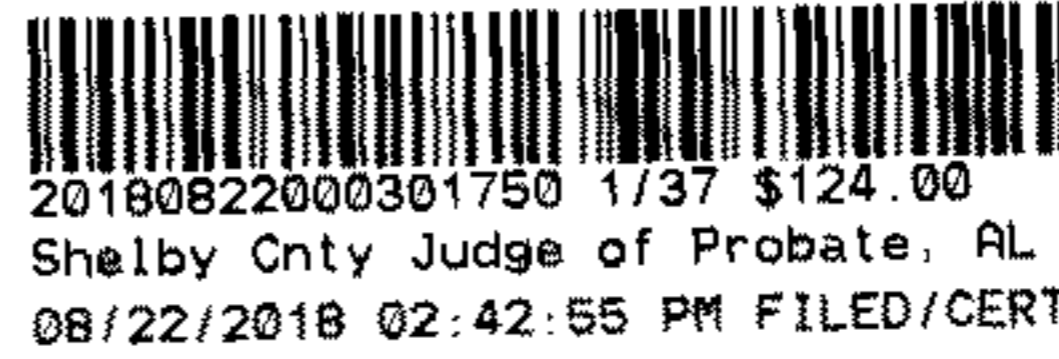


Recording Requested By and  
When Recorded Mail To:  
Robert D. McLean, Esquire  
Rocke, McLean & Sbar, P.A.  
2309 S. MacDill Avenue  
Tampa, Florida 33629



Loan No. 901001562

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**

STATE OF ALABAMA                     )  
   ) SS.  
COUNTY OF SHELBY                    )

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "**Mortgage**") is made as of the 20<sup>th</sup> day of August, 2018, by SWNC-CHELSEA CROSSINGS, LLC, an Alabama limited liability company ("**Mortgagor**"), as mortgagor, whose address is 1616 2nd Avenue South, Suite 100, Birmingham, Alabama 35233, to GENWORTH LIFE INSURANCE COMPANY, a Delaware corporation ("**Lender**"), as mortgagee, whose address is c/o Servicing Department, 10851 Mastin Street, Suite 300, Overland Park, Kansas 66210.

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

Lender is making a loan (the "**Loan**") to Mortgagor, SWNC-ALTADENA SQUARE, LLC, an Alabama limited liability company ("**Altadena**"), SWNC-GARDENDALE PLAZA, LLC, an Alabama limited liability company ("**Gardendale**"), and SWNC-JOHN'S CREEK, LLC, an Alabama limited liability company ("**Johns Creek**" and, collectively with Mortgagor, Altadena and Gardendale, "**Borrower**") in the principal amount of Twelve Million Six Hundred Forty-Five Thousand and 00/100 Dollars (\$12,645,000.00).

In consideration of the Loan and to secure the full and absolute payment and performance of the Secured Obligations (defined below), Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL, AND CONVEY, unto Lender, its successors and assigns, forever, with power of sale, AND GRANT TO LENDER A SECURITY INTEREST IN, all of Mortgagor's present and future estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (collectively, the "**Property**"):

(a) That certain real property described in Exhibit A attached hereto, lying and being in the County of Shelby, State of Alabama (the "Realty"), and all rights to the land lying in alleys, streets, and roads adjoining or abutting the Realty.


(b) All buildings, improvements and tenements now or hereafter located on the Realty.

(c) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the Realty and all buildings and improvements thereon (whether such items are leased, owned or subject to any title retaining or security instrument, or otherwise used or possessed), including without limitation all heating, cooling, air conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures; equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, paneling and draperies, all equipment, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Realty with the right of removal at the termination of their tenancies shall not be included within the scope of this section.

(d) All easements, all access, air and development rights, all minerals and oil, gas and other hydrocarbon substances, all royalties, all water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty.

(e) All of the rents, benefits, revenues, issues, profits and income of the Realty, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, including, without limitation, licenses, all cash, letters of credit and other forms of security deposits, advance rentals and deposits or payments of similar nature, all fees or other consideration received by Mortgagor in connection with the termination or modification of any lease of all or any portion of the Property, and all guaranties of tenants' or occupants' performances under such leases and agreements, and all present and future management agreements or contracts regarding the Property.

(f) All general intangibles relating to the development or use of the Realty, including, without limitation, all permits, licenses and franchises, all names under or by which the Realty may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and goodwill in any way relating to the Realty.

  
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(g) All present and future contracts and policies of insurance pertaining to the Property, and all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancelation thereof.

(h) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property, including any awards for damages sustained to the Property for a temporary taking, change in grade of streets or taking of access.

(i) All water rights relating to the Realty, including, without limitation, all certificated rights and all shares of water stock or other evidence of ownership of any part of the Realty whether owned by Mortgagor alone or in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Realty.

(j) All products and proceeds of all of the foregoing.

TO HAVE AND TO HOLD the Property and all parts thereof unto and to the use and benefit of Lender, its successors and assigns forever;

PROVIDED, HOWEVER, that these presents are upon the express condition that, if Borrower shall pay or cause to be paid to Lender all sums due Lender with respect to the Loan under the Loan Documents and keep, perform and observe all the covenants and promises in each of the Loan Documents, all without fraud and delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void; otherwise the same shall remain in full force and effect.

TO SECURE THE FOLLOWING (collectively, the "**Secured Obligations**"):

(1) Payment of the principal sum of Twelve Million Six Hundred Forty-Five Thousand and 00/100 Dollars (\$12,645,000.00) with interest thereon, according to the terms and provisions of a Promissory Note of even date herewith, payable to Lender, or order, and made by Borrower, and all modifications, extensions, renewals and replacements thereof (collectively the "**Note**");

(2) Payment of all future or additional advances made by Lender to protect and preserve the Property and the lien and security interest created by this Mortgage, including without limitation the payment of taxes on the Property, insurance premiums for insurance for the Property, payment of principal and interest on prior liens and payment of expenses and reasonable attorneys' fees, together with interest thereon as herein provided;

(3) Payment of all other sums which are or which may become owing under the Loan Documents (as said term is hereinafter defined);

(4) Performance of all obligations of Mortgagor, Altadena, Gardendale and/or Johns Creek under the Loan Documents; and

(5) Payment of the principal and interest on all other future loans or advances made by Lender to Mortgagor, Altadena, Gardendale and/or Johns Creek when the promissory note evidencing the loan or advance specifically states that it is secured by this Mortgage, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

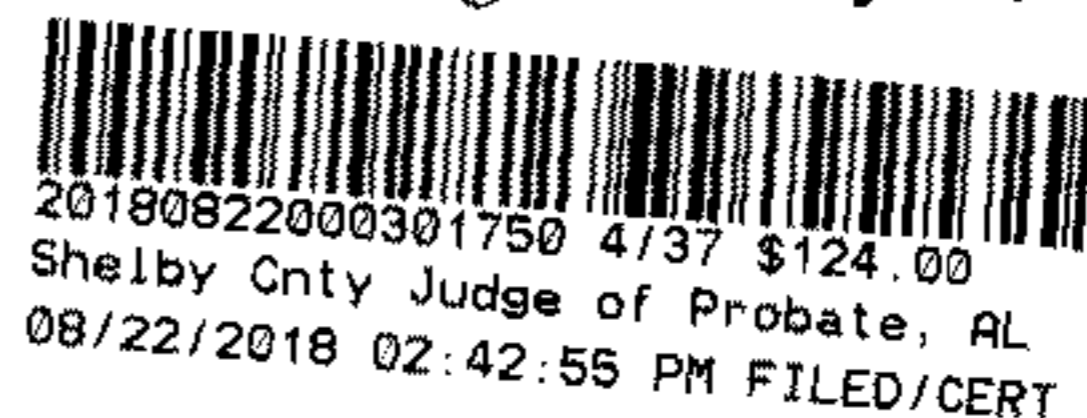
As used herein, the term “**Loan Documents**” means the Note, this Mortgage, an Assignment of Rents and Leases (the terms of which shall control in the event of any conflict with the terms of Article VI in this Mortgage), any loan agreement and Uniform Commercial Code Financing Statements executed in connection herewith, and all related guaranties, assignments, instruments and documents evidencing or securing the Loan or otherwise executed in connection therewith (except the Environmental Indemnity, which is not secured by this Mortgage), together with all amendments, modifications, extensions, renewals and replacements thereof. Without limiting the foregoing, as used herein, the term “**Loan Documents**” includes the Altadena Security Instruments, the Gardendale Security Instruments and the Johns Creek Security Instruments defined in Article XI below. This Mortgage shall not secure any Loan Document or any particular person’s liabilities or obligations under any Loan Document to the extent that such Loan Document expressly states that it or such particular person’s liabilities or obligations are not secured by this Mortgage.

MORTGAGOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I**  
**REPRESENTATIONS AND WARRANTIES**

**Section 1.1 Warranty of Title.** Mortgagor represents and warrants to Lender that: (a) Mortgagor has good and marketable title in fee simple to such of the Property that is real property and is the sole and absolute owner of all other Property; (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of ad valorem property taxes and assessments, general and special, the exceptions, if any, listed on Schedule B of the title insurance policy issued to and approved by Lender in connection with the Loan (the “**Permitted Exceptions**”), and no others, whether superior or inferior to this Mortgage, will be created or suffered to be created by Mortgagor during the life of this Mortgage without the prior written consent of Lender; (c) no default on the part of Mortgagor or, to the best of Mortgagor’s knowledge, any other person exists under any of the Permitted Exceptions and all Permitted Exceptions are in full force and effect, without modification; (d) none of the Permitted Exceptions will be modified by Mortgagor without Lender’s prior written consent; (e) Mortgagor will fully comply with the terms of the Permitted Exceptions; and (f) Mortgagor has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Lender against all claims and demands of any other person whomsoever, subject only to non-delinquent installments of taxes and assessments and the Permitted Exceptions.

**Section 1.2 Hazardous Substances.** Mortgagor represents and warrants to Lender that: (i) to the best of Mortgagor’s knowledge, which knowledge is based upon that certain Phase I Environmental Site Assessment prepared by EBI Consulting dated July 23, 2018, and



designated as Project No. 1118003963 (the "ESA"), no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property; (ii) to the best of Mortgagor's knowledge (based on the ESA), no Hazardous Substance (as hereinafter defined) is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under, from, or in the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iii) neither Mortgagor nor, to the best of Mortgagor's knowledge (based on the ESA), any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under, from, or in or associated with the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iv) Mortgagor has not received a summons, citation, directive, letter or other communication, written or oral, from any federal, state or local governmental agency or department concerning any intentional or unintentional act or omission by Mortgagor or any other person or entity with respect to the Property which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into waters or air or onto lands, or otherwise concerning any actual or alleged violation with respect to or associated with the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) neither Mortgagor nor the Property is subject to any governmental or judicial claim, order, judgment, notice, or lien with respect to the clean-up of Hazardous Substance at or with respect to the Property. Mortgagor further represents and warrants to Lender that it has no actual knowledge of any fact or condition which would cause any of the information contained in the ESA to be misleading, inaccurate, incomplete or incorrect.

As used herein, the term "**Hazardous Substance**" means any waste oil, solvent mixture, or any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean-up, including without limitation any substance, waste or material which now or hereafter is (i) designated as a "solid or hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), (ii) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), (iii) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), (iv) defined as a "hazardous air pollutant" under or pursuant to the Federal Clean Air Act (42 U.S.C. § 7401 et seq.), (v) defined as a hazardous, toxic or dangerous substance under or pursuant to any so-called "Superfund" or "Superlien" law, (vi) defined or listed as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "infectious waste," "pollutant," "controlled hazardous substance," "hazardous substance," "hazardous material," "solid waste," "transuranic waste," "petroleum product," or "pollutant" under or pursuant to the statutes and regulations of the State of Alabama.

