

This instrument prepared by, and
after recording, please return to:

Loan No. 100011506

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Purchase Mortgage

MORTGAGE AND SECURITY AGREEMENT

Between

VALLEYDALE VILLAGE, LLC,
a Delaware limited liability company

As Borrower

and

UNUM LIFE INSURANCE COMPANY OF AMERICA,
a Maine corporation

As Lender

Dated as of November 25th, 2014

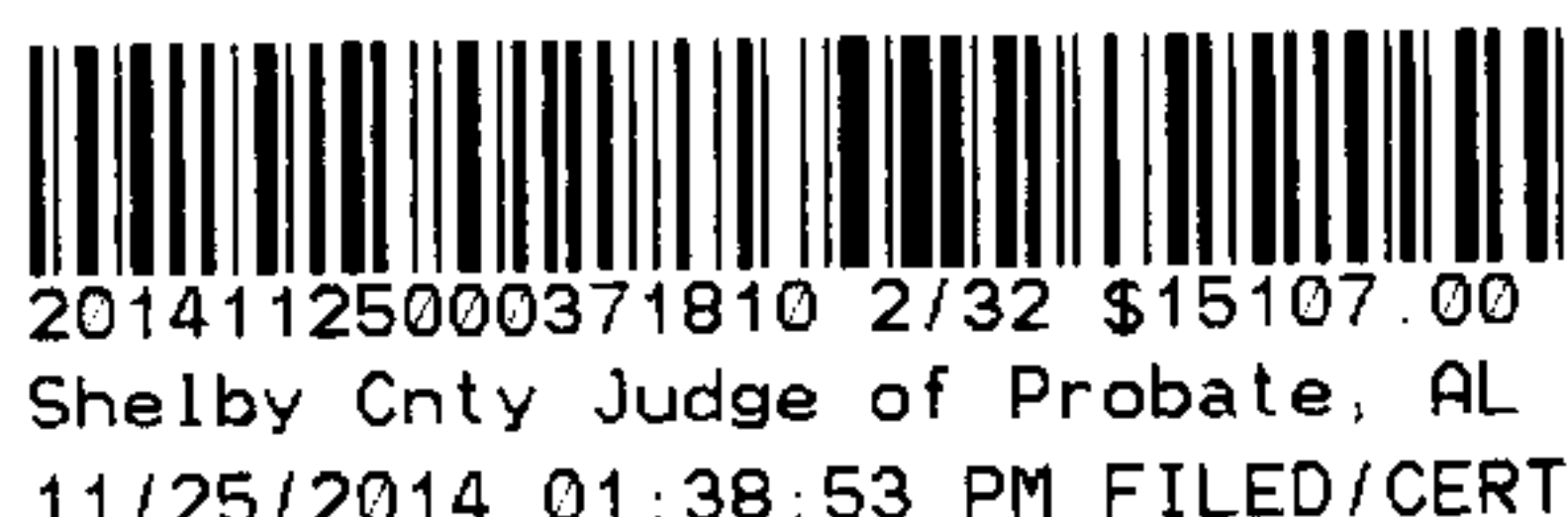
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PROVISIONS OF SECTION 7-9A-502(C) OF THE CODE OF ALABAMA (1975) AND
SHALL BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.**

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This MORTGAGE AND SECURITY AGREEMENT (hereinafter called the "Security Instrument") is made as of November ~~25th~~, 2014, by **VALLEYDALE VILLAGE, LLC**, a Delaware limited liability company, with a mailing address of c/o The Rosen Group, 40 East 69th Street, New York, New York 10021 (hereinafter called "Borrower") in favor of **UNUM LIFE INSURANCE COMPANY OF AMERICA**, a Maine corporation, with a mailing address of Attention: Investments, Mortgages and Real Estate, 2211 Congress Street – C244, Portland, Maine 04122-0590 (hereinafter called "Lender"),

WITNESSETH:

That, intending to be legally bound, for good and valuable consideration, and to secure the payment and performance of the Obligations, Borrower does grant, bargain, sell, remise, release, and convey unto Lender, its successors and assigns, with the POWER OF SALE, right-of-entry and possession and mortgage covenants, the following described property, rights and interests (hereinafter collectively called the "Real Property"): (i) the real estate described in Exhibit A, attached hereto and made a part hereof, and all privileges and other rights now or hereafter appurtenant thereto including, without limitation, all right, title and interest of Borrower now or hereafter acquired in and to any land lying within the right-of-way of any streets, roads and public places, opened or proposed, adjoining the real estate and any and all sidewalks, alleys, strips and gores, easements, servitudes and rights of way, public or private, now or hereafter used in connection therewith, (hereinafter collectively called the "Land"), (ii) all buildings structures, and other improvements now or hereafter situated, placed or constructed upon the Land, together with all enlargements, extensions and replacements thereof and repairs and additions thereto (collectively, the "Improvements"), (iii) all Leases, and (iv) all rents, income, profits, revenues, royalties, bonuses, rights, benefits, accounts, contract rights, general intangibles, claims, cure amounts or administrative amounts in any bankruptcy proceedings relating to the Land, the Improvements or any of the Leases, payments made in conjunction with any Lease termination (including, but not limited to, voluntary buyout/termination payments, or payments made by or on behalf of the Tenant, incident to the Tenant rejecting the Lease in accordance with the federal bankruptcy code (or similar state creditors' rights laws)), or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties now existing or hereafter created in all or any portion of the Land or the Improvements or any part thereof or arising out of the construction, use, or operation of the Land or the Improvements or any part thereof;

TOGETHER WITH:

(a) All fixtures, fittings, furnishings, appliances, apparatus, goods, equipment, machinery and other personal property of whatever kind and nature at present contained in or hereafter placed in any Improvement, including, without limitation, all radiators, heaters, air-conditioners, solar panels, transformers, generators, engines, boilers, ranges, ovens, elevators and motors, escalators, bathtubs, sinks, toilets, basins, pipes, faucets and other ventilating, heating, cooling, plumbing, lighting, gas and electrical systems, controls and fixtures, mirrors, mantles, refrigerating equipment, refrigerators, freezers, dishwashers, carpeting, floor coverings, furniture, laundry equipment, cooking apparatus and appurtenances, washing machines, dryers, trash compactors, computers and computer systems, equipment and apparatus, telephone and

telecommunication systems, antennas, satellite dishes, receivers, transmitters and related equipment, incinerators, trash receptacles, drop ceilings, brackets and appurtenances, sprinklers and fire extinguishing systems, smoke detectors and other fire alarm devices, door bell systems, alarm and security systems, screens, awnings, doors, storm and other detachable doors and windows, built-in cases, counters, sculptures, statuary, fountains, trees, hardy shrubs and perennial flowers, interior and exterior cleaning, plowing, lawn care, maintenance and repair machinery, vehicles or equipment, signs, pylons, monuments, and all building material, supplies, and equipment now or hereafter delivered to the Land or Improvements and installed or used or intended to be installed or used therein; such other goods, equipment, chattels and personal property as are usually furnished by landlords in leasing premises of the Real Property's character;

(b) All leases, conditional sale agreements, chattel mortgages and use agreements of machinery, equipment and other personal property of Borrower in the categories hereinabove set forth, under which Borrower is the lessee of, or entitled to use, such items, together with all deposits and payments made thereunder, and Borrower agrees to execute and deliver to Lender specific separate assignments to Lender of such instruments when requested by Lender; but nothing herein constitutes Lender's consent to any financing of any fixtures or personal property, and nothing herein shall obligate Lender to perform any obligations of Borrower under any such leases, or agreements unless it so chooses, which obligations Borrower hereby covenants and agrees to well and punctually perform;

(c) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reductions credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, district, department, instrumentality, or public body, or any court, administrative tribunal, or public utility (each, a "Governmental Agency") for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Property or upon the Property, or (ii) any Governmental Agency or any insurance company relating to the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

(d) All permits, licenses, orders and approvals of whatever nature from any Governmental Agency, related in any way to the Property, whether received by Borrower or applied for and not yet received or not yet applied for;

