


STATE OF ALABAMA)
)
COUNTY OF SHELBY)

Prepared By/Return To:

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MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT
AND FIXTURE FILING

by

WAYPOINT STONECREST OWNER, LLC,
a Delaware limited liability company
as Mortgagor,

to and in favor of

COMMUNITY & SOUTHERN BANK,
a Georgia state chartered bank,
as Mortgagee

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MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT
AND FIXTURE FILING

This Mortgage, Assignment, Security Agreement and Fixture Filing is made as of the 19 day of October, 2015, by WAYPOINT STONECREST OWNER, LLC, a Delaware limited liability company as Mortgagor (herein referred to as "Grantor"), whose address is 3475 Piedmont Road, N.E., Suite 1640, Atlanta, Georgia 30305, to and for the benefit of COMMUNITY & SOUTHERN BANK, a Georgia state chartered bank as Mortgagee (together with its successors and assigns, hereinafter referred to as "Grantee"), whose address is 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339, Attention: Commercial Real Estate/Jason Brown.

Recitals

Grantor has requested that Grantee make the Loan (as hereinafter defined) to Grantor. As a condition precedent to making the Loan, Grantee has required that Grantor execute and deliver this Mortgage, Assignment, Security Agreement and Fixture Filing to Grantee.

Grants and Agreements

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Grantor, and in order to induce Grantee to make the Loan to Grantor, Grantor agrees as follows:


Article I
Definitions.

As used in this Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Grantor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.


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"Assignment" means the Assignment of Leases and Rents of even date herewith from Grantor for the benefit of Grantee assigning the Leases and Rents as additional security for the Loan.

"Claim" means any liability, suit, action, claim, demand, loss, reasonable out-of-pocket expense, penalty, fine, judgment or other reasonable out-of-pocket cost of any kind or nature whatsoever, including reasonable out-of-pocket fees, costs and expenses of attorneys, consultants, contractors and experts.

"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"Condemnation Awards" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"Construction of the Renovations" means the performance of work in accordance with the Scope of Work (as such term is defined in the Loan Agreement).

"Contract of Sale" means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

"Default" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Mortgage.

"Design and Construction Documents" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"Encumbrance" means any Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any condition, covenant or restriction imposed in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

"Environmental Agreement" means the Environmental Indemnification and Release Agreement of even date herewith by and between Grantor and Grantee pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is one of the Loan Documents, but this Mortgage does not secure the obligations of Grantor under the Environmental Agreement.

“Event of Default” means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI.

“Expenses” means all reasonable out-of-pocket fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Grantee in making, funding, or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including reasonable attorneys’ fees actually incurred, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property, all as such Expenses are incurred in accordance with the Loan Documents.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“Guarantor” means Waypoint Residential, LLC, a Delaware limited liability company, its successors and assigns.

“Guaranty” means the Guaranty Agreement of even date herewith executed by Guarantor for the benefit of Grantee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Improvements” means all on-site and off-site improvements to the 315-unit apartment community presently on the Land, together with all fixtures, tenant improvements, amenities and appurtenances now or later to be located on the Land and/or in such improvements.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Land” means the real property described in Exhibit “A” attached hereto and made a part hereof.

“Laws” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Leases” means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

“Letter of Credit” means any letter of credit issued by Grantee for the account of Grantor or its nominee in connection with the Construction of the Renovations, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

“Lien” means any mortgage, this Mortgage, pledge, security title, security interest, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means the loan from Grantee to Grantor, the repayment obligations in connection with which are evidenced by the Note.

“Loan Agreement” means the Construction Loan Agreement of even date herewith between Grantor and Grantee which sets forth, among other things, the terms and conditions upon which certain of the proceeds of the Loan will be disbursed, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Loan Documents” means this Mortgage, the Note, the Guaranty, the Environmental Agreement, the Loan Agreement, any Swap Contract, any application or reimbursement agreement executed in connection with any Letter of Credit, and any and all other documents which Grantor, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Mortgage” means this Mortgage, Assignment, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Note” means the Promissory Note of even date herewith in the original principal amount of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND FOUR HUNDRED AND NO/100 Dollars (\$22,250,400.00), having a stated maturity date of **October 1, 2019** made by Grantor to the order of Grantee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 8.8 of this Mortgage.

“Obligations” means all present and future debts, obligations and liabilities of Grantor to Grantee arising pursuant to, and/or on account of, the provisions of this Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to pay and perform all obligations of Grantor under any Swap Contract; (d) to perform, observe and comply with all of the other terms, covenants and conditions which Grantor is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; excluding, however, the debts, obligations and liabilities of Grantor under the Environmental Agreement. This Mortgage does not secure the Environmental Agreement or any other Loan Document that is expressly stated to be unsecured.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to Grantee and insuring Grantee’s interest in the Property which are acceptable to Grantor and Grantee as of the date hereof, (b) the Liens, security title and interests of this Mortgage, and

(c) any Encumbrance that is expressly permitted under the terms of the Loan Documents, and (d) any other Encumbrance that Grantee shall expressly approve in writing in its sole and absolute discretion (subject to the terms of the Loan Documents).

