Mortgagor does business, or adopt or begin doing business under any other name or assumed or trade name, or (b) change its jurisdiction of organization, incorporation or formation without first notifying Mortgagee of Mortgagor's intention to do so and delivering to Mortgagee such executed modifications or supplements to this Mortgage (and to any financing statement that may be filed in connection herewith) as Mortgagee may require.

**5.9 Improper Use of Property or Chattels.** Mortgagor will not use the Property or the Chattels for any purpose or in any manner that violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

**5.10 ERISA.** Mortgagor shall not engage in any transaction that would cause the Note (or the holding of the Note by the Mortgagee or the exercise by Mortgagee of any of its rights under the Loan Documents) to be a non-exempt, prohibited transaction under ERISA, (including for this purpose the parallel provisions of Section 4975 of the Internal Revenue Code of 1986, as amended), or otherwise result in liability for Mortgagee due to Mortgagor being deemed in violation of any applicable provisions of ERISA. Mortgagor shall indemnify, protect, defend, and hold Mortgagee harmless from and against any and all losses, liabilities, damages, claims, judgments, costs, and expenses (including, without limitation excise taxes, and attorneys' fees and costs incurred in the investigation, defense, and settlement of claims and in obtaining any individual ERISA exemption or state administrative exception that may be required, in Mortgagee's sole and absolute discretion) that Mortgagee may incur, directly or indirectly, as the result of the breach by Mortgagor of any warranty or representation set forth in Section 3.3(z) hereof or the breach by Mortgagor of any covenant contained in this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage and shall not be subject to the limitation on personal liability described in the Note.

**5.11 Use of Proceeds.** Mortgagor will not use any funds advanced by Mortgagee under the Loan Documents for household or agricultural purposes, to purchase margin stock, or for any purpose prohibited by law.

**5.12 Entity Organization.** Mortgagor shall own and hold the Property and the Rents therefrom, and the Chattels and Intangible Personalty as Mortgagor's sole assets. Mortgagor shall not engage in any business other than the ownership, management and operation of the Property, Chattels and Intangible Personalty and purposes incidental thereto. Mortgagor shall not guarantee or otherwise become liable for, or pledge its assets to secure, the Indebtedness or obligations of any other Person. Mortgagor shall not incur any other Indebtedness other than amounts owed to trade creditors in the ordinary course of business.



**5.13 Access Agreements.** Without Mortgagee's prior written consent, which may be granted or withheld in Mortgagee's reasonable discretion, Mortgagor shall not enter into, modify or terminate any Access Agreements.

## ARTICLE 6

### EVENTS OF DEFAULT

Each of the following events will constitute an event of default (an "Event of Default") under this Mortgage and under each of the other Loan Documents:

#### **6.1 Failure to Pay Note or Other Amounts.**

(a) Any failure to pay when due any interest, principal or other amount in a sum certain under this Mortgage or under any of the other Loan Documents for which sum there is a scheduled date for payment or for which there is a date certain for payment; provided, however, that in any consecutive twelve (12) month period, there shall be a single grace period of not more than five (5) days for one (1) payment of principal and interest if such payment is not made on the due date therefor (and if such payment of principal and interest is received by Mortgagee within such five (5) day period, on the date of the receipt of such payment and the curing of such default, interest at the Default Rate shall cease accruing in respect to such default); or

(b) Any failure to pay within five (5) business days following demand by Mortgagee for any amount other than any amount set forth in Section 6.1(a) above.

**6.2 Violation of Certain Covenants.** The occurrence of any violation of any covenant contained in Section 4.6(b), 4.25, 4.26, 4.27, 4.28, 4.29, 4.30, 4.31, 5.3, 5.4, 5.5, 5.7 or 5.12.

**6.3 Other Obligations.** The failure of Mortgagor to properly perform any obligation contained herein or in any of the other Loan Documents (other than (i) the obligation to make payments under the Note or the other Loan Documents and (ii) other obligations under the Loan Documents covered by other provisions of this Article 6) and the continuance of such failure for a period of thirty (30) days following written notice thereof from Mortgagee to Mortgagor; provided, however, that if such failure is not curable within such thirty (30) day period, then, so long as Mortgagor commences to cure such failure within such thirty (30) day period and is continually and diligently attempting to cure to completion, such failure shall not be an Event of Default unless such failure remains uncured for ninety (90) days after such written notice to Mortgagor.

**6.4 Levy Against Property.** The levy against any of the Property, Chattels or Intangible Personalty, of any execution, attachment, sequestration or other writ that shall remain unvacated, or not set aside, or unstayed, for thirty (30) days.

**6.5 Liquidation.** The liquidation, termination or dissolution of any Mortgagor Control Person.



**6.6 Appointment of Receiver.** The appointment of a trustee or receiver for the assets, or any part thereof, of any Mortgagor Control Person other than by request of Mortgagee.

**6.7 Assignments.** The making by any Mortgagor Control Person of a transfer in fraud of creditors or an assignment for the benefit of creditors.

**6.8 Order for Relief.** The entry in bankruptcy of an order for relief for or against any Mortgagor Control Person.

**6.9 Bankruptcy.** The filing of any petition (or answer admitting the material allegations of any petition), or other pleading, seeking entry of an order for relief for or against any Mortgagor Control Person as a debtor or bankrupt or seeking an adjustment of any of such parties' debts, or any other relief under any state or federal bankruptcy, reorganization, debtor's relief or insolvency laws now or hereafter existing, including, without limitation, a petition or answer seeking reorganization or admitting the material allegations of a petition filed against any such party in any bankruptcy or reorganization proceeding, or the act of any of such parties in instituting or voluntarily being or becoming a party to any other judicial proceedings intended to effect a discharge of the debts of any such parties, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of a trustee or of any of the rights or powers granted to Mortgagee herein, or in any other document executed in connection herewith, and any such petition, if involuntary, is not dismissed within ninety (90) days following the filing thereof.

**6.10 Misrepresentation.** If any representation or warranty made by any Mortgagor Control Person, herein, or in any of the other Loan Documents, any certificate delivered to Mortgagee under or in connection with any of the Loan Documents, or any other instrument or document modifying, renewing, extending, evidencing, securing or pertaining to the Loan is false, misleading or erroneous in any material respect at the time when made.

**6.11 Judgments.** The failure of any Mortgagor Control Person to pay any money judgment in excess of \$10,000.00 against any such party before the expiration of thirty (30) days after such judgment becomes final and no longer appealable.

**6.12 Admissions Regarding Debts.** The admission of any Mortgagor Control Person, in writing, of any such party's inability to pay such party's debts as they become due.

**6.13 Assertion of Priority.** The assertion of any claim of priority over this Mortgage, by title, lien, or otherwise, unless Mortgagor within thirty (30) days after such assertion either causes the assertion to be withdrawn or provides Mortgagee with such security as Mortgagee may require to protect Mortgagee against all loss, damage, or expense, including attorneys' fees, that Mortgagee may incur in the event such assertion is upheld.

**6.14 Other Loan Documents.** The occurrence of any default by Mortgagor or any Guarantor, after the lapse of any applicable notice, grace or cure period, or the occurrence of any event or circumstance defined as or deemed to be an "Event of Default", under this Mortgage or any of the other Loan Documents.



**6.15 Other Liens.** The occurrence of any default after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any consensual lien encumbering the Property or any part thereof or interest therein, or any document or instrument evidencing obligations secured thereby; provided, however, that nothing in this Section 6.15 shall be deemed to permit any such consensual lien to be executed by Mortgagor or any other Person.

