
SPIRIT MASTER FUNDING VII, LLC, a Delaware
limited liability company, as mortgagor (Borrower)

to

CITIBANK, N.A., as mortgagee, in its capacity as collateral agent for the Noteholders
(Collateral Agent)

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

Executed as of December 11, 2013 but effective as of December 23, 2013

PREPARED BY:

Reed Smith LLP
1650 Market Street, Suite 2500
Philadelphia, PA 19103
Attention: James Mogan, Esq.

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,
AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS \$1,600,000.

AFTER RECORDING RETURN TO:

Source of Title: Deed Book _____, Page _____.

First American Title Insurance Company
Attention: Brandon Grajewski
2425 E. Camelback Rd., Suite 300
Phoenix, AZ 85016

035286 AL19

Asset #P0002454
Shelby County, Alabama

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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 11th day of December, 2013, but effective as of the 23rd day of December, 2013, by SPIRIT MASTER FUNDING VII, LLC, a Delaware limited liability company (sometimes referred to herein as "Borrower" or "Mortgagor"), whose address is c/o Spirit Realty Capital, 16767 N. Perimeter Drive, Suite 210, Scottsdale, AZ 85260, to and for the benefit of CITIBANK, N.A., whose address is 388 Greenwich Street, Floor 14, New York, New York 10013, in its capacity as collateral agent (referred to herein as the "Collateral Agent") for the Noteholders (as defined below) (any such Noteholders and its respective successors and assigns shall be referred to herein as the "Lender").

PRELIMINARY STATEMENT:

The capitalized terms used in this Mortgage, if not elsewhere defined in the first paragraph above or in Article I of this Mortgage shall have the meaning given such terms in the Collateral Agency Agreement. Borrower holds the fee simple interest in the Mortgaged Property (as defined in the Granting Clauses below), subject to the Permitted Exceptions. Borrower is executing this Mortgage for the purpose of granting all of the interest of Borrower in and to the Mortgaged Property as security for the payment of the Obligations including, without limitation, repayment of all amounts due under the Note (as such Note, together with any amendments thereto, may be extended, restated or otherwise modified as provided therein). The Mortgaged Property shall be and remain subject to the lien of this Mortgage and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.


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GRANTING CLAUSES:

Mortgagor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Trustee and to its successors and assigns WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of the Collateral Agent as agent for the Lender, all of Mortgagor's estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property (together with the Land and the Improvements, collectively the "Mortgaged Property"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Mortgaged Property, Rents and Derivative Interests

All rents, issues, profits, royalties, income and other benefits derived by Mortgagor from the property comprising the Mortgaged Property and the Personal Property (as defined below) or any portion thereof and any and all lump-sum payments made in connection with the early termination of any Lease (collectively, the "Rents"); all leases or subleases covering the Mortgaged Property and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Mortgaged Property and the Personal Property or any portion thereof or interest therein, and any greater estate in the Mortgaged Property; all interests, estate or other claims, both in law and in equity, with respect to the Mortgaged Property and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Mortgaged Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Mortgaged Property;

Personal Property

All tangible personal property owned by the Mortgagor and now or at any time hereafter located on or at the Mortgaged Property or used in connection therewith, including, without limitation, all machinery, appliances, furniture, equipment and inventory (the "Personal Property"), but excluding any Personal Property owned by the Lessee under any Lease other than as pledged as security under such Lease;

Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, distributor agreements, indemnity agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Mortgaged Property or any portion thereof, whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the property comprising the Mortgaged Property and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Mortgaged Property or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Mortgaged Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Mortgaged Property or any portion thereof with respect to Hazardous Materials or USTs, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of

the Mortgaged Property and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

Tax Certiorari.

All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

Rights Regarding Actions.

The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

Other Rights. Any and all other rights of Mortgagor in and to the items set forth above.

The Mortgaged Property shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Mortgaged Property hereby granted or mortgaged or intended to be granted or mortgaged, unto Collateral Agent as agent for the Lender and its successors and assigns, upon the terms, provisions and conditions set forth herein.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS, whether now existing or arising after the date hereof (collectively, the "Obligations"):

(i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed pursuant to, and performance of all other obligations and covenants contained in, the Loan Documents, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed pursuant to, and performance of all other obligations pursuant to, the Loan.

It is the intention of the parties hereto that the Mortgaged Property shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Mortgage for all such Obligations shall be first priority and controlled by the time of proper recording of this Mortgage and shall perfect all additional amounts funded under any Loan Agreement as a future obligatory advance. In addition, this Mortgage shall also secure unpaid balances of advances made (1) under any Indenture or other Loan Agreement for payment of any fees and expenses of the Indenture Trustee or Lender otherwise in connection with the obligations of the Mortgagor's obligations under the Indenture or other Loan Agreement, (2) with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage, (3) under the terms of the Collateral Agency Agreement, all of which shall constitute a part of the Obligations secured hereby. **This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Mortgaged Property subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed to the Lender by Mortgagor (or any other obligor whose Obligations are to be secured by this Mortgage), including advances and re-advances made under a Loan Agreement subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.**

The Loan may not be prepaid in whole or in part except as provided under the terms of the applicable Note and/or Loan Agreement.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Mortgaged Property is to be held and disposed of by Collateral Agent, upon and subject to the provisions of this Mortgage and the Collateral Agency Agreement.

ARTICLE I

DEFINED TERMS

Section 1.01. *Incorporation of Other Definitions.* Capitalized terms used in this Mortgage, if not elsewhere parenthetically defined in the preamble hereto or Section 1.02 of this Mortgage, shall have the meaning given such terms in the Collateral Agency Agreement or, if no meaning is given to such terms in the Collateral Agency Agreement, in the Loan Agreement.

Section 1.02. *Definitions.* Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Collateral Agency Agreement*” means the Collateral Agency Agreement, dated as of December 24, 2013 among the Collateral Agent, Borrower and Spirit Realty Capital, Inc., as the same may be amended, assigned or restated from time to time.

“*Collateral Agent*” has the meaning assigned to such term in the Preliminary Statement and includes any successor collateral agent pursuant to the Collateral Agency Agreement.

“*Event of Default*” has the meaning set forth in Section 6.01.

“*Existing Note*” means, collectively, the Notes (as defined in the Master Indenture) executed by Mortgagor, as Issuer, as the same may hereafter be amended, supplemented, extended restated or increased.

“*Improvements*” means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

“*Indemnified Parties*” means the Lender (and any agent of the Lender and Collateral Agent) (and after the date of any Notice of Assignment (as defined in the Collateral Agency Agreement) delivered pursuant to the Collateral Agency Agreement, the Indenture Trustee, if any, and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Collateral Agent’s or the Lender’s assets and business).

“*Indenture*” means (a) the Master Indenture and (b) any other loan agreement or indenture, now in existence or entered into after the date hereof, pursuant to which Mortgagor is or becomes a party (either as a borrower, co-borrower, issuer, co-issuer, guarantor or otherwise), which states that the obligations of one or more borrowing parties (including not limited to Mortgagor) pursuant to such loan agreement or indenture are intended to be secured hereby, as the same may from time to time be amended, supplemented or modified.

