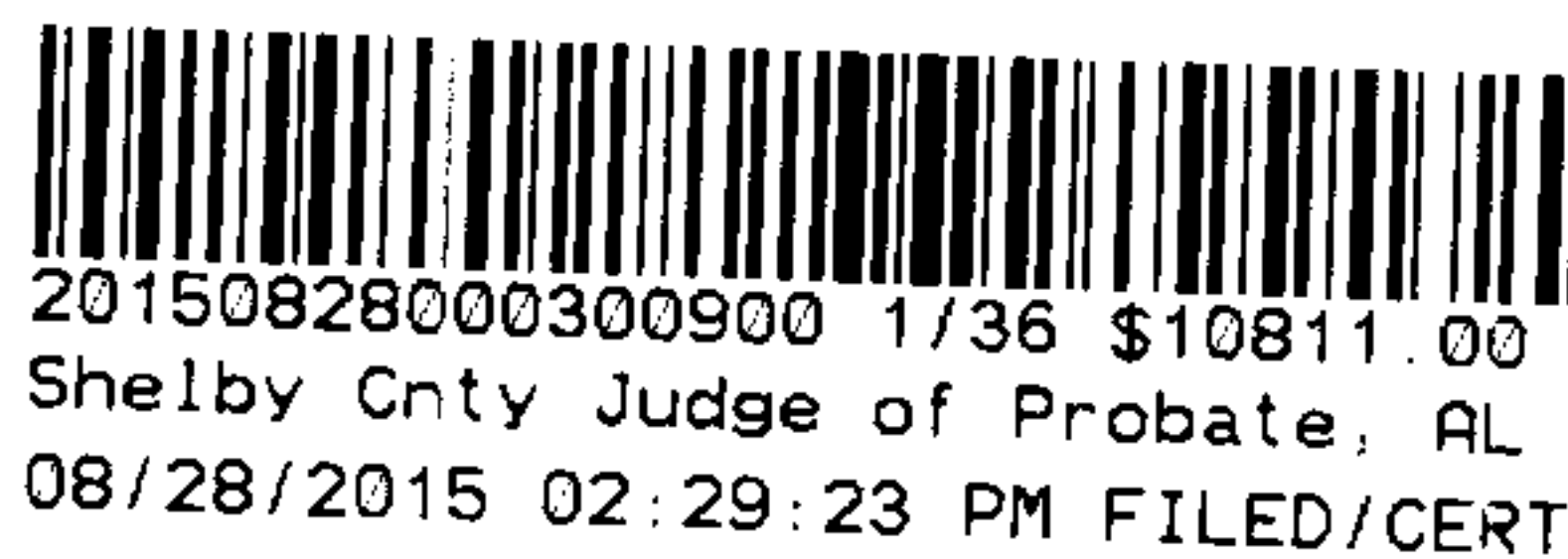


THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDATION RETURN TO:

Daniel S. Huffenus, Esq.  
Katten Muchin Rosenman LLP  
550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202



**AREC 8, LLC and UHIL 8, LLC, together as mortgagor (Mortgagor)**

to

**MORGAN STANLEY BANK, N.A. and JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, together as mortgagee (Lender)**

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

Dated: As of August 12, 2015  
Location: 2797 Pelham Parkway  
Pelham, Alabama  
As more particularly described in Exhibit A hereto  
County: Shelby

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

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

**THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**") is made as of August 12, 2015, by **AREC 8, LLC**, a Delaware limited liability company, and **UHIL 8, LLC**, a Delaware limited liability company, each having its principal place of business at 2727 N. Central Avenue, Phoenix, Arizona 85004, together as mortgagor (collectively, "**Mortgagor**"), to **MORGAN STANLEY BANK, N.A.**, a national banking association, having an address at 1585 Broadway, New York, New York 10036 and **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, together as mortgagee (together with their successors and assigns, "**Lender**").

