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**FIRST FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

**NAME OF
LEASEHOLD
MORTGAGOR:**

Phenix Louisville, L.P., a Georgia limited partnership

**NAME OF FEE
MORTGAGOR:**

Louisville/Jefferson County Metro Government, a consolidated local government
and political subdivision of the Commonwealth of Kentucky

**NAME OF
MORTGAGEE:**

Voya Retirement Insurance and Annuity Company, a Connecticut corporation

**FIRST FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

This **FIRST FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "Mortgage"), is made this ____ day of December, 2014, by **PHENIX LOUISVILLE, L.P.**, a Georgia limited partnership, as leasehold mortgagor (hereinafter referred to as the "Leasehold Mortgagor"), and **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a consolidated local government and political subdivision of the Commonwealth of Kentucky, as fee mortgagor (hereinafter referred to as the "Fee Mortgagor") in favor of **VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY**, a Connecticut corporation (hereinafter referred to as the "Mortgagee"). The mailing address of the Leasehold Mortgagor, the Fee Mortgagor and the Mortgagee are the addresses for those parties set forth or referred to in Section 7.10 below.

NOTWITHSTANDING ANY OTHER TERM, CONDITION OR PROVISION OF THIS MORTGAGE TO THE CONTRARY, RECOURSE UNDER THIS MORTGAGE AS AGAINST THE FEE MORTGAGOR IS STRICTLY LIMITED AS SET FORTH IN ARTICLE 9 BELOW.

W I T N E S S E T H :

WHEREAS, the Fee Mortgagor is currently the owner of the fee simple estate and interest in and to the "Land" and the "Improvements" (as each such term is hereinafter defined); and

WHEREAS, the Fee Mortgagor acquired the fee simple estate and interest in and to the Land and Improvements from the Leasehold Mortgagor (hereinafter referred to as the "Acquisition") in furtherance of and as a condition precedent to the issuance by the Fee Mortgagor of its Industrial Building Revenue Bonds, Series 2008 (The Bellamy at Louisville Project) in the original principal amount of \$32,500,000.00 (hereinafter referred to as the "Bonds"); and

WHEREAS, pursuant to the terms, conditions, and provisions of that certain Bond Purchase Agreement dated as of October 10, 2008, by and among the Fee Mortgagor, the Leasehold Mortgagor, and Phenix Louisville Funding, L.P., a Georgia limited partnership (hereinafter referred to as the "Borrower"), the Borrower purchased the Bonds; and

WHEREAS, contemporaneously with and as a condition precedent to the issuance of the Bonds and the consummation of the Acquisition, (a) the Leasehold Mortgagor, the Fee Mortgagor, and the Borrower entered into that certain Lease and Financing Agreement dated as of October 10, 2008, and recorded in the Office of the County Clerk of Jefferson County, Kentucky on October 10, 2008, in Deed Book 9299, at Page 810 (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Ground Lease"), and (b) the Leasehold Mortgagor, the Fee Mortgagor, the Board of Education of Jefferson County, Kentucky, and the Commonwealth of Kentucky (by and through its Department of Revenue) entered into that certain Payment in Lieu of Taxes (PILOT) Agreement dated as of October 10, 2008 (hereinafter referred to as the "PILOT Agreement"); and

WHEREAS, pursuant to the terms, conditions, and provisions of the Ground Lease (a) the Fee Mortgagor leased all of the Land and the Improvements back to the Leasehold Mortgagor, (b) the Leasehold Mortgagor agreed to construct, furnish, equip, and operate the Land and the Improvements in

accordance with the requirements of the Ground Lease, and (c) the Fee Mortgagor, the Borrower, and the Leasehold Mortgagor agreed upon certain of the repayment terms of the Bonds, all as more fully set forth and described in the Ground Lease; and

WHEREAS, pursuant to the terms, conditions, and provisions of the PILOT Agreement, in order to induce the Leasehold Mortgagor to undertake the construction, furnishing, equipping, and operation of the Improvements, the Fee Mortgagor was willing to afford to the Leasehold Mortgagor an abatement, through the operation of KRS 103.285, 132.200(7), and 132.020(1)(b), of all of the *ad valorem* property taxes with respect to the Land and the Improvements that would otherwise be payable by the Leasehold Mortgagor; and

