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APG INDUSTRIAL ALABASTER, LLC (Mortgagor)

to

WEBSTER BANK, NATIONAL ASSOCIATION (Mortgagee)

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**MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT AND FIXTURE FILING  
(APG INDUSTRIAL ALABASTER, LLC)**

Dated: As of February 11, 2021

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PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Reed Smith LLP  
506 Carnegie Center Drive, Suite 300  
Princeton, New Jersey 08540  
Attn: Christopher J. Maurer, Esq.

THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO THE CODE OF ALABAMA (1975), § 7-9A-502(c) AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY.

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Tax Parcel Identification Nos.: 23-1-12-0-000-064.000 and 23-1-12-0-000-063.001

Property Location: 2039 Fulton Springs Road, Alabaster, Alabama 35007

**MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT  
AND FIXTURE FILING (APG INDUSTRIAL ALABASTER, LLC)**

**THIS MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT AND FIXTURE FILING (APG INDUSTRIAL ALABASTER, LLC)** (as it may be from time to time amended, modified, extended, renewed, substituted and/or supplemented, referred to as this "**Mortgage**") made as of the 11<sup>th</sup> day of February, 2021, by **APG INDUSTRIAL ALABASTER, LLC**, a Delaware limited liability company, having an office located at c/o Alterra Property Group, 414 S. 16th Street, Suite 100, Philadelphia, Pennsylvania 19146 ("**Mortgagor**"), in favor of **WEBSTER BANK, NATIONAL ASSOCIATION**, a national association organized and existing under the laws of the United States of America having its principal place of business located at 145 Bank Street, Waterbury, Connecticut 06702 ("**Mortgagee**").

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

**WHEREAS**, Mortgagor is indebted to Mortgagee in the original principal sum of Fourteen Million Seven Hundred Fifty Thousand and 00/100 (\$14,750,000.00) Dollars (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "**Loan**"), as evidenced by that certain Commercial Promissory Note of even date herewith in said principal amount (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "**Note**"), the terms, conditions, and provisions thereof being incorporated herein by reference and made a part of this Mortgage to the same extent as though set forth in full herein, bearing a variable rate of interest and payable as set forth in the Note, all as more particularly set forth in the Note; and

**WHEREAS**, the grant of the security interest herein by Mortgagor to Mortgagee shall secure the payment and performance of all liabilities and obligations now or hereafter owing from Mortgagor to Mortgagee (and any affiliate of Webster Financial Corporation) of whatever kind or nature, whether or not currently contemplated at the time of this Mortgage, whether such obligations be direct or indirect, absolute or contingent or due or to become due, including without limitation, all obligations of Mortgagor, actual or contingent, in respect of contracts with Mortgagee relating to interest rate hedge or swap products or letters of credit or banker's acceptances issued by Mortgagee for the account of or guaranteed by Mortgagor and all obligations of any partnership or joint venture as to which Mortgagor is or may become personally liable (collectively, the "**Obligations**", which Obligations shall include all accrued interest and all costs and expenses, including attorney's fees, costs and expenses relating to the appraisal and/or valuation of assets and all costs and expenses incurred or paid by Mortgagee in exercising, preserving, defending, collecting, administering, enforcing or protecting any of its rights under the Obligations or hereunder or with respect to any other collateral for the "Indebtedness" (as such term is defined below) or in any litigation arising out of the transactions evidenced by the Obligations).

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby give, grant, bargain, sell, convey, assign, confirm, and mortgage unto Mortgagee, its successors and assigns, the following:

**THE MORTGAGED PROPERTY**

(A) The land described in Exhibit "A" attached hereto, incorporated herein and made a part hereof (the "**Land**"), which is located in Shelby County, Alabama, and all trees, shrubbery, crops and other plantings now or hereafter grown on the Land; and

(B) **TOGETHER WITH** (1) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (collectively, the **"Buildings"**), (2) all rights, title and interests of Mortgagor, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in any of the Buildings (the Buildings and such other property being hereinafter collectively referred to as the **"Improvements"**), and (3) all rights, title and interests of Mortgagor, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), in any and all plans, specifications, drawings, books, records and similar items relating to the Land or the Improvements, the operation thereof, any rights thereto or any interest therein; and

(C) **TOGETHER WITH** all rights, title, and interests of Mortgagor in and to all fixtures, fittings, machinery, appliances, equipment, apparatus, furnishings and personal property of every nature whatsoever now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Land or any of the Buildings, or in connection with the operation thereof or any construction or other work now or hereafter conducted thereon (all of the property described in this paragraph (C) being hereinafter collectively referred to as the **"Equipment"**); and

(D) **TOGETHER WITH** all proceeds, products, extensions, additions, improvements, renewals, substitutions, replacements, accessions, and accretions of and to all or any part of the property described in paragraphs (A), (B), and (C) hereof or any other property encumbered by this Mortgage; and

(E) **TOGETHER WITH** all rights, title and interests of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to (1) all streets, roads and public places (whether open or proposed) adjoining or otherwise providing access to the Land, (2) the land lying in the bed of such streets, roads and public places, and (3) all other sidewalks, alleys, ways, passages, vaults, water courses, strips and gores of land adjoining or used or intended to be used in connection with all or any part of the property described in paragraphs (A), (B), (C), and (D) hereof; and

(F) **TOGETHER WITH** all rights, title and interests of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to all easements, rights-of-way and rights of use or passage (whether public or private), estates, interests, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, claims, franchises, licenses, profits, rents, royalties, tenements, hereditaments, reversions, remainders and appurtenances of every nature whatsoever in any way now or hereafter belonging, relating or appertaining to all or any part of the property described in paragraphs (A), (B), (C), (D), and (E) hereof; and

(G) **TOGETHER WITH** all rights, title and interests of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to (1) any and all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and interest thereon (collectively, **"Compensation"**), now or hereafter made or payable in connection with any casualty or other damage to all or any part of the property described in paragraphs (A), (B), (C), (D), (E), and (F) hereof, or in connection with any condemnation proceedings affecting any such property or any taking under power of eminent domain (or any conveyance in lieu of or under threat of any such taking) of any such property or any rights thereto or any interest therein, including, without limitation, any and all Compensation for change of grade of streets or any other injury to or decrease in the value of such property, (2) any



and all proceeds of any sales, assignments or other dispositions of any such property or any rights thereto or any interest therein, (3) any and all proceeds of any other conversion (whether voluntary or involuntary) of any such property into cash or any liquidated claim, (4) any and all refunds of insurance premiums, taxes, assessments, water charges, sewer rents or other impositions in respect of any such property, and (5) all accounts, accounts receivable, option rights, contract rights, general intangibles, permits, licenses, approvals, bonuses, actions and rights in action arising from or relating to any such property (including, without limitation, all rights to insurance proceeds and unearned insurance premiums and all rights of Mortgagor in and to all contracts relating to management, maintenance and security of any such property); and

(H) **TOGETHER WITH** all rights, title and interests of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to all rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the property described in paragraphs (A), (B), (C), (D), (E), and (F) hereof or any business conducted thereon by Mortgagor, whether now or hereafter payable or accruing (including, without limitation, any and all monetary sums paid or payable from time to time by any and all tenants, licensees, invitees, guests, customers, occupants or other users of any such property or business), and all right of Mortgagor to collect and receive the same; provided, however, that permission is hereby given to Mortgagor, so long as no Event of Default shall have occurred and be continuing, to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as they become due and payable, but not in advance thereof, which permission shall terminate immediately upon the occurrence of, and during the continuance of, any Event of Default; and

(I) **TOGETHER WITH** (1) all rights, title and interests of Mortgagor (whether as seller, purchaser or otherwise) in and to any and all agreements for purchase and sale or any other transfer of all or any part of the property described in paragraphs (A), (B), (C), (D), (E) and (F) hereof, together with any and all down payments, earnest money deposits and other sums paid or payable or deposited in connection therewith, and (2) all rights, title and interests of Mortgagor (whether as lessor, lessee or otherwise) in and to any and all leases, subleases, use, occupancy or similar agreements (collectively, "**leases**") now or hereafter affecting all or any part of the property described in paragraphs (A), (B), (C), (D), (E), and (F) hereof, together with any and all guaranties thereof and security therefor (including, without limitation, any and all rights, title and interests of Mortgagor in and to property of any tenant or other person under any such lease or under any other arrangement entered into in connection with any such lease, and any and all cash, security deposits, advance rentals and deposits or payments of a similar nature under any such lease or other arrangement) and together with all money payable thereunder or in connection therewith (including, without limitation, any and all cancellation or termination payments), subject, however, to the conditional permission given to Mortgagor to collect and use the rents, income and other benefits arising under any such lease as provided above; and

(J) **TOGETHER WITH** all rights, title and interests of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to any and all further or greater estate, rights, title, interests, claim and demand of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to any of the property described in the foregoing paragraphs or any rights or interests appurtenant thereto; and

(K) **TOGETHER WITH** all Proceeds relating to all or any portion of the foregoing collateral described in paragraphs (A) through (J) above, whether such Proceeds take the form of Accounts, Inventory, Instruments (including Promissory Notes), Documents, Chattel Paper, Investment Property, Certificated Securities, Uncertificated Securities, Security Entitlements, General Intangibles, Payment Intangibles, Software, Deposit Accounts, Letter of Credit Rights,

Equipment, Farm Products or Fixtures, or otherwise, and all supporting Obligations relating to any of the forgoing, as each of those capitalized terms is defined in the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Alabama (the “**Uniform Commercial Code**”); and

All of the property described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J) and (K) above, and each item of property therein described, is herein collectively referred to as the “**Mortgaged Property**”.

Mortgagor hereby irrevocably and absolutely **GRANTS AND CONVEYS, MORTGAGES AND WARRANTS, SETS OVER, TRANSFERS, ASSIGNS, BARGAINS AND SELLS** to Mortgagee, **WITH THE POWER OF SALE** and all statutory rights under the laws of the State of Alabama, a first priority security interest in all personal property and fixtures included within the Mortgaged Property and agrees that Mortgagee shall have with respect thereto (in addition to its other rights and remedies), all rights and remedies of a secured party under the Uniform Commercial Code. This instrument is intended to take effect as a security agreement under the Uniform Commercial Code and is to be filed in the real estate records in lieu of a financing statement as a fixture filing pursuant to the Uniform Commercial Code. Notwithstanding the foregoing to the contrary, Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may request in order to perfect its security interest or to impose the lien hereof more specifically upon any of the Mortgaged Property. Mortgagor agrees that no other chattel mortgage or other security agreement shall be filed with respect to the Mortgaged Property without the prior express written consent of Mortgagee.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee, its successors and assigns forever, to its and their own proper use.

**AND ALSO**, Mortgagor, for itself and its successors and assigns, covenants with and warrants to Mortgagee, its successors and assigns, that Mortgagor is well seized of the Land, the Buildings and all other parts of the Mortgaged Property constituting real property as a good indefeasible estate in fee simple, that Mortgagor has good and absolute title to the Equipment and all other parts of the Mortgaged Property constituting personal property, that Mortgagor has good right, full power and lawful authority, without the joinder or consent of any person, to give, grant, bargain, sell, assign and confirm the Mortgaged Property in manner and form as written above, and that the Mortgaged Property is free and clear of all claims, demands, liens, security interests, charges, encumbrances and exceptions to title whatsoever (except as set forth in the Mortgagee’s title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage);

**AND FURTHERMORE**, Mortgagor does by these presents bind itself and its successors and assigns forever to **WARRANT AND DEFEND** title to the Mortgaged Property to Mortgagee, its successors and assigns, against all claims, demands, liens, security interests, charges, encumbrances and exceptions to title (except as set forth in the Mortgagee’s title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage).

**PROVIDED ALWAYS**, and this instrument is upon the express condition that, if Mortgagee is paid the principal sum mentioned in the Note, the interest thereon and all other sums payable to Mortgagee as are secured hereby, in accordance with the provisions of the Note and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Mortgagor performs and complies with all the agreements, conditions, covenants, provisions

and stipulations contained herein and in the other Loan Documents, then this Mortgage and the estate hereby granted shall cease and become void.

