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Shelby Cnty Judge of Probate, AL  
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When Recorded Return To:

SNELL & WILMER L.L.P.  
One South Church Avenue  
1500 Unisource Energy Tower  
Tucson, Arizona 85701-1630  
Attention: Stephen J. Young, Esq.  
NCS- 013135AL8

*Recorder's Use*

## **MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT SECURES A VARIABLE RATE PROMISSORY NOTE WHICH VARIES ACCORDING TO CHANGES IN THE PRIME RATE ANNOUNCED FROM TIME TO TIME IN THE WESTERN EDITION OF *THE WALL STREET JOURNAL* IN ACCORDANCE WITH THE SECURED PROMISSORY NOTE BY GRANTOR IN FAVOR OF LENDER.

GRANTOR'S DELAWARE ORGANIZATIONAL IDENTIFICATION NUMBER: 5258714.

THIS MORTGAGE AND SECURITY AGREEMENT dated June 27, 2013 (this "**Mortgage**"), is made and executed between SPIRIT SPE PORTFOLIO 2012-5, LLC, a Delaware limited liability company, whose address is 16767 N. Perimeter Drive, Suite 210, Scottsdale, Arizona 85260 ("**Grantor**") and ALLIANCE BANK OF ARIZONA, a division of Western Alliance Bank, an Arizona banking corporation, whose address is One East Washington Street, 14<sup>th</sup> Floor, Phoenix, Arizona 85004 (referred to below as "**Lender**").

**For valuable consideration, Grantor** does mortgage, grant, bargain, sell and convey, with power of sale unto Lender, and grants to Lender a security interest in all of Grantor's right, title, and interest in and to that certain real property located as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Premises**");

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Premises including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "**Improvements**"), all of which shall be deemed and construed to be a part of the real property;

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



TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the "**Rents**"), subject to the terms and provisions of Article II of this Mortgage with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or portions thereof, granted by Grantor, and further subject to the right, power and authority hereinafter given to Grantor to collect and apply such Rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Grantor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Grantor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Grantor thereunder including, without limitation, all rights of Grantor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (whether one or more, individually or collectively as the context requires, the "**Leases**");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Grantor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Grantor in (i) the property and interests in property described on **Exhibit B** attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Grantor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Grantor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Grantor, and (v) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "**Personal Property**");

TOGETHER WITH all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Grantor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property (as defined below), and any and all awards made for the taking by eminent domain, or by any



proceeding of purchase in lieu thereof, of the whole or any part of the Mortgaged Property (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages); and

TOGETHER WITH all proceeds of the foregoing.

The Premises, the Improvements, the Rents, the Leases, the Personal Property, and the entire estate, property, right, title and interest hereby mortgaged and conveyed to Lender may hereafter be collectively referred to as the "**Mortgaged Property**".

FOR THE PURPOSE OF SECURING (in such order of priority as Lender may elect) the following (the "**Obligations**"):

(a) payment of indebtedness in the total principal amount of Six Million and No/100 Dollars (\$6,000,000.00) (the "**Loan**"), with interest thereon, which Loan is the "**Portfolio Loan**" (as defined in the Loan Agreement referred to below) which is secured by the Premises and certain other property of Grantor, and which Loan, together with the other Portfolio Loans, is evidenced by that certain Secured Promissory Note dated as of March 27, 2013, as modified pursuant to that certain First Modification Agreement dated as of June 24, 2013 between Grantor and Lender (the "**First Modification**"), in the amended total principal amount of the Loan Amount (as specified in the Loan Agreement) (as it may be further amended, modified, extended, renewed, replaced, and restated from time to time, the "**Note**") executed by Grantor pursuant to that certain Loan Agreement between Grantor and Lender dated as of March 27, 2013, as modified pursuant to the First Modification (as it may be further amended, modified, extended, restated and renewed from time to time, the "**Loan Agreement**"). The Note contains a provision providing for a variable rate of interest thereunder;

(b) payment of all sums advanced by Lender to protect the Mortgaged Property, with interest thereon equal to the Interest Rate (as defined in the Note) plus six percent (6%) per annum (which rate of interest is hereinafter referred to as the "**Agreed Rate**");

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Grantor, or its successors or assigns, by Lender, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Mortgage;

(d) performance of every obligation of Grantor contained in the Loan Documents (as defined below) relating to the Loan or the Mortgaged Property;

(e) performance of every obligation of Grantor contained in any agreement, document, or instrument now or hereafter executed by Grantor reciting that the obligations thereunder are secured by this Mortgage, including, without limitation, all other obligations, agreements or indebtedness between Grantor and any affiliate of Lender; and



(f) for the benefit of Lender, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Mortgaged Property is bound or may be affected.

This Mortgage, the Note, the Loan Agreement, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "**Loan Documents**". Capitalized terms as used in this Mortgage and not otherwise defined are used with the meanings set forth in the Loan Agreement and other Loan Documents. Any term used or defined in the Uniform Commercial Code as in effect in the State of Alabama, as amended from time to time ("**Uniform Commercial Code**"), and not defined in this Mortgage, has the meaning given to the term in the Uniform Commercial Code, when used in this Mortgage.

**GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS, IT BEING UNDERSTOOD THAT GRANTOR MAY CAUSE ANY OF ITS COVENANTS OR AGREEMENTS WITH RESPECT TO THE MORTGAGED PROPERTY TO BE PERFORMED BY THE TENANT (WHETHER ONE OR MORE, INDIVIDUALLY OR COLLECTIVELY AS THE CONTEXT REQUIRES, THE "TENANTS") UNDER THE LEASES ON BEHALF OF GRANTOR AND LENDER SHALL ACCEPT SUCH PERFORMANCE BY THE TENANTS ON GRANTOR'S BEHALF:**

**1. COVENANTS AND AGREEMENTS OF GRANTOR**

**Section 1.1 Payment and Performance of Secured Obligations.** Grantor shall pay when due and/or perform each of the Obligations.

**Section 1.2 Maintenance, Repair, Alterations.** Grantor shall keep the Mortgaged Property in good condition and repair. Grantor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Lender. Grantor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Grantor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Grantor shall not commit or permit any waste or deterioration of the Mortgaged Property, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Grantor shall perform its obligations under each Lease. "**Requirement**" and "**Requirements**" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Grantor or the Mortgaged Property are bound or which are otherwise applicable to the Mortgaged Property, construction of any Improvements on the Mortgaged Property, or operation, occupancy or use of the Mortgaged Property (including, without limitation (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization,



license, permit, or approval relating to the Mortgaged Property, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Mortgaged Property, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Grantor is a party or by which Grantor or the Mortgaged Property is bound or affected, and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Grantor is a party or by which Grantor or the Mortgaged Property is bound or affected).

**Section 1.3 Required Insurance.** Grantor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Mortgaged Property, at no expense to Lender, policies of insurance in forms and amounts, issued by such companies, and covering such casualties, risks, perils, liabilities and other hazards as required under the Loan Agreement. All such policies of insurance required by the terms of this Mortgage or the Loan Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor or any party holding under Grantor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Grantor.

