

*This instrument prepared by
and when recorded return to:*
H. Chandler Combest, Esq.
Bradley Arant Boult Cummings LLP
445 Dexter Avenue, Suite 9075
Montgomery, Alabama 36104

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03/03/2016 08:11:12 AM
MORT 1/30

STATE OF ALABAMA)
COUNTY OF SHELBY)

**MAXIMUM PRINCIPAL INDEBTEDNESS FOR ALABAMA RECORDING TAX PURPOSES IS
\$325,000.00.**

**ACCOMMODATION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT**

**THIS ACCOMMODATION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT** (this "Mortgage") is made this 29th day of February, 2016, by SDH
BIRMINGHAM LLC, a Georgia limited liability company, as mortgagor, whose address is 110 Village
Trail, Suite 215, Woodstock, Georgia 30188, Attention: Tom Bradbury (together with its permitted
successors and assigns, "Mortgagor"), in favor of REGIONS BANK, an Alabama banking corporation, as
mortgagee (in such capacity, together with its successors and assigns, "Mortgagee"), whose address is
1180 West Peachtree Street, Suite 900, Atlanta, Georgia 30309, Attention: Scott McLay.

**THIS MORTGAGE SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING
PURSUANT TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CODE OF
ALABAMA (1975), AS AMENDED.**

WITNESSETH:

WHEREAS, Mortgagee has made loans to SDC Gwinnett LLC, a Georgia limited liability
company ("Borrower"), in the original aggregate principal amount of \$325,000.00 (collectively, the
"Loan"), as evidenced by the Note (as defined below) and the Loan Documents (as defined below); and

WHEREAS, Mortgagor desires to pledge certain real property to Mortgagee as security for the
Secured Indebtedness (as defined below); and

WHEREAS, Mortgagor is an affiliate of Borrower and, as a result, will obtain material financial
benefit from the extension of the Loan to Borrower, and in order to induce Mortgagee to make the Loan
to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are
hereby acknowledged, Mortgagor has agreed to enter into this Mortgage.

AGREEMENT:

ARTICLE I

Definitions; Granting Clauses; Secured Indebtedness

1.1 Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Accessories" shall have the meaning set forth in Section 1.2 of this Mortgage.

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

"Affiliate" means (a) with respect to Mortgagor or Borrower, (i) any person which, directly or indirectly, Controls, is Controlled by or is under common Control with Mortgagor or Borrower, as applicable, or (ii) any person who is a director, officer or key employee of Mortgagor or Borrower, as applicable, or any person described in clause (a)(i) of this definition, or (b) with respect to any other Person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person. For purposes of this definition, "Control" of a person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Borrower" shall have the meaning set forth in the Recitals to this Mortgage.

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

"Collateral" shall have the meaning set forth in Section 1.4 of this Mortgage.

"Debtor Relief Laws" means Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

"Environmental Indemnity Agreement" shall have the meaning set forth in Section 2.9 of this Mortgage.

"Event of Default" shall have the meaning set forth in Section 4.1 of this Mortgage.

"Guarantor" means any person or entity who, or which, in any manner, is or becomes obligated to Mortgagee under any guaranty now or hereafter executed in connection with respect to the Loan (collectively or severally as the context thereof may suggest or require).

"Hedge Agreement" means any existing or future "swap agreement" (as defined in 11 U.S.C. §101, as in effect from time to time) to hedge interest rate risk related to the Loan executed by and among Borrower or any of its Affiliates with Mortgagee or any of its Affiliates.

"Improvements" means all buildings, fixtures, structures, improvements and other appurtenances now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"Land" means, collectively, the real property described in Exhibit A which is attached hereto and incorporated herein by reference and any and all additional real property made subject to the lien of this Mortgage pursuant to Spreader Agreements and Section 1.3 hereof.

"Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

"Lease" 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, extensions, replacements, and modifications thereof, and guaranties of payment or performance, 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.

"Lien" means any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, charge, encumbrance, lien (statutory or other), preference, priority or other security agreement or similar preferential arrangement of any kind or nature whatsoever.

"Loan" shall have the meaning set forth in the Recitals to this Mortgage.