"Person" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Grantor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Grantee shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Grantor's rights and interests under all Swap Contracts, including all rights to the payment of money from Grantee under any Swap Contract and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; (f) all insurance policies held by Grantor with respect to the Property or Grantor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Grantor with Grantee related to the Property, including any such deposit account from which Grantor may from time to time authorize Grantee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Grantor's right, title and interest in and to all Design and Construction Contracts.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Grantor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Grantor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Grantor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of units or other public facilities within the Real Property.

"State" means the state in which the Land is located.

"Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Grantor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

ARTICLE II

Granting Clauses: Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Grantor (a) hereby irrevocably and unconditionally mortgages, grants, bargains, sells, conveys, transfers and assigns to Grantee with power of sale and right of entry and possession, all estate, right, title and interest that Grantor now has or may later acquire in and to the Real Property; (b) grants to Grantee a security interest in the Personalty; (c) assigns to Grantee, and grants to Grantee a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) assigns to Grantee, and grants to Grantee a security interest in, all of Grantor's right, title and interest in, but not any of Grantor's obligations or liabilities under, all Design and Construction Documents; TO HAVE AND TO HOLD to the use, benefit and behoof of Grantee, subject to the terms, provisions and conditions herein set forth. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of

the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note, the Loan Agreement or any Swap Contract which provide that the interest rate on one or more of the Obligations may vary from time to time. The definition of "Obligations" includes future advances.

Section 2.2 Absolute Assignment of Leases and Rents.


In consideration of the making of the Loan by Grantee to Grantor, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor absolutely and unconditionally assigns the Leases and Rents to Grantee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Grantor to Grantee of all of Grantor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist beyond any applicable grace and cure period, however, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, all Rents. Grantor agrees to collect and hold all Rents in trust for Grantee and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement and Fixture Filing.

(a) This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Grantor to Grantee under the Uniform Commercial Code of the State. In addition to all of its other rights under this Mortgage and otherwise, Grantee shall have all of the rights of a secured party under the Uniform Commercial Code of 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. Grantor hereby irrevocably authorizes Grantee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Grantee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. The foregoing authorization includes Grantor's irrevocable authorization for Grantee at any time and from time to time to file any initial financing statements and amendments thereto that indicate the Personalty (a) as "all assets" of Grantor or words of similar effect, provided that any particular asset comprised in the Personalty falls within the scope of the Uniform Commercial Code of the State or the jurisdiction where the initial financing statement or amendment is filed, or (b) as being of an equal or lesser scope or with greater detail.

(b) This Mortgage shall constitute a financing statement filed as a fixture filing in accordance with the laws of the State. This Mortgage is to be filed in the real estate records of the office of the Probate Judge of the county in which the Land is located. For this purpose, the following information is provided:

(i) The name of the Debtor is Waypoint Stonecrest Owner, LLC, and its mailing address is 3475 Piedmont Road, N.E., Suite 1640, Atlanta, Georgia 30305;


20151028000375510 8/25 \$33461.60
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10/28/2015 08:43:31 AM FILED/CERT

(ii) Debtor is a limited liability company organized under the laws of the State of Delaware and has been using or operating under said name and identity or structure without change since September 1, 2015;

(iii) The name of the Secured Party is Community & Southern Bank, and its mailing address is 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339;

(iv) This Mortgage covers goods which are or are to become fixtures;

(v) The types or items of collateral are as described in this Article II hereof; and

(vi) Debtor is the record owner of a fee interest in the Land, as described in Exhibit A attached hereto.

Section 2.4 Satisfaction and Cancellation of Mortgage and Termination of Assignment and Financing Statements.

If and when Grantor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, Grantee will provide a release of this Mortgage and termination statements for filed financing statements and any other applicable release documents, if any, to Grantor. Grantor 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 release and the filing of such termination statements, the absolute assignment set forth in Section 2.2 shall automatically terminate and become null and void.

Article III
Representations and Warranties.

Grantor makes the following representations and warranties to Grantee:

Section 3.1 Title to Real Property.

Grantor (a) owns fee simple title to the Real Property subject only to the Permitted Exceptions, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Grantor has the right and authority to convey the Real Property and does hereby convey the Real Property in fee simple forever with general warranty. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 Title to Other Property.

Grantor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property is not subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property.

To Grantor's knowledge, no buildings or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and, to Grantor's knowledge, none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements.

To Grantor's knowledge, the existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Section 3.6 Leases and Tenants.

