

Purchase Money \$ 6,610,000 <sup>00</sup>

PREPARED BY,  
RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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State of Alabama

County of Shelby

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

by

**MSC ALABASTER, LLC,**  
a Delaware limited liability company,  
as Mortgagor

and

**SUNTRUST BANK,**  
a Georgia banking corporation,  
as Lender

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

Mortgagor's Organizational Identification Number is DE 5814641

746485

**FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** made as of October 6, 2015 (together with any amendments or modifications hereto in effect from time to time, the "**Security Instrument**"), between **MSC ALABASTER, LLC**, a Delaware limited liability company, having an office at c/o Morningstar Properties, Attn: Wes Carter, CFO, 725 Park Center Drive, Matthews, NC 28105 ("**Mortgagor**") and **SUNTRUST BANK**, a Georgia banking corporation, having an address at SunTrust Bank, CRE Cary Middle Office, Attn: Middle Office Hub Team Lead, Mail Code NC-Cary-0175, 351 Wellesley Trade Lane, Suite 109, Cary, NC 27519 (together with its successors and assigns, "**Lender**").

**WITNESSETH:**

A. This Security Instrument is given to secure a loan (the "**Loan**") in the principal sum of SIX MILLION SIX HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$6,610,000.00) or so much thereof as may be advanced pursuant to that certain Term Loan Agreement dated as of the date hereof between Mortgagor and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note dated as of the date hereof made by Mortgagor to Lender (such promissory note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "**Note**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Mortgagor desires to secure the payment of the outstanding principal amount of the Loan together with all interest, including without limitation deferred, accrued or capitalized and unpaid thereon and all other sums due to Lender in respect of the Loan and the Loan Documents and including all borrowings and re-borrowings of Mortgagor to the extent provided in the Loan Documents (the "**Debt**") and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby.

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

**ARTICLE I  
GRANTING CLAUSES**

Section 1.1 Property Conveyed. Mortgagor grants, bargains, sells, conveys, aliens, remises, releases, assigns, mortgages, hypothecates, deposits, pledges, sets over, confirms and warrants to Lender, together with its successors and assigns forever, in fee simple forever, with right of entry and possession, all of Mortgagor's estate, right, title and interest now owned or hereafter acquired in and to each of the following (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, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements owned by Mortgagor now or hereafter erected or located on the Land (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, and remainder and remainders thereof, 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 "equipment," as such term is defined in Article 9 of the Uniform Commercial Code, as adopted and enacted by the State of South Carolina (the "**Uniform Commercial Code**"), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land and is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, electronic data-processing and other office equipment, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, 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), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases (as hereinafter defined) except to the extent that Mortgagor shall have any right or interest therein;

(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, 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 (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, interest rate hedging agreements, and, to the extent assignable: (i) licenses, (ii) certificates and (iii) 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), whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, superior in lien to the lien of this Security Instrument and all proceeds and products of any of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, 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**") (collectively, the "**Leases**") 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, royalties, issues, profits, income, revenues and other benefits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements 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 and performance of the Obligations, including the payment of the Debt, as provided herein;

(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 such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

(k) Tax Certiorari. Mortgagor’s interest in all refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction of same, in each case, irrespective of the time period to which they relate;

(l) 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;

(m) Agreements. To the extent assignable, 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 to receive and collect any sums payable to Mortgagor thereunder;

(n) 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;

(o) Accounts. All operating, security deposit, reserve, escrow and lockbox accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Uniform Commercial Code Property. All documents, instruments, chattel paper, intangibles, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash, or in liquidation or other claims or otherwise; and

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

AND without limiting any of the other provisions of this Security Instrument, 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 Security Instrument be deemed conclusively to be real estate and conveyed hereby.



Section 1.2      Assignment of Rents.