**Section 1.3 Location of Mortgagor.** Mortgagor represents and warrants to Lender that Mortgagor is a limited liability company organized under the laws of the State of Alabama, whose place of business or its chief executive office (if it has more than one place of business) is located in the State of Alabama, and Mortgagor's exact legal name is as set forth in the first paragraph on page 1 of this Mortgage. Mortgagor covenants that it will give Lender thirty (30)

days' prior written notice of any act, event or occurrence which will cause the representations and/or warranties in this section to become untrue in any respect.

**Section 1.4 Personal Property.** Mortgagor represents and warrants that it owns, free and clear of liens or encumbrances, all fixtures, equipment and other items of personal property used in connection with the operation of the Property other than fixtures, equipment and other items of personal property owned by tenants.

**Section 1.5 Non-Agricultural Use/Non-Homestead Property.** The Property is not used principally or at all for agricultural or farming purposes. Mortgagor represents and warrants that the Property is not homestead property, but is, rather, commercial property.

## **ARTICLE II MORTGAGOR'S COVENANTS**

**Section 2.1 Payment and Performance of Secured Obligations.** Mortgagor agrees to pay when due all sums that are now or that may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

**Section 2.2 Payment of Taxes, Utilities, Liens and Charges.**

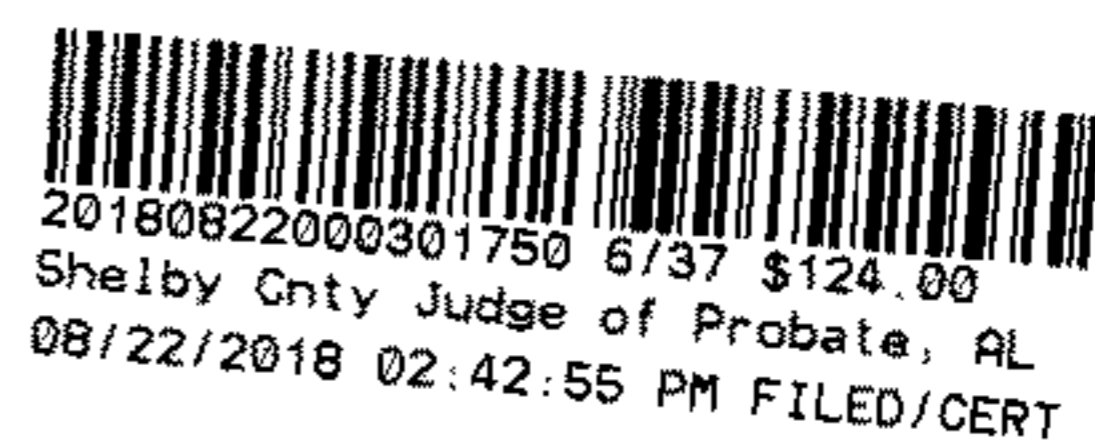
(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Mortgagor agrees to pay when due directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property, this Mortgage or the Loan Documents. Upon request, Mortgagor shall promptly furnish to Lender all notices of amounts due under this subsection and all receipts evidencing such payments. Mortgagor may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Mortgagor's expense and Mortgagor shall not be obligated to pay such taxes or assessments while such contest is pending so long as (i) the Property is not thereby subject to imminent loss or forfeiture and (ii) if Mortgagor has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with Lender or provides other security satisfactory to Lender in its sole discretion.

(b) Utilities. Mortgagor agrees to pay when due all utility charges and assessments for services furnished to the Property.

(c) Liens and Charges. Mortgagor agrees to pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of Section 4.1 hereof, Mortgagor will promptly discharge any lien or other charge, whether superior or inferior to this Mortgage, which may be claimed against the Property.

**Section 2.3 Insurance.**

(a) Coverages Required. Mortgagor will keep the following insurance coverages in effect with respect to the Property:



(i) Insurance against loss by fire, vandalism, malicious mischief and such other hazards as may now or hereafter be embraced by the standard "all risk" or "special form" policy of insurance, in an amount equal at all times to the lesser of one hundred percent (100%) of the current replacement value of the improvements then located on the Property or the amount of the Loan. All such insurance coverage shall contain a "replacement cost endorsement," without deduction for depreciation.

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Realty, whichever is less, if the Realty is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available. If the Realty is not located in a flood hazard area, Mortgagor agrees to provide Lender with satisfactory evidence to that effect.

(iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to twelve (12) months' aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Mortgagor, business interruption insurance in an amount equal to twelve (12) months' net income from such portion of the Property as is so occupied. The amounts of such coverages shall be subject to adjustment, from time to time at Lender's request, to reflect changes in the rental and/or income levels during the term of the Loan.

(iv) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million Dollars (\$1,000,000) combined single-limit liability coverage, or in such greater amounts as Lender may reasonably require.

(v) Insurance covering the perils of terrorism and acts of terrorism.

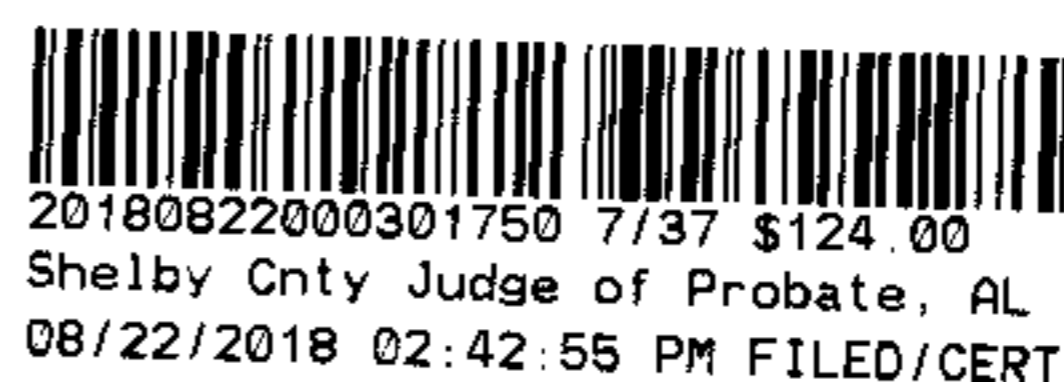
(vi) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of such items, in such amounts as Lender may reasonably require.

(vii) Demolition, increased cost of construction and contingent building laws liability insurance, if and at any time the Property constitutes a legal, non-conforming use under applicable zoning or other governmental laws.

(viii) Sinkhole insurance if the Property is located in a sinkhole zone.

(ix) Windstorm insurance.

(x) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Lender may from time to time reasonably require.

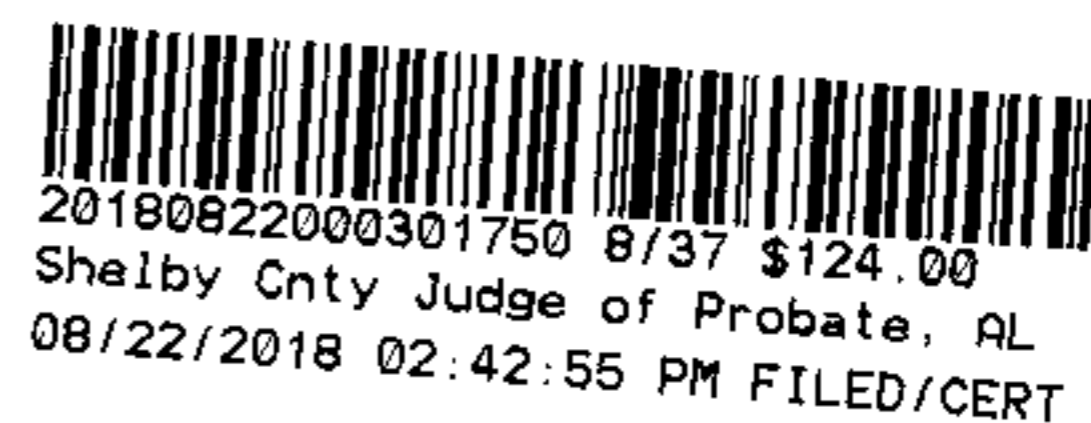


This section sets forth Lender's minimum insurance requirements and shall not be construed as a recommendation as to the nature, type or extent of any insurance, supplements or endorsements that Mortgagor could or should acquire, and Mortgagor shall, with the assistance of its own brokers and advisors, determine whether and to what extent any additional insurance coverages shall be obtained.

(b) Policies. Each insurance policy will be in a form and content acceptable to Lender, will provide for a deductible of no greater than Twenty-Five Thousand Dollars (\$25,000.00) and will be issued by a company acceptable to Lender, which company shall, among other things, be (i) duly authorized to provide such insurance in the state in which the Property is located, and (ii) rated "A-", or better with a size rating of "V" or larger by A.M. Best Company's Key Rating Guide in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations or the basis for its ratings or ceases to provide ratings, Lender shall be entitled to select replacement ratings in the exercise of its reasonable business judgment). Each hazard insurance policy will include a mortgagee endorsement in favor of and in form acceptable to Lender, naming Lender as first mortgagee and loss payee, and which endorsement provides that the policy to which it relates will survive foreclosure of this Mortgage. Each liability insurance policy will name Lender as an additional insured. An "agreed amount endorsement" will be included in any policy containing a co-insurance clause, and Mortgagor agrees that any and all co-insurance clauses and "agreed amount endorsements" must be satisfactory to Lender. If any required property insurance coverage is furnished as part of a "blanket policy," either the blanket policy will include an "agreed value endorsement" or "agreed amount endorsement," or Mortgagor will furnish to Lender a copy of the insurer's "statement of value" for the Property. All required policies will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage, and shall include a waiver of subrogation for any policy on which Mortgagor is a co-insured or additional insured. Mortgagor shall furnish to Lender (x) the complete original of each required insurance policy, or (y) a certified copy thereof (including all declaration pages, policy forms and endorsements), which shall include an original signature of an authorized officer or agent of the insurer, or (z) an uncertified memorandum copy thereof (including all declaration pages, policy forms and endorsements), together with an original evidence of insurance or certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Mortgagor hereby assigns to Lender all required insurance policies, together with all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation (all such assigned items constituting "Property" for purposes of this Mortgage).

(c) Payment; Renewals. Mortgagor shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III relating to reserves, Mortgagor will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Mortgagor shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.





(i) In the event of any loss, Mortgagor will give prompt written notice thereof to the insurance carrier and Lender. In connection with any loss resulting in a claim exceeding Twenty-Five Thousand Dollars (\$25,000.00), Mortgagor hereby grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Mortgagor's or Lender's name, any action relating to any claim and to collect and receive insurance proceeds; provided, however, that Lender shall have no obligation to do so. If no Event of Default has occurred and is continuing, the immediately preceding sentence shall apply except that Lender shall not be entitled to act as Mortgagor's attorney-in-fact and Mortgagor shall be entitled to participate jointly with Lender in adjusting and compromising any claim, and appearing in any proceeding.

