


PREPARED BY AND UPON
RECORDATION RETURN TO:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: William P. McInerney, Esq.


20141006000312680 1/39 \$10131.50
Shelby Cnty Judge of Probate: AL
10/06/2014 01:47:33 PM FILED/CERT

Return to:
Kellie Andrade
First National Financial Title Services, Inc.
3237 Satellite Blvd, Bldg 300, Suite 450
Duluth, GA 30096
File No. H9026-1

BRE NEWTON HOTELS PROPERTY OWNER LLC, as mortgagor

(Mortgagor)

to

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

and

GERMAN AMERICAN CAPITAL CORPORATION

collectively, as mortgagee

(Lender)

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

Dated: As of August 12, 2014
Location: 3 Greenhill Parkway
Birmingham, Alabama 35242
County: Shelby

**THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN
ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE
OF ALABAMA.**

Property Name: Residence Inn Birmingham Inverness
Property Address: 3 Greenhill Parkway
Birmingham, Alabama 35242

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Mortgage**”) is made as of August 12, 2014, by **BRE NEWTON HOTELS PROPERTY OWNER LLC**, a Delaware limited liability company, having its principal place of business at c/o Blackstone Real Estate Advisors L.P., 345 Park Avenue, New York, New York 10154, as mortgagor (referred to herein as “**Mortgagor**”) to **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 and **GERMAN AMERICAN CAPITAL CORPORATION**, a Maryland corporation, having an address at 60 Wall Street, 10th Floor, New York, New York 10005, collectively, as mortgagee (together with their respective successors and assigns, each a “**Co-Lender**” and collectively, “**Lender**”).

W I T N E S S E T H:

WHEREAS, this Mortgage is given to secure a loan (the “**Loan**”) in the principal sum of \$570,000,000.00 advanced pursuant to that certain Loan Agreement, dated as of the date hereof, among Mortgagor, BRE Newton Hotels Property Owner LP, a Delaware limited partnership (the “**Other Borrower**”) and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by those certain promissory notes, each dated the date hereof, in the original principal amount of \$570,000,000.00, in the aggregate, made by Mortgagor and the Other Borrower in favor of each Co-Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Note**”);


WHEREAS, Mortgagor desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of Mortgagor’s obligations under the Note, the Loan Agreement and the other Loan Documents (as hereinafter defined); and

WHEREAS, this Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are partially secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the “**Loan Documents**”).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Mortgage:

Property Name: Residence Inn Birmingham Inverness
Property Address: 3 Greenhill Parkway
Birmingham, Alabama 35242

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ARTICLE I - GRANTS OF SECURITY

Section 1.1 Property Mortgaged. As security for the Obligations (as hereinafter defined), Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns, with right of entry and power of sale, all of Mortgagor's right, title and interest in, to and under the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "**Property**");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights (to the extent assignable) hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, alleyways, sidewalks, utility pipes, conduits and lines, parking areas, driveways and irrigation systems, presently situated upon the Land, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land and any other income producing Land now or hereafter improved (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein, except for any automobile vehicles leased for use at the Property, if any, (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases or guests or invitees at the Property except to the extent that Mortgagor shall have any right or interest therein;

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(f) Fixtures. All tangible property now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Land is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), kitchen fixtures, bar equipment, lawn mowers and other gardening tools, tractors and other motorized vehicles, golf carts, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other customary hotel equipment and personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal

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Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “**Uniform Commercial Code**”), superior in lien to the lien of this Mortgage and all proceeds and products of the above. Notwithstanding the foregoing, personal property shall not include any property belonging to Tenants under Leases or guests or invitees at the Property except to the extent that Mortgagor shall have any right or interest therein;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions, or other agreements (whether written or oral), pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the “**Leases**”), whether before or after the filing by or against Mortgagor of any petition for relief under Title 11 of the United States Code, 11 U.S.C. §101 et seq., as the same may be amended from time to time, any successor statutes and rules and regulations from time to time promulgated thereunder (the “**Bankruptcy Code**”) and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits arising from the Leases and any extension, renewal or replacement thereof together with all rents, rent equivalents, income, fees, receivables, receipts, accounts, deposits profits, (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Mortgagor or its agents or employees for Mortgagor’s account from any and all sources relating to the use, enjoyment and occupancy of the Property, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, room service, bars, meeting rooms, banquet rooms and recreational facilities or fitness or other facilities (including, without limitation, any deposits and rental fees), all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, movie rentals, telephone service, if any, from business interruption or other loss of income insurance from the Land and the Improvements whether paid or accrued before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt; Notwithstanding the foregoing, “Rents” shall not include (i) Custodial Funds, including any gratuities collected by or for the benefit of employees at the Property or (ii) federal, state and municipal excise, sales, use

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and similar taxes collected directly from patrons or guests of the Property as a part of or based on the sales price of any goods, services or other items. This assignment of present and future Leases shall be effective without further or supplemental assignment;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses (including, without limitation, liquor licenses, if any, to the extent permitted by applicable law), plans, specifications and other documents, now or hereafter entered into, and in each case all rights therein and thereto (subject to any restrictions on assignment), respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of an Event of Default, to receive and collect any sums payable to Mortgagor thereunder; provided, that unless an Event of Default has occurred and is continuing, Mortgagor shall be entitled to act in connection with any of the foregoing in accordance with the applicable requirements of the Loan Agreement and other Loan Documents and provided such actions do not violate any covenant contained herein or therein;

(o) Trademarks. To the extent assignable, all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

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(p) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established pursuant to the Cash Management Agreement, including, without limitation, the Cash Management Account, the Concentration Account and the Lockbox Accounts, together with all deposits or wire transfers made to the Cash Management Account, the Concentration Account and the Lockbox Accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Letters of Credit. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, right, titles and interest referred to in this Section 1.1; and

(s) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (r) above.

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Mortgagor expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and subject to this Mortgage.

Section 1.2 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Lender all of Mortgagor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Cash Management Agreement, the other Loan Documents and Section 7.1(h) of this Mortgage, Lender grants to Mortgagor a revocable license (and Mortgagor shall have the express right to) (a) collect, receive, use and enjoy the Rents and Mortgagor shall hold such Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums in accordance with the terms of the other Loan Documents and (b) otherwise deal with and enjoy the rights of lessor under the Leases.

