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Loan No. 1004231

This Instrument Prepared By: Donald M. Warren, Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, telephone 205-251-3000

After Recording, Return To: Wells Fargo Bank, National Association, 5400 LBJ Frwy., 10th Floor, Dallas, Texas 75240, Attn: Loan Administration, Loan No. 1004231

MORTGAGE AND SECURITY AGREEMENT

made by

LAKE WILBORN PARTNERS, LLC

and

BLACKRIDGE PARTNERS, LLC

(collectively, "Mortgagor")

in favor of

WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender")

dated as of

May 9, 2018

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA (1975), AS AMENDED, AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND LENDER, AS SECURED PARTY.

THIS MORTGAGE AND SECURITY AGREEMENT IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9A-334(h), CODE OF ALABAMA (1975), AS AMENDED, AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

THIS MORTGAGE IS GIVEN TO PROVIDE ADDITIONAL SECURITY FOR EXISTING REVOLVING INDEBTEDNESS. THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY WILL NOT EXCEED THE SUM OF $30,000,000.00. PURSUANT TO SECTION 40-22-2(1)b., CODE OF ALABAMA (1975), AS AMENDED, RECORDING PRIVILEGE TAX HAS BEEN PAID UPON SAID MAXIMUM PRINCIPAL AMOUNT AS FOLLOWS: (A) MORTGAGE TAX IN THE AMOUNT OF $10,500.00 WAS PAID UPON RECORDING OF THAT CERTAIN CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED MAY 26, 2011, RECORDED IN BOOK LR201104, PAGE 17887 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA; (B) MORTGAGE TAX IN THE AMOUNT OF $4,500.00 WAS PAID IN CONJUNCTION WITH THE LOAN INCREASE EVIDENCED BY THAT CERTAIN MORTGAGE MODIFICATION AGREEMENT RECORDED IN BOOK LR201219, PAGE 9835

IN SAID RECORDING OFFICE; (C) MORTGAGE TAX IN THE AMOUNT OF $5,250.00 WAS PAID IN CONJUNCTION WITH THE LOAN INCREASE EVIDENCED BY THAT CERTAIN SECOND MORTGAGE MODIFICATION AGREEMENT RECORDED IN BOOK LR201313, PAGE 13205 IN SAID RECORDING OFFICE; (D) MORTGAGE TAX IN THE AMOUNT OF $9,750.00 WAS PAID IN CONJUNCTION WITH THE LOAN INCREASE EVIDENCED BY THAT CERTAIN THIRD MORTGAGE MODIFICATION AGREEMENT RECORDED IN BOOK LR201510, PAGE 23444 IN SAID RECORDING OFFICE; (E) MORTGAGE TAX IN THE AMOUNT OF $15,000 WAS PAID IN CONJUNCTION WITH THE LOAN INCREASE EVIDENCED BY THAT CERTAIN FIFTH MORTGAGE MODIFICATION AGREEMENT RECORDED AS INSTRUMENT NO. 2018000332 IN SAID RECORDING OFFICE. THE MATURITY OF THE INDEBTEDNESS SECURED BY THIS MORTGAGE IS NOT BEING EXTENDED IN CONJUNCTION WITH THE RECORDING OF THIS MORTGAGE. NO ADDITIONAL RECORDING TAX IS DUE.

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MORTGAGE AND SECURITY AGREEMENT

This MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "**Mortgage**"), dated as of May 9, 2018, is granted by **LAKE WILBORN PARTNERS, LLC,** an Alabama limited liability company ("**Lake Wilborn**"), **BLACKRIDGE PARTNERS, LLC,** an Alabama limited liability company ("**Blackridge Partners**" together with Lake Wilborn, collectively, the "**Mortgagor**") in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("**Lender**").

W I T N E S S E T H:

ARTICLE 1. DEFINITIONS

1.1 **DEFINITIONS**. As used herein, the following terms shall have the following meanings:

"**Borrower**" – Shall mean Mortgagor, NSH CORP., an Alabama corporation ("**NSH**"), SB DEV. CORP., an Alabama corporation ("**SBDC**"), NSH NASHVILLE, LLC, a Tennessee limited liability company ("**NSH Nashville**"), BRENLEY CROSSING PARTNERS LLC, a Tennessee limited liability company (""**Brenley Crossing**"), JACKSON HILLS PARTNERS LLC, a Tennessee limited liability company ("**Jackson Hills**"), STOCKTON PARTNERS, LLC, an Alabama limited liability company ("**Stockton Partners**"), and MCDANIEL FARMS PARTNERS, LLC, a Tennessee limited liability company ("**McDaniel Farms**") together with any and all subsequent obligors under the Credit Facility.

"**Code**" – The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

"**Constituent Party**" – Any signatory to this Mortgage or a Supplemental Mortgage that signs on Mortgagor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

"**Construction Contracts**" – Any and all contracts and agreements, written or oral, between Mortgagor and any other party, and between any of the foregoing and any subcontractor, and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements including the performing of labor or the furnishing of standard or specially fabricated materials or other supplies or services in connection therewith.

"**Contracts**" – All of the right, title, and interest of Mortgagor in, to, and under any and all (i) contracts for the purchase or sale of all or any portion of the Mortgaged Property, whether such Contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi–governmental agency, which are directly or indirectly related to, or connected with, the development of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no–action letters from each governmental authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property, (b) for the construction of any improvements on the Mortgaged Property (including, without

limitation, the Construction Contracts), and (c) to develop or operate the Mortgaged Property as a commercial and/or residential project; (iii) any and all right, title, and interest Mortgagor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) all contracts with architects, engineers or other professionals relating to the design and/or construction of the Improvements, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all rebates, refunds or deposits, and all other sums due or to become due under and pursuant thereto and together with all powers, privileges, options, and other benefits of Mortgagor under such contracts; and (v) all other contracts which in any way relate to the design, use, enjoyment, occupancy, operation, maintenance, management or ownership of the Mortgaged Property (save and except any and all leases, subleases, or other agreements pursuant to which Mortgagor is granted a possessory interest in the Land), including but not limited to engineers contracts, architects contracts, maintenance and service contracts and management agreements.

"**Credit Agreement**" – Third Amended and Restated Credit Facility Agreement dated effective as of December 28, 2017 by and among Borrower and Lender, as amended by Modification Agreement dated December 31, 2017, as amended by Second Modification Agreement dated May 3, 2018.

"**Credit Facility**" – Shall have the meaning attached to such term in the Credit Agreement.

"**Disposition**" – Any sale, lease (except as permitted under this Mortgage, any Supplemental Mortgage or the Credit Agreement), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Mortgagor (if Mortgagor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), except pursuant to a partial release of the lien of this Mortgage pursuant to the applicable provisions thereof and of the other Loan Documents or as otherwise expressly permitted under the other Loan Documents.

"**Event of Default**" – Shall have the meaning set forth in Article 6 hereof.

"**Fixtures**" – All materials, supplies, equipment, apparatus and other items now owned or hereafter acquired by Mortgagor and 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 any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

"**Governmental Authority**" – Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Governmental Requirement**" – Any and all statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Mortgagor or the Mortgaged Property (including, without limitation, the ownership, use, occupancy, possession, operation, maintenance, construction, alteration or repair thereof).

"**Guarantors**" (individually and/or collectively, as the context may require) – Those persons, firms or entities, if any, designated as "Guarantors" in the Guaranty.

"**Guaranty**" (individually and/or collectively, as the context may require) – That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantors guaranteeing (i) the repayment of all or any part of the Indebtedness, (ii) the satisfaction of, or continued compliance with, the Obligations, or (iii) both.

"**Home**" – A single Lot and the Improvement constructed or to be constructed on such Lot.

"**Impositions**" – (i) All real estate and personal property taxes, charges, assessments, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof, or any portion thereof, or the sidewalks, streets or alleyways adjacent thereto; (ii) any charges, fees, license payments or other sums payable for any easement, license or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, telephone and other utility charges and fees; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

"**Improvements**" – The single family detached residences to be constructed by Mortgagor upon the Lots, as more particularly described in the Plans and Specifications, together with any and all buildings, garages, houses, walkways, driveways, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof; provided, however, no more than one (1) such residence is to be constructed upon each Lot.