“*Indenture Trustee*” means an indenture trustee serving in such capacity under the terms of an Indenture.

"*Issuer*" shall mean an "Issuer" as defined in an Indenture.

"*Land*" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

"*Lease*" and "*Leases*" have the meaning set forth in the Granting Clause.

"*Loan*" means, collectively, the loans made to Mortgagor (or any other Issuer) from time to time pursuant to the Indenture and the loans or extensions of credit made from time to time pursuant to a Loan Agreement (other than the Master Indenture) which, pursuant to the terms of such Loan Agreement, are intended to be secured by this Mortgage.

"*Loan Agreement*" means (a) any Indenture or (b) any other agreement between Mortgagor and/or any other Issuer or borrower, on the one hand, and an Indenture Trustee and/or Lender, on the other hand, stating that this Mortgage is intended to secure obligations pursuant to such agreement, as the same may from time to time be amended, supplemented or modified.

"*Loan Documents*" means the Loan Agreements, the Notes, this Mortgage and any other document or instrument evidencing and/or securing any part or all of the Loan.

"*Losses*" has the meaning set forth in Section 7.09.

"*Master Indenture*" means the Master Indenture dated as of December 24, 2013 between Mortgagor and Citibank, N.A., a national banking association, not individually but sole in its capacity as trustee, as the same may hereafter be amended or supplemented, including but not limited to any amendment or supplement thereto which adds an additional Issuer (as defined in such Master Indenture) and/or which provides for issuances of additional Notes by any one or more present or future Issuers (including Mortgagor),

"*Net Award*" has the meaning set forth in Section 4.01(b)(v).

"*Net Insurance Proceeds*" has the meaning set forth in Section 4.01(a)(iii).

"*Note*" means, collectively, (a) the Existing Note, (b) any other Note (other than the Existing Note) as defined in the Master Indenture, and (c) any promissory note which is intended to be secured hereby, evidencing the obligation to repay a Loan (other than the loan evidenced by the Existing Note), whether now in existence or executed after the date hereof, and any amendments, extensions, increases or modifications thereof.

"*Noteholder*" has the meaning set forth in the Collateral Agency Agreement.

"*Notices*" has the meaning set forth in Section 7.04.

"*Obligations*" has the meaning set forth in the Granting Clauses.

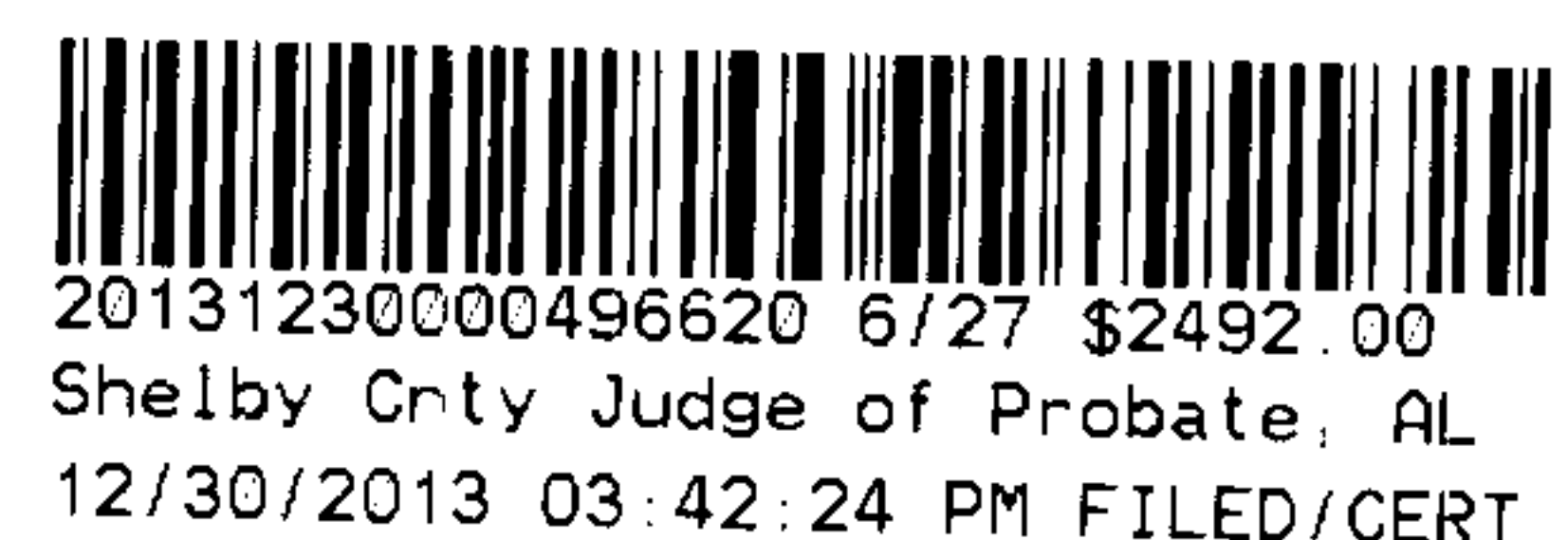
"*Outstanding Obligations*" means the sum of the outstanding principal balance of the Note and all other Obligations, all accrued but unpaid interest on the Note and such Obligation, all sums advanced by Collateral Agent under this Mortgage and all other sums due and payable under this Mortgage and the other Loan Documents corresponding to the Mortgaged Property.

"*Partial Taking*" has the meaning set forth in Section 4.01(b)(ii).

"*Personal Property*" has the meaning set forth in the Granting Clause.

"*Prohibited Transaction*" has the meaning set forth in Section 3.08.

"*Recordable Documents*" has the meaning set forth in Section 3.01.



“*Rents*” has the meaning set forth in the Granting Clause.

“*Restoration*” means the restoration, replacement or rebuilding of the Mortgaged Property, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

“*State*” means the State in which the Land is located.

“*Taking*” has the meaning set forth in Section 4.01(b)(i).

“*Total Taking*” has the meaning set forth in Section 4.01(b)(ii).

“*Mortgaged Property*” has the meaning set forth in the Granting Clause.

“*UCC*” has the meaning set forth in Section 6.02(iii).

ARTICLE II

INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

The representations, warranties and covenants of Borrower set forth in any Note, Loan Agreement and Indenture are incorporated by reference into this Mortgage as if stated in full in this Mortgage. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Mortgage and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Mortgage.

ARTICLE III

COVENANTS OF BORROWER

In addition to any covenants of Borrower set forth in any Note, Loan Agreement, Indenture or any other Loan Document, Borrower hereby covenants to Collateral Agent and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Borrower shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Collateral Agent may request to cause this Mortgage, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the “Recordable Documents”) to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Mortgaged Property and to publish notice of and protect the validity of the Recordable Documents. Borrower shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) requested by Collateral Agent for carrying out the intention of, or facilitating the performance of, this Mortgage. Collateral Agent shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Borrower to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Collateral Agent shall not exercise such power of attorney unless Borrower has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Borrower shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.