Section 1.3 Security Agreement. This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Lender, as security for the Obligations, a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the

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Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon a default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Mortgagor shall pay to Lender within ten (10) Business Days following written demand any and all out-of-pocket expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Mortgagor’s (debtor’s) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Mortgagor hereby pledges to Lender all of its respective right, title and interest in and to any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Cash Management Account, the Lockbox Accounts, the Concentration Account, the Manager Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied or distributed as provided in the Loan Documents.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever, pursuant to the terms and conditions set forth herein and the Loan Documents;

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PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Mortgage, shall well and truly perform the Other Obligations as set forth in this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and Lender will provide a satisfaction and cancellation of this Mortgage and termination statements for filed financing statements, if any, to Mortgagor; provided, however, that Mortgagor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release, except as set forth in Section 10 hereof.

ARTICLE II - DEBT AND OBLIGATIONS SECURED


Section 2.1 Debt. This Mortgage and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt, including, without limitation, all principal, interest, fees and other charges from time to time owing under the Note.

Section 2.2 Other Obligations. This Mortgage and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the "**Other Obligations**"):

- (a) the performance of all other obligations of Mortgagor contained herein;
- (b) the performance of each obligation of Mortgagor contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 Debt and Other Obligations. Mortgagor's obligations for the payment of the Debt and Mortgagor's performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**", the timely payment and performance of which are secured by this Mortgage.

Section 2.4 Future Advances. This Mortgage secures all future advances of the Obligations, regardless of whether such future advances are (a) optional or obligatory, (b) additional advances of principal or advances to protect the Property, (c) being advanced for the same purpose as advances previously made, (d) arising out of the same transaction as previous advances, or (e) currently within the contemplation of the parties. The priority of all such future advances shall relate back to the date of filing of this Mortgage.


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ARTICLE III - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

Section 3.1 Payment of Debt. Mortgagor will pay, or cause to be paid, the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.

Section 3.4 Maintenance of Property. Mortgagor shall cause the Property to be maintained in a good and safe condition and repair in all material respects, normal, ordinary wear and tear excepted. Except as otherwise provided in the Loan Agreement, the Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements in the ordinary course of business) without the consent of Lender or as otherwise permitted pursuant to the Loan Agreement. Subject to and in accordance with the terms and conditions of the Loan Agreement, Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land, in each case, in accordance with the terms of the Loan Agreement.

Section 3.5 Waste. Mortgagor shall not commit or suffer any material waste of the Property or make any change in the use of the Property which may reasonably be expected to materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that may reasonably be expected to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may reasonably be expected to in any way materially impair the value of the Property or the security of this Mortgage. Mortgagor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials. (a) Except as provided in the Loan Agreement or as otherwise provided in Section 3.6(b) below, Mortgagor will promptly pay, or cause to be paid, when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any

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event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof and any Permitted Encumbrances.

(b) After prior written notice to Lender, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, (ii) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) except with respect to a Permitted Encumbrance and Permitted Indebtedness, such proceeding shall suspend the collection of the Labor and Material Costs from Mortgagor and from the Property, Mortgagor shall have paid all of the Labor and Material Costs under protest or Mortgagor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder and (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost.

Section 3.7 Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 Change of Name, Identity or Structure. Mortgagor shall not change its name, identity (including its trade name or names) or, if not an individual, its corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Lender, except as permitted pursuant to Section 5.2 of the Loan Agreement. Mortgagor shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the written request of Lender, Mortgagor shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which such Mortgagor intends to operate the Property, and representing and warranting that such Mortgagor does business under no other trade name with respect to the Property.

Section 3.9 Title. Mortgagor has good, marketable and insurable fee simple title to the real property comprising part of the Land portion of the Property and has good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan

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Documents. This Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, to the extent a security interest may be perfected therein by the recording of this Mortgage or the filing of financing statements under the Uniform Commercial Code and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. To Mortgagor's knowledge, and except as set forth in the schedules to the Loan Agreement, there are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of the Loan Agreement.

Section 3.10 Letter of Credit Rights. If Mortgagor is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Mortgage now or hereafter issued in favor of Mortgagor, Mortgagor shall promptly notify Lender thereof and, at the request and option of Lender, Mortgagor shall, use commercially reasonable efforts to either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Mortgage pursuant to an agreement in form and substance reasonably satisfactory to Lender.

ARTICLE IV - OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Mortgagor and Lender. The relationship between Mortgagor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. Without limiting Section 9.3 of the Loan Agreement, the general partners, members, principals and (if any Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations. (a) Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

ARTICLE V - FURTHER ASSURANCES

Section 5.1 Recording of Mortgage, Etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all reasonable out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or

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facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver hereby authorizes Lender to file in the name of Mortgagor to the extent Lender may lawfully do so (or in the case of financing statements, without the signature of Mortgagor), one or more financing statements to evidence more effectively the security interest of Lender in the Property. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect. Lender shall provide Mortgagor with copies of any notices and/or instruments of filings executed by Lender in accordance with the immediately preceding sentence; provided, that failure by Lender to provide such copies shall not affect the validity thereof. Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity upon the occurrence and during the continuance of an Event of Default, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2. Notwithstanding anything to the contrary in the immediately preceding sentence, Lender shall not execute any documents as attorney in fact for Mortgagor unless Mortgagor shall have failed or refused to execute the same within five (5) Business Days after receipt of Lender's request thereof.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property granted by this Mortgage, Mortgagor will pay the tax, with interest and penalties thereon, if any, (provided, that nothing hereunder shall require Mortgagor to pay any income tax imposed on Lender by reason of its interest in the Property). If the payment of tax by Mortgagor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable; provided, however, no Spread Maintenance Payment or prepayment premium shall be due or payable in connection therewith and provided, further that Lender shall not exercise such option if, within one hundred eighty (180) days of receipt by Mortgagor of such written notice, Mortgagor shall prepay the outstanding principal balance of the Loan in an amount equal to the Adjusted Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.5.2 of the Loan Agreement. No Spread Maintenance Payment or prepayment premium shall be due or payable in connection with the foregoing payment but any actual third party Breakage Costs shall be paid by Mortgagor in connection with the foregoing payment.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable, provided, however, no Spread Maintenance Payment or prepayment premium

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shall be due or payable in connection therewith and provided, further, that Lender shall not exercise such option if, within one hundred eighty (180) days of receipt by Mortgagor of such written notice, Mortgagor shall prepay the outstanding principal balance of the Loan in an amount equal to the Adjusted Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.5.2 of the Loan Agreement. No Spread Maintenance Payment or prepayment premium shall be due or payable in connection with the foregoing prepayment but any Breakage Costs shall be paid by Mortgagor in connection with the foregoing payment.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, provided, that Mortgagor shall have the right to contest such amounts in accordance with the terms and conditions of the Loan Agreement.