**NOW, THEREFORE**, to induce Mortgagee to make the Loan which is evidenced by the Note and secured by this Mortgage, Mortgagor has and does hereby agree, warrant, covenant and represent as follows:

## **ARTICLE ONE - COVENANTS OF MORTGAGOR**

**1.01 Performance of Obligations.** Mortgagor shall cause to be performed, observed and complied with all provisions of this Mortgage, of the Note and of every other instrument, document or agreement, now or hereafter evidencing, governing or securing all or any part of the indebtedness evidenced by the Note or otherwise governing the responsibilities of Mortgagor in connection with such indebtedness or the Mortgaged Property, and Mortgagor shall promptly pay to Mortgagee when due all principal, interest and other sums required to be paid by Mortgagor under the Note, this Mortgage, the Commercial Loan and Security Agreement of even date herewith by and among, inter alia, Mortgagor and Mortgagee (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, the “**Loan Agreement**”) or any such other instrument (the Note, this Mortgage, the Loan Agreement and all such other instruments, documents or agreements which may now or hereafter evidence, govern or secure the Note or the Loan Agreement being herein collectively referred to as the “**Loan Documents**” and the principal amount of the Note outstanding from time to time, all accrued interest thereon and all other Obligations and indebtedness described in this Mortgage or any of the Loan Documents being herein collectively referred to as the “**Indebtedness**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

**1.02 General Representations, Covenants and Warranties.** Mortgagor warrants, represents and covenants that: (a) Mortgagor is a duly organized and validly existing limited liability company under the laws of the State of Delaware and is duly qualified to do business in the State of Alabama; (b) Mortgagor has duly obtained all licenses, permits, approvals and authorizations, and has duly completed all filings, required for the conduct of its business; (c) all due action has been taken to make and constitute the Loan Documents, and the Loan Documents do constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject to the effect of bankruptcy and other laws affecting the rights of creditors generally; (d) there are no provisions in any indenture, contract, agreement or other document affecting Mortgagor, or to which Mortgagor is a party or by which Mortgagor or its properties are bound, which prohibit or limit the execution of any of the Loan Documents, or the performance and observance by Mortgagor of any of the covenants, agreements, conditions or other provisions of any of the Loan Documents, and such actions by Mortgagor will not violate any law, ordinance, rule, regulation, order, judgment, injunction or decree presently in effect or the adoption of which is known to Mortgagor to be presently under consideration; (e) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency cases or proceedings are pending, or to the knowledge of Mortgagor contemplated, by or against Mortgagor; (f) all reports, statements and other data furnished to Mortgagee by Mortgagor or any member of Mortgagor are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (g) Mortgagor possesses a good and marketable title to the Mortgaged Property subject only to those title exceptions listed in the marked-up title insurance report approved by and issued to Mortgagee on the date hereof to insure the priority of the lien of this Mortgage; (h) there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or the Mortgaged Property in any court or before any governmental authority,



nor is Mortgagor in default with respect to any order of any court or governmental authority; (i) all costs incurred prior to the date hereof in connection with any construction of, in or on any Improvements or in connection with the purchase of any Equipment have been paid; (j) the Land has frontage on, and direct access for ingress and egress to, a publicly dedicated street or highway; (k) electric, gas, sewer, water and telephone facilities and any other necessary utilities presently are available in sufficient capacity to service the Mortgaged Property satisfactorily until the Indebtedness shall have been paid in full, and any easements necessary to the furnishing of such utility service to the Mortgaged Property have been obtained and duly recorded; and (l) Mortgagor has not received any notice of default, or any notice of the existence of any state of facts which, with notice or the passage of time, or both, would constitute a default, under any instrument evidencing or securing any indebtedness of Mortgagor.

### 1.03 Compliance with Laws.

(a) Except as otherwise set forth in that certain Phase I Environmental Site Assessment prepared by Apex Companies, LLC dated December 30, 2020, Apex Project No. ALTERRA-001A (the “**Environmental Report**”), Mortgagor hereby represents, warrants and covenants that to Mortgagor’s actual knowledge (without, other than the Environmental Report, independent investigation), the Mortgaged Property and the use thereof presently comply with all applicable agreements and restrictive covenants and with all applicable laws, ordinances, rules, regulations, orders, judgments, injunctions and decrees (including, without limitation, all zoning and subdivision ordinances and building codes and all health and environmental laws and regulations), and all licenses, permits, approvals and authorizations required in connection therewith have been duly obtained and are in effect. Mortgagor shall cause the Mortgaged Property and the use thereof to comply with all such agreements, covenants, laws, ordinances, rules, regulations, orders, judgments, injunctions and decrees (whether now or hereafter in effect), and all licenses, permits, approvals and authorizations hereafter required in connection therewith shall be obtained.

(b) Mortgagor warrants and represents that, to Mortgagor’s actual knowledge, without independent investigation, except as otherwise set forth in the Environmental Report, (i) neither the Mortgaged Property nor any other property now or previously owned by Mortgagor is under investigation with respect to, or is or has been in violation of, any Environmental Law (as hereinafter defined), (ii) no proceedings have been commenced against, nor written notice received by, Mortgagor concerning any alleged violation of any Environmental Law, (iii) neither the Mortgaged Property nor any such other property has been the subject of any threatened, proposed or actual cleanup or other protective or remedial action relating to any Hazardous Substances (as hereinafter defined), whether pursuant to any Environmental Law or otherwise, and (iv) there are no Hazardous Substances in, on, under or about the Mortgaged Property, no release, discharge, spillage, seepage or filtration of any Hazardous Substances is occurring or has occurred in, on, under, about or from the Mortgaged Property, and the Mortgaged Property is not being used and has not been used for any generation, treatment, storage, handling, transportation, use or disposal of any Hazardous Substances in, on, under, about or from the Mortgaged Property, except in strict conformity with applicable state and Federal laws and regulations, except to the extent commercially used in day-to-day operations of such property and, in such case, in compliance with all Environmental Law to the extent applicable to the Property. Mortgagor shall not permit or suffer the generation, treatment, storage, handling, transportation, use, disposal, release, discharge, spillage, seepage or filtration of any Hazardous Substances, in, on, under, about or from all or any part of the Mortgaged Property. For purposes of this Mortgage, (A) the term “**Environmental Law**” shall mean and refer to any federal, state or local law, ordinance, rule, regulation, order, judgment, injunction or decree relating to pollution, Hazardous Substances or environmental protection (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.), and all amendments and supplements to any of the

foregoing and all regulations issued pursuant thereto, and (B) the term “**Hazardous Substances**” shall mean and refer to any and all pollutants, contaminants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the manufacture, use, maintenance or handling of which is restricted, prohibited or penalized by any Environmental Law (including, without limitation, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

**1.04 Discharge of Liens.** If any mechanic’s, laborer’s, materialman’s, statutory or other lien (other than any lien for taxes not yet due and payable) shall be filed or otherwise imposed upon or against all or any part of the Mortgaged Property, then Mortgagor shall, within ten (10) days after being given notice of the filing thereof or otherwise becoming aware of the imposition thereof, cause such lien to be vacated or discharged of record by payment, deposit, bond, final order of a court of competent jurisdiction or otherwise. If such lien shall not be so vacated or discharged, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge such lien in such manner as Mortgagee may select, and Mortgagee shall be entitled, if Mortgagee shall so elect, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of any judgment in favor of such lienor with interest, costs and allowances. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person designated by Mortgagee, the amount of all payments made by Mortgagee as provided above and all costs, expenses and liabilities (including, without limitation, attorneys’ fees) incurred by Mortgagee in connection therewith, together with interest thereon at the Default Rate (as defined in the Note) from the date paid or incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee.

**1.05 Taxes Affecting Mortgaged Property.**

(a) Mortgagor shall pay or cause to be paid, on or before the last day when they may be paid without interest or penalty, all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances (including, without limitation, water and sewer rents and charges, charges for setting or repairing meters and charges for other utilities), general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind whatsoever, now or hereafter imposed, levied or assessed upon or against all or any part of the Mortgaged Property, the use, occupancy or possession thereof, this Mortgage, the Indebtedness or the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed upon or against Mortgagor or in respect of all or any part of the Mortgaged Property, and any and all interest, costs and penalties on or with respect to any of the foregoing (collectively, the “**Impositions**”); provided, however, that Mortgagor may in good faith, by appropriate proceedings diligently conducted (including, without limitation, payment of the asserted Imposition under protest if such payment must be made in order to contest such Imposition), contest the validity, applicability or amount of any asserted Imposition, and such contest shall not constitute a default under this Section 1.05 if, on or before the due date of such asserted Imposition, Mortgagor shall establish an escrow acceptable to Mortgagee in an amount estimated by Mortgagee to be adequate to cover the payment of such Imposition and all interest, costs and penalties thereon. If such escrow is insufficient to pay any amount adjudged by a court of competent jurisdiction to be due, and all interest, costs and penalties thereon, Mortgagor shall pay such deficiency no later than the date such judgment becomes final. Upon request by Mortgagee, Mortgagor shall exhibit to Mortgagee original receipts or other satisfactory proof of payment of the then most recently paid Impositions.

(b) Mortgagor shall not claim, demand or be entitled to receive any credit on account of the Indebtedness for any Impositions. No deduction shall be claimed from the taxable



value of all or any part of the Mortgaged Property by reason of the Indebtedness, any of the Loan Documents or the interest of Mortgagee in the Mortgaged Property.

**1.06 Taxes Affecting Mortgagee's Interest.** Mortgagor shall pay when due any and all mortgage recording, intangible property and documentary stamp taxes, all similar taxes, and all filing, registration and recording fees, which are now or hereafter may become payable in connection with the Indebtedness, this Mortgage or any of the other Loan Documents. Mortgagor shall pay when due any and all transfer and conveyance taxes which are now or hereafter may become payable in connection with the Indebtedness, this Mortgage or any of the other Loan Documents, or in connection with any foreclosure of this Mortgage, any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness or any other enforcement of Mortgagee's rights with respect thereto. The entry by a court of a decision that an undertaking by Mortgagor pursuant to this Mortgage to pay taxes, assessments, levies, liabilities, obligations or encumbrances is legally inoperative or cannot be enforced, or in the event of the adoption of any law or procedure changing in any way the laws or procedures now in force for the taxation of mortgages or debts secured by mortgages so as to affect adversely the security of this Mortgage or to reduce the net income to Mortgagee in respect of the Indebtedness, unless (a) upon request by Mortgagee, Mortgagor promptly shall pay to Mortgagee or to the taxing authority (if so directed by Mortgagee), all taxes, charges and related costs for which Mortgagee may be liable as a result thereof, and (b) such payment by Mortgagor shall (in Mortgagee's judgement) be permitted and shall not render the Note usurious.

**1.07 Insurance.**

(a) Mortgagor shall, at its sole cost and expense, obtain for, deliver to, assign to and maintain for the benefit of Mortgagor and Mortgagee, for so long as this Mortgage shall remain in effect, insurance policies (including renewals thereof as herein provided) in such amounts as Mortgagee may require, insuring the Mortgaged Property against all insurable hazards, casualties and contingencies (including, without limitation, loss of rentals or business interruption) as Mortgagee may require, and shall pay promptly when due any and all premiums on such insurance policies. If the Mortgaged Property is located in an area designated by the Federal Emergency Management Agency or the Flood Disaster Protection Act of 1973 (P.L. 93-234) as being in a "special flood hazard area" or as having specific flood hazards, whether now or at any time hereafter, Mortgagor shall also furnish Mortgagee with flood insurance policies which conform to the requirements of said Flood Disaster Protection Act of 1973 and the National Flood Insurance Act of 1968, as either may be amended from time to time, plus such supplemental insurance policies as Mortgagee shall require to enable Mortgagor to comply with this Section 1.07(a).

(b) The amounts of any such insurance coverages shall be in an amount equal to the full insurable value and shall be maintained thereafter at all times in an amount such that Mortgagor will not be deemed a co-insurer under applicable insurance laws, regulations, policies or practices. Renewals of such policies shall be so delivered at least ten (10) days before any such insurance shall expire. If Mortgagor shall fail to provide any such insurance, or shall fail to replace any of the same within ten (10) days after being notified that the insuring company is no longer approved by Mortgagee, or if any such insurance is cancelled or lapses without replacement, Mortgagee may, at its option, procure the same in such amounts as Mortgagee may reasonably determine and the cost thereof together with interest thereon at the Default Rate from the date of expenditure by Mortgagee to the date of repayment by Mortgagor to Mortgagee shall be repaid by Mortgagor to Mortgagee on demand and shall be part of the indebtedness secured hereby.

(c) All such policies required under this Section 1.07 shall be issued by a company or companies acceptable to Mortgagee. All such policies required under this Section 1.07 shall be in form acceptable to Mortgagee, and shall contain such provisions and endorsements as Mortgagee may require. Without limiting the generality of the foregoing, each such policy required under this Section 1.07 shall contain a noncontributory standard mortgagee endorsement making all losses payable to Mortgagee, shall provide that no act or omission of Mortgagor shall invalidate such policy as against Mortgagee, and shall provide that such policy shall not be canceled, terminated or materially altered without at least thirty (30) days' prior written notice to Mortgagee.

(d) All such policies required under this Section 1.07 shall be delivered to and held by Mortgagee. At least fifteen (15) days prior to the expiration date of each such policy, a renewal thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Within fifteen (15) days after the effective date of each such policy and each such renewal, Mortgagor shall deliver to Mortgagee a satisfactory receipt evidencing the payment of all premiums on such insurance policy or renewal, prepaid for a period of at least six (6) months. Mortgagee's acceptance or approval of any insurer shall not be construed as a representation or warranty of the solvency of such insurer, and Mortgagee's acceptance or approval of any insurance coverage shall not be construed as a representation or warranty of the sufficiency of such coverage.