"Loan Agreement" means that certain Guidance Line of Credit Agreement dated as of July 30, 2015, between Borrower and Mortgagee, as the same may be amended, restated, supplemented or otherwise modified following the date hereof.

"Loan Documents" shall mean a collective reference to the Loan Documents, as such term is defined in the Loan Agreement, and any and all documents executed in connection with the Loan.

"Maximum Amount" shall have the meaning set forth in Section 6.11 of this Mortgage.

"Mortgagee" shall have the meaning set forth in the introductory paragraph hereof.

"Mortgagor" shall have the meaning set forth in the introductory paragraph hereof.

"Note" shall mean that certain Guidance Line of Credit Note dated as of July 30, 2015, made by Borrower and payable to the order of Mortgagee in the aggregate principal face amount of \$20,000,000.00 bearing interest as therein provided, containing a provision for, among other things, the payment of attorneys' fees, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Permitted Exceptions" means the matters approved by Mortgagee as permitted exceptions of title with respect to the Property and set forth as exceptions to title in the title insurance policy applicable to the Property approved by Mortgagee.

"Permitted Liens" means the following: (a) Liens for taxes, assessments or other governmental charges or levies not yet due or which are being vigorously contested in good faith by appropriate action and which Borrower or Mortgagor has provided Mortgagee with a surety bond or other security reasonably satisfactory to Mortgagee insuring Mortgagee against such Liens; (b) Liens in favor of property owners' associations securing payment of assessments or other charges that are not yet due and payable or delinquent; (c) easements, rights-of-way,

restrictions, plats, declarations of covenants, conditions and restrictions, or similar encumbrances on the use of real property which do not interfere with the ordinary conduct of business of Borrower or Mortgagor or materially detract from the value of such real property; (d) Liens in favor of Mortgagee; and (e) any Liens of mechanics, materialmen or material suppliers incurred in the ordinary course of business for which Borrower or Mortgagor has provided Mortgagee with a surety bond or other security reasonably satisfactory to Mortgagee insuring Mortgagee against the priority of such Liens.

"Premises" shall have the meaning set forth in Section 1.2 of this Mortgage.

"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 of Alabama.

"Property" shall have the meaning set forth in Section 1.2 of this Mortgage.

"Release Date" means the earlier of the following two dates: (i) the date on which 100% of the indebtedness and obligations secured hereby have been irrevocably paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor, Borrower and their heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice.

"Rents" means all of the rents, issues and profits, and all revenue, income and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated Lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law, together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to any construction on or renovation of the Property.

"Requirement of Law" means as to any person, the Certificate (or Articles) of Formation (or Incorporation), Operating Agreement (or Bylaws), or other organizational or governing documents of Mortgagor, Borrower or any Guarantor, and any law, treaty, rule or regulation, or determination, including all environmental laws, rules, regulations and determinations, of an arbitrator or a court or other governmental authority, in each case applicable to or binding upon Mortgagor, Borrower or any Guarantor or any of their property or to which Mortgagor, Borrower or any Guarantor or any of their property is subject.

"Secured Indebtedness" means all indebtedness and obligations referenced in clauses (a), (b) and (c) of Section 1.5 hereof, as the same may exist from time to time prior to the termination hereof.

"Secured Parties" means a collective reference to Mortgagee and any other holder of any of the Secured Indebtedness; and "Secured Party" means any of them, as applicable.

"Spreader Agreements" means, collectively, those certain Mortgage Modification and Spreader Agreements, in form and substance satisfactory to Mortgagee, executed by Mortgagor for the benefit of Mortgagee to modify this Mortgage by encumbering additional real property and adding such real property to the definition of Land, and spread the lien of this Mortgage to encumber such real property.

(b) Any term used or defined in the Alabama Uniform Commercial Code, as in effect from time to time, and not defined in this Mortgage has the meaning given to the term in the Alabama Uniform Commercial Code, as in effect from time to time, when used in this Mortgage; provided, however, if a term is defined in Article 9 of the Alabama Uniform Commercial Code differently than in another article of the Alabama Uniform Commercial Code, the term has the meaning specified in Article 9.

(c) Capitalized terms used herein and not otherwise defined have the meaning given such terms in the Loan Agreement.