"**Indebtedness**" – (i) The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note or the other Loan Documents; (ii) such additional sums, with interest thereon, as may hereafter be borrowed from Lender, or their successors or assigns, by Mortgagor or any other Borrower or the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Mortgagor, Borrower and Lender that such future indebtedness may be incurred); (iii) all payment and performance obligations under any Swap Agreement, or other interest rate agreement executed by and between Borrower and Lender, which agreement is evidenced by a writing which recites that it is secured by this Mortgage or any Supplemental Mortgage; and (iv) any and all other indebtedness, obligations and liabilities of any kind of Borrower to Lender , now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including, but not limited to, indebtedness, obligations and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise (it being contemplated by Borrower, Lender that Borrower may hereafter become indebted to Lender in further sums).

"**Land**" – The real property or interest therein described in Exhibit "A" attached hereto and incorporated herein by this reference together with the "Land" described in any and all Supplemental Mortgages, together with all right, title, interest, and privileges of Mortgagor in and to (i) all streets, ways, roads, alleys, easements, rights–of–way, licenses, rights of ingress and egress, vehicle parking and public places, existing or proposed, abutting, adjacent, used in conjunction with or pertaining to such real property or the interests therein; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

"**Leases**" – Any and all leases, master leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith.

"**Legal Requirements**" – (i) Any and all Governmental Requirements, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof, (iii) any Borrower's, Guarantor's or any Constituent Party's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, and (vi) any and all leases (other than Leases), and contracts (written or oral) (other than Contracts) of any nature that relate in any way to the Mortgaged Property and to which any Borrower, any Guarantor or any Constituent Party may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Mortgagor is granted a possessory interest in the Mortgaged Property.

"**Lender**" – Shall have the meaning set forth in the preamble, and shall include its successor and assigns.

"**Loan Documents**" – The Note, the Credit Agreement, this Mortgage, the Supplemental Mortgages, the Guaranty, if any, the Mortgage and any and all other documents now or hereafter executed by Mortgagor or any other Borrower, any Guarantor, any Constituent Party or any other person or party in connection with the Credit Facility evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with all modifications or amendments thereto.

"**Lot**" – shall mean a single platted and subdivided portion of the Land upon which a single Improvement is to be, has been or is in the process of being, constructed, and which has all required municipal approvals and utilities, including, without limitation, streets, alleys (if applicable), sidewalks, potable water, storm and sanitary sewer, electricity, telephone and, to the extent applicable, gas and cable television facilities, substantially completed and each connected to or available at the boundaries of such Lot.

"**Maximum Lawful Rate**" – Shall have the meaning set forth in Section 12.13 hereof.

"**Minerals**" – All substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Land, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores, upon extraction or removal from the Land.

"**Mortgaged Property**" – The Land, Improvements, Fixtures, Minerals, Personalty, Plans and Specifications, Contracts, Leases, and Rents, together with:

(a) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Mortgaged Property and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and

(b) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

"**Note**" – That certain Fifth Amended and Restated Promissory Note Secured by Mortgage from Borrower in favor of Lender in the stated principal amount of up to $30,000,000, as amended by Modification Agreement dated December 31, 2017, as amended by Second Modification Agreement dated May 3, 2018, together with such other replacement notes as may be issued from time to time pursuant to the Credit Agreement, as hereafter amended, supplemented, replaced or modified.

"**Obligations**" – Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other Borrower, any Guarantor or any other person or party to Lender or others as set forth in the Note, this Mortgage, the Loan Documents, the Guaranty, the Contracts, the Leases and all other documents now or hereafter executed by Mortgagor or any other Borrower, any Guarantor or any other person or party in connection with the loan evidenced by the Note, including, without limitation the covenants, conditions, warranties, representations and other obligations under any Swap Agreement, or other interest rate agreement executed by and between any Borrower and Lender, which agreement is evidenced by a writing which recites that it is secured by this Mortgage or any Supplemental Mortgage, and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Mortgagor is granted a possessory interest in the Land.

"**Partial Release Price**" – The amount for each Home or Lot to be paid by Borrower to Lender for a partial release of the lien of this Mortgage for the applicable Home, or Lot. The Partial Release Price for each such Home or Lot, as applicable, is set forth in the Credit Agreement, except as such amount may be changed pursuant to Section 2.10 of the Credit Agreement or Section 8.4 hereof.

"**Permitted Exceptions**" – The liens, easements, restrictions, security interests, and other matters (if any) as specified in this Mortgage or any applicable Supplemental Mortgage and the liens and security interests created by the Loan Documents.

"**Personalty**" – All of the right, title, and interest of Mortgagor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, tradenames, inventory; (iii) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Mortgaged Property, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Mortgaged Property and those for municipal utility district or other utility costs incurred or deposits made in connection with the Mortgaged Property; (iv) all payments of money and rights to payment of money from Lender to Mortgagor under any swap derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement however described or defined) at any time entered into between Mortgagor and Lender in connection with the loan evidenced by a Note; and (v) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 – Secured Transactions); any and all of which are now owned or hereinafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Mortgaged Property, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Mortgaged Property or stored elsewhere) for use in or on the Mortgaged Property, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

"**Plans and Specifications**" – Any and all plans and specifications for the construction of such style or type of Improvement, approved by Lender in accordance with the Credit Agreement, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval and, if required, by each party issuing a commitment to guarantee, insure, purchase or refinance the loan applicable to such Home, and all amendments and modifications thereof approved in writing by the same.

"**Rents**" – All of the rents, revenues, income, receipts, issues, proceeds, profits, security and other types of deposits (after Mortgagor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Mortgagor, for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property, together with any and all rights and claims of any kind which Mortgagor may have against any lessee under any Lease or any subtenants or occupants of the Mortgaged Property.

"**Subordinate Mortgage**" – Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Mortgagor, the lien of which is subordinate and inferior to the lien of this Mortgage.

"**Supplemental Mortgage**" – means a supplement to this Mortgage pursuant to which the terms, covenants, conditions, grants, liens and warranties of the Mortgage are incorporated and by which Mortgagor mortgages the Mortgaged Property to secure this Credit Facility.

"**Swap Agreement**" - means a "swap agreement" as defined in Section 101 of the Bankruptcy Code entered into by any Borrower and Lender (or with another financial institution which is reasonably acceptable to Lender), to hedge the floating interest expense of the Credit Facility the full term of the Credit Facility in an aggregate notional

amount equal to the outstanding principal balance of the Credit Facility originally scheduled to be outstanding over such term when the hedge is executed and providing for a fixed rate acceptable to Lender, with such Borrower making fixed rate payments and receiving floating rate payments to offset changes in the variable interest expense of the Credit Facility, all upon terms and subject to such conditions as shall be acceptable to Lender (or if such transaction is with another financial institution, all upon terms and subject to such conditions as shall be approved by Lender in writing), together with all modifications, extensions, renewals and replacements thereof.

1.2 **ADDITIONAL DEFINITIONS**. As used herein, the following terms shall have the following meanings:

"**Hereof**," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced.

"**Heretofore**" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Mortgage or any applicable Supplemental Mortgage.

The term "**Mortgage**" means this Mortgage as supplemented, amended or modified by all Supplemental Mortgages.

All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

Any capitalized terms used but not defined in this Mortgage shall have the meaning given to such capitalized terms in the Credit Agreement.