(e) To the extent not included in the foregoing, all tangible or intangible personal property of any kind or nature whatsoever that is or will be used in the construction of, placed upon, or is or will be derived from, related to or used in connection with the ownership, management, use, maintenance, or enjoyment of the Property, including without limitation: (i) choses in action, all causes of action, judgments, awards of damages and settlements hereafter made including, but not limited to, those resulting from or in lieu of any taking of the Property or any part thereof under the power of eminent domain, or for any damage to the Property; (ii) all insurance policies and proceeds thereof covering the Property; (iii) all blueprints, plans, maps, documents, books and records relating to the Property; (iv) all contracts for utilities, services or

materials relating to the Property, but nothing herein shall obligate Lender to perform the obligations of Borrower under such contracts; (v) all deposits, letters of credit, performance bonds or other security given to any Governmental Agency in connection with any permit or approval relating to the Property; (vi) all monies now or hereafter on deposit with or held by Lender or any agent of Lender for the payment of governmental impositions or insurance premiums relating to the Property or for subsequent disbursement for any purpose until expended or applied as provided in this Security Instrument; (vii) all trade names, trademarks and good will; (viii) all existing and future records with respect to environmental matters, whether located at the Land or elsewhere, whether in the possession of Borrower or some third party (including any Governmental Agency), and whether written, photographic, or computerized; (ix) any other equitable or contract rights pertaining to the Property; and (x) deposit accounts, letter of credit rights, supporting obligations, instruments, chattel paper, investment property, and general intangibles, as each of these terms is defined in the Uniform Commercial Code of the State of Alabama; and

(f) All additions or accessions to, renewals, amendments, extensions, and replacements of, substitutions for and the products of all of the above, and all cash and non-cash proceeds thereof, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily.

The items set forth in paragraphs (a) through (f) above are sometimes hereinafter separately referred to as "Collateral." To the extent that any portions of the Collateral are goods which are, or are to become, fixtures, this Security Instrument is, to the fullest extent permitted by applicable law, recorded as a fixture filing, with Borrower as the debtor and Lender as the secured party and this Security Instrument shall be effective as a financing statement with respect to Collateral constituting fixtures. This Security Instrument shall constitute a security agreement with Borrower as the debtor and Lender as the secured party. Borrower hereby grants Lender a security interest in the Collateral. Information concerning this security interest may be obtained from Lender at its offices listed at the beginning of this Security Instrument; the mailing address of Borrower is the address listed at the beginning of this Security Instrument. The inclusion of proceeds in the Collateral does not constitute authorization by Lender to dispose of any Collateral. Lender acknowledges by its acceptance hereof that the Property does not include personal property in which Borrower has no right, title or interest, such as furniture or equipment owned solely by Tenants.

TO HAVE AND TO HOLD the above-granted Property, with all the privileges and appurtenances to the same belonging to Lender, its successors and assigns forever, and Borrower covenants that Borrower is lawfully seized and possessed of the Property as aforesaid and has good right to convey the same, that the same is unencumbered except the Permitted Exceptions, and Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Exceptions.

PROVIDED, HOWEVER, that if Borrower shall fully pay or cause to be fully paid to Lender the principal and interest (as the rate thereof may be adjusted as provided in the Note), late charges and prepayment premium, if any, to become due thereupon at the time and in the manner stipulated therein, and shall pay and perform or cause to be paid and performed all other Obligations, then, in such case, the estate, right, title and interest of Lender in the Property shall

cease, terminate and become void, and upon proof being given to the satisfaction of Lender that the Obligations have been paid or satisfied, and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Lender, and of any other sums as herein provided, Lender shall, at Borrower's cost cancel, release and discharge this Security Instrument.

ARTICLE ONE: DEFINITIONS

All initially capitalized words are defined terms having the specialized definitions attributable to them by various provisions of this Security Instrument. Such specialized definitions shall apply regardless of whether such words appear before or after their respective definitions in this Security Instrument. As used in this Security Instrument, the following capitalized words shall have the following meanings:

"Guarantor" means Jonathan P. Rosen and any guarantor of the Obligations in whole or in part, together with the guarantor's heirs, successors and assigns, and, if there is more than one guarantor, the term "Guarantor" means any and all of them.

"Lease" means any and all current or future leases, subleases, tenancies, licenses, rental agreements, occupancy agreements or other agreements or arrangements, whether written or oral, granting to any person(s) or entity(ies) (each, a "Tenant") any right to possess, use or occupy all or any portion of the Land and/or the Improvements, and any and all guaranties or other security for the obligations of any Tenant, and all amendments, extensions and renewals of any of the foregoing.

"Loan" means the loan or loans from Lender to Borrower evidenced by the Note.

"Loan Agreement" means the Loan Agreement of near or even date herewith between Borrower and Lender, as it may be amended, replaced, extended, renewed, restated, or otherwise modified from time to time.

"Loan Documents" means this Security Instrument, the Loan Agreement, the Note, and the Assignment of Rents, Leases and Other Benefits given by Borrower to Lender (the "Assignment of Rents"), the Environmental Agreement and Indemnity made by Borrower and Guarantor in favor of Lender (the "Environmental Agreement"), the Guaranty (Covenants) entered into by Guarantor of Lender (the "Guaranty"), the Reserve Agreement between Borrower and Lender, all dated of near or even date herewith, and all other agreements, documents and instruments now or hereafter evidencing, securing or otherwise relating to the Loan, each as amended, replaced, extended, renewed, restated, or otherwise modified from time to time.

"Note" means the \$10,000,000.00 promissory note of near or even date herewith given by Borrower to Lender, final payment of which is due on or before December 1, 2024, and any additional notes reciting that they are secured hereby, each as it may be amended, replaced, extended, renewed, restated, or otherwise modified from time to time.

"Obligations" means (i) the Loan, including all interest thereon, as the rate thereof may be adjusted in accordance with the Note, and all fees, charges and premiums set forth in the Note, (ii)

any and all additional advances made or costs or expenses incurred by Lender to protect or preserve the Property or the lien or security interest created hereby, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder, or for any purpose provided herein (whether or not the original Borrower remains the owner of the Property at the time such advances are made or costs or expenses incurred), (iii) all fees, charges and expenses (including reasonable attorneys' and paralegals' fees) paid, assessed or incurred by Lender at any time in connection with the commitment for, preparation, execution, delivery, amendment, review, perfection, administration and/or enforcement of any of the Loan Documents, (iv) any and all other liabilities, advances, loans, sums due or to become due under any indebtedness of Borrower to Lender of every kind, nature and description (whether or not evidenced by any note or other instrument, and whether or not for the payment of money), direct or indirect, absolute or contingent, primary or secondary, joint or several, secured or unsecured, due or to become due, now existing or hereafter arising, regardless of how they arise or were acquired, and (v) to the extent not included in the foregoing, the due, prompt and complete observance, payment and performance of each and every obligation, covenant and agreement of Borrower contained in the Loan Documents, including all obligations to perform acts or refrain from taking action thereunder.

"Permitted Exceptions" has the meaning given that term in the Loan Agreement.

"Property" means, collectively, the Collateral and the Real Property, and each reference to the Property shall mean both the Property in its entirety and any component, category, part, portion or type of the Property, or any interest therein.

ARTICLE TWO: COVENANTS

Borrower covenants and agrees with Lender as follows:

2.1 Title.

(a) Borrower warrants that it has (and has conveyed hereby) good and marketable title to an indefeasible fee simple estate in the Property, subject to no liens, charges or encumbrances, except for the Permitted Exceptions, that it has good right, full power and lawful authority to mortgage, grant, bargain, sell and convey the Property in the manner and form herein provided; and that so long as this Security Instrument is in effect, it shall provide to Lender a lender's title insurance policy acceptable to Lender; that this Security Instrument is and shall remain a valid and enforceable first priority mortgage on the Property subject only to the Permitted Exceptions; that Borrower and its successors and assigns shall warrant and defend the same and the priority of this Security Instrument forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any exercise of power of sale or foreclosure hereof but shall run with the Land.

(b) Borrower has and shall maintain title to the Collateral including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the security interest granted hereunder and other than as disclosed to and accepted by Lender in writing, and has good right to subject the Collateral to the security interest granted hereunder.

