

**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
5400 LBJ Frwy., Suite 100
Dallas, TX 75420
Attention: Jacquelyne Ollango

This Mortgage was prepared by:

Donald M. Warren
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

(Space Above For Recording Use)

Parcel Identification Number: See Exhibit A

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

NAME OF **NSH CORP.**
MORTGAGOR(S): Additional names on Page 2 of this document.

NAME OF **NSH CORP.**
BORROWER(S): Additional names on page 2 of this document.

NAME OF **WELLS FARGO BANK, NATIONAL ASSOCIATION**
MORTGAGEE:

NOTE TO RECORDER: THIS INSTRUMENT IS GIVEN TO PROVIDE ADDITIONAL SECURITY FOR DEBT DESCRIBED IN (i) THAT CERTAIN CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED APRIL 29, 2011 FROM THE MORTGAGOR IN FAVOR OF MORTGAGEE RECORDED ON MAY 27, 2011 AS INSTRUMENT 20110527000533900 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA AND (ii) THAT CERTAIN CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED JANUARY 18, 2012 FROM THE MORTGAGOR IN FAVOR OF MORTGAGEE RECORDED ON JANUARY 26, 2012 AS INSTRUMENT 20120126000049710 IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, (COLLECTIVELY, THE "MORTGAGES"), AS SUCH MORTGAGES HAVE BEEN MODIFIED PURSUANT TO (X) THAT CERTAIN MORTGAGE MODIFICATION AGREEMENT DATED EFFECTIVE OCTOBER 29, 2012 AND RECORDED WITH THE OFFICES OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA (INSTRUMENT 20121119001254750) AND MADISON COUNTY, ALABAMA (INSTRUMENT 20121120000754090) AND (Y) THAT CERTAIN SECOND MORTGAGE MODIFICATION AGREEMENT DATED EFFECTIVE APRIL 26, 2013, AND RECORDED WITH THE OFFICES OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA (INSTRUMENT 20130429000429310) AND MADISON COUNTY, ALABAMA (INSTRUMENT 20130501000285270) UPON WHICH ALL RECORDING TAX WAS PAID UPON RECORDING THE ABOVE-DESCRIBED MORTGAGES AS MODIFIED.
THERE IS NO INCREASE IN THE DEBT AND NO RECORDING TAX IS DUE.

**WELLS
FARGO**

THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

**THE PROPERTY SUBJECT TO THIS MORTGAGE IS NOT HOMESTEAD
PROPERTY.**

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

THE PARTIES TO THIS CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), made as of September ____, 2014, are NSH CORP., an Alabama corporation ("Mortgagor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Mortgagee"). The mailing address of Mortgagor and Mortgagee are the addresses for those parties set forth or referred to in Section 11.8 below.

RECITALS:

WHEREAS, Mortgagor is justly indebted to Lender for a Credit Facility (as hereafter defined), which Credit Facility is evidenced by *inter alia* (i) that certain Second Amended and Restated Promissory Note Secured by Mortgage dated December 31, 2013, which is incorporated herein by this reference, executed by Mortgagor, as borrower, and payable to the order of Mortgagee, as lender, in the principal amount of THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$13,500,000.00) (as hereafter modified, amended or restated, the "Note"), and (ii) that certain Credit Facility Agreement dated as of April 29, 2011 between Mortgagor and Mortgagee, as amended by Modification Agreement dated May 26, 2011, as amended by Second Modification Agreement dated January 18, 2012, as amended by Third Modification Agreement dated July 29, 2012, as amended by Fourth Modification Agreement dated August 22, 2012, as modified by Fifth Modification Agreement dated November 16, 2012, as modified by Sixth Modification Agreement dated April 26, 2013, as modified by Seventh Modification Agreement dated September 30, 2013, as modified by Eighth Modification Agreement dated January 13, 2014 and as modified by Ninth Modification Agreement dated of even date herewith (as hereafter modified, amended or restated, the "Credit Agreement").

WHEREAS, Mortgagor has requested certain modifications to the terms and conditions of the Credit Facility (the "Loan Modifications"), and as a condition to consenting to such Loan Modifications, Mortgagee requires that Mortgagor execute and deliver this Mortgage as additional security for the Credit Facility.

AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **DEFINITIONS.** Terms not otherwise defined herein shall have the following meanings:

Code: The Uniform Commercial Code, as amended from time to time, in affect in the state in which the Property is located.

Construction Contracts: Any and all contracts and agreements, written or oral, between Mortgagor and any other party, and between any of the foregoing and any subcontractor, and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements including the performing of labor or the furnishing of standard or specially fabricated materials or other supplies or services in connection therewith.

Contracts: All of the right, title, and interest of Mortgagor in, to, and under any and all (i) contracts for the purchase or sale of all or any portion of the Property, whether such Contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development of the Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Property with all legal requirements applicable to the Property, (b) for the construction of any improvements on the Property (including, without limitation, the Construction Contracts), and (c) to develop or operate the Property as a commercial and/or residential project; (iii) any and all right, title, and interest Mortgagor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Property by future purchasers; (iv) all contracts with architects, engineers or other professionals relating to the design and/or construction of the Improvements, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all rebates, refunds or deposits, and all other sums due or to become due under and pursuant thereto and together with all powers, privileges, options, and other benefits of Mortgagor under such contracts; and (v) all other contracts which in any way relate to the design, use, enjoyment, occupancy, operation, maintenance, management or ownership of the Property (save and except any and all leases, subleases, or other agreements pursuant to which Mortgagor is granted a possessory interest in the Lots), including but not limited to engineers contracts, architects contracts, maintenance and service contracts and management agreements.

Credit Agreement: Shall have the meaning given to such term in the Recitals.

Credit Facility: Shall have the meaning attached to such term in the Credit Agreement.

Default: Any happening or occurrence described in Article 10 hereinbelow.

Disposition: Any sale, lease (except as permitted under this Mortgage), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Property (or any interest therein) or all or any part of the beneficial ownership interest in Mortgagor (if Mortgagor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity),

except pursuant to a partial release of the lien of the Mortgage pursuant to the applicable provisions thereof and of the other Loan Documents.

ERISA: The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq., as heretofore or hereafter amended from time to time.

Fixtures: All materials, supplies, equipment, apparatus and other items now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Lots, including but not limited to any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Governmental Requirement: Any and all statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Mortgagor or the Property (including, without limitation, the ownership, use, occupancy, possession, operation, maintenance, construction, alteration or repair thereof).

Guarantors (individually and/or collectively, as the context may require): Those persons, firms or entities, if any, designated as "Guarantors" in the Credit Agreement.

Hazardous Materials: Shall have the meaning ascribed to such term in the Credit Agreement.

Hazardous Materials Laws: All laws, ordinances and regulations related to Hazardous Materials.

Home: A single Lot and the Improvement constructed or to be constructed on such Lot.

Impositions: (i) All real estate and personal property taxes, charges, assessments, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Property or the ownership, use, occupancy or enjoyment thereof, or any portion thereof, or the sidewalks, streets or alleyways adjacent thereto; (ii) any charges, fees, license payments or other sums payable for any easement, license or agreement maintained for the benefit of the Property; (iii) water, gas, sewer, electricity, telephone and other utility charges and fees; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Property.