1.2 Granting Clause. In consideration of the provisions of this Mortgage and the sum of TEN DOLLARS (\$10.00) cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are acknowledged by Mortgagor, Mortgagor has bargained and sold and does hereby MORTGAGE, GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ALIEN, ASSIGN and SET OVER to Mortgagee, all rights, title, interest and estate of Mortgagor now owned or hereafter acquired in the following:

(a) the Land, together with: (i) the Improvements; and (ii) all right, title and interest of Mortgagor in and to (1) 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 Mortgagor and belonging or appertaining to the Land or Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy, and (5) all rights, estates, powers and privileges appurtenant or incident to the foregoing (the Land, Improvements and other rights, titles and interests referred to in this clause (a), all Additions to and Proceeds of the foregoing being herein sometimes collectively called the "Premises");

(b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), which are now or hereafter attached to or situated in, on or about the Land or the 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 the Improvements, and Additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land);

(c) all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the obligations or indebtedness referenced in Section 1.5), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Hedge Agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements, contracts or agreements for the sale or lease of any portion of the Premises or Accessories and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, (including deposit accounts) instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize any Secured Party to debit and/or credit payments due with respect to the Loan or any Hedge Agreement, all rights to the payment of money from any Secured Party under any Hedge Agreement, and all accounts, deposit accounts and general intangibles including payment intangibles, described in any Hedge Agreement; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, issues, profits, royalties, bonuses, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and

(d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.2, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.2; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.2; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of or related to the properties,

rights, titles and interests referred to above in this Section 1.2 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.2 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate;

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers, benefits, interests and privileges appurtenant thereto of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Premises, the Accessories and all other property and rights used or useful in connection therewith (herein collectively called the "Property"), unto Mortgagee, and Mortgagee's successors or substitutes, and to its successors and assigns, forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Borrower under the Note, the Loan Agreement and the other Loan Documents and all other Secured Indebtedness;

PROVIDED, HOWEVER, that should the Secured Indebtedness be paid according to the tenor and effect thereof when the same shall be due and payable and should Mortgagor and Borrower timely and fully discharge its obligations hereunder and under the other Loan Documents, then this Mortgage, and all the properties, interest and rights hereby granted, bargained and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

1.3 Master Mortgage; Additional Land. This Mortgage is intended as a master mortgage. From time to time, Mortgagor shall encumber additional real property which will be subject to the lien, operation and effect of this Mortgage, and Mortgagor shall execute, deliver and record Spreader Agreements to modify this Mortgage to include such real property in the definition of Land and spread the lien of this Mortgage to encumber such real property.

1.4 Security Interest. With respect to the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral"), this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Collateral, in accordance with the provisions of the Alabama Uniform Commercial Code. Mortgagor hereby grants to Mortgagee (for the benefit of the Secured Parties) a security interest in the Collateral to secure the Secured Indebtedness. In addition to its rights hereunder or otherwise, Mortgagee (for the benefit of the Secured Parties) shall have all of the rights of a secured party under the Alabama Uniform Commercial Code, 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.

1.5 Note, Loan Documents, Other Obligations, Amount Secured. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively, the "Secured Indebtedness");

(a) the Note, any Hedge Agreement and the other Loan Documents (including, without limitation, all indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts under each such document, note or instrument), and all other notes, instruments or agreements given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part;

21

(b) all other indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Borrower or Mortgagor (whether now or hereafter incurred) to Mortgagee (or, in the case of any Hedge Agreement, an Affiliate of Mortgagee) under any Loan Document or other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the obligations and loans related to any of the above-noted documents, instruments and notes, including but not limited to any other loan or credit agreements, letters of credit or reimbursement agreements, tri-party financing agreements, Hedge Agreement or other agreement between Borrower or Mortgagor and Mortgagee, or among Mortgagor or Borrower, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loans evidenced by the notes referenced above, excluding, however, obligations arising under any "swap" (as such term is defined in the Commodity Exchange Act, as in effect from time to time, and the official rules and regulations promulgated thereunder (collectively, the "CEA")) to the extent that the securing of such swap obligation by Mortgagor would be impermissible or illegal under the CEA; and

(c) all future advances and readvances that may subsequently be made by any Secured Party to Borrower with respect to any of the foregoing; provided, however, and notwithstanding the foregoing provisions of this Section 1.5, this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Mortgagee is by applicable law prohibited from obtaining a lien on real estate nor shall such section create an obligation on the part of any Secured Party to make future advances or readvances to Borrower.