(ii) Except as may otherwise be required by applicable law, Lender shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:

(A) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(B) The reimbursement of Mortgagor, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

(iii) Notwithstanding the provisions of Section 2.3(d)(ii) above, Lender agrees that the Net Proceeds from a loss described in this Section 2.3(d) will be made available under clause (ii)(B) above to reimburse Mortgagor for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:

(A) At the time the proceeds are received, and at all times during the restoration or repair of the Property, no event or circumstance exists which is or which with the passage of time, the giving of notice, or both would constitute an Event of Default;

(B) The Net Proceeds are less than the indebtedness then secured by this Mortgage;

(C) The Net Proceeds are received more than one (1) year prior to the maturity date of the Note, including any acceleration of the maturity date by Lender if the Note gives Lender a right of acceleration;

(D) Mortgagor gives Lender written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Mortgagor thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Lender, which approval shall not be unreasonably withheld;

(E) The Net Proceeds are sufficient, in Lender's reasonable business judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Lender's judgment they are not, Mortgagor deposits with Lender funds in an amount equal to the deficiency, which funds Lender may, at its option, require be expended prior to use of the Net Proceeds; and

(F) Lender receives evidence satisfactory to Lender that the Property can lawfully be restored or repaired to its condition prior to the damage or destruction and that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

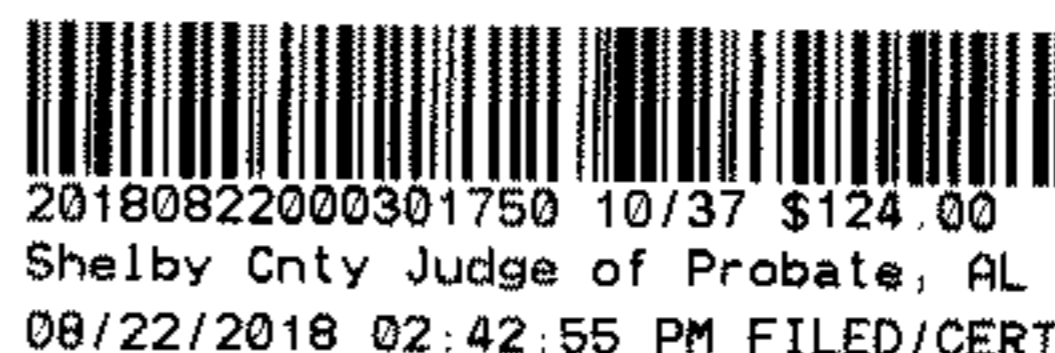
(iv) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Mortgagor from restoring, repairing or maintaining the Property as provided in Section 2.4 below, regardless of whether insurance proceeds are available or insufficient.

(e) Transfer of Title. If the Property is sold pursuant to Article VIII or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

**Section 2.4 Preservation and Maintenance of Property; Right of Entry.**

(a) Preservation and Maintenance. Mortgagor (i) will not commit, permit to occur or suffer any waste or impairment or deterioration of the Property, (ii) will not abandon the Property, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and will replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. No building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor will any fixture or chattel covered by this Mortgage and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced



by an article of equal suitability, owned by Mortgagor, free and clear of any lien or security interest except such as may be approved in writing by Lender.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

**Section 2.5 Hazardous Substances.**

(a) No Future Hazardous Substances. Mortgagor will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Mortgage), nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any waters or air. Without limiting the foregoing, Mortgagor shall not cause or permit the installation, operation or presence on the Property of any underground storage tank or system used or to be used for the storage, handling or dispensing of petroleum or any other substance regulated under the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), as now or hereafter amended, or any state or local statute, ordinance, rule, regulation or other law now or hereafter in effect regulating underground storage tanks or systems.

(b) Notification; Clean Up. Mortgagor will immediately notify Lender if Mortgagor becomes aware of (i) any Hazardous Substance or other environmental problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Mortgagor will, at its sole expense, take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including, without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Mortgage relating to Hazardous Substances, and the observance of all covenants contained in this Section 2.5, (i) Lender is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice; and (ii) if and at any time Hazardous Substances are being handled on the Property, Mortgagor shall furnish Lender with such information and documents as may be reasonably requested by Lender to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules regulations and other laws. Mortgagor shall reimburse Lender upon demand for all costs and expenses,

including without limitation reasonable attorneys' fees, incurred by Lender in connection with any such entry and inspection and the obtaining of such information and documents.

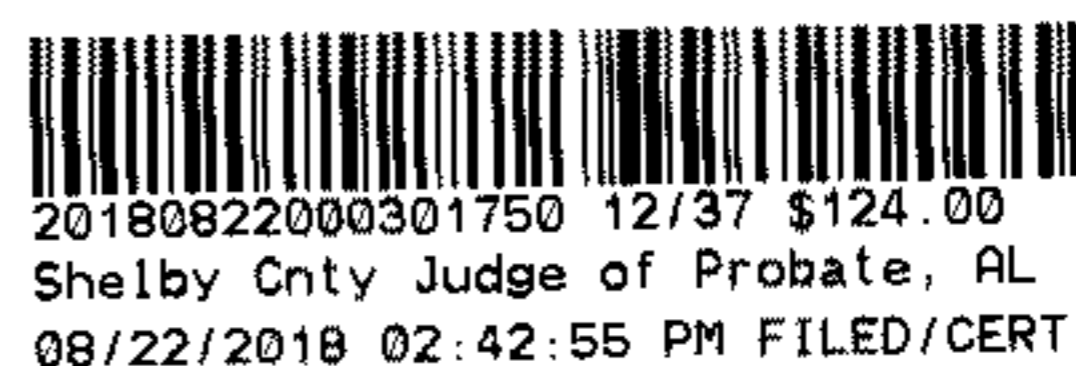
(d) Indemnity for Certain Matters. Mortgagor shall be responsible for, and indemnify, defend, and hold harmless Lender from and against, any claim, judgment, loss, damage, demand, cost, expense or liability, known or unknown, contingent or otherwise, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or after the date of this Mortgage) of Hazardous Substances on, in, under or about the Property including all costs and expenses incurred by Lender, including reasonable attorneys' and consultants' fees. The foregoing indemnification obligation shall be limited to the actual damages incurred by Lender, including all advances or payments paid or agreed to be paid by Lender pursuant to its rights to require environmental assessments, join or participate in any proceedings, cure Mortgagor's default or enforce its remedies. The obligations of Mortgagor under this section shall be mutually exclusive of any liabilities arising under the Environmental Indemnity, which are not secured hereby.

**Section 2.6 Parking.** If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are reduced for any other reason, Mortgagor will take all actions as are necessary to provide parking facilities in kind, size and location necessary to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Mortgagor will furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

**Section 2.7 Use of Property.** Mortgagor will comply with, and will cause all tenants, invitees and other users of the Property to comply with, all federal, state and municipal laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all taxes, fees and charges in connection therewith. The Property may not be converted to a cooperative or condominium without Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion. Mortgagor shall not cause or permit all or any of the Property to be used for a gasoline station, service station or other fueling facility which in whole or in part handles, sells or distributes gasoline, diesel fuel, gasohol or any other substance used in self-propelled motor vehicles. Unless required by applicable law or unless Lender has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor will not initiate or acquiesce in a change in the zoning or land use classification of the Property without Lender's prior written consent.

**Section 2.8 Condemnation.**

(a) Proceedings. Mortgagor will promptly notify Lender of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Mortgagor will appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Mortgagor grants Lender a power of attorney, which power of attorney is



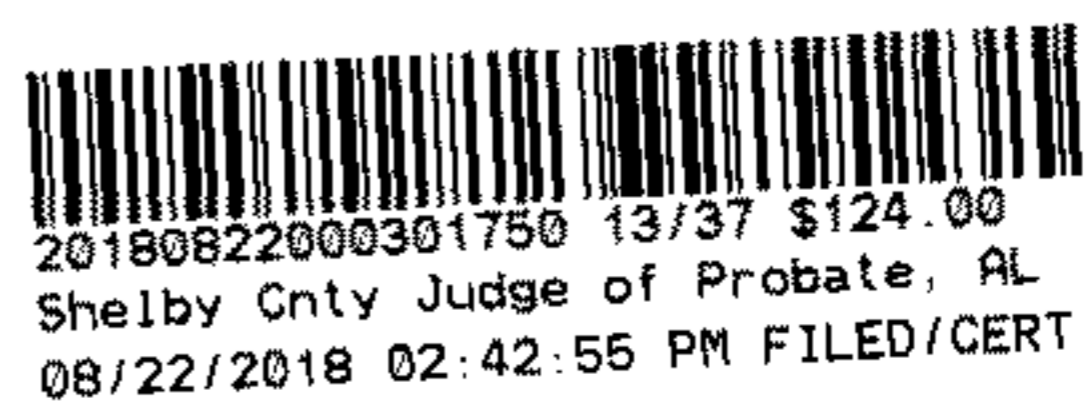
coupled with an interest and is irrevocable, to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Lender shall have no obligation to do so. All awards, payments, damages (direct, consequential or otherwise), claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender (all such assigned items constituting "Property" for purposes of this Mortgage), and all proceeds of any such awards, payments, damages or claims shall be paid to Lender.

(b) Application of Proceeds. Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.3(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of Section 2.3(d)(iii).

**Section 2.9 Protection of Lender's Security.** Mortgagor will give notice to Lender of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Lender therein or the rights or remedies of Lender. If any such action or proceeding is commenced or if Lender is made a party to any such action or proceeding by reason of this Mortgage or if Mortgagor fails to perform any obligation on its part to be performed hereunder, then Lender in its discretion may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage, to remedy Mortgagor's failure to perform its obligations (without, however, waiving any default by Mortgagor) or otherwise to protect Lender's interests. Mortgagor will pay all losses, damages, fees, costs and expenses, including reasonable attorneys' fees, of Lender thus incurred. This section shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

**Section 2.10 Reimbursement of Lender's Expenses.** All amounts disbursed by Lender pursuant to Section 2.9 or any other provision of this Mortgage, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Mortgagor on such amounts by the payee thereof under applicable law if that is less.

**Section 2.11 Books and Records; Financial Statements.** Mortgagor will keep and maintain at Mortgagor's address stated above, or such other place as Lender may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Lender. Mortgagor will furnish to Lender, within twenty (20) days after Lender's request therefor, but not more than twice per calendar year (unless an Event of Default shall have occurred hereunder), the following documents, each certified to Lender by Mortgagor as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable,



the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Property, (d) a copy of the most recent statements for the insurance coverages maintained under Section 2.3(a) of this Mortgage, and (e) a statement of income and expenses for the Property for the most recently ended fiscal year of Mortgagor. In addition, Mortgagor and any general partner or any managing member, if any, therein, will furnish to Lender, within twenty (20) days after Lender's request therefor, but not more than twice per calendar year (unless an Event of Default shall have occurred hereunder), a complete and current financial statement, in reasonable detail and certified as correct by Mortgagor or such partner or member, together with a true and correct copy of such person's most recent federal income tax return. In addition, Mortgagor and any general partner or any managing member, if any, therein, irrevocably authorizes Lender to obtain credit reports on Mortgagor and any such general partner or managing member on one or more occasions during the term of the Loan.

**Section 2.12 Prohibited Person Compliance.** For purposes of this section, "Debtor Entity" means Mortgagor, any guarantor of the Loan, any indemnitor under the Environmental Indemnity, and their respective affiliates (including individuals and entities), members, partners, shareholders and other owners. Mortgagor warrants, represents and covenants that no Debtor Entity is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 23, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>); (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in subparts [i] – [iv] above are herein referred to as a "Prohibited Person"). Mortgagor covenants and agrees that no Debtor Entity will (A) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (B) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Upon Lender's request, Mortgagor further covenants and agrees to deliver to Lender any certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that no Debtor Entity is a Prohibited Person or has taken any action described in subsections (A) and (B) above.

**Section 2.13 Commercial Purpose.** The proceeds of the Loan will be used exclusively for commercial, business or investment purposes.