Improvements: The single family detached residences to be constructed by Mortgagor upon Lots, as more particularly described in the Plans and Specifications, together with any and all buildings, garages, houses, walkways, driveways, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Lots or any part thereof; provided, however, no more than one (1) such residence is to be constructed upon each Lot.

Indebtedness: (i) The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note or the other Loan Documents; (ii) such additional sums, with interest thereon, as may hereafter be borrowed from Mortgagee, its successors or assigns, by the Mortgagor or then record owner of the Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Mortgagor and Mortgagee that such future indebtedness may be incurred); and (iii) any and all other indebtedness, obligations and liabilities of any kind of the Mortgagor to Mortgagee, now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including, but not limited to, indebtedness, obligations and liabilities to Mortgagee of the Mortgagor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise (it being contemplated by Mortgagor and Mortgagee that Mortgagor may hereafter become indebted to Mortgagee in further sums).

Legal Requirements: (i) Any and all Governmental Requirements, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use or occupancy thereof, (iii) Mortgagor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, and (vi) any and all leases (other than Leases), and contracts (written or oral) (other than Contracts) of any nature that relate in any way to the Property and to which Mortgagor or any guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Mortgagor is granted a possessory interest in the Property.

Loan Documents: The Note, the Credit Agreement, this Mortgage, the Supplemental Mortgages, if any, and any and all other documents referenced in the Credit Agreement or any other documents now or hereafter executed by the Mortgagor or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

Lot: A single platted and subdivided portion of land, described in Exhibit A to this Mortgage or in a Supplemental Mortgage, within a single family residential subdivision upon which a single Improvement is to be, has been or is in the process of being, constructed, together with all right, title, interest, and privileges of Mortgagor in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking and public places, existing or proposed, abutting, adjacent, used in conjunction with or pertaining to such real property or the interests therein; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Minerals: All substances in, on, or under the Lots which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Lots, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores, upon extraction or removal from the Lots.

Note: Shall have the meaning given to such term in the Recitals.

Permitted Exceptions: The liens, easements, restrictions, security interests, and other matters (if any) as specified in this Mortgage or any Supplemental Mortgage and the liens and security interests created by the Loan Documents.

Personalty: All of the right, title, and interest of Mortgagor in and to (i) equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, tradenames, inventory; (iii) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Property, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Property and those for municipal utility district or other utility costs incurred or deposits made in connection with the Property; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Property, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Property or stored elsewhere) for use in or on the Property, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Plans and Specifications: Any and all plans, specifications, shop drawings and other technical descriptions prepared for construction of the Improvements, and all supplements thereto and amendments and modifications thereof.

Rents: All of the rents, revenues, income, receipts, issues, proceeds, profits, security and other types of deposits (after Mortgagor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Mortgagor, for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Property, together with any and all rights and claims of any kind which Mortgagor may have against any lessee under any Lease or any subtenants or occupants of the Property.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Property executed and delivered by Mortgagor, the lien of which is subordinate and inferior to the lien of the Mortgage.

Supplemental Mortgage: Any and all supplements to this Mortgage which are duly executed and recorded in the appropriate recording office where the Property is located.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings:

- (a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced.
- (b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of the Mortgage.
- (c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.



All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE 2. GRANT

- 2.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably grants, conveys, bargains, mortgages, encumbers, assigns, transfers, hypothecates, pledges, sets over, and grants a security interest and assigns to Mortgagee, with power of sale and right of entry and possession, all Lots, together with all Improvements, Fixtures, Minerals, Personalty, Plans and Specifications, Contracts, Leases, and Rents, all right, title, interest, and privileges of Mortgagor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property, together with all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Lots, Improvements, Fixtures or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Property and those for municipal utility district or other utility costs incurred or deposits made in connection with the Lots. All interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, and the proceeds of any of the foregoing, are collectively referred to herein as the "Property". The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 2.2 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Property, subject only to the Permitted Exceptions or such other exceptions approved by Mortgagee in writing. Mortgagor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property.

ARTICLE 3. OBLIGATIONS SECURED

- 3.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in the Credit Agreement, which Credit Agreement provides for the construction of certain Improvements on the Property; (b) the payment of THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$13,500,000.00), with interest thereon, according to the terms of the Note, (c) payment to Mortgagee of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Note; (d) any and all extensions, renewals, or modifications of the Note and Credit Agreement, whether the same be in greater or lesser amounts; and (e) payment and performance of any other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such obligation is evidenced by a writing which recites that it is secured by this Mortgage (collectively, the "Obligations").
- 3.2 **INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Obligations, together with all costs of collecting the Obligations. All terms of the Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall

be deemed to have notice of the terms of the Obligations and the rate of interest on one or more Obligations may vary from time to time.

ARTICLE 4. ASSIGNMENT OF LEASES AND RENTS

- 4.1 **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, issues, revenues, receipts, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "**Leases**" shall also include all subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.
- 4.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 4.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

ARTICLE 5. SECURITY AGREEMENT AND FIXTURE FILING

- 5.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee a security interest, to secure payment and performance of all of the Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**"):

All Personalty, Fixtures, Contracts, Construction Contracts, Plans and Specifications, Leases and Rents; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Note; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Code, and is acknowledged and agreed to be a "construction mortgage" under the Code.

- 5.2 **RIGHTS OF MORTGAGEE.** Upon the occurrence of a Default, Mortgagee shall have all the rights of a "Secured Party" under the Code. In addition to such rights, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Mortgagee may: (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the Code or other applicable law.

Mortgagor acknowledges and agrees that a Disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten days prior notice of such Disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other Disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Obligations.

- 5.3 **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents and warrants that: (a) Mortgagor's principal place of business is located at the address shown in Section 11.8 below; and (b) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage and all of Mortgagor's organizational documents or agreements delivered to Mortgagee are complete and accurate in every respect. Mortgagor agrees: (a) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee 30 days prior written notice thereof; (b) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the creation, preservation, perfection, priority or enforcement of any of its rights hereunder; and (c) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in the Collateral.

ARTICLE 6. WARRANTIES AND REPRESENTATIONS.

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date of and at all times during the term of this Mortgage, as follows:

- 6.1 **AUTHORITY/ENFORCEABILITY.** Mortgagor is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own the Property and construct the Improvements as contemplated by the Loan Documents.