(e) In the event of any foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness, all rights, title and interests of Mortgagor in and to all such insurance policies then in force shall pass to the purchaser or Mortgagee.

(f) (i) Mortgagor shall give prompt written notice to Mortgagee of any loss covered by any insurance policy on the Mortgaged Property, and Mortgagee may make proof of loss with respect thereto if not made promptly by Mortgagor. Mortgagee is hereby irrevocably authorized and appointed the agent and attorney-in-fact of Mortgagor, at Mortgagee's option but with notice to Mortgagor, to adjust or compromise any such loss and to collect and receive the proceeds from any such policy in respect of any such loss, which appointment shall be deemed to be coupled with an interest. Each insurance company issuing any such policy is hereby irrevocably authorized and directed to make payment for any such loss (whether or not Mortgagee exercises its option to adjust or compromise such loss) directly to Mortgagee alone and not to Mortgagor and Mortgagee jointly. Mortgagor shall promptly pay over to Mortgagee any such payments received directly from any insurance company. During the existence of an Event of Default, Mortgagee is hereby irrevocably authorized and appointed the agent and attorney-in-fact of Mortgagor to endorse Mortgagor's name on any instrument in payment of such proceeds, which appointment shall be deemed to be coupled with an interest. Such insurance proceeds received by Mortgagee shall not be commingled with the general funds of Mortgagee. No interest shall be payable in respect of any such proceeds received by Mortgagee. After deducting from such insurance proceeds any out-of-pocket expenses incurred by Mortgagee in the adjustment or compromise of such loss or in the collection or handling of such funds (including, without limitation, reasonable attorneys' fees), Mortgagee may apply the net proceeds, in such manner as Mortgagee may determine, either toward restoring the Mortgaged Property or to the reduction of the Indebtedness, whether then matured or to mature in the future. Alternatively, at the option of Mortgagee, Mortgagee may, and if required to do so in accordance with Section 1.07(f)(ii) below, shall pay over to Mortgagor all or any part of such net proceeds for the purpose of repairing the Improvements, building new Improvements in their place, or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage as security for the full Indebtedness secured hereby before such payment to Mortgagor took place. Notwithstanding any such loss, Mortgagor shall continue to pay interest, at the applicable rate and at the times provided

in the Note, on the entire outstanding principal amount of the Indebtedness. Although Mortgagee intends to use reasonable efforts to collect such proceeds in a timely fashion, Mortgagee shall not be responsible for any failure to collect any proceeds due under the terms of any policy, regardless of the cause of such failure.

(ii) Notwithstanding anything contained to the contrary in Section 1.07(f)(i) above, and no Event of Default has occurred which is continuing, Mortgagee shall apply such proceeds as follows:

(A) If the aggregate amount of such proceeds is less than \$250,000, Mortgagee shall pay such proceeds directly to Mortgagor, to be held in trust for Mortgagee and applied to the cost of rebuilding and restoring the Mortgaged Property.

(B) If the aggregate amount of such proceeds exceed \$250,000, then Mortgagee shall disburse such amounts of the proceeds for the repair or replacement of the Mortgaged Property, subject to and in accordance with the conditions set forth in Section 1.07(f)(iii) below.

(iii) Insurance proceeds to be distributed pursuant to Section 1.07(f)(ii) shall be distributed for restoration only if the following conditions are satisfied: (A) no Event of Default shall have occurred which is continuing; (B) the delivery to Mortgagee of satisfactory evidence of the estimated cost of completion of such repair and restoration work and any architect's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and of payment and of the continued priority of the lien hereof over any potential liens of mechanics and materialmen (including, without limitation, title policy endorsements) as Mortgagee may reasonably require and approve; (C) the time required to complete the repair and restoration work and for the income from the Mortgaged Property to return to the level it was prior to the loss will not exceed the coverage period of the rental loss insurance required hereunder; (D) the covenants contained in Section 5.2 of the Loan Agreement are satisfied (and for this purpose, rent loss insurance may be included in calculating the satisfaction of the covenant under Section 5.2); (E) the outstanding Indebtedness shall not exceed sixty-two and one-half percent (62.5%) of the Allocated Loan Amount of the Mortgaged Property, as determined by Mortgagee, and Mortgagee shall have the right to require an appraisal confirming this value; (F) Mortgagee reasonably approves the plans and specifications of such work before such work is commenced; (G) if the amount of any insurance proceeds, award or other payment is insufficient to cover the cost of restoring and rebuilding the Mortgaged Property, Mortgagor shall pay such cost in excess of such proceeds, award or other payment before being entitled to reimbursement out of such funds; (H) Mortgagor obtains such builder's risk and other insurance as Mortgagee shall require in relation to the design and construction; (I) such other conditions to such disbursements, in Mortgagee's reasonable discretion, as would be customarily required by a construction lender doing business in the area where the Mortgaged Property is located; (J) no payment made by Mortgagee prior to the final completion of the repair or restoration work shall, together with all payments theretofore made, exceed ninety percent (90%) of the cost of such work performed to the time of payment, and at all times the undisbursed balance of said proceeds shall be at least sufficient to pay for the cost of completion of such work free and clear of all liens; (K) repair and restoration of the Mortgaged Property shall be commenced promptly after the occurrence of the loss and shall be prosecuted to completion diligently; and (L) the Mortgaged Property shall be so restored and rebuilt to substantially the same character and quality as prior to such damage and destruction and shall comply with all legal requirements and requirements of tenant leases. Any proceeds remaining after payment of the cost of rebuilding and restoration shall be paid to Mortgagor so long as (1) no Event of Default has occurred and is continuing and (2) either (y) the Maxim tenant is in occupancy and paying rent or (z) a new tenant satisfactory to Mortgagee is in occupancy and



paying rent pursuant to a new lease in form and content satisfactory to Mortgagee in its sole and absolute discretion.

(g) Mortgagor shall, at its sole cost and expense, obtain for, deliver to and maintain for the benefit of Mortgagor and Mortgagee, for so long as this Mortgage shall remain in effect, commercial liability insurance policies (including renewals thereof) relating to the Mortgaged Property, in such amounts, with such companies and in such form as Mortgagee may require. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly when due any and all premiums on such insurance policies and, promptly thereafter, shall deliver to Mortgagee satisfactory evidence of the continuance of such coverage.

(h) Mortgagor shall not carry any additional or separate insurance concurrent in form or contributing in the event of loss with any insurance required to be maintained hereunder, or in excess of the amounts required hereunder, unless such insurance shall comply with the provisions of this Section 1.07 (including, without limitation, the loss payable provisions herein set forth). Mortgagor immediately shall notify Mortgagee if any such additional, separate or excess insurance shall be carried and shall deliver to Mortgagee certificates or other evidence of all policies of such insurance (including all renewals thereof).

#### **1.08 Escrow Deposits.**

(a) In order to secure the performance and discharge of Mortgagor's obligations under Section 1.05 and Section 1.07 of this Mortgage, but not in lieu of such obligations, but subject to Section 1.08(c) below, Mortgagor shall pay over to Mortgagee (i) an amount equal to one-twelfth (1/12th) of the next maturing annual Impositions or insurance premiums, or both, for each month that has elapsed since the last date to which such Impositions or premiums, as the case may be, then have been paid, and (ii) with each installment on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay such Impositions or premiums, or both, when due. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee such additional funds as may be required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such Impositions or premiums, or both, when due. Such deposits shall not be, nor be deemed to be, trust funds and may be commingled with the general funds of Mortgagee. No interest shall be payable in respect of any such deposits. Mortgagor promptly shall provide to Mortgagee all bills for Impositions and insurance premiums as to which Mortgagee is collecting such deposits, together with any other documents required to enable Mortgagee to pay such Impositions and premiums when due. Upon the occurrence of an Event of Default, Mortgagee, at its option, may apply to the reduction of the Indebtedness, in such manner as Mortgagee may determine, any amount under this Section 1.08 then remaining to Mortgagor's credit.

(b) Nothing contained in this Section 1.08 to the contrary shall be deemed to affect any right or remedy of Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any amount required to be paid by Section 1.05 or Section 1.07 of this Mortgage, to add the amount so paid to the Indebtedness and to require Mortgagor to reimburse Mortgagee for such amount, together with interest thereon at the Default Rate from the date so paid by Mortgagee until the date so reimbursed to Mortgagee.

(c) Notwithstanding anything to the contrary contained in Section 1.08(a) above, the requirement to make such deposits is hereby waived by Mortgagee, provided that the following conditions are fulfilled at all times: (i) the annual Impositions and insurance premiums are paid not later than the due date thereof, and Mortgagee shall have received satisfactory

evidence of payment prior to the date such payments are due; and (ii) no Event of Default shall have occurred and be continuing under any of the Loan Documents. If, at any time, any of the above conditions are not fulfilled, Mortgagee may at its option require that Mortgagor commence making the monthly escrow deposits in accordance with the terms of Section 1.08(a) above.

#### 1.09 Condemnation.

(a) Mortgagee shall be entitled to all compensation, awards, damages, claims, rights of action, proceeds, payment and other relief (collectively, "**compensation**") of, or on account of, any damage or taking of all or any part of the Mortgaged Property in connection with any condemnation proceedings or any exercise of the power of eminent domain (or any conveyance in lieu of or under threat of any such taking), including, without limitation, any such compensation for change of grade of streets or any other injury to or decrease in the value of the Mortgaged Property. All such compensation, and the right thereto, is hereby assigned to Mortgagee and included in the Mortgaged Property. Mortgagor shall promptly execute such further assignments of any such compensation as Mortgagee may require, and Mortgagor shall take all steps to assure that such compensation shall be paid to Mortgagee alone, and not to Mortgagor and Mortgagee jointly, and that such compensation at all times shall be free and clear of any liens, charges or encumbrances of any kind whatsoever. Mortgagee is hereby irrevocably authorized and appointed the agent and attorney-in-fact of Mortgagor to endorse Mortgagor's name on any instrument in payment of such compensation, which appointment shall be deemed to be coupled with an interest.

(b) Mortgagee is hereby irrevocably authorized and appointed the agent and attorney-in-fact of Mortgagor, at Mortgagee's option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any condemnation or exercise of the power of eminent domain, to settle or compromise any claim in connection therewith and to collect and receive such compensation and give proper receipts therefor, which appointment shall be deemed to be coupled with an interest. Mortgagor from time to time shall promptly deliver to Mortgagee any and all instruments and authorizations which Mortgagee may request to enable Mortgagee to take any such action. Such compensation received by Mortgagee shall not be, nor be deemed to be, trust funds and may be commingled with the general funds of Mortgagee. No interest shall be payable in respect of any such compensation. After deducting from such compensation any out-of-pocket expenses incurred by Mortgagee in connection therewith (including, without limitation, reasonable attorneys' fees), Mortgagee may release such net compensation to Mortgagor without affecting the lien of this Mortgage as security for the full Indebtedness secured hereby before such payment to Mortgagor took place (which release may be made subject to such terms and conditions as Mortgagee may impose), or Mortgagee may apply such net compensation, in such manner as Mortgagee may determine, to the reduction of the Indebtedness, whether then matured or to mature in the future. Any balance of such net compensation remaining after such application to the Indebtedness shall be paid to Mortgagor. Notwithstanding any such condemnation, Mortgagor shall continue to pay interest, at the applicable rate and at the times provided in the Note, on the entire outstanding principal amount of the Indebtedness. Although Mortgagee intends to use reasonable efforts to collect such compensation, in a timely fashion, Mortgagee shall not be responsible for any failure to collect such compensation, regardless of the cause of such failure.

**1.10 Care and Management of Mortgaged Property.**

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good, safe and tenantable condition and repair. Mortgagor shall not threaten, cause, permit or suffer (i) any abandonment, waste, impairment or deterioration of all or any part of the Mortgaged Property, (ii) the conduct of any nuisance in or on all or any part of the Mortgaged Property, or (iii) any action that will increase the risk of fire or other hazard to all or any part of the Mortgaged Property. Mortgagor shall pay when due all charges for utilities, whether public or private, serving or intended to serve all or any part of the Mortgaged Property.

(b) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time while this Mortgage is in effect upon reasonable written notice to Mortgagor (except in an emergency or to protect Mortgagor's collateral).

(c) If all or any part of the Mortgaged Property shall be physically damaged or destroyed by fire or any other cause (including, without limitation, any condemnation), Mortgagor shall give prompt written notice thereof to Mortgagee and shall promptly commence and diligently pursue to completion the restoration or repair of the Mortgaged Property to the equivalent of its condition immediately prior to such damage or destruction (or, in the case of any condemnation, to such condition as shall be satisfactory to Mortgagee). Mortgagor shall have no obligation to restore casualties covered by insurance unless Mortgagee causes sufficient insurance proceeds or condemnation awards, if available, to be promptly disbursed to Mortgagor in accordance with the provisions of Section 1.07(f) above, upon compliance by Mortgagor with the terms thereof.