ARTICLE 2. GRANT

2.1 **GRANT**. To secure the full and timely payment of the Indebtedness (subject, in the case of the principal indebtedness secured to the limitation expressed in Section 2.6 of this Mortgage) and the full and timely performance and discharge of the Obligations, Mortgagor has GRANTED, BARGAINED, SOLD, CONVEYED, MORTGAGED AND ASSIGNED, and by these presents does GRANT, BARGAIN, SELL, CONVEY, MORTGAGE AND ASSIGN, unto Lender, with power of sale and right of entry and possession, the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Loan Documents shall terminate, in accordance with the provisions of Section 12.20 hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Lender confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

2.2 **DEFEASANCE; RELEASE**. If that portion of Indebtedness which is covered by this Mortgage is paid in full in accordance with the terms of this Mortgage, the applicable Supplemental Mortgage, the Note, and the other Loan Documents, and if Mortgagor and the other Borrowers, as applicable, shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Mortgage, any applicable Supplemental Mortgages, the Note and the other Loan Documents, then the conveyance governed by this Mortgage and the applicable Supplemental Mortgages shall become null and void and be released at Borrower's request and expense, Lender shall not have any further obligation to make advances under and pursuant to the

provisions of the Note or the other Loan Documents with respect to the Mortgaged Property covered by this Mortgage and such Supplemental Mortgage.

2.3 **REVOLVING INDEBTEDNESS.** The Indebtedness secured by this Mortgage is a revolving indebtedness which Borrower may borrower, repay and re-borrow pursuant to the terms of the Credit Facility. This Mortgage shall remain valid and in full force and effect notwithstanding the fact that at any time or from time to time the outstanding Indebtedness secured hereby may be reduced to $0.00.

ARTICLE 3. WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Lender, as of the date of and at all times during the term of this Mortgage, as follows:

3.1 **AUTHORITY/ENFORCEABILITY**. Mortgagor is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own the Mortgaged Property and construct the Improvements as contemplated by the Loan Documents.

3.2 **BINDING OBLIGATIONS**. Mortgagor is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Mortgagor.

3.3 **FORMATION AND ORGANIZATIONAL DOCUMENTS**. Mortgagor has delivered, or caused to be delivered to Lender all formation and organizational documents of Borrower, the Constituent Parties, if any, and of all Guarantors, if any, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Mortgagor shall promptly provide Lender with copies of any amendments or modifications of the formation or organizational documents.

3.4 **NO VIOLATION**. Mortgagor's execution, delivery, and performance under the Loan Documents do not (i) require any consent or approval not heretofore obtained under any partnership agreement, articles of incorporation, bylaws or other document; (ii) violate any Legal Requirements applicable to the Mortgaged Property or Mortgagor; or (iii) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which Mortgagor or the Mortgaged Property is bound or regulated.

3.5 **COMPLIANCE WITH LEGAL REQUIREMENTS**. Mortgagor has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy and market the Mortgaged Property, and shall maintain compliance with all Legal Requirements applicable to the Mortgaged Property and necessary for the transaction of Mortgagor's business.

3.6 **ACCURACY**. All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Credit Facility or the Mortgaged Property or required by the Loan Documents are accurate, correct in all material respects and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

3.7 **NO COMMENCEMENT**. As of the date of this Mortgage and each applicable Supplemental Mortgage, no steps to commence construction on the Land described in this Mortgage or any Supplemental Mortgage, as applicable, including steps to clear or otherwise prepare the Land for construction thereon or the delivery of material for use in construction of the Improvements have been taken.

3.8 **TITLE TO MORTGAGED PROPERTY AND LIEN OF THIS INSTRUMENT**. Mortgagor has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate), Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claim, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles, interests or estates of any nature whatsoever except the Permitted Exceptions. This Mortgage constitutes and, as modified by each Supplemental Mortgage will constitute, a valid, subsisting, first mortgage on the Land, the Improvements,

and the Fixtures; a valid, subsisting first security interest in and to the Personalty, Contracts, Construction Contracts, Plans and Specifications.

3.9 **OTHER PAYMENTS**. Mortgagor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirement to be withheld by Mortgagor pending completion of the Improvements) all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture hereunder) and services of every kind and character used, furnished or installed in or on the Mortgaged Property and no claim for same exists or will be permitted to be created.

3.10 **BUSINESS PURPOSES**. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Mortgagor, and is not for personal, family, household, or agricultural purposes.

3.11 **MAILING ADDRESS**. Mortgagor's mailing address, as set forth Section 12.5 hereof, or as changed pursuant to the provisions hereof, is true and correct.

3.12 **RELATIONSHIP OF MORTGAGOR AND LENDER**. The relationship between Mortgagor and Lender is solely that of debtor and creditor, Lender has no fiduciary or other special relationship with the Mortgagor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Mortgagor and Lender to be other than that of debtor and creditor.

3.13 **NO RELIANCE ON LENDER**. Mortgagor is experienced in the ownership and operation of properties similar to the Mortgaged Property. Lender is relying solely upon Mortgagor's and the each other Borrower's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Mortgaged Property. Mortgagor is not relying on Lender's expertise or business acumen in connection with the Mortgaged Property or in connection with the construction of the Improvements.

ARTICLE 4. AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Lender as follows:

4.1 **PAYMENT AND PERFORMANCE**. Mortgagor will pay, or cause Borrower to pay, the Indebtedness, as and when called for in the Loan Documents and on or before the due dates thereof, and will perform all of the Obligations, in full and on or before the dates same are to be performed.

4.2 **EXISTENCE**. Mortgagor will preserve and keep in full force and effect its existence (separate and apart from its affiliates), rights, franchises and trade names.

4.3 **COMPLIANCE WITH LEGAL REQUIREMENTS**. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 **FIRST LIEN STATUS**. Mortgagor will protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest is asserted against the Mortgaged Property, the Construction Contracts or the Plans and Specifications other than the liens and security interests in favor of Lender , the lien securing real estate taxes not yet due and payable, and inchoate mechanic's and materialmen's liens securing sums not yet due and payable, Mortgagor will promptly, and at its own cost and expense, (a) within the time period required under the Credit Agreement, pay the underlying claim in full or take such other action so as to cause same to be released or, if permitted by Lender in Lender's sole discretion, bonded to Lender's satisfaction and (b) within five (5) days from the date such lien or security interest is so asserted, give Lender notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.

4.5 **PAYMENT OF IMPOSITIONS**. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto

or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, to the extent and in the manner permitted by law (a) pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions if such installment payment would not create or permit the filing of a lien (statutory, constitutional or contractual) against the Mortgaged Property and (b) contest the payment of any Impositions in good faith and by appropriate proceedings provided that (i) any such contests shall be prosecuted diligently and in a manner not prejudicial to the rights, liens and security interests of Lender, (ii) Mortgagor shall deposit funds with Lender or obtain a bond in form and substance and with an issuing company satisfactory to Lender in an amount sufficient to cover any amounts which may be owing in the event the contest may be unsuccessful (Mortgagor shall make such deposit or obtain such bond, as the case may be, within five (5) days after demand therefor and, if made by payment of funds to Lender, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Mortgagor or the adverse claimant), (iii) no contest may be conducted and no payment may be delayed beyond the date on which the Mortgaged Property could be sold for nonpayment, and (iv) Lender may pay over to the taxing authority entitled thereto any or all of the funds at any time when, in the opinion of Lender's counsel, the entitlement of such authority to such funds is established. Subject to Mortgagor's right to contest as provided for herein, Mortgagor shall submit to Lender copies of tax statements and paid tax receipts evidencing the due and punctual payment of all real estate and personal property taxes, charges and assessments levied upon or assessed or charged against the Mortgaged Property on or before the delinquent date of any such taxes.

4.6 **REPAIR**. Mortgagor will keep the Mortgaged Property in first class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non–structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will also use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Plans and Specifications or elsewhere in the Loan Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Section 5.2 hereof; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will notify Lender in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 **INSURANCE**. Mortgagor will obtain and maintain insurance upon and relating to the Mortgaged Property as required by the Credit Agreement. Lender shall be furnished with a copy of each such initial policy coincident with the execution of this Mortgage or any applicable initial Supplemental Mortgage and a copy of each renewal policy not less than fifteen (15) days prior to the expiration of the initial or each immediately preceding renewal policy together with receipts or other evidence that the premiums thereon have been paid. Upon the request of Lender, Mortgagor shall furnish to Lender, on or before thirty (30) days after the close of each of Mortgagor's fiscal years, a statement certified by Mortgagor or a duly authorized officer of Mortgagor of the amounts of insurance and coverages maintained in compliance with the Credit Agreement, and of the insurance company or companies which carry such insurance.