Section 5.4 Severing of Mortgage. The provisions of Section 8.2(c) of the Loan Agreement are hereby incorporated by reference herein.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor will issue, in lieu thereof, a replacement Note or other Loan Document to which it was originally a party, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE VI - DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and their respective members and principals in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should an Event of Default be continuing with respect to repayment of the Debt or the performance of the Other Obligations, beyond any applicable notice and cure period in the Loan Documents, Lender can recover the Debt, or part thereof, by a sale of the Property.

Section 6.2 No Sale/Encumbrance. Neither Mortgagor nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as permitted pursuant to and in accordance with the terms of the Loan Agreement.

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ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) to the extent permitted by applicable law, sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor or any guarantor or indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;
- (h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and, subject to applicable law and to the rights of any Tenants under a Lease, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise (except for any damages caused by the gross negligence or willful misconduct of Lender, its agents, nominees or attorneys) and exclude Mortgagor and its

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agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may, subject to applicable laws; (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property that Lender deems advisable; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify the Leases, obtain and evict Tenants (subject to any non-disturbance agreements that Lender may have entered into with such Tenants, if any), and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable third party attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Mortgage;

(k) pursue such other remedies as Lender may have under applicable law; or

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(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale under this Section 7.1, by foreclosure, power of sale or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Mortgage or the other Loan Document, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after written notice from Lender to Mortgagor that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Subject to the terms of the Loan Agreement, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, provided that, if no Event of Default has occurred and is continuing, Lender shall endeavor to cooperate with Mortgagor and its legal counsel with respect to any defense by Lender of any such action. Subject to the terms of the Loan Agreement, Lender shall also have the right to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property; provided that Lender shall notify Mortgagor that it intends to bring such action at least ten (10) days prior to Lender instituting any such action (unless (a) an Event of Default has occurred and is continuing, in which case such notice shall not be required or (b) the provision of such notice by Lender is reasonably likely to result in the imminent danger of the Property, or any part thereof or interest therein, being sold, forfeited or lost, in which case notice will be provided as soon as is reasonably practicable after such action is taken), and Lender shall endeavor to

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provide to Mortgagor and its legal counsel reasonable periodic status as to any such action brought by Lender.

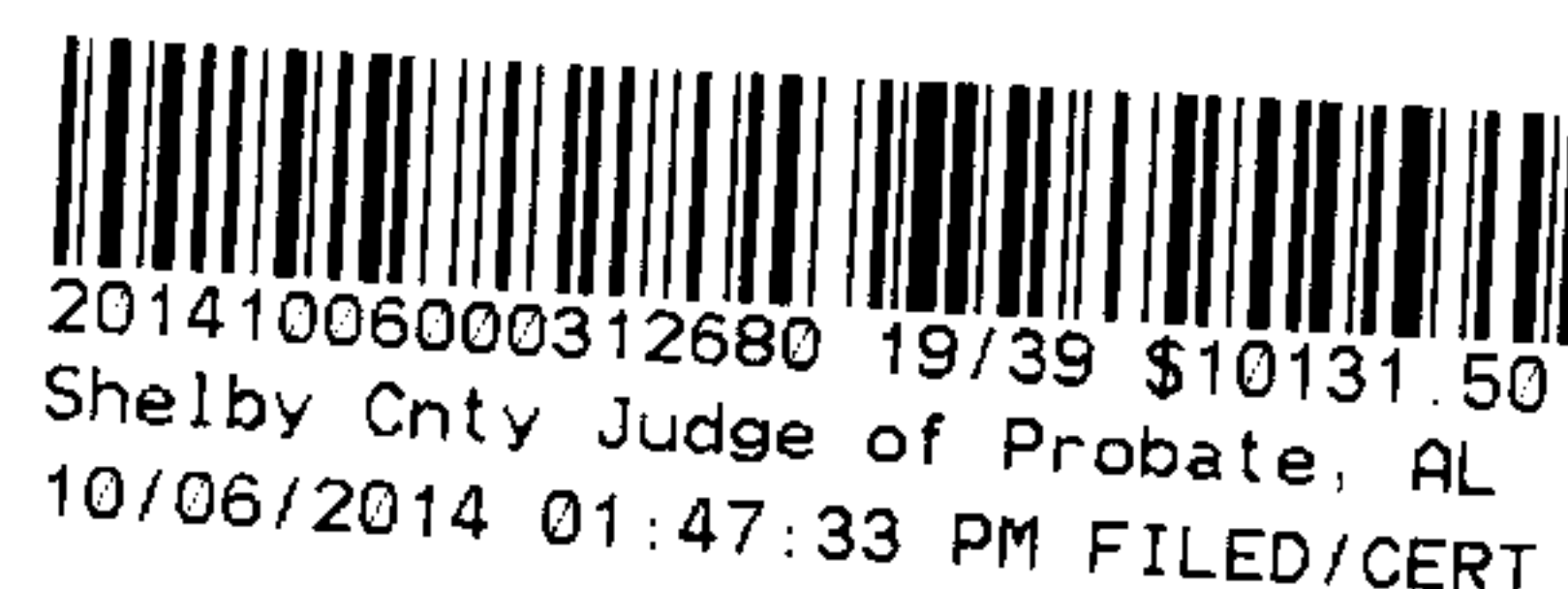
Section 7.5 Recovery of Sums Required To Be Paid. Subject to the terms of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor hereunder or under the other Loan Documents existing at the time such earlier action was commenced.