(d) No work required to be performed under this Section 1.10 (other than routine maintenance and repairs) shall be undertaken until plans and specifications therefor, prepared and signed by an architect or engineer satisfactory to Mortgagee and approved by all governmental authorities whose approval is required, have been submitted to and approved in writing by Mortgagee.

(e) No part of the Mortgaged Property shall be removed, demolished or materially altered, without the prior express written consent of Mortgagee. Notwithstanding the foregoing to the contrary, Mortgagor shall have the right, without the consent of Mortgagee, to remove and dispose of, free from the lien of this Mortgage, items of Equipment which shall have become worn out or obsolete; provided, however, that, either contemporaneously with or prior to such removal or disposition, any such item shall be replaced with another item or items of equal utility and of a value at least equal to that of the replaced item when first acquired, which item or items shall be owned by Mortgagor and shall be free from any security interest, ownership interest or other right or claim of any other person. By such removal and replacement, Mortgagor conclusively shall be deemed to have elected to subject said replacement item to the lien and security interest of this Mortgage.

**1.11 Use of Mortgaged Property.**

(a) The Mortgaged Property shall be used as and for office, warehouse, and/or ancillary retail and related purposes and for no other purpose. No development or other alteration of the Mortgaged Property and no other use of the Mortgaged Property shall be permitted so long as any part of the indebtedness secured hereby shall be outstanding.

(b) Mortgagor shall not cause, permit or suffer all or any part of the Mortgaged Property to be used by the public without restriction or in such manner as might tend to impair



Mortgagor's rights, title and interests in and to all or any part of the Mortgaged Property or in such manner as might make possible any claim of adverse usage or adverse possession by the public or of implied dedication of all or any part of the Mortgaged Property.

(c) If, at any time, the then-existing use or occupancy of all or any part of the Mortgaged Property shall, pursuant to any law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, Mortgagor shall not cause, permit or suffer such use or occupancy to be discontinued without the prior express written consent of Mortgagee.

#### **1.12 Leases.**

(a) Mortgagor warrants and represents that (i) the schedule of leases delivered to Mortgagee in connection with the transaction of which this Mortgage is a part is true, correct and complete, (ii) all leases described in said schedule are presently in effect, and (iii) to Mortgagor's actual knowledge, no default exists under any such lease (other than any default disclosed in said schedule). Upon request of Mortgagee, Mortgagor shall provide Mortgagee with a current list of all leases then affecting the Mortgaged Property. Mortgagor shall keep, perform and observe its material obligations as landlord under all leases now or hereafter affecting all or any part of the Mortgaged Property, and Mortgagor shall use reasonable commercially efforts to require each tenant under any such lease to keep, perform and observe its obligations as tenant under such lease. Upon request by Mortgagee, Mortgagor shall promptly furnish to Mortgagee original or certified copies of all such leases, all guaranties thereof and all amendments thereto.

(b) Mortgagor shall not enter into any new leases of space within the Mortgaged Property, without obtaining the prior express written approval of Mortgagee as to the lease and the tenant thereunder. Mortgagor shall not amend, modify or alter in a material manner any of the terms of any of the existing leases of space within the Mortgaged Property. Mortgagor shall not, without the prior express written consent of Mortgagee accelerate the payment of rent or accept payment of rent more than one (1) month in advance, grant any reduction, deferral or abatement of the rent payable under any lease, grant any rights of termination or cancellation in favor of the tenant under any lease. Mortgagor shall not commingle with the general funds of Mortgagor or any other person any security deposits under any such lease, all such deposits being deemed to be trust funds.

(c) The assignment contained in paragraph (I) of the section of this Mortgage entitled "The Mortgaged Property" shall not be deemed to impose upon Mortgagee any of the obligations, duties or liabilities of Mortgagor under or in respect of any lease (including, without limitation, any liability under any covenant of quiet enjoyment in the event that any tenant shall have been barred and foreclosed by any foreclosure of this Mortgage, or by any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness, of all rights, title and interests in and to all or any part of the Mortgaged Property). Upon request by Mortgagee, Mortgagor from time to time shall specifically assign to Mortgagee as additional security for the Indebtedness, by a written instrument approved by Mortgagee, all rights, title and interests of Mortgagor in and to any and all leases now or hereafter affecting all or any part of the Mortgaged Property, together with all security therefor and all money payable thereunder, subject to the conditional permission given to Mortgagor to collect and use the rents, income and other benefits arising under any such lease as provided above. Mortgagor also shall execute and deliver to Mortgagee any notice, financing statement or other document required by Mortgagee to perfect the foregoing assignment as to any such lease. The provisions of this Section 1.12 shall be subject to the provisions of said paragraph (I).

**1.13 Assignment of Rents.**

(a) The assignment contained in paragraph (H) of the section of this Mortgage entitled "The Mortgaged Property" shall, to the extent permitted by law, constitute an absolute and present assignment of the rents, royalties, issues, profits, revenues, income and other benefits described in said paragraph, subject, however, to the conditional permission given to Mortgagor to collect and use the same as provided in said paragraph (it being understood and agreed that neither the existence nor exercise of such permission shall subordinate such assignment to any subsequent assignment by Mortgagor and that all such subsequent assignments shall be subject to the rights of Mortgagee under this Mortgage). Said assignment contained in paragraph (H) shall be fully operative without any further action by Mortgagor or Mortgagee, and Mortgagee is hereby irrevocably authorized and empowered, at its option upon the occurrence and during the continuance of an Event of Default, to collect and receive any and all such rents, royalties, issues, profits, revenues, income and other benefits, whether or not Mortgagee shall have taken, or at any time shall take, possession of the Land, the Buildings or any other part of the Mortgaged Property. Mortgagee is hereby irrevocably authorized, upon and during the continuance of an Event of Default, to notify all tenants, licensees, invitees, guests, customers, occupants or other users of all or any part of the Mortgaged Property of Mortgagee's rights under this Section 1.13 and said paragraph (H).

(b) Mortgagor hereby grants to Mortgagee the right, at Mortgagee's option upon the occurrence of an Event of Default, to take all actions with respect to any and all such rents, royalties, issues, profits, revenues, income and other benefits as are contemplated by Section 3.03 below. Mortgagee is hereby irrevocably authorized and appointed the agent and attorney-in-fact of Mortgagor, at Mortgagee's option upon the occurrence of and during the continuance of an Event of Default, to demand, collect, receive and enforce payment of any and all such rents, royalties, issues, profits, revenues, income and other benefits, to give receipts, releases and satisfactions therefor and to apply such collections in the manner provided in Section 3.03 below, which appointment shall be deemed to be coupled with an interest. Such assignment, grant and appointment shall continue in effect until the Indebtedness shall have been paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant and appointment, whether or not foreclosure shall have been instituted. Neither the exercise by Mortgagee of any rights under this Section 1.13(b) or said paragraph (H), nor the application of any such rents, royalties, issues, profits, revenues, income or other benefits to the Indebtedness, shall cure or waive any Event of Default or notice of any Event of Default or invalidate any act done pursuant to this Mortgage or any such notice, but shall be cumulative of all other rights and remedies.

**1.14 Security Agreement.**

(a) This Mortgage constitutes a security agreement within the meaning of the Uniform Commercial Code. Terms used herein which are defined in the Uniform Commercial Code and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Uniform Commercial Code. To the extent the definition of any category or type of collateral is modified by any amendment, modification or revision to the Uniform Commercial Code, such modified definition will apply automatically as of the date of such amendment, modification or revision.

(b) To secure the Obligations, Mortgagor, as debtor, hereby assigns and grants to Mortgagee, as secured party, a continuing lien on and security interest in all personal property of Mortgagor, including the following, all whether now owned or hereafter acquired or arising and

wherever located: (i) accounts (including health-care-insurance receivables and credit card receivables); (ii) securities entitlements, securities accounts, commodity accounts, commodity contracts and investment property; (iii) deposit accounts; (iv) instruments (including promissory notes); (v) documents (including warehouse receipts); (vi) chattel paper (including electronic chattel paper and tangible chattel paper); (vii) inventory, including raw materials, work in process, or materials used or consumed in Mortgagor's business, items held for sale or lease or furnished or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (viii) goods of every nature, including stock-in-trade, goods on consignment, standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, crops grown, growing, or to be grown, manufactured homes, computer programs embedded in such goods and farm products; (ix) equipment, including machinery, vehicles and furniture; (x) fixtures; (xi) agricultural liens; (xii) as-extracted collateral; (xiii) commercial tort claims, if any; (xiv) letter of credit rights; (xv) general intangibles, of every kind and description, including payment intangibles, software, computer information, source codes, object codes, records and data, all existing and future customer lists, choses in action, claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, blueprints, drawings, designs and plans, trade secrets, contracts, licenses, license agreements, formulae, tax and any other types of refunds, returned and unearned insurance premiums, rights and claims under insurance policies; (xvi) all supporting obligations of all of the foregoing property; (xvii) all property of Mortgagor now or hereafter in Mortgagee's possession or in transit to or from, or under the custody or control of, Mortgagee or any affiliate thereof; (xviii) all cash and cash equivalents thereof; and (xix) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

(c) By its signature hereon, Mortgagor hereby irrevocably authorizes Mortgagee to file against Mortgagor one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and Mortgagor will pay the cost of preparing and filing the same in all jurisdictions in which such filing is deemed by Mortgagee to be necessary or desirable in order to perfect, preserve and protect its security interests. If required by Mortgagee, Mortgagor will execute all documentation necessary for Mortgagee to obtain and maintain perfection of its security interests in the personal property of Mortgagor. **This instrument is intended to take effect as a security agreement under the Uniform Commercial Code and is to be filed in the real estate records as a "fixture filing" financing statement in accordance with the provisions and Laws of the State of Alabama.**

(d) Upon any Event of Default hereunder or under the Note, Mortgagee shall have, in addition to any other rights and remedies hereunder or under the Note, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to such personal property. To the extent permitted by law, Mortgagor and Mortgagee agree that the items set forth on the financing statements shall be treated as part of the real estate and improvements regardless of the fact that such items are set forth in the financing statements. Such items are contained in the financing statements to create a security interest in favor of Mortgagee in the event such items are determined to be personal property under the law. Notwithstanding any release of any or all of that property included in the Mortgaged Property which is deemed "real property", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the Obligations of Mortgagor as are now or hereafter evidenced by the Note.



(e) To the extent permitted under the Uniform Commercial Code, Mortgagor waives all rights of redemption and all other rights and remedies of a debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the personal property after the occurrence of an Event of Default hereunder and to all other rights and remedies of Mortgagor with respect thereto. In exercising its right to take possession of the personal property upon the occurrence of an Event of Default hereunder, Mortgagee may enter upon the Mortgaged Property without being guilty of trespass or any other wrong-doing, and without liability for damage thereby occasioned.

(f) Mortgagor shall reimburse Mortgagee, on demand, for all reasonable expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the personal property which are incurred or paid by Mortgagee, including, without limitation, all attorneys' fees, legal expenses and costs, and all such expenses shall be added to Mortgagor's Obligations to Mortgagee and shall be secured hereby.

(g) The description of the property in this Mortgage includes goods which are or are to become fixtures on the Land and/or Improvements of which Mortgagor is the record owner. For this purpose, the respective addresses of Mortgagor, as debtor, and of Mortgagee, as secured party, from which information concerning the security interest may be obtained are as set forth in the preamble of this Mortgage.

**1.15 After-Acquired Property.** To the extent permitted by applicable Law, the lien of this Mortgage shall automatically attach, without further act, to all rights, title and interests of Mortgagor in and to any and all after acquired property of the character or type described in the section of this Mortgage entitled "The Mortgaged Property". Mortgagor shall promptly execute and deliver to Mortgagee such instruments as shall be requested by Mortgagee to confirm such lien. Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to execute all such instruments on behalf of Mortgagor, which appointment shall be deemed to be coupled with an interest.

**1.16 Further Assurances.** Upon request by Mortgagee, Mortgagor from time to time shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee, and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and re-filed at such times and in such offices and places as Mortgagee shall deem desirable, any and all such further mortgages, assignments, security agreements, financing statements, instruments of further assurance, certificates and such other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, perfect, continue or preserve the Obligations of Mortgagor under the Loan Documents or the lien of this Mortgage upon all or any part of the Mortgaged Property. Upon any failure by Mortgagor to do so, in addition to its other rights and remedies under this Mortgage, Mortgagee may make, execute, deliver, record, file, re-record or re-file any and all such mortgages, assignments, security agreements, financing statements, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so, which appointment shall be deemed to be coupled with an interest.