4.8 **APPLICATION OF PROCEEDS**. It is agreed that any insurance proceeds will be payable to Lender , and, except as provided herein, applied at Lender's sole option (and in Lender's sole discretion) either (i) to the restoration, repair or replacement of the Mortgaged Property or (ii) toward the payment of the Indebtedness. Notwithstanding the foregoing, provided that (i) no Event of Default is then existing, and (ii) the amount outstanding under the Credit Facility does not then exceed the Borrowing Base (without including the damaged Improvements in the Borrowing Base for such purposes), then Lender agrees that the proceeds of any casualty insurance shall be made available to Mortgagor for the restoration, repair or replacement of the damaged Improvements in accordance with the terms and conditions of this Section 4.8. If the proceeds of such insurance are to be used for restoration, repair or replacement (herein referred to as the "**Work**") of the Mortgaged Property, such proceeds shall be paid out by Lender from time to time to Mortgagor (or, at the option of Lender, jointly to Mortgagor and the persons furnishing labor and/or material incident to the Work or directly to such persons) as the Work progresses, subject to the following conditions: (a) if the cost of the Work estimated by Lender shall exceed $25,000.00, prior to the commencement thereof (other than Work to be performed on an emergency basis to protect the Mortgaged Property or prevent interference therewith), Mortgagor shall have prepared and submitted

to Lender the plans and specifications for such Work (but only if the plans and specifications have been materially amended form the original plans and specifications) and afforded Lender the opportunity to accept same; (b) each request for payment by Mortgagor shall be made on ten (10) days prior written notice to Lender and shall be accompanied by a certificate executed by an officer of Mortgagor, stating, among such other matters as may be reasonably required by Lender that: (i) all of the Work completed has been done in compliance with the plans and specifications submitted to Lender; (ii) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (iii) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iv) the amount of insurance proceeds remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion); (c) at the request of Lender, each request shall be accompanied by waivers of lien satisfactory in form and substance to Lender covering that part of the Work for which payment or reimbursement was previously requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Lender that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Mortgaged Property; (d) there has not occurred any Event of Default since the hazard, casualty or contingency giving rise to payment of the insurance proceeds; (e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful; and (f) if, in Lender's judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Mortgagor shall deposit with Lender, immediately upon a request therefor, an amount of money which when added to such insurance proceeds will be sufficient, in Lender's judgment, to complete the Work. If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other aforesaid persons) incident thereto, Lender may, at Lender's option, disburse such balance to Mortgagor or apply such balance toward the payment of the Indebtedness, whether or not then due. Nothing herein shall be interpreted to prohibit Lender from (y) withholding from each such disbursement ten percent (10%) (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and from continuing to withhold such sum, until the time permitted for perfecting liens against the Mortgaged Property has expired (or such longer period of time as permitted or required by any Legal Requirement), at which time the amount withheld shall be disbursed to Mortgagor (or to Mortgagor and any person or persons furnishing labor and/or material for the Work or directly to such persons), or (z) applying at any time the whole or any part of such insurance proceeds to the curing of any Event of Default. If the insurance proceeds are applied to the payment of the Indebtedness pursuant to Section 4.7 hereof and this Section 4.8, any such application shall be in such order as Lender, in its sole discretion, may determine.

4.9 **RESTORATION FOLLOWING CASUALTY**. If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor will give notice thereof to Lender and, if so instructed by Lender, will promptly, if the insurance proceeds are to be disbursed to Mortgagor for such purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property in accordance with the provisions of Section 4.8 hereof and all Legal Requirements as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction; provided, however, any Improvements which are damaged and are in the process of being repaired or restored shall be excluded from the Borrowing Base until the completion of the repair and restoration of such Improvements to the point of completion of the Improvements at the time of casualty.

4.10 **SITE VISITS, OBSERVATIONS AND TESTING**. Mortgagor will permit Lender and its agents, representatives and employees, at all reasonable times and at Mortgagor's expense, to inspect the Mortgaged Property. Without limiting the generality of the foregoing, Lender, its agents, representatives, and employees shall have the right at any reasonable time to enter and visit the Mortgaged Property for the purposes of observing the same, taking and removing soil or groundwater samples, and conducting tests on any part of the Mortgaged Property. Lender is under no duty, however, to visit or observe the Mortgaged Property or to conduct tests, and any such acts by Lender shall be solely for the purposes of protecting Lender's security and preserving Lender's rights under the Loan Documents. Lender owes no duty of care to protect Borrower or any other party against, or to inform

Mortgagor or any other party of, any Hazardous Materials (as defined in the Credit Agreement) affecting the Mortgaged Property. No site visit, observation or testing by Lender shall result in a waiver of any Event of Default of Mortgagor or impose any liability on Lender. In no event shall any site visit, observation or testing by Lender be a representation that Hazardous Materials are or are not present in, on, or under the Mortgaged Property, or that there has been or shall be compliance with any Hazardous Materials Laws (as defined in the Credit Agreement), or any other applicable Legal Requirements. Neither Mortgagor nor any other party is entitled to rely on any site visit or observation by Lender. Lender shall disclose to Mortgagor, without representation or warranty of any kind, any report or findings made as a result of, or in connection with, any site visit, observation or testing by Lender, except to the extent that Lender deems any portion of such report or findings to be confidential. It is expressly understood and agreed that neither Mortgagor nor any other person or entity may rely on any such report or findings, and Lender may require, as a condition to such disclosure, that Mortgagor execute a statement whereby it reaffirms that it will not rely upon such report or findings. In each instance, Lender shall give Mortgagor reasonable notice before entering the Mortgaged Property or any other place Lender is permitted to enter under this Section 4.10. Lender shall make reasonable efforts to avoid interfering with Mortgagor's or any tenant's use of the Mortgaged Property, or any other property, in exercising any rights provided in this Section.

4.11 **STATEMENT OF UNPAID BALANCE**. At any time and from time to time, Mortgagor will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.12 **FINANCIAL COVENANTS**.

(a) **Financial Information**. Mortgagor shall deliver and shall cause each other Borrower and Guarantors to deliver, to Lender such financial statements and other financial reports as are specified in Article 10 in the Credit Agreement.

(b) **Books and Records**. Mortgagor shall maintain complete books of account and other records for the Mortgaged Property and for disbursement and use of the proceeds of the Credit Facility, and the same shall be available for inspection and copying by Lender upon reasonable prior notice.

(c) **Reports**. Mortgagor shall deliver to Lender such schedules and reports and/or marketing and sales information reports as are specified in the Credit Agreement.

(d) **Financial Requirements**. In addition to the other matters specified herein, Mortgagor and each Borrower, Guarantors and Constituent Parties shall comply with each and every one of the financial requirements specified in Article 10 of the Credit Agreement, as each may be applicable to it.

4.13 **TAX AND INSURANCE ESCROW**. Upon Lender's request Mortgagor shall pay monthly, annually, or as otherwise directed by Lender, an amount ("**Escrowed Sums**") equal to the sum of (a) the annual Impositions (estimated by Lender, wherever necessary) to become due for the tax year during which such payment is so directed and (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Lender determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Lender shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Lender within thirty (30) days thereafter the additional amount as stated in Lender's notice. The Escrowed Sums may be held by Lender in an interest bearing account and may be commingled with Lender's other funds. Upon assignment of this Mortgage, Lender shall have the right to pay over the balance of the Escrowed Sums then in its possession to its assignee whereupon the Lender shall then become completely released from all liability with respect thereto. Within ninety–five (95) days following the full payment of the Indebtedness (other than a full payment of the Indebtedness as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Indebtedness) or at such earlier time as Lender may elect, the balance of the Escrowed Sums in its possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto. If no Event of Default shall have occurred and be continuing hereunder, the Escrowed Sums shall, at the option of Lender, be repaid to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Loan Documents to pay the Impositions and the required insurance premiums prior to the due dates thereof (to

the extent Lender is holding sufficient funds in escrow therefor) or be paid directly to the Governmental Authority and the insurance company entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Lender shall have the additional option of crediting the full amount of the Escrowed Sums against the Indebtedness without notice of any kind to Mortgagor. Notwithstanding anything to the contrary contained in this Section 4.13 or elsewhere in this Mortgage, Lender hereby reserves the right to waive the payment by Mortgagor to Lender of the Escrowed Sums, and, in the event Lender does so waive such payment, it shall be without prejudice to Lender's rights to insist, at any subsequent time or times, that such payments be made in accordance herewith.