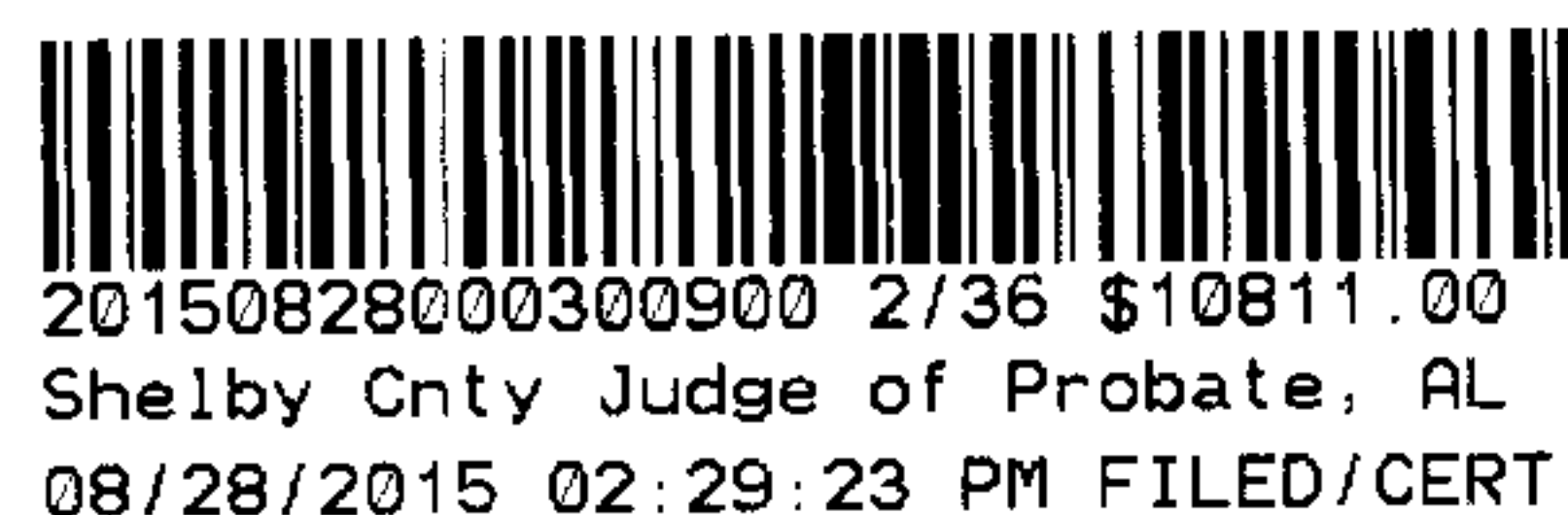
**W I T N E S S E T H:**

**WHEREAS**, this Mortgage is given to secure a loan (the "**Loan**") in the principal sum of Two Hundred Seventy Million and 00/100 Dollars (\$270,000,000.00), advanced pursuant to that certain Loan Agreement, dated as of the date hereof, among Mortgagor, AREC 9, LLC, AREC 10, LLC, AREC 13, LLC, UHIL 9, LLC, UHIL 10, LLC, UHIL 13, LLC, U-Haul Co. of Florida 8, LLC, U-Haul Co. of Florida 9, LLC and U-Haul Co. of Florida 10, LLC (together with Mortgagor, "**Borrower**") and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by the Note (as such term is defined in the Loan Agreement), with a final maturity date of September 1, 2035;

**WHEREAS**, AREC 8, LLC holds fee simple title to the Land (hereinafter defined), Improvements (hereinafter defined), Fixtures (hereinafter defined) and some or all of the other Property (hereinafter defined), and UHIL 8, LLC holds a leasehold estate in the Land, Improvements, Fixtures, and fee simple title to the Equipment (hereinafter defined), Personal Property (hereinafter defined), as well as a fee or leasehold estate in some or all of the other Property, and together, Mortgagor owns all rights, title and interests in the Property;

**WHEREAS**, Mortgagor desires to secure the payment of the Debt and the performance of all of Borrower's obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined); and

**WHEREAS**, this Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are, subject to the limits set forth herein, secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, and all other documents evidencing or securing the Debt are hereinafter referred to collectively as the "**Loan Documents**").





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

## ARTICLE 1 - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns, including power of sale, the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the “**Property**”):

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

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

(c) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, but excluding any fixtures owned by U-Haul International, Inc., a Nevada corporation (“**U-Haul**”) (collectively, the “**Improvements**”);

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

(e) **Equipment.** All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which are used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include (i) any property belonging to tenants under leases except to the extent that Mortgagor shall have any right or interest therein, or (ii) U-Haul trucks, trailers and other U-Haul rental equipment not owned by Mortgagor;



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

(g) **Personal Property**. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage and all proceeds and products of the above;

(h) **Leases and Rents**. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the



lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (and from any After Acquired Leasehold Property that is operated by Mortgagor through its operations on the Land) whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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

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

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

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

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

(n) **Agreements.** All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(o) **Trademarks.** All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property, but excluding any tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and other general intangibles owned by U-Haul;

(p) **Accounts.** All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, the Blocked Account and the Cash



Management Account, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

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

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

(s) **Operating Lease.** All rights, benefits, privileges, and interests of Mortgagor in that certain operating lease described on Exhibit B attached hereto and incorporated herein by reference (the “**Operating Lease**”) and all modifications, extensions, renewals, and replacements thereof, and all deposits, credits, options, privileges, and rights of Mortgagor as tenant under the Operating Lease, together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(t) **Accounts Receivable.** All rights, title and interest of Mortgagor arising from the operation of the Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper (hereinafter referred to as “**Accounts Receivable**”), including, without limiting the generality of the foregoing, (i) all accounts, contract rights, book debts, and notes arising from the operation of a self-storage facility on the Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services, including, without limitation, the rental of U-Haul equipment and the retail sale of moving supplies and other appurtenant and related business good or property, (ii) Mortgagor’s right to payment from any consumer credit/charge card organization or entity (such as, or similar to, the organizations or entities which sponsor and administer the American Express Card, the Visa Card or the Mastercard), (iii) Mortgagor’s rights in, to and under all purchase orders for goods, services or other property, (iv) Mortgagor’s rights to any goods, services or other property represented by any of the foregoing, (v) monies due to or to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor) and (vi) all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing. Accounts Receivable shall include those now existing or hereafter created, substitutions therefore, proceeds (whether cash or non-cash, movable, or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom; and

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



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

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

**Section 1.3 Security Agreement.** This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Mortgagor shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Mortgagor’s



(Debtor's) principal place of business is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the Office of the Judge of Probate for the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Mortgagor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Mortgagor agrees to furnish any information requested by Lender promptly upon request by Lender. Mortgagor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements. Mortgagor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any documents and otherwise to carry out the purposes of this Section 1.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable. AREC 8, LLC's state identification number issued in the state of its formation is 3969904. UHIL 8, LLC's state identification number issued in the state of its formation is 3969852.

**Section 1.5 Pledges of Monies Held.** Mortgagor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender, including, without limitation, any sums deposited in the Blocked Account, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Mortgage or the Loan Agreement.