(c) Borrower immediately upon the execution and delivery of this Security Instrument and thereafter from time to time, shall cause this Security Instrument, and any security instrument creating a lien 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 the lien hereof upon, and the interest of Lender in, the Property.

(d) Borrower shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance.

2.2 Payment of Note and Reserves.

(a) Borrower shall promptly and punctually pay when due all principal and interest, as the rate thereof may be adjusted as provided in the Note (together with any legal, title insurance, or other expenses incurred by Lender in connection with such rate adjustment), prepayment premium, and all other sums to become due in respect to the Note. To the extent not paid in full in advance, Borrower shall also pay to Lender, together with and in addition to the monthly payments of principal and interest payable under the terms of the Note, on the date set forth therein for the making of monthly payments, until the Note is fully paid, a sum, as estimated by Lender, equal to the ground rents underground leases of the Land, if any, and the taxes and special assessments next due on the Property, plus the premiums that will next become due and payable on insurance policies as may be required hereunder, less all sums already paid therefor, divided by the number of months to elapse before one (1) month prior to the date when such ground rents, if any, premiums, taxes and special assessments will become delinquent, such sums to be held by Lender to pay said ground rents, if any, premiums, taxes and special assessments. Borrower shall deliver promptly to Lender all bills and notices with respect to any of the foregoing. Such payments, hereinafter referred to as "Reserves", are to be held without any allowance of interest or dividend to Borrower and need not be kept separate and apart from other funds of Lender. All payments mentioned in this Section and all payments to be made under the Note shall be added together and the aggregate amount thereof shall be paid by Borrower each month in a single payment to be applied by Lender to the following items in the order set forth: (i) said ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums; (ii) interest and late charges on the Loan; and (iii) amortization of the principal of the Loan.

(b) The Reserves shall be applied to the payment of ground rents, if any, premiums, taxes and special assessments as described in subsection (a) only upon the satisfaction of the following conditions: (i) no Event of Default or event that, with notice or the passage of time, or both, would constitute an Event of Default, has occurred; (ii) the Reserves on deposit with Lender are sufficient to pay the full amounts of such items; (iii) Borrower has furnished Lender with prior written notification that such items are due and with the bills and invoices therefor in sufficient time to pay the same before any penalty or interest attaches and before policies of

insurance lapse, as the case may be; and (iv) Lender's access to the Reserves or to any additional deposits made by Borrower for premiums, taxes and special assessments is not restricted or constrained in any way. Upon assignment of this Security Instrument by Lender, any Reserves on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate.

(c) If the total of the Reserves shall exceed the amount of payments actually applied by Lender, such excess may be credited by Lender on subsequent payments to be made by Borrower or, at the option of Lender, refunded to Borrower or its successors in interest as may appear on the records of Lender. If, however, the Reserves shall not be sufficient to pay the sums required when the same shall become due and payable, upon receipt of notice by Lender, Borrower shall immediately deposit with Lender the full amount of any such deficiency. If an Event of Default occurs, Lender may at any time apply the balance of the Reserves against any of the outstanding Obligations.

2.3 Maintenance and Repair.

Borrower shall keep the Property in first class operating order, repair and condition and shall not commit or permit any waste thereof. Among other things, first class condition shall include keeping the Property free of Hazardous Materials in accordance with **Section 2.15** of this Security Instrument. Borrower shall make all repairs, replacements, renewals, additions and improvements and complete and restore promptly and in good workmanlike manner any Improvements that may be constructed, damaged, partially taken, or destroyed thereon, and pay when due all costs incurred therefor, regardless of whether any insurance or other proceeds, if any, are sufficient for the purpose. Borrower shall not remove from the Land or demolish any of the Property conveyed hereby, nor demolish or materially alter, or permit the Property to be demolished or materially altered without prior written consent of Lender. Borrower shall permit Lender or its agents the opportunity to inspect the Property, including the interior of any Improvements, at reasonable times with reasonable advance notice.

2.4 Compliance with Laws.

Borrower shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions, now or hereafter, affecting Borrower or the Property or the operation thereof, and shall pay all fees or charges in connection therewith. Except as may be shown on a lender's title insurance policy accepted in writing by Lender, and only to the extent shown therein, Borrower shall not, by act or omission, permit any property which is not subject to this Security Instrument to rely on the Property to fulfill any governmental requirement for the existence or use of such property; and the Property shall not rely on any property which is not subject to this Security Instrument to fulfill any governmental requirement for the existence or use of the Property. Borrower shall not by act or omission impair the integrity of the Land as a single separate subdivided zoning lot separate and apart from all other lots. Borrower shall not initiate or acquiesce in any zoning reclassification without Lender's written consent.



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2.5 Insurance.

During the entire term of the Loan, Borrower, at its sole cost and expense, shall keep or cause to be kept in effect for Borrower and the Property such policies of insurance as are required under the Loan Agreement.

2.6 Casualty.

(a) Borrower shall promptly notify Lender of any loss whether covered by insurance or not. In case of loss or damage by fire or other casualty, Lender is authorized (1) except in cases governed by **Section 2.6(c)** below, to settle and adjust any claim under insurance policies which insure against such risks, or (2) to allow Borrower to agree with the insurance company or companies on the amount to be paid in regard to such loss and in either case, Lender is authorized to collect and receipt for any such insurance proceeds.

(b) In the event that the amount of insurance proceeds exceeds the Applicable Damage Threshold (as hereinafter defined), Lender will hold the insurance proceeds without interest and will release the insurance proceeds as restoration progresses in payment of restoration costs, subject to the following conditions:

(1) There shall be no outstanding Event of Default and no event shall have occurred and be continuing which, but for the giving of notice and passage of time, or both, would constitute an Event of Default;

(2) At the time of the restoration, there will be Leases in place to generate sufficient income to cover all operating expenses of the Property and all debt service payments.

(3) Lender shall approve the plans and specifications;

(4) The size, quality and use of the Improvements on the Land shall be substantially the same as or better than immediately prior to the casualty;

(5) There shall be sufficient funds upon deposit at all times with Lender to complete the restoration, as certified by an architect approved by Lender;

(6) The insurance proceeds will be disbursed under such reasonable procedures as may be established by Lender;

(7) The insurer shall not assert any defense against Borrower or any Tenant pursuant to the insurance policy covering the Improvements; and

(8) Such other conditions as would customarily be required by a local construction lender, or are otherwise reasonable.

Lender may apply any insurance proceeds remaining after completion of restoration to the Obligations or, if the above conditions are not met, Lender may apply all insurance proceeds to the Obligations without the payment of any Prepayment Premium (as defined in the Note).

(c) In the event that the amount of insurance proceeds is equal to or less than the Applicable Damage Threshold, Borrower may adjust and settle such claims subject to the following conditions:

- i. Borrower fully satisfies the conditions set forth in Subsections 2.6(b)(1), (2) and (4) above;
- ii. Borrower pays any applicable deductible; and
- iii. Borrower keeps Lender fully informed of the status of all adjustment and claims negotiations with the insurer.

Borrower shall use all proceeds obtained under this paragraph (c) for the repair and restoration of the Property, which repair and restoration work shall be diligently completed in a workmanlike manner in accordance with all requirements of the Loan Documents that pertain to such work and payment therefor, including **Section 2.3** and **Section 2.8** of this Security Instrument. Lender may apply any insurance proceeds remaining after completion of restoration to the Obligations or, if the above conditions are not met, Lender may apply all insurance proceeds to the Obligations without the payment of any Prepayment Premium (as defined in the Note). As used herein, the "Applicable Damage Threshold" means \$250,000.00.

2.7 Condemnation.

Borrower, promptly upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property, shall notify Lender of the pendency thereof. Borrower hereby assigns, transfers and sets over unto Lender all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. In case of any such action, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. Subject to the foregoing, after deducting therefrom all of its expenses, including reasonable attorneys' and paralegals' fees, Lender may elect to apply the proceeds of the award upon or in reduction of the Obligations without the payment of any Prepayment Premium, whether due or not, or hold said proceeds without any allowance of interest and make them available for restoration or rebuilding of the Property. In the event that Lender elects to make said proceeds available to reimburse Borrower for the cost of the rebuilding or restoration of the Property, such proceeds shall be made available in the manner and under the conditions that Lender may require under **Section 2.6** above. If the proceeds are made available by Lender to reimburse Borrower for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be paid to Borrower as long as there has been no Event of Default and no event shall have occurred and be continuing which, but for the giving of notice and passage of time, or both, would constitute an Event of Default under the Loan Documents. Borrower agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Lender may require.

