

**LSREF3/AH CHICAGO, LLC, as mortgagor**  
(Borrower)

and

**LSREF3/AH CHICAGO TENANT, LLC, as mortgagor**  
(Operating Lessee)

to

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and GOLDMAN SACHS  
MORTGAGE COMPANY, collectively, as mortgagee**  
(Lender)

**AMENDED AND RESTATED FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT  
OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**  
**(ALABAMA)**

Dated: As of July 31, 2017  
Location: 4686 Highway 280 East  
Birmingham, Alabama  
County: Shelby

PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Kimberly Brown Blacklow, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
1002-228648A/1-RTT

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

**THIS AMENDED AND RESTATED FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING** (this “**Security Instrument**”) is made as of July 31, 2017, by **LSREF3/AH CHICAGO, LLC**, a Delaware limited liability company, having an address at 2711 North Haskell Ave., Suite 1700, Dallas, Dallas County, Texas 75204, (“**Borrower**”) and **LSREF3/AH CHICAGO TENANT, LLC**, a Delaware limited liability company, having an address at 2711 North Haskell Ave., Suite 1700, Dallas, Dallas County, Texas 75204 (“**Operating Lessee**” and together with Borrower, collectively, “**Mortgagor**”) to **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 (“**JPM**”) and **GOLDMAN SACHS MORTGAGE COMPANY**, a New York limited partnership, having an address at 200 West Street, New York, New York 10282, as mortgagee (“**Goldman**” and together with JPM and their respective successors and assigns, collectively, “**Lender**”).

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

**WHEREAS**, Borrower is the fee owner of certain real property defined below as the Fee Land;

**WHEREAS**, Lender is now the lawful owner and holder of the mortgage more particularly described in **Schedule I** attached hereto and made a part hereof (the “**Existing Mortgage**”), and the promissory notes and the other obligations secured thereby (the “**Existing Notes**”);

**WHEREAS**, the Existing Mortgage was given or assigned to Lender pursuant to that certain assignment of mortgage, on or about the date hereof, by and between **Wells Fargo Bank, National Association, as Trustee, for the benefit of holders of Hyatt Hotel Portfolio Trust 2015-HYT, Commercial Mortgage Pass-Through Certificates, Series 2015-HYT** (the “**Assignor**”), as assignor, and Lender, as assignee;

**WHEREAS**, the aggregate principal amount of the Existing Notes is \$340,000,000.00, of which \$340,000,000.00 remains outstanding as of the date hereof and is partially secured by the Existing Mortgage in the amount of \$340,000,000.00

**WHEREAS**, Borrower and Lender have agreed to consolidate, extend, modify and restate the Existing Notes such that the amount secured by this Security Instrument is \$410,000,000.00;

**WHEREAS**, Mortgagor and Lender have agreed to amend and restate in its entirety the terms of the Existing Mortgage to conform to the terms hereof and to consolidate and coordinate the lien of the Existing Mortgage with the lien hereof so that together they shall constitute in law but one mortgage and a single unified lien;

**NOW, THEREFORE**, in pursuance of said agreement and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration each to the other in hand paid, receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

## **ARTICLE I - GRANTS OF SECURITY**

**Section 1.1 Property Mortgaged.** Mortgagor does hereby irrevocably grant, bargain, sell, convey, mortgage, pledge, assign, warrant and transfer to Lender and its successors and assigns all of Mortgagor's right, title, and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "**Property**");

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

(b) OL Collateral. All of (i) Operating Lessee's estate, right, title and interest in, and under the Operating Lease and the leasehold estate created thereby in the Fee Land, including all of Operating Lessee's interest in all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs and replacements now or thereafter erected on the Fee Land (collectively, the "**OL Collateral**") and together with all appurtenances thereto including, but not limited to (A) extension, renewal, modification and option rights and all of the estate and right of Operating Lessee of, in, and to the OL Collateral under and by virtue of the Operating Lease, (B) all credits and deposits of Operating Lessee under the Operating Lease, and (C) the right or privilege of Operating Lessee to terminate, cancel, surrender or merge the Operating Lease and (ii) any other right Operating Lessee may now or hereafter acquire in and to the Property (as otherwise described in this Section 1.1);