To Grantor's knowledge, the Leases now in effect are valid and in full force and effect, and, to Grantor's knowledge, Grantor is not in default under the terms of any Lease. Except as expressly permitted in the Loan Agreement, Grantor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Grantor has title to and the right to assign the Leases and Rents to Grantee, and no other assignment of the Leases or Rents has been granted to any other party. To the best of Grantor's knowledge and belief, no tenant or tenants occupying, individually or in the aggregate, more than five percent (5%) of the net rentable area of the Improvements are in default under their Lease(s) or are the subject of any bankruptcy, insolvency or similar proceeding.

Article IV
Affirmative Covenants.

Section 4.1 Obligations.

Grantor agrees to promptly pay and perform all of the Obligations promptly when due.

Section 4.2 Property Assessments; Documentary Taxes.

Grantor (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to Grantee, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Grantor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Mortgage or any of the other Loan Documents.

Section 4.3 Permitted Contests.

Grantor shall not be required to pay any of the Property Assessments, nor comply with any Law, so long as Grantor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of

the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Grantee is not subjected to any Claim as a result of such contest, and (d) Grantor provides assurances reasonably satisfactory to Grantee (including the establishment of an appropriate reserve account with Grantee) of its ability to pay such Property Assessments or comply with such Law in the event Grantor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Grantor shall indemnify and save Grantee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Grantor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 Compliance with Laws.

Grantor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Section 4.5 Maintenance and Repair of the Property.

Grantor, at Grantor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair (ordinary wear and tear excepted), and (b) make all necessary repairs to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they are intended, erected, or installed (ordinary wear and tear excepted).

Section 4.6 Additions to Security.


All right, title and interest of Grantor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by Grantor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the granting clauses hereof. Grantor agrees, however, to execute and deliver to Grantee such further documents as may be reasonably required to secure Grantor's interest therein.

Section 4.7 Subrogation.

To the extent permitted by Law, Grantee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Grantee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Grantee to pay or discharge any Lien.

Section 4.8 Leases.

(a) Except as expressly permitted in the Loan Agreement, Grantor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Grantee, such consent not to be unreasonably withheld, conditioned or delayed.


20151028000375510 11/25 \$33461.60
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10/28/2015 08:43:31 AM FILED/CERT

(b) Grantee shall not be obligated to perform or discharge any obligation of Grantor under any Lease. The assignment of Leases provided for in this Mortgage in no manner places on Grantee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

(c) No approval of any Lease by Grantee shall be for any purpose other than to protect Grantee's security and to preserve Grantee's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default unless Grantee agrees to such waiver in writing.

Article V Negative Covenants.

Section 5.1 Encumbrances.


Except as permitted under the Loan Documents, Grantor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Grantor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Grantee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Grantee in its sole and absolute discretion, Grantor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Grantor does so diligently and without prejudice to Grantee or material delay in completing Construction of the Renovations. Grantor shall give Grantee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

Section 5.2 Transfer of the Property.

Grantor, unless all amounts due under the Loan are paid in full prior to or upon such Transfer or Grantee otherwise consents thereto in writing; will not Transfer all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Mortgage or other Transfers permitted under the Loan Documents). Except as permitted under the Loan Documents, the change of Control of the general partner of Grantor's sole member, without the express written approval of Grantee, shall be deemed to be a prohibited Transfer of the Property.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except for the Construction of the Renovations or as permitted under the Loan Documents, no Improvements or Accessories shall be materially altered without the prior written consent of Grantee, such consent not to be unreasonably withheld. Grantor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, for any Accessory in excess of \$1,000.00, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Grantor shall be deemed to have subjected such Accessories to the Lien of this Mortgage), or (b) so long as a prepayment


20151028000375510 12/25 \$33461.60
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10/28/2015 08:43:31 AM FILED/CERT

may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Grantee to be applied to the prepayment of the principal of the Loan.

Section 5.4 Additional Improvements.

Grantor will not construct any Improvements other than those presently on the Land and the Construction of the Renovations or those otherwise permitted in the Loan Agreement without the prior written consent of Grantee. Grantor will complete and pay for, within a reasonable time, any Improvements which Grantor is permitted to construct on the Land. Grantor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Without the prior written consent of Grantee, Grantor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Grantor (a) will promptly perform and observe, and cause to be performed and observed, the obligations of Borrower under all of the terms and conditions of all agreements affecting the Property in connection with the foregoing in all material respects, and (b) will do or cause to be done all things commercially reasonable to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Section 5.6 Special Purpose Entity.