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Section 3.02. ***Use; Maintenance and Repair; Leases.*** The Mortgaged Property shall be used solely as contemplated in the Lease. Borrower shall not, and shall not permit any lessee under any Lease, to convert the Mortgaged Property to an alternative use while this Mortgage is in effect without Collateral Agent's consent, which consent shall not be unreasonably withheld. Collateral Agent may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Mortgaged Property, and (ii) whether the converted use will increase Collateral Agent's risks or decrease the value of the Mortgaged Property. Borrower shall comply with the Loan Documents in connection with any Lease and, if prohibited by the Loan Documents, shall not (i) enter into any Leases without Collateral Agent's prior written consent; (ii) modify or amend the terms of any Lease without Collateral Agent's prior written consent; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee under any Lease, without Collateral Agent's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Collateral Agent's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Collateral Agent, without Collateral Agent's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Collateral Agent otherwise consents or elects, Borrower's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Collateral Agent or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise. Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in any Lease; (ii) give prompt notice to Collateral Agent of any claim or event of default under any Lease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Collateral Agent; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

Section 3.03. ***After-Acquired Property.*** All right, title and interest of Borrower in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by or released to Borrower, immediately upon such acquisition or release and without any further granting by Borrower, shall become part of the Mortgaged Property and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Borrower and specifically described in the Granting Clauses hereof. Borrower shall execute and deliver to Collateral Agent any further assurances, mortgages, grants, conveyances or assignments thereof as the Collateral Agent may reasonably require to subject the same to the lien hereof.

Section 3.04. ***Taxes, Assessments, Charges and Other Impositions.*** (a) Borrower shall do or cause to be done everything necessary to preserve the lien hereof without expense to Collateral Agent, including, without limitation, enforcing the payment obligations of the lessee under the Lease. Borrower shall pay or cause to be paid prior to delinquency any and all taxes, assessments, water and sewer charges, and other charges now or hereafter assessed against the Mortgaged Property.

(b) Borrower may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Borrower shall provide written notice to Collateral Agent of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Mortgaged Property or any interest therein, (iii) neither the Mortgaged Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Borrower shall have deposited with Collateral Agent adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Borrower shall have furnished the security as may be required in the proceeding or as may be required by Collateral Agent to insure payment of any contested taxes.

Section 3.05. **Insurance.** Borrower shall maintain, with respect to the Mortgaged Property, at its sole expense, or cause the lessee under the Lease to maintain at such lessee's expense, the types and amounts of insurance required by the Lease.

Section 3.06. **Impound Account.** Upon the occurrence of an Event of Default under this Mortgage or any other Loan Document, Collateral Agent may require Borrower to pay to Collateral Agent sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Collateral Agent will estimate the amounts needed for such purposes and will notify Borrower to pay the same to Collateral Agent in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Mortgage. Should additional funds be required at any time, Borrower shall pay the same to Collateral Agent on demand. Borrower shall advise Collateral Agent of all taxes and insurance bills which are due and shall cooperate fully with Collateral Agent in assuring that the same are paid. Collateral Agent may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or other gains from such funds, if any, shall be the sole property of Collateral Agent. If an Event of Default shall occur subsequent to Collateral Agent requiring the establishment of an impound account pursuant to this Section, Collateral Agent may apply all impounded funds against any sums due from Borrower to Collateral Agent. Collateral Agent shall give to Borrower upon request an annual accounting showing all credits and debits to and from such impounded funds received from Borrower.

Section 3.07. **Advances by the Lender or Collateral Agent.** If the Borrower fails to perform any covenant of the Borrower contained herein, the Lender or Collateral Agent may make advances to perform any of the covenants contained in this Mortgage on Borrower's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by the Lender or Collateral Agent shall be secured hereby. Borrower shall repay on demand all sums so advanced with interest thereon at the Default Rate, if any, provided for in the Loan Agreement, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Collateral Agent's election, the Lender or Collateral Agent may add the amount of such advance to the principal balance of the obligations secured by this Mortgage.

Section 3.08. **Negative Covenants.** Without limiting the terms and conditions of Section 5.2 of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Collateral Agent (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Mortgaged Property or any part thereof or permit the Mortgaged Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; and (b) an agreement by Borrower leasing all or any part of the Mortgaged Property (other than the Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Lease or any Rents.

Collateral Agent's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Collateral Agent shall determine in its sole discretion, including, without limitation, (i) Borrower having executed and delivered such modifications to the terms of this Mortgage and the other Loan Documents as Collateral Agent shall request, and (ii) the proposed transferee having assumed the Note, this Mortgage and the other Loan Documents (as modified pursuant to clause (i) above). Collateral Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property without Collateral Agent's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Collateral Agent has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property.


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Section 3.09. **Priority of Loan Agreement.** In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article III, the Loan Agreement provisions shall control.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY

Section 4.01. **Casualty or Condemnation.** Borrower, immediately upon obtaining knowledge of any casualty to any portion of the Mortgaged Property or of any proceeding or negotiation for the taking of all or any portion of the Mortgaged Property in condemnation or other eminent domain proceedings, shall notify Collateral Agent of such casualty, proceeding or negotiation. Unless Borrower is required under the Lease to restore the Mortgaged Property or pay any Proceeds (defined below) to the lessee under the Lease, any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). If Borrower is required under the terms of the Lease to restore the Mortgaged Property or pay any Proceeds to the lessee under the Lease, the Proceeds shall be applied as provided in the Lease. Collateral Agent may participate in any condemnation or eminent domain proceeding, and Borrower will deliver or cause to be delivered to Collateral Agent all instruments reasonably requested by Collateral Agent to permit such participation.

(a) **Casualty.** (i) In the event of any material damage to or destruction of the Mortgaged Property or any part thereof, Borrower will promptly give written notice to Collateral Agent, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Mortgaged Property shall relieve Borrower of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Mortgaged Property or any part thereof, Borrower, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Collateral Agent and Borrower on account of any occurrence of damage to or destruction of the Mortgaged Property or any part thereof, less the costs, fees and expenses incurred by Collateral Agent and Borrower in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Borrower, if the amount of such Net Insurance Proceeds is less than \$50,000 and applied by Borrower toward the cost of the Restoration, and (2) Collateral Agent, if the amount of such Net Insurance Proceeds is \$50,000 or greater. Provided that no Event of Default is continuing, Net Insurance Proceeds paid to Collateral Agent shall be held and disbursed by Collateral Agent, or as Collateral Agent may from time to time direct, as the Restoration progresses, to pay or reimburse Borrower for the cost of the Restoration, upon written request of Borrower accompanied by evidence, reasonably satisfactory to Collateral Agent, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Borrower's business income insurance), Borrower has deposited into an escrow satisfactory to Collateral Agent such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Collateral Agent, (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection and (ff), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Collateral Agent of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower. If at the time of the damage or destruction to the Mortgaged Property or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Collateral Agent, and Collateral Agent may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay such Net Insurance Proceeds in whole or in part to

Borrower to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Mortgaged Property or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Collateral Agent, Borrower and those authorized to exercise such right ("Taking"), Borrower will promptly give written notice thereof to Collateral Agent, generally describing the nature and extent of such Taking. Collateral Agent shall file and prosecute on behalf of Collateral Agent and Borrower any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Collateral Agent.