2.8 Liens and Encumbrances.

Borrower shall not, without Lender's written consent, permit the creation of any liens or encumbrances on the Property other than the lien of this Security Instrument, and shall pay when due all obligations, lawful claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Property, whether such lien would be senior or subordinate hereto, including, but without limiting the generality of the foregoing, all claims of mechanics, materialmen, laborers and others for work or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Land or the Improvements, and Borrower will do or cause to be done everything necessary so that the first priority security lien of this Security Instrument shall be fully preserved, at the cost of Borrower, without expense to Lender. The foregoing prohibition extends to any liens by which the Property is encumbered without Borrower's consent, including without limitation, all claims of mechanics, materialmen, laborers and others for work or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Property, but in the case of any such involuntary lien, Borrower shall not be deemed in violation of this Section 2.8 if the lien is discharged of record or in the alternative insured or bonded over to the satisfaction of Lender by the title company insuring the lien of this Security Instrument within the time period set forth in Section 3.1(e) of this Security Instrument. Any lien or encumbrance on the Property created hereafter shall contain, or shall by virtue hereof be deemed to contain, a provision subordinating such lien or encumbrance to all Leases then or in the future affecting the Property.

2.9 Taxes and Assessments.

Borrower shall pay in full when due, and in any event before any penalty or interest attaches, all general taxes and assessments, special or supplemental taxes, special or supplemental assessments, water charges, sewer service charges, and all other charges against the Property and shall furnish to Lender official receipts evidencing the payment thereof.

2.10 Change of Title or Additional Financing.

(a) Borrower agrees that it shall be an Event of Default and that Lender, at its option, may declare the Note (including without limitation, any prepayment premium provided for thereunder), and any other Obligations to be forthwith due and payable, if, without Lender's prior written consent (which may be withheld for any or no reason), any of the following shall occur, whether voluntarily or involuntarily or by operation of law: (i) Borrower shall sell, convey, assign, transfer, dispose of or be divested of its title to, convey security title to the Property, mortgage, encumber or cause to be encumbered (except for the imposition of mechanics' or materialmans' liens for work completed in accordance herewith) the Property, in any manner or way, whether voluntary or involuntary; or (ii) any merger, consolidation, sale, transfer, assignment, or dissolution involving all or substantially all of the assets of Borrower or any managing general partner or managing member of the original Borrower; or (iii) any assignment, transfer, pledge, voluntary or involuntary sale, or encumbrance (or any of the foregoing at one time or over any period of time) of, except as set forth in the Loan Agreement, any of the direct or indirect legal or beneficial ownership interests of Borrower (whether partnership, stock, equity, beneficial,

profit, loss or otherwise), regardless of the type or form of entity of Borrower; or (iv) if applicable, if Borrower is a partnership, the conversion of any general partnership interest in Borrower to a limited partnership interest, or in the event of any change, removal, or resignation of any general partner of Borrower; or (v) if applicable, if Borrower is a limited liability company, any change, removal, addition or resignation of a managing member (or if no managing member, any member, except as set forth in the Loan Agreement); or (vi) the Property be converted to or operated as a condominium or cooperative form of ownership; or (vii) any other change in the legal or equitable title of the Property, or change of any ownership interests in Borrower or in any legal entities which comprise Borrower or in the beneficial ownership of the Property, whether or not of record and whether or not for consideration except as set forth in the Loan Agreement. The provisions of the foregoing sentence of this Section shall apply to each and every such further encumbrance, sale, transfer, assignment, conveyance or occurrence, regardless of whether or not Lender has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment, conveyance or occurrence, and irrespective of whether such further encumbrance, sale, transfer, assignment, conveyance or occurrence is voluntary, by reason of operation of law or is otherwise made. In the event of any request for the consent of Lender, Borrower shall pay to Lender an administrative fee for processing any application seeking the consent of Lender, together with legal and transactional costs incurred by Lender in connection with the transfer under this Section, including any costs of amending the Loan Documents and of obtaining a title insurance endorsement. Lender's consent to a transfer under this Section shall not be deemed to be a waiver of the right to require consent to future or successive transfers.

(b) In the event ownership of the Property becomes vested in a person or persons other than Borrower, or in the event that any interest in Borrower is transferred as hereinabove stated, in either event without the prior written approval of Lender, Lender may, without notice to Borrower, forbear exercising Lender's remedies with respect to such Event of Default and deal with such successor or successors in interest with reference to this Security Instrument, and the Note and additional notes, if any, in the same manner as with Borrower or any other parties under any of the Loan Documents, without in any way releasing, discharging or otherwise affecting the liability of Borrower hereunder or any other parties under any of the Loan Documents for the Obligations. No sale of the Property or any transfer as described above, no forbearance on the part of Lender, no extension of the time for the payment of the Obligations or any change in the terms thereof consented to by Lender shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Borrower or any other parties under any of the Loan Documents, either in whole or in part, nor shall the full force and effect of this Security Instrument or any of the other Loan Documents be altered thereby. In addition, in the event of any transfer of ownership of the Property without the prior written approval of Lender as aforesaid, the transferee shall nevertheless be conclusively deemed to have assumed all of the transferor's Obligations under this Security Instrument, the Note and all other Loan Documents by acquiring the Property or such portion thereof subject to this Security Instrument, except that in doing so without the prior written approval of Lender, such transferee agrees that it assumes such Obligations without the benefits of **Section 14** of the Note regarding limited recourse liability of Borrower (so that such transferee shall be fully and personally liable for the Obligations).

(c) Borrower shall not voluntarily, involuntarily or by operation of law sell, assign, transfer or otherwise dispose of the Collateral or any interest therein and shall not otherwise do

or permit anything to be done or occur that may impair the Collateral as security hereunder except so long as this Security Instrument is not in default, Borrower shall be permitted to sell or otherwise dispose of the Collateral when worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property in the conduct of the business of Borrower, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value of that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby and so that the security interest of Lender hereunder shall be the first priority security interest in said Collateral. In the event the Collateral is sold in connection with the sale of the Real Property, Borrower shall require, as a condition of the sale, that the buyer specifically agree to assume Borrower's obligations as to the security interest herein granted and to execute whatever agreements and filings deemed necessary by Lender to maintain its perfected security interest in the Collateral.

2.11 Advances.

If Borrower shall fail to perform any of the covenants herein or contained in any of the other Loan Documents, Lender may, but without obligation to do so, make advances to perform any such covenants on its behalf, and all sums so advanced shall be a lien upon the Property and shall be secured by this Security Instrument. Borrower shall repay on demand all sums so advanced on its behalf with interest at the Default Rate, as defined in the Note, from and after the time of such advance. Nothing herein contained shall prevent any such failure to perform on the part of Borrower from constituting an Event of Default.

2.12 Time is of the Essence.

Borrower agrees that TIME IS OF THE ESSENCE hereof in connection with all Obligations of Borrower herein or in any other Loan Documents.

2.13 Estoppel Certificates.

Borrower within ten (10) days after written request by Lender (but no more than twice in any given calendar year unless an Event of Default has occurred and is continuing) shall furnish Lender or any proposed assignee of Lender, a duly acknowledged written statement setting forth (i) the amount of the Obligations, (ii) the rate of interest of the Note, (iii) the terms of payment and maturity date of the Note, and the date installments of interest and/or principal were last paid, (iv) either that no setoffs or defenses exist against the Obligations or this Security Instrument or any of the other Loan Documents, or, if such setoffs or defenses are alleged to exist, the nature thereof, (v) that the Note and Loan Documents have not been modified or if modified, giving particulars of such modification, (vi) except as provided in such statement, there are no defaults or to the best of Borrower's knowledge events which with the passage of time or the giving of notice, or both, would constitute an Event of Default under any of the Loan Documents, (vii) attaching a certified rent roll thereto, and stating whether or not, to the best knowledge of Borrower, any of the Tenants under the Leases are in default under the Leases, and if any of the Tenants are in default, setting forth the specific nature of all such defaults, (viii) that the Assignment of Rents is and continues to be valid and binding on Borrower and enforceable against Borrower in accordance with its terms, and (ix) as to any other matters reasonably

requested by Lender and reasonably related to the Leases, the Obligations, the Property or this Security Instrument.