**Section 1.4 Delivery of Policies, Payment of Premiums.**

(a) At Lender's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Lender in form reasonably satisfactory to Lender or shall name Lender as an additional insured. Grantor shall furnish Lender with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Lender consents, Grantor may provide any of the required insurance through blanket policies carried by Grantor and covering more than one location, or by policies procured by a tenant or other party holding under Grantor; provided, however, all such policies shall meet the requirements referred to in **Section 1.3**. Grantor shall deliver to Lender evidence reasonably satisfactory to Lender of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Mortgage. All such policies shall contain a provision that, notwithstanding any contrary agreement between Grantor and insurance company, such policies will not be cancelled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Lender.

(b) In the event Grantor fails to obtain, maintain, or deliver to Lender the policies of insurance with respect to the Mortgaged Property required by this Mortgage, Lender may, at Lender's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Lender's interest, and Grantor will pay all premiums thereon promptly upon demand by Lender, and until such payment is made by Grantor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Lender, Grantor shall deposit with Lender in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage (funds deposited for this purpose are referred to as "**Insurance Impounds**"). In such event Grantor further agrees to



cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Lender. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Lender shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Lender shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Grantor set forth in **Section 1.3** to obtain and maintain insurance. Lender may commingle Insurance Impounds with its own funds, and Grantor shall not be entitled to interest thereon. Lender may reserve for future payments of premiums such portion of Insurance Impounds as Lender in its absolute and sole discretion deems proper. If Grantor fails to deposit with Lender sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand with interest from the date advanced at the Agreed Rate, or at the option of Lender the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Lender may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Lender may, at any time, at Lender's option, apply any Insurance Impounds or Impositions Impounds under this **Section 1.4** or **Section 1.8**, any funds paid as Rents, and any other funds of Grantor held by Lender to payment of any of the Obligations, in such manner and order as Lender may elect, notwithstanding that such Obligations may not yet be due.

**Section 1.5    Casualties; Insurance Proceeds.**

(a) Grantor shall give prompt written notice thereof to Lender after the happening of any casualty to or in connection with the Mortgaged Property or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Lender, and Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. If Grantor receives any proceeds of insurance resulting from such casualty, Grantor shall promptly pay over such proceeds to Lender. All proceeds of insurance will be applied by Lender to restoration of the Mortgaged Property to the extent Grantor is required to make payment of such proceeds to the Tenant under the Lease and after such payment, or if no such payment is required, to the payment of the Obligations in such order as Lender shall determine.

(b) Grantor shall not be excused from repairing or maintaining the Mortgaged Property as provided in **Section 1.2** hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available to Grantor or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such default or notice of default.



**Section 1.6 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Mortgage as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Grantor in and to all policies of insurance required by **Section 1.3** shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Mortgaged Property, to the extent such policies are assignable pursuant to the terms thereof.

**Section 1.7 Indemnification; Subrogation; Waiver of Offset.**

(a) If Lender is made a party to any litigation concerning the Note, this Mortgage, any of the Loan Documents, the Mortgaged Property or any part thereof or interest therein, or the occupancy of the Mortgaged Property by Grantor, then except to the extent directly caused by the gross negligence or willful misconduct of Lender, Grantor shall indemnify, defend and hold Lender harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Lender as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Lender may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Grantor, Grantor shall pay Lender reasonable attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Grantor by reason of its breach.

(b) Grantor waives any and all right to claim or recover against Lender, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Grantor, the Mortgaged Property, Grantor's property or the property of others under Grantor's control from any cause insured against or required to be insured against by this Mortgage.

(c) All sums payable by Grantor pursuant to this Mortgage shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Mortgage by any trustee or receiver of Lender, or by any court, in any such proceeding; (v) any claim that Grantor has or might have against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms of the Loan Documents or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Grantor. "**Person**" means any natural person, any unincorporated association, any



corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

**Section 1.8   Impositions.**

(a) Grantor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) that are assessed or imposed upon the Mortgaged Property or become due and payable and that create, may create, or appear to create a lien upon the Mortgaged Property (the above are sometimes referred to herein individually as an "**Imposition**" and collectively as "**Impositions**"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Grantor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Lender and measured by or based in whole or in part upon this Mortgage or the outstanding amount of the Obligations, then all such taxes (other than federal and state income taxes on the interest paid to Lender), assessments or fees shall be deemed to be included within the term "**Impositions**" as defined in **Section 1.8(a)** and Grantor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Grantor fails to pay such Impositions prior to delinquency, Lender may, at its option, declare all or part of the Obligations, immediately due and payable. If Grantor is prohibited by law from paying such Impositions, Lender may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Grantor.

(c) Subject to the provisions of **Section 1.8(d)** and upon request by Lender, Grantor shall deliver to Lender within thirty (30) days after the date upon which any Imposition is due and payable by Grantor proof satisfactory to Lender evidencing the payment thereof.

(d) Grantor shall have the right to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Grantor's covenant to pay any such Imposition at the time and in the manner provided in this **Section 1.8**, unless Grantor has given prior written notice to Lender of Grantor's intent to so contest or object to an Imposition prior to such Imposition becoming delinquent, and unless, in Lender's reasonable discretion, (i) Grantor shall demonstrate to Lender's satisfaction that the proceedings to be initiated by Grantor shall conclusively operate to prevent the sale of the Mortgaged Property or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender, (iii) Grantor shall demonstrate to Lender's satisfaction that Grantor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or (iv) such contest is being conducted by Tenant in full compliance with the terms of the Lease.



(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Lender, Grantor shall pay to Lender an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Lender, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Lender, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "**Impositions Impounds**"). In such event, Grantor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Lender. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Lender shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Lender may notify Grantor and upon such notice Grantor shall deposit immediately an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this **Section 1.8(e)**. Lender may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Lender may reserve for future payment of Impositions such portion of Impositions Impounds as Lender may in its absolute and sole discretion deem proper. If Grantor fails to deposit with Lender sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Lender the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Lender may determine, notwithstanding that such Obligations may not yet be due.

(f) Grantor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Mortgaged Property or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Mortgaged Property as a single lien.

**Section 1.9 Utilities.** Grantor shall pay when due all charges that are incurred by Grantor for the benefit of the Mortgaged Property or that may become a charge or lien against the Mortgaged Property for gas, electricity, water, sewer, or other services furnished to the Mortgaged Property.

**Section 1.10 Actions Affecting Mortgaged Property.** Grantor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Lender may appear.