WHEREAS, in consideration of such tax abatement, the Fee Mortgagor required that the Leasehold Mortgagor enter into the PILOT Agreement for the purposes of evidencing its agreement to make payments in lieu of such taxes to the Board of Education of Jefferson County, Kentucky, and the Commonwealth of Kentucky, Department of Revenue; and

WHEREAS, in connection with the issuance of the Bonds, the Borrower obtained a loan from Compass Bank in the original principal amount of Twenty-Seven Million Five Hundred Thousand and 00/100 (\$27,500,000.00) Dollars (hereinafter, as it may have been from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Original Loan"), which Original Loan was secured, *inter alia*, by that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 22, 2008, executed by the Leasehold Mortgagor in favor of Compass Bank, and recorded prior to the consummation of the Acquisition and the execution and delivery of the Ground Lease in the Office of the County Clerk of Jefferson County, Kentucky on October 10, 2008, in Mortgage Book 11268, at Page 957 (hereinafter, as it may have been from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Original Fee Mortgage"), which Original Fee Mortgage encumbered the Leasehold Mortgagor's original fee simple estate and interest in and to the Land and the Improvements; and

WHEREAS, upon consummation of the Acquisition, the Fee Mortgagor acquired title to the Land and Improvements subject to the lien of the Original Fee Mortgage; and

WHEREAS, the proceeds of (i) the Original Loan were used for the purposes of (a) paying the costs incurred by the Leasehold Mortgagor in connection with the Leasehold Mortgagor's acquisition, development, construction, and equipping of the Land and the Improvements and (b) funding principal advances under, and to pay the purchase price of, the Bonds, and (ii) the Bonds were used by the Leasehold Mortgagor to pay, *inter alia*, costs incurred by the Leasehold Mortgagor in connection with the Leasehold Mortgagor's acquisition, development, construction, and equipping of the Land and the Improvements; and

WHEREAS, as support for the Original Loan, the Leasehold Mortgagor further executed and delivered that certain Guaranty Agreement dated as of July 22, 2008 in favor of Compass Bank (hereinafter, as it may have been from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Original Guaranty"), which Original Guaranty was secured by that certain Leasehold Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of October 10, 2008, executed by the Leasehold Mortgagor in favor of Compass Bank, and recorded following the consummation of the Acquisition and the execution and delivery of the Ground Lease in the Office of the County Clerk of Jefferson County, Kentucky on October 10, 2008, in Mortgage Book 11344, at Page 536 (hereinafter, as it may have been from time to time amended, modified, extended,

renewed, substituted, and/or supplemented, referred to as the “Original Leasehold Mortgage”, and hereinafter the Original Fee Mortgage and the Original Leasehold Mortgage shall be collectively referred to as the “Original Mortgages”), which Original Leasehold Mortgage encumbered the Leasehold Mortgagor’s leasehold estate and interest in and to the Land and the Improvements pursuant to the terms, conditions, and provisions of the Ground Lease; and

WHEREAS, the Borrower and the Leasehold Mortgagor have requested that the Mortgagee, and the Mortgagee has agreed to, provide to the Borrower a commercial mortgage term loan in the original principal amount of Sixteen Million Two Hundred Fifty Thousand and 00/100 (\$16,250,000.00) Dollars (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Loan”) for, among other things, the purpose of refinancing the Original Loan; and

WHEREAS, in connection with the refinancing of the Original Loan, this Mortgage will replace and refinance the Original Mortgages; and

WHEREAS, the Leasehold Mortgagor and the Fee Mortgagor have agreed to execute and deliver this Mortgage so that the Borrower may refinance the existing indebtedness outstanding under the Original Loan, as contemplated under the Ground Lease; and

WHEREAS, the Loan is evidenced by that certain Promissory Note #1 dated of even date herewith, executed by the Borrower, as maker, in favor of the Mortgagee, as payee (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Note”); and

WHEREAS, the Loan is supported by that certain Non-Recourse Guaranty dated of even date herewith, executed by the Leasehold Mortgagor in favor of the Mortgagee (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Guaranty”).