**6.16 Other Indebtedness.** The occurrence of any default after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any Indebtedness incurred or owing by Mortgagor, or any document or instrument evidencing any obligation to pay such Indebtedness.

## ARTICLE 7

### MORTGAGEE'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Mortgagee may exercise any remedy available at law or in equity, including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Mortgagee may determine in Mortgagee's sole discretion:

**7.1 Performance of Defaulted Obligations.** Mortgagee may make any payment or perform any other obligation under the Loan Documents that either Mortgagor or any Guarantor has failed to make or perform, and Mortgagor hereby irrevocably appoints Mortgagee as the true and lawful attorney-in-fact for Mortgagor to make any such payment and perform any such obligation in the name of Mortgagor. All payments made and expenses (including attorneys' fees) incurred by Mortgagee in this connection, together with interest thereon at the Default Rate from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Mortgagor to Mortgagee. In lieu of advancing Mortgagee's own funds for such purposes, Mortgagee may use any funds of Mortgagor that may be in Mortgagee's possession, including but not limited to insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

**7.2 Specific Performance and Injunctive Relief.** Notwithstanding the availability of legal remedies, Mortgagee will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Mortgagor or any Guarantor to cure or refrain from repeating any Default.

**7.3 Acceleration of Secured Obligations.** Mortgagee may, without notice or demand, declare all of the Secured Obligations immediately due and payable in full.

**7.4 Suit for Monetary Relief.** Subject to the non-recourse provisions of the Note, with or without accelerating the maturity of the Secured Obligations, Mortgagee may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Mortgagor's default under any of the Loan Documents.

**7.5 Possession of Property.** To the extent permitted by law, Mortgagee may enter and take possession of the Property without seeking or obtaining the appointment of a receiver,



may employ a managing agent for the Property, and may lease or rent all or any part of the Property, either in Mortgagee's name or in the name of Mortgagor, and may collect the rents, issues, and profits of the Property. Any revenues collected by Mortgagee under this Section will be applied first toward payment of all expenses (including, without limitation, attorneys' fees) incurred by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance, if any, will be applied against the Secured Obligations in such order and manner as Mortgagee may elect in its sole discretion.

**7.6 Enforcement of Security Interests.** Mortgagee may exercise all rights of a secured party under the UCC with respect to the Chattels and the Intangible Personalty, including but not limited to taking possession of, holding, and selling the Chattels and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Mortgagee's giving of such notice to Mortgagor at least five (5) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

**7.7 Foreclosure Against Property.**

(a) Mortgagee may:

(i) institute proceedings for the complete foreclosure of this Mortgage, in which case the Property may be sold for cash or credit in one or more parcels, and in such order as Mortgagee shall determine;

(ii) with or without entry and, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Secured Obligations then due and payable, subject to the lien of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Secured Obligations not then due; and

(iii) sell the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein, pursuant to the power of sale herein granted or otherwise, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note or this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion may elect.

(b) All fees, costs and expenses of any kind incurred by Mortgagee in connection with the exercise of any remedies under this Mortgage or any of the other Loan Documents, including, without limitation, the acceleration of the Secured Indebtedness or foreclosure of this Mortgage, which fees, costs and expenses shall include, without limitation, the costs incurred in respect of any litigation, mediation, arbitration, bankruptcy proceeding and any appeals thereunder and all court costs incurred in connection therewith, the costs of any



appraisals of the Property or any environmental reports obtained by Mortgagee, the cost of any title reports or abstracts, all costs of any receivership for the Property advanced by Mortgagee, and all attorneys' and consultants' fees and expenses incurred by Mortgagee, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Mortgagor to Mortgagee at any foreclosure sale.

(c) The proceeds of any sale under this Section shall be applied:

First: To the payment of the costs and expenses of any such sale, including, without limitation, compensation to Mortgagee, its agents and counsel, and of any judicial proceedings, including, without limitation, the costs and legal expenses of Mortgagee in foreclosing or otherwise enforcing this Mortgage, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Property shall have been sold.

Second: To the payment of the whole amount of the Secured Obligations then due, owing or unpaid, with interest on the unpaid Secured Obligations at the Default Rate from and after the happening of any Event of Default until the same is paid.

Third: To the payment of any other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Note and all other Loan Documents.

Fourth: To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

Mortgagee and any receiver or custodian of the Property or any part thereof shall be liable to account for only those rents, issues and profits actually received by it.

(d) Mortgagee may adjourn from time to time any sale to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(e) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Section 7.7, Mortgagee, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons or entities with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall 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 such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 7.7, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons or entities claiming or who may claim the same, or any part thereof, either from, through or under Mortgagor.

(f) Upon sale made under or by virtue of this Section 7.7 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may take settlement for the purchase price by crediting upon the Secured Obligations the net sale price after deducting therefrom the expenses of the sale and the costs of the action and any other sums that Mortgagee is authorized to deduct under this Mortgage.

(g) Subject to the provisions of Section 16 of the Note and Section 9.21 of this Mortgage, the obligation of this Mortgage and of the Note shall continue until the Secured Obligations are paid in full notwithstanding any action or actions or partial foreclosure that may be brought to recover any amount or amounts for installments of principal, interest, taxes, assessments, water and sewer charges, rents and rates or insurance or other sums or charges due and payable under the provisions of this Mortgage.

(h) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before, and notwithstanding any statutory rate of interest applicable with respect to judgments, after the entering of execution of any judgment, the Secured Obligations shall bear interest at the Default Rate until the Secured Obligations shall have been paid in full.

(i) In the event of a foreclosure of this Mortgage or the succession by Mortgagee to the interests of Mortgagor hereunder, the purchaser of the Property or such successor shall succeed to all rights of Mortgagor, including any right to proceeds of insurance and to unearned premiums, and in and to all policies or certificates of insurance assigned and delivered to Mortgagee pursuant to this Mortgage.

(j) Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims and defenses of any nature (except for payments actually made) whatsoever that Mortgagor may have against any assignor of this Mortgage and the Note and no such offset, counterclaim or defense (except for payments actually made) shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage and/or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mortgagor.



(k) In any action or proceeding to foreclose this Mortgage, or to recover or collect the Secured Obligations, the provisions of law respecting the recovery of costs, disbursements and allowances shall also be applicable.

(l) Nothing in this Section dealing with foreclosure procedures or specifying particular actions to be taken by Mortgagee shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by New York law, and any such inconsistency shall be resolved in favor of New York law applicable at the time of foreclosure.