4.14 **APPRAISALS**. Lender shall have the right to reappraise the Mortgaged Property as specified in the Credit Agreement.

4.15 **ADDRESS**. Mortgagor shall give written notice to Lender of any change of address of Mortgagor at least thirty (30) days prior to the actual change of address of Mortgagor. Absent such official written notice of a change in address for Mortgagor, then Lender shall be entitled for all purposes under the Loan Documents to rely upon Mortgagor's address as set forth in the Credit Agreement.

4.16 **DISCLOSURES**. If at any time Mortgagor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a material adverse effect on the financial condition of Mortgagor or any other Borrower or the Mortgaged Property, Mortgagor shall promptly notify Lender of the existence or occurrence thereof and of Mortgagor's opinion as to what effect such may have on the Mortgaged Property, Mortgagor or any other Borrower. Mortgagor shall also give prompt notice to Lender of (i) the serious illness or death of any member of the Senior Management of any Borrower, (ii) any litigation or dispute, threatened or pending against or affecting the Mortgaged Property, any Borrower, any Guarantor or any Constituent Party which could have a material adverse effect on the financial condition of the Mortgaged Property, any Borrower, any Guarantor or any Constituent Party, (iii) any Event of Default, (iv) any default by any Borrower (after expiration of any applicable grace or cure period) or any acceleration of any indebtedness owed by any Borrower under any contract to which such Borrower is a party, (v) any default (after expiration of any applicable grace or cure period) by any Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which any Guarantor is a party, and (vi) any change in the character of any Borrower's, any Guarantor's or any Constituent Party's business as it existed on the date hereof.

4.17 **ERISA**. Mortgagor and each other Borrower, Guarantors and Constituent Parties shall at all times comply with the provisions of ERISA (as defined in the Credit Agreement) with respect to any retirement or other employee benefit plan to which it is a party as employer, and as soon as possible after any Borrower, any Guarantor or any Constituent Party knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of any Borrower, any Guarantor or any Constituent Party has occurred, Mortgagor shall furnish to Lender a written statement setting forth details as to such Reportable Event and the action, if any, which Borrower, any Guarantor or any Constituent Party proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

ARTICLE 5. NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Lender that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 **USE VIOLATIONS**. Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereto.

5.2 **ALTERATIONS**. Mortgagor will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Sections 4.6 and 4.9 hereof) without the prior written consent of Lender make or permit to be

made any alterations or additions to the Mortgaged Property of a material nature, except as permitted or contemplated under the Credit Agreement.

5.3 **REPLACEMENT OF FIXTURES AND PERSONALTY**. Mortgagor will not, without the prior written consent of Lender, permit any of the Fixtures or Personalty to be removed at any time from the Mortgaged Property unless (i) the removed item is removed temporarily for maintenance and repair, (ii) the removed item is removed in the ordinary course of business pursuant to a request of a purchaser under an Approved Sales Contract or (iii) if removed permanently, is replaced by an article of equal suitability and value, owned by any Borrower, free and clear of any lien or security interest except such as may be first approved in writing by Lender.

5.4 **CHANGE IN ZONING**. Mortgagor will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or, except as permitted by the Credit Agreement, grant or consent to any easement (except in the ordinary course of business, and provided that any such easement does not materially affect the use or value of the Lot or any other Land for the purpose of the construction and sale of a Home on any Lot affected by such easement), dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Lender's prior written consent.

5.5 **NO DRILLING**. Mortgagor will not, without the prior written consent of Lender, consent to any drilling or exploration for or extraction, removal, or production of, any minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

5.6 **BUSINESS CHANGE**. Mortgagor shall not make or permit to occur or exist a material change in the character of its business activities as such existed on the date of this Mortgage, without Lender's prior written consent.

5.7 **NO DISPOSITION**. Mortgagor will not make a Disposition without obtaining Lender's prior written consent to a Disposition.

5.8 **NO SUBORDINATE MORTGAGES**. Mortgagor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

ARTICLE 6. EVENTS OF DEFAULT

The term "**Event of Default**", as used herein and in the Loan Documents, shall have the meaning ascribed to such term in the Credit Agreement.

ARTICLE 7. DEFAULT AND FORECLOSURE

7.1 **REMEDIES**. If an Event of Default shall occur, Lender may, subject to the provisions of Section 7.9 hereinbelow, at Lender's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration**: Declare the then outstanding principal balance on the Note, the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property**: Enter upon and into the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Lender's prior written consent thereto, Lender may invoke any and all legal remedies to dispossess Mortgagor,

including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) **Operation of Mortgaged Property**: Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either by itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Lender may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Lender shall deem necessary or desirable), and apply all Rents and other amounts collected by Lender in connection therewith in accordance with the provisions of Section 7.8 hereof.

(d) **Foreclosure and Sale**: Sell the Mortgaged Property pursuant to any process allowed by applicable law, including, without limitation, as may be provided in Article 13 of this Mortgage.

(e) **Trustee or Receiver**: Make application to a court of competent jurisdiction as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.8 hereinbelow.

(f) **Other**: Exercise any and all other rights, remedies and recourses granted under the Loan Documents (including, without limiting the generality of the foregoing, those set forth in Sections 9.5 and 10.6 hereinbelow) or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2 **SEPARATE SALES**. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Lender, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

7.3 **REMEDIES CUMULATIVE, CONCURRENT AND NONEXCLUSIVE**. Lender shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Mortgaged Property, the Leases, the Contracts, the Construction Contracts, the Plans and Specifications, or any portion thereof) and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against any Borrower, any Guarantor, any Constituent Party or others obligated on the Indebtedness or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse and (d) are intended to be, and shall be, nonexclusive.

7.4 **NO CONDITIONS PRECEDENT TO EXERCISE OF REMEDIES**. Neither Mortgagor or any other Borrower, any Guarantor, any Constituent Party nor any other person hereafter obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Lender to comply with any request of any Borrower, Guarantors, any Constituent Party or of any other person so obligated to foreclose the lien of this Mortgage or to enforce any provisions of the other Loan Documents, (b) the release, regardless of consideration, of the Mortgaged Property or the addition of any other property to the Mortgaged Property, (c) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Lender extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Borrower, any Guarantor, any Constituent Party or such other person, and in such event Borrower, Guarantors, the Constituent Parties and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by

Lender or (d) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

7.5 **RELEASE OF AND RESORT TO COLLATERAL**. Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Lender may resort to any other security therefor held by Lender in such order and manner as Lender may elect.

7.6 **WAIVER OF REDEMPTION, NOTICE AND MARSHALING OF ASSETS**. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly required under the Loan Documents, all notices of any Event of Default or of Lender's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents and (c) any right to a marshaling of assets or a sale in inverse order of alienation.

7.7 **DISCONTINUANCE OF PROCEEDINGS**. If Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such an event, Mortgagor and Lender shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

7.8 **APPLICATION OF PROCEEDS**. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property, the Leases, the Contracts, the Construction Contracts or the Plans and Specifications shall be applied by Lender (or the receiver, if one is appointed) to the extent that funds are so available therefrom to the following in the order of priority that Lender, in its sole discretion, may determine:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) Lender's and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement and (v) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those to which the Mortgaged Property has been sold subject to and without in any way implying Lender's prior consent to the creation thereof);

(b) to the payment of all amounts, other than the outstanding principal balance of the Note and accrued but unpaid interest, which may be due to Lender under the Loan Documents, together with interest thereon as provided therein;

(c) to the payment of all accrued but unpaid interest due on the Note;

(d) to the payment of the outstanding principal balance of the Note for which any Guarantor or any Constituent Party is not individually and personally liable pursuant to the terms and provisions of the Guaranty or any other Loan Documents (to the extent applicable);

(e) to the payment of that portion of the Indebtedness for which any Guarantor or any Constituent Party is individually and personally liable pursuant to the terms and provisions of the Guaranty or any other Loan Documents (to the extent applicable);

(f) to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Lender and permitted by law, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(g) to Borrower.