Section 7.6 Examination of Books and Records. Except as otherwise provided in the Loan Agreement, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon their financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior notice, but not more than two (2) times in any calendar year, (provided, that upon the occurrence and during the continuance of an Event of Default, the foregoing limitation for examinations per annum shall not apply), Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 Other Rights, Etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor or any Guarantor or any Indemnifying Person with respect to the Loan to take any action to foreclose this Mortgage upon the occurrence and during the continuance of an Event of Default or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, except as provided in the Loan Agreement, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for decline in value of the Property except as arising solely from Lender's gross negligence, willful misconduct or illegal acts, or for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

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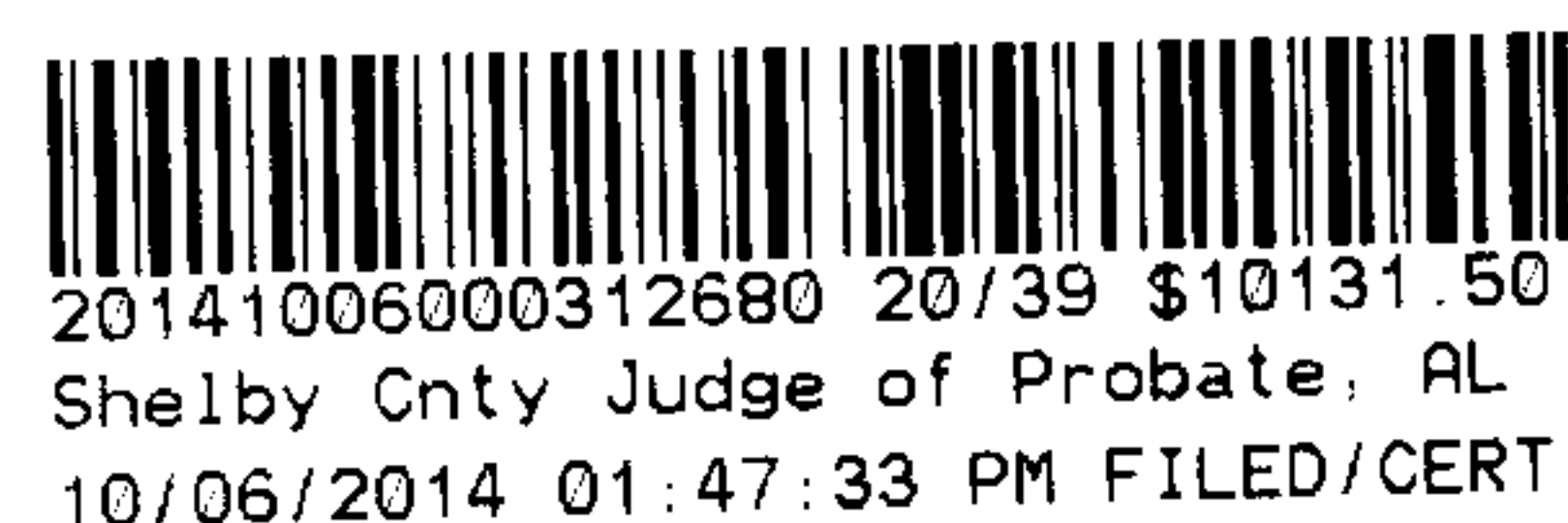
(c) During the existence of an Event of Default, Lender may resort for the payment of the Debt to any other security held by Lender in connection with the Loan in such order and manner as Lender, in its discretion, may elect. During the existence of an Event of Default, Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof or of any other Loan Document without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage or under any other Loan Document shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein or in any other Loan Document to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated or stated in any other Loan Document but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Subject to the terms and conditions of the Loan Agreement, Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 Violation of Laws. Subject to the terms and conditions of the Loan Agreement, if the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 Recourse and Choice of Remedies. Notwithstanding any other provision of this Mortgage or the Loan Agreement, including, without limitation, Section 9.3 of the Loan Agreement, Lender and the other Indemnified Parties (as hereinafter defined) are entitled to enforce against Mortgagor the obligations of Mortgagor contained in Sections 9.2 and 9.3 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and upon the occurrence and during the continuance of an Event of Default, in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor with respect to the Loan. The provisions of Sections 9.2 and 9.3 herein are, relative to Mortgagor only, exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Mortgage or the other Loan Documents, and each Mortgagor with respect to the Loan is fully and personally liable for the obligations pursuant to Sections 9.2 and 9.3 herein. The liability of Mortgagor with respect to the Loan pursuant to Sections 9.2 and 9.3 herein is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and the other Loan

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Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against the Other Borrower pursuant to Sections 9.2 and 9.3 herein whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 9 herein.

Section 7.11 Right of Entry. Upon reasonable notice to Mortgagor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times, subject to the rights of Tenants under the Leases.

ARTICLE VIII - PREPAYMENT

Section 8.1 Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

ARTICLE IX - INDEMNIFICATION

Section 9.1 General Indemnification. Except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, actual out-of-pocket costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Mortgage, or any other Loan Documents, other than an amendment required by Lender in connection with a Securitization pursuant to Section 9.1 of the Loan Agreement; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Mortgage, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with any Mortgagor, any guarantor or any indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of any Mortgagor to perform or be in compliance with any of the terms of this Mortgage, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any

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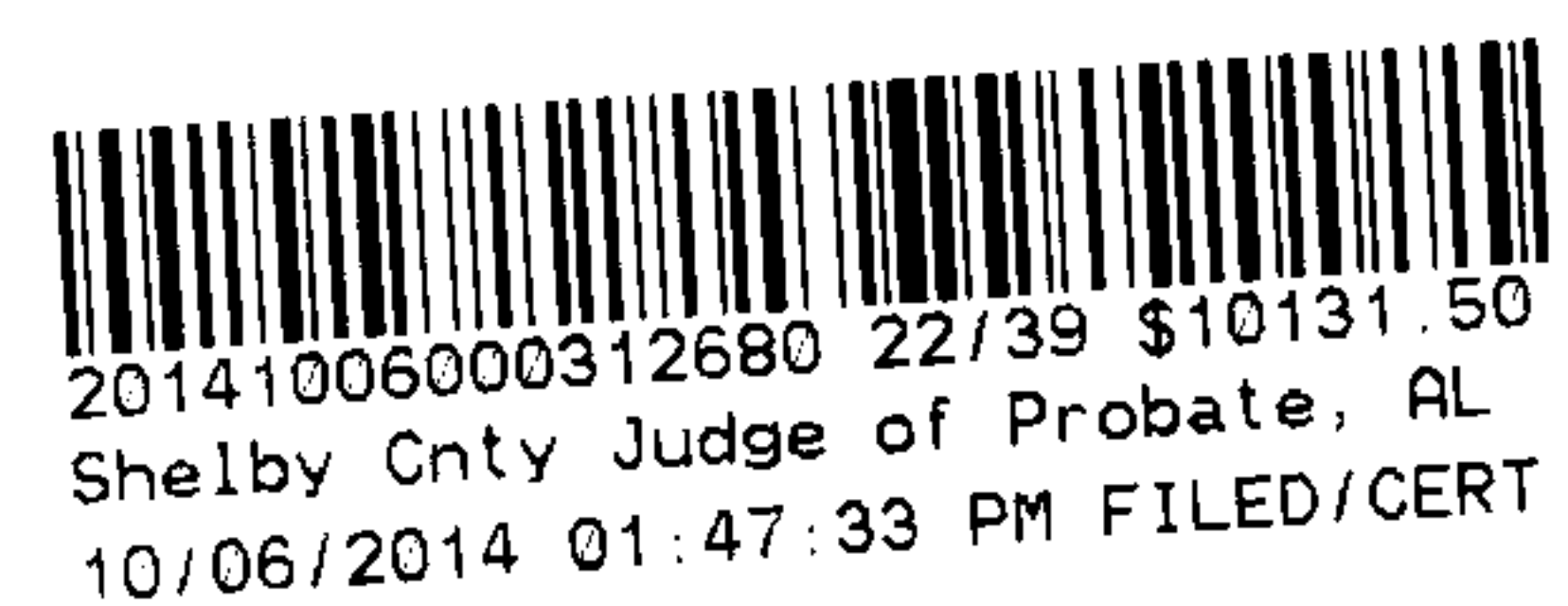
materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through any Mortgagor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by any Mortgagor in this Mortgage or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