(ii) In case of a Taking of the whole of the Mortgaged Property, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Mortgaged Property ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Borrower, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Collateral Agent for such purpose), at its own or Lessee's cost and expense, will promptly commence and complete or cause the commencement and completion of the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Mortgaged Property as shall result in the Mortgaged Property remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Mortgaged Property by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Collateral Agent shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Borrower shall consult with Collateral Agent, its attorneys and experts, and make all reasonable efforts to cooperate with Collateral Agent in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Mortgaged Property, Borrower will, at its own or Lessee's cost and expense, promptly commence and complete or cause the commencement and completion of the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Collateral Agent and Borrower in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received by Collateral Agent or Borrower on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Collateral Agent an amount up to the Outstanding Obligations, as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Collateral Agent under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note and other sums due under this Mortgage. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the Outstanding Obligations, Borrower shall pay to Collateral Agent simultaneously with the payment of such Proceeds to Collateral Agent the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Borrower.

(y) Proceeds received by Collateral Agent or Borrower on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Mortgage; and


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(ii) then, all or any portion of the balance of such proceeds shall, in Collateral Agent's sole discretion, either be paid to:

(1) Collateral Agent, as the holder of this Mortgage, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Loan Agreement or in the Note), as Collateral Agent shall determine; or

(2) Borrower; provided, however, in Collateral Agent's sole discretion, such proceeds shall be pledged to Collateral Agent to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Collateral Agent, or, with Collateral Agent's consent, Borrower shall provide Collateral Agent with alternative security satisfactory to Collateral Agent in its sole discretion.

Collateral Agent may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or gains from such funds, if any, shall be the sole property of Collateral Agent.

(z) Proceeds received by Collateral Agent or Borrower on account of a Taking for temporary use shall be held by Collateral Agent and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Mortgaged Property, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Borrower.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Collateral Agent is hereby authorized and empowered, in the name and on behalf of Borrower and otherwise, to file and prosecute Borrower's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay the Net Award in whole or in part to Borrower to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain the Net Award, the lien of this Mortgage shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

Section 4.02. ***Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.*** If no Event of Default shall have occurred and be continuing, Borrower may, from time to time with respect to its interest in the Mortgaged Property, and with Collateral Agent's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property, (iv) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes, (v) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. ***Collateral Agent's Power.*** At any time, or from time to time, without liability therefor, Collateral Agent, without affecting the personal liability of any person for payment of the Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Property, may from time to time without notice, solely in order to protect the security hereof or to pay or discharge the Obligations in the event Borrower fails to do so, (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in any extension agreement or any agreement subordinating the lien or charge hereof, (iv) release any person so liable, (v) extend the maturity or alter any of the terms of any Obligations, (vi) grant other indulgences, (vii) take or release any other or additional security for any Obligations, (viii) make compositions or other

arrangements with debtors in relation thereto, or (ix) advance additional funds and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Collateral Agent.

Section 4.04. **Priority of Loan Agreement.** In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article IV, the Loan Agreement provisions shall control.

Section 4.05. **Release of Property.** Borrower shall not be entitled to a release of any portion of the Personal Property and Mortgaged Property from the lien of this Mortgage except in accordance with the Collateral Agency Agreement.

ARTICLE V

SECURITY INTEREST

Section 5.01. **Security Agreement.** With respect to the Personal Property or any portion of the Mortgaged Property which constitutes fixtures or other property governed by the UCC, this Mortgage shall constitute a security agreement between Borrower, as the debtor, and Collateral Agent, as the secured party, and Borrower hereby grants to Collateral Agent a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Collateral Agent hereunder, Collateral Agent shall have all of the rights conferred upon secured parties by the UCC. Borrower authorizes Collateral Agent to file financing statements with respect to the security interest of Collateral Agent, continuation statements with respect thereto, and any amendments to such financing statements which may be allowed pursuant to the Loan Documents. Furthermore, at any time, and from time to time, Borrower will execute and deliver to Collateral Agent all financing statements that may from time to time be required by Collateral Agent to establish and maintain the validity and priority of the security interest of Collateral Agent, or any modification thereof. Collateral Agent may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Collateral Agent proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Collateral Agent to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Collateral Agent may at its option dispose of such property in accordance with Collateral Agent's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC. Borrower represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Mortgage. Borrower agrees that, notwithstanding any provision in the UCC to the contrary, Borrower shall not file a termination statement of any financing statement filed by Collateral Agent in connection with any security interest granted under this Mortgage if Collateral Agent reasonably objects to the filing of such termination statement.

Section 5.02. **Effective as a Financing Statement and Fixture Filing.** This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other portion of the Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of Borrower is the address of Borrower set forth in the introductory paragraph of this Mortgage, and the address of the Collateral Agent from which information concerning the security interests hereunder may be obtained is the address of Collateral Agent as set forth in the introductory paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.



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ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. **Events of Default.** Each of the following shall be an event of default under this Mortgage (each an “Event of Default”):

(i) If Borrower fails to pay any principal or interest payment due under the Primary Note within five days after the date such payment is due and payable.

(ii) Subject to the provisions of Section 3.04(b) of this Mortgage, if Borrower fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Mortgaged Property pursuant to Applicable Regulations.

(iii) If Borrower shall fail to maintain insurance in accordance with the requirements of Section 3.05 of this Mortgage.

(iv) If Borrower materially fails to observe or perform any of the covenants, conditions, or obligations of this Mortgage, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note or any of the Notes made pursuant to any Loan Agreement, is not willful or intentional, does not place any rights or interest in collateral of Collateral Agent in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Collateral Agent, the Indenture Trustee or Lender, as applicable, in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Collateral Agent shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Collateral Agent in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Collateral Agent. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(v) If there is an “Event of Default” under any Loan Agreement and all cure periods, if any, with respect thereto have expired without the Borrower curing such “Event of Default”.