**7.8 Appointment of Receiver.** To the extent permitted by law, Mortgagee shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property upon ex-parte application to any court of competent jurisdiction. Mortgagor waives (i) any right to any hearing or notice of hearing prior to the appointment of a receiver and (ii) any right to contest the appointment of a receiver by Mortgagee. Such receiver shall post a bond or other security for such receiver's actions as a receiver in an amount and in form and substance as may be required by applicable law. Such receiver and its agents shall be empowered, but shall not be obligated, to (a) take possession of the Property and any businesses conducted by Mortgagor or any other person thereon and any business assets used in connection therewith, (b) exclude Mortgagor and Mortgagor's agents, servants, and employees from the Property, (c) collect the rents, issues, profits, and income therefrom, (d) complete any construction that may be in progress, (e) do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (g) pay all taxes and assessments against the Property and the Chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally do anything that Mortgagor could legally do if Mortgagor were in possession of the Property. All expenses incurred by the receiver or its agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations in such order or manner as Mortgagee may in its sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of Mortgagee, any such receivership will continue until the Secured Obligations have been discharged in full, or until title to the Property has passed after foreclosure sale and all applicable periods of redemption have expired (but only to the extent that any such periods of redemption are not waived pursuant to Section 7.13 hereof). Notwithstanding the foregoing provisions of this Section 7.8, prior to any receiver's engagement of counsel or any consultants, or incurring any expenses in excess of \$10,000.00, in connection with the Property, such receiver shall obtain Mortgagee's written consent to such counsel, consultant or expense, as applicable

**7.9 Right to Make Repairs, Improvements.** Should any part of the Property come into the possession of Mortgagee, whether before or after an Event of Default, Mortgagee may, but shall not be obligated, to use, operate, and/or make repairs, alterations, additions and improvements to the Property for the purpose of preserving the Property or the value of the Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee, at the place where



the Note is payable, or at such other place as may be designated by Mortgagee in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Mortgagee in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the Default Rate, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Property is undertaken by Mortgagor and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

**7.10 Surrender of Insurance.** Mortgagee may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Obligations and, in connection therewith, Mortgagor hereby appoints Mortgagee (or any officer of Mortgagee), as the true and lawful agent and attorney-in-fact for Mortgagor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

**7.11 Prima Facie Evidence.** Mortgagor agrees that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Mortgagee, any and all statements of fact or other recitals therein made as to the identity of Mortgagee, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Secured Obligations, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, and without being limited by the foregoing, as to any other act or thing having been duly done by Mortgagee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do by virtue hereof.

**7.12 Application of Escrow and Reserve Funds.** Mortgagee may apply any or all of the funds held in any escrow account or reserve account maintained pursuant to any of the Loan Documents or otherwise in connection with the Loan, or draw all or any portion of any letter of credit maintained pursuant to any of the Loan Documents in connection with the Loan and apply any or all of the proceeds of such letter of credit, to the payment of the Secured Obligations in such order and manner as Mortgagee may determine in its sole discretion.

**7.13 Waiver of Right of Redemption.** Mortgagor hereby waives any right of redemption under any applicable federal, state or local law.

**7.14 Replacement of Property Manager.** Following the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to replace the Property Manager with a property manager acceptable to Mortgagee in Mortgagee's sole discretion..



## ARTICLE 8

### ASSIGNMENT OF LEASES AND RENTS

**8.1 Assignment of Leases and Rents.** Mortgagor hereby unconditionally and absolutely grants, transfers and assigns unto Mortgagee all Rents now or hereafter due or payable for the occupancy or use of the Property, and all Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property; reserving unto Mortgagor, however, a license to collect and retain such Rents and all security for the Leases prior to the occurrence of any Event of Default. Such license shall be revocable by Mortgagee without notice to Mortgagor at any time after the occurrence of an Event of Default. Mortgagor represents that the Rents and the Leases have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by Mortgagor or by any person or persons whomsoever; and Mortgagor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Mortgagee the rights, interest, powers and authorities herein granted and conferred. Failure of Mortgagee at any time or from time to time to enforce the assignment of Rents and Leases under this Section shall not in any manner prevent its subsequent enforcement, and Mortgagee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

**8.2 Further Assignments.** Mortgagor shall give Mortgagee at any time upon demand any further or additional forms of assignment or transfer of such Rents, Leases and security as may be requested by Mortgagee, and shall deliver to Mortgagee executed copies of all such Leases and security.

**8.3 Application of Rents.** Mortgagee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting such monies. Any monies received by Mortgagee hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of the delinquency, such application to be in such order as Mortgagee may determine. The acceptance of this Mortgage by Mortgagee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

**8.4 Collection of Rents.** Upon or at any time after an Event of Default shall have occurred and be continuing, Mortgagee may declare all sums secured hereby immediately due and payable, and may, at its option, upon written notice to Mortgagor, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (a) enter upon, take possession of, manage and operate the Property, or any part thereof (including without limitation making necessary repairs, alterations and improvements to the Property); (b) make, cancel, enforce or modify Leases (and any guaranties thereof); (c) obtain and evict tenants; (d) fix or modify Rents; (e) do any acts that Mortgagee deems proper to protect the security thereof and (f) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid. In connection with the foregoing, Mortgagee shall be entitled and empowered to employ attorneys,



and management, rental and other agents in and about the Property and to effect the matters that Mortgagee is empowered to do, and in the event Mortgagee shall itself effect such matters, Mortgagee shall be entitled to charge and receive management, rental and other fees therefor as may be customary in the area in that the Property is located; and the fees, charges, costs and expenses of Mortgagee or such persons shall be additional Secured Obligations. Mortgagee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or this Mortgage or invalidate any act done pursuant to such notice.

**8.5 Authority of Mortgagee.** Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Mortgagee hereunder without investigating the reason for any action taken by Mortgagee, or the validity or the amount of Secured Obligations owing to Mortgagee, or the existence of any default in the Note or this Mortgage, or under or by reason of this assignment of Rents and Leases, or the application to be made by Mortgagee of any amounts to be paid to Mortgagee. The sole signature of Mortgagee shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Mortgagee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this assignment of Rents and Leases shall be drawn to the exclusive order of Mortgagee.

**8.6 Indemnification of Mortgagee.** Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage that Mortgagee may or might incur under any Lease or by reason of the assignment; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including attorneys' fees, incurred by Mortgagee in defense of any claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Mortgagor shall reimburse Mortgagee therefor on demand.

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

**9.1 Time of the Essence.** Time is of the essence with respect to all provisions of the Loan Documents.

**9.2 Intentionally Omitted Waiver of Homestead and Other Exemptions.** To the extent permitted by law, Mortgagor hereby waives all rights to any homestead or other exemption to which Mortgagor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law. Mortgagor hereby waives any right it may have to require Mortgagee to marshal all or any portion of the security for the Secured Obligations. Notwithstanding the existence of interests in the Property, Chattels or Intangible Personalty other than that created by this Mortgage, and notwithstanding any other provision of this Mortgage, upon an Event of Default, to the extent permitted by applicable law,



Mortgagee shall have the right, in Mortgagee's sole discretion, to determine the order in which the Property, Chattels or Intangible Personalty shall be subjected to the remedies provided in this Mortgage and to determine the order in which all or any part of the Indebtedness secured by this Mortgage is satisfied from the proceeds realized upon the exercise of the remedies provided in this Mortgage.

**9.4 Non Recourse; Exceptions to Non-Recourse.** Except as expressly set forth in Section 16 of the Note and Section 9.21 of this Mortgage, the recourse of Mortgagee with respect to the obligations evidenced by the Note, this Mortgage and the other Loan Documents (except for the Guaranty and the Environmental Indemnity Agreement) shall be solely to the Property, Chattels and Intangible Personalty, and any other collateral given as security for the Note.

**9.5 Rights and Remedies Cumulative.** Mortgagee's rights and remedies under each of the Loan Documents are cumulative of the rights and remedies available to Mortgagee under each of the other Loan Documents and those otherwise available to Mortgagee at law or in equity. No act of Mortgagee shall be construed as an election to proceed under any particular provision of any Loan Document to the exclusion of any other provision in the same or any other Loan Document, or as an election of remedies to the exclusion of any other remedy that may then or thereafter be available to Mortgagee.