- 6.2 **BINDING OBLIGATIONS.** Mortgagor is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Mortgagor.
- 6.3 **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Mortgagor has delivered to Mortgagee all formation and organizational documents of Mortgagor, the Constituent Parties, if any, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Mortgagee. Mortgagor shall immediately provide Mortgagee with copies of any amendments or modifications of the formation or organizational documents.
- 6.4 **NO VIOLATION.** Mortgagor's execution, delivery, and performance under the Loan Documents do not (i) require any consent or approval not heretofore obtained under any partnership agreement, articles of incorporation, bylaws or other document; (ii) violate any Legal Requirements applicable to the Property or Mortgagor; or (iii) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which Mortgagor or the Property is bound or regulated.
- 6.5 **COMPLIANCE WITH LEGAL REQUIREMENTS.** Mortgagor has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy and market the Property, and shall maintain compliance with all Legal Requirements applicable to the Property and necessary for the transaction of Mortgagor's business.
- 6.6 **ACCURACY.** All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Credit Facility or the Property or required by the Loan Documents are accurate, correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.
- 6.7 **NO COMMENCEMENT.** As of the date any Lot is subjected to the lien of this Mortgage, no steps to commence construction on such Lot, including steps to clear or otherwise prepare such Lot for construction thereon or the delivery of material for use in construction of the Improvements, have been taken.
- 6.8 **TITLE TO PROPERTY AND LIEN OF THIS INSTRUMENT.** Mortgagor has good and indefeasible title to the Lots (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and Improvements, and good and marketable title to all other Property, free and clear of any liens, charges, encumbrances, security interests, claim, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles, interests or estates of any nature whatsoever except the Permitted Exceptions. This Mortgage as amended by each Supplemental Mortgage constitutes a valid, subsisting, first lien mortgage on the Property; a valid, subsisting first security interest in and to the Personalty, Contracts, Construction Contracts, Plans and Specifications.
- 6.9 **OTHER PAYMENTS.** Mortgagor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirement to be withheld by Mortgagor pending completion of the Improvements) all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture hereunder) and services of every kind and character used, furnished or installed in or on the Property and no claim for same exists or will be permitted to be created.
- 6.10 **BUSINESS PURPOSES.** The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Mortgagor, and is not for personal, family, household, or agricultural purposes.
- 6.11 **MAILING ADDRESS.** Mortgagor's mailing address, as set forth herein, or as changed pursuant to the provisions hereof, is true and correct.

- 6.12 **RELATIONSHIP OF MORTGAGOR AND MORTGAGEE.** The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with the Mortgagor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.
- 6.13 **NO RELIANCE ON MORTGAGEE.** Mortgagor is experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Mortgagee have and are relying solely upon Mortgagor's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Property. Mortgagor is not relying on Mortgagee's expertise or business acumen in connection with the Property or in connection with the construction of the Improvements.

ARTICLE 7. AFFIRMATIVE COVENANTS.

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

- 7.1 **PAYMENT AND PERFORMANCE.** Mortgagor will pay the Indebtedness, as and when called for in the Loan Documents and on or before the due dates thereof, and will perform all of the Obligations, in full and on or before the dates same are to be performed.
- 7.2 **EXISTENCE.** Mortgagor will preserve and keep in full force and effect its existence (separate and apart from its affiliates), rights, franchises and trade names.
- 7.3 **COMPLIANCE WITH LEGAL REQUIREMENTS.** Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Property.
- 7.4 **FIRST LIEN STATUS.** Mortgagor will protect the first lien and security interest status of this Mortgage, as amended by each Supplemental Mortgage and the other Loan Documents. If any lien or security interest is asserted against the Property, the Construction Contracts or the Plans and Specifications, Mortgagor will promptly, and at its own cost and expense, (a) pay the underlying claim in full or take such other action so as to cause same to be released or, if permitted by Mortgagee in Mortgagee's sole discretion, bonded to Mortgagee's satisfaction and (b) within five (5) days from the date such lien or security interest is so asserted, give Mortgagee notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.
- 7.5 **PAYMENT OF IMPOSITIONS.** Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, to the extent and in the manner permitted by law (a) pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions if such installment payment would not create or permit the filing of a lien (statutory, constitutional or contractual) against the Property and (b) contest the payment of any Impositions in good faith and by appropriate proceedings provided that (i) any such contests shall be prosecuted diligently and in a manner not prejudicial to the rights, liens and security interests of Mortgagee, (ii) Mortgagor shall deposit funds with Mortgagee or obtain a bond in form and substance and with an issuing company satisfactory to Mortgagee in an amount sufficient to cover any amounts which may be owing in the event the contest may be unsuccessful (Mortgagor shall make such deposit or obtain such bond, as the case may be, within five (5) days after demand therefor and, if made by payment of funds to Mortgagee, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Mortgagor or the adverse claimant), (iii) no contest may be conducted and no payment may be delayed beyond the date on which the Property could be sold for nonpayment, and

(iv) Mortgagee may pay over to the taxing authority entitled thereto any or all of the funds at any time when, in the opinion of Mortgagee's counsel, the entitlement of such authority to such funds is established. Subject to Mortgagor's right to contest as provided for herein, Mortgagor shall submit to Mortgagee copies of tax statements and paid tax receipts evidencing the due and punctual payment of all real estate and personal property taxes, charges and assessments levied upon or assessed or charged against the Property on or before the delinquent date of any such taxes.