7.9 **ACCELERATION FOLLOWING CERTAIN EVENTS**. Notwithstanding anything to the contrary herein contained or inferable from any provision hereof, upon the occurrence of an Event of Default, the outstanding principal balance of the Note, unpaid accrued interest and any other accrued but unpaid portion of the Indebtedness shall immediately become due and payable in full without the necessity of further action on the part of Lender , and Mortgagor hereby expressly waives any requirement of notice of intent to accelerate maturity and notice of acceleration of maturity of the Indebtedness.

7.10 **OCCUPANCY AFTER FORECLOSURE**. The purchaser at any foreclosure sale pursuant to Section 7.1(d) shall become the legal owner of the Mortgaged Property. All occupants (except those which have previously executed a prior written agreement with purchaser) of the Mortgaged Property or any part thereof shall become tenants at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any Court having jurisdiction over the Mortgaged Property.

7.11 **WAIVER OF SETOFF**. The Indebtedness, or any part thereof, shall be paid by Borrower without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Lender or Borrower, or any action taken with respect to this Mortgage by any trustee or receiver of Lender, any Lender or Borrower, or by any court, in any such proceeding; (v) any claim which any Borrower has or might have against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with any Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

7.12 **SETOFF**. Lender shall each be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Mortgagor in and to each and every account and other property of Mortgagor which are in the possession of Lender to the full extent of the outstanding balance of the Indebtedness.

ARTICLE 8. CONDEMNATION; PARTIAL RELEASES

8.1 **CONDEMNATION**. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Mortgaged Property, Mortgagor shall notify Lender of such fact. Mortgagor shall then, if requested by Lender, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Lender for disposition pursuant to the terms of this Mortgage. Mortgagor may be the nominal party in such proceeding but Lender shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto Lender to be held by it, in trust, subject to the lien and security interest of this Mortgage, and disbursed as follows:

(a) if (i) all of the Mortgaged Property or any Lot is taken, (ii) so much of the Mortgaged Property or a Lot is taken, or the Mortgaged Property or affected Lot is so diminished in value, that the remainder thereof cannot (in Lender's judgment) be developed profitably, (iii) an Event of Default shall have occurred or (iv) the Mortgaged Property is partially taken or diminished in value and (in Lender's judgment) need not

be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to Lender shall be applied by it in the order recited in Section 8.2 hereof; or

(b) if (i) only a portion of the Mortgaged Property or affected Lot is taken and the portion remaining can (in Lender's judgment), with rebuilding, restoration or repair, be profitably developed as a single family residence, (ii) none of the other facts recited in Section 8.1(a) hereof exists, (iii) Lender has originally approved the Plans and Specifications for such Improvements pursuant to the Credit Agreement, and (iv) Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the Plans and Specifications therefor and within three (3) months after the date of the taking or diminution in value and shall otherwise comply with Section 4.8 hereof, then such sums shall be paid to Mortgagor to reimburse Mortgagor for money spent in the rebuilding, restoration or repair; otherwise same shall be applied by Lender in the order recited in Section 8.2 hereof

8.2 **APPLICATION OF PROCEEDS**. All proceeds received by Lender with respect to a taking or a diminution in value of the Mortgaged Property shall be applied to the following in the order of priority that Lender, in its sole discretion, may determine:

(a) to reimburse Lender for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of said proceeds; or

(b) to the payment of those items recited in Section 7.8(b) through (f) hereof; provided, however, that if such proceeds are required under Section 8.1(b) hereof to be applied to the rebuilding, restoration or repair of the Mortgaged Property, the provisions of Section 4.8 hereof shall determine the conditions precedent for utilizing such proceeds for such purpose.

8.3 **PARTIAL RELEASE**. At any time prior to the maturity of the Note, and provided that no Event of Default is then existing under the Loan Documents, and no event or condition exists which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, Lender shall, at Mortgagor's request issue partial releases from the lien of this Mortgage in accordance with the terms of the Credit Agreement.

8.4 **DEFAULT PARTIAL RELEASE**. If at any time during the existence of an Event of Default, or the existence of an event or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, Mortgagor requests a partial release of the lien of this Mortgage, such partial release shall only be permitted in accordance with the terms of, and subject to the satisfaction of the terms and conditions of, the Credit Agreement.

ARTICLE 9. ASSIGNMENT OF LEASES AND RENTS

9.1 **ASSIGNMENT**. For ten dollars ($10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY absolutely unto Lender, the Leases and the Rents subject only to the Permitted Exceptions applicable thereto and the hereinafter referenced License. TO HAVE AND TO HOLD the Leases and the Rents unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, if Borrower shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharged, the Obligations on or before the date same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Mortgagor without the necessity of any further act or requirement by any Borrower or Lender.

9.2 **LIMITED LICENSE**. Lender hereby grants to Mortgagor a limited license (the "**License**"), nonexclusive with the rights of Lender reserved in Section 9.4 hereof, to exercise and enjoy all incidences of ownership of the Leases

and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rent so collected, first to the payment of the Indebtedness and the satisfaction and discharge of the Obligations. Thereafter, Mortgagor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

9.3 **ENFORCEMENT OF LEASES**. So long as the License is in effect, Mortgagor shall (a) submit any and all proposed Leases to Lender for approval prior to the execution thereof, (b) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (c) maintain each of the Leases in full force and effect during the term thereof, (d) appear in and defend any action or proceeding in any manner connected with any of the Leases, (e) deliver to Lender executed counterparts of all Leases and (f) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time request. Without Lender's prior written consent, Mortgagor shall not (v) do or knowingly permit to be done anything to impair the value of any of the Leases, (w) except for deposits not to exceed one month's rent for any one lessee, collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (x) discount any future accruing Rent, (y) amend, modify or terminate any Lease or (z) assign or grant a security interest in or to the License or any of the Leases.

9.4 **SUITS: ATTORNMENT**. After the occurrence of any Event of Default, Lender may exercise the right and Mortgagor hereby acknowledges that Lender has the right (but not the obligation) to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of the Indebtedness selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Mortgagor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Lender. Mortgagor hereby ratifies and confirms all that Lender shall do or cause to be done by virtue of this Article 9. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Mortgagor shall be absolutely discharged to the extent of its payment to Lender.

9.5 **REMEDIES**. Upon or at any time after the occurrence of any Event of Default, Lender, at its option and in addition to the remedies provided in Article 7 hereof, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Mortgagor. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, Lender shall have the exclusive right, power and authority to take any and all action as described in Section 9.4 hereof, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to in Section 9.4 or this Section 9.5 taken by Lender shall constitute an election of remedy.

9.6 **NO OBLIGATION OF LENDER**. Neither the acceptance by Lender of the assignment granted in this Article 9, nor the granting of any other right, power, privilege or authority in this Article 9 or elsewhere in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "mortgagee in possession" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property.

9.7 **NO MERGER OF ESTATES**. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Lender, any lessee or any third party purchaser or otherwise.

9.8 **MORTGAGOR'S INDEMNITIES**. So long as the License is in effect, Mortgagor shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender may incur under or by reason of this assignment, or for any action taken by Lender under and in accordance with this Article 9, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Lender arising out of the Leases, **INCLUDING ANY LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY LENDER ON ACCOUNT OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF LENDER, BUT NOT INCLUDING ANY OF THE FOREGOING CAUSED BY ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER**. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all attorneys' fees and interest thereon at the default rate specified in the Note shall be payable by Mortgagor to Lender immediately, without demand, and shall be secured under Article 2 hereof.

9.9 **CONFLICT**. The absolute assignment contained in this Article 9 is in addition to, and not in lieu of, the collateral conveyance contained in Article 2 hereof. It is the intent of the parties that no conflict exist between the absolute assignment contained in this Article 9 and the collateral conveyance contained in Article 2 hereof. However, if and to the extent any such conflict is perceived to exist as to the Leases or the Rents, such conflict shall be resolved in favor of the absolute assignment contained in this Article 9.