(a) Mortgagor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Lender all of Mortgagor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable exclusive license granted hereby to operate and manage the Property and to collect, as they become due, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property, including, without limitation, the payment of taxes and insurance, and the payment of interest, principal and other sums becoming due under the Debt, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Lender, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Lender. Nothing contained in this Section 1.2, and no collection by Lender of Rents, shall be construed as imposing on Lender any of the obligations of the lessor under the Leases. The rights of Lender contained in this Section 1.2 are in addition to and shall be cumulative with the rights of the Mortgagee set forth in any other instrument of similar import, given herewith by Mortgagor to Lender as security for the payment and performance of the Obligations, and to the extent of any inconsistency between the terms of such instrument and the terms of this Section 1.2, the terms of such instrument shall control.

(b) Mortgagor shall timely perform all of its obligations under the Leases. Mortgagor represents and warrants that: (i) Mortgagor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made.

Section 1.3      Security Agreement; Fixture Filing.

(a) This Security Instrument shall also be considered a security agreement under the Uniform Commercial Code. This Security Instrument 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 Security Instrument, Mortgagor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property 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"). Mortgagor hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the authorization or signature of Mortgagor. 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 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.

(b) As to those items of the Collateral which are or shall become affixed to the Land and/or the Improvements, and all products and proceeds thereof, this Security Instrument is and shall be effective as a





Financing Statement filed as a fixture filing as and from the date of its recordation in the real estate records of the County in which the Land is situated. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are set forth below. The name of the record owner of the Land and Improvements is the Mortgagor. This Security Instrument is to be filed for recording with the recorder's office of any county or counties where the Land (including such Fixtures) is located. The definition of the "Property" contained in Section 1.1 of this Security Instrument describes the types and items of Personal Property affixed or to be affixed to the Land and the Improvements. For this purpose, the following information is set forth:

Name and Address of Debtor:

MSC Alabaster, LLC  
c/o Morningstar Properties  
Attn: Wes Carter, CFO  
725 Park Center Drive  
Matthews, NC 28105

Name and Address of Secured Party:

SunTrust Bank  
CRE Cary Middle Office  
Attn: Middle Office Hub Team Lead  
Mail Code NC-Cary-0175  
351 Wellesley Trade Lane, Suite 109  
Cary, NC 27519

This document covers any portion of the Property that now is or later may become a fixture attached to the Land.


Debtor is the record owner of the Property.

### 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 ALWAYS**, these presents are upon the express condition, that if Mortgagor has paid the Debt in full and performed all of its obligations pursuant to this Security Instrument and the other Loan Documents, and no further advances are to be made under the Loan Agreement, Lender will provide a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Mortgagor. Mortgagor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 1.2 shall automatically terminate and become null and void. It is intended by the parties hereto that this Security Instrument shall operate as a mortgage under the laws of the State of Alabama.

### ARTICLE II DEBT AND OBLIGATIONS SECURED



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Section 2.1 Obligations. This Security Instrument and the grants, conveyances, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

Section 2.2 Other Obligations. This Security Instrument and the grants, conveyances, assignments and transfers made in Article I 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 payment and performance of each other obligation of Mortgagor contained in the Loan Agreement and any other Loan Document;
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document; and
- (d) the payment and performance of all Hedging Obligations owed by Mortgagor to Lender or any affiliate of Lender and all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing.

Section 2.3 Debt and Other Obligations. Mortgagor’s obligations for the payment of the Debt and the payment and performance of the Other Obligations may sometimes be referred to collectively herein as the “**Obligations**.”

Section 2.4 Future Advances. This Security Instrument shall secure any additional loans as well as any and all present or future advances and readvances made by Lender to or for the benefit of Mortgagor or the Property whether such advances are obligatory or are made at the option of Lender or otherwise, and all renewals or extensions thereof, all of which shall be secured hereunder to the same extent as though such future advances were made at the execution of the Note and this Security Instrument, including, without limitation: (a) principal, interest, late charges, fees and other amounts which Lender may advance pursuant to the Loan Documents; (b) all advances by Lender to or for the benefit of Mortgagor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Lender for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, private assessments or maintenance costs, and costs incurred by Lender for the enforcement and protection of the Property or the lien and security title of this Security Instrument; and (d) all legal fees, costs and other expenses incurred by Lender by reason of any default or otherwise in connection with the Obligations. The total amount of indebtedness secured by this Security Instrument may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon and any disbursements made under this Security Instrument for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest, if any. Mortgagor agrees that if, at any time during the term of this Security Instrument or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Mortgagor fails to perform or observe any covenant or obligation under this Security Instrument including, without limitation, payment of any of the foregoing, Lender may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Lender shall be added to the amount secured by this Security Instrument and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with Default Interest, such interest to be calculated from the date of such advance to the date of repayment thereof. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Security Instrument to a sum less than the maximum principal amount set forth herein.