Grantor has not and shall not:

- (a) Own any asset or property other than the Property and has not and shall not during the term of the Loan engage in any business or activity other than the ownership, renovation, development, financing, leasing, management, sale and operation of the Property;
- (b) Merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case, Grantee's consent;
- (c) Fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the Property is located, if applicable, or without the prior written consent of Grantee, amend, modify, terminate or fail to comply with the provisions of Grantor's Articles of Organization or similar organizational documents, as the case may be in any material respect;
- (d) Own any subsidiary or make any investment in, any person or entity without the consent of Grantee;
- (e) Commingle its assets with the assets of any of its members, affiliates, principals or of any other person or entity;

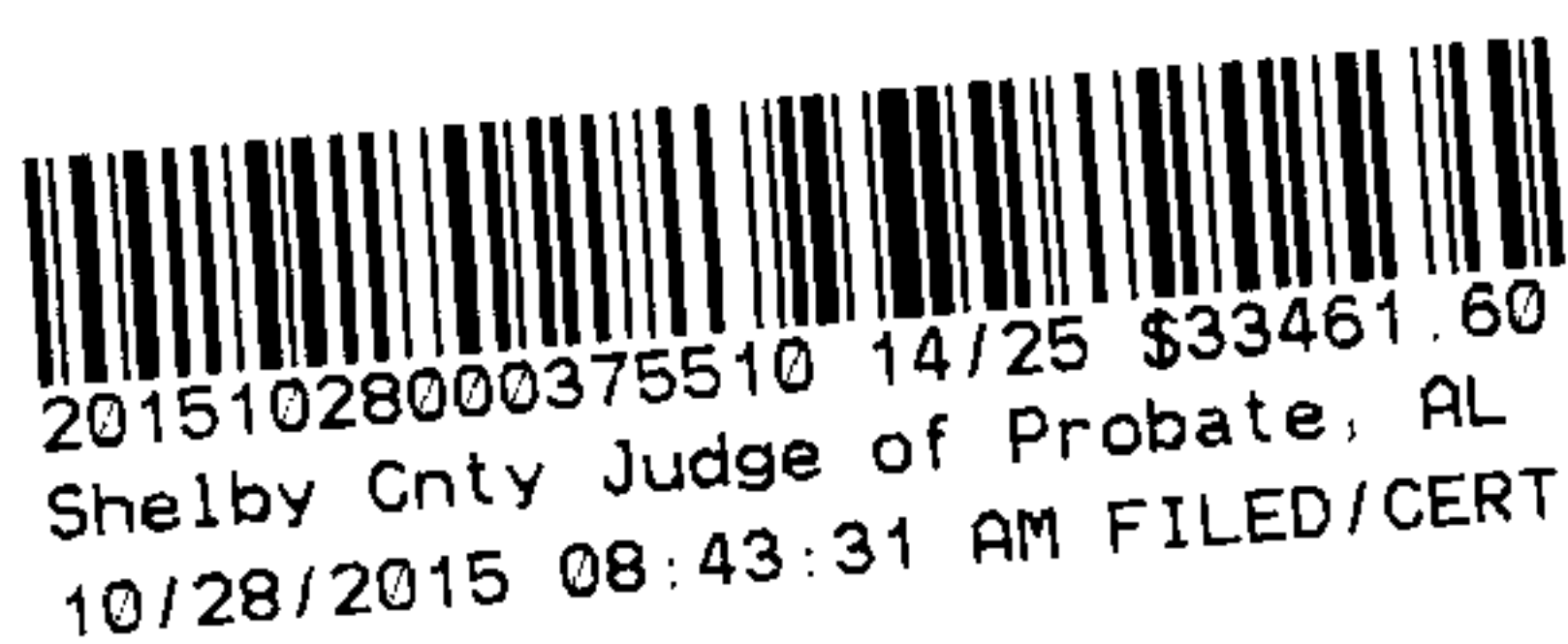
- (f) Fail to pay its debts and liabilities from its assets as the same shall become due;
- (g) Fail to maintain its records, books of account and bank accounts separate and apart from those of the members, principals and affiliates of Grantor, the affiliates of a member or principal of Grantor, and any other person or entity;
- (h) Enter into any contract or agreement with any member, principal or affiliate of Grantor or Guarantor, or any member, principal or affiliate thereof, except pursuant to the terms of the Grantor's sole member's limited partnership agreement or otherwise upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any members, principals or affiliate of Grantor or Guarantor, or any member, principal or affiliate thereof;
- (i) Seek the dissolution or winding up in whole, or in part, of Grantor;
- (j) Fail to correct any known misunderstandings regarding the separate identity of Grantor;
- (k) Hold itself out to be responsible for the debts of another person;
- (l) Make any loans or advances to any third party, including any member, principal or affiliate of Grantor, or any member, principal or affiliate thereof;
- (m) Fail to file its own tax returns or be reflected in consolidated tax returns;
- (n) Fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, (ii) to suggest that Grantor is responsible for the debts of any third party (including any member, principal or affiliate of Grantor, or any member, principal or affiliate thereof);
- (o) Provided that the following shall not be deemed to require Grantor's sole member or any general partner or limited partner thereof, nor any other Person to contribute any capital, make any loan, or otherwise fund any amounts to Grantor, fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or
- (p) File or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

Article VI
Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Mortgage:

Section 6.1 Payment Obligations.

Grantor fails to pay any of the Obligations within ten (10) days after receipt of written notice from Grantee that payment is due, whether on the scheduled due date or upon acceleration, maturity or otherwise; provided, however, that with respect to monthly payments



under the Note, Grantee shall not be obligated to provide such written notice more often than two (2) times in any consecutive twelve (12) month period.