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01. Collateral Agent may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Collateral Agent may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys’ fees, upon any Obligations, all in such order as the Lender may determine. The entering upon and taking possession of the Mortgaged Property, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of

Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, the Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default;

(ii) Commence an action to foreclose this Mortgage in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, 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 Borrower in respect of the Personal Property or any part thereof. In the event the Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to the Lender;

(2) Without notice to or demand upon Borrower, make such payments and do such acts as the Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(3) Require Borrower to assemble the Personal Property or any portion thereof, at the Mortgaged Property, and promptly to deliver such Personal Property to the Lender, or an agent or representative designated by it. The Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise the Lender's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as the Lender may determine. The Lender may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Lender shall give Borrower at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Borrower at the address set forth at the beginning of this Mortgage and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC;

(iv) Exercise all of Borrower's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the Indemnity Agreements. Borrower hereby grants the Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;


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(v) Apply any sums then deposited in the impound account described in Section 3.06 toward payment of the taxes, assessment and insurance premiums for the Mortgaged Property and/or as a credit on the Obligations in such priority and proportion as the Lender may determine in its sole discretion;

(vi) If held by the Lender, surrender the insurance policies maintained pursuant to Section 3.05, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as the Lender in its sole discretion shall deem proper, and in connection therewith, Borrower hereby appoints the Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for the Lender to collect such insurance premiums; and

(vii) Sell Borrower's interest in the Mortgaged Property pursuant to the power of sale herein conferred. If Collateral Agent elects to sell Borrower's interest in the Mortgaged Property by exercise of such power of sale, Collateral Agent shall cause such sale to be performed in the manner then required by law.

(aa) Collateral Agent shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Mortgage. Collateral Agent, without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Borrower's interest in the Mortgaged Property at the time and place of sale fixed by Collateral Agent, either as a whole, or in separate lots or parcels or items as Collateral Agent shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Collateral Agent shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, with general warranty of title by Borrower, as applicable. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower or Collateral Agent, may purchase at such sale. Collateral Agent may sell not only the real property but also the Personal Property and other interests which are a part of the Mortgaged Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. Collateral Agent shall not be required to take possession of any part of the Mortgaged Property or to have any of the Personal Property present at any sale of the Mortgaged Property. Collateral Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Collateral Agent, including the posting of notices and the conduct of sale, but in the name and on behalf of Collateral Agent. In the event any sale hereunder is not completed or is defective in the opinion of Collateral Agent, such sale shall not exhaust the power of sale hereunder, and Collateral Agent shall have the right to cause a subsequent sale or sales to be made hereunder until all of the Mortgaged Property has been lawfully sold.

(bb) As may be permitted by law, Collateral Agent shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Collateral Agent in exercising the power of sale or foreclosing this Mortgage, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note and the amounts due and owing to Collateral Agent under this Mortgage) in such manner and order as Collateral Agent may elect, and (iii) third, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Collateral Agent may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property.

Section 6.03. ***Appointment of Receiver.*** If an Event of Default shall have occurred and be continuing, Collateral Agent, as a matter of right and without notice to Borrower or anyone claiming under Borrower, Borrower hereby waiving any right to a hearing or notice of hearing prior to the appointment of a receiver, and without regard to any showing of insolvency, fraud or mismanagement and without regard to the then sufficiency of the security for the payment of the Obligations and without notice to Borrower and without any showing of insolvency, fraud or mismanagement on the part of the Borrower, and without the necessity of filing any judicial or other proceeding

other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the income, rents, issues and profits thereof, and Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receivers appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters. To the extent permitted by applicable law, Borrower or the then-owner of the Mortgaged Property, may seek the appointment of a receiver for the Mortgaged Property upon *ex parte* application to any court of the competent jurisdiction. Such receiver shall be empowered (a) to take possession of the Mortgaged Property and any businesses conducted by Borrower thereon and any business assets used in connection therewith, (b) to exclude Borrower and Borrower's agents, servants and employees from the Mortgaged Property, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Mortgaged Property, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Mortgaged Property, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Mortgaged Property and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Mortgaged Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Collateral Agent advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Collateral Agent, but not in excess of the Default Rate, and (j) generally to do anything that Borrower could legally do if Borrower were in possession of the Mortgaged Property. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Collateral Agent, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. **Remedies Not Exclusive.** Collateral Agent shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, Mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Collateral Agent's right to realize upon or enforce any other security now or hereafter held by Collateral Agent, it being agreed that Collateral Agent shall be entitled to enforce this Mortgage and any other security now or hereafter held by Collateral Agent in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Collateral Agent is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Collateral Agent, or to which Collateral Agent may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Collateral Agent. Collateral Agent may pursue inconsistent remedies.

The acceptance by Collateral Agent of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Collateral Agent of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Collateral Agent shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Collateral Agent thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Collateral Agent to any action or inaction of Borrower which is subject to consent or approval of Collateral Agent hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

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Section 6.05. **Possession of Mortgaged Property.** In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Borrower occupies the portion of the Mortgaged Property so sold, or any part thereof, Borrower shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property; and this Mortgage and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage shall be construed to constitute Collateral Agent as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Property pursuant to the powers granted herein.

Section 6.06. **Waiver of Rights.** Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Property, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, state of execution, exemption from civil process, redemption, or extension of time for payment; and (ii) any right to a marshaling or assets or a sale in inverse order of alienation.

Section 6.07. **Relief From Stay.** In the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Collateral Agent shall thereupon be entitled and Borrower irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Collateral Agent as provided in the Loan Documents and Borrower hereby irrevocably waives its rights to object to such relief. In the event Borrower shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Borrower hereby agrees that no injunctive relief against Collateral Agent shall be sought under Section 105 or other provisions of the Code by Borrower or other person or entity claiming through Borrower, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. **Cash Collateral.** Borrower hereby acknowledges and agrees that in the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Mortgaged Property covered by the lien of this Mortgage, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Borrower assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Collateral Agent as that term is defined in Section 363 of the Code; and (iv) that Collateral Agent has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Collateral Agent to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Borrower under Section 546(b) of the Code.


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Section 6.09. **Assignment of Rents and Leases.** (a) Borrower hereby assigns, transfers, conveys and sets over to Collateral Agent all of Borrower's estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Borrower irrevocably appoints Collateral Agent its true and lawful attorney-in-fact, at the option of Collateral Agent, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Mortgaged Property, pursuant to Borrower's rights under the Leases, to exercise any of Borrower's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Collateral Agent, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Collateral Agent for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Collateral Agent from all liability (other than as a result of the gross negligence or willful misconduct of Collateral Agent) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Collateral Agent that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Collateral Agent to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Collateral Agent, and, so long as no Event of Default shall have occurred and be continuing, Borrower shall have a license, revocable upon an Event of Default, to possess and control the Mortgaged Property and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Collateral Agent's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Mortgaged Property, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this assignment, and in Collateral Agent's or Borrower's name, sue for or otherwise collect such Rents as specified in this Mortgage as the same become due and payable, including, but not limited to, Rents then due and unpaid. Collateral Agent may so sue for or otherwise collect such Rents with or without taking possession of the Mortgaged Property. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Mortgaged Property shall make its rent payable to and pay such rent to Collateral Agent (or Collateral Agent's agents) on Collateral Agent's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Collateral Agent to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums secured by this Mortgage. Collateral Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents actually received.

(d) Collateral Agent shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Collateral Agent hereunder, except to the extent of Collateral Agent's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Mortgaged Property by Collateral Agent or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Collateral Agent under applicable law or provided therein.