### ARTICLE III MORTGAGOR COVENANTS

Mortgagor covenants and agrees that throughout the term of the Loan:

Section 3.1 Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

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 Security Instrument 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 (a) cause the Property to be maintained in a good and safe condition and repair; (b) make or cause to be made, as and when necessary, all repairs, replacements and additions, whether or not insurance proceeds are available therefor; and (c) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property (except for normal replacement of the Fixtures, the Equipment or the Personal Property and refurbishment of the Improvements) without the consent of Lender, except as expressly permitted under the terms of the Loan Agreement and the other Loan Documents. Subject to the terms of the Loan Agreement, Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Security Instrument. Lender, and any persons authorized by Lender, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the reasonable discretion of Lender, the necessity for any repair, alteration, replacement, clean-up or maintenance, Mortgagor shall, at the discretion of Lender, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Lender in an amount determined by Lender for the purpose of effecting such work.

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 insurance 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 Security Instrument. 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. Subject to Mortgagor's right to contest such amounts in accordance with the terms of the Loan Agreement, Mortgagor will promptly pay 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 created hereby and by the other Loan Documents, 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 created hereby and by the other Loan Documents, except for the Permitted Encumbrances.

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      Seisin and Warranty. Mortgagor hereby warrants that (a) Mortgagor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters set forth in that certain lender's policy of title insurance issued by First American Title Insurance Company in connection with the recordation of this Security Instrument (the "**Permitted Encumbrances**"); (b) Mortgagor has the right, full power and lawful authority to grant, convey and assign the same to Lender in the manner and form set forth herein; and (c) this Security Instrument is a valid and enforceable first lien on and security title to the Property. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against all lawful claims whatsoever, subject to the Permitted Encumbrances; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Lender to protect fully the lien of this Security Instrument.

Section 3.9      Taxes and Other Charges. Mortgagor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property ("**Taxes**") when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Mortgagor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such Taxes, in accordance with the terms of the Loan Agreement.

#### **ARTICLE IV OBLIGATIONS AND RELIANCES**


Section 4.1      Relationship of Mortgagor and Lender. The relationship as 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 Security Instrument or 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, as applicable, 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 Agent Obligations.

(a)      Notwithstanding anything herein to the contrary, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b)      By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, 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 the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

  
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Section 4.4      Reliance. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in 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 Security Instrument in the absence of the warranties and representations as set forth in the Loan Agreement.

## ARTICLE V FURTHER ASSURANCES

Section 5.1      Recording of Security Instrument, Etc. Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents conveying, creating or evidencing the liens or security interest 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 liens 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 Security Instrument, 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 any 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 Security Instrument, any mortgage supplemental hereto, any Security Instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any 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, 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 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 Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Law. Mortgagor hereby irrevocably authorizes Lender, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Lender may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Mortgagor" or "all personal property of Mortgagor" or words of similar effect (as permitted under Section 9-504 of Revised Article 9 (Ala. Code § 7-9A-504)), in order to perfect the security interests granted by Mortgagor under this Security Instrument. 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 Applicable Law is enacted or adopted or amended after the date of this Security Instrument 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 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 Security Instrument or the Debt. If such claim, credit or deduction shall be required by Applicable 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.