This Mortgage is a FUTURE ADVANCE MORTGAGE and secures all present and future loan advances and readvances (future advances) made by any Secured Party under the Loan Agreement, the Note or any other Loan Document; provided, that the maximum principal amount which may be secured hereby at any one time is Three Hundred Twenty-Five Thousand and No/100 Dollars (\$325,000.00) plus interest thereon, all charges and expenses of collection incurred by any Secured Party, including court costs and reasonable attorneys' fees, and all other sums from time to time owing to any Secured Party by Borrower or Mortgagor.

1.6 Mortgage for the Benefit of the Secured Parties. All provisions in favor of Mortgagee set forth herein, except to the extent related solely to the reimbursement of Mortgagee for costs and expenses incurred in connection herewith or to the indemnification obligations of Mortgagor as they relate specifically to Mortgagee, are intended to be for the benefit of the Secured Parties, and all actions taken by Mortgagee hereunder, except as specifically related to the matters noted above, shall be deemed to be for the benefit of the Secured Parties.

1.7 Future Advances. Mortgagee may make future advances to Borrower, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Mortgagee under the Loan Agreement, if applicable. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Mortgagee may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Mortgagor or Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

ARTICLE II

Representations, Warranties and Covenants

Mortgagor represents, warrants, and covenants as follows:

2.1 Payment and Performance. Mortgagor will make, or will cause Borrower to make, due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit an Event of Default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

2.2 Title and Permitted Liens. Mortgagor has, in Mortgagor's own right, and, except as specifically provided by the Loan Agreement, Mortgagor covenants to maintain, lawful, good and marketable fee simple title to the Property, owns all of the beneficial and equitable interest in and to the Property, is lawfully seized and possessed of the Property and every part thereof. Mortgagor has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for the Permitted Exceptions and Permitted Liens and does hereby convey the Property. Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and its successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Exception or Permitted Lien and will not modify or affirmatively permit modification of any Permitted Exception or Permitted Lien without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Exception or Permitted Lien does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. If any right or interest of Mortgagee (or any other Secured Party) in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee (whether or not named as party to legal proceedings with respect thereto), is hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee, and Mortgagee shall be subrogated to all rights of the person receiving such payment.

2.3 Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property as required by the Loan Agreement and the other Loan Documents.

2.4 Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense all insurance required to be maintained pursuant to the Loan Agreement and the other Loan Documents, and shall comply with all provisions regarding such insurance as set forth therein.

2.5 Insurance and Condemnation Proceeds. Mortgagor shall comply with all provisions regarding insurance and condemnation proceeds as set forth in the Loan Agreement and the other Loan Documents.

2.6 Compliance with Requirement of Law. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Requirements of Law. The Property is not, and shall not be, dependent on any other property or premises

or any interest therein other than the Property to fulfill any Requirement of Law. Except as set forth in the Permitted Exceptions, Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Requirement of Law. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

2.7 No Other Liens. Mortgagor will not create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Exceptions, Permitted Liens, the Liens created pursuant to the Loan Documents or expressly permitted by the Loan Documents, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same.

2.8 Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor. For the purposes of this Section, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

2.9 Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of any Environmental Indemnity Agreement in favor of Mortgagee with respect to the Property (the "Environmental Indemnity Agreement").

2.10 Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, deeds of trust, security agreements, financing statements, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the

indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

2.11 Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee on demand to the extent paid by Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other out-of-pocket costs and expenses of every character incurred by Mortgagor or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loans evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

2.12 Indemnification.

(a) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this Section, the terms "Mortgagee" shall include the directors, officers, partners, employees and agents of Mortgagee, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this Section by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this Section, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Requirement of Law.

(b) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any

bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease or arising under the Environmental Indemnity Agreement. The indemnities in this Section shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

2.13 Records and Financial Reports. Mortgagor will furnish to Mortgagee such financial statements and other information as may be required pursuant to the terms of the Loan Documents.