**Section 1.11 Actions By Lender.** If Grantor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Lender, in its absolute and sole discretion, without obligation so to do, without releasing Grantor from any obligation, and with



only such notice to or demand upon Grantor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith, if Grantor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, beyond any applicable cure periods (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Lender shall have and is hereby given the right, but not the obligation, but subject to the requirements and limitations of the Leases, (a) to enter upon and take possession of the Mortgaged Property; (b) to make additions, alterations, repairs and improvements to the Mortgaged Property that they or either of them may consider necessary or appropriate to keep the Mortgaged Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Mortgage; (e) to complete construction of any and all improvements theretofore commenced on the Mortgaged Property, if any; (f) to remediate any environmental activity; and (g) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Grantor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by it in connection with the exercise by Lender of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

**Section 1.12 Transfer of Mortgaged Property by Grantor.** In order to induce Lender to make the Loan, Grantor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Lender, Lender shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Lender may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Mortgage, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Grantor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Lender. As used herein, "**Transfer**" shall mean:

(i) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Mortgaged Property or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in **Exhibit C** attached hereto and incorporated herein by reference);

(ii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any beneficial interest in Grantor or any Lender, partner, member, or shareholder in Grantor to or in any Person (if Grantor or any partner, member or shareholder in Grantor is a trust) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;



(iii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Grantor or any Lender, partner, member, or shareholder in Grantor to or in any Person (if Grantor or any Lender, partner, member or shareholder in Grantor is a partnership) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(iv) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any member interest in Grantor or any Lender, partner, member, or shareholder in Grantor to or in any Person (if Grantor or any Lender, partner, member, or shareholder in Grantor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(v) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Grantor or any Lender, partner, member or shareholder in Grantor to or in any Person or any consolidation or merger of Grantor or any Lender, partner, member, or shareholder in Grantor into or with any Person (if Grantor or any Lender, partner, member, or shareholder in Grantor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(vi) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any other legal or beneficial interest in Grantor or any Lender, partner, member, or shareholder in Grantor whether voluntary, involuntary, by operation of law or otherwise, except the Permitted Exceptions; or

(vii) the execution of any agreements to do any of the foregoing, except the Permitted Exceptions.

### **Section 1.13 Eminent Domain.**

(a) In the event that any proceeding or action be commenced for the taking of the Mortgaged Property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "**Taking**"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Grantor receive any notice or other information regarding such Taking or damage, Grantor shall give prompt written notice thereof to Lender. All compensation, awards, damages, rights of action and proceeds awarded to Grantor by reason of any such Taking or damage or received by Grantor as the result of a transfer in lieu of a Taking (the "**Condemnation Proceeds**") are hereby assigned to Lender, and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Lender may require. If Grantor receives any Condemnation Proceeds Grantor shall promptly pay over such proceeds to Lender. All Condemnation Proceeds will be applied by Lender to restoration of the Mortgaged Property to the extent Grantor is required to make payment of Condemnation Proceeds to the Tenant under the Lease and after such payment, or if no such payment is required, to the payment of the Obligations in such order as Lender shall determine. Lender is hereby authorized and empowered by Grantor, at Lender's option and in Lender's sole discretion, as attorney-in-fact for Grantor, to the extent Grantor has the right or



power under the Lease, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Grantor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(b) Grantor shall not be excused from repairing or maintaining the Mortgaged Property as provided in **Section 1.2** or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are Condemnation Proceeds available to Grantor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

**Section 1.14 Additional Security.** No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Mortgage. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Mortgage and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Lender at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

**Section 1.15 Inspections.** Subject to the requirements and limitations of the Lease, Lender, and its agents, representatives, officers, and employees, are authorized to enter upon or in any part of the Mortgaged Property, upon forty eight (48) hours prior written notice to Grantor (except in the event of an emergency, when no such prior notice shall be required), for the purpose of inspecting the same and for the purpose of performing any of the acts Lender is authorized to perform hereunder or under the terms of any of the Loan Documents. Lender and its agents, representatives, officers, and employees shall not cause any material disruption of the business conducted on the Premises by Grantor or any tenant or occupant in connection with the foregoing.

**Section 1.16 Ownership and Liens and Encumbrances.** Grantor is, and as to any portion of the Mortgaged Property acquired hereafter will upon such acquisitions be, and shall remain the owner of the Mortgaged Property free and clear of any Liens and Encumbrances. Grantor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Grantor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Mortgaged Property, or any part thereof or interest therein. Grantor shall notify Lender immediately in writing of any Lien or Encumbrance or claim thereof on the Mortgaged Property. Grantor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Grantor shall first deposit with Lender a bond or other security satisfactory to Lender in such amount as Lender shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Grantor loses such contest, Grantor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Grantor shall fail to remove and discharge any Lien or



Encumbrance or claim thereof, then, in addition to any other right or remedy of Lender, Lender may, after only such notice to Grantor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Grantor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Mortgage. "**Lien or Encumbrance**" and "**Liens and Encumbrances**" mean, respectively, each and all of the following in respect of the Mortgaged Property: other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Lender in this Mortgage, excluding from the foregoing the Permitted Exceptions.

**Section 1.17 Lender's Powers.** Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the Obligations, Lender may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Lender's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**Section 1.18 Financial Statements.** Grantor shall deliver to Lender such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement. Lender shall have the right to audit, inspect and copy all of Grantor's books and records, relating thereto.

**Section 1.19 Trade Names.** At the request of Lender from time to time, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names or fictitious business names under which Grantor intends to operate the Mortgaged Property or any business located thereon and representing and warranting that Grantor does business under no other trade names or fictitious business names with respect to the Mortgaged Property. Grantor shall immediately notify Lender in writing of any change in said trade names or fictitious business names, and will, upon request of Lender, authorize any additional financing statements and execute any other certificates necessary to reflect the change in trade names or fictitious business names.

**Section 1.20 Leasehold.** If a leasehold estate constitutes a portion of the Mortgaged Property, Grantor agrees not to amend, modify, extend (except for renewal options contained in



the Leases), renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Lender, which consent may be withheld by Lender in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Grantor agrees to perform all obligations and agreements under said leasehold and shall not take any action or omit to take any action which would effect or permit the termination of said leasehold. Grantor agrees to promptly notify Lender in writing with respect to any default or alleged default by any party thereto and to deliver to Lender copies of all notices, demands, complaints or other communications received or given by Grantor with respect to any such default or alleged default. Lender shall have the option to cure any such default and to perform any or all of Grantor's obligations thereunder. All sums expended by Lender in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

**Section 1.21 Future Advances.** This Mortgage is given to secure not only existing Obligations, but also future advances, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The principal amount (including any future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed Six Million and No/100 Dollars (\$6,000,000.00), any advance made by Lender in connection with the exercise of any remedy resulting from an Event of Default plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Grantor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

## **2. ASSIGNMENT OF RENTS**

**Section 2.1 Assignment of Rents.** Grantor hereby absolutely and irrevocably assigns and transfers to Lender all the Rents of the Mortgaged Property, and hereby gives to and confers upon Lender the right, power and authority to collect the Rents. Grantor irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Grantor or Lender, for all Rents and apply the same to the payment of the Obligations in such order as Lender shall determine. Grantor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Lender upon written demand by Lender, without further consent of Grantor; provided, however, that Grantor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Lender is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder or under the other Loan Documents. The assignment of the Rents of the Mortgaged Property in this Article II is intended to be an absolute assignment from Grantor to Lender and not merely the passing of a security interest.