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Leasehold Mortgagor and the Fee Mortgagor hereby covenant and agree as follows:

ARTICLE 1. GRANT

1.1 **GRANT**. For the purposes of and upon the terms and conditions in this Mortgage, including, without limitation, the recitals hereto which are hereby incorporated by reference, the Leasehold Mortgagor and the Fee Mortgagor, as applicable, irrevocably, unconditionally and absolutely grant, convey, bargain, sell, pledge, assign, warrant, transfer and convey to the Mortgagee, with all powers of sale (if any) and all statutory rights under the laws of the Commonwealth of Kentucky, and further grant to the Mortgagee a security interest in, all of the Leasehold Mortgagor’s and the Fee Mortgagor’s present and hereafter acquired estate, rights, title, and interests in, to, and under the following (hereinafter collectively referred to as the “Mortgaged Premises”):

- (a) The Leasehold Mortgagor’s and the Fee Mortgagor’s respective estates, rights, title, interests, claims, and demand whatsoever that the Leasehold Mortgagor and/or the Fee Mortgagor now has or hereafter acquires, either in law or in equity, in possession or

expectancy, of, in and to that certain real property located at 1501 Bellamy Place, Louisville, Kentucky 40208, as more particularly described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land"), together with their respective rights, title, and interests (whether now or in the future) in and to all buildings, structures and improvements now or hereafter erected on the Land, and in and to any and all fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings, structures, and improvements (hereinafter collectively referred to as the "Improvements"), including without limitation, the leasehold estate and interest in and to the Land and the Improvements created by the Ground Lease (including, without limitation, (i) all options to extend or renew the Ground Lease (and the leasehold estate for the term of each extension or renewal), (ii) all options and rights of first refusal contained in the Ground Lease to purchase the Land, and (iii) all of the Leasehold Mortgagor's and the Fee Mortgagor's other rights, title, and interests in, to, and under the Ground Lease) (hereinafter collectively referred to as the "Leasehold Estate"); and

- (b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges attached or belonging to the Land, the Improvements, the Leasehold Estate, or in any wise appertaining thereto, whether now or in the future, and all the rents, issues and profits from the Land, the Improvements, and/or the Leasehold Estate; and
- (c) The land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all rights, title and interests, if any, of the Leasehold Mortgagor and/or the Fee Mortgagor in and to any strips and gores adjoining the Land; and
- (d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land, the Improvements, the Leasehold Estate or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land, the Improvements, or the Leasehold Estate, now owned or hereafter acquired by the Leasehold Mortgagor and/or the Fee Mortgagor, including, but without limitation of the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, telephone, communications and power equipment, systems and apparatus, all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Land or the Improvements or in warehouses and intended to be used in connection with or incorporated into the Land, the Improvements, or the Leasehold Estate or for the pursuit of any other activity in which the Leasehold Mortgagor and/or the Fee Mortgagor may be engaged on the Land or the Improvements, and including without limitation all heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving,

spotlighting equipment, dishwashers, garbage disposals, washers and dryers, and other customary equipment, together with all substitutions, accessions, repairs, additions and replacements to any of the foregoing; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the Improvements and are declared to be a portion of the security for the prompt payment of the "Secured Obligations" (as such term is hereinafter defined) together with interest, charges and prepayment fees, if any, thereon in accordance with the terms of the Note and the Guaranty, and any additional indebtedness accruing to the Mortgagee on account of any future payments, advances or expenditures made by the Mortgagee pursuant to the terms of the Note, the Guaranty, or this Mortgage and any additional sums with interest thereon which may be loaned to the Borrower by the Mortgagee or advanced under the "Loan Documents" (as such term is defined in the Note), whether in single units or centrally controlled, and whether physically attached to said real estate or not; and