### **CONDITIONS TO GRANT**

**TO HAVE AND TO HOLD** the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

**PROVIDED, HOWEVER,** these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Mortgage, if Borrower shall well and truly perform the Other Obligations as set forth in this Mortgage and if Mortgagor shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and Lender shall mark the Note "paid in full" and will, at Mortgagor's sole cost and expense, release the lien of this Mortgage; provided, however, that



Mortgagor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

**Section 2.2 Other Obligations.** This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

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

**Section 2.3 Debt and Other Obligations.** Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations.**"

## ARTICLE 3 - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

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

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

**Section 3.4 Maintenance of Property.** Mortgagor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any



Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

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

**Section 3.6 Payment for Labor and Materials.**

(a) Mortgagor will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

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

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

**Section 3.8 Change of Name, Identity or Structure.** Mortgagor shall not change Mortgagor’s name, identity (including its trade name or names) or, if not an individual,



Mortgagor's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Lender. Mortgagor shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Mortgagor shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

**Section 3.9 Title.** Mortgagor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Mortgagor's ability to repay the Loan. This Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create a valid, perfected first priority lien, security title and security interest on the Property, to the extent such security interest can be perfected by filing, subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Mortgage. Mortgagor shall not, without the prior written consent of Lender, convey, grant, pledge, assign, or otherwise transfer a grant of an easement, restriction, covenant, reservation or right of way that encumbers, burdens or otherwise affects the Property or any part thereof.

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

**Section 3.11 No Merger of Fee and Leasehold Estates.** So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Property and the leasehold estate therein created pursuant to the provisions of the Operating Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Lender, or in any other person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Property, including, but not limited to, the leasehold estate created by the Operating Lease, with or without consideration, at Lender's



election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

**Section 3.12 Acquisition of Fee Estate.** So long as any portion of the Debt remains unpaid, in the event that UHIL 8, LLC, shall be the owner and holder of the fee title to the Property, the lien of this Mortgage shall be spread to cover such Mortgagor's fee title to the Property without any further action. Mortgagor agrees, at its sole cost and expense, including without limitation Lender's reasonable attorneys' fees, to (a) execute any and all documents or instruments necessary to accomplish the foregoing; and (b) provide a title insurance policy which shall insure that the lien of this Mortgage is a first lien on Mortgagor's fee title to the Property.

#### **ARTICLE 4 - OBLIGATIONS AND RELIANCES**

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

**Section 4.2 No Reliance on Lender.** The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.**

(a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

**Section 4.4 Reliance.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material



inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## ARTICLE 5 - FURTHER ASSURANCES

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

**Section 5.2 Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

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

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by



it that the payment of tax by Mortgagor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

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

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

## ARTICLE 6 - DUE ON SALE/ENCUMBRANCE

**Section 6.1 Lender Reliance.** Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

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

## ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT



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

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or any indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;
- (h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Lender may, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with



respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Mortgage;

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

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



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

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

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

**Section 7.4 Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

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

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon their financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine



and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7    Other Rights, Etc.**

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

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

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

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

**Section 7.9    Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional reasonable requirements upon Mortgagor in



connection herewith including, without limitation, monetary reserves or financial equivalents in amounts sufficient, in Lender's sole judgment, to mitigate such non-compliance.

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Mortgage or the Loan Agreement, including, without limitation, Section 9.3 of the Loan Agreement, to the fullest extent permitted by applicable law, Lender and other Indemnified Parties are entitled to enforce the obligations of Mortgagor contained in Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor. The provisions of Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Mortgage or the other Loan Documents, and Mortgagor is fully and personally liable for the obligations pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement. The liability of Mortgagor pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Mortgagor pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 9 herein.

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

**Section 7.12 Lender's Remedies against Multiple Parcels.** The Debt and the Obligations hereby secured are also secured by other properties, lots and parcels (each an "**Other Property**" and collectively, the "**Other Properties**") covered by other mortgages, deeds of trust and deeds to secure debt (the "**Other Mortgages**") within and/or outside the state where the Property is located. If this Mortgage or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations secured hereby, or if Lender exercises its power of sale (if applicable under the laws of the State in which the Property is located), execution may be made upon or Lender may exercise its remedies (including any power of sale) against any one or more of the Other Properties and not upon the other Other Properties, or upon all of such Other Properties, either together or separately, and at different times or at the same time, and the exercise of such remedies, execution sales or sales under the power of sale herein granted (if applicable under the laws of the state in which the Property is located) may likewise be conducted separately or concurrently, in each case at Lender's election. No event of enforcement taking place against any Other Property, and no failure to prosecute any such other enforcement shall in any way stay, preclude or bar enforcement of this Mortgage, and Lender may pursue any



or all of Lender's rights and remedies under this Mortgage until the Debt and the Obligations are paid and discharged in full.

## ARTICLE 8 - PREPAYMENT

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

## ARTICLE 9 - INDEMNIFICATION

**Section 9.1 General Indemnification.** MORTGAGOR SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT (WITH LEGAL COUNSEL REASONABLY ACCEPTABLE TO LENDER), DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, DIMINUTIONS IN VALUE, FINES, PENALTIES, CHARGES, FEES, EXPENSES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT, PUNITIVE DAMAGES, FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES, OF WHATEVER KIND OR NATURE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND OTHER COSTS OF DEFENSE) (COLLECTIVELY, THE "LOSSES") IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING: (A) OWNERSHIP OF THIS MORTGAGE, THE PROPERTY OR ANY INTEREST THEREIN OR RECEIPT OF ANY RENTS; (B) ANY AMENDMENT TO, OR RESTRUCTURING OF, THE DEBT, THE NOTE, THE LOAN AGREEMENT, THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS; (C) ANY AND ALL LAWFUL ACTION THAT MAY BE TAKEN BY LENDER IN CONNECTION WITH THE ENFORCEMENT OF THE PROVISIONS OF THIS MORTGAGE, THE LOAN AGREEMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUIT IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH MORTGAGOR, ANY GUARANTOR OR ANY INDEMNITOR PERSON AND/OR ANY PARTNER, JOINT VENTURER OR SHAREHOLDER THEREOF BECOMING A PARTY TO A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING; (D) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (E) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (F) ANY FAILURE ON THE PART OF MORTGAGOR TO PERFORM OR BE IN COMPLIANCE WITH ANY OF THE TERMS OF THIS MORTGAGE, THE NOTE, THE LOAN AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; (G) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF



ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PROPERTY OR ANY PART THEREOF; (H) THE FAILURE OF ANY PERSON TO FILE TIMELY WITH THE INTERNAL REVENUE SERVICE AN ACCURATE FORM 1099-B, STATEMENT FOR RECIPIENTS OF PROCEEDS FROM REAL ESTATE, BROKER AND BARTER EXCHANGE TRANSACTIONS, WHICH MAY BE REQUIRED IN CONNECTION WITH THIS MORTGAGE, OR TO SUPPLY A COPY THEREOF IN A TIMELY FASHION TO THE RECIPIENT OF THE PROCEEDS OF THE TRANSACTION IN CONNECTION WITH WHICH THIS MORTGAGE IS MADE; (I) ANY FAILURE OF THE PROPERTY TO BE IN COMPLIANCE WITH ANY LEGAL REQUIREMENTS; (J) THE ENFORCEMENT BY ANY INDEMNIFIED PARTY OF THE PROVISIONS OF THIS ARTICLE 9; (K) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE; (L) THE PAYMENT OF ANY COMMISSION, CHARGE OR BROKERAGE FEE TO ANYONE CLAIMING THROUGH MORTGAGOR WHICH MAY BE PAYABLE IN CONNECTION WITH THE FUNDING OF THE LOAN; OR (M) ANY MISREPRESENTATION MADE BY MORTGAGOR IN THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT. ANY AMOUNTS PAYABLE TO LENDER BY REASON OF THE APPLICATION OF THIS SECTION 9.1 SHALL BECOME IMMEDIATELY DUE AND PAYABLE AND SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE LOSS OR DAMAGE IS SUSTAINED BY LENDER UNTIL PAID.

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

**Section 9.3 ERISA Indemnification.** MORTGAGOR SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE, AND SETTLEMENT OF LOSSES INCURRED IN CORRECTING ANY PROHIBITED TRANSACTION OR IN THE SALE OF A PROHIBITED LOAN, AND IN OBTAINING ANY INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION UNDER ERISA THAT MAY BE REQUIRED, IN LENDER'S SOLE DISCRETION) THAT LENDER MAY INCUR, DIRECTLY OR INDIRECTLY, AS A RESULT OF A BREACH OF ANY OF THE REPRESENTATIONS MADE UNDER SECTION 4.1.9 OF THE LOAN AGREEMENT



**OR A BREACH OF ANY NEGATIVE COVENANTS CONTAINED IN SECTION 5.2.9 OF THE LOAN AGREEMENT.**

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

**Section 9.5 Environmental Indemnity.** Simultaneously with this Mortgage, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Mortgage.

**ARTICLE 10 - WAIVERS**

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

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

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



notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

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

**Section 10.5 Survival.** The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto.

## **ARTICLE 11 - EXCULPATION**

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

## **ARTICLE 12 - NOTICES**

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

## **ARTICLE 13 - APPLICABLE LAW**

### **Section 13.1 Governing Law.**

(a) THE LOAN AGREEMENT AND THIS MORTGAGE WERE NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE, THE LOAN AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED



BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE PORTION OF THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THE LOAN AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THE LOAN AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR MORTGAGOR ARISING OUT OF OR RELATING TO THE LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MORTGAGOR DOES HEREBY DESIGNATE AND APPOINT:

CT Corporation  
111 Eighth Avenue  
New York, New York 10011

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MORTGAGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. MORTGAGOR (I) SHALL GIVE PROMPT NOTICE TO LENDER OF




ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

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

**Section 13.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

## ARTICLE 14 - DEFINITIONS

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

  
20150828000300900 25/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



## ARTICLE 15 - MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

**Section 15.8 Limitation on Lender's Responsibility.** No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste



committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

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


## ARTICLE 16 - STATE-SPECIFIC PROVISIONS

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

**Section 16.2 Foreclosure.** In addition to the rights and remedies set forth in Article 7, at the option of Lender, this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and Lender, or its agent, may sell, pursuant to the power of sale hereby granted or otherwise, the Property or any part of the Property (including, without limitation, any leasehold, subleasehold or other interest therein encumbered hereby as Lender may from time to time elect to sell) at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse of the county where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county; provided, however, that (i) if the Property is located in more than one county, publication is to be made in all counties in which such Property is located, and (ii) if no newspaper is published in a county where the Property is located, notice shall be in a newspaper in an adjoining county. At any such sale, Lender may execute and deliver to the purchaser a conveyance of the Property or any part of the Property. Lender may bid at said sale in the form of cash, cash equivalents and/or cancellation of all or any part of the Obligations, or any combination thereof, and purchase the Property or any part or parcel thereof, if the highest bidder therefor. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect. Any sale may be adjourned by Lender, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

**Section 16.3 Section 3.9.** Section 3.9 of this Mortgage is hereby amended by deleting at the beginning thereof the text "Mortgagor has good, marketable and insurable fee simple title" and by inserting in lieu thereof the following text "Mortgagor has and is seized of good, marketable and insurable fee simple title".