2.14 Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to this Mortgage, any Loan Document or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Property, this Mortgage or any Loan Document deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or the interest of Mortgagee in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

2.15 Statement Concerning Loan Documents or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance under the Loan Documents; (iii) the date to which interest has been paid under the Loan Documents; (iv) this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor.

2.16 Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed

in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

2.17 Additions to Security. All right, title and interest of Mortgagor 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 Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

ARTICLE III

Assignment of Rents, Leases, Issues and Profits

3.1 Assignment. Mortgagor hereby absolutely and unconditionally assigns, transfers and sets over to Mortgagee all Rents and all of Mortgagor's rights in and under all Leases TO HAVE AND TO HOLD unto Mortgagee forever, and Mortgagor does hereby bind Mortgagor, its successors and assigns, to warrant and forever defend the title to the Rents unto Mortgagee against every person whomsoever lawfully claiming or to claim the same, or any part thereof. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee, of all of Mortgagor'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. In no event will the assignment in this Section reduce the Secured Indebtedness except to the extent, if any, that Rent is actually received by Mortgagee and applied upon or after said receipt to the Secured Indebtedness in accordance with this Mortgage. So long as no Event of Default has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Event of Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied as set forth in the Loan Agreement. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether an Event of Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after an Event of Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of Mortgagee, all in such manner as may be determined by

Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Event of Default, unless other Events of Default also then exist or the Secured Indebtedness has been accelerated, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage.

3.2 Covenants, Representations and Warranties Concerning Leases and Rents.

Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor, to the knowledge of Mortgagor, any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease); (d) unless otherwise stated in a Permitted Exception or Permitted Lien, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, waive, release or otherwise modify any other material obligation under any Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more; (j) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall, as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require, and promptly upon request by Mortgagee deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed copies of all Leases and records relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or

improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

3.3 No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee or any Secured Party as a "mortgagee in possession," nor obligate Mortgagee (or any Secured Party) to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Neither Mortgagee nor any other Secured Party shall be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article III shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

ARTICLE IV

Events of Default

4.1 Events of Default. The occurrence of any one of the following shall constitute an event of default under this Mortgage ("Event of Default") (in each case subject to, but without duplication of, any applicable grace or cure periods provided for herein or in any other Loan Document (as applicable)):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness is not paid when due, regardless of how such amount may have become due.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept, and remains so for a period of thirty (30) days after written notice to Mortgagor.

(c) Default Under Other Loan Documents. The occurrence of any default under the Loan Agreement or any other Loan Document which is not cured within the applicable grace or cure period (if any) provided therein.

(d) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Mortgagor or Borrower for relief under any Debtor Relief Law, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing of any pleading or an answer by Mortgagor or Borrower in any involuntary proceeding under any Debtor Relief Law or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Mortgagor's or Borrower's insolvency; (iii) a general assignment by Mortgagor or Borrower for the benefit of creditors; or (iv) Mortgagor or Borrower applying for, or the

appointment of, a receiver, trustee, custodian or liquidator of Mortgagor or Borrower or any of its property.

(e) Involuntary Bankruptcy. The failure of Mortgagor or Borrower to effect a full dismissal of any involuntary petition under any Debtor Relief Law or under any other debtor relief law that is filed against Mortgagor or Borrower or in any way restrains or limits Mortgagor or Mortgagee regarding the Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or thirty (30) days after the date of filing of such involuntary petition.

(f) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(g) Grant of Easement, Etc. Except to the extent specifically contemplated and permitted by the Loan Agreement, Mortgagor grants, without the prior written consent of Mortgagee, any easement or dedication, files any plat, declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(h) Abandonment. The owner of the Property abandons any of the Property.

4.2 Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding an Event of Default or incipient Event of Default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such Event of Default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

ARTICLE V

Remedies

5.1 Certain Remedies. Upon the occurrence of any Event of Default, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Declare any or all of the Secured Indebtedness immediately due and payable, terminate any and all Hedge Agreements and demand payment of the principal sum due thereunder, with interest, advances, costs, and attorneys' fees. Without limitation of the foregoing, upon the occurrence of an Event of Default described in Section 41. (d) or (e) above, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention

to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (i) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (ii) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Performance by Mortgagee. Mortgagee may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at the Default Rate or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession under Mortgagor. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied to pay, perform or observe any term, covenant or condition.