### **ARTICLE III RESERVES**

**Section 3.1 Deposits.** If required by Lender, Mortgagor will, at the time of making each installment payment under the Note, deposit with Lender a sum, as estimated by Lender, equal to (a) the rents under any ground lease, (b) the taxes and special assessments next due on the Property, (c) the premiums that will next become due on insurance policies as may be

required under this Mortgage and (d) such other charges and impositions in connection with Mortgagor or the Property as Lender reasonably deems necessary to protect Lender's interests, less all sums already deposited therefor, divided by the number of months to elapse before one (1) month prior to the date when such rents, taxes, special assessments, premiums, and other charges and impositions will become due (collectively "Reserves"). If requested by Lender, Mortgagor will promptly deliver to Lender all bills and notices with respect to any rents, taxes, assessments, premiums, and other charges and impositions. All Reserves deposited with Lender under this Section 3.1 are hereby pledged as additional security for the Secured Obligations.

**Section 3.2 Application of Deposits.** All such deposited Reserves shall be held by Lender and applied in such order as Lender elects to pay such rents, taxes, assessments, premiums, and other charges and impositions or upon the occurrence of an Event of Default (defined below), may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Article III is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the Reserves actually received by it. Upon any assignment of this Mortgage by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the transferee all rights of Mortgagor with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Mortgagor the remaining balance of any Reserves then held by Lender.

**Section 3.3 Adjustments to Deposits.** If the total Reserves held by Lender exceed the amount deemed necessary by Lender to provide for the payment of such rents, taxes, assessments, premiums, and other charges and impositions one (1) month before the same fall due, then such excess shall, provided no Event of Default then exists hereunder, be credited by Lender on the next due installment or installments of such Reserves. If at any time the total Reserves held by Lender is less than the amount deemed necessary by Lender to provide for the payment thereof one (1) month before the same fall due, then Mortgagor will deposit the deficiency with Lender within thirty (30) days after written notice to Mortgagor stating the amount of the deficiency.

#### **ARTICLE IV** **RESTRICTIONS ON TRANSFERS AND ENCUMBRANCES**

**Section 4.1 Transfer or Encumbrance of the Property.**

(a) A "Transfer" is: (i) any sale (by contract or otherwise), lien, encumbrance, conveyance or other transfer of the Property or any part thereof or interest therein (including, without limitation, any of the foregoing actions between any person or entity that is a part of Mortgagor and another person or entity that is a part of Mortgagor); or (ii) any transfer of any ownership interest in Mortgagor or any entity which has a direct or indirect ownership interest in Mortgagor; or (iii) any pledge, assignment or encumbrance of any ownership or equity interest in Mortgagor, including an assignment of ownership or equity interest in Mortgagor, including assignments of ownership or equity interests made in connection with any mezzanine or preferred equity financing. Without limiting the foregoing, a Transfer includes any change (whether direct or indirect) in the ownership of any stock interest in a corporate borrower, in the

ownership of any membership interest or in the manager of a limited liability company borrower, in the ownership of any general partnership interest in any general or limited partnership borrower, or in the ownership of any beneficial or equitable interest in any other borrower entity, organization or association which is not a natural person or persons (including without limitation a trust), or any change in the ownership of any stock, membership, general partnership or other beneficial or equitable interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Mortgagor. A change in the ownership of a limited partnership interest in a limited partnership borrower shall not be deemed a "Transfer."

(b) In the event of a Transfer without Lender's prior written consent, Lender may in its sole discretion declare the Transfer an Event of Default under this Mortgage and invoke any remedy or remedies provided for herein, or may in its sole discretion consent to such Transfer. Lender's consent to a Transfer or its waiver of an Event of Default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Lender by reason of any subsequent Transfer.

(c) Notwithstanding the foregoing prohibitions on Transfers, Lender will give its written consent to Transfers under any will, trust or applicable law of descent arising because of the death of an individual, provided: Lender is given prompt notice of the Transfer and the transferee; and managerial control of the Property remains satisfactory to Lender, in its sole and absolute discretion, following the Transfer. Furthermore, notwithstanding the foregoing prohibitions on Transfers, Lender will give its written consent to Transfers of interests in Mortgagor and of interests in an entity that has a direct individual ownership interest in Mortgagor to the transferor's spouse and/or lineal descendants or to an estate planning trust established for the transferor's spouse and/or lineal descendants whose beneficiaries are the transferor, the transferor's spouse and/or lineal descendants, provided: Mortgagor gives Lender prior written notice of the proposed Transfer; Lender reviews and approves the Transfer and related documents; Lender receives satisfactory assurances that the lien priority of this Mortgage is unaffected; Mortgagor pays to Lender its customary transfer review fee and all of Lender's costs and expenses incurred in connection with the proposed Transfer; and managerial control of the Property remains satisfactory to Lender, in its sole and absolute discretion, following the Transfer.

(d) Notwithstanding the foregoing prohibitions on Transfers, Lender will give its written consent to Transfers of membership interests in Mortgagor and of interests in an entity that has a direct or indirect ownership interest in Mortgagor, provided: Len B. Shannon, III, Derek R. Waltchack, Timothy S. Blair, and Andrew R. Patterson, collectively, maintain direct or indirect control of Mortgagor and each of Altadena, Gardendale and Johns Creek, either through their control over the manager of Mortgagor, Altadena, Gardendale and Johns Creek, or through their ownership of membership interests in Mortgagor, Altadena, Gardendale and Johns Creek or any entity that has a direct or indirect ownership interest in Mortgagor, Altadena, Gardendale and Johns Creek, provided: Mortgagor gives Lender prior written notice of the proposed Transfer; Lender reviews and approves the Transfer and related documents; Lender receives satisfactory assurances that the lien priority of this Mortgage is unaffected; and Mortgagor pays to Lender its customary transfer review fee and all of Lender's costs and expenses incurred in connection with the proposed Transfer.



(e) Notwithstanding the foregoing prohibitions on Transfers, Lender will give its written consent to Transfers of membership interests in Mortgagor to existing owners of interests in Mortgagor or any entity that has a direct or indirect ownership interest in Mortgagor, provided: Len B. Shannon, III, Derek R. Waltchack, Timothy S. Blair, and Andrew R. Patterson, collectively, continue to have day to day management control over Mortgagor and each of Altadena, Gardendale and Johns Creek; Mortgagor gives Lender prior written notice of the proposed Transfer; Lender reviews and approves the Transfer and related documents; Lender receives satisfactory assurances that the lien priority of this Mortgage is unaffected; and Mortgagor pays to Lender its customary transfer review fee and all of Lender's costs and expenses incurred in connection with the proposed Transfer.

(f) Notwithstanding subsections (c), (d) and (e) above, no transferee of an ownership interest in Mortgagor shall be a person or entity that is a Prohibited Person.

(g) For any Transfer permitted under this Mortgage or requested by Mortgagor, Lender may condition its consent upon: the Property having been and assurances that it shall continue to be well maintained and managed in a manner reasonably satisfactory to Lender in its sole and absolute discretion; Lender's approval of the Transfer terms, documents and background materials; there being no uncured Event of Default under this Mortgage; if there is an encumbrance, conveyance or transfer of the Property or any part or interest therein, Mortgagor furnishing an endorsement to Lender's title insurance policy insuring the continued validity and priority of the lien of this Mortgage following the Transfer and such subordination agreements and other documents as may be required by Lender or its title company to issue the endorsement; and Mortgagor furnishing proof of payment of any taxes arising in connection with the Transfer. Unless Lender in its sole discretion otherwise agrees in writing at that time, no Transfer shall release the transferor or any guarantor or other person from any liability under the Loan Documents or the Environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity to the extent the transferor has any personal liability. At Lender's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Lender. Regardless of whether Lender consents to a Transfer request, Mortgagor agrees to pay all of Lender's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and reasonable attorneys' fees and costs, and Lender may condition its willingness to consider a Transfer request upon a deposit to pay for Lender's expenses.

**ARTICLE V**  
**UNIFORM COMMERCIAL CODE SECURITY AGREEMENT**

**Section 5.1 Grant to Lender.** Mortgagor grants and conveys to Lender a continuing security interest under the Alabama Uniform Commercial Code, and this Mortgage constitutes a security agreement pursuant to the Alabama Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Mortgage; and

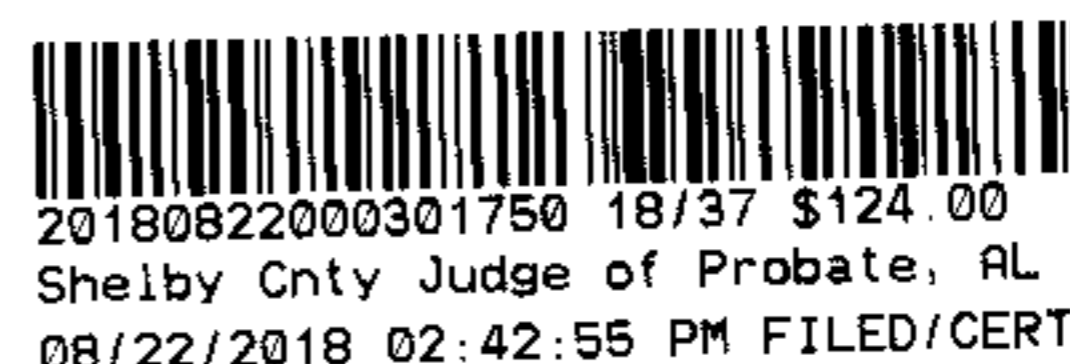
(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Mortgagor as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Mortgage).

Mortgagor hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Mortgagor and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is and at all times shall be regarded for all purposes as part of the real property.

**Section 5.2 Lender's Rights and Remedies.** With respect to Property subject to the foregoing security interest, Lender has all of the rights and remedies (i) of a secured party under the Alabama Uniform Commercial Code, which shall be without limitation upon or in derogation of the rights and remedies created and accorded to Lender by this Mortgage pursuant to the common law or any other laws of the State of Alabama or any other jurisdiction (it being understood that the rights and remedies of Lender under the Alabama Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Lender arising under the common law or any other laws of the State of Alabama or any other jurisdiction); (ii) provided herein, including without limitation the right to cause such Property to be sold; and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default, Mortgagor will assemble any items of personal property and make them available to Lender at the Property, or a place which is hereby deemed to be reasonably convenient to both parties. Lender shall give Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Mortgagor.

**Section 5.3 Mortgagor Name(s); Matters Affecting Financing Statement Filings.** At the request of Lender, Mortgagor shall execute a certificate in form satisfactory to Lender listing the trade names or fictitious business names under which Mortgagor intends to operate the Property or any business located thereon and representing and warranting that Mortgagor does business under no other trade names or fictitious business names with respect to the Property. Mortgagor will not change any of the following without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the written consent of Lender:

- (a) Mortgagor's name or identity (including its trade name or names);
- (b) if Mortgagor is an individual, Mortgagor's principal residence;



(c) if Mortgagor is an organization, Mortgagor's corporate, partnership or other structure;

(d) if Mortgagor is an organization, Mortgagor's jurisdiction of organization (i.e. the jurisdiction under whose law Mortgagor is organized); or

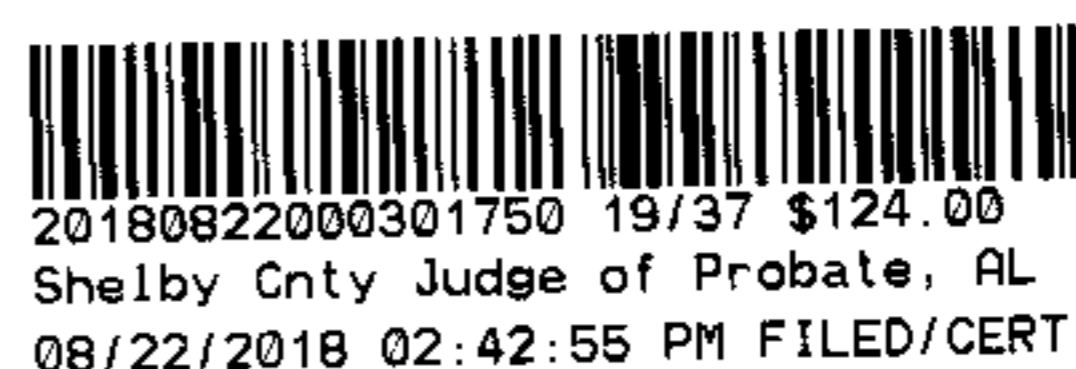
(e) if Mortgagor is an organization, Mortgagor's place of business (if Mortgagor has only one place of business) or Mortgagor's chief executive office (if Mortgagor has more than one place of business).