**Section 16.4 Section 1.5.** Section 1.5 of this Mortgage is hereby amended by adding the following:

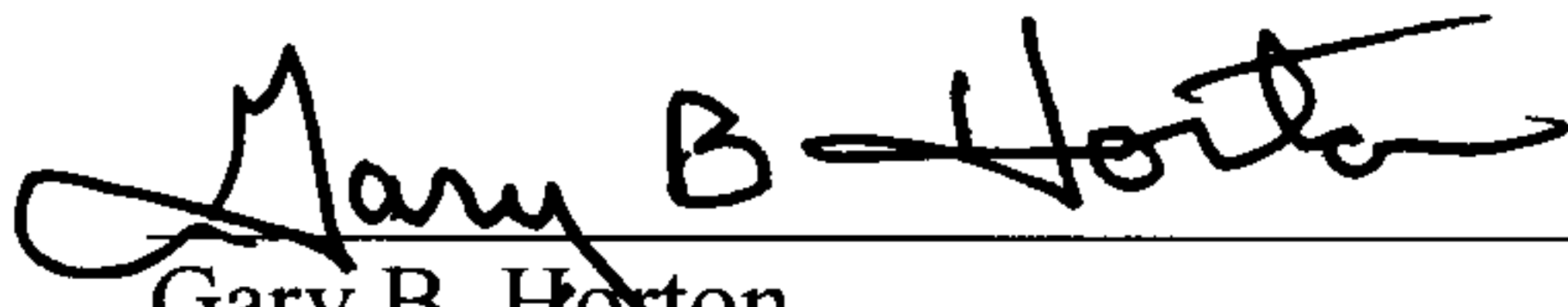
  
20150828000300900 27/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



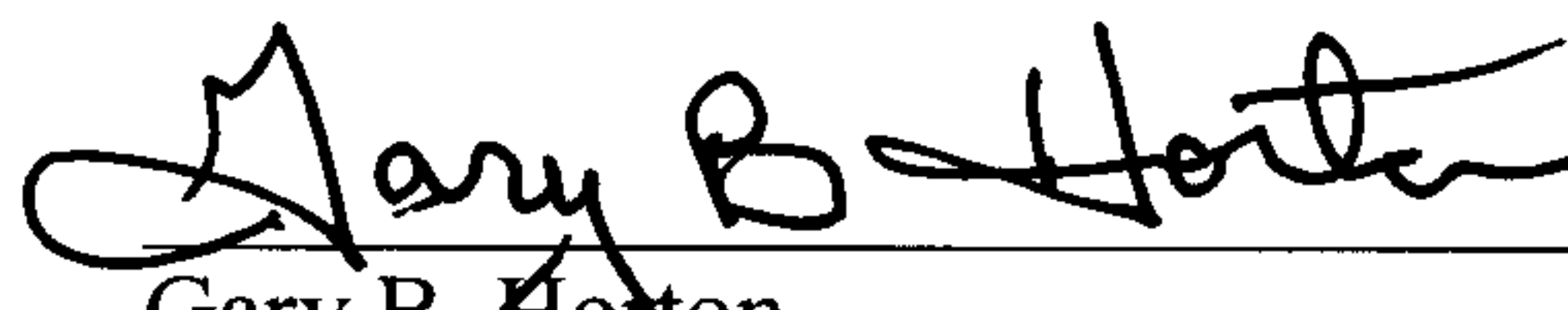
**IN WITNESS WHEREOF**, the undersigned Mortgagor have caused this Mortgage to be executed by their duly authorized Treasurer on the date of the acknowledgment of the Mortgagor's signature below to be effective as of the day and year first above written.

**MORTGAGOR:**

**AREC 8, LLC**, a Delaware limited liability company

By:   
Gary B. Horton  
Treasurer

**UHIL 8, LLC**, a Delaware limited liability company

By:   
Gary B. Horton  
Treasurer



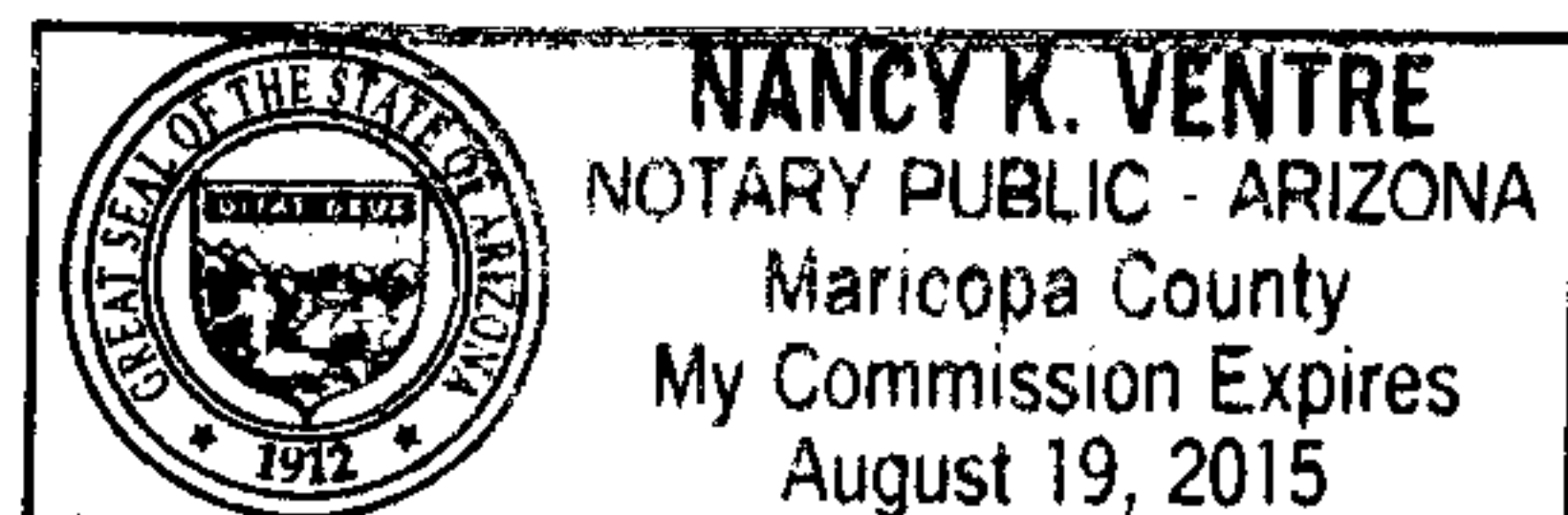
20150828000300900 28/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Gary B. Horton, whose name as Treasurer of AREC 8, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 7th day of July, 2015.