## ARTICLE VI DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender's Reliance. Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and its general partners, managers, members, principals and 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 the repayment of the Debt and the performance of the Obligations. Mortgagor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Transfer or Encumbrance. Except as expressly permitted in the Loan Agreement, Mortgagor shall not permit or suffer any Transfer of the Property, without the prior written consent of Lender. Except as permitted under the Loan Agreement, without the prior written consent of Lender, Mortgagor will not permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant or other matter of any nature that would affect title to the Property, other than Leases (to the extent not prohibited by the terms of the Loan Agreement) and the Permitted Encumbrances. Mortgagor shall give Lender written notice of any default under any Lien. As used herein, the term "Transfer" means any direct or indirect sale, transfer, conveyance, mortgage, pledge or assignment of (i) the Property or any part thereof, or any direct legal or beneficial interest therein; or (ii) any ownership interest in Mortgagor, or any direct or indirect owner of Mortgagor, direct or indirect, legal or equitable.

## ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Event of Default. Each of the following shall constitute a default (each, an "**Event of Default**") hereunder:

- (a) An Event of Default (as defined therein) occurs under the Loan Agreement; or
- (b) Mortgagor fails to promptly perform or comply with any of the obligations set forth in this Security Instrument, and such failure continues beyond that date which is thirty (30) days after the date on which Lender notifies Mortgagor of such failure.

Section 7.2 Remedies. If an Event of Default shall have occurred, Lender may take any of the following actions:

(a) Acceleration. Lender may declare the entire amount of the Obligations immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Lender may charge and collect Default Interest from the date of default on the unpaid balance of the Obligations, at the rate set forth in the Loan Agreement.

(b) Lender's Right to Enter and Take Possession, Operate and Apply Income.

(i) Lender may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Lender and, to the extent permitted by Applicable Law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.



(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Lender's demand, Lender may obtain a judgment or order conferring on Lender the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Lender, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(iii) Lender may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Personal Property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Lender from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Lender may deem necessary or proper to implement and perform any and all of the foregoing.

(iv) The Lender may, with or without taking possession of the Property as hereinabove provided, collect and receive all the Rents therefrom, including those past due as well as those accruing thereafter, and shall apply the monies so received first, to the payment of all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Lender and its agents in connection with the collection of same, whether or not in possession of the Property, and second, in such order as Lender may elect, to the payment of the Obligations.


(c) Proceedings To Recover Sums Due.

(i) If any installment or part of any of the Obligations shall fail to be paid when due, Lender shall be entitled to sue for and to recover judgment against the Mortgagor for the amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Lender in connection with such proceeding, together with interest thereon at the default rate applicable to the Loan from the date incurred by Lender. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Applicable Law. All such costs and expenses shall be secured by this Security Instrument and shall be due and payable by Mortgagor immediately.

(ii) If Mortgagor shall fail to pay upon the Lender's demand, after acceleration as provided herein, all of the unpaid Obligations, together with all accrued interest thereon, Lender shall be entitled to sue for and to recover judgment against the Mortgagor for the entire amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Lender in connection with such proceeding, together with interest thereon at the default rate applicable to the Loan from the date incurred by Lender. Any such judgment against the Mortgagor shall bear interest at the lesser of the Default Rate or the maximum rate permitted by Applicable Law. All such costs and expenses shall be secured by this Security Instrument and shall be payable by Mortgagor immediately. Lender's right under this subsection may be exercised by Lender either before, after or during the pendency of any proceedings for the enforcement of this Security Instrument, including appellate proceedings.

(iii) No recovery of any judgment as provided in subsections (i) and (ii) above and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Security Instrument upon the Property or any part thereof, or any lien, rights, powers, or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Foreclosure.

  
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(i) Lender may institute proceedings for the partial or complete foreclosure of this Security Instrument and Lender may, pursuant to any final judgment of foreclosure, sell the Property as an entirety or in separate lots, units, or parcels.

(ii) In case of a foreclosure sale of all or any part of the Property, the proceeds of sale shall be applied in accordance with Section 7.2(n) hereof, and the Lender shall be entitled to seek a deficiency judgment against the Mortgagor to enforce payment of any and all Obligations then remaining due and unpaid, together with interest thereon, and to recover a judgment against the Mortgagor therefor, which judgment shall bear interest at the maximum rate permitted by Applicable Law.