Upon any change in the matters referred to above (if permitted hereunder), Mortgagor specifically authorizes Lender to file all financing statement amendments, additional financing statements and other documents to reflect such change. Furthermore, Mortgagor will, upon request of Lender, execute any such financing statements and other documents required by Lender to reflect such change.

**Section 5.4 Fixture Filing.** This Mortgage covers goods which are or are to become fixtures on the Realty, and this Mortgage constitutes and is filed as a "fixture filing" (as that term is defined in the Alabama Uniform Commercial Code) upon such of the Property which is or may become fixtures. The exact names of Mortgagor, as "Debtor," and Lender, as "Secured Party," and their respective addresses are set forth on page 1 of this Mortgage. Mortgagor has an interest of record in the Realty. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

- (a) Name of Mortgagor (Debtor): SWNC-Chelsea Crossings, LLC
- Address of Mortgagor: 1616 2<sup>nd</sup> Avenue South, Suite 100  
Birmingham, Alabama 35233
- Type of Organization: limited liability company
- Organizational ID Number: 524-576
- Jurisdiction of Organization: Alabama
- (b) Name of Lender (Secured Party): Genworth Life Insurance Company
- Address of Lender: 10851 Mastin Street, Suite 300  
Overland Park, KS 66210
- (c) Record Owner of Real Estate described on Exhibit "A" hereto: SWNC-Chelsea Crossings, LLC

**Section 5.5 Lender Authorization to File Financing Statement; Mortgagor Cooperation.** Mortgagor hereby authorizes Lender to file one or more Uniform Commercial



Code Financing Statements with respect to the Property. Mortgagor covenants and agrees that it will promptly furnish to Lender, upon Lender's request, such information as may be required in order for Lender to do so.

**ARTICLE VI**  
**ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY**  
**APPOINTMENT OF RECEIVER; LENDER IN POSSESSION**

**Section 6.1 Assignment of Rents and Leases.** As security for the Secured Obligations, Mortgagor hereby assigns and transfers to Lender all right, title and interest of Mortgagor in and to (a) any and all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (collectively "**Leases**"), (b) all cash, letters of credit and other forms of security deposits, advance rentals and deposits, all fees or other consideration received by Mortgagor in connection with the termination or modification of any Lease of all or a portion of the Property or other payments of similar nature under the Leases; (c) any and all guaranties of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits and revenues (collectively "**Rents**") now due or which may become due or to which Mortgagor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

**Section 6.2 Collection of Rents.** Prior to written notice given by Lender to Mortgagor of an Event of Default, Mortgagor shall have a license to, and will, collect and receive all Rents of the Property as trustee for the benefit of Lender and Mortgagor, and apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Mortgage, third to the costs of discharging any obligation or liability of Mortgagor under the Leases, and fourth to the Secured Obligations, with the balance, if any, so long as no such Event of Default has occurred, to the account of Mortgagor. Upon delivery of written notice by Lender to Mortgagor of an Event of Default and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall, immediately upon delivery of such notice, be held by Mortgagor as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Lender may make written demand upon all or some of the tenants and occupants of the Property to pay all Rents to Lender, and Mortgagor hereby agrees that each such tenant and occupant shall have no liability to inquire further as to the existence of a default by Mortgagor. Upon written demand by Lender, Mortgagor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Mortgagor. Lender may exercise, in Lender's or Mortgagor's name, all rights and remedies available to Mortgagor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Mortgagor's obligations under any of the Leases.

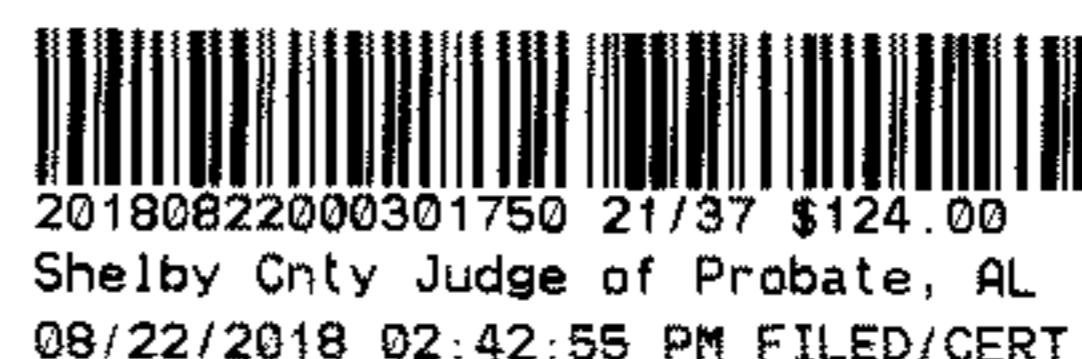
**Section 6.3 Mortgagor's Representations and Warranties.** Mortgagor represents and warrants to Lender that Mortgagor has not executed and will not execute any other assignment of said Leases or Rents (other than the Assignment of Rents and Leases in favor of Lender of even date herewith), that Mortgagor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article VI, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Mortgagor further represents and warrants to Lender that all existing Leases are in good standing and there is no default thereunder, whether by Mortgagor or lessee, nor to Mortgagor's best knowledge has any event or condition occurred which, with notice or the passage of time or both, would be a default thereunder.

**Section 6.4 Leases of the Property.**

(a) **Affirmative Covenants.** Mortgagor shall at all times promptly and faithfully perform, or cause to be performed, all of the obligations, covenants, conditions and agreements contained in all Leases, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed, and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. Mortgagor, at no cost or expense to Lender, shall enforce or secure the performance and observance of each and every obligation, covenant, condition and agreement of each of the other parties under each Lease. Mortgagor shall not execute any Lease except for an actual occupancy by the tenant, lessee or licensee thereunder. All Rents collected in advance of the due date thereof shall be held in trust for Lender's benefit hereunder and shall only be credited and applied at the time such Rent becomes due and payable.

(b) **Lease Requirements.** No Lease shall contain any option or right of first refusal to purchase all or any portion of the Property. No Lease shall contain any right to terminate the term thereof (except in the event of damage or destruction, or condemnation or seizure by eminent domain, of all or substantially all of the Property). Each Lease of the Property will be subordinate to the lien of this Mortgage, unless Lender elects that the Lease shall be superior to this Mortgage, and each tenant who occupies twenty-five percent (25%) or more of the Property shall execute an appropriate subordination or attornment agreement as required by Lender. To the extent required by Lender, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its Lease, all satisfactory in form and content to Lender.

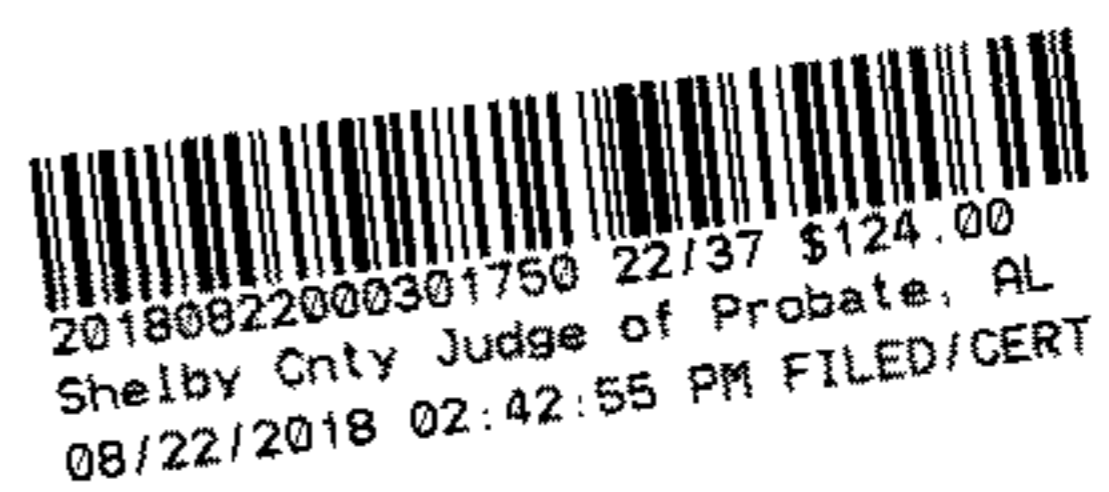
(c) **Acts Requiring Consent of Lender.** Mortgagor shall not, without Lender's prior written consent: (i) collect or accept payment of any Rents more than two (2) months in advance; (ii) cancel, terminate or surrender any Lease (other than for non-payment of Rent or any other material default thereunder); (iii) take or omit to take any action or exercise any right or option which would permit the tenant under any Lease to cancel or terminate said Lease; (iv) anticipate, discount, release, waive, compromise or otherwise discharge any Rents payable under the Leases, or otherwise waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases; (v) permit any tenant to assign or sublet its interest in any of the Leases unless required to do so by the terms of the Lease and then only if such assignment does



not work to relieve the tenant of any liability for payment of and performance of its obligations under such Lease; (vi) enter into, execute, modify or extend any Lease now existing or hereafter made providing for a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the area demised by the Lease is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property; (vii) cancel, terminate or surrender any Lease now existing or hereafter made providing for a term (assuming that all renewal options, if any, are exercised) of more than five (5) years; (viii) cancel, terminate or surrender in any single twelve-month period Leases demising more than twenty-five percent (25%) of the aggregate total net rentable area of the building improvements at the Property; (ix) further pledge, transfer, mortgage or otherwise encumber or assign the Leases or future payments of Rents, or incur any material indebtedness, liability or other obligations to any tenant, lessee or licensee under the Leases; or (x) permit any Lease to become subordinate to any lien other than the lien of this Mortgage. However, subject to the limitations in subsections (vi), (vii) and (viii) above, Mortgagor may take any of the actions described in subsections (ii) or (iv) above so long as such actions are taken by Mortgagor in the ordinary and prudent course of business with due regard for the security afforded Lender by the Lease and are consistent with sound customary leasing and management practices for properties similar to the Property. To the extent Mortgagor should request the consent of Lender pursuant to this Section 6.4(c), Mortgagor shall furnish to Lender such financial and background information as Lender may require in order to make its determination.