(d) Power of Enforcement and Power of Sale.

(i) Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (2) to foreclose this Mortgage and to sell the Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (3) to pursue any other remedy available to it, all as Mortgagee shall deem most effectual for such purposes. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Mortgagee may determine.

(ii) Mortgagee may sell the Property, as an entirety or in separate lots or parcels, as provided by applicable law, at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county where the Land is located, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property, as an entirety or in separate lots or parcels, as provided by applicable law, so purchased. Mortgagee may bid at said sale and purchase said 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 Mortgagee may elect.

(e) Recitals. The recitals contained in any mortgage of conveyance or other instrument(s) given in connection with any foreclosure sale and/or any affidavit(s) of a person(s) knowledgeable of the facts as to compliance with the requirements of such sale, will, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including, without limitation, the amount of the Secured Indebtedness, the occurrence of an Event of Default, and the advertisement and conduct of such sale in the manner provided herein or under applicable law and the appointment of any successor Mortgagee hereunder, and it shall not be necessary to prove in any court the existence of such facts. All prerequisites and requirements to such foreclosure sale will be conclusively presumed from such recitals to have been satisfied and performed and all persons subsequently dealing with the Property, including without limitation, the purchaser(s) thereof, shall be fully protected in relying upon the truthfulness of such recitals or affidavits.

(f) Receipt of Purchase Money Sufficient Discharge. A receipt from any person authorized to receive the purchase money paid at any foreclosure sale, or other sale contemplated by this Mortgage, will be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns will have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(g) Separate Sales. The Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

(h) Uniform Commercial Code. Without limitation of Mortgagee's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Alabama Uniform Commercial Code, 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) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates to allow Mortgagee to take possession or dispose of the Collateral; (3) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Mortgagee fails to comply with this clause (3) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Alabama Uniform Commercial Code, 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); (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in paragraph (d) above in this Section; (5) in the event of a foreclosure sale, whether made under judgment of a court or otherwise, the Collateral and the other Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part



thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house legal services) incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any Event of Default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee; (10) Mortgagee may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Mortgagee may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (12) Mortgagor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Mortgagor acknowledges that the Collateral may be sold at a loss to Mortgagor, and that, in such event, Mortgagee shall have no liability or responsibility to Mortgagor for such loss.

(i) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the Secured Indebtedness, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(j) Entry on Property. Mortgagee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property. Mortgagee shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Mortgagee in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Mortgagee pursuant to this Section, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property or any part thereof, or from any act or omission of Mortgagee in managing the Property unless such loss is caused by the willful misconduct and bad faith of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or

other agreement relating to the Property or arising under any Permitted Lien or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section.

(k) Receiver. Mortgagee may, at Mortgagee's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Mortgagor for the purpose of preserving the Land and Improvements, preventing waste, and to protect all rights accruing to Mortgagee by virtue of the Loan Agreement and this Mortgage, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Secured Indebtedness; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties of receivers in similar cases, including the express power to make any and all further improvements, whether on-site or off-site, as Mortgagee may determine to be necessary to complete the development and construction of the Improvements, the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Secured Indebtedness, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. All expenses incurred in connection with the appointment of such receiver, or in protecting, preserving, or improving the Land, shall be charged against Mortgagor and shall be secured by the Mortgage and enforced as a lien against the Land and Improvements.

(l) Termination of Commitment to Lend. Cancel Mortgagee's obligations arising under the Loan Documents, including without limitation the cancellation and termination of any obligation to advance funds under the Loan.

(m) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

5.2 Proceeds of Foreclosure. The proceeds of any sale held by Mortgagee or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, as set forth in the Loan Agreement and the other Loan Documents.

5.3 Mortgagee as Purchaser. Mortgagee shall have the right to become the purchaser at any sale by virtue of any foreclosure sale or sale of all or any portion of the Property under the power herein granted or any other legal right, remedy or recourse, and Mortgagee shall have the right to credit upon the amount of Mortgagee's successful bid, to the extent necessary to satisfy such bid, all or any part of the Secured Indebtedness in such manner and order as Mortgagee may elect.