- (e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Land, the Improvements, the Leasehold Estate, or other properties described above as a result of: (i) the exercise of the right of eminent domain or action in lieu thereof; or (ii) the alteration of the grade of any street; or (iii) any fire, casualty, accident, damage or other injury to or decrease in the value of the Land, the Improvements, the Leasehold Estate or other properties described above, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Leasehold Mortgagor, the Fee Mortgagor, or the Mortgagee, and of all counsel fees, costs, and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment. The Leasehold Mortgagor and the Fee Mortgagor agree to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such award or payment; and
- (f) All accounts receivable and any right of the Leasehold Mortgagor and/or the Fee Mortgagor to payment for goods sold or leased or for services rendered, whether or not yet earned by performance, and whether or not evidenced by an instrument or chattel paper, arising from the operation of the Mortgaged Premises, including, without limitation, the Leasehold Estate, now existing or hereafter created, substitutions therefor, proceeds thereof (whether cash or noncash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any or all of the foregoing and proceeds therefrom; and
- (g) All authorizations, licenses, permits, contracts, management agreements, franchise agreements, and occupancy and other certificates concerning the ownership, use and operation of the Mortgaged Premises, including, without limitation, the Leasehold Estate; and
- (h) All monies on deposit for the payment of real estate taxes or special assessments against the Mortgaged Premises, including, without limitation, the Leasehold Estate, or for the payment of premiums on policies of fire and other hazard insurance covering the Mortgaged Premises, including, without limitation, the Leasehold Estate; and
- (i) All names in which the Leasehold Mortgagor and/or the Fee Mortgagor has an interest

under or by which the Mortgaged Premises, including, without limitation, the Leasehold Estate, may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents, patents pending and goodwill with respect to the Mortgaged Premises, including, without limitation, the Leasehold Estate; and

- (j) All shares of stock or partnership interest or other evidence of ownership of any part of the Mortgaged Premises, including, without limitation, the Leasehold Estate, that is owned by the Leasehold Mortgagor and/or the Fee Mortgagor in common with others, including all water stock relating to the Mortgaged Premises, including, without limitation, the Leasehold Estate, if any, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Mortgaged Premises, including, without limitation, the Leasehold Estate, and any management or other similar agreements; and
- (k) All plans and specifications prepared for the construction of any improvements on the Mortgaged Premises and all studies, data and drawings related thereto to the extent assignable; and all contracts and agreements of the Leasehold Mortgagor and/or the Fee Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of improvements on the Mortgaged Premises, including, without limitation, the Leasehold Estate, to the extent assignable; and
- (l) All of the Leasehold Mortgagor's rights, title, and interests in, to and under any and all reserve, deposit or escrow accounts made pursuant to any Loan Document with respect to the Mortgaged Premises, including, without limitation, the Leasehold Estate, together with all income, profits, benefits and advantages arising therefrom; and
- (m) All goods, accounts, general intangibles, chattel paper, instruments, documents, consumer goods, equipment and inventory owned by the Leasehold Mortgagor and/or the Fee Mortgagor in connection with the operation of the Mortgaged Premises, including, without limitation, the Leasehold Estate, and/or located on or used in the operation of the Mortgaged Premises, including, without limitation, the Leasehold Estate; and
- (n) All substitutions, accessions, additions, and replacements to any of the foregoing; and
- (o) All products and proceeds of any of the foregoing, whether cash or noncash, or with respect to the Mortgaged Premises, including without limitation, insurance proceeds, proceeds of any voluntary or involuntary disposition or diminution in value of any of the foregoing or of the Mortgaged Premises, and any claim respecting any thereof (pursuant to judgment, condemnation award or otherwise) and all goods, accounts, general intangibles, chattel paper, instruments, documents, consumer goods, equipment and inventory, wherever located, acquired with the proceeds of any of the foregoing or proceeds thereof.