**Section 2.2 Collection Upon an Event of Default.** Upon the occurrence of an Event of Default, Lender may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents



(including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Obligations in such order as Lender may determine. The collection of such Rents, or the entering upon and taking possession of the Mortgaged Property, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Grantor also hereby authorizes Lender upon such entry, at its option, to take over and assume the management, operation and maintenance of the Mortgaged Property and to perform all acts Lender in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Grantor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases and/or to make concessions to tenants. Grantor hereby releases all claims of any kind or nature against Lender arising out of such management, operation and maintenance, excepting the liability of Lender to account as hereinafter set forth.

**Section 2.3 Application of Rents.** Upon such entry, Lender shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Lender. Lender shall not be accountable for more monies than it actually receives from the Mortgaged Property; nor shall it be liable for failure to collect Rents. Lender shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Lender's judgment shall be deemed conclusive and reasonable.

**Section 2.4 Mortgagee in Possession.** It is not the intention of the parties hereto that an entry by Lender upon the Premises under the terms of this instrument shall make Lender a party in possession in contemplation of the law, except at the option of Lender.

**Section 2.5 Indemnity.** Except to the extent directly caused by the gross negligence or willful misconduct of Lender, Grantor hereby agrees to indemnify and hold harmless Lender for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

**Section 2.6 No Obligation to Perform.** Nothing contained herein shall operate or be construed to obligate Lender to perform any obligations of Grantor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Lender, this



assignment shall not operate to place upon Lender any responsibility for the operation, control, care, management or repair of the Mortgaged Property or any portion thereof, and the execution of this assignment by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

### 3. **SECURITY AGREEMENT**

**Section 3.1 Creation of Security Interest.** Grantor hereby grants to Lender, a security interest in and to all the Personal Property.

**Section 3.2 Representations, Warranties and Covenants of Grantor.** Grantor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Grantor to Lender and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought by Grantor for personal, family or household purposes.

(b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Grantor will not, without the prior written consent of Lender, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with similar items of greater value.

(c) At the request of Lender, Grantor will authorize Lender to file one or more financing statements and/or execute one or more fixture filings pursuant to the Uniform Commercial Code, in form satisfactory to Lender and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Lender to be necessary or desirable.

(d) Grantor's principal place of business is in the State of Arizona at the address stated in the introductory paragraph of this Mortgage. Grantor does not do business under any trade name except as previously disclosed in writing to Lender. Grantor will immediately notify Lender in writing of any change in its place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Lender, authorize any additional financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Grantor will also promptly notify Lender (i) of any change of Grantor's organizational identification number or (ii) if Grantor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(e) Grantor shall immediately notify Lender of any claim against the Personal Property adverse to the interest of Lender therein.

**Section 3.3 Use of Personal Property by Grantor.** Until the occurrence of an Event of Default hereunder or under any other Loan Document, Grantor may have possession of the



Personal Property and use it in any lawful manner not inconsistent with this Mortgage and not inconsistent with any policy of insurance thereon.

**Section 3.4 Remedies Upon an Event of Default.**

(a) In addition to the remedies provided in **Section 4.2** hereof, upon the occurrence of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantor with respect to the Personal Property or any part thereof. In the event Lender demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Mortgage, Grantor agrees to promptly turn over and deliver possession thereof to Lender;

(ii) Without notice to or demand upon Grantor, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Grantor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and deliver promptly such Personal Property to Lender, or an agent or representative designated by Lender. Lender, and its agents and representatives, shall have the right to enter upon any or all of Grantor's premises and property to exercise Lender's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Lender by this Mortgage, any other Loan Document, or by law, either concurrently or in such order as Lender may determine;

(v) Sell or cause to be sold in such order as Lender may determine, as a whole or in such parcels as Lender may determine, the Personal Property and the remainder of the Mortgaged Property;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Lender may determine. Lender may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.



(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Grantor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Grantor at the address set forth in **Section 5.4**. If Lender fails to comply with this **Section 3.4** in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code (or under the Uniform Commercial Code, enforced from time to time, in any other state to the extent the same is the applicable law).

(c) The proceeds of any sale under **Section 3.4(a)(iv)** shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and reasonable attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Lender shall determine; and

(iii) The surplus, if any, shall be paid to the Grantor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Grantor until full payment of any deficiency has been made in cash.

(e) Lender may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(f) Lender may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure would not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property. Grantor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Grantor acknowledges that the Personal Property may be sold at a loss to Grantor and that, in such event, Lender shall have no liability or responsibility to Grantor for such loss.

**Section 3.5 Security Agreement.** This Mortgage constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code and Lender shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code.



**Section 3.6 Fixture Filing.** Upon its recording in the real property records, this Mortgage shall be effective as a financing statement filed as a fixture filing. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts arising with respect to the Mortgaged Property and general intangibles under the Uniform Commercial Code and the Uniform Commercial Code as in effect from time to time in any other state where the Property is situated. In addition, a carbon, photographic or other reproduced copy of this Mortgage and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

**Section 3.7 Authorization to File Financing Statements; Power of Attorney.** Grantor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Grantor as authorized by applicable law, as applicable to the Mortgaged Property. For purposes of such filing, Grantor agrees to furnish any information requested by Lender promptly upon request by Lender. Grantor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Mortgage. Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this **Section 3.7**, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

#### **4. REMEDIES UPON DEFAULT**

**Section 4.1 Events of Default.** Each of the following shall constitute an event of default ("**Event of Default**"):

(a) Failure by Grantor to pay any monetary amount when due under any Loan Document, and the expiration of five (5) days after written notice of such failure to Grantor.

(b) Failure by Grantor or Guarantor (as defined in the Loan Agreement) to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Grantor or Guarantor, under any Loan Document and the expiration of thirty (30) days after written notice of such failure by Lender to Grantor.

(c) Any representation or warranty by Grantor or Guarantor in any Loan Document is materially false, incorrect, or misleading as of the date made.

(d) The occurrence of a Material Adverse Change (as defined in the Loan Agreement).

(e) The occurrence of any Transfer, unless prior to such Transfer the holder of the Note has delivered to Grantor the written consent of such holder to such Transfer.



(f) The occurrence of any Event of Default, as such term is defined in the Loan Agreement or any other Loan Document.

Notwithstanding any provision to the contrary herein or in any of the other Loan Documents, if any Event of Default hereunder or under any other Loan Document relates solely to a Portfolio Loan other than the Loan, such Event of Default shall not result in the occurrence of an Event of Default hereunder. The proceeds of the Mortgaged Property shall be applied to the payment of the obligations of Grantor under the Loan and all other amounts owing to Lender with respect to such Loan and not to the obligations of Grantor to Lender with respect to any other Portfolio Loan.