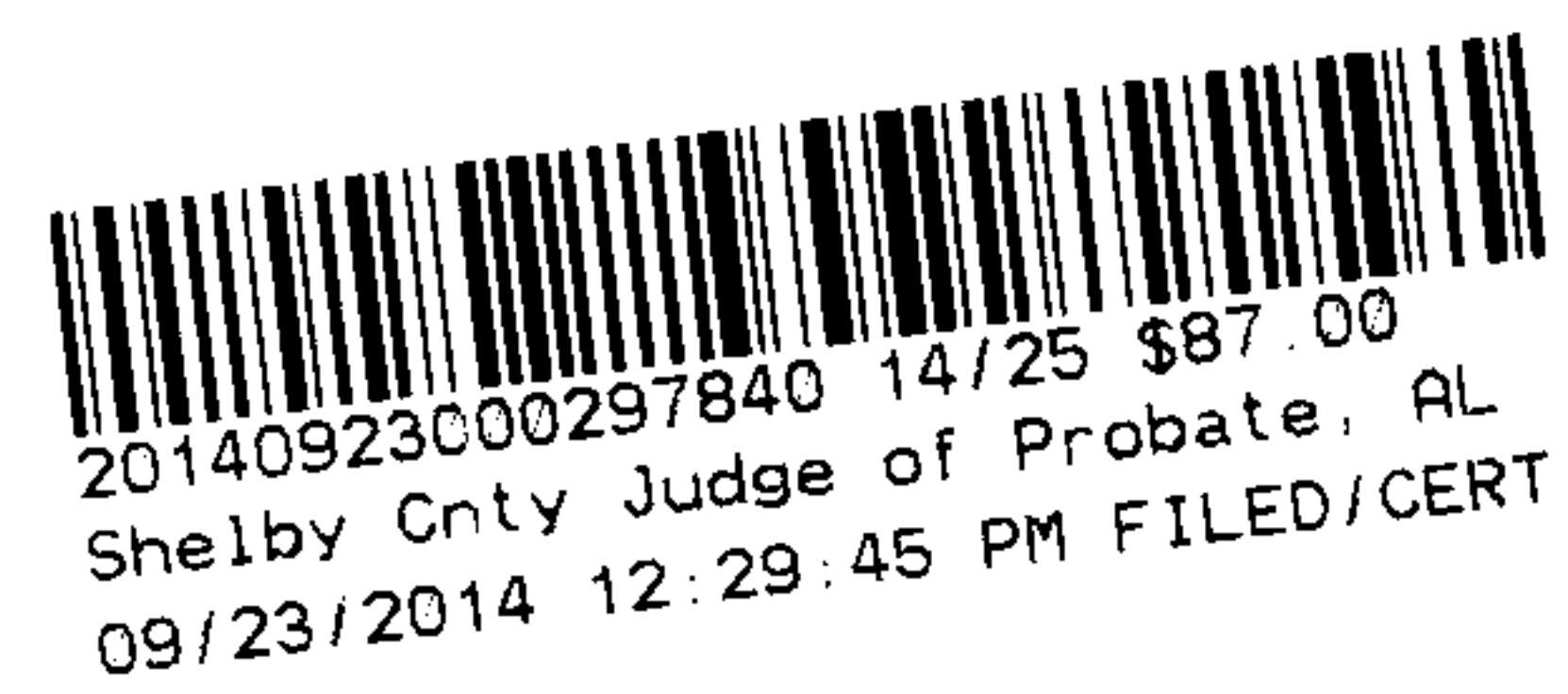
- 7.6 **REPAIR.** Mortgagor will keep the Property in first class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will also use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Property for its intended usage as set forth in the Plans and Specifications or elsewhere in the Loan Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in this Mortgage; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will notify Mortgagee in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.
- 7.7 **INSURANCE.** Mortgagor will obtain and maintain insurance upon and relating to the Property insuring against personal injury and death, loss by fire and such other hazards, casualties and contingencies (including business interruption insurance covering loss of Rents and builder's all risk coverage) as are normally and usually covered by extended coverage policies in effect where the Property is located as specified in the Credit Agreement and such other risks as may be specified by Mortgagee, from time to time, all in such amounts and with such insurers of recognized responsibility as are acceptable to Mortgagee. Each insurance policy issued in connection therewith shall provide by way of endorsements, riders or otherwise that (a) proceeds will be payable to Mortgagee as its interest may appear, it being agreed by Mortgagor that such payments shall be applied at Mortgagee's sole option (and in Mortgagee's sole discretion) either to (i) the restoration, repair or replacement of the Property or (ii) toward the payment of the Indebtedness; (b) the coverage of Mortgagee shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (c) no such insurance policy shall be cancelled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Mortgagee ten (10) days prior written notice thereof; and (d) Mortgagee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same. Mortgagee shall be furnished with evidence, in form and content acceptable to Mortgagee, of such insurance policies for all Property subject to this Mortgage upon the execution of this Mortgage and each Supplemental Mortgage, and Mortgagor shall provide the original of each renewal policy not less than fifteen (15) days prior to the expiration of the initial or each immediately preceding renewal policy together with receipts or other evidence that the premiums thereon have been paid.
- (a) **Collateral Protection Insurance Notice.** (A) MORTGAGOR IS REQUIRED TO: (i) KEEP THE PROPERTY AND IMPROVEMENTS INSURED AGAINST DAMAGE IN THE AMOUNT MORTGAGEE SPECIFIES; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF ALABAMA OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME MORTGAGEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) MORTGAGOR MUST, IF REQUIRED BY MORTGAGEE, DELIVER TO MORTGAGEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS THEREFOR; AND (C) IF MORTGAGOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSES (A) OR (B) HEREOF,



MORTGAGEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF MORTGAGOR AT MORTGAGOR'S EXPENSE.

- 7.8 **APPLICATION OF PROCEEDS.** If the proceeds of the insurance described in Section 7.7 hereof are to be used for restoration, repair or replacement (herein referred to as the "**Work**") of the Property, such proceeds shall be paid out by Mortgagee from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to the Work or directly to such persons) as the Work progresses, subject to the following conditions: (a) if the cost of the Work estimated by Mortgagee shall exceed \$25,000.00, prior to the commencement thereof (other than Work to be performed on an emergency basis to protect the Property or prevent interference therewith), (i) an architect or engineer, approved by Mortgagee, shall be retained by Mortgagor (at Mortgagor's expense) and charged with the supervision of the Work and (ii) Mortgagor shall have prepared and submitted to Mortgagee the plans and specifications for such Work and afforded Mortgagee the opportunity to accept same; (b) each request for payment by Mortgagor shall be made on ten (10) days prior written notice to Mortgagee and shall be accompanied by a certificate executed by the architect or engineer supervising the Work (if one is required pursuant to the Loan Documents), otherwise by Mortgagor or an executive officer of Mortgagor, stating, among such other matters as may be reasonably required by Mortgagee that: (i) all of the Work completed has been done in compliance with the plans and specifications submitted to Mortgagee; (ii) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (iii) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iv) the amount of insurance proceeds remaining in the hands of Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion); (c) each request shall be accompanied by waivers of lien satisfactory in form and substance to Mortgagee covering that part of the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee that there has not been filed with respect to the Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Property; (d) there has not occurred any Default since the hazard, casualty or contingency giving rise to payment of the insurance proceeds; (e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Property lawful; and (f) if, in Mortgagee's judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Mortgagor shall deposit with Mortgagee, immediately upon a request therefor, an amount of money which when added to such insurance proceeds will be sufficient, in Mortgagee's judgment, to complete the Work. If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other aforesaid persons) incident thereto, Mortgagee may, at Mortgagee's option, disburse such balance to Mortgagor or apply such balance toward the payment of the Indebtedness, whether or not then due. Nothing herein shall be interpreted to prohibit Mortgagee from (y) withholding from each such disbursement ten percent (10%) (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and from continuing to withhold such sum, until the time permitted for perfecting liens against the Property has expired (or such longer period of time as permitted or required by any Legal Requirement), at which time the amount withheld shall be disbursed to Mortgagor (or to Mortgagor and any person or persons furnishing labor and/or material for the Work or directly to such persons), or (z) applying at any time the whole or any part of such insurance proceeds to the curing of any Default. If the insurance proceeds are applied to the payment of the Indebtedness pursuant to the terms and provisions of the Loan Document, any such application shall be in such order as Mortgagee, in its sole discretion, may determine.