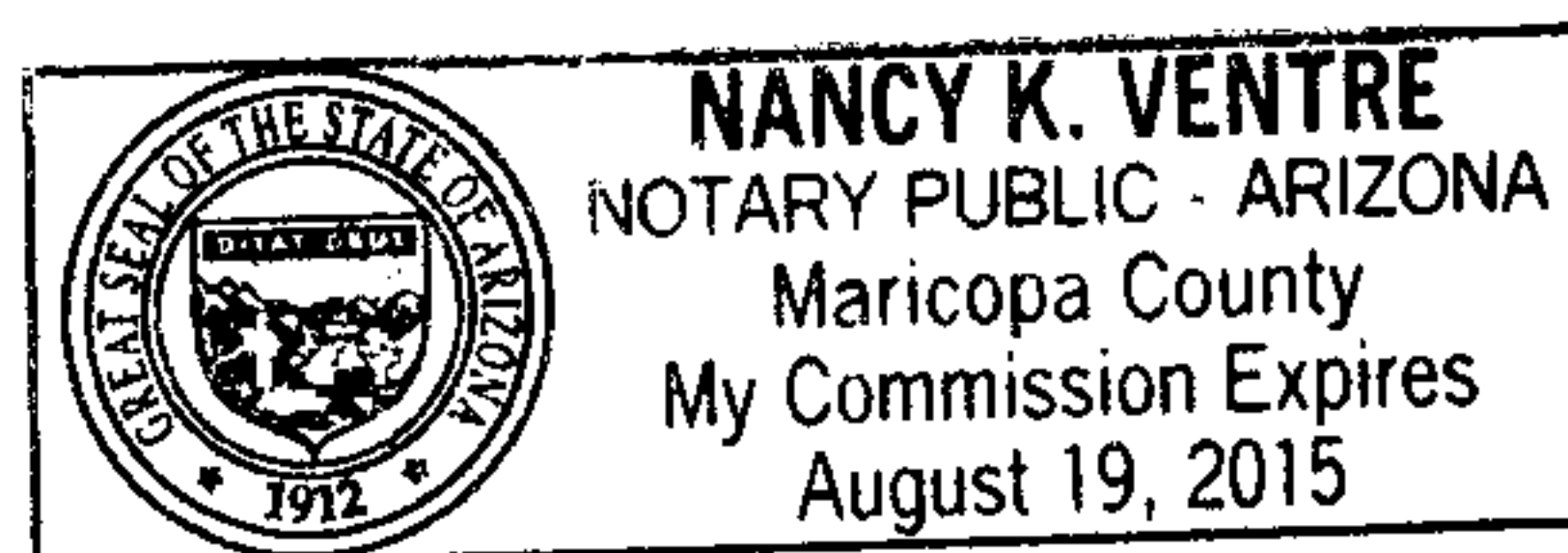
Nancy K. Ventre  
Notary Public (print name): **Nancy K. Ventre**  
My commission expires: **AUGUST 19 2015**

[SEAL]

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Gary B. Horton, whose name as Treasurer of UHIL 8, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 7th day of July, 2015.



Nancy K. Ventre  
Notary Public (print name): **Nancy K. Ventre**  
My commission expires: **AUGUST 19 2015**

[SEAL]


20150828000300900 29/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



“The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 1.1. The Mortgagor is the debtor, and the Lender is the secured party. The names of the debtor (Mortgagor) and the secured party (Lender) are given in the first paragraph of this Mortgage. This Mortgage is authorized by the debtor (Mortgagor) as a fixture filing. The mailing address of the Lender set out in the first paragraph of this Mortgage is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in the first paragraph of this Mortgage is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 1.5 and in Section 1.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. AREC 8, LLC is a record owner of the real estate.”

**Section 16.5 Date.** The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

**[NO FURTHER TEXT ON THIS PAGE]**

  
20150828000300900 30/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



## EXHIBIT A

### Legal Description

Part of Lot 4, Issis Subdivision as recorded in Map Book 16, Page 70, in the Office of the Judge of Probate, Shelby County, Alabama, being more particularly described as follows:

From the most Southerly corner of said Lot 4, Issis Subdivision, run in a Northwesterly direction along the Southwest line of said Lot 4 for a distance of 115.52 feet to an existing iron pin being the point of beginning; thence continue in a Northwesterly direction along said Southwest line for a distance of 86.48 feet to an existing iron pin; thence turn an angle to the right of 90 deg. 00 min. 03 sec. and run in a Northeasterly direction for a distance of 119.98 feet; thence an angle to the right of 90 deg. 01 min. 05 sec. and run in a Southeasterly direction for a distance of 29.99 feet to an existing iron pin; thence turn an angle to the left of 89 deg. 54 min. 07 sec. and run in a Northeasterly direction for a distance of 89.92 feet to an existing iron pin; thence turn an angle to the left of 89 deg. 50 min. 39 sec. and run in a Northwesterly direction for a distance of 255.11 feet to an existing iron pin being on the Southeast right of way line of U.S Highway No. 31; thence turn an angle to the right of 89 deg. 44 min. 16 sec. and run in a Northeasterly direction for a distance of 251.66 feet to an existing iron pin being on the Southerly right of way line of Little Oak Ridge Road; thence turn an angle to the right of 73 deg. 12 min. 01 sec. and run in an Easterly direction along the South right of way line of Little Oak Ridge Road for a distance of 453.47 feet to an existing iron pin; thence turn an angle to the right of 110 deg. 22 min. 46 sec. and run in a Southwesterly direction for a distance of 301.03 feet to an existing iron pin; thence turn an angle to the right of 24 deg. 34 min. 34 sec. and run in a Southwesterly direction for a distance of 176.57 feet to an existing iron pin; thence turn an angle to the left of 19 deg. 40 min. and run in a Southwesterly direction for a distance of 139.16 feet, more or less, to the point of beginning. Being situated in Shelby County, Alabama.