Section 6.2 Transfers.

Unless all amounts due under the Loan are paid in full prior to or upon such Transfer or Grantee otherwise consents thereto in writing, Grantor Transfers all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Accessories expressly permitted under this Mortgage or other Transfers permitted under the Loan Documents), or there is a Transfer, without the express written approval of Grantee, that constitutes a prohibited Transfer of the Property in violation of Section 5.2 hereof.

Section 6.3 Other Obligations.

Grantor fails to promptly perform or comply in all material respects with any of the Obligations set forth in this Mortgage (other than those expressly described in other Sections of this Article VI), and such failure continues uncured for a period of thirty (30) days after Notice from Grantee to Grantor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Grantor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Grantor causes such failure to be cured no later than one hundred twenty (120) days after the date of such Notice from Grantee.

Section 6.4 Event of Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note or the Loan Agreement, or any of the other Loan Documents, or Grantor or Guarantor fails to promptly pay, perform, observe or comply with any material obligation or agreement contained in any of the other Loan Documents to which they are a party (within any applicable grace or cure period).

Section 6.5 Change in Zoning or Public Restriction.


Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed if the Property is no longer permitted to be used for its present use.

Section 6.6 Intentionally Omitted.

Section 6.7 Intentionally Omitted.

Section 6.8 Execution; Attachment.

Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.


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Article VII
Rights and Remedies.

Upon the happening and during the continuance of any Event of Default (beyond any applicable notice and cure periods), Grantee shall have the right, in addition to any other rights or remedies available to Grantee under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

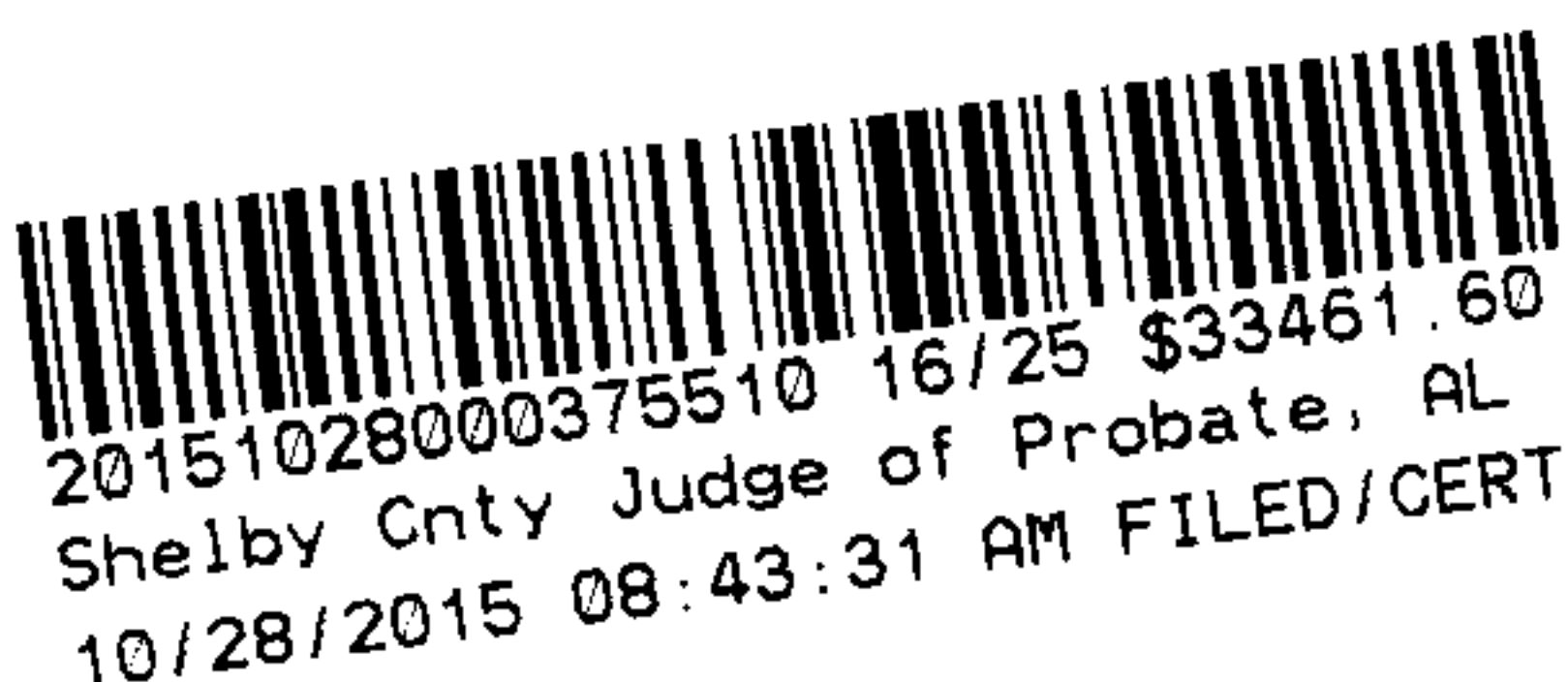
Section 7.1 Acceleration.