2.14 Records.

Borrower agrees to keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied and shall permit Lender, and its agents, accountants and attorneys, to visit and inspect the Property (subject to the rights of Tenants of the Property, all of whose Leases shall permit inspection of the demised premises thereunder) and examine its books and records of account, and to discuss its affairs, finances and accounts with Borrower, at such reasonable times as Lender may request.

2.15 Environmental Compliance.

(a) The terms and provisions of the Environmental Agreement, including the representations and warranties and the indemnification made therein, are incorporated in this Security Instrument by reference as if fully set out. Capitalized terms used in this **Section 2.15** that are not defined in this Security Instrument shall have the respective meanings ascribed to them by the Environmental Agreement.

(b) Except for Permitted Materials, Borrower shall not use or permit the use (by Lease or otherwise) of the Property for any Environmental Activity, including, without limitation, the generation, transportation, treatment, handling, storage, or disposal of Hazardous Materials.

(c) Borrower shall keep and maintain the Property (or cause the Property to be kept and maintained) in compliance with all Applicable Environmental Laws.

(d) Borrower shall, at its sole cost and expense, detain the spread of, ameliorate and remove from the Property to Lender's complete satisfaction and with all reasonable due care, any contamination of Hazardous Materials which may be discovered in, on, around or underneath the Property, in a safe manner, and to a safe degree, in accordance with all Applicable Environmental Laws.

(e) Borrower shall provide Lender with immediate written notice: (i) of Borrower's obtaining knowledge of any Environmental Activity, including, without limitation, any potential or known Release or Threatened Release of Hazardous Materials on, onto, from or under the Property, whether from a federal, state or other Governmental Agency, or otherwise; or (ii) of all claims made or threatened by any third party relating to any loss or injury from Hazardous Materials in, on, from, or under the Property.

(f) Borrower shall report any Release of Hazardous Materials in accordance with Applicable Environmental Law.

(g) Borrower shall promptly deliver copies of any documents relating to any governmental proceeding relating to Hazardous Materials and all engineering reports, test reports and laboratory analyses concerning the Hazardous Materials affecting the Property to Lender.

(h) If any Governmental Agency requires the investigation of the Property and/or ground water for the existence of Hazardous Materials, or Lender reasonably suspects or believes that there exists the threat of or there has been Hazardous Materials contamination of the Property and/or ground water, Borrower, at its expense, shall promptly and thoroughly investigate the Property and/or the ground water for Hazardous Materials contamination. The professionals retained by Borrower and the scope and timing of any such investigation shall be subject to Lender's reasonable approval. In the event Borrower fails to complete an investigation for Hazardous Materials when and as required by this Section, or if an Event of Default (or an event which but for the passage of time or giving of notice would constitute an Event of Default) occurs, Lender may, in its sole and absolute discretion, enter the Land and the Improvements and conduct the investigation at the expense of Borrower, after giving five (5) days written notice to Borrower. Such investigation may include obtaining one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert evaluating or confirming (i) whether any Hazardous Materials are present in, on, under or adjacent to the Property and (ii) whether the use and operation of the Property comply with Applicable Environmental Law. Environmental assessments may include detailed visual inspections of the Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analysis as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all Applicable Environmental Laws.

(i) In the event of any change in the laws governing the assessment, existence, release or removal of Hazardous Materials, such as but not limited to the identification of a new hazardous substance to be included in the definition of Hazardous Materials, which change would lead a prudent lender to require additional testing to avail itself of any statutory insurance or limited liability, Borrower shall take all such necessary action (including, without limitation, the conducting of engineering tests at the sole expense of Borrower) to confirm that no Hazardous Material is present on the Property.

(j) Borrower shall permit Lender or its agents to inspect the Property at any reasonable time upon five (5) days' written notice, except in the case of an emergency or when Borrower or any Tenant has abandoned the Property or where there is an Event of Default, in which case no notice shall be required.

(k) Borrower hereby grants and conveys to Lender, any assignee, any prospective bidder at any foreclosure sale and their respective officers, directors, employees, agents and independent contractors an easement to enter on and upon the Land and the Improvements at any time and from time to time for the purpose of making such audit tests, inspections, and examinations, including subsurface exploration and testing (collectively, "Tests and Studies"), as Lender, in its discretion, deems necessary, convenient, or proper to determine whether the ownership, use and operation of the Property and the conduct of the activities engaged in thereon are in compliance with this **Section 2.15**. Lender, or its designated agents, shall have the right to inspect and copy all of Borrower's records relating to environmental matters and to enter all buildings or facilities of Borrower for such purpose. Lender, or its designated agent, may interview any or all of Borrower's agents and employees regarding environmental matters,

including any consultants or experts retained by Borrower, all of whom are directed to discuss environmental issues fully and openly with Lender or its designated agent to provide such information as may be reasonably requested. The exercise of the easement rights granted hereunder shall not constitute Lender a mortgagee in possession with respect to the Property. All of the costs and expenses incurred by Lender with respect to the Tests and Studies, including, without limitation, audits, tests, inspections, and examination which Lender may conduct, including the fees of the engineers, laboratories, and contractors, and including the costs of repair of any physical injury to the Property incidental to the Tests and Studies, shall be paid upon demand of Lender by Borrower. Lender may, but shall not be required to, advance such costs and expenses on behalf of Borrower. All sums so advanced shall bear interest at the Default Rate, as defined in the Note if not paid within 5 days of demand.

(l) The easement granted hereby (i) shall be assignable and shall be considered assigned to whoever holds the Obligations, (ii) is irrevocable and may not be revoked by Borrower, and (iii) is intended to be and shall be construed as an interest in the Property and as an easement in gross. It is not intended to be a personal right of Lender or a mere license. Such easement shall exist and continue until such time as all Obligations have been paid and performed in full and this Security Instrument has been released of record. A release of this Security Instrument shall evidence a termination of the easement.

(m) Borrower acknowledges that no adequate remedy at law exists for a violation of the easement granted hereby and agrees that Lender shall have the right to enforce the easement granted hereby by equitable writ or decree, including temporary and preliminary injunctive relief. In the event Lender is required to enforce its rights hereunder Borrower shall pay all of Lender's costs and expenses in connection therewith, including all reasonable attorneys' and paralegals' fees, costs and expenses incurred by Lender. If Lender is refused the right of entry and inspection by Borrower or any Tenant, or is otherwise unable to enter and conduct Tests and Studies on the Property without a breach of peace, Lender may obtain an order from a court of competent jurisdiction, the appointment of a receiver, or both, to enable Lender to exercise its rights under this Section. In that regard, the decision of Lender as to whether there exists a Release or Threatened Release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto. The results of all Tests and Studies shall be and at all times remain the property of Lender and under no circumstances shall Lender have any obligation whatsoever to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by them in connection with such Tests and Studies.

(n) Notwithstanding the provisions of this Section, Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender to make available to any party (including without limitation any Governmental Agency and any prospective bidder at any foreclosure sale of the Property), any and all information which Lender may have with respect to the Property, whether provided by Borrower or any third party or obtained as a result of Tests and Studies, including without limitation, environmental reports, surveys and engineering reports. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of Tests and Studies or any information

contained therein to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering any or all of the Tests and Studies or any information contained therein to any third party, and Borrower hereby releases, remises and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Tests and Studies or their delivery.