- 7.9 **RESTORATION FOLLOWING CASUALTY.** If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Property, Mortgagor will give notice thereof to Mortgagee and, if so instructed by Mortgagee, will promptly, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Property in accordance with the provisions of Section 7.8 hereof and all Legal Requirements as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.
- 7.10 **SITE VISITS, OBSERVATIONS AND TESTING.** Mortgagor will permit Mortgagee, and its agents, representatives and employees, at all reasonable times and at Mortgagor's expense, to inspect the Property. Without limiting the generality of the foregoing, Mortgagee, its agents, representatives, and employees shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the same, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by Mortgagee shall be solely for the purposes of protecting Mortgagee's security and preserving Mortgagee's rights under the Loan Documents. Mortgagee owes no duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Materials affecting the Property. No site visit, observation or testing by Mortgagee shall result in a waiver of any Default of Mortgagor or impose any liability on Mortgagee. In no event shall any site visit, observation or testing by Mortgagee be a representation that Hazardous Materials are or are not present in, on, or under the Property, or that there has been or shall be compliance with any Hazardous Materials Laws, or any other applicable Legal Requirements. Neither Mortgagor nor any other party is entitled to rely on any site visit or observation by Mortgagee. Mortgagee shall disclose to Mortgagor, without representation or warranty of any kind, any report or findings made as a result of, or in connection with, any site visit, observation or testing by Mortgagee, except to the extent that Mortgagee deems any portion of such report or findings to be confidential. It is expressly understood and agreed that neither Mortgagor nor any other person or entity may rely on any such report or findings, and Mortgagee may require, as a condition to such disclosure, that Mortgagor execute a statement whereby it reaffirms that it will not rely upon such report or findings. In each instance, Mortgagee shall give Mortgagor reasonable notice before entering the Property or any other place Mortgagee is permitted to enter under this Section 7.10. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's or any tenant's use of the Property, or any other property, in exercising any rights provided in this Section. All contracts let or amended by Mortgagor after the date hereof shall require agreement to the foregoing inspection rights, except where such rights have been waived by Mortgagee in writing.
- 7.11 **STATEMENT OF UNPAID BALANCE.** At any time and from time to time, Mortgagor will furnish promptly, upon the request of Mortgagee, a written statement or affidavit, in form satisfactory to Mortgagee, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.
- 7.12 **FINANCIAL COVENANTS.**
- (a) **Financial Information.** Mortgagor shall deliver and shall cause Guarantors to deliver, to Mortgagee such financial statements and other financial reports as are specified in Article X in the Credit Agreement.
- (b) **Books and Records.** Mortgagor shall maintain complete books of account and other records for the Property and for disbursement and use of the proceeds of the Credit Facility, and the same shall be available for inspection and copying by Mortgagee upon reasonable prior notice.



- (c) **Financial Requirements.** In addition to the other matters specified herein, Mortgagor, Guarantors and Constituent Parties shall comply with each and every one of the financial requirements specified in Article X of the Credit Agreement, as each may be applicable to it.

- 7.13 **TAX AND INSURANCE ESCROW.** Upon Mortgagee's request Mortgagor shall pay monthly, annually, or as otherwise directed by Mortgagee, an amount ("**Escrowed Sums**") equal to the sum of (a) the annual Impositions (estimated by Mortgagee, wherever necessary) to become due for the tax year during which such payment is so directed and (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Mortgagee determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. The Escrowed Sums may be held by Mortgagee in an interest bearing account and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the Escrowed Sums then in its possession to its assignee whereupon the Mortgagee shall then become completely released from all liability with respect thereto. Within ninety-five (95) days following the full payment of the Indebtedness (other than a full payment of the Indebtedness as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Indebtedness) or at such earlier time as Mortgagee may elect, the balance of the Escrowed Sums in its possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto. If no Default shall have occurred and be continuing hereunder, the Escrowed Sums shall, at the option of Mortgagee, be repaid to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Loan Documents to pay the Impositions and the required insurance premiums or be paid directly to the Governmental Authority and the insurance company entitled thereto. If a Default shall have occurred and be continuing hereunder, however, Mortgagee shall have the additional option of crediting the full amount of the Escrowed Sums against the Indebtedness without notice of any kind to Mortgagor. Notwithstanding anything to the contrary contained in this Section 7.13 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive the payment by Mortgagor to Mortgagee of the Escrowed Sums, and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's rights to insist, at any subsequent time or times, that such payments be made in accordance herewith.
- 7.14 **APPRAISALS.** Mortgagee shall have the right to reappraise the Property as often as Mortgagee so desires and Mortgagor agrees to fully cooperate with, and furnish all financial, lease and other material information relating to the Property, to Mortgagee and its appraiser in connection with any such appraisal. Costs, fees and expenses related to appraisals of the Property shall be payable as provided in the Credit Agreement and the other Loan Documents.
- 7.15 **ADDRESS.** Mortgagor shall give written notice to Mortgagee of any change of address of Mortgagor at least thirty (30) days prior to the actual change of address of Mortgagor. Absent such official written notice of a change in address for Mortgagor, then Mortgagee shall be entitled for all purposes under the Loan Documents to rely upon Mortgagor's address as set forth in this Mortgage, as same may have been theretofore changed in accordance with the provisions hereof.
- 7.16 **DISCLOSURES.** If at any time Mortgagor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a material adverse effect on the financial condition of Mortgagor or the Property, Mortgagor shall promptly notify Mortgagee of the existence or occurrence thereof and of Mortgagor's opinion as to what effect such may have on the Property or Mortgagor. Mortgagor shall also give prompt notice to Mortgagee of (i) the serious illness or death of any principal or key employee of Mortgagor, (ii) any litigation or dispute, threatened or pending against or affecting the Property, Mortgagor or any Guarantor which could have a material adverse effect on the financial condition of the Property, Mortgagor or any Guarantor, (iii) any Default, (iv) any default by Mortgagor or any acceleration of any indebtedness owed by Mortgagor under any contract to which

Mortgagor is a party, (v) any default by any Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which any Guarantor is a party, and (vi) any change in the character of Mortgagor's or any Guarantor's business as it existed on the date hereof.

- 7.17 **ERISA.** Mortgagor and Guarantors shall at all times comply with the provisions of ERISA with respect to any retirement or other employee benefit plan to which it is a party as employer, and as soon as possible after Mortgagor or any Guarantor knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of Mortgagor or any Guarantor has occurred, it shall furnish to Mortgagee a written statement setting forth details as to such Reportable Event and the action, if any, which Mortgagor or any Guarantor proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

ARTICLE 8. NEGATIVE COVENANTS.

Mortgagor hereby covenants and agrees with Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

- 8.1 **USE VIOLATIONS.** Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereto.
- 8.2 **ALTERATIONS.** Mortgagor will not commit or permit any waste of the Property and will not (subject to the provisions of Sections 7.6 and 7.9 hereof) without the prior written consent of Mortgagee make or permit to be made any alterations or additions to the Property of a material nature, except in accordance with the Plans and Specifications.
- 8.3 **REPLACEMENT OF FIXTURES AND PERSONALTY.** Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Property unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by Mortgagee.
- 8.4 **CHANGE IN ZONING.** Mortgagor will not seek or acquiesce in a zoning reclassification of all or any portion of the Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Property, without Mortgagee's prior written consent.
- 8.5 **NO DRILLING.** Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any minerals from the surface or subsurface of the Lots regardless of the depth thereof or the method of mining or extraction thereof.
- 8.6 **BUSINESS CHANGE.** Mortgagor shall not make or permit to occur or exist a material change in the character of its business activities as such existed on the date of this Mortgage, without Mortgagee's prior written consent.
- 8.7 **NO DISPOSITION.** Except as expressly permitted by Section 9.7 of the Credit Agreement, Mortgagor will not make a Disposition without obtaining Mortgagee's prior written consent to a Disposition.
- 8.8 **NO SUBORDINATE MORTGAGES.** Mortgagor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate

Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Property, other than the Permitted Exceptions.