Grantee may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Grantor).

Section 7.2 Foreclosure; Power of Sale.

Grantee may sell and dispose of the Property at public auction, at the usual place for conducting sales at the courthouse in the county where the Property or any part thereof may be, to the highest bidder for cash, first advertising the time, terms and place of such sale, together with a description of the property to be sold, by publishing a notice thereof for three (3) consecutive weeks immediately preceding the date of sale in a newspaper of general circulation in the county where the Property to be sold is located, all other notice being hereby waived by Grantor; and Grantee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Property in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, the said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with; and Grantor hereby constitutes and appoints Grantee or its assigns as agent and attorney-in-fact to make such recitals, sale and conveyance, and all of the acts of such attorney-in-fact are hereby ratified, and Grantor agrees that such recitals shall be binding and conclusive upon Grantor; at the election of Grantee, the Property, or any part thereof, may be sold in one parcel and as an entirety, or in such parcels, manner or order as Grantee in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations satisfied in full, and Grantee, or its assigns, shall collect the proceeds of such sale, applying such proceeds as provided in Section 7.8; and Grantor agrees that in case of a sale, as herein provided, Grantor or any person in possession under Grantor shall then become and be a tenant at sufferance of Grantee or the purchaser of the Property, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants at sufferance; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Grantee may have at law or in equity. At any such sale, Grantee, its agents, representatives, successors or assigns, may bid for and acquire, as purchaser, the Property or any portion thereof.

Section 7.3 Judicial Action.



Grantee shall have the right from time to time to sue Grantor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of Grantee thereafter to enforce any appropriate remedy against Grantor, including an action of foreclosure or an action for specific performance, for a Default or Event of Default existing at the time such earlier action was commenced.

Section 7.4 Collection of Rents.

Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Grantee may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Grantee may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Grantee may notify the tenants under the Leases that all Rents are to be paid to Grantee, and following such notice all Rents shall be paid directly to Grantee and not to Grantor or any other Person other than as directed by Grantee, it being understood that a demand by Grantee on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Grantee without the necessity of further consent by Grantor. Upon and during the continuance of an Event of Default, Grantor irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Grantee instead of to Grantor, upon receipt of written notice from Grantee, without the necessity of any inquiry of Grantor and without the necessity of the Tenant determining the existence or non-existence. Upon and during the continuance of an Event of Default, Grantor hereby appoints Grantee as Grantor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Grantee's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Grantee; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Grantee may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations.

Section 7.5 Taking Possession or Control of the Property; Appointment of Receiver.

As a matter of right without regard to the adequacy of the security or the solvency of any Person liable for the Obligations, and to the extent permitted by Law without notice to Grantor, Grantee shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Grantor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to Grantee pursuant to Section 7.4. In addition, to the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor,

Grantee may (a) enter upon, and take possession of (and Grantor shall surrender actual possession of), the Property or any part thereof, without notice to Grantor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Grantor and its agents and employees therefrom.

Section 7.6 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.5, Grantee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary (the costs of completing such Improvements shall be Expenses secured by this Mortgage and shall accrue interest as provided in the Loan Agreement and the other Loan Documents). Grantee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Grantee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.7 Uniform Commercial Code.

Grantee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, Grantor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Grantee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Grantee may choose to dispose of some or all of the Property, in any combination consisting of both Personalty and Real Property, in accordance with the Law of the State and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Grantor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale of the Personalty.

Section 7.8 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article VII and any other proceeds received by Grantee from the exercise of any of its other rights and remedies hereunder

or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Grantee may elect.

Section 7.9 Other Remedies.

Grantee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Loan Documents or by applicable Laws.

Article VIII
Miscellaneous.

Section 8.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Grantee as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Grantee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Grantee of any or all such other rights, powers or remedies.

Section 8.2 No Waiver by Grantee.

No course of dealing or conduct by or among Grantee and Grantor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Grantee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Grantee from exercising any such right, power or remedy at any later time or times. By accepting payment of any of the Obligations after the due date or during or upon the expiration of any applicable grace or cure period, Grantee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations, except if Grantee agrees otherwise in writing. Neither Grantor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Grantee to comply with any request of Grantor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Grantee, or (c) Grantee's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Grantor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Grantee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien and security title of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Grantee may resort to the security

or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Grantee may elect in its sole discretion.

Section 8.3 Waivers and Agreements Regarding Remedies.

To the full extent Grantor may do so, Grantor hereby: (a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, reinstatement (including without limitation all rights under Official Code of Georgia Annotated Section 44-14-85), extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Grantor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Grantee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Grantee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Grantor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

(e) notwithstanding anything to the contrary contained herein, Grantor does not waive any defenses it has or may have to payment, performance or non-breach.