**1.17 Maintenance of Existence.** Mortgagor shall at all times maintain (a) its existence, franchises, rights and privileges as a limited liability company under the laws of the State of Delaware, and (b) its rights and authorization to do business in the State of Alabama as such an entity. Upon any failure by Mortgagor to do so, Mortgagee may appoint any person as such agent of Mortgagor for service of process, and Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so, which appointment shall be deemed to be coupled with an interest. Upon request by Mortgagee, Mortgagor from time to time

shall provide to Mortgagee satisfactory evidence of Mortgagor's compliance with the terms of this Section 1.17.

**1.18 Estoppel Certificates.** Upon request by Mortgagee, Mortgagor from time to time shall deliver to Mortgagee a written statement, duly acknowledged, setting forth the then outstanding principal of and interest on the Indebtedness, and stating whether or not any offsets or defenses exist against the Indebtedness and, if any offsets or defenses are claimed, identifying same in detail.

**1.19 Expenses and Indemnification.**

(a) Mortgagor shall pay when due and payable and upon request by Mortgagee shall reimburse Mortgagee for, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract and search fees, title insurance fees and premiums, escrow fees, reasonable attorneys' fees, court costs, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred, or which hereafter are incurred, by Mortgagee in connection with: (i) preparation, execution and recording of this Mortgage and the other Loan Documents; (ii) after the occurrence of any Event of Default, preparation for enforcement of this Mortgage or any of the other Loan Documents, whether or not any suit or other action actually shall be commenced or undertaken; (iii) enforcement of this Mortgage or any of the other Loan Documents; (iv) court or administrative proceedings of any kind to which Mortgagee may be a party, whether as plaintiff, defendant or otherwise, by reason of the Indebtedness or any of the Loan Documents; (v) defending and upholding the lien of this Mortgage or otherwise defending or asserting any rights and claims of Mortgagee under this Mortgage and the other Loan Documents; (vi) preparation for, and actions taken in connection with, Mortgagee's taking possession of all or any part of the Mortgaged Property; (vii) negotiations with Mortgagor or any of their respective officers, employees, agents, contractors, attorneys or other representatives in connection with the existence or cure of any Event of Default; (viii) any transfer or proposed transfer of the Mortgaged Property in lieu of foreclosure; and (ix) the approval or disapproval by Mortgagee of any action taken or proposed to be taken and required to be approved by Mortgagee under the terms of any of the Loan Documents.

(b) Mortgagor shall indemnify and hold harmless Mortgagee from and against, and reimburse Mortgagee for, any and all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Mortgagee by reason of, on account of or in connection with (i) any bodily injury, death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, (ii) any act performed or omitted to be performed by Mortgagor under any of the Loan Documents, or (iii) any transaction, suit, action or proceeding arising out of or in any way connected with the Mortgaged Property, any of the Loan Documents or the Indebtedness. Notwithstanding anything contained herein to the contrary, the foregoing indemnity and hold harmless shall not apply to any grossly negligent or intentional acts or omissions of Mortgagee, its agents, employees, contractors or representatives, nor shall it apply to damage or deterioration of the Mortgaged Property that occurs following the date, if any, that Mortgagor or any transferee of the Loan or, following foreclosure the Mortgaged Property, any transferee of the Mortgaged Property, assumes control of the Mortgaged Property.

(c) Subject to the terms, conditions, and provisions of Section 1.07(f)(iii) of this Mortgage and Section 1.7 of the Loan Agreement (with respect to Mortgagor being solely responsible for the cost and expense of an appraisal required in connection with a Property Release), Mortgagee may, from time to time, order an updated appraisal of the Mortgaged Property, which appraisal shall be prepared by an appraiser selected by Mortgagee at the sole

cost and expense of Mortgagee; provided however, notwithstanding the foregoing to the contrary, Mortgagor shall be solely responsible for the cost and expense of any such appraisal (i) during the existence of an Event of Default or (ii) as may be required by Mortgagee's internal procedures and/or federal regulatory reporting requirements; provided, further, however, the results of any such appraisal ordered or obtained in connection with this Section 1.19(c) only may not be used to declare Mortgagor in default under this Mortgage or any of the other Loan Document.

**1.20 Mortgagee's Performance of Defaults.** If Mortgagor defaults in the payment of any Imposition or insurance premium, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, agreement, condition or provision of this Mortgage or any of the other Loan Documents and such default constitutes an Event of Default hereunder, Mortgagee, at its option, may pay, perform or observe the same. No such payment, performance or observance shall release Mortgagor from any obligations under any of the Loan Documents or constitute a waiver of any Event of Default or any rights or remedies of Mortgagee in connection therewith. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person or persons that Mortgagee may designate, the amount of all such payments properly made by Mortgagee (whether such payments are regular or accelerated payments) and all out-of-pocket costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection therewith, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee. Mortgagee is hereby irrevocably authorized and empowered to enter upon, and to authorize others to enter upon, the Mortgaged Property upon reasonable advance notice to Mortgagor, except in an emergency or for preservation of Mortgagee's collateral, for the purpose of performing or observing any such defaulted covenant, agreement, condition or other provision, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

**1.21 Security and Priority of Advances.** This Mortgage secures future advances. Advances may be made and indebtedness incurred from time to time hereafter, but each such advance or indebtedness shall be secured hereby as if made on the date hereof. This Mortgage also secures (a) all advances made by Mortgagee with respect to the Mortgaged Property for the payment of real estate taxes, water and sewer rents, assessments, maintenance charges, insurance premiums or costs incurred for the protection of any of the Mortgaged Property or the lien of this Mortgage and (b) all expenses incurred by Mortgagee by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on the Mortgaged Property from the time this Mortgage is left of record (or, if this is a purchase money mortgage, from the time of delivery hereof to Mortgagee) for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

**1.22 Required Notices.**

(a) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any of the following:

(i) receipt by Mortgagor of any notice from any governmental authority or instrumentality concerning (A) compliance or lack of compliance of all or any part of the Mortgaged Property, or any business or other activity conducted thereon, with any law, ordinance, rule, regulation, order, judgment, injunction or decree or with the conditions or other requirements of any license, permit, approval or authorization (including, without limitation, notice of any violation or alleged violation of any Environmental Law, or of any threatened, proposed or actual cleanup or other protective or remedial action relating to any Hazardous Substances, whether pursuant to any Environmental Law or otherwise), or (B) the status of, or need for, any license, permit, approval or authorization;



(ii) receipt by Mortgagor of any notice concerning compliance or lack of compliance of all or any part of the Mortgaged Property, or any business or other activity conducted thereon, with any agreement or restrictive covenant;

(iii) receipt by Mortgagor of any notice from any tenant leasing all or any part of the Mortgaged Property or from the holder of any lien or security interest encumbering all or any part of the Mortgaged Property concerning any default or any other material matter in respect of such lease, lien or security interest;

(iv) receipt by Mortgagor of any notice of any contemplated, threatened or pending condemnation or eminent domain proceeding relating to all or any part of the Mortgaged Property;

(v) receipt by Mortgagor of any notice concerning (A) any contemplated, threatened or pending cancellation of any insurance coverage on all or any part of the Mortgaged Property, (B) any refusal by any insurance company to provide or continue insurance coverage on all or any part of the Mortgaged Property, or (C) any increase in the cost of premiums for any insurance coverage on all or any part of the Mortgaged Property due to the condition thereof or due to any business or activity conducted therein or thereon;

(vi) receipt by Mortgagor of any notice concerning commencement of any judicial or administrative proceedings by, against, or otherwise having a material effect on Mortgagor, the Mortgaged Property or any entity controlled by or under common control with Mortgagor;

(vii) receipt by Mortgagor of any notice concerning commencement of any action for default under the terms of any loan by any creditor of Mortgagor or any entity controlled by or under common control with Mortgagor;

(viii) any change in the name of Mortgagor or in the location of Mortgagor's principal place of business; or

(ix) any material change in the use of the Mortgaged Property or in the occupancy of the Buildings.

(b) Mortgagor also shall notify Mortgagee in writing upon receipt by Mortgagor of notice of any other occurrence requiring the giving of notice to Mortgagee pursuant to this Mortgage or any of the other Loan Documents. Each notice to Mortgagee pursuant to this Section 1.22 shall be accompanied by a true, correct and complete copy of any notice received by Mortgagor which is the subject of such notice to Mortgagee.

**1.23 Single Purpose Entity; Authorization.** Mortgagor represents and warrants, and covenants for so long as any obligations secured by this Mortgage remain outstanding, as follows:

(a) Mortgagor does not and will not own any asset or property other than (i) the Mortgaged Property, and (ii) the personal property and fixtures described in the section of this Mortgage entitled "The Mortgaged Property".

(b) Mortgagor does not and will not engage in any business other than the acquisition, ownership, management and operation of the Mortgaged Property, and Mortgagor will conduct and operate its business in all material respects as presently conducted and operated and

will not change the use of the Mortgaged Property, nor may the Mortgagor undertake any development of the Mortgaged Property without the prior express written consent of Mortgagee. Mortgagee's consent shall be granted or withheld at Mortgagee's sole discretion.

(c) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Indebtedness, and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are customary and reasonable under the circumstances. Except with Mortgagee's prior express written approval in each instance, no indebtedness other than the Indebtedness is or shall be secured by the Mortgaged Property. Mortgagee's approval shall be granted or withheld at Mortgagee's sole discretion. In connection with any such financing approved by Mortgagee, Mortgagor shall be required to obtain and deliver to Mortgagee a subordination and standstill agreement from such other creditor which shall be in form and substance satisfactory to Mortgagee in its sole discretion.

(d) Mortgagor has not made and will not make any loans or advances to any third party (including any constituent party, any Guarantor or any affiliate of Mortgagor, or any constituent party of any such Guarantor), except in de minimis amounts in the ordinary course of business and of the character of trade or operational expenses.

(e) Mortgagor will maintain books and records and bank accounts separate from those of its affiliates and any constituent party, and Mortgagor will file or cause to be filed separate, distinct tax returns or informational return relating only to Mortgagor.

(f) Mortgagor is and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or constituent party of Mortgagor or any affiliate or constituent party of any Guarantor), and will use and conduct its business in its own name.

(g) Neither Mortgagor nor any constituent party will cause or seek the dissolution or winding up, in whole or in part, of Mortgagor.

(h) Mortgagor will not commingle its funds and other assets with those of, or pledge its assets for the benefit of any affiliate of Mortgagor, any Guarantor or any other party.

(i) Mortgagor does not or will not hold itself out to be responsible for the debts or obligations of any other person and does not or will not pay another person's liabilities out of its own funds.

(j) Mortgagor will not consent to the filing of any petition to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, and Mortgagor will not make an assignment for the benefit of its creditors.

## ARTICLE TWO - DEFAULTS

**2.01 Event of Default.** The occurrence of any Event of Default as defined in the Loan Agreement shall constitute an "Event of Default" hereunder.

## ARTICLE THREE - REMEDIES

**3.01 Acceleration of Maturity.** After the occurrence of any Event of Default, Mortgagee, at its option and without demand or notice, may declare the outstanding Indebtedness

(or, at Mortgagee's option, any part thereof) to be due and payable immediately. Upon such declaration, the Indebtedness (or such part thereof) shall immediately become and be due and payable without demand or notice.

**3.02 Mortgagee's Power of Enforcement.** After the occurrence of any Event of Default, Mortgagee, at its option, may proceed by any appropriate action or proceeding to (a) enforce payment of the Indebtedness pursuant to the Loan Documents, (b) enforce performance of any term of this Mortgage or any of the other Loan Documents, (c) enforce any other rights of Mortgagee with respect to the Indebtedness or the Mortgaged Property, (d) foreclose this Mortgage and sell the Mortgaged Property, as an entirety or in separate lots or parcels, under the judgment or decree of any court of competent jurisdiction, (e) to the extent permitted by law, pursue the partial foreclosure of this Mortgage for any part of the Indebtedness then due and payable, subject to the continuing encumbrance of this Mortgage as security for the balance of the Indebtedness not then due, and (f) pursue any other right, power or remedy available to Mortgagee at law or in equity. Mortgagee may pursue any and all such actions or proceedings, at Mortgagee's option, either with or without entry or taking possession and whether or not the Indebtedness or any part thereof shall have been declared to be immediately due and payable or shall otherwise be due. Mortgagee may pursue any and all such actions or proceedings without prejudice to Mortgagee's right thereafter to foreclose this Mortgage or to bring any other action or proceeding to enforce Mortgagee's rights, powers and remedies with respect to the Indebtedness or the Mortgaged Property, whether or not the basis for any such subsequent action or proceeding shall be a default or Event of Default existing at the time such earlier action or proceeding was commenced.