**Section 6.5 Lender in Possession; Appointment of Receiver.** Upon the occurrence of an Event of Default, Lender in person, by agent or by court-appointed receiver and regardless of the adequacy of Lender's security, may enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Mortgagor could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Mortgage. In the event Lender exercises its rights pursuant to this Section 6.5, Lender shall be deemed to be acting as agent of Mortgagor and not as owner of the Property. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof, such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default, Lender shall be entitled (without notice and regardless of the adequacy of Lender's security or the solvency of Mortgagor, and as a matter of strict right) to the appointment of a receiver, Mortgagor hereby consenting to the appointment of such receiver, and which appointment may be made before or after sale. The receiver shall have, in addition to all of the rights and powers customarily given to and exercised by such receivers (including, without limitation, the power to collect Rents), all the rights and powers granted to Lender in this Article VI. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

**Section 6.6 Application of Rents.** All Rents collected subsequent to delivery of written notice by Lender to Mortgagor of an Event of Default shall be applied first to the costs, if



any, of taking control of and managing the Property and collecting the Rents, including without limitation reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article VI.

**Section 6.7 Deficiencies.** To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Mortgagor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Mortgage. Such excess sums shall be payable by Mortgagor upon demand by Lender and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor therefor under applicable law if that is less.

**Section 6.8 Lender Not Mortgagee in Possession.** Nothing herein shall constitute Lender as a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

**Section 6.9 Enforcement.** Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Article VI, the word "lease" shall mean "sublease" if this Mortgage is on a leasehold. This assignment shall terminate at such time as this Mortgage ceases to secure payment of indebtedness held by Lender.

## **ARTICLE VII EVENTS OF DEFAULT**

The occurrence of any one or more of the following defaults shall constitute an "**Event of Default**" (herein so called) hereunder:

(a) Mortgagor's failure to pay any amount outstanding under the Note on the Maturity Date.

(b) Mortgagor's failure to make any other payment when due under the Note, this Mortgage or any of the other Loan Documents, followed by Mortgagor's failure to make such payment within ten (10) days after written notice thereof given to Mortgagor by Lender; provided, however, that Lender shall not be obligated to give Mortgagor written notice prior to exercising its remedies with respect to such default if Lender had previously given Mortgagor during the previous twelve (12) month period a notice of default for failure to make a payment of similar type.

(c) Mortgagor's failure to perform any other covenant, agreement or obligation under the Note, this Mortgage or any of the other Loan Documents, followed by Mortgagor's failure to cure such default within thirty (30) days after written notice thereof given

to Mortgagor by Lender (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Mortgagor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Lender's notice of default).

(d) Mortgagor or any guarantor of any portion of Mortgagor's obligations under the Loan Documents (whether one or more, "Guarantor") files, or there is filed against Mortgagor or any Guarantor (and such involuntary filing is not dismissed within forty-five (45) days), or any portion of the Property becomes the subject of, a petition in bankruptcy or action seeking reorganization, arrangement, liquidation, dissolution or similar relief under any bankruptcy or other federal or state insolvency or other law relating to relief from indebtedness, or a receiver, trustee or liquidator is appointed with respect to Mortgagor, any Guarantor or any portion of the Property.

(e) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Mortgagor or Mortgagor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(f) Mortgagor commences any proceeding for dissolution or liquidation, or any such proceeding is commenced against Mortgagor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

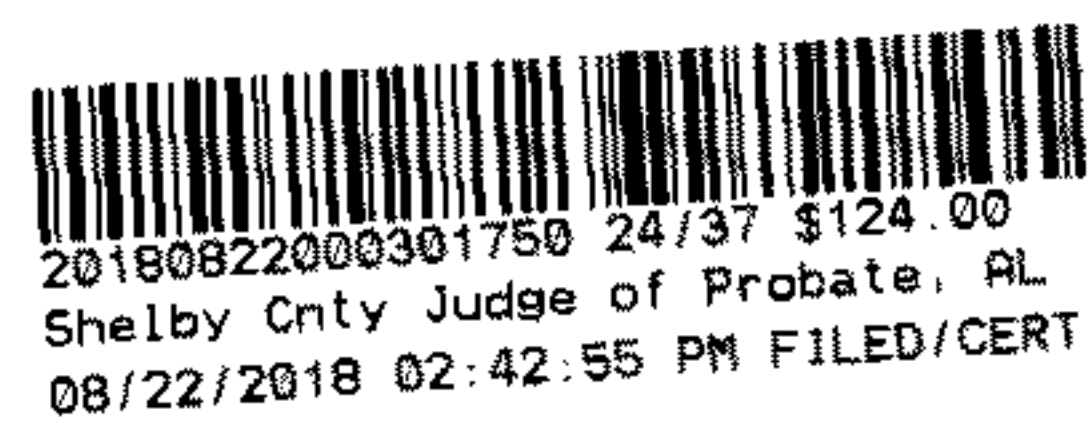
(g) Mortgagor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(h) There is an attachment, execution or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within ten (10) days.

(i) Any representation or disclosure made to Lender by Mortgagor or any Guarantor in connection with the Loan proves to be materially false or misleading when made, whether or not that representation or disclosure is contained in the Loan Documents.

(j) Any Transfer (as defined in Section 4.1 above) made without Lender's prior written consent.

(k) The death of any Guarantor unless, within thirty (30) days of the death of such Guarantor, Mortgagor provides a new replacement guarantor reasonably acceptable to Lender who executes Lender's standard form guaranty agreement and environmental indemnity agreement and assumes all of the deceased Guarantor's obligations under the Loan Documents. Lender will be deemed to be reasonable in refusing to approve a proposed replacement guarantor whose creditworthiness, net worth and liquidity is less than that of the original decedent Guarantor at the time of the closing of the Loan.





**ARTICLE VIII**  
**REMEDIES**

**Section 8.1 Acceleration Upon Default; Additional Remedies.** Upon the occurrence of an Event of Default, Lender may, at its option and without notice to or demand upon Mortgagor, take any one or more of the following actions:

(a) Declare any or all indebtedness secured by this Mortgage, including any prepayment fee, to be due and payable immediately.

(b) Take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Lender) and manage, control or lease the same to such person or persons and at such rental as it may deem proper and collect all rents, issues and profits, therefrom, including those past due as well as those thereafter accruing, with the right of Lender to cancel any lease or sublease for any cause which would entitle Mortgagor to cancel the same; to make such expenditures for maintenance, repairs and costs of operation as it may deem advisable; and after deducting the cost thereof and a commission of five (5%) percent upon the gross amount of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession under this section shall not prevent concurrent or later proceedings for the foreclosure sale of the Property as provided elsewhere herein.

(c) Apply to any court of competent jurisdiction for the appointment of a receiver or similar official to manage and operate the Property, or any part thereof, and to apply the net rents and profits therefrom to the payment of the interest and/or principal of the Note and/or any other obligations of Mortgagor to Lender hereunder. In the event of such application, Mortgagor agrees to consent to the appointment of such receiver or similar official, and agrees that such receiver or similar official may be appointed without notice to Mortgagor, without regard to the adequacy of any security for the debts and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Note or any other obligation of Mortgagor hereunder.

(d) Bring a court action to foreclose this Mortgage, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the Property or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Note to the date of the Event of Default, and thereafter at the default rate specified in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note and this Mortgage, including all sums which may have been loaned by Lender to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Lender for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance, utilities or repairs to the Property, all costs of suit, together with interest at the default rate on any judgment obtained by Lender from and after the date of any judicial sale of the Property until actual payment is made of the full amount due Lender.

(e) Sell the Property at public outcry to the highest bidder for cash in front of the front or main door of the court house of the county where said Property, or a substantial and

material part thereof, is located, either in person or by auctioneer, after having first given notice of the time, place and terms of the sale, together with a description of the Property, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Any such 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. Lender may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Mortgage only as to the Property sold, and if the Secured Obligations and all other sums secured hereby are not thereby satisfied in full, the other Property shall continue as security therefor and there may be a further foreclosure of this Mortgage, either by sale under power of sale or by judicial foreclosure.

(f) Without declaring the entire unpaid principal balance due, Lender may foreclose only as to the sum past due, without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Property shall be sold subject to all remaining items of indebtedness; and Lender may again foreclose, in the same manner, as often as there may be any sum past due.

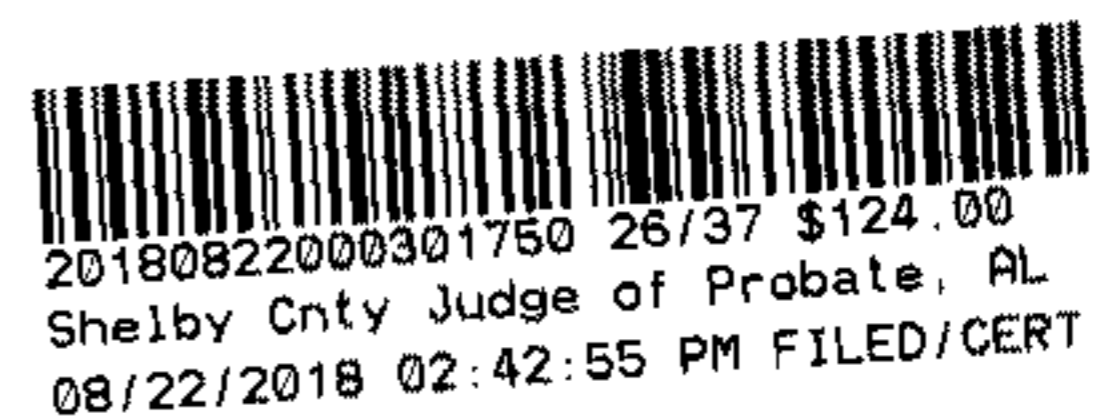
(g) Lender may realize upon the personal property which is collateral heretofore, enforce and exercise all of Mortgagor's rights, powers, privileges and remedies in respect of the personal property collateral, dispose of or otherwise deal with the personal property collateral in such order as Lender may in its discretion determine, and exercise any and all other rights, powers, privileges and remedies afforded to a secured party under the laws of the State of Alabama, as well as all other rights or remedies available at law or in equity with regard to the Property.

(h) Exercise any or all of the rights and remedies provided for herein, the Note or any other Loan Document or available at law, in equity or otherwise.

**Section 8.2 Additional Provisions.** Mortgagor expressly agrees, on behalf of itself, its successors and assigns and any future owner of the Property, or any part thereof or interest therein, as follows:

(a) All remedies available to Lender with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by Lender in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

(b) The obtaining of a judgment or decree on the Note, whether in the State of Alabama or elsewhere, shall not in any manner affect the lien of this Mortgage upon the Property, and any judgment or decree so obtained shall be secured to the same extent as the Note is now secured.



(c) In the event of any foreclosure sale hereunder, all net proceeds shall be available for application to the indebtedness hereby secured whether or not such proceeds may exceed the value of the Property for unpaid taxes, liens, assessments and any other costs relating to the Property.

**Section 8.3 Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or the Note or under any other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy contained herein or by law or in equity provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or not or hereafter existing at law or in equity or by statute. Every power or remedy given to Lender or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and it may pursue inconsistent remedies.

**Section 8.4 Sale of the Property.** In exercising its rights and remedies Lender may, at Lender's sole discretion, cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property.

**Section 8.5 Notice of Sale.** Lender shall give Mortgagor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, including notices given in the manner and at the times required for notices in a nonjudicial foreclosure.

**Section 8.6 Waiver; Election of Remedies.** A waiver by either party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Mortgage are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Mortgagor shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

**Section 8.7 Waivers; Releases.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Mortgagor by any present or future laws exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice

of intent to accelerate, notice of acceleration and any other notice of Lender's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (iv) the exemption of homestead; (v) all rights of reinstatement and redemption; and (vi) the administration of estates and decedents, or other matter to defeat, reduce or affect the right of Lender under the terms of this Mortgage to sell the Property for the collection of the Secured Obligations secured hereby (without any prior or different resort for collection) or the right of Lender, under the terms of this Mortgage, to receive the payment of the Secured Obligations out of the proceeds of the sale of the Property in preference to every other person or claimant whatever (only reasonable expenses of such sale being first deducted).