The parties intend the definition of Mortgaged Premises to be broadly construed and in the case of doubt as to whether a particular item is to be included in the definition of Mortgaged Premises, the doubt should be resolved in favor of inclusion. In the event that the Leasehold Mortgagor and/or the Fee Mortgagor acquires any estate or interest in the Land, the Improvements, or the Leasehold Estate after the date of this Mortgage, including, without limitation, any fee title

interest, estate for years, easement or other estate or interest in real property, this Mortgage shall automatically create a lien on any and all after-acquired property, without further action or acknowledgement of the parties, with the same force and effect and the same priority as if the Leasehold Mortgagor and/or the Fee Mortgagor, as applicable, owned such interest on the date of the recording of this Mortgage and such estate and interest shall be encumbered hereby and shall be deemed to be included in the definition of "Mortgaged Premises" as used herein.

- 1.2 **ADDRESS.** The address of the Mortgaged Premises is 1501 Bellamy Place, Louisville, Kentucky 40208. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Mortgaged Premises as described on Exhibit "A" attached hereto and made a part hereof.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** The Leasehold Mortgagor and the Fee Mortgagor make this Mortgage for the purpose of securing the following obligations (hereinafter collectively referred to as the "Secured Obligations"):

- (a) Payment to the Mortgagee of any and all sums at any time due and owing under the Guaranty. Defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Note and/or the Guaranty, as applicable; and
- (b) Payment and performance of all covenants and obligations of the Leasehold Mortgagor and the Fee Mortgagor under this Mortgage and/or any other Loan Document to which the Leasehold Mortgagor and/or the Fee Mortgagor is a party; and
- (c) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Mortgage; and
- (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Mortgaged Premises may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of the Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage; and
- (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations in accordance with the terms of the Loan Documents.

- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All Persons who may have or acquire an interest in the Mortgaged Premises shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein.
- 2.4 **EFFECT OF EXTENSION OF TIME.** If the payment of the Secured Obligations, or any part thereof, is extended or varied, or if any part of any security for the payment of the Secured Obligations is released, or if any Person liable for the payment of the Secured Obligations is released, or if the Mortgagee takes other or additional security for the payment of the Secured Obligations, or if the Mortgagee waives or fails to exercise any right granted herein, or in the Note, the Guaranty or in any other instrument given to secure the payment hereof (including, without limitation, any of the Loan Documents), then all Persons now or at any time hereafter liable for the payment of the Secured Obligations, or any part thereof, or interested in the Mortgaged Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such Persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Subject to the terms, conditions, and provisions of Section 3.2 below, each of the Leasehold Mortgagor and the Fee Mortgagor hereby irrevocably, absolutely, presently, and unconditionally assigns to the Mortgagee all of such party's rights, title, and interests in, to, and under: (a) all leases, subleases, rental agreements, student housing occupancy agreements, and other agreements, if any, now or hereafter in existence relating to the use, occupancy or possession of the Land or the Improvements or any part thereof, and all rights, title and interests of such party thereunder, including, without limitation, all cash and securities deposited thereunder to secure performance by the tenants of their obligations thereunder, and including further, the right to amend, modify, or terminate the same or waive the provisions thereof, and the right to receive and collect the rents thereunder and all guaranties thereof, and all income, rents, issues, profits, revenues, deposits, accounts and other benefits from the operation of the Improvements, including, without limitation, all receivables, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of the Improvements, or personalty located thereon, or the rendering of services by the Leasehold Mortgagor, the Fee Mortgagor, or any operator or manager of the Improvements, and all substitutions thereof or proceeds, if any, from business income or other loss of income insurance relating to the use, enjoyment, or occupancy of the Land and/or the Improvements (hereinafter collectively referred to as the "Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Mortgaged Premises, including, without limitation, all amounts payable and all rights and benefits accruing to the Leasehold Mortgagor and/or the Fee Mortgagor under the Leases (hereinafter collectively referred to as "Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder (including, without limitation, security deposits, whether in the form of cash, letters of credit, or otherwise), and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and the Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Mortgaged Premises.