**Section 4.2 Acceleration Upon Default; Additional Remedies.** Upon the occurrence of an Event of Default, Lender may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Lender may, in addition to the exercise of any or all of the remedies specified in **Section 3.4:**

(a) **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Mortgaged Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Obligations. In furtherance of this right, Lender may require any tenant or other user of the Mortgaged Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

(b) **Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Mortgaged Property, with the power to protect and preserve the Mortgaged Property, to operate the Mortgaged Property preceding foreclosure or sale, and to collect the Rents from the Mortgaged Property and apply the proceeds, over and above the cost of the receivership, against the Obligations. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Mortgaged Property exceeds the Obligations by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

(c) **Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Mortgaged Property.

(d) **Nonjudicial Foreclosure.** Lender, at its option, may sell the Mortgaged Property or any part of the Mortgaged Property pursuant to power of sale (which is hereby granted by Grantor to Lender) at public outcry to the highest bidder for cash (a "**Sale**") in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and in the



event of a Sale hereunder or under any applicable provision of law of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining Mortgaged Property. At any sale conducted pursuant to this Section, Lender may execute and deliver to the purchaser a conveyance of the Mortgaged Property, or any part of the Mortgaged Property, or any personal property or fixtures included in or located on the Mortgaged Property, in fee simple, which conveyance may contain recitals as to the occurrence of an Event of Default hereunder, and to this end Grantor hereby constitutes and appoints Lender its agent and attorney in fact to make such sale and conveyance and thereby to divest Grantor of all right, title, or equity in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the reasonable acts and doings of said agent and attorney in fact are hereby ratified and confirmed. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by dissolution or otherwise, are granted as cumulative of the other remedies provided by law for collection of the Obligations, and shall not be exhausted by one exercise thereof but may be exercised until full payment of the Obligations.

(e) **Tenancy at Sufferance.** If Grantor remains in possession of the Mortgaged Property after the Mortgaged Property is sold as provided above or Lender otherwise becomes entitled to possession of the Mortgaged Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Mortgaged Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Mortgaged Property, or (2) vacate the Mortgaged Property immediately upon the demand of Lender.

(f) **Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

(g) **Sale of the Mortgaged Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Mortgaged Property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Mortgaged Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Mortgaged Property.

(h) **Shortened Redemption.** Grantor hereby agrees that, in the event of foreclosure of this Mortgage, Lender may, at Lender's sole option, elect to reduce the period of redemption pursuant to any applicable law.

(i) **Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Obligations.



## 5. MISCELLANEOUS

**Section 5.1 Change, Discharge, Termination, or Waiver.** No provision of this Mortgage may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Lender to exercise and no delay by Lender in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

**Section 5.2 Grantor Waiver of Rights.** Grantor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Mortgaged Property, and (b) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Grantor may have or be able to assert by reason of the laws of the State of Arizona pertaining to the rights and remedies of sureties including, without limitation, A.R.S. Sections 12-1641 through 12-1646, and Arizona Rules of Civil Procedure 17(f).


**Section 5.3 Statements by Grantor.** Grantor shall, within ten (10) days after written notice thereof from Lender, deliver to Lender a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest or such other amounts.

**Section 5.4 Full Performance.** If Grantor pays all the Obligations when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**Section 5.5 Notices.** All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or overnight courier service or sent by registered or certified mail, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, and if delivered by hand or overnight courier service, shall be deemed given when delivered.

To Lender: Alliance Bank of Arizona  
One East Washington Street, 14<sup>th</sup> Floor  
Phoenix, Arizona 85004

To Grantor: Spirit SPE Portfolio 2012-5, LLC  
16767 N. Perimeter Drive, Suite 210  
Scottsdale, Arizona 85260

  
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**Section 5.6 Non-Recourse Provisions.** The Loan and the obligations of Grantor hereunder are subject to the non-recourse provisions of **Section 7.25** of the Loan Agreement.

**Section 5.7 Captions and References.** The headings at the beginning of each section of this Mortgage are solely for convenience and are not part of this Mortgage. Unless otherwise indicated, each reference in this Mortgage to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

**Section 5.8 Invalidity of Certain Provisions.** If any provision of this Mortgage is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

**Section 5.9 Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Lender at Grantor's request and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

**Section 5.10 Attorneys' Fees.** If any or all of the Obligations are not paid when due or if an Event of Default occurs, Grantor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

**Section 5.11 Governing Law.** WITH RESPECT TO PROCEDURAL MATTERS RELATED TO THE CREATION OF THE LIEN, PERFECTION AND ENFORCEMENT OF LENDER'S RIGHTS AGAINST THE MORTGAGED PROPERTY, THIS MORTGAGE WILL BE GOVERNED BY FEDERAL LAW APPLICABLE TO LENDER AND TO THE EXTENT NOT PREEMPTED BY FEDERAL LAW, THE LAWS OF THE STATE OF ALABAMA. IN ALL OTHER RESPECTS THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

**Section 5.12 Waiver of Jury Trial.** BY EXECUTING THIS MORTGAGE, THE UNDERSIGNED SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF ARIZONA. GRANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG GRANTOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO



THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

**Section 5.13 Joint and Several Obligations.** If this Mortgage is signed by more than one party as Grantor, all obligations of Grantor herein shall be the joint and several obligations of each party executing this Mortgage as Grantor.

**Section 5.14 Number and Gender.** In this Mortgage the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

**Section 5.15 Loan Statement Fees.** Grantor shall pay the amount demanded by Lender or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

**Section 5.16 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

**Section 5.17 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration executed by Lender so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Mortgaged Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

**Section 5.18 Representations and Warranties.** Grantor represents and warrants to Lender that:

(a) it is the lawful owner of the Mortgaged Property free and clear of all Liens and Encumbrances and holds a fee simple estate in the Premises and Improvements, subject only to the Permitted Exceptions and that Grantor has full right, power and authority to convey and mortgage the same and to execute this Mortgage;

(b) Grantor's exact legal name is correctly set forth in the introductory paragraph of this Mortgage;



(c) if Grantor is not an individual, Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage;

(d) if Grantor is an unregistered entity (including, without limitation, a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Mortgage; and

(e) Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage.

**Section 5.19 Integration.** The Loan Documents contain the complete understanding and agreement of Grantor and Lender and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

**Section 5.20 Binding Effect.** The Loan Documents will be binding upon, and inure to the benefit of, Grantor and Lender and their respective successors and assigns. Grantor may not delegate its obligations under the Loan Documents.


**Section 5.21 Time of the Essence.** Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

**Section 5.22 Survival.** The representations, warranties, and covenants of the Grantor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

**Section 5.23 Non-Recourse Provisions.** The Loan and the obligations of Grantor hereunder are subject to the non-recourse provisions of **Section 7.25** of the Loan Agreement.

**Section 5.24 Release.** Grantor shall be entitled to obtain a release of the Mortgaged Property from the lien of this Mortgage in accordance with the terms and conditions of **Section 7.26** of the Loan Agreement.