**3.03 Mortgagee's Right To Enter and Take Possession.**

(a) After the occurrence of any Event of Default, Mortgagor, upon request by Mortgagee, shall forthwith surrender and deliver to Mortgagee the actual possession of the Mortgaged Property or any part thereof designated by Mortgagee. To the extent permitted by law, Mortgagee may enter and take possession of all or any part of the Mortgaged Property and may exclude Mortgagor and its officers, employees, agents, contractors, attorneys and other representatives therefrom, and Mortgagee may have joint access with Mortgagor to the books, papers and accounts of Mortgagor and of any manager of the Mortgaged Property. On the first day of each month occurring after any such entry into possession, or after the appointment of any receiver as provided below, Mortgagor shall pay to Mortgagee or to such receiver, as the case may be, in advance, a use and occupancy charge equal to the fair and reasonable rental value for such month of any part of the Mortgaged Property which shall then be in the possession of Mortgagor. If Mortgagor shall fail to make any such payment as provided above, then, upon request by Mortgagee, Mortgagor shall vacate, deliver and surrender possession of such part of the Mortgaged Property to Mortgagee or to such receiver, as the case may be, and, to the extent permitted by law, Mortgagor may be evicted or dispossessed by summary proceedings or otherwise.

(b) If Mortgagor for any reason shall fail to surrender or deliver to Mortgagee the Mortgaged Property or any part thereof designated by Mortgagee as provided above, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession, and requiring Mortgagor to deliver to Mortgagee immediate possession of the Mortgaged Property or such part thereof. Mortgagor hereby specifically consents to the entry of any such judgment or decree. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all out-of-pocket costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection with any such failure to surrender or deliver possession and in connection with any such judgment or



decree, together with interest thereon at the Default Rate from the date incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee.

(c) After any such entry into possession, Mortgagee, in Mortgagor's name or otherwise, may hold, store, use, operate, manage and control the Mortgaged Property, or the part thereof as to which Mortgagee shall have entered into possession, and may conduct the business thereof. In doing so, Mortgagee from time to time may:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, alterations, additions and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personal property and other property of the type encumbered by this Mortgage;

(ii) insure the Mortgaged Property or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property, or such part thereof, and exercise all the rights and powers of Mortgagor with respect to the Mortgaged Property and the management and operation of the Mortgaged Property (including, without limitation, the right to enter into leases, to cancel, enforce or modify leases, to evict tenants by summary proceedings or otherwise and to take other appropriate steps to enforce leases);

(iv) enter into agreements with others to exercise the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine; and

(v) collect and receive all the rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the Mortgaged Property, including those past due as well as those accruing thereafter, and apply the moneys so received, in such priority as Mortgagee may determine, to (1) the payment of interest, principal and other amounts due and payable in respect of the Indebtedness or otherwise payable pursuant to any of the Loan Documents, (2) the deposits for Impositions and insurance premiums relating to the Mortgaged Property, (3) the cost of insurance, Impositions and other expenses of operating, maintaining, repairing and improving all or any part of the Mortgaged Property, including, without limitation, renting commissions and rental collecting commissions paid to any agent of Mortgagee or of any receiver, (4) the compensation, expenses and disbursements of the agents, contractors, attorneys and other representatives of Mortgagee, and (5) amounts advanced for any purpose recognized under this Section 3.03(c) or otherwise permitted by law or agreement.

(d) Mortgagee shall be liable to account only for rents, royalties, issues, profits, revenues, income and benefits actually received by Mortgagee while in possession of the Mortgaged Property. In the event of any foreclosure, Mortgagee may remain in possession of all or any part of the Mortgaged Property until the foreclosure sale or the vesting of title pursuant to any strict foreclosure, and thereafter during any period of redemption. In the absence of any foreclosure, Mortgagee may remain in possession of all or any part of the Mortgaged Property as long as there exists an Event of Default. The same right of taking possession shall exist during the continuance of any subsequent Event of Default. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or set off as a result of, any acts or omissions of Mortgagee, or its officers, employees, agents, contractors, attorneys or other representatives, while properly in possession of all or any part of the Mortgaged Property (except for damages directly caused by Mortgagee's own gross negligence or intentional wrongful acts), all such liabilities, claims and rights of set off being hereby expressly waived by Mortgagor.

(e) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all out-of-pocket costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection with the management, operation, use, control and maintenance of all or any part of the Mortgaged Property, except to the extent such costs, expenses and liabilities shall or could have been paid out of collections from the Mortgaged Property as provided above, together with interest thereon at the Default Rate from the date incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee.

### **3.04 Appointment of Receiver.**

(a) After the occurrence of any Event of Default, Mortgagee, to the extent permitted by law and without regard to the value, adequacy or occupancy of the Mortgaged Property and without notice, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, royalties, issues, profits, revenues, income and other benefits of and from the Mortgaged Property and apply the same as the court may direct or otherwise as may be permitted by law. Mortgagor hereby specifically consents to such appointment. Without limiting the generality of the foregoing or any other provision of this Mortgage, Mortgagor agrees that the failure of Mortgagor to pay any Impositions (except to the extent permitted in connection with any contest pursuant to Section 1.05 of this Mortgage) or to maintain any insurance required with respect to the Mortgaged Property or to pay any premiums payable with respect to any such insurance shall constitute waste, justifying the appointment of a receiver. The receiver shall be entitled to hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof as would Mortgagee pursuant to Section 3.03(c) above and shall have all rights and powers permitted under the laws of the State of Alabama and such other rights and powers as the court making such appointment shall confer. The receiver shall be liable to account only for rents, royalties, issues, profits, revenues, income and other benefits actually received by such receiver. Notwithstanding the appointment of any receiver or other custodian, Mortgagee, as pledgee or depository, shall be entitled to the possession and control of any cash, deposits or instruments held by Mortgagee at the time of such appointment or payable or deliverable to Mortgagee from time to time under the terms of this Mortgage or any of the other Loan Documents.

(b) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, or to any such receiver, all costs, expenses and liabilities (including, without limitation, attorneys' fees, receivers' fees and the fees of any manager retained by such receiver) incurred by Mortgagee or by such receiver in connection with the appointment of such receiver and the exercise of the rights and powers of such receiver, except to the extent such costs, expenses and liabilities shall or could have been paid out of collections from the Mortgaged Property as provided in Section 3.03(c) above, together with interest thereon at the Default Rate from the date incurred by Mortgagee or by such receiver until the date so paid to, or as directed by, Mortgagee or to such receiver.

### **3.05 Reserved.**

**3.06 Waiver of Certain Rights.** Mortgagor agrees, to the extent permitted by law, that after the occurrence of any Event of Default neither Mortgagor nor any person at any time claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisement, valuation, stay, notice of election to accelerate, mature or declare due the Indebtedness, extension, redemption or moratorium laws, or any exemption from execution or sale, now or hereafter in force, in order to prevent or hinder the foreclosure of this Mortgage, the final and absolute sale of all or any part of the Mortgaged Property or the final and absolute putting into possession thereof,

immediately after such sale, of the purchasers thereof or the enforcement of any other rights or remedies of Mortgagee under any of the Loan Documents. Mortgagor, for itself and for all who may at any time claim through or under Mortgagor or who hereafter may otherwise acquire any interest in or title to all or any part of the Mortgaged Property, hereby waives, to the extent permitted by law, all benefit of any such law or laws, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure or other enforcement of this Mortgage. Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Mortgaged Property in part or as an entirety. Mortgagee shall not be required to accept any part of the Mortgaged Property (as distinguished from the entirety thereof) in satisfaction of all or any part of the Indebtedness. Mortgagee shall not be required to accept any apportionment of the Indebtedness to or among any part or parts of the Mortgaged Property. If any law now in force of which Mortgagor might take advantage despite this Section 3.06 shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 3.06.

**3.07 Leases.** Any foreclosure of this Mortgage and any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness may, at Mortgagee's option, be subject to the rights of any tenants of all or any part of the Mortgaged Property, and any failure to make any such tenants parties defendant to any foreclosure proceedings or to foreclose or otherwise terminate their rights will not be, nor be asserted by Mortgagor to be, a defense to any such foreclosure proceedings or to any proceedings seeking collection of all or any part of the Indebtedness, including, without limitation, any deficiency remaining unpaid after the completion of any such foreclosure, any sale in connection therewith or any other transfer in extinguishment of all or any part of the Indebtedness.

**3.08 Suits To Protect Mortgaged Property.** Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to institute and maintain any and all suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property or the security of this Mortgage by any unlawful acts or omissions, (b) to prevent the occurrence or continuance of any violation of this Mortgage or any of the other Loan Documents, (c) to foreclose this Mortgage (after the occurrence of an Event of Default), (d) to preserve and protect its interest in the Mortgaged Property, and (e) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such legislation, enactment, rule or order might impair the Mortgaged Property or the security of this Mortgage or be prejudicial to Mortgagee's interests.

**3.09 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial case or proceeding affecting Mortgagor, its creditors or its properties, Mortgagee, to the extent permitted by law, is hereby irrevocably authorized, at Mortgagee's option, to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such case or proceeding for the entire Indebtedness, at the date of the institution of such case or proceeding, and for any additional amounts which may become due and payable under any of the Loan Documents after such date.

**3.10 Application of Moneys by Mortgagee.** Any moneys collected or received by Mortgagee in connection with the enforcement of its rights or remedies following any Event of Default shall be applied, in such priority as Mortgagee may determine, to the payment of compensation, expenses and disbursements of the agents, contractors, attorneys and other representatives of Mortgagee, to the payment of all or any part of the Indebtedness or for any other purpose authorized by any of the Loan Documents or by law.



**3.11 No Waiver.**

(a) No delay or omission of Mortgagee to insist upon strict performance of any Obligations of Mortgagor under or in connection with this Mortgage or any of the other Loan Documents or to exercise any right, power or remedy available after the occurrence of any Event of Default shall waive, exhaust or impair any such Obligation or any such right, power or remedy, nor shall any such delay or omission be construed to waive any such Event of Default or to constitute acquiescence therein. Notwithstanding any such delay or omission, Mortgagee thereafter shall have the right, from time to time and as often as may be deemed expedient by Mortgagee, to insist upon and enforce strict performance of any and all Obligations of Mortgagor under or in connection with this Mortgage or any of the other Loan Documents. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

(b) No waiver of any Event of Default shall extend to or affect any subsequent Event of Default or any other Event of Default then existing, nor shall any such waiver impair any rights, powers or remedies consequent upon any Event of Default. After the occurrence of any Event of Default (whether or not the Indebtedness shall have been declared to be due and payable immediately), Mortgagee may accept payments of amounts owing in respect of the Indebtedness, and no such acceptance shall waive any such Event of Default or result in any Indebtedness which shall have been declared to be due and payable no longer being due and payable.

**3.12 Remedies Cumulative.** Except as otherwise provided herein, no right, power or remedy conferred upon or reserved to Mortgagee or to any receiver by any of the Loan Documents, by law or by any court, is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given under any of the Loan Documents or now or hereafter existing at law, in equity or by statute.

**3.13 Purchase by Mortgagee.** Upon any foreclosure sale, Mortgagee may bid for and purchase all or any part of the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain, possess and dispose of such property in its own absolute right without further accountability. Upon any foreclosure sale, Mortgagee may, if permitted by law, and after allowing for costs and expenses of the sale, compensation and other charges, in paying the purchase price, apply any portion of or all of the Indebtedness in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

**3.14 Discontinuance of Proceedings.** If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or if such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

**3.15 Additional Security and Guaranty.** If Mortgagee at any time holds additional security for, or any guaranty of, all or any part of the Indebtedness, Mortgagee may foreclose such security or otherwise enforce Mortgagee's rights with respect to, or realize upon, such security or such guaranty (as the case may be), at Mortgagee's option, either before or concurrently with or after a foreclosure or other enforcement of this Mortgage, without being deemed to have made an election thereby or to have accepted the benefits of such guaranty, the security of this Mortgage or

such additional security (or the proceeds of such security) in full settlement of the Indebtedness and Mortgagee's rights with respect thereto. Any judgment or decree with respect to the Note or with respect to any such guaranty or security, whether rendered in the State of Alabama or elsewhere, shall not in any manner affect the security of this Mortgage, and any deficiency or other debt represented by said judgment or decree shall, to the extent permitted by law, be secured by this Mortgage to the same extent that the Indebtedness was secured hereby prior to the rendering of such judgment.