(c) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Fee Land and the OL Collateral (the Fee Land and the OL Collateral being hereinafter collectively referred to as the "**Land**") and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(d) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(e) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy.



property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

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

(h) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, inventory and articles of personal property and accessions thereof and renewals and replacements thereof and substitutions therefor, if any (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating

equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, elevators, escalators, fittings, plants, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, conveyors, cabinets, lockers, shelving, spotlighting equipment, washers and dryers), other customary hotel equipment, general intangibles, contract rights, accounts, accounts receivable, franchises (to the extent permitted under (and subject to) the applicable franchise agreements and any comfort letters delivered in connection therewith), licenses (including liquor licenses to the extent permitted by applicable law), certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the **"Personal Property"**), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the **"Uniform Commercial Code"**), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(i) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral), including, without limitation, the Operating Lease, pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the **"Leases"**), whether before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space) whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the **"Rents"**) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from



the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property in accordance with Article VI of the Loan Agreement and this Security Instrument;

(k) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property in accordance with Article VI of the Loan Agreement and this Security Instrument;

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

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

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

(o) Agreements. All agreements, contracts, certificates, instruments, franchises (to the extent permitted under (and subject to) the applicable franchise agreements and any comfort letters delivered in connection therewith), permits, licenses (including without limitation, hospitality licenses and liquor licenses, to the extent permitted by applicable law), plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, to the extent any such instruments or rights may be so mortgaged pursuant to the terms thereof, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(p) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(q) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Lockbox Agreement and the Cash Management Agreement, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and

thereof in accordance with the terms of the Lockbox Agreement, Cash Management Agreement, and Loan Agreement, as applicable;

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

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

(t) Interest Rate Cap Agreement. The Interest Rate Cap Agreement, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing in accordance with the terms of the Interest Rate Cap Agreement; and

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

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

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

**Section 1.3 Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so




subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Mortgagor shall pay to Lender, within ten (10) Business Days of written request, any and all reasonable out-of-pocket expenses, including reasonable legal expenses and attorneys’ fees, actually incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The addresses of Mortgagor (debtors) are as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

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

**Section 1.6 Unilateral Subordination.** Lender may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Security Instrument 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 Security Instrument to any Lease.

  
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## CONDITIONS TO GRANT

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that, subject to the terms of Section 9.3 of the Loan Agreement, Mortgagor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE II - DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt; provided however, that the amount secured by this Security Instrument shall not exceed the maximum principal amount of \$410,000,000.00 plus interest thereon and any disbursements made to protect the security of this Security Instrument.

**Section 2.2 Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the "**Other Obligations**");

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

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

## ARTICLE III - BORROWER COVENANTS

Mortgagor covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower will pay, or cause to be paid, the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

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

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

**Section 3.4 Maintenance of Property.** Mortgagor shall cause the Property to be maintained in a good and safe condition and repair in accordance with the terms of the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender, except to the extent permitted under and in accordance with the Loan Agreement. Subject to the terms of the Loan Agreement, Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

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

**Section 3.6 Payment for Labor and Materials.** (a) Subject to the terms of the Loan Agreement and Section 3.6(c) below, Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof and the Permitted Encumbrances.

(b) After prior written notice to Lender, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of



the Labor and Material Costs from Mortgagor and from the Property or Mortgagor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) Mortgagor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