Section 9.2 Mortgage and/or Intangible Tax. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Mortgagor hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Mortgagor shall indemnify and hold harmless the Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

Section 9.3 ERISA Indemnification. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable third party attorneys' fees and reasonable and documented out-of-pocket costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any non-exempt prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a breach or default under Sections 4.1.9 or 5.2.9 of the Loan Agreement.

Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. In connection with any indemnification obligations of Mortgagor hereunder, upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to Mortgagor and/or other Indemnified Parties that are different from or additional to those available to Mortgagor, such Indemnified Party shall have the right to

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select separate counsel to assert such legal defenses, and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse the Indemnified Parties for the payment of reasonable fees and out-of-pocket disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 9.5 Environmental Indemnity. Simultaneously with this Mortgage, Mortgagor has executed the Environmental Indemnity. The obligations of Mortgagor under the Environmental Indemnity are not part of the Debt and are not secured by this Mortgage.

ARTICLE X - WAIVERS

Section 10.1 Waiver of Counterclaim. To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 Marshalling and Other Matters. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

Section 10.3 Waiver of Notice. To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provides for the giving of notice by Lender to Mortgagor, and Mortgagor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

Section 10.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.5 Survival. The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue until the Debt is paid in full and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Lender's interest in the

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Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto. Notwithstanding the provisions of this Mortgage to the contrary, the liabilities and obligations of Mortgagor shall not apply to the extent such liability and obligations arose after any Indemnified Party or its nominee acquired title to the Property, whether by foreclosure, exercise of a power of sale, deed in lieu of foreclosure or otherwise.

ARTICLE XI - EXCULPATION

The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

ARTICLE XII - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE XIII - APPLICABLE LAW

Section 13.1 Governing Law. This Mortgage shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement; provided that the provisions of this Mortgage regarding the creation, perfection and enforcement of the Liens and security interests herein granted shall be governed by and construed under the laws of the State in which the Property is located, without application of such State's conflict of laws principles.

Section 13.2 Usury Laws. Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Mortgagor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Lender, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

Section 13.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof

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does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

ARTICLE XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the term "**Mortgagor**" shall mean "Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the term "**Guarantor**" shall be deemed to refer to each and every Person comprising the Guarantor from time to time, jointly and severally, and to include the successors and assigns of each such Person, the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all reasonable third party attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases, and the Rents and enforcing its rights hereunder.

ARTICLE XV - MISCELLANEOUS PROVISIONS

Section 15.1 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought or by repayment of the Debt in full in accordance with the Loan Agreement.

Section 15.2 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors and assigns forever.

Section 15.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Mortgage shall be construed without such provision.

Section 15.4 Headings, Etc. The headings and captions of various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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Section 15.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations, except as otherwise agreed or accepted by Lender.

Section 15.7 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Mortgagor and Lender with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

Section 15.8 Limitation on Lender's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or any other Person, or 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 or stranger other than as a result of actions of Lender that constitute gross negligence or willful misconduct. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 15.9 Conflict of Terms. In case of any conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Section 15.10 Release or Assignment of Mortgage. Notwithstanding anything to the contrary herein: if all of the Debt is indefeasibly paid or upon the release of the Property in accordance with the Loan Agreement or as may otherwise be permitted by the terms of the Loan Agreement, then and in that event only, all rights, except those indemnifications made pursuant to Sections 9.1, 9.2, 9.3 and 9.4 hereof, under this Mortgage shall automatically terminate and the Property shall become wholly clear of the liens, security interests, conveyances

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and assignments evidenced hereby, which shall be promptly released of record by Lender in due form. To the extent requested by Mortgagor, Lender agrees to assign the Note and this Mortgage to such party as may be designated by Mortgagor upon the repayment (or purchase by another lender designated by Mortgagor) in full of the Debt or upon release of the Property as may otherwise be permitted under the Loan Agreement and Lender will cooperate in the preparation of all of the necessary documentation to effectuate an assignment of this Mortgage and the indebtedness secured thereby, including the delivery of originals of the Loan Documents. All reasonable costs incurred by Lender under this paragraph, including, without limitation, reasonable third-party attorney's fees and disbursements, promptly shall be reimbursed by Mortgagor.

Section 15.11 Cross Collateralization and Cross Default. Mortgagor acknowledges that in order to induce Lender to make the Loan, (i) this Mortgage and (ii) each other Mortgage with respect to each Individual Property (collectively, the "**Other Mortgages**"), are hereby cross-collateralized and cross-defaulted as provided herein. In accordance with the terms and provisions of the Loan Agreement, without limitation of any other right or remedy provided to Lender in this Mortgage or in any of the other Loan Documents, Mortgagor agrees that this Mortgage and the Other Mortgages are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default by Mortgagor under this Mortgage shall constitute an Event of Default under each of the Other Mortgages; (ii) an Event of Default under the Note, the Loan Agreement or this Mortgage shall constitute an Event of Default under this Mortgage and each of the Other Mortgages; and (iii) this Mortgage and each of the Other Mortgages shall constitute security for the Note as if a single blanket lien were placed on all of the Properties (as such term is defined in the Loan Agreement) as security for the Note.