ARTICLE 9. RIGHTS AND DUTIES OF THE PARTIES

- 9.1 **PERFORMANCE OF OBLIGATIONS.** Mortgagor shall promptly pay and perform each of the Obligations when due. If Mortgagor fails to timely pay or perform any portion of the Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Mortgagee's rights in the Property, including the retaining of counsel, and any amount so expended by Mortgagee will be added to the Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 9.2 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage.
- 9.3 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein shall be sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock, partnership interests, or limited liability company membership interests of a Mortgagor or managing member or general partner of Mortgagor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, THEN Mortgagee, in its sole discretion, may at anytime thereafter declare all Obligations immediately due and payable.
- 9.4 **DAMAGES; CONDEMNATION PROCEEDS.**
- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.
- (b) Mortgagee may permit insurance proceeds held by Mortgagee to be used for repair or restoration subject to the terms and provisions of Section 7.8 of this Mortgage.
- (c) Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Property, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be

paid over to Mortgagee for disposition pursuant to the terms of this Mortgage. Mortgagor may be the nominal party in such proceeding but Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. If the Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Property shall be, and by these presents is, assigned, transferred and set over unto Mortgagor to be held by it, in trust, subject to the lien and security interest of this Mortgage, and disbursed as follows:

- (i) if (A) all of the Property is taken, (B) so much of the Property is taken, or the Property is so diminished in value, that the remainder thereof cannot (in Mortgagee's judgment) continue to be operated profitably for the purpose it was being used immediately prior to such taking or diminution, (C) a Default shall have occurred or (D) the Property is partially taken or diminished in value and (in Mortgagee's judgment) need not be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to Mortgagee shall be applied by it in the order recited in Section 9.4(d) hereof; or
 - (ii) if (A) only a portion of the Property is taken and the portion remaining can (in Mortgagee's judgment), with rebuilding, restoration or repair, be profitably operated for the purpose referred to in Section 9.4(c)(i)(B) hereof, (B) none of the other facts recited in Section 9.4(c)(i) hereof exists, (C) Mortgagor shall deliver to Mortgagee plans and specifications for such rebuilding, restoration or repair acceptable to Mortgagee, which acceptance shall be evidenced by Mortgagee's written consent thereto, and (D) Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the plans and specifications therefor and within three (3) months after the date of the taking or diminution in value and shall otherwise comply with Section 7.8 hereof, then such sums shall be paid to Mortgagor to reimburse Mortgagor for money spent in the rebuilding, restoration or repair; otherwise same shall be applied by Mortgagee in the order recited in Section 9.4(d) hereof.
- (d) All proceeds received by Mortgagee with respect to a taking or a diminution in value of the Property shall be applied to the following in the order of priority that Mortgagee, in its sole discretion, may determine:
- (i) to reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of said proceeds; or
 - (ii) to the payment of those items recited in Section 10 hereof; provided, however, that if such proceeds are required under Section 9.4(c)(ii) hereof to be applied to the rebuilding, restoration or repair of the Property, the provisions of Section 7.8 hereof shall determine the conditions precedent for utilizing such proceeds for such purpose.
- (e) Mortgagor hereby acknowledges that the conditions described in this Mortgage are reasonable, and, if such applicable conditions have not been satisfied within 30 days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

9.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims.

Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property and of any condemnation offer or action.

- 9.7 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Obligations ("**Interested Parties**"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any of the Obligations, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any of the Obligations, or accept additional security or release all or a portion of the Property and other security for the Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgagee and each Supplemental Mortgage upon the Property.
- 9.8 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 9.9 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms hereof.
- 9.10 **PARTIAL RELEASE.** At any time prior to the maturity date of the Note, Mortgagee shall, at Mortgagor's request, pursuant to an arms-length sale with an independent third party purchaser, issue partial releases from the lien of this Mortgage of one or more Homes; provided, however, such partial releases shall at all times be subject to and in accordance with the terms and conditions set forth in the Credit Agreement.

ARTICLE 10. DEFAULT PROVISIONS

- 10.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:
- (a) **Representations and Warranties.** (i) The failure of any representation or warranty of Mortgagor in this Mortgage and the continuation of such failure for more than 10 days after written notice to Mortgagor from Mortgagee requesting that Mortgagor cure such failure; or (ii) any material adverse change in the financial condition of Mortgagor, any Guarantor, or any indemnitor from the financial condition represented to Mortgagor as of the date hereof; or
 - (b) **Performance of Obligations.** Mortgagor's failure to perform any obligation, covenant or condition under this Mortgage; provided, however, that if a cure period is provided for the remedy of such failure, Mortgagor's failure to perform will not constitute a Default until such date as the specified cure period expires;
 - (c) **Default under Loan Documents.** A default under any of the Loan Documents.
- 10.2 **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies:
- (a) With or without notice, to declare all Obligations immediately due and payable;

- (b) With or without notice, and without releasing Mortgagor from any of the Obligations, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons;
- (c) To sell the Property or any part thereof at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Property or any part thereof is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for 3 successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee, or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Property so purchased; and at the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.
- (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
- (e) To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Obligations, the existence of a declaration that the Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
- (f) To enter upon, possess, manage and operate the Property or any part thereof;
- (g) To cause the Property to be sold to satisfy the Obligations. Except as required by law, neither Mortgagor nor any other person or entity other than Mortgagee shall have the right to direct the order in which the Property is sold;
- (h) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent actions; and

Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Mortgagee deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee

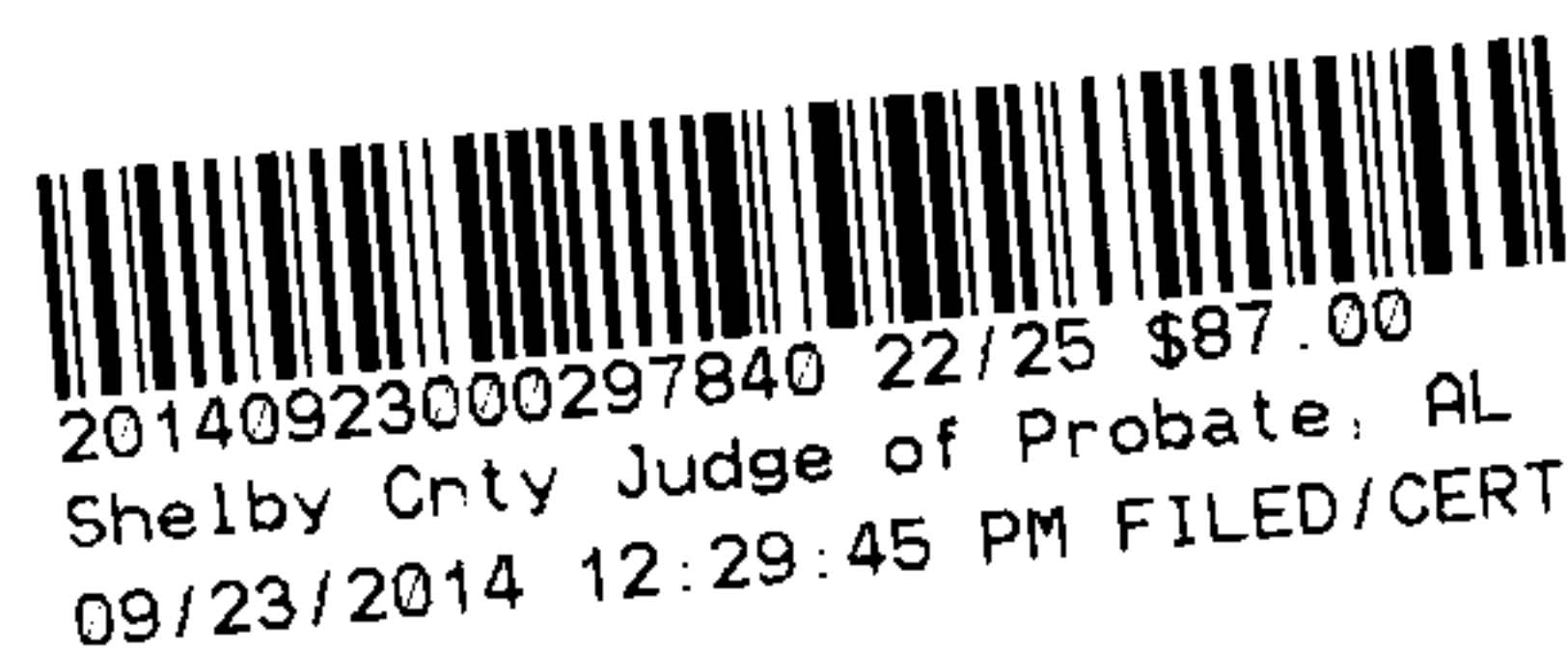
any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and

- 10.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 10.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under this Mortgage other than those described in Section 10.3, less all costs and expenses incurred by Mortgagee or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 10.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any of the Obligations, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver, shall cure or waive any breach, Default or notice of Default under this Mortgage, or nullify the effect of any notice of Default or sale (unless all Obligations then due have been paid and performed and Mortgagor has cured all other Defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Mortgage.
- 10.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to this Article 10 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Mortgagee as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.
- 10.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder.
- 10.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it

from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Obligations after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 11. MISCELLANEOUS PROVISIONS

- 11.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference.
- 11.2 **ATTORNEYS' FEES.** If the Note is placed with an attorney for collection or if an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Mortgagor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 11.3 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of the Note or this Mortgage shall constitute a waiver of any breach, default, or failure of condition under the Note, this Mortgage or the obligations secured thereby. A waiver of any term of the Note, this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the loan evidenced by the Note, the terms of the Note shall prevail.
- 11.4 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.
- 11.5 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 11.6 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal laws preempt the laws of such state.
- 11.7 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.
- 11.8 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

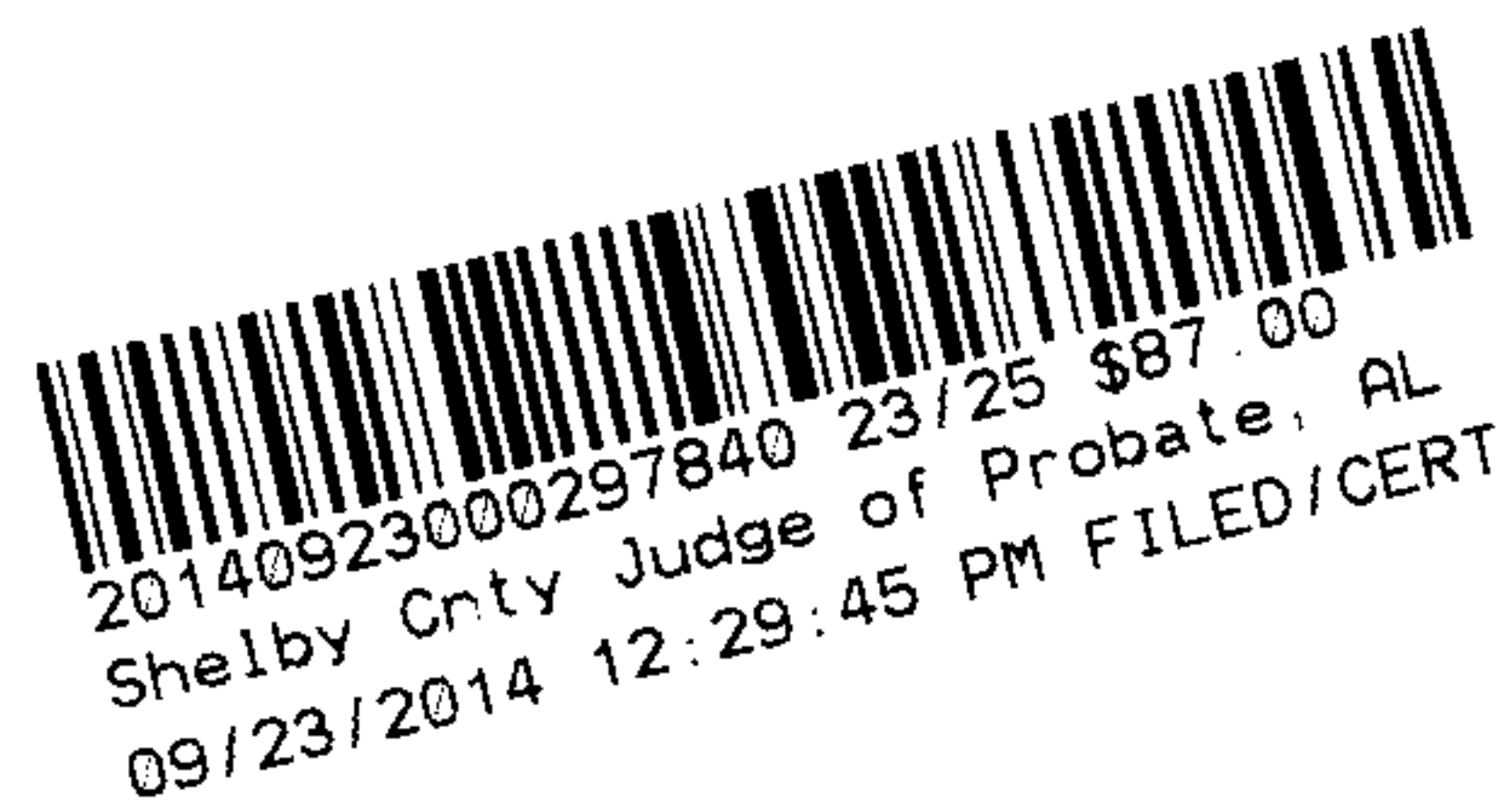


Mortgagor:	NSH CORP. 3545 Market Street Hoover, Alabama 35226
With a copy to:	HARTMAN & SPRINGFIELD 2700 Highway 280S Suite 460E Birmingham, Alabama 35223 Attention: John L. Hartman, III
Mortgagee:	WELLS FARGO BANK, NATIONAL ASSOCIATION 5400 LBJ Frwy., Suite 100 Dallas, TX 75420 Attention: Jacquelyne Ollango Loan #: 1004231
With a copy to:	WELLS FARGO BANK, NATIONAL ASSOCIATION Winston-Salem Loan Center One West Fourth Street Winston-Salem, NC 27101 Attention: Disbursement Administration-NSH Corp. Loan #1004231

Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of 30 days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Credit Agreement.