(c) Notwithstanding the foregoing, it shall not be a default under the terms and conditions of this Section 3.6 if, in respect of a mechanic's or materialman's lien asserted against the Property for Labor and Material Costs (each, a "**Mechanic's Lien**"): (i) Mortgagor shall have provided Lender with written notice of such Mechanic's Lien within thirty (30) days of obtaining actual knowledge thereof; (ii) within sixty (60) days of obtaining actual knowledge of the filing of any Mechanic's Lien, Mortgagor shall have furnished to Lender either (A) a cash deposit equal to the amount of the Labor and Material Costs which are the subject of such Mechanic's Lien, or (B) an indemnity bond satisfactory to Lender with a surety reasonably satisfactory to Lender, in the amount of the Labor and Material Costs which are the subject of such Mechanic's Lien, plus in each instance a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith; (iii) no Event of Default shall have occurred and be continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents; (iv) Mortgagor shall at all times diligently prosecute the discharge of such Mechanic's Lien, and shall update Lender regarding the status of same from time to time upon Lender's request; (v) neither the Property nor any part thereof nor any interest therein shall be in imminent danger of being sold, forfeited, terminated, canceled or lost; (vi) such contest shall preclude the collection of, or other realization upon, any contested amount from the Property or any revenues from or interest in the Property; (vii) such contest shall not subject Lender or Borrower to civil or criminal liability (other than the civil liability of Borrower for the amount of the Mechanic's Lien in question plus interest); and (viii) Mortgagor has not consented to such Mechanic's Lien.

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

**Section 3.8 Change of Name, Identity or Structure.** No Mortgagor shall change its name, identity (including its trade name or names) or, if not an individual, its corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Lender; provided, however, that nothing contained in this Section 3.8 shall be deemed to require notice to or consent by Lender with respect to any Transfer, sale or pledge that would be permitted without notice to Lender or Lender's consent under Section 5.2.10 of the Loan Agreement. Mortgagor shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to

establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Mortgagor shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

**Section 3.9 Title.** Borrower has good, marketable and insurable fee and leasehold title to the real property comprising part of the Property and Mortgagor, as applicable, has good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Borrower's ability to repay the Loan. Borrower warrants that this Mortgage is a valid lien on and security interest in the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and subject to applicable creditor's rights laws and rules of equity, whether or not equitable relief has been sought. To Mortgagor's actual knowledge, after due inquiry, there are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of the Loan Documents.

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

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

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

**Section 4.2 No Reliance on Lender.** The general partners, members, principals and (if Borrower or Operating Lessee is a trust) beneficial owners of Mortgagor are



experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

**Section 4.4 Reliance.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance exists on the part of Lender on the date hereof; that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## **ARTICLE V - FURTHER ASSURANCES**

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

**Section 5.2 Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, within three (3) Business Days following Lender's written request therefor, shall deliver, and in the event it shall fail to so execute and deliver such financing statements within three (3) Business Days of request, hereby authorizes Lender to file one or more financing statements to evidence more effectively the security interest of Lender in the Property. Such financing statements may describe as the collateral covered thereby as "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect. Upon the occurrence and during the continuance of an Event of Default, Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, the right (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Lender deems appropriate to protect Lender's interest, if Mortgagor shall fail to do so within 10 Business Days after written request by Lender, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, personalty, Fixtures, plans and property agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Mortgagor hereunder; however: (1) Lender shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Lender in such performance shall be included in the Debt and shall bear interest at the Default Rate; (3) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (4) Lender shall not be liable to Mortgagor or any other person or entity for any failure to take any action that it is empowered to take under this Section 5.2.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**  
(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Mortgagor will pay, or cause to be paid, the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable without the requirement of the payment of any Spread Maintenance Payment.



(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable without the requirement of the payment of any Spread Maintenance Payment.

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

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

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

## **ARTICLE VI - DUE ON SALE/ENCUMBRANCE**

**Section 6.1 Lender Reliance.** Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and their respective members in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt, or part thereof, by a sale of the Property in accordance with the terms of the Loan Documents.

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

## **ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1 Remedies.** Subject to and in accordance with the terms of the Loan Agreement, upon the occurrence and during the continuance of any Event of Default,