ARTICLE XVI - STATE-SPECIFIC PROVISIONS

Section 16.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 Power of Sale. In addition to the rights and remedies set forth in Article 7, upon the occurrence and during the continuance of an Event of Default, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) under the power of sale which is hereby given to Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held

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between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

Section 16.3 Foreclosure Deeds. To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

Section 16.4 Multiple Sales. If an Event of Default has occurred and is continuing, Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under this Article 16. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

Section 16.5 Amended Provisions. Section 3.8 of this Mortgage is hereby amended by deleting at the beginning thereof the text "Mortgagor has good, marketable and insurable fee simple title" and by inserting in lieu thereof the following text "Mortgagor has and is seized of good, marketable and insurable fee simple title".

Section 16.6 Additional Fixture Filing Language. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Property and is to be filed and recorded in, among other places, the real estate records of the county where the Property is located. For this purpose the following information is included: The Property is described by item or type in Section 1.1. Mortgagor is the debtor, and Lender is the secured party. The names of the debtor (Mortgagor) and the secured party (Lender) are given in the first paragraph of this Mortgage. The mailing addresses of Lender set out in the first paragraph hereof are addresses of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in the first

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paragraph hereof is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in Section 1.1 and in this Section 16.6. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Mortgagor is the record owner of the Land.

[NO FURTHER TEXT ON THIS PAGE]



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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its duly authorized signatory on the date of the acknowledgment of Mortgagor's signature below to be effective as of the date first written on page 1 hereof.

MORTGAGOR:

BRE NEWTON HOTELS PROPERTY OWNER LLC,
a Delaware limited liability company

By: _____

Name: Brian Kim

Title: Managing Director and Vice President



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NOTARY ACKNOWLEDGMENT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that BRIAN KIM, whose name as Managing Director and Vice President of BRE Newton Hotel Property Owner LLC, a Delaware limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of said conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 9th day of September, 2014.


Priyanka Bose

Notary Public

My Commission Expires:

Oct. 7, 2017

PRIYANKA BOSE
Notary Public, State of New York
No. 01808290109
Qualified in New York County
Commission Expires Oct. 7, 2017


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EXHIBIT A

LEGAL DESCRIPTION

PARCEL I

Being a part of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run West along the South line of said Quarter-Quarter section for a distance of 263.21 feet to the point of beginning; thence continue West along the last described course a distance of 696.06 feet; thence 90 degree(s) 00 minute(s) right and in a Northerly direction for a distance of 95.00 feet; thence 43 degree(s) 00 minute(s) left and in a Northwesterly direction for a distance of 127.00 feet; thence 43 degree(s) 30 minute(s) right and in a Northerly direction for a distance of 75.00 feet to a point situated on the Southeasterly right-of-way line of a proposed road and said point of curve of a curve to the right said curve to the right having a radius of 610.14 feet and a central angle of 37 degree(s) 16 minute(s) 38 second(s); thence 72 degree(s) 00 minute(s) right to the chord of said curve to the right and run Northeasterly along the Southeasterly right-of-way line of the proposed road and the arc of said curve to the right for a distance of 396.96 feet to the end of said curve to the right and the beginning of a curve to the left and said curve to the left having a radius of 319.14 feet and a central angle of 25 degree(s) 30 minute(s) 50 second(s); thence Northeasterly along the Southeasterly right-of-way line of proposed road and the arc of said curve for a distance of 142.24 feet; thence 101 degree(s) 28 minute(s) 36 second(s) right from the chord of last stated curve and in a Southerly direction for a distance of 117.17 feet; thence 82 degree(s) 08 minute(s) 06 second(s) left and in an Easterly direction for a distance of 65.46 feet; thence 71 degree(s) 05 minute(s) 09 second(s) left and in a Northeasterly direction for a distance of 61.78 feet to a point on the approximate lake shore; thence 99 degree(s) 36 minute(s) 57 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 57.08 feet; thence 19 degree(s) 26 minute(s) 40 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 73.28 feet; thence 0 degree(s) 38 minute(s) 40 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 81.94 feet; thence 25 degree(s) 42 minute(s) 01 second(s) left and in a Southeasterly direction along the approximate lake shore for a distance of 50.71 feet; thence 24 degree(s) 37 minute(s) 55 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 94.93 feet; thence 17 degree(s) 49 minute(s) 50 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 52.74 feet; thence 74 degree(s) 12 minute(s) 26 second(s) right and in a Southwesterly direction for a distance of 83.74 feet to the point of beginning.

Tax parcel No. 02-7-36-0-001-019.00

Also a Non-Exclusive Easement for ingress and egress described as follows:

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PARCEL II

Being a part of the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northwest Quarter, Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section; thence run West along the South line of said Southwest Quarter of the Northeast Quarter for a distance of 1020.17 feet; thence 62 degree(s) 50 minute(s) 45 second(s) left and in a Southwesterly direction for a distance of 54.50 feet to a point of the Northeasterly right-of-way line of US Highway No. 280. said right-of-way being in a curve to the right, curving Northerly, said curve to the right having a radius of 5639.58 feet and a central angle of 2 degree(s) 23 minute(s) 16 second(s); thence 92 degree(s) 28 minute(s) 13 second(s) right to the chord of said curve to the right and run in a Northeasterly direction along the Northeasterly right-of-way line of U.S. Highway No. 280 and the arc of said curve to the right for a distance of 235.02 feet to the point of beginning, said point being the point of intersection of the Northeasterly right-of-way line of U.S. Highway No. 280 with the Southeasterly right-of-way line of a proposed road, said proposed road right-of-way being in a curve to the right, curving Northeasterly, said curve to the right having a radius of 377.81 feet and a central angle of 22 degree(s) 27 minute(s) 01 second(s); thence 101 degree(s) 00 minute(s) 43 second(s) right from the chord of the U.S. Highway No. 280 curve to the chord of the curve of the proposed road and run Northeasterly along the Southeasterly right-of-way line of the proposed road and the arc of the curve for a distance of 148.04 feet to the end of said curve; thence at tangent to said curve continue Northeasterly along the Southeasterly right-of-way line of the proposed road for a distance of 130.32 feet to the beginning of a curve to the right, said curve to the right having a radius of 610.14 feet and a central angle of 18 degree(s) 38 minute(s) 19 second(s); thence Northeasterly along the arc of said curve and the Southeasterly right-of-way line of the proposed road for a distance of 198.48 feet to the end of curve; thence 90 degree(s) 00 minute(s) Left from the tangent of said curve and in Northwesterly direction for a distance of 60.00 feet to a point on the Northwesterly right- of-way line of proposed road, said point being situated on a curve to the left and curving Southwesterly, said curve having a radius of 670.14 feet and a central angle of 18 degree(s) 38 minute(s) 19 second(s); thence continue Southwesterly along the Northwesterly right-of-way line of the proposed road and the arc of said curve to the left for a distance of 218.00 feet to the end of said curve; thence 90 minute(s) 00 minute(s) right from the tangent of said curve in a Northwesterly direction for a distance of 15.00 feet; thence 90 degree(s) 00 minute(s) left and in a Southwesterly direction along the Northwesterly right-of-way line of proposed road for a distance of 179.92 feet to the beginning of a curve to the left, said curve to the left having a radius of 422.57 feet and a central angle of 17 degree(s) 23 minute(s) 48 second(s); thence continue Southwesterly along the Northwesterly right-of-way line of the proposed road and the arc of said curve for a distance of 128.30 feet to the end of said curve and the point of intersection of the Northwesterly right-of-way line of the proposed road with the Northeasterly right-of-way line of U.S. Highway No. 280, the Northeasterly right-of-way line of U.S. Highway No. 280 being in a curve to the left, curving Southeasterly, said curve having a radius of 5639.58 feet and a central angle of 00 degree(s) 54 minute(s) 54 second(s); thence