[Signatures Begin on Next Page]

  
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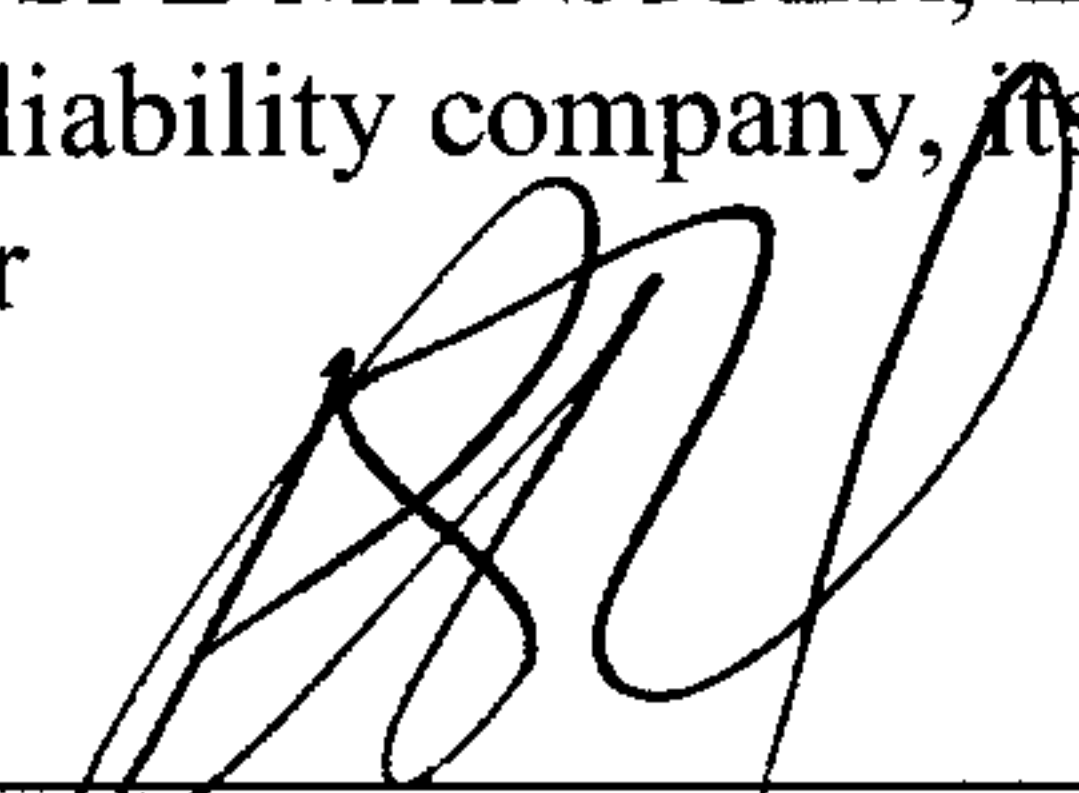


**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.**

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

**SPIRIT SPE PORTFOLIO 2012-5, LLC**, a  
Delaware limited liability company

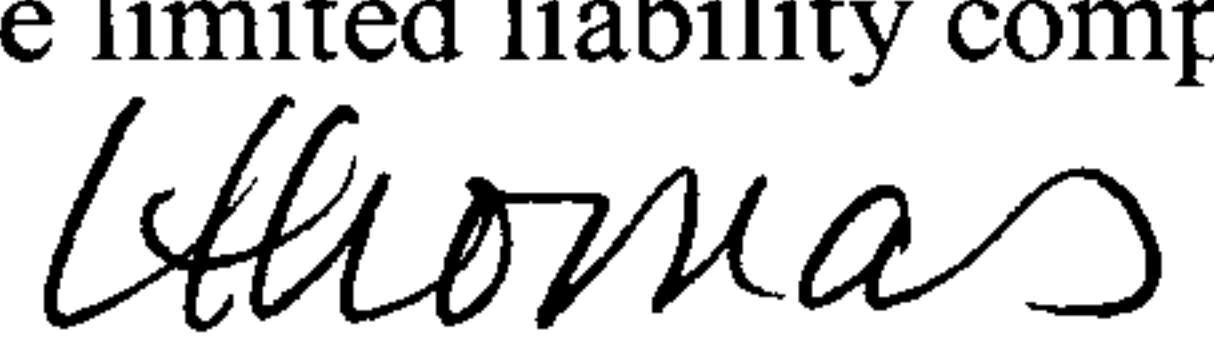
By: SPIRIT SPE MANAGER, LLC, a Delaware  
limited liability company, its non-member  
manager

By:   
Peter M. Mavoides  
President, Chief Operating Officer  
and Assistant Secretary

"GRANTOR"

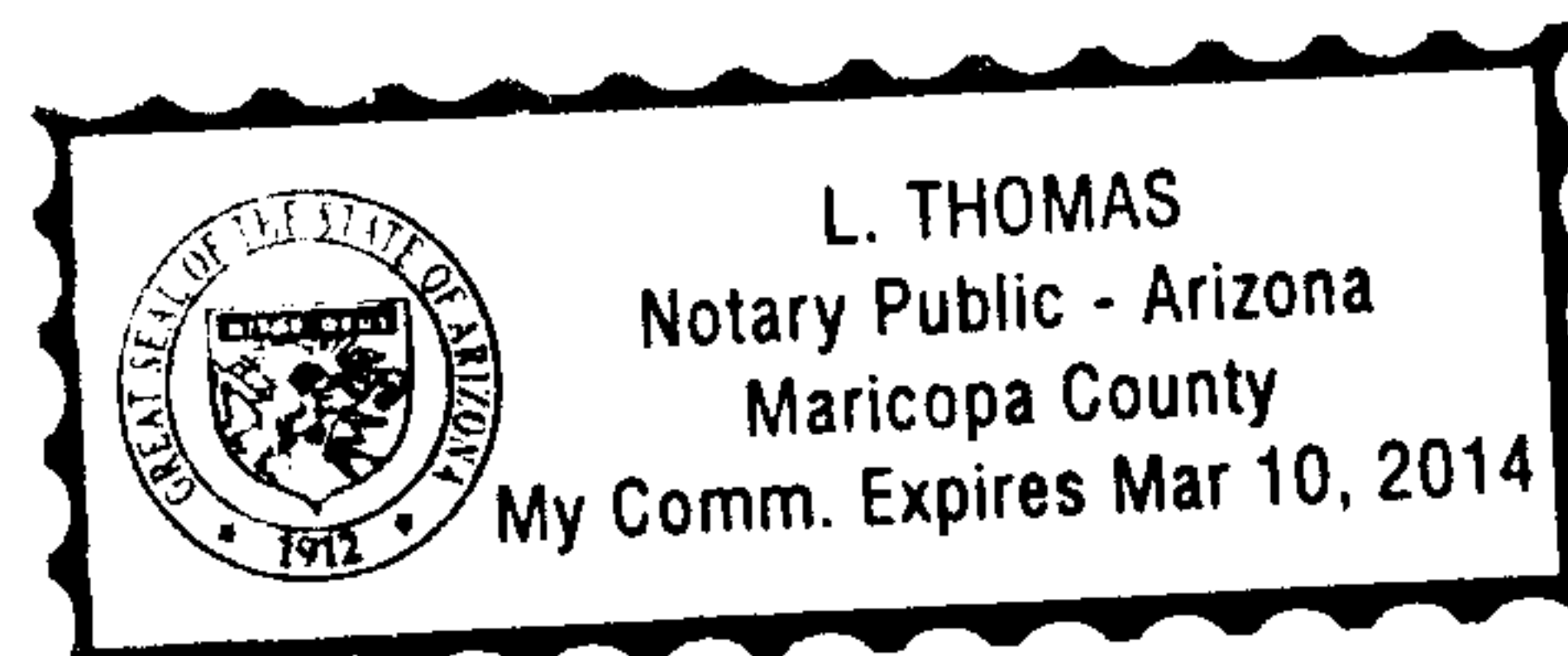
STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF MARICOPA            )