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

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



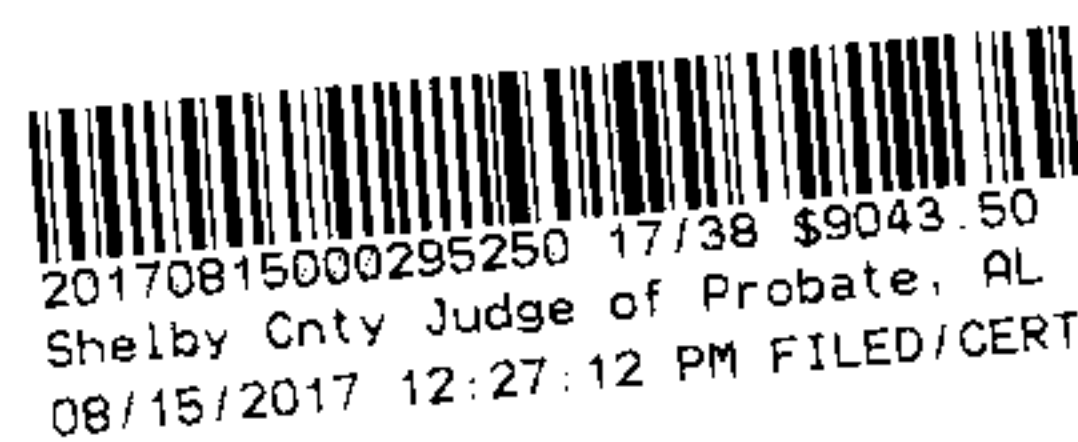
(iii) complete any construction on the Property in such manner and form as Lender deems advisable; (iv) make alterations, additions, renewals, replacements and improvements to or on the Property; (v) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor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

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor, subject to applicable law;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) the unpaid principal balance of the Note; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

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

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



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

**Section 7.2 Application of Proceeds.** Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, or if Mortgagor fails to make any payment or to do any act as herein provided (and the continuation of such failure beyond any applicable notice or cure period, if any), Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and all actual out-of-pocket cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender within ten (10) days of Lender's written demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable within ten (10) days of written demand by Lender therefor.

**Section 7.4 Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property; provided, that Lender shall notify Mortgagor that it intends to bring such action at least ten (10) Business Days prior to Lender instituting any such action (unless (x) an Event of Default has occurred and is continuing or (y) the provision of such notice by Lender will materially prejudice Lender's security interest in the Property or Lender's rights and remedies under the Loan Documents, in either of which events such notice shall not be required), and Lender shall endeavor to provide to Mortgagor and its legal counsel reasonable periodic status as to any such action brought by Lender.

**Section 7.5 Recovery of Sums Required To Be Paid.** Subject to the terms of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender



thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Mortgagor under the Loan Documents existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon their financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7 Other Rights, Etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

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

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

**Section 7.8 Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require under the Loan Documents, without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument. or improving the position of any subordinate

lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9 Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Mortgagor in connection therewith to the extent expressly provided for under the terms of the Loan Agreement.

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

**Section 7.11 Right of Entry.** Subject to and in accordance with the terms of the Loan Agreement, upon reasonable notice to Mortgagor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE VIII - PREPAYMENT

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



## ARTICLE IX - INDEMNIFICATION

**Section 9.1 General Indemnification.** Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless, or cause to be protected, defended, indemnified, released and held harmless, or cause to be protected, defended, indemnified, released and held harmless, the Indemnified Parties from and against any and all actual claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages (excluding consequential and punitive damages and diminution in value), losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the security interest in the Property or receipt of any Rents hereunder; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents in accordance with the terms of the Loan Agreement; (c) any and all lawful action that may be taken by Lender in accordance with applicable Legal Requirements and the terms of the Loan Documents in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Mortgagor, any guarantor or any indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in or on the Property or any part thereof or, if arising out of or in connection with the use or operation of the Property or any action or obligation of Mortgagor, on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in or on the Property or, if arising out of or in connection with the use or operation of the Property or any action or obligation of Mortgagor, any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) intentionally omitted; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (l) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor which may be payable in connection with the funding of the Loan: provided, however, that Mortgagor shall not be liable for the payment of any Losses to the extent same arise as a result of the gross negligence, willful misconduct, fraud or illegal acts of any Indemnified Party. This provision shall survive payment of the Note in full and the satisfaction of all other obligations of Borrower under this Security Instrument, the Loan Agreement and the other Loan Documents. Any losses incurred by Lender by reason of the application of this Section 9.1 shall become due and payable within ten (10)

days of Lender's written demand therefor and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

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

**Section 9.3 ERISA Indemnification.** Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless, or cause to be protected, defended, indemnified, released and held harmless, the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's reasonable discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1.9 of the Loan Agreement or a breach of any negative covenants contained in Section 5.2.9 of the Loan Agreement.