2.16 Professional Leasing and Management.

Except for a Permitted Lease (as defined in the Loan Agreement), Borrower shall not enter into any new Lease with respect to the Property without the consent of Lender. Borrower agrees to employ experienced professionals, acceptable to Lender, to lease and manage the Property, pursuant to a management agreement acceptable to Lender at all times while this Security Instrument is in effect. Pursuant to this Security Instrument or any additional document required by Lender, any management agreement is hereby assigned to Lender and the rights of the manager thereunder shall be subordinated to the lien of this Security Instrument and such manager shall consent to such subordination and assignment upon request from Lender. If any change of management or termination or modification of any management contract occurs without Lender's prior written approval, it shall constitute an Event of Default hereunder. Notwithstanding the foregoing, the initial manager of the Property shall be Borrower, and so long as Borrower continues to serve as the sole manager of the Property, no management agreement shall be required with respect thereto.

2.17 Special Collateral Covenants.

(a) This Security Instrument constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code of Alabama, and the Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower by executing and delivering this Security Instrument has granted to Lender, as security for the Obligations, a security interest in the Collateral. Without in any way affecting Lender's security interest in the Collateral, and except as may be set forth specifically to the contrary in any other provisions of this Security Instrument, it is expressly understood and agreed as follows: (i) Borrower shall, at Borrower's expense, promptly take all actions reasonably necessary to obtain all proceeds to which Borrower is entitled in connection with the Property, including, without limitation, the filing of any applications or claims and the prosecution of appeals or litigation, if necessary; (ii) the delivery of this Security Instrument and the Assignment of Rents to Lender constitutes irrevocable authorization and direction from Borrower to each payor with regard to any of the Collateral that if Lender shall send notice to payor requesting direct payment to Lender, the payor shall remit payments directly to Lender when due beginning with the next payment due from payor after Lender's notice to payor; (iii) if an Event of Default has occurred, Borrower shall notify Lender in writing of all actions taken by Borrower pursuant to this Section, and of all proceeds received by Borrower as a result thereof and shall remit same to Lender; (iv) if an Event of Default has occurred, the proceeds of any of the Collateral received by Lender shall be applied toward the repayment of the Obligations; and (v) effective upon the occurrence of an Event of Default, Lender shall be and is irrevocably appointed as Borrower's attorney-in-fact (such power of attorney being deemed to be coupled with an interest) to take all such actions on behalf of

Borrower that Lender deems necessary and expedient in order to obtain all proceeds to which Borrower is entitled with respect to any of the Property.

(b) Borrower warrants that (i) Borrower's (that is, "Debtor's") name, identity or corporate structure and residence or principal place of business and state of registration are as set forth in **Section 2.17(c)** hereof; (ii) Borrower (that is, "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in **Section 2.17(c)** hereof; and (iii) the location of all tangible Collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses (i) or (iii) of this **Section 2.17(b)** within thirty (30) days of the effective date of any such change and Borrower hereby authorizes Lender to file any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or any security interest granted hereunder from losing its perfected status.

(c) The information contained in this **Section 2.17(c)** is provided in order that this Security Instrument shall, to the extent permitted by applicable law, be effective as a financing statement filed as a fixture filing under the Alabama Uniform Commercial Code. The names of the "Debtor" and the "Secured Party," the identity or corporate structure and residence or principal place of business of "Debtor," and the time period for which "Debtor" has been using or operating under said name and identity or corporate structure without change, are as set forth in Schedule 1 of **Exhibit B** attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor," are as set forth in Schedule 2 of **Exhibit B** attached hereto; and a statement indicating the types, or describing the items, of Collateral is set forth hereinabove.

(d) BORROWER HEREBY AUTHORIZES LENDER TO FILE FINANCING STATEMENTS COVERING THE COLLATERAL WITH ALL APPROPRIATE FILING OFFICES.

ARTICLE THREE: DEFAULT AND REMEDIES

3.1 Events of Default.

Any of the following events shall constitute an "Event of Default" hereunder:

(a) Failure to make any payment or deposit when due in accordance with the terms of the Note, the Reserve Agreement or any of the other Loan Documents.

(b) Except for Events of Default listed in the other subsections of this **Section 3.1**, Borrower's failure to observe or perform any of the other terms, covenants and conditions in the Note, this Security Instrument, the Assignment of Rents, or any other Loan Document, and such failure continues for thirty (30) days after the date of written notice thereof to Borrower (or such longer period of time, not to exceed sixty (60) additional days, as shall be reasonably necessary to effect cure, provided that Borrower has promptly commenced and is diligently prosecuting cure at all times after occurrence of the default in question).

(c) Except as expressly permitted under the provisions of the Loan Agreement or of Sections 2.8 or 2.10 above, any transfer or encumbrance described in the provisions of Sections 2.8 or 2.10 above occurs without the prior written consent of Lender.

(d) An event of default under, or institution of foreclosure or other proceedings to enforce any second mortgage or junior security interest, lien or encumbrance of any kind upon the Property.

(e) If the Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any judgment lien, lis pendens, notice of pendency, stop notice lien, mechanic's or material supplier's lien or other lien of any nature whatsoever (including those described in Section 2.8 above) and the same shall not either be discharged of record or in the alternative insured or bonded over to the satisfaction of Lender by the title company insuring the lien of this Security Instrument within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Security Instrument and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Property or is only a matter of record or notice.

(f) If the Property shall be taken, attached, or sequestered on execution or other process of law in any action against Borrower, and such action is not dismissed within ninety (90) days.

(g) The occurrence of an "Event of Default" as defined in the Loan Agreement.

3.2 Remedies.

(a) Upon and after any Event of Default, Lender may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, all prepayment premiums payable thereunder and all other Obligations to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest, and premiums and other Obligations of Borrower, shall become and be immediately due and payable, anything in the Note or in this Security Instrument to the contrary notwithstanding.

(b) Upon and after any Event of Default, Lender personally, or by its agents or attorneys, without regard to the adequacy of any security for the Obligations, may enter into and upon all or any part of the Land and the Improvements, with or without appointment of a receiver or an application therefor, and may exclude Borrower, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Lender at the expense of Borrower, from time to time, either by purchase, repairs or construction may maintain and restore the Property, whereof it shall become possessed as aforesaid, may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; and likewise, from time to

time, at the expense of Borrower, Lender may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; and in every such case Lender shall have the right to manage and operate the Property and to carry on the business thereof and exercise all rights and powers of Borrower with respect thereto either in the name of Borrower or otherwise as it shall deem best; and with or without possession Lender shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Property, all of which shall for all purposes constitute property of Lender; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Property, as well as just and reasonable compensation for the services of Lender and for all attorneys, paralegals, counsel, agents, clerks, servants, receivers and other employees by them properly engaged and employed, Lender shall, at its sole option, either (i) apply the monies arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable and second, to the payment of any other Obligations, or (ii) hold such monies as additional security pending any foreclosure sales.

(c) Upon and after any Event of Default, Lender shall have all of the remedies of a Secured Party under the Uniform Commercial Code, including without limitation the right and power to sell, or otherwise dispose of the Collateral, or any part thereof, and for that purpose may take immediate and exclusive possession of the Collateral, or any part thereof, and with or without judicial process, enter upon any part of the Land or Improvements on which the Collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option Borrower shall assemble the tangible Collateral and make it available to Lender at the place and at the time designated in the demand. Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale. Lender without removal may render the Collateral unusable and dispose of the Collateral on the Land. If Lender shall proceed under this Security Instrument to exercise any rights and remedies of a secured party under the Uniform Commercial Code with respect to the Collateral, Borrower agrees that: (i) whenever the notification with respect to the sale or other disposition of the Collateral is required by law, such notification of the time and place of public sale or the date after which a private sale or other intended disposition is to be made, shall be deemed reasonable if given in writing at least ten (10) days before the time of such public sale, or the date after which any such private sale or other intended disposition is to be made, as the case may be; (ii) Lender may require Borrower to assemble the tangible Collateral and make it available to Lender at a place to be designated by Lender; and (iii) expenses of retaking, holding, preparing for sale, selling or the like shall include Lender's reasonable attorneys' and paralegals' fees and legal expenses.