**Section 8.8 Application of Sale Proceeds.** Except as may otherwise be required by applicable law, the proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including without limitation, Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest on all advances made by Lender from date of disbursement at the applicable interest rate under the Note from time to time or at the maximum rate permitted to be charged by Lender under the applicable law if that is less.


SECOND: Payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note from time to time or the maximum rate permitted by applicable law if that is less.

THIRD: Payment of all other indebtedness secured by this Mortgage in any order that Lender chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

**Section 8.9 Waiver of Order of Sale and Marshalling.** Lender shall have the right to determine the order in which any and all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Mortgagor, any person who consents to this Mortgage and any person who now or hereafter acquires a security interest in the Property hereby waives, to the extent permitted by law, any and all right to require marshalling of assets in connection with the exercise of any of the remedies provided herein or to direct the order in which any of the Property will be sold in the event of any sale under this Mortgage.

**Section 8.10 Non-Waiver of Defaults.** The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

  
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**Section 8.11 Expenses During Redemption Period.** If this Mortgage is foreclosed through court action and the Property sold at a foreclosure sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. To the extent permitted by law, any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

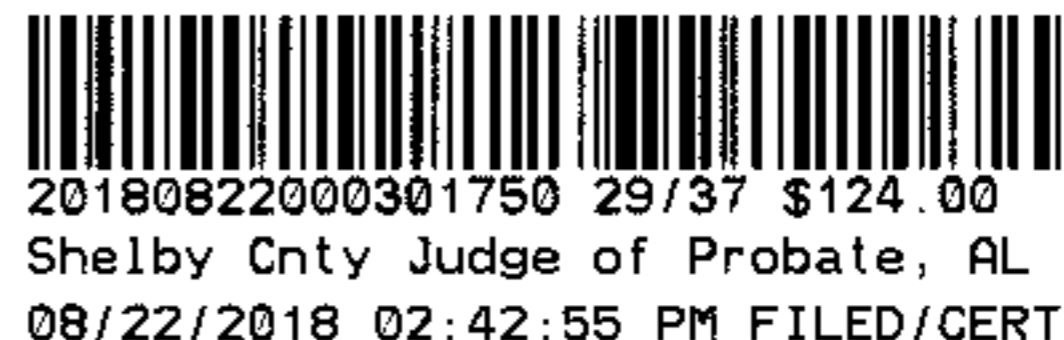
**Section 8.12 Foreclosure Subject to Tenancies.** Lender shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants of the Property, in accordance with applicable law.

**Section 8.13 Evasion of Prepayment Terms.** If an Event of Default has occurred and is continuing, a tender of payment of the indebtedness secured hereby made at any time prior to or at a judicial or nonjudicial foreclosure sale of the Property by Mortgagor, or by anyone on behalf of Mortgagor, shall constitute an evasion of the prepayment terms of the Note and shall constitute a voluntary prepayment thereunder and any such tender shall to the extent permitted by law include the additional payment required under the prepayment privilege, if any, contained in the Note or, if at that time there is no prepayment privilege, then such payment shall to the extent permitted by law include an additional payment of five percent (5%) of the then principal Loan balance.

**Section 8.14 Remedies Cumulative.** To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity or any other agreement between Lender and Mortgagor, and may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

**Section 8.15 Lender's Expenses.** Mortgagor will pay all of Lender's expenses incurred in any efforts to enforce any terms of this Mortgage and also in connection with any Mortgagor requests, whether or not there is any default under the Loan Documents or any suit is filed, including, without limitation, legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor under applicable law if that is less.

**Section 8.16 Right to Discontinue Proceedings.** In the event Lender shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so. In such event, Mortgagor and Lender shall be restored to their former positions with respect to the indebtedness secured by this Mortgage and this Mortgage, the Property and all rights, remedies and recourse of Lender shall continue as if the same had not been invoked.



**ARTICLE IX**  
**GENERAL**

**Section 9.1 Application of Payments.** Except as applicable law or this Mortgage may otherwise provide, all payments received by Lender under the Note or this Mortgage shall be applied by Lender in the following order of priority: (a) Lender's costs and expenses incurred in connection with any efforts to enforce any terms of this Mortgage; (b) amounts payable to Lender by Mortgagor under Article III for Reserves; (c) interest and late charges payable on the Note; (d) prepayment fees (if any) due under the Note; (e) interest payable on advances made to protect the security of this Mortgage; (f) principal of such advances; (g) principal of the Note; and (h) any other sums secured by this Mortgage in such order as Lender, at its option, may determine. Mortgagor acknowledges and agrees that Lender may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Mortgage prior to applying such payments to interest on or principal of the Note.

**Section 9.2 Release of Mortgage.** Upon payment unto Lender of the Secured Obligations, and if Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note, this Mortgage and the other Loan Documents, then this Mortgage and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise this Mortgage shall remain in full force and effect.

**Section 9.3 Lender's Powers.** Without affecting the liability of any person for payment or performance of the Secured Obligations, or any of Lender's rights or remedies, or the priority of this Mortgage, Lender, at its option, may extend the time for payment of the Secured Obligations or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Mortgage on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Mortgagor to consent to the making of any map or plat of the Property, consent or cause Mortgagor to consent to the granting of any easement or creating any restriction on the Property, or join or cause Mortgagor to join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof. Mortgagor shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Lender's option, for any such action if taken at Mortgagor's request.

**Section 9.4 Subrogation.** Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

**Section 9.5 Limitation on Interest and Charges.** Interest, fees and charges collected or to be collected in connection with the Secured Obligations shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Mortgagor is entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Lender which

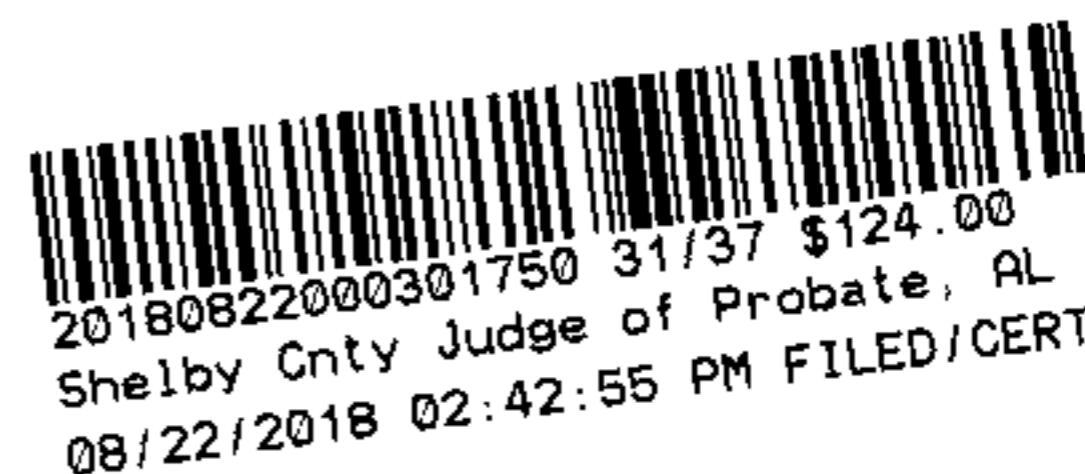
exceeded the permitted maximum will be refunded. Lender may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the persons entitled thereto. No prepayment premium shall be assessed on prepayments under this section. The provisions of this section shall control over any inconsistent provision of this Mortgage or the Note or any other Loan Documents.

**Section 9.6 Additional Documents; Power of Attorney; Further Assurances.** Mortgagor, from time to time, will execute, acknowledge and deliver to Lender upon request, and hereby grants Lender power of attorney, which power of attorney is coupled with an interest and is irrevocable, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage, and the priority thereof. Mortgagor will pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document. Mortgagor specifically authorizes Lender to file such Uniform Commercial Code Financing Statements before, on or after the date hereof, and to file such amendments and continuation statements, all as Lender determines necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Property. Mortgagor shall execute such further documents and do any and all such further things, including, but not limited to, correcting any errors or omissions in the Loan Documents, as may be necessary to implement and carry out the intent of this Mortgage.

**Section 9.7 Waiver of Statute of Limitations.** To the full extent Mortgagor may do so, Mortgagor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.

**Section 9.8 Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default by Mortgagor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Mortgage after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages under Sections 2.3 and 2.8 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

**Section 9.9 Modifications and Waivers.** This Mortgage cannot be amended, waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any amendment, waiver, change, discharge or termination is sought.



**Section 9.10 Notices.** All notices and other communications given in connection herewith must be in writing and shall be deemed given on the day delivered by hand, on the first (1<sup>st</sup>) business day following sending by nationally recognized express courier or on the second (2<sup>nd</sup>) business day following mailing by certified or registered mail, postage prepaid, to the address set forth above for the recipient thereof. Any party may change its address for such purposes by delivering or mailing to Lender or Mortgagor, as the case may be, a notice of such change.

**Section 9.11 Governing Law; Severability; Captions.** This Mortgage shall be governed by the laws of the State of Alabama. If any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the sections and articles of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

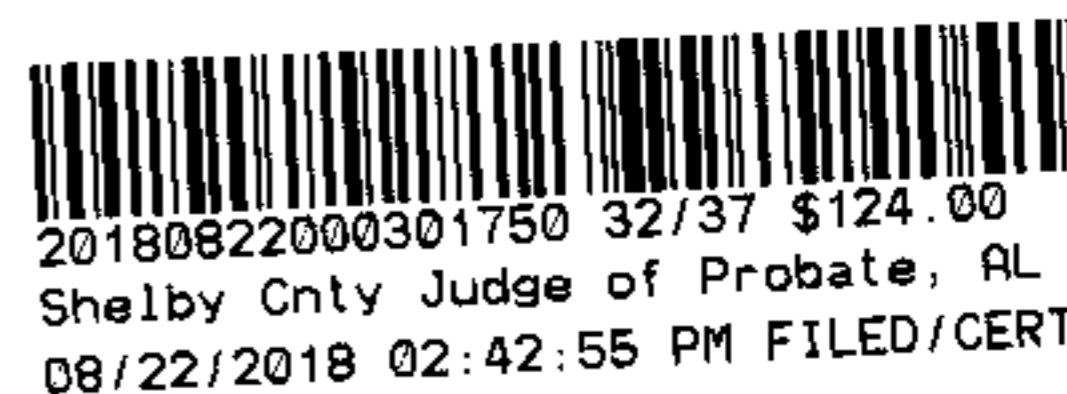
**Section 9.12 Definitions.** As used herein: the term "Mortgagor" means the Mortgagor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; and the term "Lender" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

**Section 9.13 Successors and Assigns Bound; Joint and Several Liability; Agents.** This Mortgage shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article IV hereof. All obligations of Mortgagor hereunder are joint and several. In exercising any rights hereunder or taking actions provided for herein, Lender may act through its respective employees, agents or independent contractors as authorized by Lender.

**Section 9.14 Number; Gender.** This Mortgage shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

**Section 9.15 Time.** Time is of the essence in connection with all obligations of Mortgagor herein.

**Section 9.16 Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, LENDER AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS MORTGAGE. MORTGAGOR ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S EXTENDING CREDIT TO MORTGAGOR, THAT LENDER WOULD NOT HAVE EXTENDED CREDIT WITHOUT THIS JURY TRIAL WAIVER, THAT MORTGAGOR HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER TO UNDERSTAND THE LEGAL EFFECT OF THIS WAIVER,





AND NO WAIVER OR LIMITATION OF LENDER'S RIGHTS UNDER THIS SECTION SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON LENDER'S BEHALF.