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Mortgagor shall defend, or cause to be defended, such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties, from and against any Losses. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Mortgagor shall not be liable for the expenses of more than one (1) legal counsel and one (1) local counsel in each applicable jurisdiction for the Indemnified Parties, unless any Indemnified Party shall have reasonably concluded that the positions of any Indemnified Party are in conflict with another Indemnified Party. Within ten (10) days of written demand, Mortgagor shall pay (or cause to be paid) or, in the sole and absolute discretion of the Indemnified Parties, reimburse (or cause to be reimbursed), the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith (subject to the carve-outs from liability in Section 9.1 above).



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

## **ARTICLE X - WAIVERS**

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

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

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

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

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

any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto.

#### **ARTICLE XI - EXCULPATION**

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

#### **ARTICLE XII - NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement, provided that any notice or other written communication to Operating Lessee shall be delivered to Operating Lessee at the address set forth on page 1 hereof.

#### **ARTICLE XIII - APPLICABLE LAW**

**Section 13.1 Governing Law. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE REAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.**

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then



outstanding indebtedness of Mortgagor to Lender, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

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

#### ARTICLE XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein (other than Lender, its designee or any Person that acquires title to all or any portion of the Property from Lender or such designee)", the word "**Operating Lessee**" shall mean "each Operating Lessee and any subsequent operators of the Property, including the successors and assigns of each such Operating Lessee", the word "**Mortgagor**" shall mean "the Borrower and Operating Lessee, together, collectively, with their respective successors and assigns, the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Operating Lease, the Leases and the Rents and enforcing its rights hereunder.

#### ARTICLE XV - MISCELLANEOUS PROVISIONS

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

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

**Section 15.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or

unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

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

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

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

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

**Section 15.8 Lien Absolute.** Mortgagor acknowledges that this Security Instrument and a number of other Loan Documents and those documents required by the Loan Documents together secure the Debt. Mortgagor agrees that, to the extent permitted by law, the lien of this Security Instrument and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(i) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Debt or Obligations or any other agreement or instrument relating to any of the foregoing;

(ii) any acceptance by Lender of any security for or guarantees of any of the Debt;



(iii) any failure, neglect or omission on the part of Lender to realize upon or protect any of the Debt or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Debt and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Debt or Obligations or this Security Instrument (other than the indefeasible payment in full in cash of all the Debt and Obligations hereby secured);

(iv) any change in the time, manner or place of payment of, or in any other term of, all or any of the Debt or Obligations;

(v) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Debt or Obligations hereby secured or of any of the collateral security therefor;

(vi) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Lender may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(vii) any exercise of the rights or remedies of Lender hereunder or under any or all of the Loan Documents.

**Section 15.9 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger unless Lender has taken title to the Property. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 15.10 Joint and Several Liability; Limitation on Operating Lessee's Liability.** To the extent the obligations set forth herein are expressly stated to be obligations of the Mortgagor or of both Borrower and Operating Lessee, each of Borrower and Operating Lessee shall be jointly and severally liable for the performance of such obligations. Nothing contained herein shall in any way alter or modify Borrower's obligations as a joint or several obligor for the repayment of the Debt and performance of the Obligations. Lender by its acceptance hereof, and its successors and assigns, agrees that Operating Lessee is not a Borrower and shall not be personally liable for repayment of the Debt.

**Section 15.11 Last Dollars Secured.** The parties agree that any payments or repayments of the Debt shall be and be deemed to be applied first to the portion of the Debt that

is not secured hereby, if any, it being the parties' intent that the portion of the Debt last remaining unpaid shall be secured hereby.

**Section 15.12 Multiple Exercise of Remedies.** To the extent permitted by law, Mortgagor specifically consents and agrees that Lender may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Lender may deem appropriate.