Section 6.10. **Right of Entry.** Upon reasonable notice to Borrower, Collateral Agent and its agents shall have the right to enter and inspect the Mortgaged Property and Personal Property at all reasonable times.

Section 6.11. **Bankruptcy.** Upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code (defined below). If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Collateral Agent not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Collateral Agent shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Collateral Agent demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Collateral Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Collateral Agent serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Collateral Agent of the covenant provided for in clause (ii) of the preceding sentence.

Section 6.12. **Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property and Personal Property, then, to the extent of the funds so used, Collateral Agent shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property and Personal Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Collateral Agent and are merged with the lien and security interest created herein as cumulative security for the repayment of the indebtedness, the performance and discharge of the Obligations.

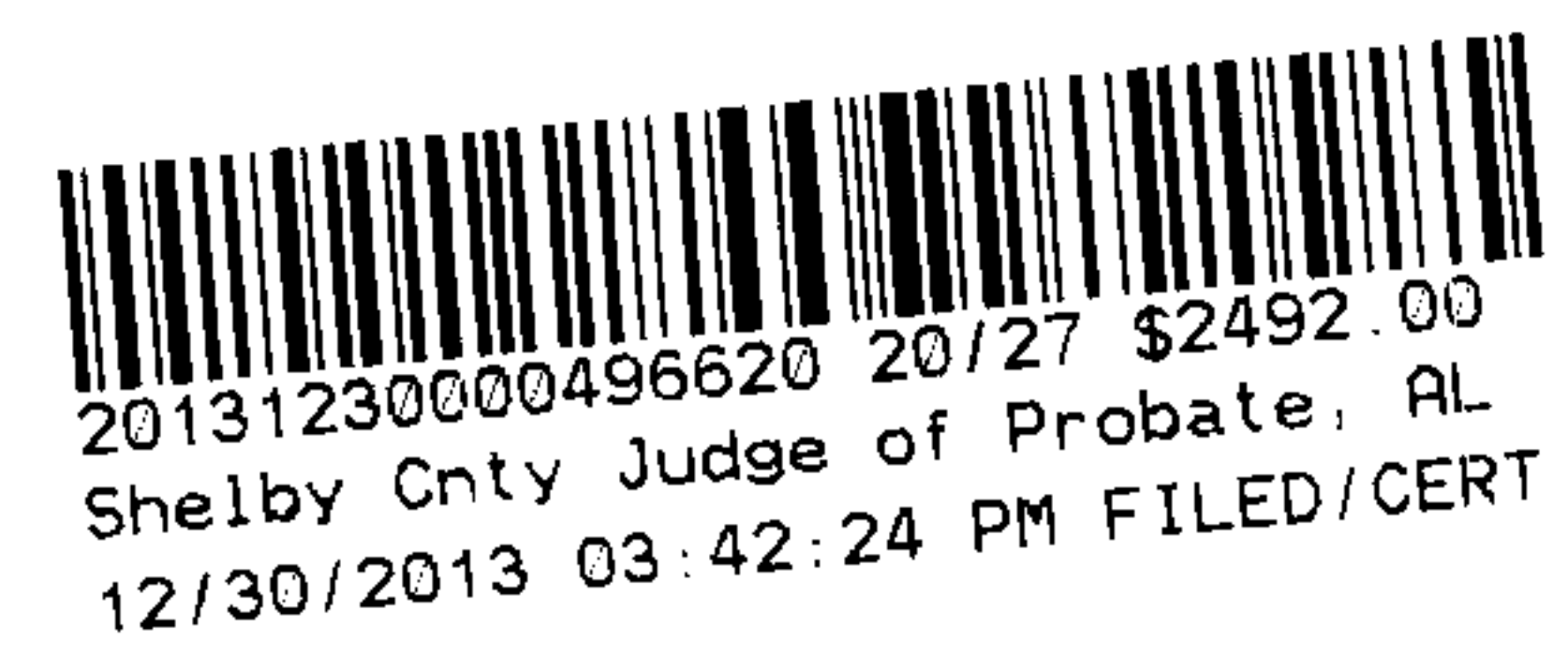
Section 6.13. **Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by law, the benefit of all Applicable Law now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property and Personal Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property and Personal Property subsequent to the date of this Mortgage and on behalf of all Persons to the extent permitted by applicable law.

Section 6.14. **Waiver of Foreclosure Defense.** Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Mortgaged Property and Personal Property a party defendant in any foreclosure proceeding or action instituted by Collateral Agent.

ARTICLE VII

MISCELLANEOUS

Section 7.01. **Satisfaction.** If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Borrower shall pay or cause to be paid all Obligations and all other sums payable by the Borrower with respect to the Obligations, then this Mortgage shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Collateral Agent agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage which shall be prepared and recorded at Borrower's sole expense.



Section 7.02. **Limitation of Rights of Others.** Nothing in this Mortgage is intended or shall be construed to give to any person, other than Borrower and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Mortgage or any covenant, condition or provision herein contained.

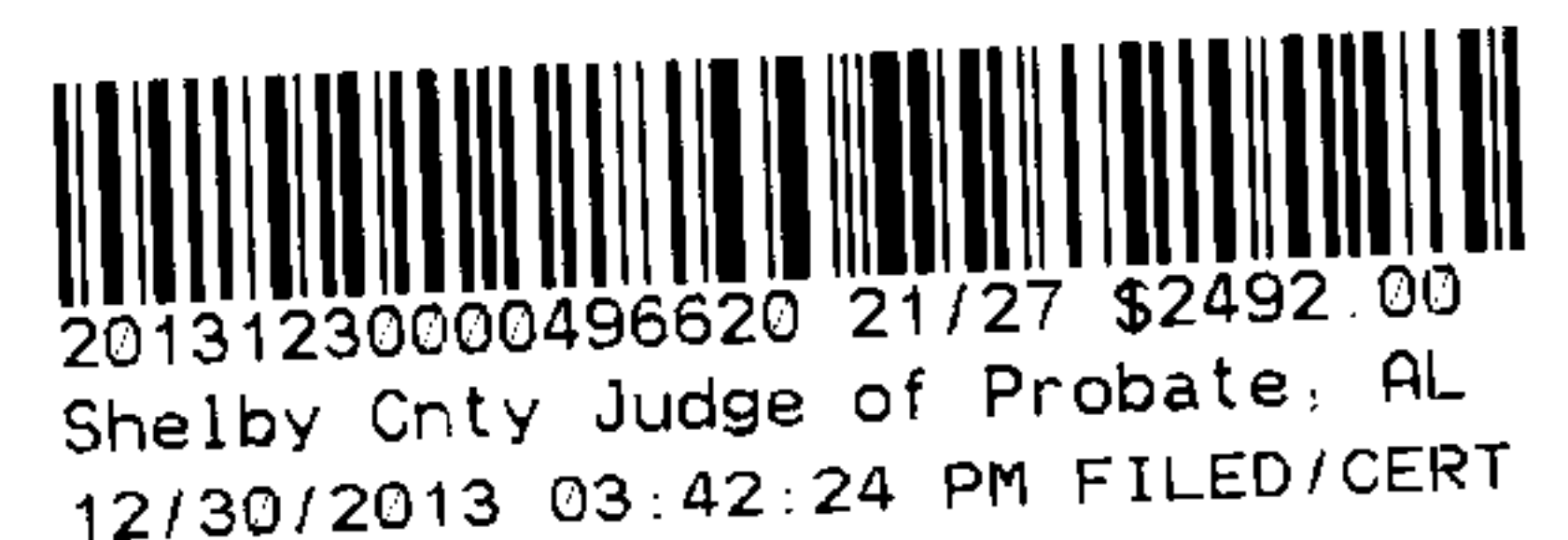
Section 7.03. **Severability.** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 7.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) machine confirmation, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the fifth Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Collateral Agent: Citibank, N.A.
388 Greenwich Street, Floor 14
New York, New York 10013
Attention: Agency & Trust, Spirit
Telephone: (212) 816-5693
Telecopy: (212) 816-5527