Section 8.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Grantor (including any permitted subsequent owner of the Property), and inure to the benefit of Grantee, its successors and assigns and to the successors in trust of Grantee.

Section 8.5 No Warranty by Grantee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Grantee pursuant to this Mortgage

or any of the other Loan Documents, Grantee 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 Grantee.

Section 8.6 Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7 Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Grantee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the Preamble to this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile or email (provided that any Notice sent via email must also be sent by one of the other methods within one (1) day following the delivery of the email). Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile or email, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 8.9 Intentionally Omitted.

Section 8.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience

of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 8.11 Governing Law.

This Mortgage and the rights and obligations of the parties hereunder and thereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Georgia (without giving effect to Georgia principles of conflicts of law), except to the extent (a) of procedural and substantive matters relating only to the creation, perfection, foreclosure and enforcement of rights and remedies against the Property, which matters shall be governed by the laws of the State of Alabama, and (b) that the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder, applicable to the affairs and transactions entered into by Grantee, otherwise preempt Georgia or Alabama law; in which event such federal law shall control. Grantor hereby irrevocably submits to the non-exclusive jurisdiction of any Georgia or federal court sitting in Georgia (or any county in Alabama where any portion of the Property is located) over any suit, action or proceeding arising out of or relating to any of the Loan Documents.

Section 8.12 Entire Agreement.


The Loan Documents constitute the entire understanding and agreement between Grantor and Grantee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Grantor and Grantee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Grantee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 8.13 Waiver of Grantor's Rights.

BY EXECUTION OF THIS MORTGAGE, GRANTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO GRANTEE TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE

(EXCEPT AS OTHERWISE PROVIDED HEREIN); (B) EXCEPT TO THE EXTENT PROVIDED OTHERWISE HEREIN, WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY GRANTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO GRANTEE; (C) ACKNOWLEDGES THAT GRANTOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR, AND GRANTOR HAS CONSULTED WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

[SIGNATURE PAGE TO FOLLOW]


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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, Grantor has caused this Mortgage to be executed under seal as of the day and year first written above.

GRANTOR:

WAYPOINT STONECREST OWNER, LLC,
a Delaware limited liability company

By: [Signature] [SEAL]

Name: Linda Lewis


Title: Vice President

Signed, Sealed and Delivered

In The Presence Of:

Sara Davis
Witness

[Signature]
Witness


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Shelby Cnty Judge of Probate, AL
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STATE OF Connecticut

COUNTY OF Fairfield

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Linda Lewis, whose name as Vice President of WAYPOINT STONECREST OWNER, LLC, a Delaware limited liability company (the "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, (s)he, as such Vice President and with full authority, executed the same voluntarily for and as the act of the Company.

Given under my hand this 15th day of October, 2015.

[Signature]
NOTARY PUBLIC
My Commission Expires: 10/31/18

10/31/18
[SEAL]

This instrument was prepared by Richard W. Stephens, Esq., Smith, Gambrell & Russell, LLP, Promenade, Suite 3100, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309, with assistance from in-state counsel.

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to hereinbelow, whose physical address is 1 Stonecrest Drive, Birmingham, Alabama 35242, is situated in the County of Shelby, State of Alabama, and is more particularly described as follows:

PARCEL I:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH ALONG THE WEST LINE OF SAID QUARTER-QUARTER SECTION FOR A DISTANCE OF 929.83 FEET TO THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING, CONTINUE SOUTH ALONG THE LAST DESCRIBED COURSE FOR A DISTANCE OF 283.72 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 91°03'21" AND LEAVING SAID WEST LINE RUN IN AN EASTERLY DIRECTION FOR A DISTANCE OF 672.12 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 88°46'58" AND RUN IN A NORTHERLY DIRECTION FOR A DISTANCE OF 263.72 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 91°13'18" AND RUN IN A WESTERLY DIRECTION FOR A DISTANCE OF 672.86 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND.

PARCEL II:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH ALONG THE WEST LINE OF SAID QUARTER-QUARTER SECTION FOR A DISTANCE OF 1193.35 FEET TO THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING, CONTINUE SOUTH ALONG THE LAST DESCRIBED COURSE FOR A DISTANCE OF 792.25 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 90°56'41" AND LEAVING SAID WEST LINE RUN IN AN EASTERLY DIRECTION FOR A DISTANCE OF 669.66 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 88°52'46" AND RUN IN A NORTHERLY DIRECTION FOR A DISTANCE OF 793.47 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 91°13'01" AND RUN IN A WESTERLY DIRECTION FOR A DISTANCE OF 672.12 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND.