#### **ARTICLE FOUR - TRANSFER OR FURTHER ENCUMBRANCE OF MORTGAGED PROPERTY**

**4.01 Option to Accelerate; Consent of Mortgagee.** In the event of any sale, conveyance, transfer, pledge or further encumbrance, by operation of law or otherwise, of all or any part of the Mortgaged Property, of any interest therein, or in the event of any change in the ownership or composition of Mortgagor, or any further assignment of rents from the Mortgaged Property, or any lease of all or substantially all of the Mortgaged Property, the Land or the Improvements, without the prior express written consent of Mortgagee, then, at Mortgagee's option, Mortgagee may declare the Indebtedness to be due and payable immediately, and upon such declaration the Indebtedness shall immediately become and be due and payable without demand or notice. Mortgagee's consent shall be within its sole and absolute discretion, and Mortgagee specifically reserves the right to condition its consent upon (by way of illustration but not by way of limitation) its approval of the financial and/or management ability of the purchaser, transferee, lessee, pledgee or assignee, upon an agreement to escalate the interest rate of the Note to Mortgagee's then current interest rate for similarly situated properties, upon the assumption of the obligations and liabilities of the Note and this Mortgage by the purchaser, transferee, lessee, pledgee or assignee, upon the receipt of guarantees of the Indebtedness satisfactory to Mortgagee and/or additional collateral satisfactory to Mortgagee and upon payment to Mortgagee of an assumption fee. Mortgagor covenants and agrees that it shall not take any of the actions, or suffer any of the events, that would be a cause for acceleration of the Indebtedness pursuant to this Section 4.01, without the prior express written consent of Mortgagee.

**4.02 Subsequent Owner.** Any purchaser, transferee, lessee, pledgee or assignee referred to in Section 4.01 above shall be deemed to have assumed and agreed to pay the Indebtedness and to have assumed and agreed to be bound by the terms and conditions of this Mortgage unless Mortgagee specifically agrees in writing to the contrary. Mortgagor agrees that, in the event ownership of all or any part of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the other Loan Documents and the Indebtedness, without in any way vitiating or discharging Mortgagor's liability with respect thereto. No sale, conveyance, transfer, pledge, encumbrance, assignment or lease referred to in Section 4.01 above, and no forbearance, extension or assumption by or to any person with respect to the Indebtedness or any of the Loan Documents, shall operate to release, discharge, modify, change or affect the liability of Mortgagor either in whole or in part, unless Mortgagee specifically agrees in writing to the contrary.

#### **ARTICLE FIVE - MISCELLANEOUS**

**5.01 Binding Effect; Use of Certain Terms.** References to the Note and all other contractual instruments shall be deemed to include all subsequent restatements, amendments and other modifications to such instruments, but only to the extent such restatements, amendments and other modifications are not prohibited by the terms of this Mortgage. Each reference in this Mortgage to any party hereto shall include the successors and assigns of such party. All

covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall run with the Land and shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not. If there is more than one Mortgagor at any time, all undertakings of Mortgagor under this Mortgage shall be deemed to be joint and several. Each reference in this Mortgage to any gender shall include any other gender, and the use of the singular shall include the plural and vice versa, unless the context requires otherwise. As used in this Mortgage, the term "person" shall mean and refer to all individuals, sole proprietorships, partnerships, joint ventures, limited liability companies, associations, trusts, estates, business trusts, corporations (non-profit or otherwise), financial institutions, governments (and agencies, instrumentalities and political subdivisions thereof), and all similar entities and organizations.

**5.02 Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage. Mortgagor shall not, without the prior express written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, assign or transfer its rights under this Mortgage or any of the Loan Documents.

**5.03 Survival.** All covenants, representations and warranties made herein shall survive the making of the Loan and the delivery of the Note and other Loan Documents. The representations and warranties, covenants, and other Obligations arising under this Mortgage shall in no way be impaired by any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Mortgagee's interest in the Mortgaged Property (but, in such case, shall benefit both Mortgagee and any assignee or transferee), any exercise of Mortgagee's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any part of the Mortgaged Property, any amendment to this Mortgage, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the Obligations pursuant hereto.

**5.04 Giving of Notices.** Any notice, report, demand, request or other instrument or communication authorized or required under this Mortgage to be given to Mortgagor or Mortgagee shall be in writing and shall be given in accordance with the requirements of the Loan Agreement.

**5.05 Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part of this Mortgage and shall not limit, expand or otherwise affect any of the terms of this Mortgage.

**5.06 Provisions Subject to Applicable Laws; Invalid Provisions To Affect No Others.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable. In the event that any of the covenants, agreements, conditions or other provisions contained in this Mortgage or in any of the other Loan Documents shall be deemed invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, conditions and provisions contained in this Mortgage or in any of the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

**5.07 Changes.** Neither this Mortgage nor any of the other Loan Documents may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, and then only to the extent specifically provided in such



instrument. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage or any of the other Loan Documents shall to the extent permitted by applicable law be superior to the rights of the holder of any intervening lien or encumbrance. Neither the modification of this Mortgage or any of the other Loan Documents nor the release of any part of the Mortgaged Property from the lien of this Mortgage shall impair the priority of such lien.

**5.08 Waiver of Conditions.** All conditions to any agreement or Obligation of Mortgagee under this Mortgage or any of the other Loan Documents (including, without limitation, any agreement or obligation to make insurance proceeds or other amounts available to Mortgagor) are solely for the benefit of Mortgagee. Any or all such conditions may be waived or relaxed at any time or times by Mortgagee. No such waiver or relaxation in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

**5.09 No Benefit to Third Parties.** Each covenant, agreement, condition and other provision of this Mortgage and of the other Loan Documents is and at all times shall be deemed to be for the exclusive benefit of Mortgagor and Mortgagee and their respective successors and assigns. Nothing set forth in this Mortgage or in any of the other Loan Documents shall be deemed to be for the benefit of any other person (including, without limitation, the holder of any other lien or interest in all or any part of the Mortgaged Property).

**5.10 Exercise of Discretion.** Each and every decision, determination, estimate, request, consent or similar matter to be made or given by Mortgagee from time to time pursuant to or in connection with this Mortgage or any of the other Loan Documents shall be within Mortgagee's sole discretion, except to the extent expressly and specifically provided to the contrary in this Mortgage or any of the other Loan Documents.

**5.11 Representatives of Mortgagee.** All rights, powers and remedies of Mortgagee under this Mortgage or any of the other Loan Documents may be exercised by Mortgagee itself or by its duly authorized officers, employees, agents, contractors, attorneys or other representatives.

**5.12 No Release.** None of the Obligations or liabilities of Mortgagor under this Mortgage or any of the other Loan Documents or in connection with the Indebtedness or the Mortgaged Property shall be released, discharged, modified or otherwise affected (except to the extent expressly provided in this Mortgage, any of the other Loan Documents or any written agreement executed by Mortgagee) by reason of: (a) any damage to, destruction of or condemnation or other taking affecting all or any part of the Mortgaged Property; (b) any restriction or prevention of or interference with any use of all or any part of the Mortgaged Property; (c) any title defect, lien or other encumbrance on all or any part of the Mortgaged Property or any eviction from all or any part of the Mortgaged Property by paramount title or otherwise; (d) any bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution, insolvency or similar case or proceeding relating to Mortgagor, or any action taken with respect to this Mortgage, any of the other Loan Documents, the Indebtedness or the Mortgaged Property by any trustee, receiver or court in connection with any such case or proceeding; (e) any claim which Mortgagor has or may have against Mortgagee; (f) any default or failure by Mortgagee to perform or comply with any of the terms of this Mortgage, any of the other Loan Documents or any other agreement with Mortgagor; (g) any consent by Mortgagee to the granting of any easement on all or any part of the Mortgaged Property or to the filing of any map, plat or re-plat of all or any part of the Mortgaged Property; (h) any failure by Mortgagee to comply with any request of Mortgagor to foreclose this Mortgage or otherwise enforce any of Mortgagee's rights, powers or remedies under this Mortgage or any of the other Loan Documents; (i) any release of all or any part of the Mortgaged Property or any other collateral for the Indebtedness from the lien of this Mortgage or from the effect of any of the other Loan Documents or any acceptance of other or additional security for all or any part of the

Indebtedness; (j) any release of any person from any liability for or in connection with all or any part of the Indebtedness; (k) any compromise, settlement, forbearance or extension of time for payment or performance of or in connection with the Indebtedness; (l) any waiver or other failure by Mortgagee to exercise any right, power or remedy under this Mortgage or any of the other Loan Documents; (m) any agreement by Mortgagee, or any consent by Mortgagee to any agreement, modifying the terms of this Mortgage or any of the other Loan Documents, the priority of the lien of this Mortgage or the obligations or liabilities of any person in connection with the Indebtedness or the Mortgaged Property; or (n) any other occurrence whatsoever, whether similar or dissimilar to any of the foregoing occurrences, whether or not Mortgagor shall have notice or knowledge of any of the foregoing occurrences. None of the foregoing occurrences shall preclude Mortgagee from exercising any right, power or remedy available after the occurrence of any then existing or subsequent Event of Default, nor shall the lien of this Mortgage be altered by any such occurrence (except to the extent expressly provided in any instrument executed by Mortgagee).

**5.13 Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of conflict or choices laws, except that the laws of the State of Alabama shall govern the creation, perfection, enforcement and foreclosure of the liens created hereunder or the Mortgaged Property or any interest therein.

**5.14 Prejudgment Remedies; Waiver of Jury Trial.** MORTGAGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND, TO THE EXTENT ALLOWED UNDER APPLICABLE LAW, MORTGAGOR HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH MORTGAGEE OR ITS SUCCESSORS OR ASSIGNS MAY DESIRE TO USE, AND TO ANY TRIAL BY JURY IN CONNECTION WITH THIS MORTGAGE OR THE INDEBTEDNESS HEREBY SECURED.

**5.15 Powers of Attorney.** This Mortgage and the other Loan Documents contain powers of attorney given by Mortgagor to Mortgagee. Such powers are coupled with an interest and are for the sole benefit of Mortgagee. Mortgagee, as agent for Mortgagor under the powers of attorney, is not a fiduciary for Mortgagor. Mortgagee, in exercising any of its rights or powers pursuant to the powers of attorney, may do so for the sole benefit of Mortgagee and not for Mortgagor.

**5.16 State Specific Provisions.** The state-specific provisions set forth and contained in this Section 5.16, to the extent inconsistent with the remaining terms, conditions, and provisions of this Mortgage, shall supersede said inconsistent provisions and, in the event of such conflict, govern and control:

(a) In addition to any other rights or remedies provided by this Mortgage or any other Loan Documents or applicable Law, Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to and reserved by Mortgagee, to sell the Mortgaged Property for cash to the highest bidder at public auction in front of the main courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the Mortgaged Property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties where the Mortgaged Property is located, as may be required (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks). The sale

shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged 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 manner as Mortgagee may elect. The provisions of this Mortgage shall apply with respect to the Mortgagee's enforcement of rights or interests in personal property which constitutes part of the Mortgaged Property hereunder.

(b) At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

(c) To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(d) If an Event of Default exists, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the entire amount of the Indebtedness due. Any such sale may be made subject to the unmatured part of the Indebtedness, and such sale, if so made, shall not affect the unmatured part of the Indebtedness, but as to such unmatured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under this Section 5.16. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Indebtedness, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Indebtedness without exhausting the power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

(e) Mortgagor hereby represents and warrants that Mortgagor has and is seized of good, indefeasible and insurable fee title to the Land.

(f) **WAIVER OF EXEMPTIONS**. Mortgagor expressly waives all rights and benefits of exemption as to the Mortgaged Property, if any, under and by virtue of the laws of the State of Alabama or any other state. If Mortgagor is an individual, Mortgagor represents and warrants to Mortgagee that the Mortgaged Property is not the homestead of Mortgagor, or Mortgagor's spouse (if Mortgagor is married).

**5.17 Security for Swap Agreement**. Mortgagor hereby acknowledges and agrees that this Mortgage shall and hereby does secure all of Mortgagor's Obligations to Mortgagee under and/or in connection with any Master Agreement, Swap Agreement and any other interest or



currency “swap agreement” (as such term is defined at 11 U.S.C. §101), future, option, collar, cap, hedge, derivative or any other such agreement providing for the transfer or mitigation of interest risks entered into in connection with any of the Obligations.

**5.18 Credit Support Document.** This Mortgage is intended to act (a) as a “Credit Support Document” (as such term is defined in any Master Agreement), with respect to Mortgagor and is hereby made a part of the “Schedule” (as such term is defined in the Master Agreement) of the Master Agreement, which such Master Agreement includes the Schedules thereto and all “Confirmations” (as such term is defined in the Master Agreement) exchanged between the parties confirming transactions thereunder, and (b) as a “transfer” under a swap agreement made by or to a swap participant, in connection with a swap agreement, within the meaning of Section 546(g) of the United States Bankruptcy Code.

**NOW THEREFORE**, if Mortgagor shall pay or cause to be paid the Indebtedness and if Mortgagor shall keep, perform and observe all of the covenants, agreements, conditions and provisions of this Mortgage and the other Loan Documents, then this Mortgage shall be null and void and of no further force and effect and shall be released by Mortgagee after written request by Mortgagor, otherwise to remain in full force and effect.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Mortgagor has caused this Mortgage, and Security Agreement, and Assignment, and Fixture Filing to be duly executed as a document under seal as of the day and year first above written, with the intent to be legally bound hereby.