**Section 15.13 Counterparts.** This Security Instrument may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

**Section 15.14 Conflict of Terms.** In the event of any conflict between the terms of this Security Instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

## **ARTICLE XVI - STATE-SPECIFIC PROVISIONS**


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

**Foreclosure Sale.** (a) Upon the occurrence of any Event of Default, or at any time thereafter, this Security instrument shall be subject to foreclosure and may be foreclosed as provided by law in case of past due security instruments pursuant to power of sale granted hereby, and Lender shall be authorized, at its option, whether or not possession of the Real Property is taken, after giving notice by publication once a week for three (3) successive weeks of the time, place, and terms of such sale together with a description of the property to be sold, by publication in a newspaper published in the county or counties wherein the Real Property or any part thereof is located, or in any other manner provided by law, to sell the Real Property (or such part or parts thereof as Lender may from time to time elect to sell) in front of such county's courthouse door, at public outcry, between the hours of 11:00 AM and 4:00 PM, to the highest bidder for cash. If no newspaper is published in the county or counties where the Real Property is located, the notice shall be placed in a newspaper published in an adjoining county for three (3) successive weeks. Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Security instrument and may purchase the Real Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Real Property, real, personal, or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction among the items included therein or without assigning to them any proportion of such proceeds. Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Real Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Real Property not previously sold shall have been sold or all the Obligations shall have been paid in full.



(b) Mortgagor hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Real Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

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

  
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Shelby Cnty Judge of Probate, AL  
08/15/2017 12:27:12 PM FILED/CERT


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

**LSREF3/AH CHICAGO, LLC,**  
a Delaware limited liability company

By: Summer Trejo  
Name: Summer Trejo  
Title: Vice President

**LSREF3/AH CHICAGO TENANT, LLC,**  
a Delaware limited liability company

By: Summer Trejo  
Name: Summer Trejo  
Title: Vice President

  
20170815000295250 30/38 \$9043.50  
Shelby Cnty Judge of Probate, AL  
08/15/2017 12:27:12 PM FILED/CERT



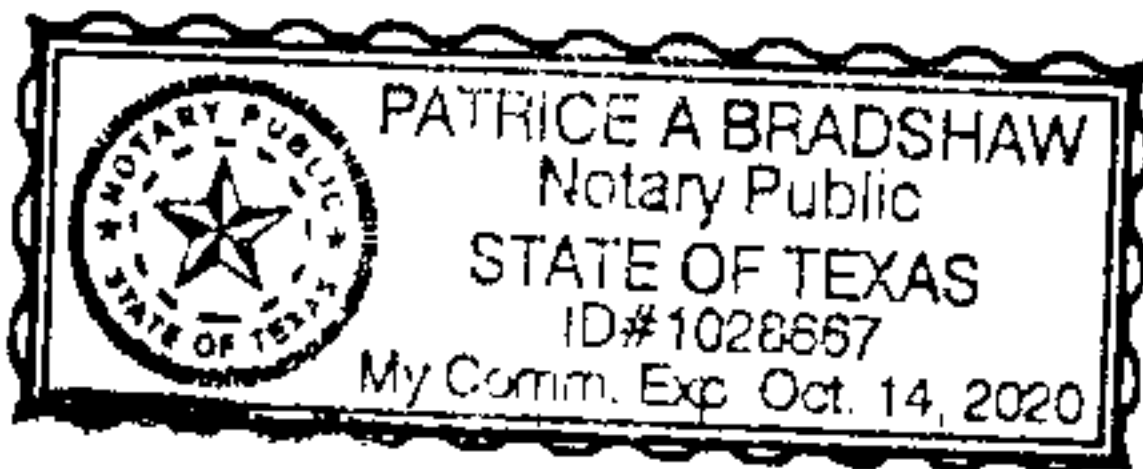
### ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DALLAS §

Before me the undersigned, a Notary Public in and for said County and State, on this day personally appeared Summer Trejo, the Vice President of LSREF3/AH Chicago, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and thereupon she/he acknowledged that she/he was authorized to execute the within instrument on behalf of said limited liability company, and that she/he executed said instrument as the voluntary act of the said limited liability company, and for the purposes and consideration expressed therein and in the capacity stated therein.

Given under my hand and seal of office this 25<sup>th</sup> day of July, A.D., 2017.