(iii) The Lender is authorized to foreclose this Security Instrument subject to the rights of any tenants of the Property, or Lender may elect which tenants Lender desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor to be, a defense to any proceedings instituted by the Lender to collect the unpaid Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

(e) Receiver. Lender may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of Alabama (the "State"). The right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate applicable to the Loan, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Security Instrument to the Lender, and the Lender shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Lender may elect.

(f) Excess Monies. Lender may apply on account of the Obligations any unexpended monies still retained by Lender that were paid by Mortgagor to Lender: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Mortgagor.

(g) Remedies as to Personal Property. Lender may exercise any or all of its rights and remedies under the Uniform Commercial Code-Secured Transactions as adopted by the State as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Lender, all of which shall be cumulative. Lender is hereby authorized and empowered to enter the Property or other place where the Personal Property may be located without legal process, and to take possession of the Personal Property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State. Upon demand by Lender, Mortgagor shall make the Personal Property available to Lender at a place reasonably convenient to Lender. Lender may sell at one or more public or private sales and for such price as Lender may deem commercially reasonable, any and all of the Personal Property secured by this Security Instrument, and any other security or property held by Lender and Lender may be the purchaser of any or all of the Personal Property.

(h) Other. Lender may institute and maintain any suits and proceedings as the Lender may reasonably deem advisable (i) to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Security Instrument, (ii) to preserve or protect its interest in the Property, and (iii) to restrain the enforcement of or compliance with any Applicable Law that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such Applicable Law would impair the security hereunder or be prejudicial to the Lender's interest.

(i) Remedies Cumulative and Concurrent. No right, power or remedy of Lender as provided in the Note, this Security Instrument, the Guaranty, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Lender, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Lender now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, any Guarantor, or any



endorser, co-maker, surety or guarantor of the Obligations, or the Property or any part thereof, or any one or more of them, at the sole discretion of Lender. The failure of Lender to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

(j) Waiver, Delay or Omission. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Lender to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

(k) Credit of Lender. To the maximum extent permitted by the laws of the State, upon any sale made under or by virtue of this Article VII, Lender may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Lender may elect.

(l) Sale. Any sale or sales made under or by virtue of this Article VII shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except Tenants pursuant to Leases approved by Lender or which lender is required to recognize under Applicable Laws, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Lender or to others.

(m) Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any Guarantor, any endorser, co-maker, surety, or guarantor of the Obligations, or any of their respective properties, the Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

(n) Application of Proceeds. The proceeds of any sale of all or any portion of the Property shall be applied by Lender first, to the payment of receiver's fees and expenses, if any, and to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender, together with interest thereon at the default rate applicable to the Loan from the date so incurred, in connection with any entry, action or proceeding under this Article VII and, second, in such order as Lender may elect, to the payment of the Obligations. Mortgagor shall be and remain liable to Lender for any difference between the net proceeds of sale and the amount of the Obligations until all of the Obligations have been paid in full.

(o) Discontinuance of Proceedings. If Lender shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Lender providing for the discontinuance or abandonment of such proceedings, Mortgagor and Lender shall be restored to their former positions and the rights, remedies and powers of Lender shall continue as if no such proceedings had been instituted.

(p) Other Remedies. Lender shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by Applicable Laws.

(q) Power of Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as provided by law in the case of past due mortgages pursuant to power of sale granted hereby. Lender may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, 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, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect.



The provisions of clause (g) shall apply with respect to Lender's enforcement of rights or interests in Personal Property which constitutes Property hereunder.

**Section 7.3      Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, remedy such Event of Default 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 Security Instrument 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 in appearing in, defending, or bringing any such action or proceeding shall bear Default Interest, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with Default Interest thereon shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

**Section 7.4      Other Rights, Etc.** 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 Security Instrument. Lender may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, Guarantor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Lender: (a) renew, extend or modify the terms of the Note, this Security Instrument, the Guaranty and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Lender may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Security Instrument upon the Property which is not released or substituted, or the validity and priority of any security interest of the Lender in such other collateral which is not released or substituted; (f) subordinate the lien of this Security Instrument or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Lender will join in such plat or replat of the Land so long as such plat or replat is acceptable to Lender); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Lender may see fit.