I, L. Thomas, a notary public in and for said County and said state, hereby certify that Peter M. Mavoides, whose name as President, Chief Operating Officer and Assistant Secretary of Spirit SPE Manager, LLC, a Delaware limited liability company, the non-member manager of Spirit SPE Portfolio 2012-5, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the limited liability company.

  
Notary Public

My Commission Expires:

3/10/14



  
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## **EXHIBIT A**

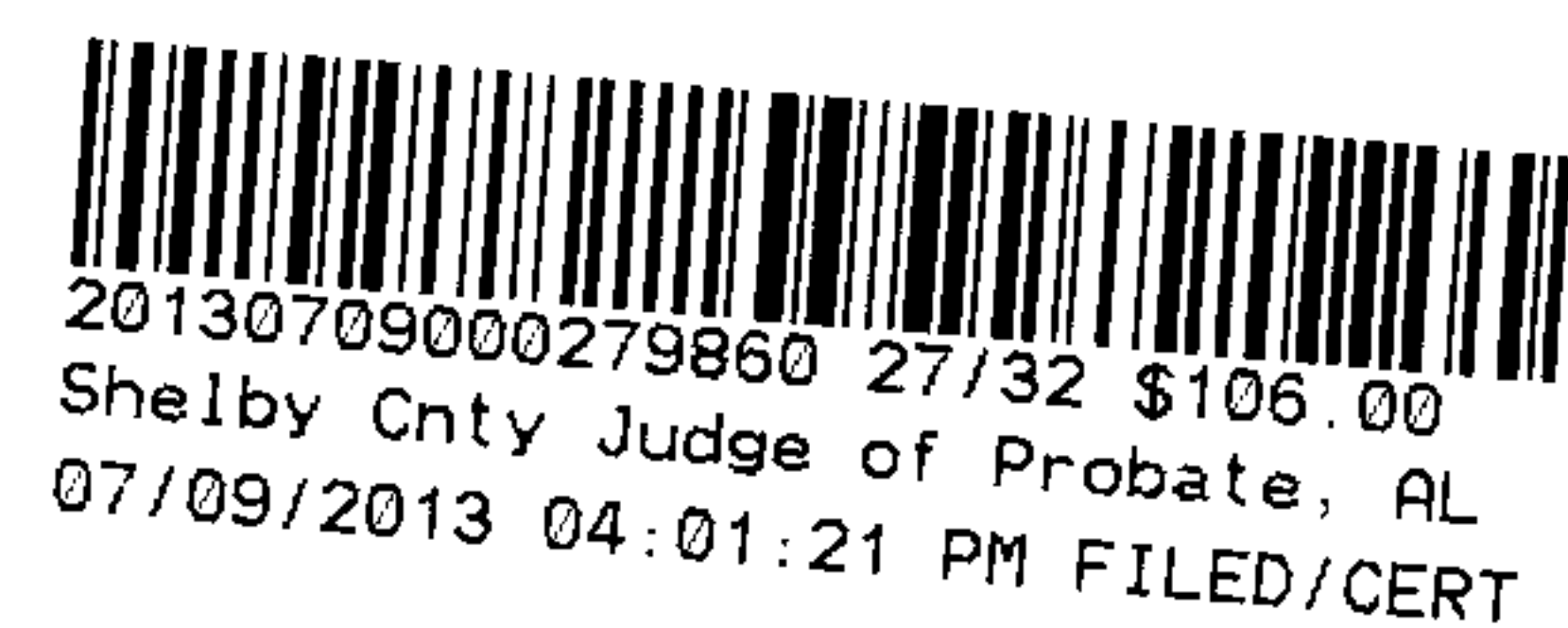
### Legal Description

Property Located at: 1 Limestone Parkway, Calera, AL 35040  
Parcel ID: 28-2-04-0-001-010.011

Lot 1A, according to the Cornerstone Resurvey of Lot 1, Cornerstone, as recorded in Map Book 39, Page 147, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama. Said lot being more particularly described as follows: A tract of land lying on the North side of Limestone Parkway (120 foot right of way), being situated in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Northeast corner of Lot #2 of Wadsworth Subdivision (a commercial subdivision) as recorded in Map Book 28, Page 2, in the Office of the Judge of Probate, Shelby County, Alabama; thence run in a Southerly direction along said lot line for a distance of 111.02 feet to the point of beginning; thence turn a deflection angle to the left of 90 degrees 12 minutes 20 seconds and run in an Easterly direction for a distance of 212.78 feet to the West side of a 60 foot right of way; thence turn a deflection angle to the right of 89 degrees 30 minutes 14 seconds and run in a Southerly direction along said right of way for a distance of 149.57 feet to a point on a curve to the right having a radius of 50.00 foot with a delta angle of 90 degrees 29 minutes 46 seconds; thence run along said curve for a distance of 78.97 feet to the North side of said Limestone Parkway right of way (120 foot right of way); thence leaving said unnamed 60 foot right of way run along said Limestone Parkway right of way in a Westerly direction tangent to said curve for a distance of 164.80 feet; thence leaving said right of way, turn a deflection angle to the right of 90 degrees 12 minutes 20 seconds and run in a Northerly direction for a distance of 200.00 feet to the point of beginning.

Less and Except: The West 55 feet of Lot 1A, according to the Cornerstone Resurvey of Lot 1, Cornerstone, as recorded in Map Book 39, Page 147, in the Probate Office of Shelby County, Alabama, said property being more particularly described as follows: A tract of land lying on the North side of Limestone Parkway (120 foot right of way), being situated in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Begin at the Northwest corner of Lot 1A of Cornerstone Resurvey, as recorded in Map Book 39, Page 147, in the Office of the Judge of Probate, Shelby County, Alabama; thence run in an Easterly direction along said lot line for a distance of 55.00 feet; thence turn a deflection angle to the right of 90 degrees 12 minutes 20 seconds and run in a Southerly direction for a distance of 200.00 feet to a point on the North right of way line of Limestone Parkway; thence turn a deflection angle to the right of 89 degrees 47 minutes 40 seconds and run in a Westerly direction along said North right of way line for a distance of 55.00 feet; thence leaving said North right of way line, turn a deflection angle to the right of 90 degrees 12 minutes 20 seconds and run in a Northerly direction for a distance of 200.00 feet to the point of beginning.