PARCEL III:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH ALONG THE WEST LINE OF SAID QUARTER-QUARTER SECTION AND THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5 FOR A DISTANCE OF 1985.60 FEET TO THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING, CONTINUE SOUTH ALONG THE DESCRIBED COURSE FOR A DISTANCE OF 663.95 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5; THENCE TURN AN ANGLE TO THE LEFT OF 91°04'32" AND LEAVING SAID WEST LINE RUN IN AN EASTERLY DIRECTION FOR A DISTANCE OF 668.24 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 88°47'59" AND RUN IN A NORTHERLY DIRECTION FOR A DISTANCE OF 663.05 FEET; THENCE TURN AN ANGLE TO THE LEFT OF 91°07'14" AND RUN IN A WESTERLY DIRECTION FOR A DISTANCE OF 669.68 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND.

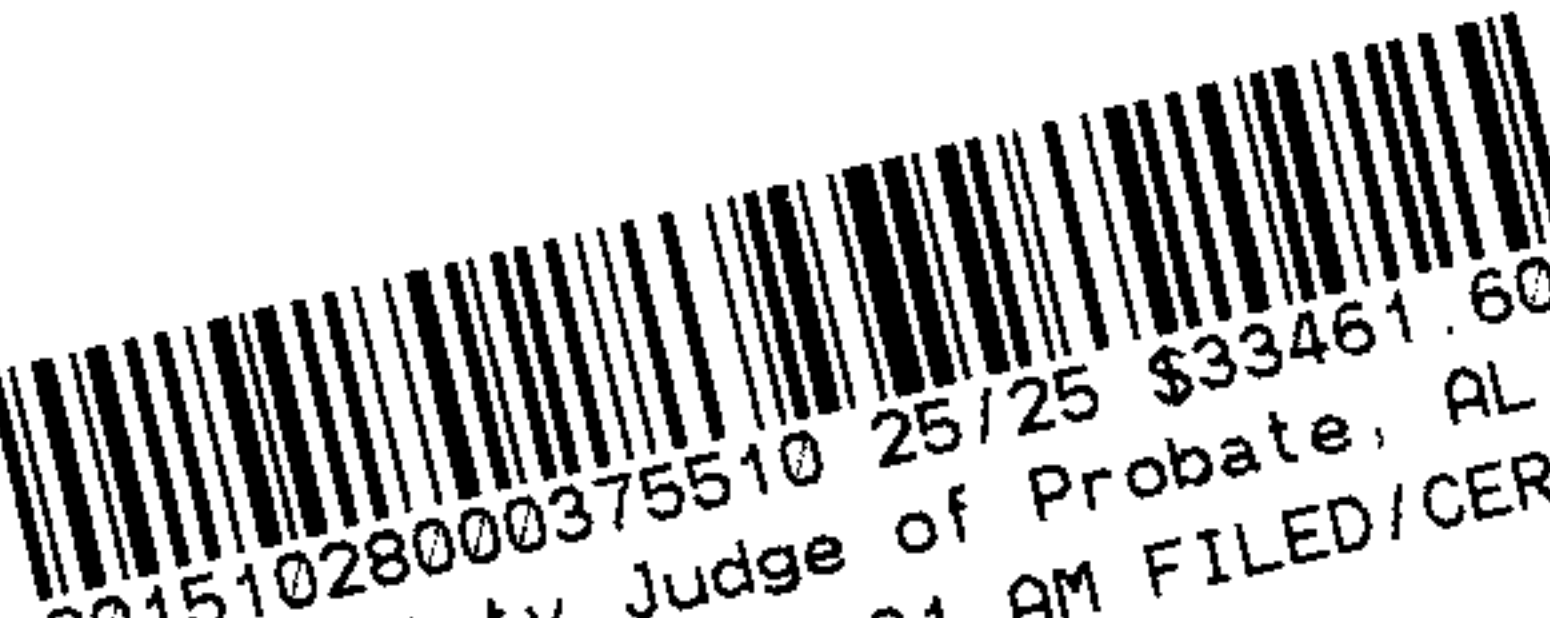
TOGETHER WITH THOSE CERTAIN EASEMENTS RECORDED IN SHELBY COUNTY INSTRUMENT 1996-17259 AND AS RECORDED IN DUPLICATE IN SHELBY COUNTY INSTRUMENT 1996-17260.

PARCEL IV:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS I, II & III FOR THE PURPOSE OF SLOPE, DRAINAGE AND ACCESS, AS CREATED BY THOSE CERTAIN EASEMENT AGREEMENTS RECORDED IN SHELBY COUNTY INSTRUMENT NUMBER 1996-17259 AND AS RECORDED IN DUPLICATE IN SHELBY COUNTY INSTRUMENT NUMBER 1996-17260, OVER, UNDER AND ACROSS THE PROPERTY DESCRIBED HEREIN.

PARCEL V:

EASEMENT RIGHTS GRANTED IN THAT CERTAIN DEVELOPMENT AND EASEMENT AGREEMENT RECORDED IN INSTRUMENT 1996-33722 AND MODIFIED IN INSTRUMENT 1998-18980, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.


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Shelby Cnty Judge of Probate, AL
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