It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance 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.

Lender may resort for the payment and performance of the Obligations (including, but not limited to, 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 the Other Obligations or any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument 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.



## ARTICLE VIII WAIVERS

Section 8.1 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 Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 8.2 Marshalling and Other Matters. To the extent permitted by Applicable Law, Mortgagor hereby waives the benefit of all appraisement, 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, for itself and all persons who may claim by, through or under Mortgagor, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "Moratorium Laws", and all rights of reinstatement and redemption of Mortgagor and of all other persons claiming by, through or under Mortgagor are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the State in which the Property is located.

Section 8.3 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 Security Instrument or the Loan Documents specifically and expressly provide 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. Mortgagor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

Section 8.4 Waiver of Statute of Limitations. To the fullest extent permitted by Applicable Law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Debt or performance of its Other Obligations.

Section 8.5 Additional Waivers. MORTGAGOR EXPRESSLY WAIVES THE FOLLOWING: ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH MORTGAGOR OR MORTGAGOR'S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATE OF ALABAMA OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE DEBT, OR ANY PART THEREOF. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY MORTGAGOR, AFTER MORTGAGOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF MORTGAGOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. MORTGAGOR'S EXECUTION OF THIS SECURITY INSTRUMENT SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

## ARTICLE IX MISCELLANEOUS

Section 9.1 Notices. All notices and communications under this Security Instrument shall be in writing and shall be given in accordance with the terms of Section 8.1 of the Loan Agreement.

Section 9.2 Remedies Cumulative. The rights and remedies of Lender as provided in this Security Instrument or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Lender at law or in equity. The failure, at any one or more times, of Lender to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Security Instrument or the rights of Lender.



Section 9.3      No Implied Waiver. Lender shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

Section 9.4      No Warranty by Lender. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Lender pursuant to this Security Instrument or any of the other Loan Documents, Lender shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Lender.

Section 9.5      Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Security Instrument shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

Section 9.6      Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Security Instrument shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Security Instrument cannot be assigned by Mortgagor without the prior written consent of Lender, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Lender.

Section 9.7      Modifications. This Security Instrument may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. No course of dealing or conduct by or among Lender and Mortgagor shall be effective to amend, modify or change any provisions of this Security Instrument or the other Loan Documents.

Section 9.8      Commercial Loan. Mortgagor represents and warrants that the loans or other financial accommodations included as Debt secured by this Security Instrument were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

Section 9.9      Governing Law. This Security Instrument shall be governed by and construed in accordance with the substantive laws of the State of Alabama without reference to conflict of laws principles.

Section 9.10     Joint and Several Liability. If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

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IN WITNESS WHEREOF, this Security Instrument has been duly executed UNDER SEAL by Mortgagor as of the day and year first above written.