5.4 Foreclosure as to Matured Debt. Upon the occurrence of an Event of Default, Mortgagee shall have the right to proceed with foreclosure of the liens and security interests hereunder without declaring the entire Secured Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Secured Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part this Mortgage shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.2 hereof except that the amount paid towards any Secured Indebtedness shall be only the matured portion of the Secured Indebtedness and any proceeds of such sale in excess of such amounts shall be applied to the prepayment (without penalty) of any other Secured Indebtedness in such manner and order and to such extent as Mortgagee deems advisable. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Secured Indebtedness.

5.5 Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Mortgagee shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

5.6 Discretion as to Security. Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

5.7 Mortgagor's Waiver of Certain Rights. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the Secured Indebtedness, notice of election to mature or declare due the whole of the Secured Indebtedness and all rights to a marshaling of assets of Mortgagor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, 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 Mortgagee under the terms of this Mortgage to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the Secured Indebtedness out of the proceeds of sale

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of the Property in preference to every other claimant whatsoever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert pursuant to any provision of Alabama law. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

5.8 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. After such foreclosure, any Leases to tenants or subtenants that are subject to this Mortgage (either by their date, their express terms, or by agreement of the tenant or subtenant) shall, at the sole option of Mortgagee or any purchaser at such sale, either (i) continue in full force and effect, and the tenant(s) or subtenant(s) thereunder will, upon request, attorn to and acknowledge in writing to the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from Mortgagee or any purchaser or purchasers, terminate within thirty (30) days from the date of sale. In the event the tenant fails to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the Property (such as an action for forcible detainer) in any court having jurisdiction.

5.9 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

ARTICLE VI

Miscellaneous

6.1 Scope of Mortgage. This Mortgage is a mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

6.2 Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the Alabama Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any surplus of withheld funds resulting from the invalidity of "stop notice" claims or the failure of claimants to prosecute their claims to judgment and any other Property in which an interest can be

perfected by filing and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and Mortgagee are set forth in the first paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

6.3 Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

6.4 Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

6.5 No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Mortgagee's consent to any junior lien).

6.6 Acts Not Constituting Waiver. Mortgagee may waive any Event of Default without waiving any other prior or subsequent Event of Default. Mortgagee may remedy any Event of Default without waiving the Event of Default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee or

any other Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default hereunder, notwithstanding any notation on or accompanying such partial payment to the contrary.

6.7 Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the Secured Indebtedness. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

6.8 Place of Payment; Forum; Waiver of Jury Trial. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Loan Agreement (or if no such designation is made, at the address of Mortgagee indicated in the first paragraph of this Mortgage). Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Georgia state court, or any United States federal court, sitting in the county in which the Secured Indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Mortgage or the Secured Indebtedness. Mortgagor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Georgia state court, or any United States federal court, sitting in the state in which the Secured Indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in the first paragraph of this Mortgage, or at a subsequent address of Mortgagor of which Mortgagee received actual notice from Mortgagor in accordance with this Mortgage. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT.

6.9 Subrogation to Existing Liens. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such

indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness.

6.10 Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

6.11 Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note, and the Loan Agreement is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Georgia or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

6.12 Releases. If all of the Secured Indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Hedge Agreements and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Hedge Agreements and any foreclosure, release or termination of this Mortgage.

6.13 Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and shall be delivered in accordance with the notice provisions of the Loan Agreement.

6.14 Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

6.15 Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

6.16 Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and the other Loan Documents and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

6.17 Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the mortgagor referenced in the introductory paragraph hereof. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

6.18 Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

6.19 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All

references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

6.20 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

6.21 No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of lender and borrower. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

6.22 Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF ALABAMA (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF ALABAMA ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

6.23 Execution Under Seal. Mortgagor agrees that this instrument is executed under seal. If Mortgagor is a corporation, the designation ("SEAL") on this instrument shall be as effective as the affixing of Mortgagor's corporate seal physically to this instrument.