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Southeasterly along the arc of said curve to the left and the Northeasterly right-of-way line of U.S. Highway No. 280 for a distance of 90.06 feet to the point of beginning.

The above described "Non-Exclusive Easement" shall terminate upon the completion of the road way to be constructed thereon, and upon the dedication to and acceptance by Shelby County, Alabama, as a dedicated public street.

Also a slope easement for ingress and egress to the Lakeshore described as follows:

PARCEL III:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run West along the South line of said Quarter-Quarter section for a distance of 263.21 feet; thence 145 degree(s) 18 minute(s) 42 second(s) right and in a Northeasterly direction for a distance of 83.74 feet; thence 74 degree(s) 12 minute(s) 26 second(s) left and in a Northwesterly direction for a distance of 52.74 feet; thence 17 degree(s) 49 degree(s) 50 second(s) left and in a Northwesterly direction for a distance of 94.93 feet; thence 24 degree(s) 37 minute(s) 55 second(s) left and in a Northwesterly direction for a distance of 50.71 feet; thence 25 degree(s) 42 minute(s) 01 second(s) right and in a Northwesterly direction for a distance of 81.94 feet; thence 0 degree(s) 38 minute(s) 40 second(s) left and in a Northwesterly direction for a distance of 73.28 feet; thence 19 degree(s) 26 minute(s) 40 second(s) left and in a Northwesterly direction for a distance of 57.08 feet; thence 99 degree(s) 36 minute(s) 57 second(s) left and in a Southwesterly direction for a distance of 61.78 feet to the point of beginning of the slope easement herein described; thence 71 degree(s) 05 minute(s) 09 second(s) right and in a Westerly direction for a distance of 65.46 feet; thence 82 degree(s) 08 minute(s) 06 second(s) right and in a Northerly direction for a distance of 45.00 feet; thence 99 degree(s) 11 minute(s) 54 second(s) right and in an Easterly direction for 86.23 feet; thence 107 degree(s) 34 minute(s) 51 second(s) right and in a Southwesterly direction for a distance of 45.00 feet to the point of beginning.

PARCEL IV:


Also, a Non-Exclusive Sign Easement, being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run West along the South line of said Quarter-Quarter section for a distance of 1020.17 feet; thence 62 degree(s) 50 minute(s) 45 second(s) left and in a Southwesterly direction for a distance of 54.50 feet to a point on the Northeasterly right-of-way line of U.S. Highway No. 280. said right-of-way line being in a curve to the right, curving Northerly, said curve to the right having a radius of 5639.58 feet and a central angle of 3 degree(s) 18 minute(s) 10 second(s); thence 92 degree(s) 55 minute(s) 40 second(s) right to the chord of said curve to the right and run Northwesterly along the Northeasterly right of way line of U.S. Highway No. 280, and the arc of said curve to the right for a distance of 325.08 feet to the point of beginning. Said point being the point of intersection of the Northeasterly right- of-way line of U.S. Highway No. 280 and the Northwesterly right-of-

Property Name: Residence Inn Birmingham Inverness
Property Address: 3 Greenhill Parkway
Birmingham, Alabama 35242

way line of a proposed road; thence continue Northwesterly along the Northeasterly right-of-way line of U.S. Highway No. 280 and the arc of a curve to the right having a radius of 5639.58 feet and a central angle of 0 degree(s) 09 minute(s) 10 second(s) for a distance of 15.04 feet; thence 90 degrees 00 minute(s) right from the tangent of said curve to the right for a distance of 21.49 feet; thence 95 degree(s) 17 minute(s) 24 second(s) right and in a Southeasterly direction for a distance of 16.48 feet to a point on the Northwesterly right- of-way line of a proposed road, said point being situated on a curve to the left, curving Southerly, said curve to the left having a radius of 422.57 feet and a central angle of 2 degree(s) 42 minute(s) 42 second(s); thence run Southwesterly along the Northwesterly right-of-way line of the proposed road and the arc of said curve to the left for a distance of 20.00 feet to the point of beginning.

Situated in Shelby County, Alabama.


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**A proceeding authorized under
Code of Alabama (1975) Section
40-22-2(8)**

21085007 v1

5. The total amount of mortgage recording privilege tax due under §40-22-2, Code of Alabama (1975), as amended, with respect to the Mortgages to be recorded in the Recording Counties, at the rate of \$.15 per \$100 or fraction thereof in Secured Principal Indebtedness, is \$10,003.50.

IT IS THEREFORE ORDERED, that the Judge of Probate of each Recording County is hereby authorized and directed to receive and record any counterpart of the Mortgage upon receipt of evidence that a total of \$10,003.50 in recording privilege tax has been paid upon said instrument, together with the customary recording and indexing fees of such Judge of Probate with respect to any such instrument offered for recording. All said tax shall be paid to the Judge of Probate of Shelby County, Alabama, whereupon said Judge of Probate shall, after deducting its 5% commission, make distribution of such tax to the Recording Counties in the percentages set forth in Schedule 1 attached hereto.