Mortgagor acknowledges that the above section has been expressly bargained for by Lender as part of the Loan and that, but for Mortgagor's agreement, Lender would not have extended the Loan.

**Section 9.17 Counterparts.** This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

## **ARTICLE X NON-RECOURSE**

Except as otherwise provided in the Note and the Environmental Indemnity Agreement of Mortgagor and any guarantors of even date, (i) Mortgagor shall not have personal liability hereunder so long as a lack of personal liability does not operate to invalidate the lien of this Mortgage and (ii) in the event of foreclosure of this Mortgage or other enforcement of the collection of the indebtedness evidenced by the Note, Lender agrees, and any holder of the Note shall be deemed by acceptance thereof to have agreed, not to take a deficiency judgment against Mortgagor with respect to said indebtedness. Notwithstanding the foregoing, nothing contained herein or in any of the other Loan Documents shall be deemed to release Mortgagor or any other party from liability for the "Non-Recourse Exceptions" set forth in the Note.

## **ARTICLE XI ADDITIONAL SECURITY INSTRUMENTS**

**Section 11.1 Additional Secured Obligations.** Mortgagor agrees that this Mortgage further secures payment of all sums and performance of all obligations under the Altadena Security Instruments, the Gardendale Security Instruments, and the Johns Creek Security Instruments, all of which shall be included within the definition of the "Secured Obligations" hereunder. As used herein:

(a) the "**Altadena Security Instruments**" means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement of even date given by Altadena to Lender as additional security for the Note and encumbering certain property located in Birmingham, Alabama (the "**Altadena Property**") and any other instrument or document executed by Altadena securing the Note, together with all modifications, extensions, renewals, and replacements thereof.

(b) the "**Gardendale Security Instruments**" means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement of even date given by Gardendale to Lender as additional security for the Note and encumbering certain property located in Gardendale, Alabama (the "**Gardendale Property**") and any other instrument or document executed by Gardendale securing the Note, together with all modifications, extensions, renewals, and replacements thereof.

(c) the “**Johns Creek Security Instruments**” means the Deed to Secure Debt, Assignment of Rents and Leases and Security Agreement of even date given by Johns Creek to Lender as additional security for the Note and encumbering certain property located in Suwanee, Georgia (the “**Johns Creek Property**”) and any other instrument or document executed by Johns Creek securing the Note, together with all modifications, extensions, renewals, and replacements thereof.

**Section 11.2 Cross Default.** Mortgagor agrees that the occurrence of any Event of Default under the Altadena Security Instruments, the Gardendale Security Instruments, or the Johns Creek Security Instruments shall constitute an Event of Default (as defined in Article VII) hereunder.

## **ARTICLE XII PARTIAL RELEASE**

**Section 12.1 Partial Release.** One year following the date of this Mortgage, Lender agrees to release the Property from the lien of this Mortgage in connection with a bona fide sale of the Property to a Third Party, provided that (i) Lender has not previously released as security for the Loan, in two (2) or more transactions, three (3) of the four (4) parcels that comprise the Total Collateral and (ii) each of the following conditions is met in a manner acceptable to Lender, in its sole and absolute discretion:

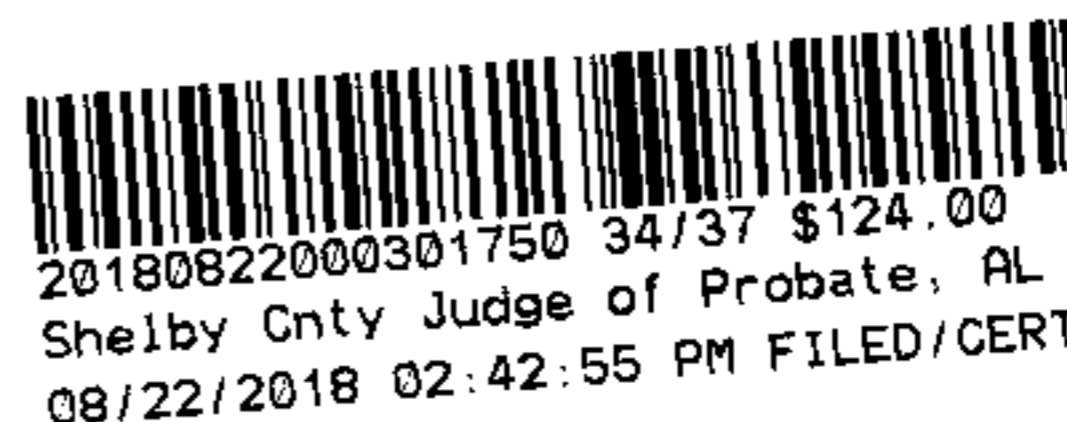
(a) Mortgagor gives Lender at least forty-five (45) days prior written notice of the requested release, together with copies of current certified rent rolls and operating statements of the Remaining Collateral (defined below), and thereafter, Mortgagor promptly provides Lender with all other information reasonably requested by Lender in connection with the requested release.

(b) There is no Event of Default under this Mortgage or any of the other Loan Documents or any other event or occurrence that, with the passage of time or the giving of notice or both, would be an Event of Default under this Mortgage or any of the other Loan Documents.

(c) Mortgagor furnishes to Lender, at Mortgagor’s expense, one or more endorsements to Lender’s title insurance policy or policies, which endorsements shall, without limiting Lender’s discretion, (i) revise the legal description of the insured property to conform to the Remaining Collateral, (ii) insure the first lien position of the deeds of trust and mortgages, as applicable, on the Remaining Collateral with an effective date as of the date of the release, (iii) contain no new exceptions to coverage other than those approved by Lender, and (iv) insure the continued validity, enforceability and priority of the deeds of trust and mortgages, as applicable, on the Remaining Collateral.

(d) Mortgagor pays to Lender a partial release fee of \$5,000.00, together with all other fees and costs associated with the release of the Property, including, without limitation, reasonable attorneys’ fees and consultants’ fees.

(e) Lender shall have determined that the DSCR for the Loan following the release of the Property will be equal to or greater than 1.40x.



(f) Mortgagor makes a Principal Curtailment on the Loan at the time of the release of the Property.

(g) Mortgagor pays a fee on the amount of the Principal Curtailment which is equal to the Prepayment Fee (as defined in the Note).

(h) Lender shall have determined that the loan to value ratio of the Loan shall not exceed seventy percent (70%) of the value of the Remaining Collateral as determined by Lender using the same underwriting methodology it employed in its initial underwriting of the Loan subject to changes in market conditions.

(i) All remaining Borrowers and all Guarantors enter into a modification agreement or such other documents as are requested by Lender in order to establish a new monthly principal and interest payment calculated using the existing interest rate the new principal balance, amortized over the portion of the Loan's original thirty (30) year amortization period that remains at the time of the release.

**Section 12.2 Defined Terms.** As used in this Article XII, the following terms have the associated meanings:

(a) The term "**Allocated Loan Amount**" means Three Million Three Hundred Seventy Thousand Dollars (\$3,370,000.00).

(b) The term "**DSCR**" means the debt service coverage ratio as determined by Lender using the same underwriting methodology it employed in its initial underwriting of the Loan.

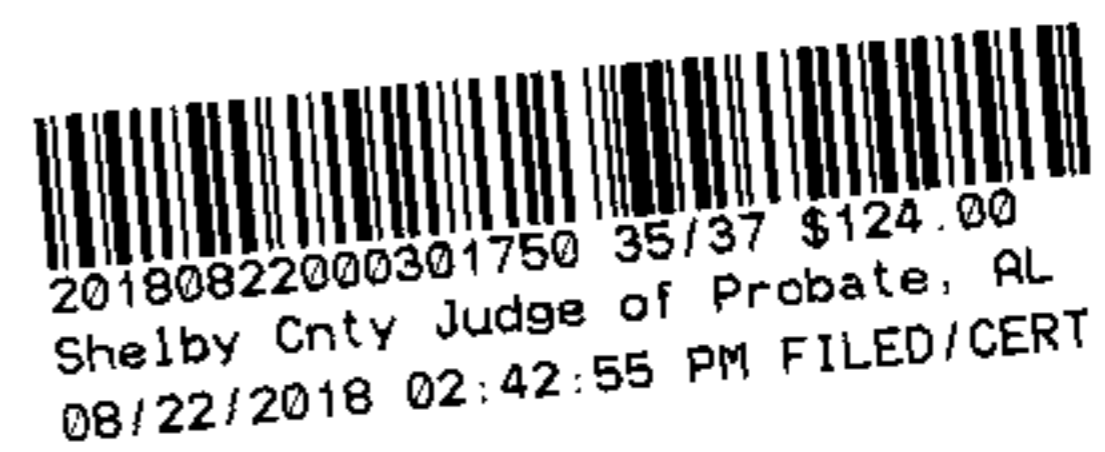
(c) The term "**Principal Curtailment**" means a payment of principal on the Loan equal to the greater of (i) One Hundred Fifteen Percent (115%) of the Allocated Loan Amount, as amortized over the term of the Loan or (ii) an amount equal to the sales price of the Property, net Mortgagor's transaction closing costs and net the prepayment fee set forth in Section 12.1(g) above.

(d) The term "**Remaining Collateral**" means the Total Collateral, less the Property and the parcel, if any, that has been previously released from the Total Collateral.

(e) The term "**Third Party**" means a true bona fide third party that is an individual or entity not related to Mortgagor, Altadena, Gardendale or Johns Creek or any members or owners (whether directly or indirectly) of Mortgagor, Altadena, Gardendale or Johns Creek.

(f) The term "**Total Collateral**" means the following four (4) parcels: the Property, the Altadena Property, the Gardendale Property, and the Johns Creek Property.

**[Remainder of this page intentionally left blank; signature page follows.]**



IN WITNESS WHEREOF, this Mortgage is effective as of the date first above written, although actually executed on the date of the acknowledgement below.

Witnesses

SWNC-CHELSEA CROSSINGS, LLC, an Alabama limited liability company

By: SW Neighborhood Center Manager, LLC, a Delaware limited liability company, its Manager

[Signature]  
Name: Butler Sparks  
[Signature]  
Name: Katherine Hart

By: [Signature]  
Andrew R. Patterson, its Authorized Representative

STATE OF ALABAMA )  
 ) SS  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew R. Patterson, whose name as the Authorized Representative of SW Neighborhood Center Manager, LLC, a Delaware limited liability company, the Manager of SWNC-Chelsea Crossings, 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 the instrument, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said companies.

Given under my hand and official seal this 15<sup>th</sup> day of August, 2018.

[Signature]  
Notary Public

My Commission Expires July 2, 2021



20180822000301750 36/37 \$124.00  
Shelby Cnty Judge of Probate, AL  
08/22/2018 02:42:55 PM FILED/CERT

**EXHIBIT A  
TO MORTGAGE**

**LEGAL DESCRIPTION**

The property which is the subject of this Mortgage is situated in Shelby County, Alabama, and is legally described as follows:

**LOT 4, ACCORDING TO THE MAP OF CHELSEA CROSSINGS SUBDIVISION, AS RECORDED IN MAP BOOK 37, PAGE 49, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA.**

**TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS CREATED UNDER INSTRUMENT #200604210000186980 AND AS SHOWN ON MAP BOOK 37, PAGE 49, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.**