9.10 **LEASE LIMITATIONS**. Notwithstanding anything to the contrary contained in the Loan Documents, the provisions of Article 9 shall not be construed as permission for Mortgagor to enter into Leases with respect to any of the Mortgaged Property. Without the prior written consent of Lender, Mortgagor shall not enter into any Lease with respect to all or any of the Mortgaged Property.

ARTICLE 10. SECURITY AGREEMENT

10.1 **SECURITY INTEREST**. This Mortgage (a) shall be construed as a mortgage on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage and such Supplemental Mortgage shall terminate as provided in Article 2 hereinabove, a first and prior security interest under, the applicable Uniform Commercial Code with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Plans and Specifications, Leases and Rents. To this end, Mortgagor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest and all of Mortgagor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Plans and Specifications, Leases and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Mortgagor and Lender that this Mortgage encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within Chapter 9 of the applicable Uniform Commercial Code be covered by the security interest granted in this Article 10 and that all items contained in the definition of "Leases" and "Rents" which are excluded from Chapter 9 of the applicable Uniform Commercial Code be covered by the provisions of Article 2 and Article 9 hereof.

10.2 **FINANCING STATEMENTS**. Mortgagor hereby authorizes Lender to prepare and file such "Financing Statements" and such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

10.3 **UNIFORM COMMERCIAL CODE REMEDIES**. Lender shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Plans and Specifications, Leases and Rents afforded to it by the aforesaid Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents.

10.4 **NO OBLIGATION OF LENDER**. The assignment and security interest herein granted shall not be deemed or construed to constitute Lender as a mortgagee in possession of the Mortgaged Property, to obligate Lender to

lease the Mortgaged Property or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

10.5 **CONSTRUCTION MORTGAGE AND FIXTURE FILING**. This Mortgage secures future advances to be used for construction of improvements on the Land pursuant to the Credit Agreement. This Mortgage shall also be effective as a financing statement covering as–extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Mortgagor) and of the Secured Party (Lender) are set forth in this Mortgage.

10.6 **FORECLOSURE OF SECURITY INTEREST**. If an Event of Default shall occur, Lender may elect, in addition to exercising any and all other rights, remedies and recourses set forth in Article 7 or Article 9 hereof, or referred to in Section 10.3 hereof, to exercise any of the remedies with regard to the Mortgaged Property as may be authorized under the Alabama Uniform Commercial Code. Lender may proceed under this Mortgage solely as to the real property interests, or solely as to the personal property interests, or as to both the real and personal property interests in accordance with its rights and remedies in respect of the real property. Except as otherwise set forth in this Section 10.6, at any foreclosure and sale as described in Section 7.1(d) hereof, it shall be deemed that Lender proceeded under the Alabama Uniform Commercial Code, as to types of property covered thereby, and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser thereat.

ARTICLE 11. [RESERVED]

ARTICLE 12. MISCELLANEOUS

12.1 **PERFORMANCE AT MORTGAGOR'S EXPENSE**. Subject to the provisions of Section 12.13 of this Mortgage, Mortgagor shall pay to Lender immediately upon demand all costs and expenses incurred by Lender in connection with: (1) the preparation of this Mortgage and any and all other Loan Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers hereunder or thereunder); (2) the administration of this Mortgage and the other Loan Documents for the term of the Note; and (3) the enforcement or satisfaction by Lender of any of Borrower's obligations under this Mortgage or under the Loan Documents. For all purposes of this Mortgage, Lender's costs and expenses shall include, without limitation, all appraisal fees, cost engineering and inspection fees, architectural fees, legal fees (including, without limitation, fees for trial, appeal or other proceedings), accounting fees, environmental consultant fees (if any), auditor fees, and the cost to Lender of any documentary taxes, recording fees, brokerage fees, title insurance premiums and title surveys. In addition, Mortgagor recognizes and agrees that formal written appraisals of the Mortgaged Property by a licensed independent appraiser may be required by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis. Except to the extent that certain of these costs and expenses are included within the definition of Indebtedness, the payment by Mortgagor of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness. If any of the services described in this Section 12.1 are provided by an employee of Lender, Mortgagor shall reimburse Lender its standard charge for such services.

12.2 **SURVIVAL OF OBLIGATIONS**. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 12.2 shall limit the obligations of Mortgagor as set forth in Sections 4.11, 9.8 and 12.17 hereof.

12.3 **FURTHER ASSURANCES**. Mortgagor, upon the request of Lender, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.

12.4 **RECORDING AND FILING**. Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re–recorded and refiled in such manner and in such places as Lender shall reasonably request, and will pay all such recording, filing, re–recording and refiling taxes, fees and other charges.

12.5 **NOTICES**. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery or by any other means shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

Mortgagor:	LAKE WILBORN PARTNERS, LLC BLACKRIDGE PARTNERS, LLC 3545 Market Street Hoover, Alabama 35226 Attention: Jonathan Belcher
With a copy to:	Hartman & Springfield 3138 Cahaba Heights Road Suite 110 Birmingham, Alabama 35243 Attn: Josh L. Hartman
Lender:	WELLS FARGO BANK, NATIONAL ASSOCIATION 5400 LBJ Frwy., 10th Floor Dallas, TX 75240-1000 Attention: Homebuilder Loan Administration Loan #: 1004231
With a copy to:	WELLS FARGO CRE Loan Services 100 North Main Street 10th Floor Winston-Salem, NC 27101 Attention: Office Manager Loan #1004231

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

12.6 **LENDER'S RIGHT TO PERFORM THE OBLIGATIONS**. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents then at any time thereafter, and upon written notice to or demand upon Borrower and the failure of Borrower to perform or cure same within ten (10) days after such notice is given by Lender, and without waiving or releasing any other right, remedy or recourse Lender may have because of same, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Land and into the Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Property, as it may deem necessary or appropriate. If Lender shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall indemnify Lender for all losses, expenses, damage, claims and causes of action, including attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 12.6. All sums paid by Lender pursuant to this Section 12.6, and all other sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as defined in the Note) from the date of such payment or expenditure until paid, shall constitute additions to the Indebtedness, shall be secured by the liens, security interests and rights created by the Loan Documents and shall be paid by Mortgagor to Lender upon demand.

12.7 **COVENANTS RUNNING WITH THE LAND**. All Obligations contained in the Loan Documents are intended by Mortgagor and Lender to be, and shall be construed as, covenants running with the Mortgaged Property.

12.8 **SUCCESSORS AND ASSIGNS**. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

12.9 **NO WAIVER; SEVERABILITY**. Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Mortgagor or any other Borrower of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions or conditions thereof; and Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower of any and all of such terms, provisions and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.10 **ENTIRE AGREEMENT AND MODIFICATION**. The Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

12.11 **COUNTERPARTS**. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal

effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

12.12 **GOVERNING LAW**. This Mortgage shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Alabama, except to the extent preempted by United States federal law. Mortgagor and all persons and entities in any manner obligated to Lender under the Loan Documents consent to the jurisdiction of any federal or state court within the State of Alabama having proper venue and also consent to service of process by any means authorized by Alabama law or United States federal law.

12.13 **INTEREST PROVISIONS**.

(a) **Savings Clause**. If the Mortgaged Property is "residential real property" and the Indebtedness is secured by a first lien on residential real property within the meaning of Part A, Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, and the regulations promulgated thereunder, then, the following provisions of this Section shall be inapplicable. However, if, for any reason, the provisions of Part A, Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall be found not to exempt any and all interest and other charges payable in connection with the Indebtedness from any limitation otherwise applicable, then the following provisions shall apply. It is expressly stipulated and agreed to be the intent of Mortgagor and Lender at all times to comply strictly with the applicable Alabama law governing the maximum rate or amount of interest payable on the Note or the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Alabama law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or the Related Indebtedness, then it is Mortgagor's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically cancelled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Mortgagor and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against the Note and/or any Related Indebtedness then owing by Borrower to Lender. Mortgagor hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Mortgagor will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Borrower to Lender . All sums contracted for, charged or received by Lender for the use, forbearance or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

(b) **Definitions**. As used herein, the term "**Maximum Lawful Rate**" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Alabama (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Alabama law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Note and the other Loan Documents. As used herein, the term "**Charges**" shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to the Note and the other Loan Documents, which are treated as interest under applicable law. As used herein, the term "**Related Indebtedness**" shall mean any and all debt paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such debt which has been paid or is payable by Borrower to Lender under the Note.