- 3.2 **GRANT OF LICENSE.** The Mortgagee confers upon the Leasehold Mortgagor and the Fee Mortgagor a revocable license (hereinafter referred to as the “License”) to exercise the rights as landlord or owner under the Leases and to collect and retain the Payments as they become due and payable, for so long as no “Event of Default” (as such term is defined in the Note or any of the other Loan Documents) exists. Upon the occurrence of an Event of Default, the License shall be automatically revoked and, from and after the occurrence of such Event of Default, the Mortgagee may collect and apply the Payments pursuant to Section 6.4 hereof without any notice to the Leasehold Mortgagor and/or the Fee Mortgagor and without taking possession of the Mortgaged Premises. At such time, if at all, as such Event of Default is waived by the Mortgagee (if the Mortgagee, in its sole and absolute discretion, agrees in writing to waive said Event of Default) or if the cure of said Event of Default shall have been accepted in writing by the Mortgagee, as determined by the Mortgagee in its sole and absolute discretion, the License shall be reinstated on the terms contained in this Mortgage. The Leasehold Mortgagor and the Fee Mortgagor hereby irrevocably authorize and direct the lessees under the Leases to rely upon and comply with any written notice or demand by the Mortgagee in accordance with the terms of this Mortgage for the payment to the Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees’ undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. The Leasehold Mortgagor and the Fee Mortgagor hereby relieve the lessees from any liability to the Leasehold Mortgagor or the Fee Mortgagor, as applicable, by reason of relying upon and complying with any such notice or demand by the Mortgagee.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not, in and of itself, cause the Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Mortgaged Premises or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for (i) any waste committed on the Mortgaged Premises by the lessees under any of the Leases or any other parties, (ii) any dangerous or defective condition of the Mortgaged Premises, or (iii) any negligence in the management, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any lessee, licensee, employee, invitee or other Person. The Mortgagee shall not directly or indirectly be liable to the Leasehold Mortgagor, the Fee Mortgagor, or any other Person as a consequence of: (A) the exercise or failure to exercise by the Mortgagee, or any of its employees, agents, contractors or subcontractors, of any of the rights, remedies or powers granted to the Mortgagee hereunder; or (B) the failure or refusal of the Mortgagee to perform or discharge any obligation, duty or liability of the Leasehold Mortgagor or the Fee Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Each of the Fee Mortgagor and the Leasehold Mortgagor hereby represents and warrants that, as of the date hereof: (a) the schedule of Leases listed on the certified rent roll delivered to the Mortgagee by the Leasehold Mortgagor on the date hereof (hereinafter referred to as the “Rent Roll”) is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and, except as disclosed in writing to the Mortgagee and to the knowledge of the Leasehold Mortgagor, no material breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease, if any, has been paid by any lessee for more than one (1) month in advance, except in accordance with the terms of Section 3.6 below; and (d) none of the lessor’s interests under any of the

existing Leases, if any, has been transferred or assigned by the Leasehold Mortgagor or the Fee Mortgagor, as applicable.

3.5 **AFFIRMATIVE LEASE COVENANTS.** The Leasehold Mortgagor and the Fee Mortgagor, as applicable, hereby covenant and agree at their sole cost and expense to:

- (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases to the extent the Leasehold Mortgagor and/or the Fee Mortgagor would enforce such provisions in its prudent business judgment in the ordinary course of its business; and
- (b) promptly give the Mortgagee copies of any written notice of any default under the Ground Lease, whether the default be that of the lessee or of the lessor; and
- (c) ensure that all Leases, including, without limitation, the Ground Lease, are and remain subject and subordinate to this Mortgage and to execute and record, at the Mortgagee's reasonable request, such additional assignments of any Lease or such specific subordinations of any Lease to this Mortgage, in form and substance acceptable to the Mortgagee, as the Mortgagee may request or require.

3.6 **LEASE APPROVAL; NEGATIVE LEASE COVENANTS.** The Leasehold Mortgagor and the Fee Mortgagor shall not, without the Mortgagee's prior express written consent:

- (a) enter into any Lease after the date hereof; provided, however, the Leasehold Mortgagor may enter into student housing occupancy agreements without the prior express written consent of the Mortgagee provided that said student housing occupancy agreement shall be (i) with bona-fide, arm's length occupants, (ii) on the Leasehold Mortgagor's standard form of student housing occupancy agreement that was approved by the Mortgagee in connection with the closing of the Loan, and (iii) for a term of at least twelve (12) months and not more than twenty-four (24) months; provided, however, the Mortgagee shall permit up to ten percent (10%) of student housing occupancy agreements in effect at any one time to be for a minimum term of at least eight (8) months; or
- (b) execute any other assignment of the Leasehold Mortgagor's and/or the Fee Mortgagor's rights, title, and interests in or to any of the Leases; or
- (c) collect any rent or other sums due under the Leases in advance, other than to collect rents not more than one (1) month in advance of the time when such rent becomes due and owing; provided, however, the Leasehold Mortgagor may collect rents under student housing occupancy agreements up to one (1) year in advance of the time when such rent become due and owing, provided that if more than twenty percent (20%) (hereinafter referred to as the "Escrow Threshold") of the beds occupied pursuant to student housing occupancy agreements shall prepay their rent, all such prepaid rent received by the Leasehold Mortgagor above the Escrow Threshold shall be promptly deposited by the Leasehold Mortgagor into escrow with Grandbridge Real Estate Capital (hereinafter referred to as the "Escrow Agent") to be held and disbursed by the Escrow Agent pursuant to the terms, conditions, and provisions of that certain Reserve Agreement dated of even date herewith execute by and among the Leasehold Mortgagor, the Escrow

Agent, and the Mortgagee; or

- (d) discount any rent or other sums due under the Leases or provide any free rent under any Lease, except as necessary in the ordinary course of business to attract future tenants; or
- (e) amend or modify any of the terms of any non-residential Lease; or
- (f) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance, other than that certain Second Fee and Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing dated of even date herewith executed by the Leasehold Mortgagor and the Fee Mortgagor in favor of the Mortgagee.

Any such attempted action in violation of the provisions of this Section 3.6 shall be null and void.

- 3.7 **NO DRY CLEANING OPERATIONS.** Without the prior express written consent of the Mortgagee, the Leasehold Mortgagor shall not, and shall not permit any tenant to, conduct any on-site dry cleaning operations on the Mortgaged Premises.

ARTICLE 4. FIXTURE FILING

- 4.1 **SECURITY INTEREST – FIXTURES.** To secure the payment and performance of all of the Secured Obligations, the Leasehold Mortgagor and the Fee Mortgagor hereby irrevocably, absolutely, presently, and unconditionally grant and assign to the Mortgagee, as of the date hereof, a first and prior security interest, in all of the following described personal property in which the Leasehold Mortgagor and/or the Fee Mortgagor now or at any time hereafter has any interest (hereinafter collectively referred to as the “Fixture Collateral”):

All furniture, fixtures, and equipment, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Mortgaged Premises; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a “fixture” under applicable law, this Mortgage constitutes a fixture filing under the Uniform Commercial Code as adopted in the Commonwealth of Kentucky, as amended, modified, or recodified from time to time (hereinafter referred to as the “UCC”), is acknowledged and agreed to be a “Mortgage” under the UCC, and covers property which includes goods which are or are to become fixtures on the Mortgaged Premises. The Leasehold Mortgagor and the Fee Mortgagor hereby grant to the Mortgagee a security interest in and to all existing and future goods which are now or become in the future fixtures relating to the Mortgaged Premises and the proceeds thereof. For purposes of the UCC, the following information concerning the security interest herein granted is furnished:

- (a) The name of the debtor (Leasehold Mortgagor and Fee Mortgagor) is as follows:
 - (i) Phenix Louisville, L.P., a Georgia limited partnership, having an address located 625 Kentucky Street, Scottdale, Georgia 30079. The Leasehold Mortgagor is a “registered organization” (as defined in the UCC), whose corporate organizational number is

[2533729].

(ii) Louisville/Jefferson County Metro Government, a consolidated local government and political subdivision of the Commonwealth of Kentucky, having an address located at 527 W. Jefferson Street, Louisville, Kentucky 40202. The Fee Mortgagor is a consolidated local government and political subdivision of the Commonwealth of Kentucky and, as such, has no organizational number.

(b) The name and address of the secured party (Mortgagee) is as follows:

Voya Retirement Insurance and Annuity Company
c/o Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Real Estate Law Department

(c) Information concerning the security interest evidenced by this instrument may be obtained from the secured party at its address above.