**9.6 No Implied Waivers.** Mortgagee shall not be deemed to have waived any provision of any Loan Document unless such waiver is in writing and is signed by Mortgagee. Without limiting the generality of the preceding sentence, neither Mortgagee's acceptance of any payment with knowledge of a Default by Mortgagor, nor any failure by Mortgagee to exercise any remedy following a Default by Mortgagor shall be deemed a waiver of such Default, and no waiver by Mortgagee of any particular Default on the part of Mortgagor shall be deemed a waiver of any other Default or of any similar Default in the future. No course of conduct or course of dealing during the term of the Loan shall be deemed to constitute a waiver by Mortgagee of any rights under any of the Loan Documents.

**9.7 No Third Party Rights.** No person shall be a third party beneficiary of any provision of any of the Loan Documents. All provisions of the Loan Documents favoring Mortgagee are intended solely for the benefit of Mortgagee, and no third party shall be entitled to assume or expect that Mortgagee will not waive or consent to modification of any such provision in Mortgagee's sole discretion.

**9.8 Preservation of Liability and Priority.** Without affecting the liability of Mortgagor or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Mortgagee may, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy that Mortgagee may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e)



release or otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property, the Chattels, or the Intangible Personalty shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Mortgagee.

**9.9 Subrogation of Mortgagee.** Mortgagee shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Mortgagee under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

**9.10 Notices.** Any notice, consent or approval required or permitted to be given by Mortgagor or Mortgagee under this Mortgage shall be in writing and will be deemed given (a) upon personal delivery, (b) on the first Business Day after receipted delivery to a courier service that guarantees next-business-day delivery, or (c) on the third Business Day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Mortgagor:

MBCP, LLC, a Delaware limited liability company  
c/o Colliers International  
420 North 20th Street, Suite 2750  
Birmingham, Alabama 35203  
Attention: Joseph E. Sandner IV

With a copy to:

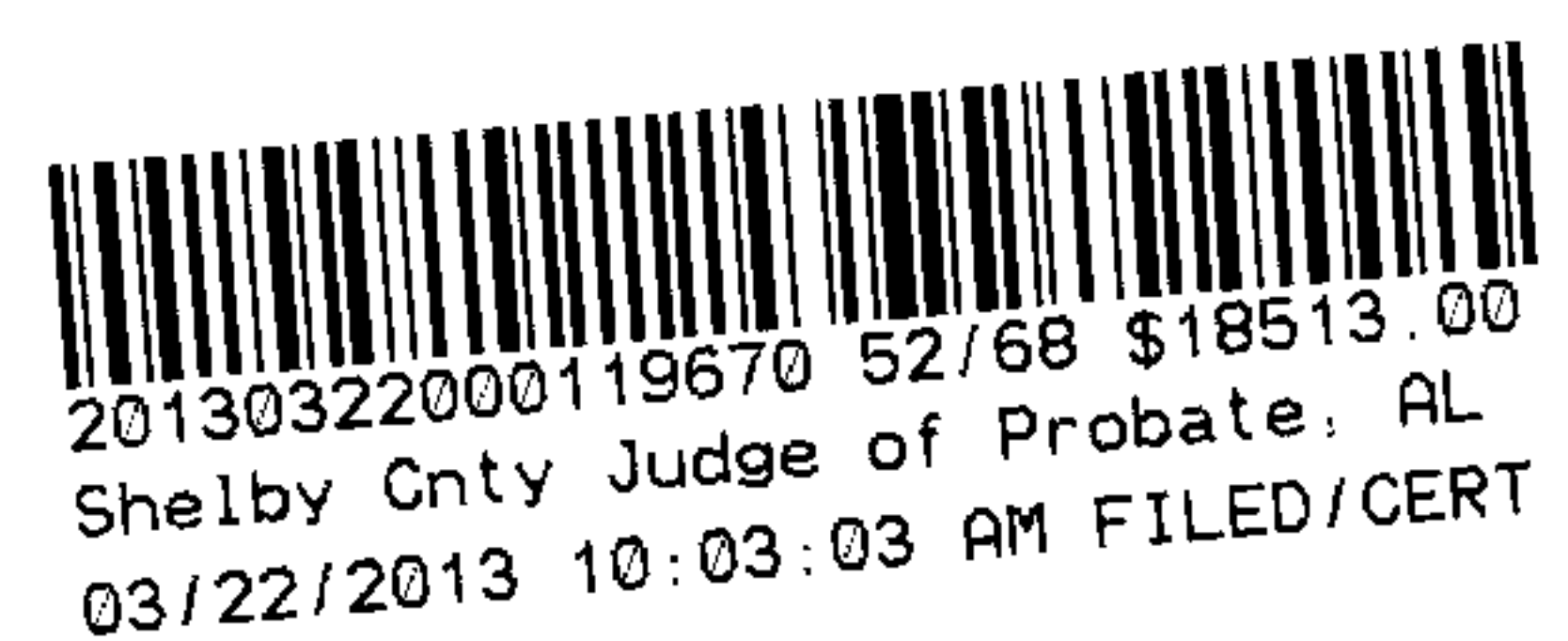
Higgs, Fletcher and Mack LLP  
401 West A Street, Suite 2600  
San Diego, California 92101  
Attention: R. Michael Jones, Esq.

If to Mortgagee:

Continental Casualty Company,  
an Illinois insurance company  
333 South Wabash Avenue  
Chicago, Illinois 60604  
Attention: Karla Kambic Lammers, Esq. – Legal Counsel

and

Continental Casualty Company  
c/o Loews Corporation  
667 Madison Avenue  
New York, New York 10065  
Attention: Michael Cotler – Director of Mortgage Lending





with a copy to:

Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, CA 90067-3012  
Attention: Adam J. Engel, Esq.

If to Servicer:

Colliers International-Atlanta, Inc.  
1349 West Peachtree Street, NE, Suite 1100  
Atlanta, Georgia 30309-2956  
Attention: Jean Hilton/Manager, Mortgage Servicing

with a copy to:

Colliers International-Atlanta, Inc.  
1349 West Peachtree Street, NE, Suite 1100  
Atlanta, Georgia 30309-2956  
Attention: Harry E. Hall, Senior Vice President

Either party may change such party's address for notices or copies of notices by giving notice to the other party in accordance with this Section.

**9.11 Defeasance.** Upon payment and performance in full of all of the Secured Obligations, Mortgagee will, as the sole cost and expense of Mortgagor, execute and deliver to Mortgagor such documents as may be required to release this Mortgage of record or in accordance with Section 10.8 hereof, to assign this Mortgage as directed by Mortgagor.

**9.12 Illegality.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Mortgage, the legality, validity, and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Mortgage shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

**9.13 Usury Savings Clause.** It is expressly stipulated and agreed to be the intent of Mortgagee and Mortgagor at all times to comply with the applicable law governing the highest lawful interest rate. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the loan evidenced thereby, or if



acceleration of the maturity of the Note, any prepayment by Mortgagor, or any other circumstance whatsoever, results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is the express intent of Mortgagor and Mortgagee that all excess amounts theretofore collected by Mortgagee be credited on the principal balance of the Note (or, at Mortgagee's option, paid over to Mortgagor), and the provisions of the Note and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Note does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Secured Obligations evidenced hereby or by the Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Secured Obligations until payment in full so that the rate or amount of interest on account of such Secured Obligations does not exceed the maximum rate or amount of interest permitted under applicable law. The term "applicable law" as used herein shall mean any federal or state law applicable to the loan made by Mortgagee to Mortgagor evidenced by the Note.