**MORTGAGOR:**

**APG INDUSTRIAL ALABASTER, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Jeffrey Pustizzi  
Authorized Signatory

COMMONWEALTH OF PENNSYLVANIA )  
 )  
PHILADELPHIA COUNTY )

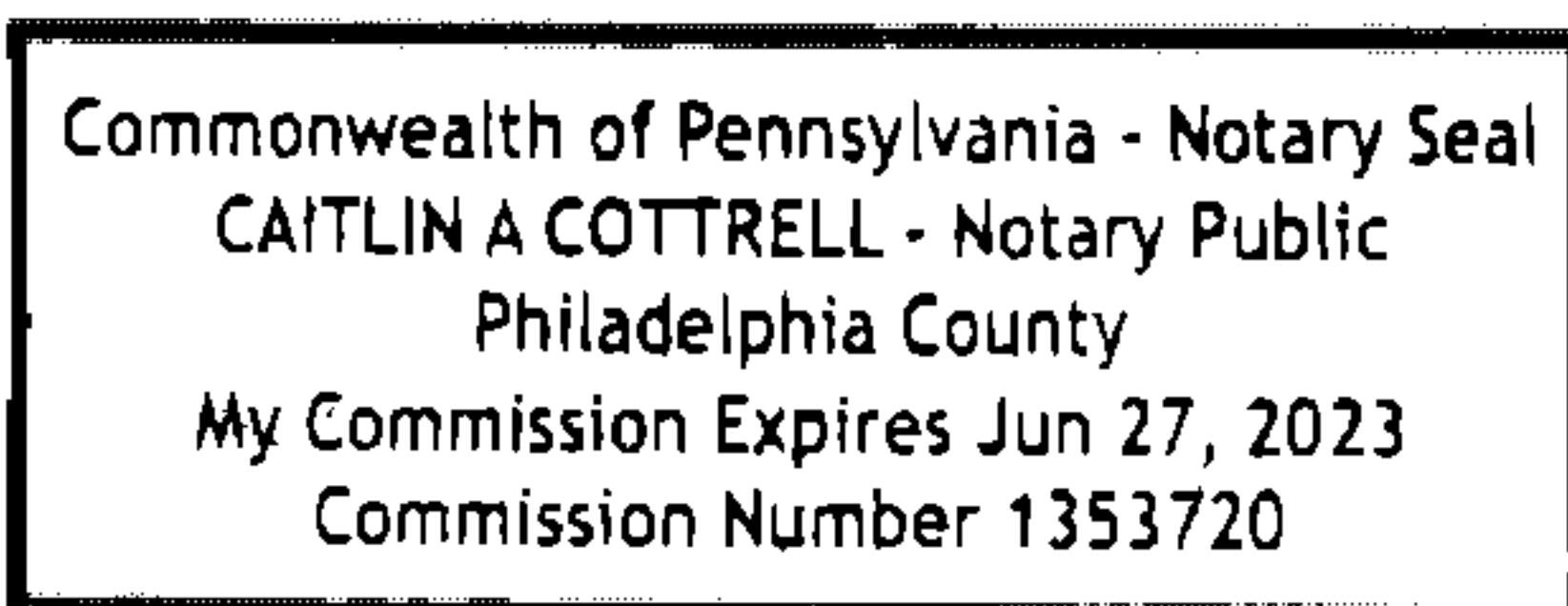
I, the undersigned, a notary public in and for said county in said state, hereby certify that Jeffrey Pustizzi, whose name as Authorized Signatory of **APG INDUSTRIAL ALABASTER, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Authorized Signatory and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 8<sup>th</sup> day of February, 2021.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: June 27, 2023



**EXHIBIT A****LEGAL DESCRIPTION**

All that certain lot or parcel of land situate in the County of Shelby, State of Alabama, and being more particularly described as follows:

**Parcel I:**

Commence at the Southeast corner of Section 12, Township 21 South, Range 3 West; thence run West along the South line of said Section a distance of 1048.89 feet to the Northeast right of way line of Interstate Highway I-65; thence turn an angle of 55 degrees 31 minutes to the right and run along said Highway right of way a distance of 237.87 feet; thence turn an angle of 1 degree 08 minutes 06 seconds to the right and run along said right of way line a distance of 210.20 feet; thence turn an angle of 2 degrees 27 minutes 52 seconds to the right and run along a chord of a right of way curve a chord distance of 436.46 feet to a point on the right of way line of Interstate Highway I-65, and the point of beginning; thence turn an angle of 2 degrees 46 minutes 34 seconds to the right to the chord of a right of way curve and run along said right of way curve, (whose delta angle is 3 degrees 05 minutes 15 seconds to the right, tangent distance is 304.82 feet, radius is 11,311.04 feet, chord distance is 609.42 feet, length of arc is 609.50 feet), to a point on the North line of the South 1/2 of the Southeast 1/4 of Section 12; thence continue along said right of way a distance of 194.83 feet to the Southeast right of way line of the L & N Railroad; thence turn to the right and run along said L & N Railroad right of way a distance of 417.32 feet to a point on the South line of the Northwest 1/4 of the Southeast 1/4 of Section 12; thence continue along said right of way a distance of 188.08 feet to the P.C. of a right of way curve; thence continue in the same direction along said right of way curve, (whose delta angle is 14 degrees 44 minutes 28 seconds to the left, radius is 2826.30 feet, length of arc is 727.15 feet), to the North right of way line of a paved county highway; thence turn an angle of 85 degrees 59 minutes to the right from the chord of said curve, and run along said County Highway right of way a distance of 210.00 feet; thence turn an angle of 87 degrees 11 minutes 43 seconds to the right and run a distance of 110.16 feet; thence turn an angle of 1 degree 28 minutes 43 seconds to the right and run a distance of 187.78 feet; thence turn an angle of 17 degrees 09 minutes 34 seconds to the left and run a distance of 512.38 feet to the point of beginning, situated in the South 1/2 of the Southeast 1/4 of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama.

**Assessor's Tax Parcel No. 23 1 12 0 000 064.001**

**Parcel II A:**

Commence at the Southeast corner of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama; thence run West along the South line of said Section 12 a distance of 1048.89 feet to the Northeasterly right of way of Interstate Highway #65; thence turn right 55 degrees 31 minutes 00 seconds and run along said right of way a distance of 237.87 feet; thence turn right 01 degree 08 minutes 06 seconds and run along said right of way a distance of 210.0 feet to the point of beginning; thence turn right 02 degrees 27 minutes 52 seconds to the chord of its curve, whose delta angle is 02 degrees 27 minutes 52 seconds to the right, radius 11,311.04 feet, tangent 243.28 for a chord 486.46 feet, and run along said curve a distance of 486.50 feet; thence turn right 112 degrees 34 minutes 54 seconds from chord of said curve a distance of 512.38 feet; thence turn right 17 degrees 09 minutes 52 seconds a distance of 187.78 feet; thence turn right 92 degrees 47 minutes 00 seconds a distance of 60.07 feet; thence turn right 87 degrees 13 minutes 00 seconds a distance of 206.78 feet; thence turn left 58 degrees 47 minutes 24 seconds a distance of 236.82 feet; thence turn left 73 degrees 28 minutes 36 seconds a distance of 150.0 feet; thence turn right 84 degrees 11 minutes 00 seconds a distance of 210.0 feet to the point of beginning.



Parcel II B:

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Commence at the Southeast corner of Section 12, Township 21 South, Range 3 West; thence run West along the South line of said Section S 89°05'00" W 840.2 feet to a point; thence run N 25°25'00" W 343.79 feet to a point in Fulton Springs Road; thence run on a chord line N 31°44'11" E 358.12' feet to a point in said Road; thence leaving said Road run N 74°05'47" W 40.0' to a point on the West right-of-way margin of said Road; thence leaving said right-of-way margin run N 74°05'47" W 73.75 feet to a point; thence run N 8°51'39" E 141.04 feet to a point; thence run S 82°53'52" E 6.25 feet to a point, the point of beginning for the property herein described; thence run N 9°55'47" E 60.07 feet to a point; thence run S 84°22'35" E 79.27 feet to a point on the West right-of-way margin of Fulton Springs Road; thence run along said right-of-way margin S 9°16'36" W 62.09 feet to a point; Thence run N 82°53'52" W 79.84 feet back to the point of beginning, containing 0.11 Acres more or less.

**Assessor's Tax Parcel No. 23 1 12 0 000 063.001**

Being the same property as described in Deeds to APG Industrial Alabaster, LLC recorded as Instrument No. 20190102000000970 and Instrument No. 20190212000044470, Shelby County, Alabama Records.

BEFORE THE ALABAMA DEPARTMENT OF REVENUE

In re:	)	A Proceeding Authorized
	)	by Section 40-22-2,
APG Industrial Alabaster, LLC	)	Code of Alabama 1975
	)	
	)	
Petitioner.	)	

MORTGAGE TAX ORDER

Comes now **APG Industrial Alabaster, LLC**, and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording tax due pursuant to Section 40-22-2, *Code of Alabama 1975*, for the privilege of recording that certain Mortgage and Security Agreement and Assignment and Fixture Filing (the “Mortgage”), executed by the Petitioner, that secures the indebtedness as described in the Petition (the “Indebtedness”), which along with other security documents (the “Security Documents”), covers real and personal property and fixtures located both inside and outside the State of Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

- 1) The Mortgage and the Security Documents secure a maximum principal indebtedness in the amount of \$14,750,000.00.
- 2) The value of the real property and fixtures conveyed by the Mortgage and located inside the State of Alabama is \$1,600,000.00, and the value of all the real property, personal property and fixtures described in and conveyed by the Mortgage and the Security Documents in all states (including the State of Alabama) is \$24,835,000.00.
- 3) The percentage of the real property and fixtures conveyed by the Mortgage that is located inside the State of Alabama is 6.44%.
- 4) The amount of the Indebtedness secured by the Mortgage and subject to the Alabama mortgage recording tax is \$949,900.00.
- 5) Alabama mortgage recording tax in the amount of \$1,424.85 will be due on the Indebtedness secured by the Mortgage under Section 40-22-2, *Code of Alabama 1975*, as amended, upon the filing for record of the Mortgage.
- 6. So long as the aggregate principal amount of Indebtedness at any one time outstanding as secured by the Mortgage does not exceed \$14,750,000.00, no additional mortgage recording tax will be due.

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IT IS, THEREFORE, ORDERED that mortgage recording tax in the amount of \$1,424.85, plus any recording fees which may be due, shall be paid to the Judge of Probate, and no additional mortgage recording tax will be due so long as the maximum principal amount of such indebtedness secured by the Mortgage does not exceed \$14,750,000.00.

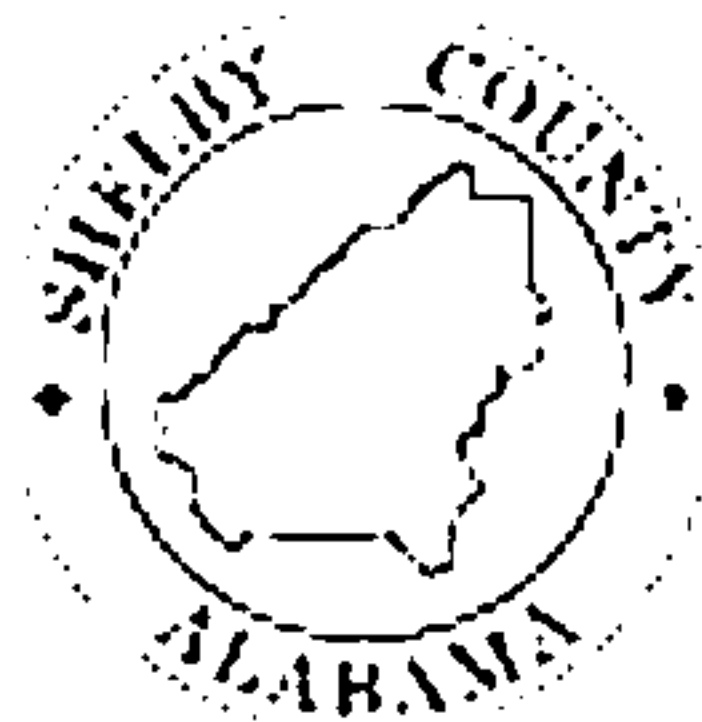
DONE this 26<sup>th</sup> day of January, 2021.

DEPARTMENT OF REVENUE

By: *Michael D. Jenks*  
Deputy Commissioner of Revenue

*K. Elizabeth Jehle*  
Legal Division: K. Elizabeth Jehle

*K. Elizabeth Jehle*  
as Secretary



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
02/17/2021 10:44:53 AM  
\$1557.85 CHARITY  
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*Allen S. Bayl*