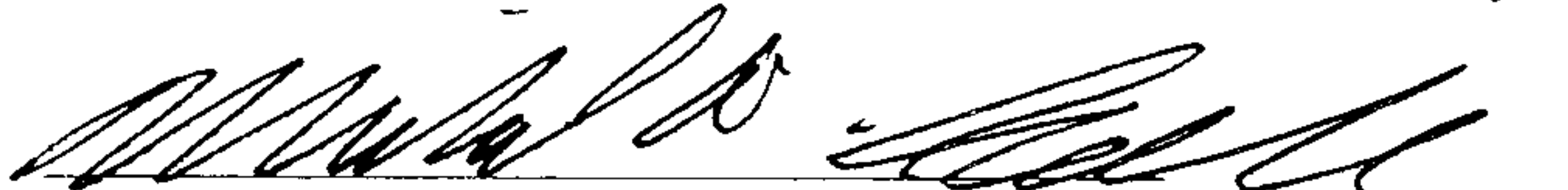
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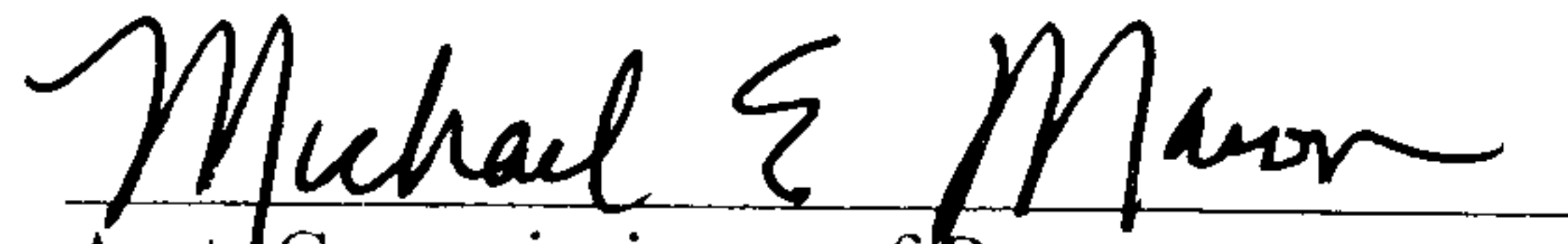
DONE this 13th day of August, 2014.

ALABAMA DEPARTMENT OF REVENUE

ATTEST:

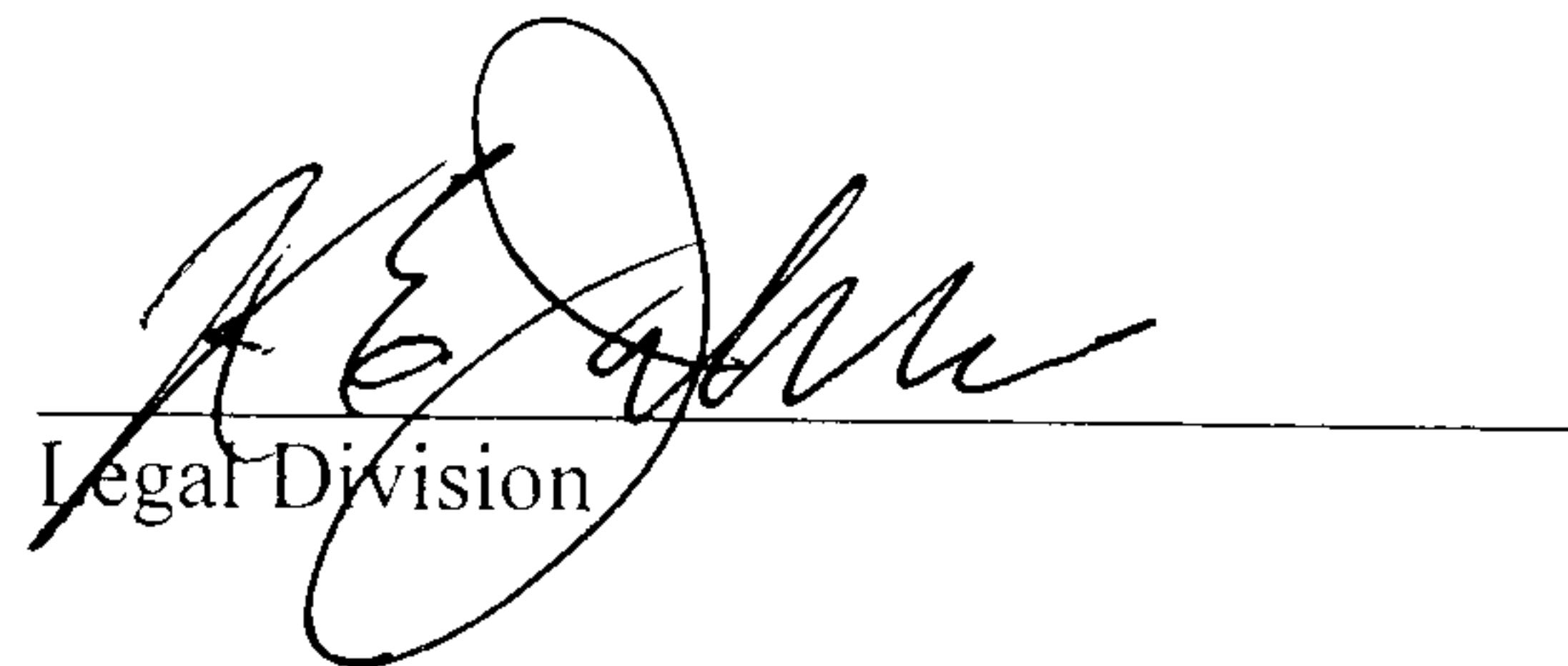

Secretary

By:


Asst. Commissioner of Revenue

LEGAL DIVISION:

By:


Legal Division




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SCHEDULE 1

Recording Counties and Value Allocation

| Alabama County | Value of Real Estate | Percentage of Total Value of Alabama Real Estate |
|-----------------------|-----------------------------|---|
| Montgomery | \$4,230,000 | 45.24 |
| Shelby | \$5,120,000 | 54.76 |
| TOTAL | \$9,350,000 | 100.00 |


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