(d) Upon and after any Event of Default, Lender, with or without entry, personally or by its agents or attorneys, insofar as applicable, may, without notice to Borrower unless specifically required by law, take any or all of the following actions:

(1) foreclose this Security Instrument 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, after giving notice by publication once a week for three successive weeks of

the time, place and terms of each such sale, together with a description of the Property to be sold, by publication in some newspaper of general circulation published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) at such county's courthouse front or main door, at public outcry, during the legal hours of sale, to the highest bidder for cash. Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Security Instrument and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Borrower 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; or

(2) institute proceedings for the complete or partial judicial or nonjudicial foreclosure of this Security Instrument; or

(3) on an ex parte basis, file a motion for the appointment of a receiver or receivers for the Property and of all the earnings, revenues, rents, issues, profits and income thereof which shall not be contested by Borrower and to which Lender shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the Obligations or the solvency of any party bound for its payment; or

(4) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, in this Security Instrument, or in any other Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Lender shall elect.

(e) If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender may at its option exhaust the remedies granted under any of said security either concurrently or independently, and in such order as Lender may determine in its discretion. In case Lender shall have proceeded to enforce any right, power or remedy under this Security Instrument by foreclosure, entry or otherwise or in the event Lender commences advertising of the intended exercise of the sale under power provided hereunder, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, then in every such case (i) Borrower and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Event of Default, and (iv) neither this Security Instrument, nor the Note, nor the Obligations, nor any other Loan Document shall be or shall be deemed to have been reinstated or

otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

(f) Lender may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so postponed.

(g) Upon the completion of any sale or sales made by Lender under or by virtue of this Section, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring in fee simple all estate, right, title and interest in and to the Property and rights sold. Lender is hereby appointed the true and lawful attorney irrevocable of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. This power of attorney shall be deemed to be a power coupled with an interest and not subject to revocation. Nevertheless, Borrower, if so requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the Property and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(h) In the event of any sale made under or by virtue of this Section (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest on, the Note, if not previously due and payable, and all other Obligations, shall become due and payable unless such acceleration be expressly waived in writing by Lender.

(i) Except as otherwise required by law, the purchase money, proceeds, or avails of any sale made under or by virtue of this Section, together with any other sums which then may be held by Lender under the provisions of this Section or otherwise, shall be applied by Lender first to payment of the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' and paralegals' fees and costs, then to said insurance premiums, liens, assessments, taxes and charges including utility charges with accrued interest thereon and then to the payment of the principal, interest, prepayment premiums, and all other Obligations, and

finally, the remainder, if any, shall be paid to Borrower or as otherwise directed in the order or decree of foreclosure.

(j) Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Lender may bid for and acquire the Property and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Lender is authorized to deduct under this Security Instrument. Lender, upon so acquiring the Property, shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

(k) In the event of any such public sale pursuant to the aforesaid power of sale and agency, Borrower shall be deemed a Tenant holding over and shall forthwith deliver possession of the Property to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to Tenants holding over.

3.3 Leases.

(a) In the event Lender shall institute judicial proceedings to foreclose the lien hereof, and shall be appointed as a receiver or a mortgagee in possession of the Property, Lender during such time as it shall be a receiver or mortgagee in possession of the Property pursuant to an order or decree entered in such judicial proceedings, shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases of the Property for such rents and for such periods of occupancy and upon such conditions and provisions as such receiver or mortgagee in possession may deem desirable, and Borrower expressly acknowledges and agrees that the term of any such Lease may extend beyond the date of any sale of the Property pursuant to a decree rendered in such judicial proceedings; it being the intention of Borrower that while Lender is a receiver or mortgagee in possession of the Property pursuant to an order or decree entered in such judicial proceedings, Lender shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Lender and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Security Instrument. The power and authority hereby given and granted by Borrower to Lender shall be deemed to be coupled with an interest and shall not be revocable by Borrower.

(b) Lender is authorized to foreclose this Security Instrument or exercise the power of sale contained herein subject to the rights of any Tenants, and the failure to make any such Tenants parties defendant to any such foreclosure proceedings or notify them of any sale and to foreclose their rights will not be, nor be asserted by Borrower to be, a defense to any proceedings instituted by Lender to collect the Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Property. Unless otherwise agreed by Lender in writing, all Leases of the Property executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Security Instrument, except that from time to time Lender may execute and record among the land records of the jurisdiction where this Security Instrument is recorded, subordination statements with respect to such of said Leases as Lender may designate, whereby

the Leases so designated by Lender will be made superior to the lien of this Security Instrument. From and after the recordation of such subordination statements, the Leases therein referred to shall be superior to the lien of this Security Instrument and shall not be affected by any foreclosure or exercise of the power of sale hereof. All such Leases shall contain a provision to the effect that the Tenant recognizes the right of Lender to effect such subordination of this Security Instrument and consents thereto.

ARTICLE FOUR: MISCELLANEOUS

4.1 Taxation of Obligations and Security Instrument.

If at any time before the Obligations are fully paid and performed, any law be enacted imposing upon Lender the obligation for the payment of the whole or any part of the taxes or assessments or charges or liens now required to be paid by Borrower, or revising or changing in any way the laws now in force for the taxation of mortgages, deeds to secure debt or bonds, or the debts secured thereby, or the manner of collection of such taxes, so as to affect adversely Lender or this Security Instrument or the Obligations, or the owner and holder thereof, then, and in any such event, Borrower, upon demand by Lender, shall promptly pay such taxes or assessments, or promptly reimburse Lender therefor. Borrower's failure or refusal to make such payment or reimbursement shall constitute an Event of Default. Provided, however, that if Lender determines (a) it would be unlawful to require Borrower to make such payment, or (b) the making of such payment by Borrower would result in the imposition of interest beyond the maximum amount permitted by law; then Lender may elect, upon sixty (60) days' notice to Borrower, to declare all of the Obligations to be immediately due and payable without triggering the Prepayment Premium (as defined in the Note). Borrower's failure or refusal to make such payment or reimbursement shall constitute an Event of Default. Anything to the contrary herein notwithstanding, Borrower shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Lender or on the Obligations.

4.2 Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

4.3 Marshaling of Assets.

Borrower on its own behalf and on behalf of its successors and assigns of any portion of the Property, and of future lienholders on any estate or interest of Borrower hereunder, hereby expressly waives all rights to require a marshaling of assets by Lender or to require Lender, upon a foreclosure, to first resort to the sale of any portion of the Property that might have been retained by Borrower, or any future lienholder who might succeed to the title of Borrower, or could possibly be retained by any future lienholder who might succeed to the title of Borrower,

before foreclosing upon and selling any other portion as may be conveyed by Borrower subject to this Security Instrument.

4.4 Partial Release.

Without affecting the liability of any other person for the payment of any Obligations (including Borrower should it convey said Property) and without affecting the priority of the lien hereof upon any Property not released, Lender may, without notice, release any person so liable, extend the maturity or modify the terms of any Obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Property described herein, take or release any other security or make compositions or other arrangements with debtors. Lender may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

4.5 Non-Waiver.

(a) By accepting payment of any Obligation after its due date or altered performance of any Obligation, Lender shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any Obligations, either to require prompt payment when due of all other Obligations or to take remedy for failure to make such prompt payment or full performance. No exercise of any right or remedy by Lender hereunder shall constitute a waiver of any other right or remedy herein contained or provided at law or in equity.

(b) No delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

(c) Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Security Instrument and any disposition of the same by Lender after occurrence of an Event of Default shall not constitute a waiver of the power of sale or right of foreclosure by Lender.

4.6 Protection of Security.

Should Borrower fail to make any payment or to perform any covenant as herein provided, Lender (but without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower from any Obligation) may: make or do the same in the manner and to such extent as Lender may deem necessary to protect the security hereof, Lender being authorized to enter upon the Land and the Improvements for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of Lender is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable attorneys' and paralegals' fees and costs. Any expenditures in connection herewith shall constitute part of the Obligations.

4.7 Rule of Construction.

When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The headings are for information and convenience and do not limit the contents of any provision hereof. The language in all parts of this Security Instrument shall be in all cases construed simply, according to its fair meaning and not for or against Borrower or Lender, regardless of which party drafted the particular language which is being construed, both parties having been represented by adequate counsel.

4.8 Severability.

If any term of this Security Instrument, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Security Instrument shall be valid and enforceable to the fullest extent permitted by law.