(Seal) Patrice A. Bradshaw, Notary Public  
(signature of Notary Public)



My Commission Expires: 10-14-2020

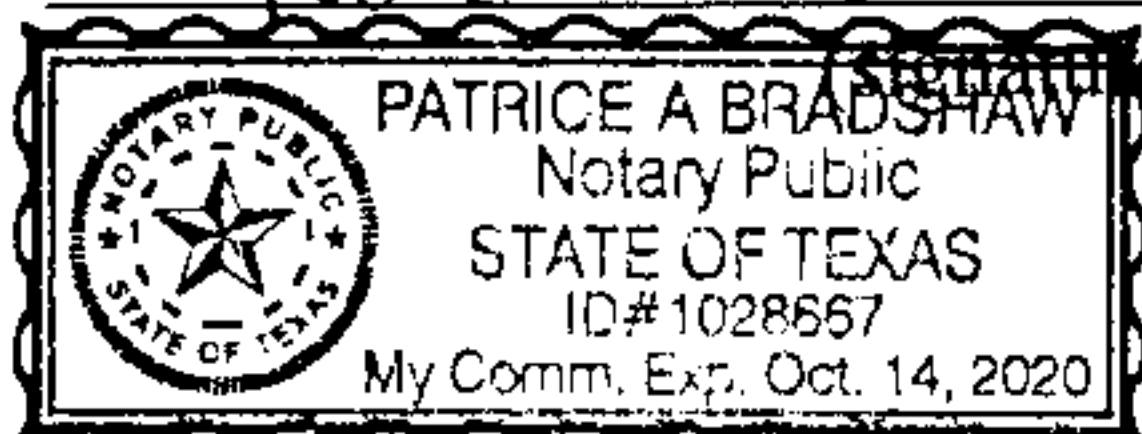
### ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DALLAS §

Before me the undersigned, a Notary Public in and for said County and State, on this day personally appeared Summer Trejo, the Vice President of LSREF3/AH Chicago Tenant, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and thereupon she/he acknowledged that she/he was authorized to execute the within instrument on behalf of said limited liability company, and that she/he executed said instrument as the voluntary act of the said limited liability company, and for the purposes and consideration expressed therein and in the capacity stated therein.

Given under my hand and seal of office this 25<sup>th</sup> day of July, A.D., 2017.

(Seal) Patrice A. Bradshaw, Notary Public  
(signature of Notary Public)



My Commission Expires: 10-14-2020


Lone Star Portfolio – Mortgage (Shelby, AL)

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Shelby Cnty Judge of Probate, AL  
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**LENDER:**

**GOLDMAN SACHS MORTGAGE COMPANY,**  
a New York limited partnership

By: Sid Shrivastava  
Name: Siddharth Shrivastava  
Title: Authorized Signatory

  
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Shelby Cnty Judge of Probate, AL  
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**ACKNOWLEDGMENT**

STATE OF New York §  
COUNTY OF New York §

Before me the undersigned, a Notary Public in and for said County and State, on this day personally appeared Sid Shrivastava, the Authorized Signatory of Goldman Sachs Mortgage Company, a New York limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and thereupon she/he acknowledged that she/he was authorized to execute the within instrument on behalf of said limited partnership, and that she/he executed said instrument as the voluntary act of the said limited partnership, and for the purposes and consideration expressed therein and in the capacity stated therein.

Given under my hand and seal of office this 27<sup>th</sup> day of July, A.D., 2017.

(Seal)

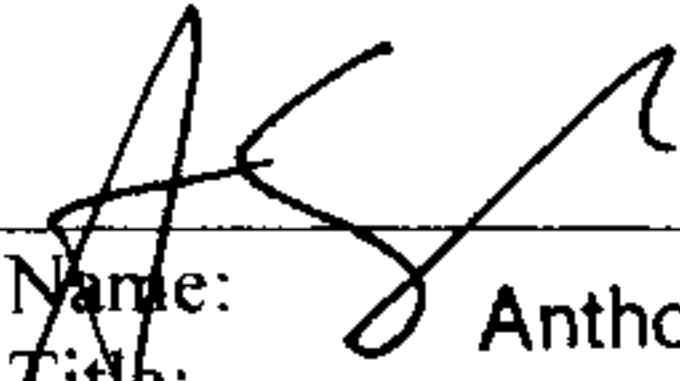
Mildred Miranda, Notary Public  
(signature of Notary Public)