APN: 28-2-04-0-001-010.011





## **EXHIBIT B**

### DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Grantor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Grantor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Mortgaged Property, or which may be received or receivable by Grantor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Grantor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Grantor's partners or shareholders, amounts payable on account of the sale of partnership interests in Grantor or the capital stock of Grantor, accounts and other accounts receivable, deposit accounts maintained with Lender and its affiliates, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, all as defined in A.R.S. §47-9101, et. seq., as presently or hereafter in effect, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Section (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) All as-extracted collateral produced from or allocated to the Premises, including, without limitation, oil, gas, and other hydrocarbons and other minerals;



(f) Grantor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Mortgaged Property and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(g) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

(h) All water stock relating to the Premises;

(i) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property;

(j) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of the Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;


(k) All commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this **Exhibit B** or elsewhere in the Mortgage;

(l) All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Mortgage;

(m) All proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith; and

(n) All Grantor's rights in proceeds of the loan evidenced by the Note.

As used in this **Exhibit B** the terms "Obligations", "Note", "Mortgaged Property", "Premises", "Improvements", and "Personal Property" shall have the meanings set forth in the Mortgage to which this **Exhibit B** is attached.

  
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## **EXHIBIT C**

**"Permitted Exceptions"** means the following:

1. Sale, transfer, or other disposition of any Personal Property that is consumed or worn out in ordinary usage and that is promptly replaced with similar items of equal or greater value.
2. Liens and Encumbrances being contested in accordance with **Section 1.16** of the Mortgage.
3. Impositions being contested in accordance with **Section 1.8(d)** of this Mortgage.
4. This Mortgage.
5. Items approved by Lender as listed on Schedule B to the ALTA lender's policy of title insurance issued to and accepted by Lender.
6. The following Transfers (subject only to any conditions set forth below):
  - (i) the issuance, sale, conveyance, pledge, assignment, grant of options with respect to, redemption or other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) (each, a "**REIT Share Transfer**") of any shares of common stock (the "**REIT Shares**") in Spirit Realty Capital, Inc., a Maryland corporation, or the legal successor thereto as a result of the Spirit-Cole Merger Transactions (as hereinafter defined) (the "**REIT**") (other than a pledge to secure corporate or other debt of the REIT, the OP (as hereinafter defined), Spirit Holdings (as hereinafter defined) or Grantor) so long as (A) at the time of the REIT Share Transfer, the REIT Shares are listed on the New York Stock Exchange or any other nationally recognized stock exchange (any such stock exchange, a "**Recognized Stock Exchange**"), or, after written notice to Lender, such REIT Shares are traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations and registered with the Securities and Exchange Commission, and (B) the REIT Share Transfer does not result in or cause a Change of Control (as hereinafter defined);
  - (ii) the issuance, sale, conveyance, pledge, assignment, grant of options with respect to, redemption or other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) (each an "**OP Transfer**"), of any limited partnership interests (the "**OP Interests**") in Spirit Realty, L.P. a Delaware limited partnership, or the legal successor thereto as a result of the Spirit-Cole Merger Transactions (the "**OP**") (other than a pledge to secure corporate or other debt of the REIT, the OP, Spirit Holdings or Grantor), so long as (A) at the time of the OP Transfer, the REIT Shares are listed on a Recognized Stock Exchange, or, after written notice to Lender, such REIT Shares are traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations and registered with the Securities and Exchange Commission, and (B) the OP Transfer does not result in or cause a Change of Control;




(iii) the issuance, sale, conveyance, pledge, assignment, grant of options with respect to, redemption or other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) (each a “Preferred Share Transfer”), of any shares of Permitted Preferred Stock (the “Preferred Shares”) in the REIT (other than a pledge to secure corporate or other debt of the REIT, the OP, Spirit Holdings or Grantor) so long (A) at the time of the Preferred Share Transfer, the REIT Shares are listed on a Recognized Stock Exchange, or, after written notice to Lender, such REIT Shares are traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations and registered with the Securities and Exchange Commission, and (B) the Preferred Share Transfer does not result in or cause a Change of Control. For purposes of this subsection (iii), the term “Permitted Preferred Stock” means (x) the non-voting preferred stock in the REIT issued and outstanding solely to maintain its status as a real estate investment trust, and (y) other preferred stock in the REIT so long as the terms upon which such preferred stock were issued do not grant the holders thereof any voting rights, other than the right to vote for two members of the Board of Directors of the REIT (which will not constitute a majority or control of the Board of Directors or the REIT) in the event of a default in the payment of dividends on the preferred stock for six (6) consecutive quarters or if the REIT fails to timely and fully redeem such preferred stock; and

(iv) the consummation, pursuant to that certain Agreement and Plan of Merger among the REIT, the OP, Cole Credit Property Trust II, Inc. and Cole Operating Partnership II, LP, dated as of January 22, 2013, as the same may be amended, supplemented or otherwise modified from time to time, of the transactions described therein (the “Spirit-Cole Merger Transactions”).

For purposes of this provision, a “Change of Control” shall occur when: (a) the OP is no longer the sole member of Grantor, (b) Spirit General OP Holdings, LLC, a Delaware limited liability company (“Spirit Holdings”) is no longer the sole general partner of the OP, (c) the REIT’s direct interest in the OP and/or its indirect interest in Grantor falls below 51%, (d) the REIT and OP are no longer the guarantors/indemnitors of the Loan, (e) one Person or group of affiliated Persons acquires more than 49% of the REIT Shares or the OP Interests in one or a series of transactions, (f) the individuals comprising the Board of Directors of the REIT, as the same exists for the twelve (12) month period immediately prior to the REIT Share Transfer, fail to represent a majority of the Board of Directors of the REIT as of the date of completion of the REIT Share Transfer and for a period of six (6) months following the REIT Share Transfer, subject to the terms of the last sentence of this paragraph, or (g) except for the Spirit-Cole Merger Transactions described in subsection (iv) above, if the REIT enters into a merger, consolidation or other business combination, or a sale of all or substantially all of the REIT’s assets and/or ownership interests which results in the REIT or the OP not being the surviving entity or Grantor otherwise no longer being controlled by the REIT. For purposes of determining the occurrence of (f) above, the following shall be expressly excluded: any change in directors resulting from (i) the death or incapacity of any director and/or (ii) the resignation or removal of or refusing to stand or failure to be re-nominated for reelection of the Board of any director for reasons unrelated to a REIT Share Transfer, provided any replacement director has been approved by a vote of at least a majority (or such higher percentage as may be required by the governing documents of the REIT) of the board of directors of the REIT then in office.



None of a REIT Share Transfer, a Preferred Share Transfer nor an OP Transfer shall relieve Grantor of its obligations and liabilities under this Mortgage, the Loan Agreement or any of the other Loan Documents.

  
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