**9.14 Obligations Binding Upon Mortgagor's Successors.** This Mortgage is binding upon Mortgagor and Mortgagor's successors and assigns, and shall inure to the benefit of Mortgagee, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and Mortgagor's successors and assigns.

**9.15 Construction.** All pronouns and any variations of pronouns herein shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the parties may require. Whenever the terms herein are singular, the same shall be deemed to mean the plural, as the identity of the parties or the context requires. The term "including" shall mean "including, without limitation." Each party hereto acknowledges that each party hereto and its respective counsel reviewed and revised this Mortgage and the other Loan Documents, and each party hereto agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Mortgage and the other Loan Documents.

**9.16 Attorneys' Fees.** Any reference in this Mortgage to attorneys' or counsel fees paid or incurred by Mortgagee shall be deemed to include paralegals' fees and legal assistants' fees. Moreover, wherever provision is made herein for payment of attorneys' or counsels' fees or expenses incurred by Mortgagee, such provision shall include but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced, during such proceedings or after entry of a final judgment.

**9.17 Waiver and Agreement Regarding Prepayment.**



(a) EXCEPT AS OTHERWISE EXPRESSLY PERMITTED HEREUNDER OR UNDER THE NOTE, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAW TO PREPAY THE NOTE, IN WHOLE OR IN PART, WITHOUT PREPAYMENT CHARGE, UPON ACCELERATION OF THE MATURITY DATE OF THE NOTE, AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PERMITTED HEREUNDER OR UNDER THE NOTE, IF FOR ANY REASON A PREPAYMENT OF ALL OR ANY PART OF THE NOTE IS MADE, WHETHER VOLUNTARILY OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THE NOTE BY MORTGAGEE ON ACCOUNT OF THE OCCURRENCE OF ANY EVENT OF DEFAULT ARISING FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY PROHIBITED OR RESTRICTED TRANSFER, FURTHER ENCUMBRANCE OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF SECURING THE NOTE, THEN MORTGAGOR SHALL BE OBLIGATED TO PAY, CONCURRENTLY WITH SUCH PREPAYMENT, THE PREPAYMENT PREMIUM PROVIDED FOR IN THE NOTE (OR, IN THE EVENT OF ACCELERATION WHEN THE NOTE IS CLOSED TO PREPAYMENT, AS PROVIDED IN THE DEFINITION OF "SECURED OBLIGATIONS" SET FORTH IN ARTICLE 1 HEREOF). MORTGAGOR HEREBY DECLARES THAT MORTGAGEE'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THE NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THE NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY MORTGAGOR, FOR THIS WAIVER AND AGREEMENT.

(b) If the maturity of the Note secured by this Mortgage is accelerated, Mortgagor shall pay a prepayment premium in an amount equal to any prepayment premium that would be payable under the terms of the Note as if the Note were prepaid in full on the date of the acceleration.

**9.18 Waiver of Jury Trial.** MORTGAGEE AND MORTGAGOR KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE AND MORTGAGOR TO ENTER INTO THE LOAN TRANSACTION EVIDENCED BY THE NOTE.

**9.19 Governing Laws; Forum.**

(a) The substantive laws of the State of Alabama shall govern the validity, construction, enforcement and interpretation of this Mortgage.

(b) Any legal suit, action or proceeding against Mortgagee or Mortgagor arising out of or relating to this Mortgage may at Mortgagee's option be instituted in any federal or state court located in or serving the County of Shelby, State of Alabama and Mortgagor waives any objections that it may now or hereafter have based on venue and/or forum non conveniens of



any such suit, action or proceeding, and Mortgagor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

**9.20 Entire Agreement.** This Mortgage, together with the other Loan Documents, contains the entire understanding between the parties to the matters addressed herein, and may not be changed, amended, modified or waived except pursuant to a written agreement executed by the parties, and supersedes any other understandings or agreements with respect to the matters covered hereby.

**9.21 Limitation on Liability.** The provisions of Section 16 of the Note are incorporated herein by reference.

**9.22 Claims Against Mortgagee.**

(a) . Mortgagee shall not be in default under this Mortgage, or under any of the other Loan Documents, unless a written notice specifically setting forth the claim of Mortgagor shall have been given to Mortgagee within three (3) months after Mortgagor first had knowledge of the occurrence of the event that Mortgagor alleges gave rise to such claim and Mortgagee does not remedy or cure the default, if any there be, promptly thereafter. Mortgagor waives any claim, set-off or defense against Mortgagee arising by reason of any alleged default by Mortgagee as to which Mortgagor does not give such notice timely as aforesaid. Mortgagor acknowledges that such waiver is or may be essential to Mortgagee's ability to enforce Mortgagee's remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Mortgagee and Mortgagor with respect to the Loan.

(b) Mortgagor hereby (i) waives any claim that Mortgagor may have against any of the Indemnified Parties based upon any assertion that any such Indemnified Party has acted unreasonably or that any such Indemnified Party has unreasonably withheld or unreasonably delayed any action, in each case, to the extent that such Indemnified Party had an obligation, either at law or pursuant to the Loan Documents, to act reasonably and (ii) agrees that the sole remedy of Mortgagor based upon any such claim shall be an action for specific performance, injunctive relief or declaratory judgment. Mortgagor hereby further agrees that the Indemnified Parties shall not be liable for any monetary damages in respect of any such claim and that Mortgagor's sole remedy in respect of any such claim shall be limited to specific performance, injunctive relief or declaratory judgment.

**9.23 Acceptance of Cures for Events of Default.** Notwithstanding anything to the contrary contained in this Mortgage or the other Loan Documents (including, without limitation, any reference to the "continuance" of an Event of Default), Mortgagee shall in no event or under any circumstance be obligated or required to accept a cure by Mortgagor, any Guarantor or by any other Person of an Event of Default unless Mortgagee agrees to do so in the exercise of its sole and absolute discretion, it being agreed that once an Event of Default has occurred and so long as Mortgagee has not determined to accept a cure of such Event of Default in writing, Mortgagee shall be absolutely and unconditionally entitled to pursue all rights and remedies available to it under the Loan Documents, at law or in equity or otherwise.



## ARTICLE 10

### EXTENSION OPTION

**10.1 Mortgagee's Extension Option; Net Operating Income.** The provisions of this Article 10 concern the election of Mortgagee to extend the term of the Loan for the Extension Term and certain obligations of Mortgagor during the Extension Term.

(a) If Mortgagor shall fail to pay the outstanding principal balance of the Loan and all accrued interest and other charges due thereon and all other amounts due under the Loan Documents, at the Original Maturity Date (as such term is defined in the Note), Mortgagee shall have the right, at Mortgagee's sole option and discretion pursuant to a written notice from Mortgagee to Mortgagor, to extend the term of the Loan for an additional period of five (5) years (the "Extension Term") and require Mortgagor to, among other things, make additional monthly payments of net operating income as provided herein. If Mortgagee elects to extend the term of the Loan pursuant to this Article 10, Mortgagor shall pay all fees of Mortgagee incurred in connection with such extension, including, but not limited to, attorneys' fees and title insurance premiums. Mortgagor shall execute all documents requested by Mortgagee to evidence and secure the Loan, as extended, and shall obtain and provide to Mortgagee any title insurance policy or endorsement requested by Mortgagee. If Mortgagee elects to extend the term of the loan for the Extension Term, no "Event of Default" shall be deemed to exist solely by reason of the failure by Mortgagor to pay such outstanding principal balance of this Note and all accrued interest and other charges due hereunder, and all other amounts due under the Loan Documents, on the Original Maturity Date.