6.24 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

6.25 Additional Indemnity. In addition to (and without limiting the generality of) any other provisions of this Mortgage or the Loan Documents, Mortgagor hereby agrees to defend, indemnify, and hold Mortgagee harmless from and against any and all liability for documentary stamp taxes and intangible taxes (together with all interest, penalties, costs, and attorneys' fees incurred in connection therewith) that at any time may be levied, assessed, or imposed by the State of Alabama or any other governmental entity or agency upon this Mortgage, the Note or any of the other Loan Documents or any amendment, extension, or renewal of any of the foregoing, or upon Mortgagee by virtue of owning or holding any of the foregoing instruments or documents, all of which shall be secured by the lien and security interest of the Loan Documents (as from time to time amended). The provisions of this Section shall survive the repayment of the Secured Indebtedness and the satisfaction of this Mortgage and the other Loan Documents for so long as any claim may be asserted by the State of Alabama or any such other governmental entity or agency.

6.26 Authorization to File Financing Statements. Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral (i) as all assets of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State of Alabama or such jurisdiction, or (ii) as being of any equal or lesser scope or with greater detail, and (b) provide any other information required by Section 7-9A-502(b) of Article 9 of the Uniform Commercial Code of the State of Alabama, or such other jurisdiction, for the sufficiency or filing-office acceptance of any financing statement or amendment, including (i) whether Mortgagor is an organization, the type of organization and any organizational identification number issued to Mortgagor and, (ii) in the case of a financing statement filed as a fixture filing or indicating collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon Mortgagee's request.

[Signature commences on the following page.]

IN WITNESS WHEREOF, Mortgagor has executed this instrument under seal as of the date first written above.

MORTGAGOR:

SDH BIRMINGHAM LLC,
a Georgia limited liability company

By: [Signature] [SEAL]
Name: Donovan Haag
Title: AVP

Mortgagor's Address for Notices:
110 Village Trail, Suite 215
Woodstock, Georgia 30188
Attention: Tom Bradbury

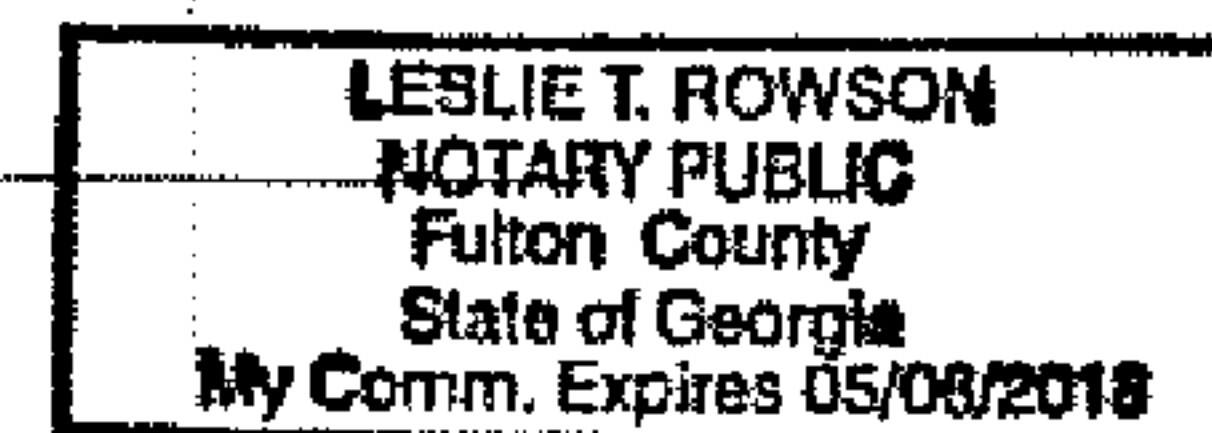
STATE OF GEORGIA)
COUNTY OF FULTON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Donovan Haag as Assistant Vice President of SDH Birmingham LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 29 day of February, 2016.

[NOTARIAL SEAL]

[Signature: Leslie T. Rowson]
NOTARY PUBLIC
My Commission Expires: _____



20160303000067480 03/03/2016 08:11:12 AM MORT 30/30

EXHIBIT A

Legal Description of the Land

Lots 11, 12 and 30, according to the Final Plat of Stone Creek Phase 5, Plat One Lake Sector, as recorded in Map Book 39, Page 22, in the Probate Office of Shelby County, Alabama.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
03/03/2016 08:11:12 AM
\$588.50 CHERRY
20160303000067480

A handwritten signature in black ink, appearing to read "James W. Fuhrmeister", is written over the official text.

A handwritten lowercase letter "a" in black ink is located in the bottom right corner of the page.