If to Mortgagor: SPIRIT MASTER FUNDING VII, LLC
c/o Spirit Realty Capital
16767 N. Perimeter Drive, Suite 210
Scottsdale, AZ 85260
Attention: Chief Financial Officer
Telephone: (480) 606-0820
Telecopy: (480) 606-0826

with a copy to: SPIRIT REALTY CAPITAL, INC.
16767 N. Perimeter Drive, Suite 210
Scottsdale, AZ 85260
Attention: General Counsel
Telephone: (480)-315-6625
Telecopy: (480)-606-0826



or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Mortgage the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Mortgage otherwise expressly provided, (i) this Mortgage may not be modified except by an instrument in writing executed by Borrower and Collateral Agent and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. **Successors and Assigns; Successor to Collateral Agent.** All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Mortgage. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. In the event that the Collateral Agent is replaced, substituted or removed under the terms of the Collateral Agency Agreement, the party to whom the Lender transfers such collateral agency obligations (including, without limitation, any successor collateral agent, trustee or agent) shall automatically (and without

record notice) be deemed the successor "Collateral Agent" hereunder and no amendment or assignment of this Mortgage shall be required. In addition, if the Collateral Agency Agreement is terminated in its entirety and no successor is appointed by Lender, then Lender shall be deemed the "Collateral Agent" and no assignment, notice or recorded document shall be required in connection therewith.

Section 7.06. **Headings.** The headings appearing in this Mortgage have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Mortgage.

Section 7.07. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Mortgage.

Section 7.08. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Borrower acknowledges that this Mortgage was substantially negotiated in the State, this Mortgage was delivered in the State, all payments under the Loan Documents will be delivered in the State and there are substantial contacts between the parties and the transactions contemplated herein and the State. For purposes of any action or proceeding arising out of this Mortgage, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Mortgage and the rights and remedies of Collateral Agent with respect to the Mortgaged Property, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Collateral Agent to commence any proceeding in the federal or state courts located in the State to the extent Collateral Agent deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents.

Section 7.09. **Indemnification.** Borrower shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Borrower's interest in the Mortgaged Property or Borrower's failure to act in respect of matters which are or were the obligation of Borrower under the Loan Documents) caused by, incurred or resulting from Borrower's operations of, or relating in any manner to, the Mortgaged Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Borrower or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Mortgage by Borrower, its officers, employees, agents or other persons. It is expressly understood and agreed that Borrower's obligations under this Section shall survive the expiration or earlier termination of this Mortgage for any reason.

Section 7.10. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** COLLATERAL AGENT, BY ACCEPTING THIS MORTGAGE, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF COLLATERAL AGENT AND BORROWER, BORROWER'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND COLLATERAL AGENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO

SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND COLLATERAL AGENT OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.11. ***Entire Agreement.*** THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 7.12. ***State Specific Provisions.*** State specific provisions, if any, are outlined on Exhibit B attached hereto and incorporated herein.

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

BORROWER:

SPIRIT MASTER FUNDING VII, LLC, a Delaware
limited liability company

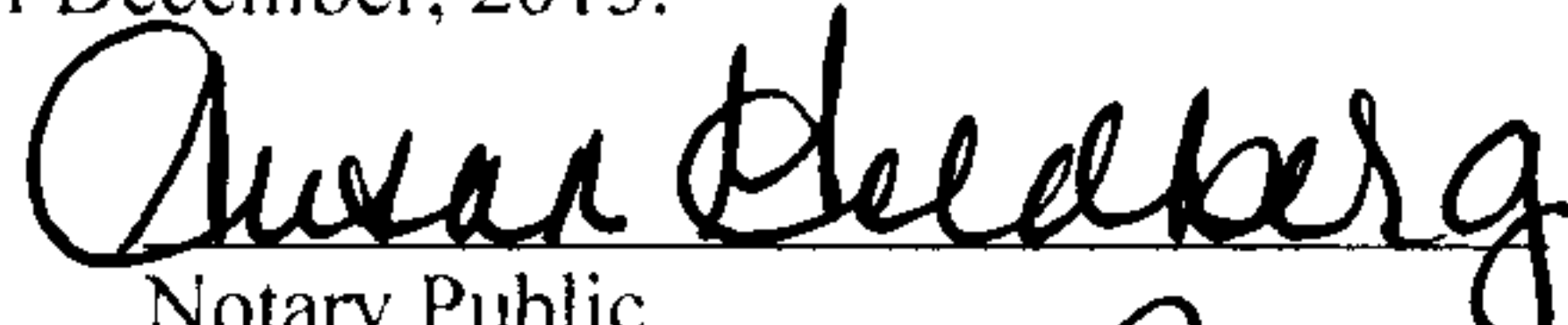
By: Spirit SPE Manager, LLC, a Delaware
limited liability company, manager