**MORTGAGOR**

**MSC ALABASTER, LLC,**  
a Delaware limited liability company

By: [Signature] [SEAL]  
Name: Wesley G. Carter  
Title: CFO

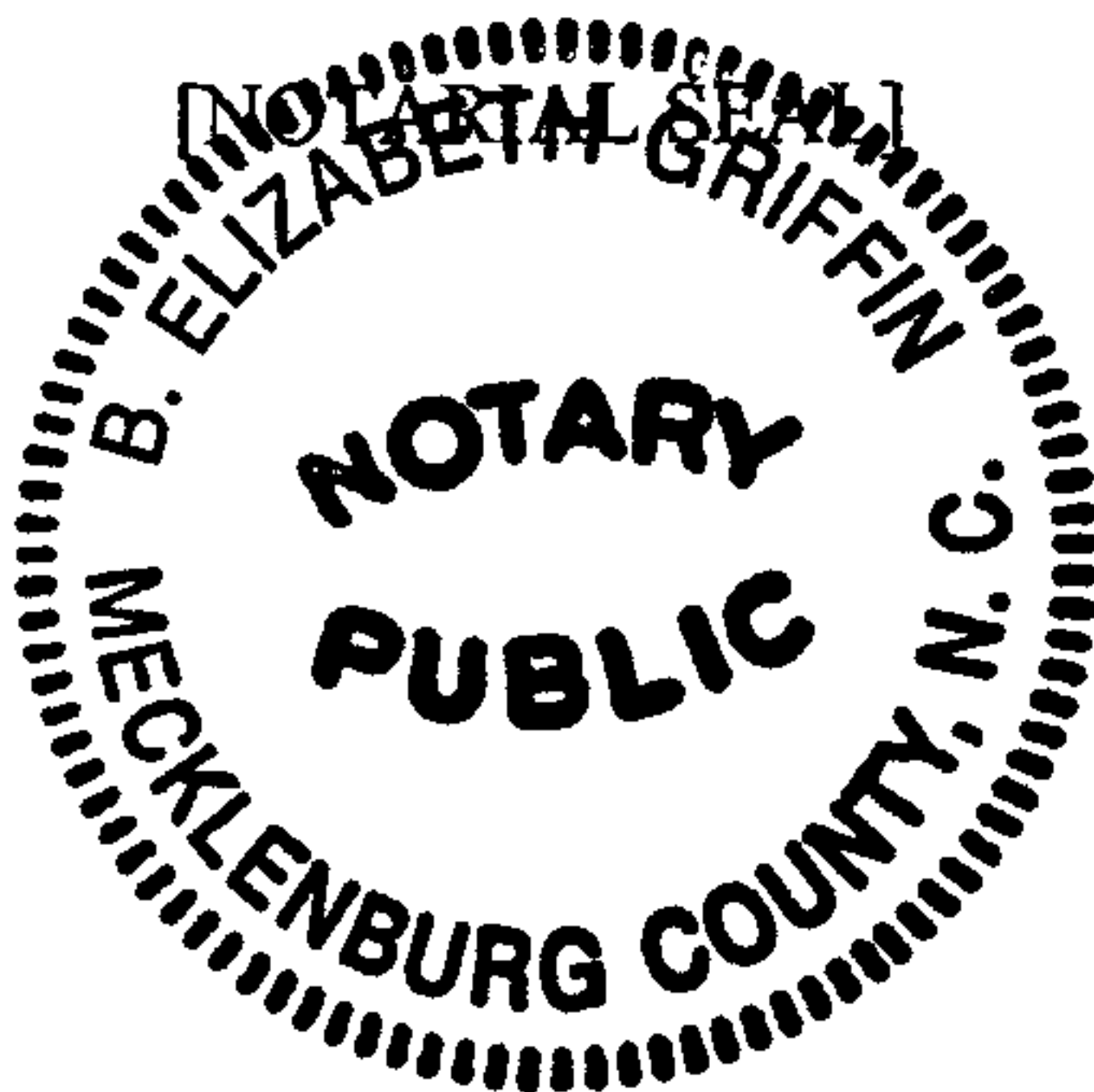
STATE OF North Carolina )  
COUNTY OF Mecklenburg )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Wesley G. Carter, whose name as CFO of MSC ALABASTER, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such CFO and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 1 day of October, 2015.

[Signature]  
Notary Public

My commission expires: 9/25/16




  
20151008000352890 18/19 \$9983.00  
Shelby Cnty Judge of Probate, AL  
10/08/2015 09:37:29 AM FILED/CERT




Exhibit A

Legal Description of Land

BEING ALL of the real property more particularly described below, lying and being in the County of Shelby, State of Alabama.

Lot 1 of that certain Resurvey and Subdivision of Lots 2, 3 & 4 Weatherly Commercial Center's Addition to Alabaster as recorded in Map Book 38, Page 8, prepared by Gonzalez-Strength & Associates, Inc. and recorded on April 7, 2009 at Map Book 41, Page 12 in the Office of the Judge of Probate for Shelby County, Alabama.

The foregoing described property being the same property shown and depicted on that certain ALTA/ACSM Land Title Survey for CSS Alabaster Project, prepared by Taylor, Rainwater & Associates, Inc., B&C Project No. 201502599, 001, Coolbox Self Storage, 50 Gilbert Dr., Alabaster, AL 35007, dated August 14, 2015, as revised.

  
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