(b) Should Mortgagee elect to extend the term of the Loan as provided above, Mortgagee shall (i) reset the interest rate borne by the then-existing principal balance of the Loan to a rate per annum (the "New Rate") equal to the greater of (A) the Original Interest Rate (as such term is defined in the Note), or (B) Mortgagee's (or comparable lenders', if Mortgagee is no longer making such loans) then-prevailing interest rate for five (5) year loans secured by properties similar to the Property, as determined by Mortgagee in its sole discretion; (ii) re-amortize the then-existing principal balance of the Loan over the remaining portion of the Amortization Period (as such term is defined in the Note) (the "New Amortization Period"); (iii) have the right to require Mortgagor to enter into modifications of the non-economic terms of the Loan Documents as Mortgagee may request (the "Non-Economic Modifications"); and (iv) notwithstanding any provision set forth in the Loan Documents to the contrary, have the right to require Mortgagor to make monthly payments into escrow for insurance premiums, real property taxes, assessments and similar governmental charges, ground lease rent and condominium association charges. Accordingly, monthly principal and interest payments during the Extension Term shall be based upon the New Rate, in an amount that would be sufficient to fully amortize the outstanding principal balance of the Loan over the New Amortization Period, if such amortization were based on a three hundred sixty (360) day year.

(c) If Mortgagee elects to extend the term of the Loan, Mortgagee shall advise Mortgagor of the New Rate on or prior to the Original Maturity Date.



(d) In addition to the required monthly payments of principal and interest set forth above, commencing on the first day of the second month following the Original Maturity Date and continuing on the first day of each month thereafter during the Extension Term (each an “Additional Payment Date”), Mortgagor shall make monthly payments to Mortgagee in an amount equal to all Extension Term Net Operating Income attributable to the Property for the calendar month ending on the last day of the month that is two months preceding each such Additional Payment Date. For example, assuming the Original Maturity Date is January 1, then Extension Term Net Operating Income for the period from January 1 through January 31 shall be payable to Mortgagee on March 1; Extension Term Net Operating Income for the period from February 1 through February 28 shall be payable to Mortgagee on April 1, and so on. Notwithstanding the forgoing, during the Extension Term, Mortgagor shall cause each tenant under a Lease to remit all amounts due with respect to such tenant’s Lease directly to Servicer in accordance with the Pledge Agreement.

(e) All such Extension Term Net Operating Income received from Mortgagor shall be held by, and in the possession of, Mortgagee or Mortgagee’s servicer and shall be deposited into an account or accounts maintained at a financial institution chosen by Mortgagee or its servicer in its sole discretion (the “Extension Term Deposit Account”) and all such funds shall be invested in a manner acceptable to Mortgagee in its sole discretion. All interest, dividends and earnings credited to the Extension Term Deposit Account shall be held and applied in accordance with the terms hereof.

(f) On the third Additional Payment Date and on each third Additional Payment Date thereafter, Mortgagee shall apply all Extension Term Excess Funds, if any, to prepayment of amounts due under this Note, without premium or penalty in such order and manner as determined by Mortgagee in its sole discretion.

(g) As security for the repayment of the Loan and the performance of all other obligations of Mortgagor under the Loan Documents, Mortgagor hereby assigns, pledges, conveys, delivers, transfers and grants to Mortgagee a first priority security interest in and to: (i) all Mortgagor’s right, title and interest in and to the Extension Term Deposit Account; (ii) all rights to payment from the Extension Term Deposit Account and the money deposited therein or credited thereto (whether then due or in the future due and whether then or in the future on deposit); (iii) all interest thereon; (iv) any certificates, instruments and securities, if any, representing the Extension Term Deposit Account; (v) all claims, demands, general intangibles, choses in action and other rights or interests of Mortgagor in respect of the Extension Term Deposit Account; (vi) any monies then or at any time thereafter deposited therein; any increases, renewals, extensions, substitutions and replacements thereof and (vii) all proceeds of the foregoing.

(h) From time to time, but not more frequently than monthly, Mortgagor may request a disbursement (a “Disbursement”) from the Extension Term Deposit Account for capital expenses, tenant improvement expenses, leasing commissions and special contingency expenses. Mortgagee may consent to or deny any such Disbursement in its sole discretion.

(i) Upon the occurrence of any Event of Default (i) Mortgagor shall not be entitled to any further Disbursement from the Extension Term Deposit Account; and (ii)



Mortgagee shall be entitled to take immediate possession and control of the proceeds on deposit in the Extension Term Deposit Account and to pursue all of its rights and remedies available to Mortgagee under the Loan Documents, at law and in equity.

(j) Notwithstanding the foregoing provisions of this Section 10.1, Mortgagee may in its sole discretion elect use the Deposit Account as the Extension Term Deposit Account.

(k) All of the terms and conditions as set forth in the Loan Documents shall apply during the Extension Term, except as expressly set forth above, and except that at the end of the Extension Term no further extensions of the Loan shall be permitted.

(l) Notwithstanding the foregoing provisions of this Section 10.1, during the Extension Term, all Extension Term Net Operating Income shall be due and payable to Mortgagee.

## **10.2 Budgets During Extension Term.**

(a) Within fifteen (15) days following the Original Maturity Date and on or before December 1 of each subsequent calendar year during the Extension Term, Mortgagor shall deliver to Mortgagee a proposed revenue and expense budget for the Property for the remainder of the calendar year in which the Original Maturity Date occurs or the immediately succeeding calendar year (as applicable). Such budget shall set forth Mortgagor's projection of Extension Term Gross Revenue and Extension Term Operating Expenses for the applicable calendar year, which shall be subject to Mortgagee's approval. Once a proposed budget has been reviewed and approved by Mortgagee, and Mortgagor has made all revisions requested by Mortgagee, if any, the revised budget shall be delivered to Mortgagee and shall thereafter become the budget for the Property hereunder (the "Budget") for the applicable calendar year. If Mortgagor and Mortgagee are unable to agree upon a Budget for any calendar year, the budgeted Extension Term Operating Expenses (excluding extraordinary items) provided in the Budget for the Property for the preceding calendar year shall be considered the Budget for the Property for the subject calendar year until Mortgagor and Mortgagee agree upon a new Budget for such calendar year.

(b) During the Extension Term, Mortgagor shall operate the Property in accordance with the Budget for the applicable calendar year, and the total of expenditures relating to the Property exceeding one hundred and five percent (105%) of the aggregate of such expenses set forth in the Budget for the applicable time period shall not be treated as Extension Term Operating Expenses for the purposes of calculating "Extension Term Net Operating Income," without the prior written consent of Mortgagee except for emergency expenditures which, in Mortgagor's good faith judgment, are reasonably necessary to protect, or avoid immediate danger to, life or property.

## **10.3 Reports During Extension Term.**

(a) During the Extension Term, Mortgagor shall deliver to Mortgagee all financial statements required by Mortgagee to calculate Extension Term Net Operating Income, including, without limitation, a monthly statement to be delivered to Mortgagee concurrently with Mortgagor's payment of Extension Term Net Operating Income that sets forth the amount of Extension Term Net Operating Income accompanying such statement and Mortgagor's



calculation of Extension Term Net Operating Income for the relevant calendar month. Such statements shall be certified by an executive officer of Mortgagor or Mortgagor's manager, managing member or general partner (as applicable) as having been prepared in accordance with the terms hereof and to be true, accurate and complete in all material respects.