20150828000300900 31/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



**EXHIBIT B**  
**Operating Lease**

Lease by and between AREC 8, LLC, a Delaware limited liability company, as lessor, and UHIL 8, LLC, a Delaware limited liability company, as lessee, dated as of August 12, 2015

  
20150828000300900 32/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



STATE OF ALABAMA

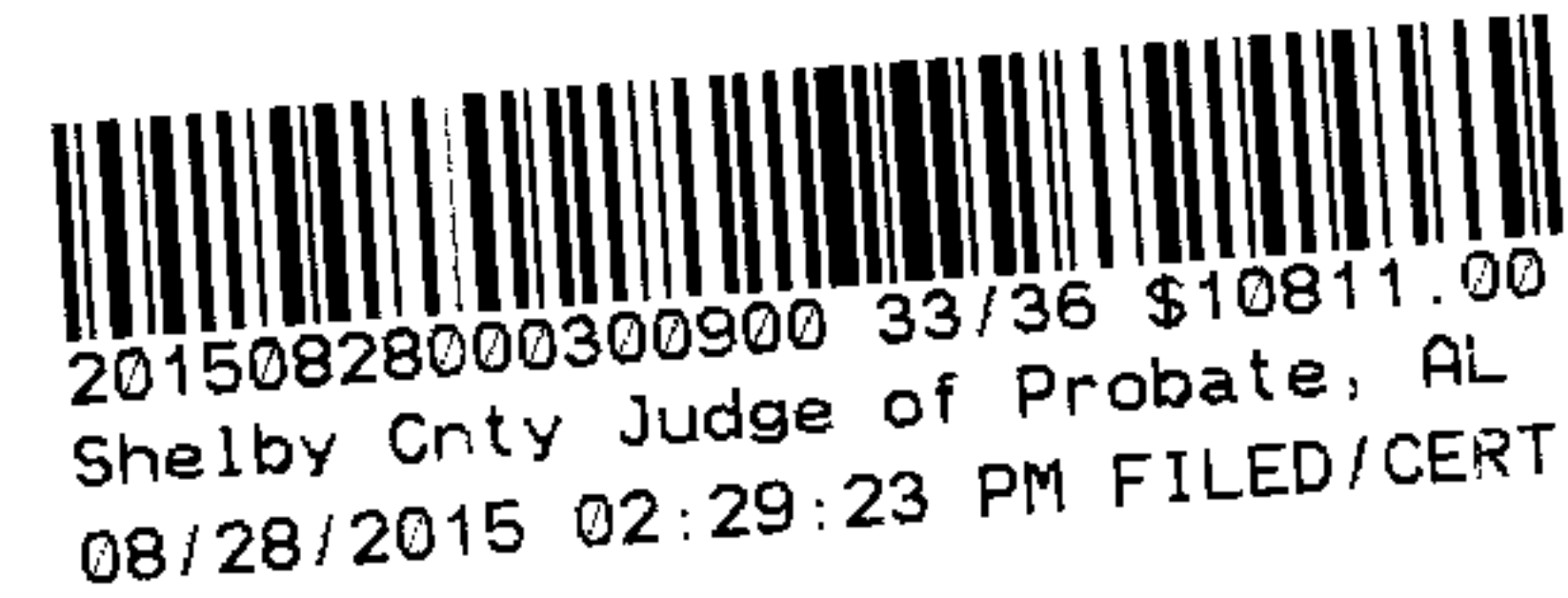
§

**MORTGAGE RECORDING TAX ORDER**

MONTGOMERY COUNTY

§

**BEFORE THE ALABAMA DEPARTMENT OF REVENUE:**



**Comes JPMorgan Chase Bank, National Association and Morgan Stanley Bank, N.A.**

(collectively, "Petitioner"), and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording tax due, pursuant to §40-22-2(8), Code of Alabama 1975, for the recording of those certain substantially identical mortgages titled Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (collectively, the "Mortgage"), to be executed by (i) AREC 8, LLC, a Delaware limited liability company ("AREC 8"), as fee owner borrower and UHIL 8, LLC, a Delaware limited liability company ("UHIL 8"), as lessee borrower, to be recorded in the office of the Judge of Probate for Shelby County, Alabama; (ii) AREC 9, LLC, a Delaware limited liability company ("AREC 9") as fee owner borrower, and UHIL 9, LLC, a Delaware limited liability company ("UHIL 9"), as lessee borrower, to be recorded in the office of the Judge of Probate for Jefferson County, Alabama; and (iii) AREC 10, LLC, a Delaware limited liability company ("AREC 10"), as fee owner borrower and UHIL 10, LLC, a Delaware limited liability company ("UHIL 10") as lessee borrower, to be recorded in the office of the Judge of Probate for Morgan County, Alabama (AREC 8, UHIL 8, AREC 9, UHIL 9, AREC 10, and UHIL 10, collectively, the "Mortgagor"; and Shelby County, Jefferson County and Morgan County, collectively, the "Alabama Counties").

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. That the maximum aggregate principal amount of indebtedness secured by the Mortgage is Two Hundred Seventy Million Dollars (\$270,000,000.00) (the "Obligation").
2. That the total value of all property given as security by the Mortgagor and affiliates of Mortgagor, both within and without the State of Alabama is \$424,700,000.00.