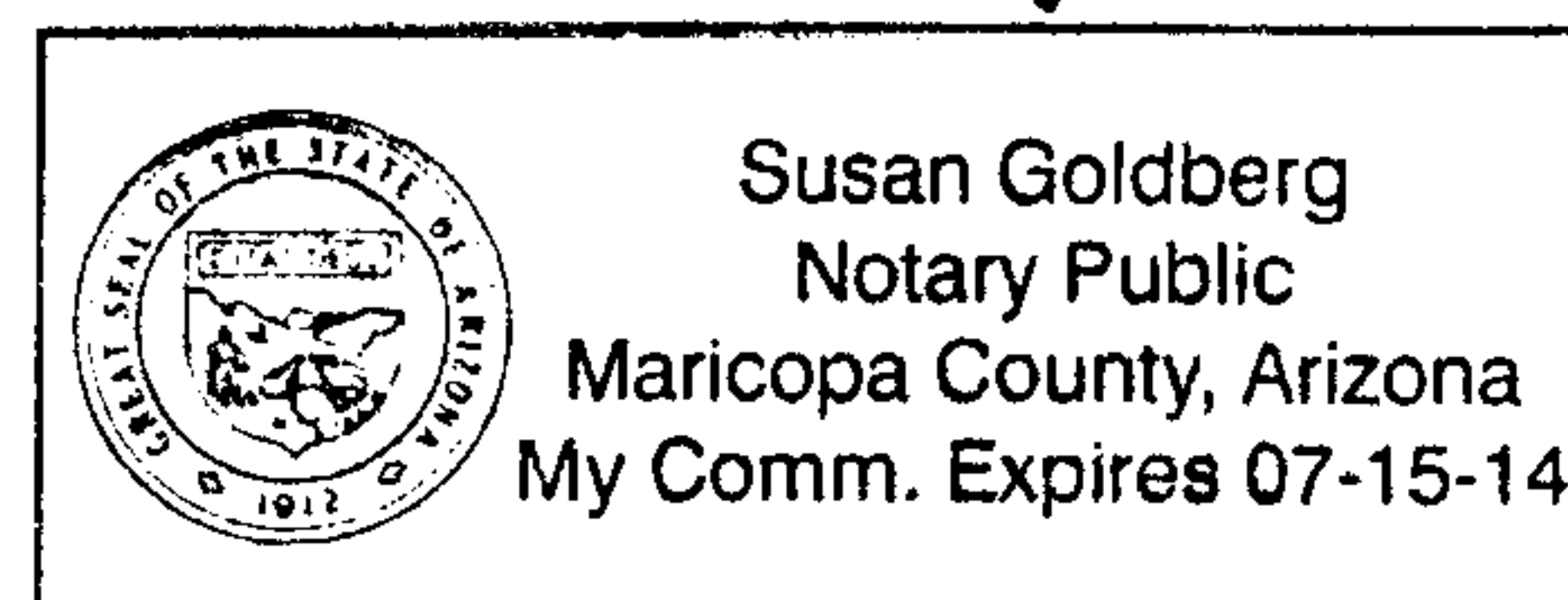
By: 
Name: Mark Manheimer
Title: Senior Vice President

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mark Manheimer whose name as Senior Vice President of Spirit SPE Manager, LLC, a Delaware limited liability company, as Manager of Spirit Master Funding VII, 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 of such limited liability company, and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as Manager of Spirit Master Funding VII, LLC as of the date hereof.

Given under my hand this the 16th day of December, 2013.

 (SEAL)
Notary Public
My Commission Expires July 15, 2014




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**Exhibit A
Legal Description**

PELHAM - 2020 Pelham Parkway, Pelham, AL

A parcel of land situated in the Northeast $\frac{1}{4}$ of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:
Commence at the Northeast corner of said Section 36; thence run South along the East line of said Section 36, a distance of 266.80 feet; thence turn 117 degrees 40 minutes 00 seconds right and run northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway 31; thence turn 110 degrees 54 minutes 05 seconds left to the tangent of a curve to the left, said curve having a radius of 1752.68 feet and run along the arc of said curve and said road right of way, 86.93 feet to a point; thence turn 90 degrees 00 minutes 00 seconds left from the tangent to said curve at said point and run easterly along said road right of way 15.00 feet; thence turn 90 degrees 00 minutes 00 seconds right to the tangent of a curve to the left, said curve having a radius of 1737.68 feet and run along the arc of said curve and said road right of way, 189.15 feet to the point of beginning; thence continue along the last described course and along said road right of way, 113.00 feet to a point; thence turn 82 degrees 08 minutes 35 seconds right from the tangent to said curve at said point and run southwesterly 211.53 feet; thence turn 90 degrees 00 minutes 00 seconds right and run northwesterly, 177.28 feet; thence turn 105 degrees 57 minutes 15 seconds right and run 239.84 feet to the point of beginning.

Now Known As: Lot 2, according to Dinsmore Resurvey, as recorded in Map Book 26, Page 94, in the Probate Office of Shelby County, Alabama.

Together with easements contained in that certain Declaration of Easements and Restrictions and Joint Maintenance Agreement by J. Wilson Dinsmore, dated May 21, 1998, recorded in Instrument # 1998-20066.

Together with easements contained in those certain Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe and Construction/Maintenance/Repair of Retaining Wall by J. Wilson Dinsmore, R-K-M Bama, Inc., and North Pelham, LLC, recorded in Instrument # 1997-27813 and Instrument # 1997-29355.

APN: 11-7-36-1-001-015.004


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EXHIBIT B

STATE SPECIFIC PROVISIONS

Section 7.12.1 ***Inconsistencies***. In the event of any inconsistencies between the terms and conditions of this Section 7.12 and the other provisions of this Mortgage, the terms and conditions of this Section 7.12 shall control and be binding.

Section 7.12.2 The first paragraph under the heading "GRANTING CLAUSES:" is hereby restated in its entirety as follows:

Mortgagor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Collateral Agent, as agent for the Lender, its successors and assigns, all of Mortgagor's estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property (together with the Land and the Improvements, collectively the "Mortgaged Property"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Section 7.12.3 Subparagraphs (i), (ii) and (iii) and the full paragraph following these subparagraphs which follow the provision that reads "THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS, whether now existing or arising after the date hereof (collectively, the "Obligations"): " are hereby deleted in their entirety and the following are substituted in lieu thereof:

- (i) Payment of the principal amount of the note of even date herewith from Borrower to Noteholders in the principal amount of \$1,600,000, together with interest thereon as provided therein, and all renewals, amendments, extensions and modifications thereof, and all refinancing of any part of said note and any and all other additional indebtedness of Borrower to said Noteholders, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancing thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise;
- (ii) Payment of taxes, assessments, insurance premiums, costs or other advances incurred to preserve or protect the Mortgaged Premises, together with interest thereon until paid at the Default Rate, all as contemplated by this Mortgage; and
- (iii) Payment of any fees and expenses incurred in connection with Borrower's obligations hereunder.

Section 7.12.4 The third sentence of Section 5.02 is hereby deleted and replaced with the following:

The names of the Debtor (Borrower) and the secured Party (Collateral Agent), the mailing address of the Secured Party (Collateral Agent) from which information can be obtained and the mailing address of the Debtor (Borrower) are set forth in the introductory paragraph of this Mortgage.


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Section 7.12.5 Section 6.02(vii) of the Mortgage is restated in its entirety as follows:

(vii)(aa) In addition to the rights and remedies set forth herein, at the option of Collateral Agent this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and Collateral Agent, its successors and assigns, agents or attorneys, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be otherwise required. At any such sale, Collateral Agent or any person conducting the sale for Collateral Agent may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Collateral Agent may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Collateral Agent in its sole discretion may elect.

(bb) As may be permitted by law, Collateral Agent shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Collateral Agent in exercising the power of sale or judicially foreclosing this Mortgage, (ii), second, to the payment of the Obligations in such manner and order as Collateral Agent may elect, and (iii) third, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Collateral Agent, or its successors and assigns, agents or attorneys, may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property. Any sale may be adjourned by Collateral Agent, its successors and assigns, agents or attorneys, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.


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Shelby Cnty Judge of Probate, AL
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