12.14 **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 Mortgaged Property, then, to the extent of such funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Mortgaged 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 Indebtedness and the satisfaction of the Obligations.

12.15 **CREDIT AGREEMENT**. Reference is hereby made for all purposes to the Credit Agreement pertaining to the construction of Improvements on the Lots, and the funding of the principal amount of the Note. In event of a conflict between the terms and provisions hereof and the Credit Agreement, the Credit Agreement shall govern.

12.16 **HEADINGS**. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

12.17 **INDEMNITY. MORTGAGOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LENDER FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY LENDER, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:**

ANY LITIGATION CONCERNING THIS MORTGAGE, ANY SUPPLEMENTAL MORTGAGE, THE OTHER LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF BORROWER OR LENDER THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY BORROWER OR LENDER, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE PARTNERS OR VENTURERS OF BORROWER IF BORROWER IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS OF BORROWER IF BORROWER IS A CORPORATION, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF BORROWER IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

ANY OBLIGATION, COVENANT OR AGREEMENT ALLEGED OR ASSERTED AGAINST LENDER UNDER THE LOAN DOCUMENTS OR ANY ACTION TAKEN OR NOT TAKEN BY LENDER WHICH IS ALLOWED OR PERMITTED UNDER THIS MORTGAGE, ANY SUPPLEMENTAL MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, RELATING TO BORROWER, THE MORTGAGED PROPERTY OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY

INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS MORTGAGE OR ANY SUPPLEMENTAL MORTGAGE OR THE OTHER LOAN DOCUMENTS; AND

ANY ACTION BROUGHT BY LENDER AGAINST BORROWER UNDER THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

NOTWITHSTANDING ANY INDEMNITY PROVISION OF THE LOAN DOCUMENTS TO THE CONTRARY, IF AT THE TIME OF THE REQUEST OR DEMAND FOR INDEMNIFICATION FROM LENDER, OR ANY TIME THEREAFTER UNTIL LENDER IS FULLY RELIEVED OF ANY FURTHER EXPENSE OR LIABILITY WITH RESPECT TO THE MATTER FOR WHICH SUCH INDEMNIFICATION HAS BEEN ASSERTED, NO EVENT OF DEFAULT EXISTS, THEN BORROWER SHALL BE IN CONTROL OF THE DEFENSE AGAINST SUCH CLAIMS, DEMANDS OR CAUSES OF ACTIONS WITH RESPECT TO THE MATTERS SO INDEMNIFIED (BUT NOTHING PROVIDED HEREIN SHALL PROHIBIT LENDER FROM ENGAGING COUNSEL, AT LENDER'S EXPENSE, TO REPRESENT LENDER'S INTEREST); PROVIDED, HOWEVER, IF AN EVENT OF DEFAULT DOES SO EXIST, THEN LENDER MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS MORTGAGE, ANY SUPPLEMENTAL MORTGAGE, AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND LENDER WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. IN SUCH EVENT, BORROWER SHALL REIMBURSE LENDER FOR THEIR ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY LENDER. ANY PAYMENTS NOT MADE WITHIN FIVE (5) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE (AS DEFINED IN THE NOTE) FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 12.17 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS MORTGAGE, ANY THE SUPPLEMENTAL MORTGAGE, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE) AND THE EXERCISE BY LENDER OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE OTHER LOAN DOCUMENTS.

12.18 **ENTIRE AGREEMENT; AMENDMENT**. THIS MORTGAGE, EACH SUPPLEMENTAL MORTGAGE, THE CREDIT AGREEMENT, AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Mortgage, each Supplemental Mortgage and the Loan Documents may be amended or waived only by an instrument in writing signed by the applicable Borrower party and Lender.

12.19 **WAIVER OF RIGHT TO TRIAL BY JURY**. EACH PARTY TO THIS MORTGAGE HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALING OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS MORTGAGE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

12.20 **RELEASE**. If the Indebtedness is paid in full in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, and if Borrower shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Mortgage, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Borrower's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

ARTICLE 13. ALABAMA SPECIFIC PROVISIONS

13.1 **CONSTRUCTION MORTGAGE**. This Mortgage is a "construction mortgage" as defined in § 7-9A-334(h), *Code of Alabama* (1975), as amended.

13.2 **FIXTURE FILING.** This Mortgage serves as a financing statement filed as a fixture filing pursuant to § 7-9A-502(c), *CODE OF ALABAMA (*1975), as amended.

13.3 **REVOLVING CREDIT**. This Mortgage secures revolving or open end indebtedness. The maximum principal indebtedness secured hereby will not exceed the sum of $30,000,000.00. Pursuant to section 40-22-2(1)b., *Code of Alabama* (1975), as amended, recording privilege tax has been paid upon said maximum principal amount.

13.4 **FUTURE ADVANCES**. This Mortgage secures all future advances of the Indebtedness, subject to Section 2.6 hereof, regardless of whether such future advances are (a) optional or obligatory, (b) additional advances of principal or advances to protect the Mortgaged Property, (c) being advanced for the same purpose as advances previously made, (d) arising out of the same transaction as previous advances, or (e) currently within the contemplation of the parties. The priority of all such future advances shall relate back to the date of filing of this Mortgage.

13.5 **AMENDMENTS**. Any amendment or restatement of the Note to change the interest rate, the maturity date, the rate of interest, the time of payment, amortization, the dates of payment or the amount of principal shall be secured by this Mortgage, and the priority of any such amendment or restatement shall relate back to the priority of this Mortgage.

13.6 **FORECLOSURE**. If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Mortgaged Property to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in the county or counties in which the Mortgaged Property to be sold is located. If there is Mortgaged Property to be sold in more than one county, publication shall be made in all counties where the Mortgaged Property to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender may bid at any sale held under this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Mortgaged 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 Mortgaged Property not previously sold shall have been

sold or all the Indebtedness and Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

13.7 **PRINCIPLES OF CONSTRUCTION**. To the extent of any conflict between the provisions of this Article 13 and the other provisions of this Mortgage, the provisions of this Article 13 shall control.

IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the date of its acknowledgment below, and effective as of the date first written above.

REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS

MORTGAGOR:

LAKE WILBORN PARTNERS, LLC,
an Alabama limited liability company

By: _____
J. Daniel Garrett
Its Chief Financial Officer

STATE OF ALABAMA §
§
COUNTY OF JEFFERSON §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. Daniel Garrett, whose name as Chief Financial Officer of LAKE WILBORN PARTNERS, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 9th day of May, 2018.

[S E A L]

_____
Notary Public
My Commission Expires: 04-18-2020

LINDA S MAYO
Notary Public, Alabama State At Large
My Commission Expires April 18, 2020

MORTGAGOR:

Blackridge Partners, LLC,
an Alabama limited liability company

By: _____
J. Daniel Garrett
Its Chief Financial Officer

STATE OF ALABAMA §
§
COUNTY OF JEFFERSON §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. Daniel Garrett, whose name as Chief Financial Officer of BLACKRIDGE PARTNERS, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 9th day of May, 2018.

[S E A L]

_____
Notary Public
My Commission Expires: 04-18-2020

LINDA S MAYO
Notary Public, Alabama State At Large
My Commission Expires April 18, 2020

EXHIBIT A

Legal Description

Parcel 1
Lots 20, 21, 22 & 24, according to the Survey of Lake Wilborn Phase 1B, as recorded in Map Book 48, Pages 85, in the Probate Office of Shelby County, Alabama.

Parcel 2
Lots 101, 106, 107, 108 & 167, according to the Survey of Lake Wilborn Phase 2A, as recorded in Map Book 49, Page 17, in the Probate Office of Shelby County, Alabama.

Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
05/09/2018 03:02:39 PM
$118.00 CHERRY
20180509000159420