(b) In addition, on or before February 1 of each calendar year during the Extension Term, Mortgagor shall submit to Mortgagee an annual income and expense statement for the Property which shall include the calculation of Extension Term Gross Revenue, Extension Term Operating Expenses and Extension Term Net Operating Income for the preceding calendar year and shall be accompanied by Mortgagor's reconciliation of any difference between the actual aggregate amount of the Extension Term Net Operating Income for such calendar year and the aggregate amount of Extension Term Net Operating Income for such calendar year actually remitted to Mortgagee. All such statements shall be certified by an executive officer of Mortgagor or Mortgagor's manager, managing member or general partner (as applicable) as having been prepared in accordance with the terms hereof and to be true, accurate and complete in all material respects. If any such annual financial statement discloses any inconsistency between the calculation of Extension Term Net Operating Income and the amount of Extension Term Net Operating Income actually remitted to Mortgagee, Mortgagor shall immediately remit to Mortgagee the amount of any underpayment of Extension Term Net Operating Income for such calendar year or, in the event of an overpayment by Mortgagor, such amount may be withheld from any subsequent payment of Extension Term Net Operating Income required hereunder.

(c) Mortgagee may notify Mortgagor within ninety (90) days after receipt of any statement or report required hereunder that Mortgagee disputes any computation or item contained in any portion of such statement or report. If Mortgagee so notifies Mortgagor, Mortgagee and Mortgagor shall meet in good faith within twenty (20) days after Mortgagee's notice to Mortgagor to resolve such disputed items. If, despite such good faith efforts, the parties are unable to resolve the dispute at such meeting or within ten (10) days thereafter, the items shall be resolved by an independent certified public accountant designated by Mortgagee within fifteen (15) days after such ten (10) day period. The determination of such accountant shall be final. All fees of such accountant shall be paid by Mortgagor. Mortgagor shall remit to Mortgagee any additional amount of Extension Term Net Operating Income found to be due for such periods within ten (10) days after the resolution of such dispute by the parties or the accountant's determination, as applicable. The amount of any overpayment found to have been made for such periods may be withheld from any required future remittance of Extension Term Net Operating Income.

(d) Mortgagor shall at all times keep and maintain full and accurate books of account and records adequate to reflect correctly all items required in order to calculate Extension Term Net Operating Income.



## ARTICLE 11

### ALABAMA PROVISIONS

**11.1 Principles of Construction.** In the event of any inconsistencies between the terms and provisions of this Mortgage and Article 11 of this Mortgage, the terms and provisions of Article 11 shall govern and control.

**11.2 Future Advances.** IT IS THE INTENT OF MORTGAGOR AND MORTGAGEE THAT THIS MORTGAGE SECURE ALL FUTURE ADVANCES (INCLUDING OPTIONAL AND PROTECTIVE ADVANCES) MADE PURSUANT TO THE LOAN DOCUMENTS.

[END OF TEXT]

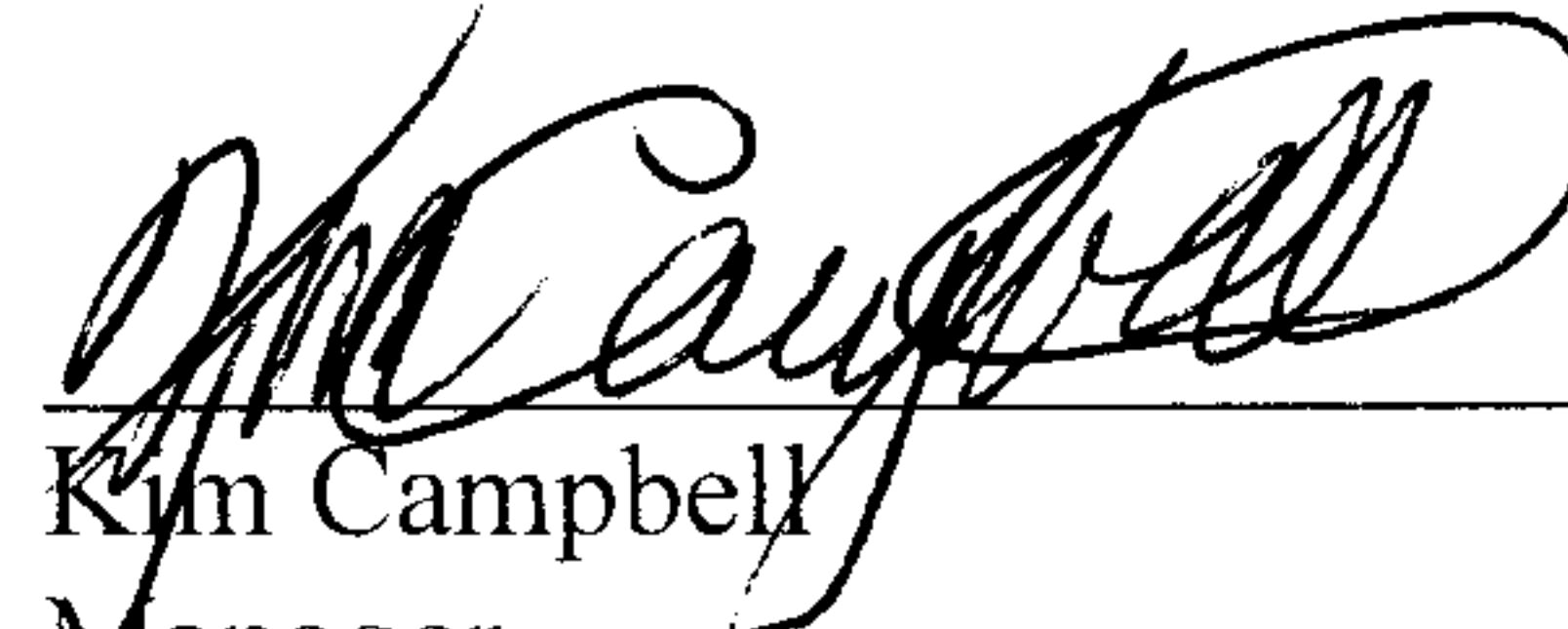


IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed and delivered this Mortgage as of the date first mentioned above.

**MORTGAGOR:**

**MBCP, LLC**, a Delaware limited liability company

By:

  
\_\_\_\_\_  
Kim Campbell  
Manager





STATE OF California  
COUNTY OF San Diego

I, Melissa Adams, a notary public in and for said County, in said State, hereby certify that Kim Campbell, whose name as Manager of MBCP, LLC, a Delaware 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, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 6 day of March, 2013.



Melissa Adams

(Signature and office of individual taking acknowledgment.)