4.9 Successors in Interest.

This Security Instrument applies to, inures to the benefit of, and is binding not only on the parties hereto, but also on their heirs, executors, administrators, successors and assigns.

4.10 Notices.


All notices, consents, approvals, statements, requests, reports, demands, instruments or other communications to be made, given or furnished pursuant under this Security Instrument (each, a "Notice") shall be in writing and delivered in any manner described in **Section 8.4** of the Loan Agreement to the address set forth therein for the party intended to receive the same.

4.11 Modifications.

This Security Instrument may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

4.12 Governing Law.

This Security Instrument and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by those laws of the State of Alabama that are applicable to agreements that are negotiated, executed, delivered and performed solely in the State of Alabama.


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4.13 Security Instrument Irrevocable.

This Security Instrument is irrevocable by Borrower.

4.14 Attorneys' Fees.

Borrower shall forthwith pay to Lender the amount of all reasonable attorneys' and paralegals' fees and costs incurred by Lender as described in the Loan Agreement.

4.15 Waiver of Jury Trial.

AFTER CONSULTATION WITH COUNSEL, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT BORROWER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS SECURITY INSTRUMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF BORROWER OR LENDER AND ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER MAKING THE LOAN.

4.16 No Liability or Obligation on Lender.

Nothing in this Security Instrument shall be construed to impose any obligation upon Lender to expend any money or to take any other discretionary act herein permitted and Lender shall not have any liability or obligation for any delay or failure to take any discretionary act. Lender shall not be required to see that this Security Instrument is recorded and shall not be liable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, or for anything whatever in connection with this Security Instrument, except willful misconduct or gross negligence. Lender may act upon any instrument or paper believed by it in good faith to be genuine and to be signed by the proper party or parties, and shall be fully protected for any action taken or suffered by it in reliance thereon.

4.17 Limitation of Liability.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender acknowledges and agrees that Borrower's liability under the Note and the other Loan Documents, except for the Environmental Agreement, is limited as expressly set forth in the Note, the terms of which are hereby incorporated herein by this reference. Nothing herein shall be deemed to limit the liability of Borrower and the other indemnitor(s) under any Environmental Agreement, and the liability of any Guarantor(s) under any Guaranty (Covenants).

4.18 Counterparts.

This Security Instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.19 After-Acquired Property.

Except for equipment leased by Borrower from unrelated third parties, the lien of this Security Instrument will automatically attach, without further act, to all after-acquired property of any nature whatsoever attached to, located in, on, or used in the operation of the Property, owned by Borrower or in which Borrower has an interest, and Borrower covenants and warrants that it will have good and absolute title to all of the aforesaid after-acquired property it acquires, free of any lien or encumbrance.

4.20 Subrogation.

Lender hereby is subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Obligations.

4.21 Future Advances.

This Security Instrument is given to secure not only the existing Obligations of Borrower to Lender, but also such future advances up to an additional amount equal to twice the original principal balance of the Loan made within twenty (20) years from date hereof, plus interest thereon, and any disbursements made by Lender for the payment of taxes, insurance or other liens on the Property encumbered by this Security Instrument, with interest on such disbursements, which advances shall be part of the Obligations to the same extent as if such future advances were made this date. The total amount of Obligations may increase or decrease from time to time. The provisions of this Section shall not be construed to imply any obligation on Lender to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of Lender. Any reference to "Loan" in this Security Instrument shall be construed to include any future advances made pursuant to this Section.

4.22 Release of Collateral.

Conditions related to the release of a portion of the Property are set forth in the Loan Agreement, the provisions of which are fully incorporated herein by reference.


4.22 Purchase Money Mortgage.

Proceeds of the Note have been applied to the purchase price of the Property; therefore, this is a purchase money mortgage.

**REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be signed and sealed as of the date first above written.

VALLEYDALE VILLAGE, LLC,
a Delaware limited liability company

By: 
Name: Jonathan P. Rosen
Title: Manager

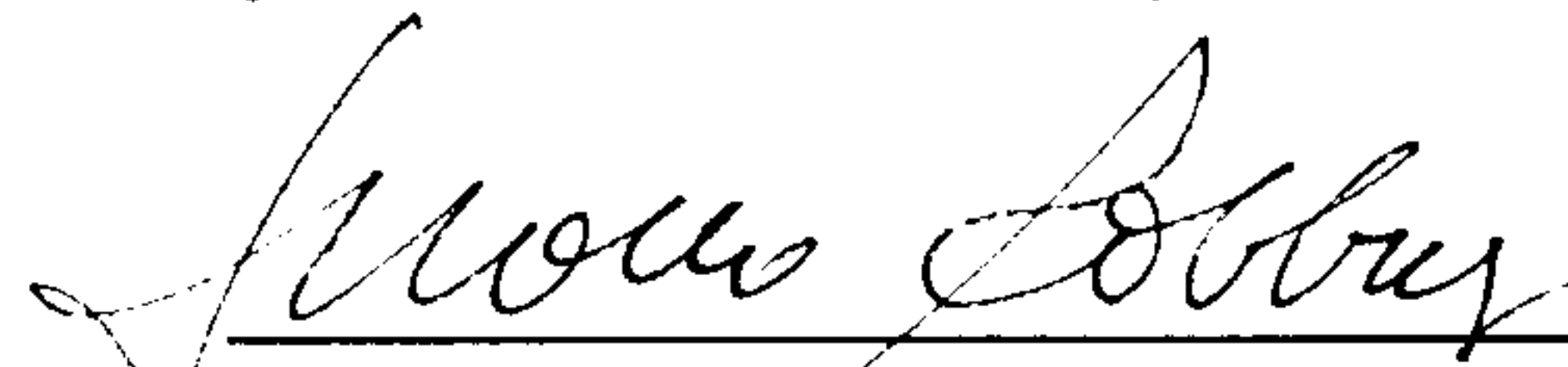
STATE OF NEW YORK:

SS :

COUNTY OF NEW YORK:

I, the undersigned, a Notary Public in and for said state, hereby certify that Jonathan P. Rosen, whose named as Manager of Valleydale Village, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he/she, as such Manager and with full authority, did voluntarily sign the foregoing instrument for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this 17th day of November, 2014.


Notary Public

JEROME ROBBINS
Notary Public, State of New York
No. 31-02R08592525
Qualified in New York County
Commission Expires November 30, 2018



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Exhibit B
(UCC Financing Statement Information)

SCHEDULE 1

(Description of "Debtor" and "Secured Party")

A. Debtor:

1. Name and Identity of Corporate Structure: Valleydale Village, LLC, a Delaware limited liability company
2. The principal place of business and chief executive officer of Debtor is located in New York County, New York.
3. Debtor has been using or operating under said name and identity without change since October 24, 2014 or has not operated under any other name or identity.
4. State of Registration: Delaware

B. Secured Party: Unum Life Insurance Company of America

SCHEDULE 2

(Notice Mailing Addresses of "Debtor" and "Secured Party")

A. The mailing address of Debtor is:

Valleydale Village, LLC
Attn: Jonathan P. Rosen
40 East 69th Street
New York, NY 10021

B. The mailing address of Secured Party is:

Unum Life Insurance Company of America
ATTN: Investments, Mortgage and Real Estate;
Loan No. 100011506
2211 Congress Street – C244
Portland, ME 04122-0590




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EXHIBIT A

Lot 1, according to the Survey of Regency Centers Valleydale Village Survey as recorded in Map Book 31, Page 69 and Lots 1 and 2 according to the Survey of Valleydale Village as recorded in Map Book 8, Page 141, in the Probate Office of Shelby County, Alabama.

Together with all interest created by:

1. That certain Reciprocal Easement Agreement between Valleydale Village Properties and McDonald's Corporation in Instrument No. 1995-20164.
2. That certain Declaration of Restrictions, Covenants, and Conditions and Grant of Easements as recorded in Instrument No. 20031013000684130 in the Probate Office of Shelby County, Alabama.
3. That certain Consent grant of Easement recorded in Book 63, Page 23 in the Probate Office of Shelby County, Alabama.


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