Mortgagor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Mortgagor at the address set forth above.

- 11.9 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("Wells Fargo") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Credit Facility, the date of the closing and a description of the size/location of the Property.
- 11.10 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property marshaled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien securing the Obligations. Mortgagee shall have the right to

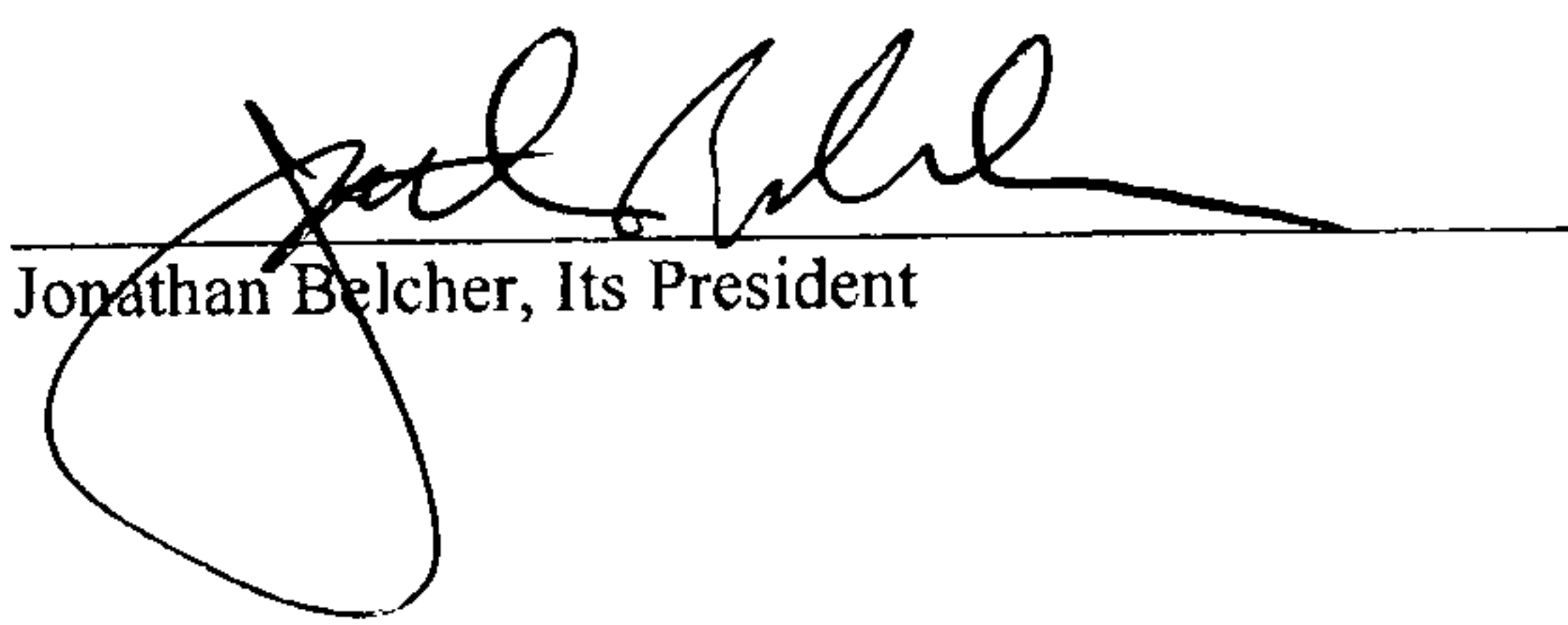


sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Mortgagee may designate.

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

"MORTGAGOR"

NSH CORP.,
an Alabama corporation


Jonathan Belcher, Its President

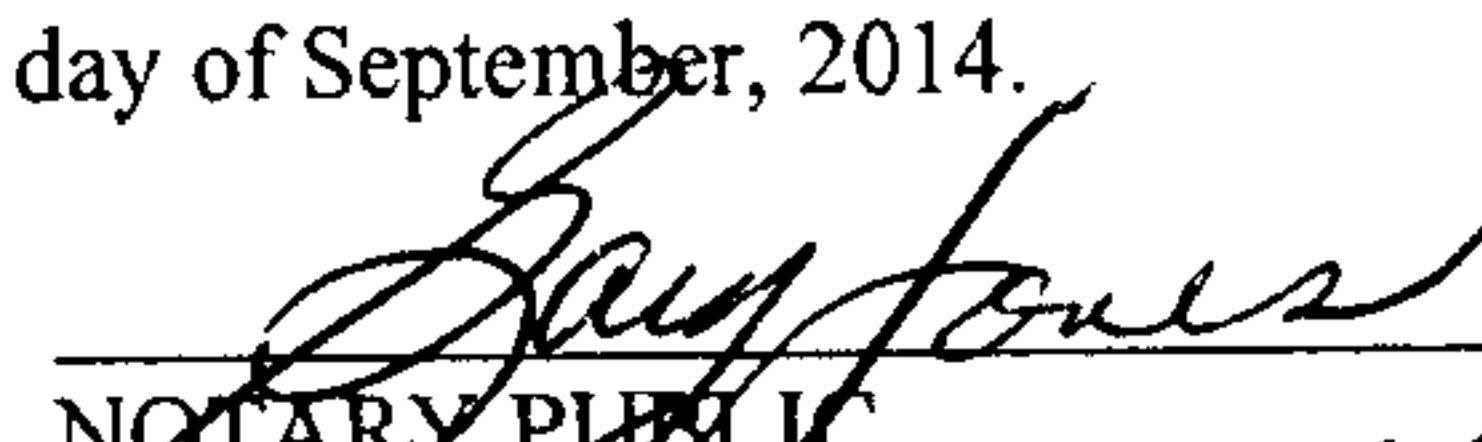
STATE OF ALABAMA)

COUNTY OF TETTERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jonathan Belcher, whose name as President of NSH Corp., an Alabama corporation, 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 12 day of September, 2014.

[NOTARY SEAL]


NOTARY PUBLIC
My Commission Expires: 4-17-2016



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Shelby Cnty Judge of Probate, AL
09/23/2014 12:29:45 PM FILED/CERT

EXHIBIT A
DESCRIPTION OF PROPERTY

Exhibit A to Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by NSH Corp., as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of September 12, 2014.

All the certain real property located in the County of Shelby, State of Alabama, described as follows:

Lots 5, 85, 89, 90, 91, 92, 97 and 98, according to the Survey of Kirkman Preserve – Phase 1-A, as recorded in Map Book 43, Page 142, in the Probate Office of Shelby County, Alabama.



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Shelby Cnty Judge of Probate, AL
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