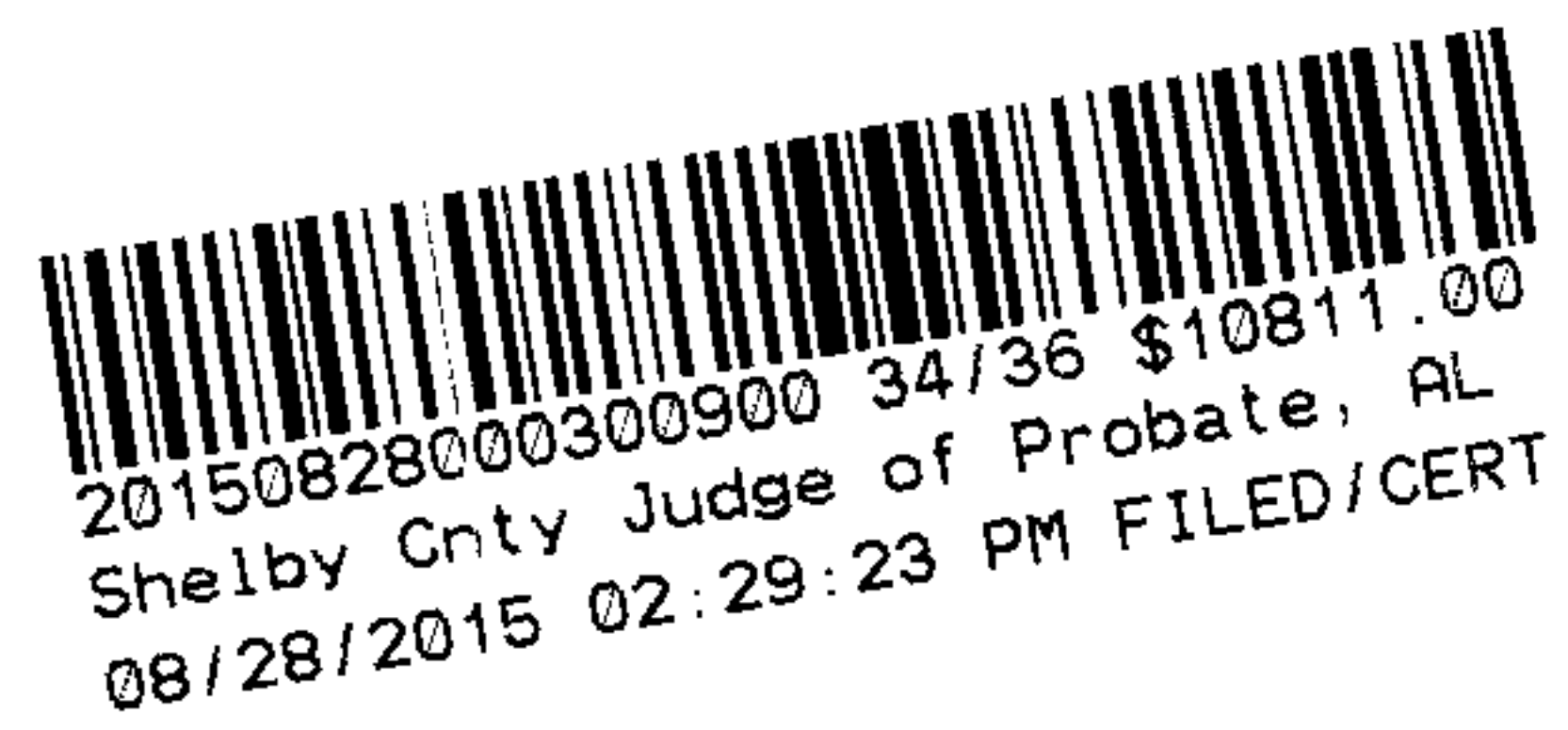
4. That the value of the property encumbered by the Mortgage and located within the Alabama Counties is \$11,200,000.00 allocated amongst the Alabama Counties as set forth on Exhibit A.

5. That the total amount of indebtedness allocable to Alabama, and upon which tax is due on the Obligation, is \$7,128,000.00.

6. That the mortgage recording tax, calculated at the rate of \$.15 for each \$100 of indebtedness, or fraction thereof, is in the amount of \$10,692.00.

**IT IS ORDERED, THEREFORE,** that the mortgage privilege tax in the amount of \$10,692.00, plus any recording fees which may be due, shall be paid to the Judge of Probate of the first Alabama County in which the Mortgage is filed for record, and thereafter allocated by the Judge of Probate of said county to the other Alabama Counties in which the properties and fixtures covered by the Mortgage are located, in accordance with the percentages set forth in Exhibit A, and no additional recording tax will be due and payable notwithstanding the fact that advances are made from time to time, and repaid and re-borrowed, under the Obligation, so long as the maximum principal amount of such Obligation secured by the Mortgage does not exceed \$270,000,000.00 at any one time.

[signature page to follow]





DONE this 14<sup>th</sup> day of AUGUST, 2015.


ALABAMA DEPARTMENT OF REVENUE

By: Michael E. Mason  
Assistant Commissioner of Revenue

ATTEST:

[Signature]  
As Secretary

[Signature]  
Legal Division: K. Elizabeth Jehle


  
20150828000300900 35/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT



## EXHIBIT A

### County by County Values

<u>County</u>	<u>Value</u>	<u>Percentage</u>
Morgan	\$2,450,000.00	21.87%
Jefferson	\$2,000,000.00	17.86%
Shelby	\$6,750,000.00	60.27%
<b>Totals</b>	<b>\$11,200,000.00</b>	<b>100.00%</b>

  
20150828000300900 36/36 \$10811.00  
Shelby Cnty Judge of Probate, AL  
08/28/2015 02:29:23 PM FILED/CERT