My Commission Expires: June 12, 2021

**Mildred Miranda**  
**Notary Public-State of New York**  
**No. 01M16360048**  
**Qualified in New York County**  
**Commission Expires June 12, 2021**

**LENDER:**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,**  
a banking association chartered under the laws of the United  
States of America

By:   
Name: \_\_\_\_\_ Anthony Shaskus  
Title: \_\_\_\_\_ Vice President



ACKNOWLEDGMENT

STATE OF New York §  
COUNTY OF New York §

Before me the undersigned, a Notary Public in and for said County and State, on this day personally appeared Anthony Shaskis, the Vice President of JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America, known to me to be the person whose name is subscribed to the foregoing instrument, and thereupon she/he acknowledged that she/he was authorized to execute the within instrument on behalf of said banking association, and that she/he executed said instrument as the voluntary act of the said banking association, and for the purposes and consideration expressed therein and in the capacity stated therein.

Given under my hand and seal of office this 24 day of July, A.D., 2017.

(Seal) Thomas A. DeBlasio, Notary Public  
(signature of Notary Public)

My Commission Expires: February 27, 2021

Thomas A. DeBlasio  
Notary Public, State of New York  
Qualified in New York County  
No. 01DE6355030  
My Commission Expires February 27, 2021



## SCHEDULE I


### PRIOR MORTGAGES

FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING made by LSREF3/AH CHICAGO, LLC, a Delaware limited liability company and LSREF3/AH CHICAGO TENANT, LLC, a Delaware limited liability company to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and GS COMMERCIAL REAL ESTATE LP, a Delaware limited partnership dated as of November 12, 2014 and recorded on December 5, 2014, as Instrument Number 20141205000382900 in the Recorder's Office of Shelby County, Alabama (as the same has heretofore been amended, modified, restated, supplemented, renewed or extended) ("Mortgage"), securing payment of note(s) of even date therewith, in the original principal amount of \$340,000,000.00, and creating a first lien on the property described in Exhibit A attached hereto and by this reference made a part hereof.

GS COMMERCIAL REAL ESTATE LP, a Delaware limited partnership assigned its interest in said Deed of Trust to GOLDMAN SACHS MORTGAGE COMPANY, a New York limited partnership by assignment instrument recorded April 1, 2015 as Instrument Number 20150401000102530, in the Recorder's Office of Shelby County, Alabama.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and GOLDMAN SACHS MORTGAGE COMPANY assigned their interest in said Deed of Trust to WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF HOLDERS OF HYATT HOTEL PORTFOLIO TRUST 2015-HYT, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2015-HYT by assignment instrument recorded April 1, 2015 as Instrument Number 20150401000102540, in the Recorder's Office of Shelby County, Alabama.

Assignment of Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Wells Fargo Bank, National Association, as Trustee, for the benefit of Holders of Hyatt Hotel Portfolio Trust 2015-HYT, Commercial Mortgage Pass-Through Certificates, Series 2015-HYT, as assignor, in favor of JPMorgan Chase Bank, National Association and Goldman Sachs Mortgage Company, collectively, as assignee.

  
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## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Parcel I :

Lot 24B, according to the map of Inverness Center Site 24B, as recorded in Map Book 21, Page 61, in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel II:

Easement for the benefit of Parcel I for ingress and egress as described in Easement Agreement recorded as Instrument No. 1996-23103, in said Probate Office.

Parcel III:

Easement for the benefit of Parcel I for ingress and egress as described in Mutual Easement Agreement recorded as Instrument No. 1996-23105, in said Probate Office.

Parcel Number: 02-07-36-0-001-29.015




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## **EXHIBIT B**

### **OPERATING LEASE**

That certain Master Lease Agreement, dated as of November 12, 2014, by and between Borrower, as lessor, and Operating Lessee, as lessee, as evidenced by a certain Memorandum of Lease, dated as of November 12, 2014, and amended by that certain First Amendment to Master Lease Agreement dated July 31, 2017.

  
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