Notary Public

My Commission Expires: 11/22/16

[Acknowledgment on behalf of Mortgagor]



## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL I:

Lot 11-G, Meadow Brook Corporate Park South, Phase II, Resurvey No. 8, as recorded in Map Book 25, page 91 A & B, in the Probate Office of Shelby County, Alabama; being more particularly described as follows:

Begin at the Southeasterly corner of Lot 11-G, Meadow Brook Corporate Park South, Phase II, Resurvey No. 8, as recorded in Map Book 25, page 91 A & B in the Probate Office of Shelby County, Alabama and run North 90°00' West a distance of 603.04 feet to a point on the corner of Lot 11-G; thence North 0°00' East a distance of 603.74 feet to a point on the Southeasterly right of way line of Resource Drive; thence North 64°16'06" East along the Southeasterly right of way line of Resource Drive a distance of 223.21 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 460.00 feet, a central angle of 28°27'36" and a chord bearing of North 50°02'18" East; thence along the arc of said curve and the Southeasterly right of way line of Resource Drive a distance of 228.49 feet to the P.R.C. (Point of Reverse Curve) of a curve to the right having a radius of 25.00 feet, a central angle of 79°47'55" and a chord bearing of North 75°42'28" East; thence along the arc of said curve and the Southeasterly right of way line of Resource Drive a distance of 34.82 feet to a point on the Southwesterly right of way line of Corporate Drive, said point being the P.R.C. (Point of Reverse Curve) of a curve to the left having a radius of 362.21 feet, a central angle of 10°38'30" and a chord bearing of South 69°42'50" East; thence along the arc of said curve and the Southwesterly right of way line of Corporate Drive a distance of 67.27 feet to the P.T. (Point of Tangent) of said curve; thence South 75°02'05" East tangent to said curve along the Southwesterly right of way line of Corporate Drive a distance of 52.34 feet to a point; thence South 0°25'10" East a distance of 97.46 feet to a point; thence South 15°00'40" West a distance of 43.23 feet to a point; thence South 0°25'10" East a distance of 460.87 feet to a point; thence South 22°45'40" East a distance of 235.47 feet to the Point of Beginning; being situated in Shelby County, Alabama.

#### PARCEL II:

Lot 11-F, Meadow Brook Corporate Park South, Phase II, Resurvey No. 8, as recorded in Map Book 25, page 91 A & B in the Probate Office of Shelby County, Alabama; being more particularly described as follows:

Begin at the Southeast corner of Lot 11-F, Meadow Brook Corporate Park South, Phase II, Resurvey No. 8, as recorded in Map Book 25, page 91 A & B in the Probate Office of Shelby County, Alabama and run North 0°00' East along the East line of said Lot 11-F a distance of 603.74 feet to a point on the Southeasterly right of way line of Resource Drive (a 60 foot wide right of way); thence South 64°16'06" West along the Southeasterly right of way line of Resource Drive a distance of 295.54 feet to a point; thence North 25°43'54" West a distance of 255.40 feet to a point on the edge of Lake E; thence South 58°16'06" West a distance of 3.66 feet to the P.C. (Point of Curve) of a curve to the right having a radius of 185.00 feet, a central angle of 83°15'51" and a chord bearing of North 80°05'58" West; thence in a Southwesterly, Westerly



and Northwesterly direction along the arc of said curve and along Lake E a distance of 268.85 feet to a point; thence South 51°31'57" West a distance of 243.19 feet to a point; thence South 2°58'01" West a distance of 315.00 feet to a point; thence South 28°58'16" West a distance of 320.01 feet to a point, said point being the Southwesterly corner of Lot 11-F; thence North 90°00' East along the South line of said Lot 11-F a distance of 984.14 feet to the Point of Beginning.

TOGETHER WITH rights granted in that certain Reciprocal Easement Agreement recorded in Instrument 20030102000000360, in the Probate Office of Shelby County, Alabama.



**EXHIBIT B**

**PERMITTED EXCEPTIONS**

[attached hereto]



All taxes for the year 2013 and subsequent years, not yet due and payable.

Any prior reservation or conveyance, together with release of damages, of minerals of every kind and character, including, but not limited to, oil, gas, sand and gravel, in on and under subject property.

**PARCELS I & II:**

Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporation Park as recorded in Real 64, page 91; 1st Amendment recorded in Real 95, page 826; 2nd Amendment recorded in Real 141, page 784; 3rd Amendment recorded in Real 177, page 244; 4th Amendment recorded in Real 243, page 453; 5th Amendment recorded in Real 245, page 89; 6th Amendment recorded in Instrument 1992-23529; 7th Amendment recorded in Instrument 1995-03028; 8th Amendment recorded in Instrument 1995-04188; 9th Amendment recorded in Instrument 1996-5491; 10th Amendment recorded in Instrument 1996-32318; 11th Amendment recorded in Instrument 1997-30077; 12th Amendment recorded in Instrument 1997-37856; 13th Amendment recorded in Instrument 1998-5588; 14th Amendment recorded in Instrument 1998-41655; 15th Amendment recorded in Instrument 1998-46243; 16th Amendment recorded in Instrument 1999-2935; 17th Amendment recorded in Instrument 20021217000631360 and 18th Amendment recorded in Instrument 20100927000316200 in the Probate Office of Shelby County, Alabama.

**PARCEL I only:**

Agreement with Alabama Power Company regarding underground cables recorded in Real 207, page 348, in the Probate Office of Shelby County, Alabama.

Agreement with Alabama Power Company recorded in Misc. Book 48, page 880, in the Probate Office of Shelby County, Alabama.

Matters shown on plat recorded in Map Book 25, page 91 A & B, as follows: Building setback line of 40 feet reserved from Resource Drive and Corporate Drive; 20 foot storm sewer easement on the Easterly and Westerly portions with pipe locations extensions; 20 foot sanitary sewer easements and sanitary manholes through Southerly portion; asphalt paving and curbs, as shown on that survey last revised 2/15/2013 by William H. Sommerville III designated as MKA Project No. 1122-13-2769. (the "Survey")

Transmission line permit to Alabama Power Company, recorded in Instrument 1999-25430, in the Probate Office of Shelby County, Alabama, as shown on the Survey.



Sanitary Sewer Line Easement Agreement between Daniel US Properties Limited Partnership II and Shelby County, recorded in Instrument 2000-44862 in the Probate Office of Shelby County, Alabama, as shown on the Survey.

Easements and rights of others as stated in that certain Reciprocal Easement Agreement recorded in Instrument 20030102000000360, in the Probate Office of Shelby County, Alabama.

**PARCEL II only:**

Agreement with Alabama Power Company recorded in Misc. Book 48, page 880, in the Probate Office of Shelby County, Alabama.

Easement to DMB, LLC, as recorded in Instrument 1998-0958, in the Probate Office of Shelby County, Alabama, as shown on the Survey.

Matters shown on plat recorded in Map Book 25, page 91 A & B, as follows: Building setback line of 40 feet reserved from Resource Drive and Corporate Drive; 20 foot storm sewer easement on the Easterly and Westerly portions with pipe locations extensions; 20 foot sanitary sewer easements and sanitary manholes through Southerly portion; asphalt paving and curve, as shown on the Survey.


Transmission line permit to Alabama Power Company, recorded in Instrument 1999-25430, in the Probate Office of Shelby County, Alabama, as shown on the Survey.

Sanitary Sewer Line Easement Agreement dated 12/27/2000, by and between Meadow Brook South 2500, LLC and Shelby County, Alabama, as set out in Instrument 2001-00004, in the Probate Office of Shelby County, Alabama, as shown on the Survey.

The following matters as delineated on the survey dated 2/15/2013 by William H. Sommerville III designated as MKA Project No. 1122-13-2769:

- a.) Encroachment of curbing and parking into 20' Sanitary Sewer Easement and 20' Storm Easement (Parcels I & II)
- b.) Encroachment of A/C pad over property line (Parcel II Only)
- c.) Encroachment of fence over property line (Parcel II Only)

NOTE: The company insures the Insured against actual monetary loss by reason of forced removal of said encroachments.

  
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Shelby Cnty Judge of Probate, AL  
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