(d) The Fee Mortgagor is the record owner of a fee simple estate in the real estate described in this Mortgage. The Leasehold Mortgagor is the record owner of a leasehold estate in the real estate described in this Mortgage pursuant to the terms, conditions, and provisions of the Ground Lease.

(e) This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit "A".

4.2 **REPRESENTATIONS AND WARRANTIES.** The Leasehold Mortgagor and the Fee Mortgagor hereby represent and warrant that: (a) the Leasehold Mortgagor and/or the Fee Mortgagor has good title to the Fixture Collateral; (b) except for those liens and other encumbrances listed as exceptions to the loan policy of title insurance being issued to the Mortgagee by Stewart Title Guaranty Company as of the date hereof (hereinafter collectively referred to as "Permitted Encumbrances"), neither the Fee Mortgagor nor the Leasehold Mortgagor has previously assigned or encumbered the Collateral, and no financing statement covering any of the Fixture Collateral has been delivered to any other Person; (c) as of the date hereof, the Leasehold Mortgagor's and the Fee Mortgagor's respective principal places of business are located at the address shown in Section 7.10 hereof; and (d) as of the date hereof, the Leasehold Mortgagor's and the Fee Mortgagor's legal names are exactly as set forth on the first page of this Mortgage and all of the Leasehold Mortgagor's organizational documents or agreements delivered to the Mortgagee are complete and accurate in every respect.

4.3 **COVENANTS.** The Leasehold Mortgagor and the Fee Mortgagor hereby covenant and agree: (a) to execute and deliver such documents as the Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change their respective names, and as applicable, their respective chief executive offices, their respective principal residence or the jurisdiction in which such party is organized and/or registered without giving the Mortgagee prior express written notice thereof; (c) to cooperate with the Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as the Mortgagee deems reasonably necessary, proper or convenient in connection with the preservation, perfection

or enforcement of any of its rights hereunder; and (d) that the Mortgagee is hereby expressly and specifically authorized to file financing statements in the name of the Leasehold Mortgagor and the Fee Mortgagor to perfect the Mortgagee's security interest in and to the Fixture Collateral.

4.4 **RIGHTS OF MORTGAGEE.** In addition to the Mortgagee's rights as a "Secured Party" under the UCC, the Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of the Leasehold Mortgagor: (a) give notice to any Person of the Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Fixture Collateral or any rights or interests of the Mortgagee therein; (c) inspect the Fixture Collateral at, provided no Event of Default exists, the Mortgagee's own expense; and (d) during the existence of an Event of Default, endorse, collect and receive any right to payment of money owing to the Leasehold Mortgagor or the Fee Mortgagor under or from the Fixture Collateral.

4.5 **RIGHTS OF MORTGAGEE ON DEFAULT.** Upon the occurrence of an Event of Default, in addition to all of the Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

- (a) The Mortgagee may: (i) upon written notice, require the Leasehold Mortgagor and/or the Fee Mortgagor to assemble any or all of the Fixture Collateral and make it available to the Mortgagee at a place designated by the Mortgagee; (ii) without prior notice, enter upon the Mortgaged Premises or other place where any of the Fixture Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Fixture Collateral, and store the same at locations acceptable to the Mortgagee at the Leasehold Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Fixture Collateral and bid and become the purchaser at any such sales; and
- (b) The Mortgagee may, for the account of the Leasehold Mortgagor and/or the Fee Mortgagor and at the Leasehold Mortgagor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Fixture Collateral as the Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which the Mortgagee may deem desirable or proper with respect to any of the Fixture Collateral; and/or (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all Secured Obligations and obligations now or hereafter owing to the Leasehold Mortgagor and/or the Fee Mortgagor in connection with or on account of any or all of the Fixture Collateral; and
- (c) In disposing of Fixture Collateral hereunder, the Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Fixture Collateral may be applied by the Mortgagee to the payment of expenses incurred by the Mortgagee in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by the Mortgagee toward the payment of the Secured Obligations in such order of application as the Mortgagee may from time to time elect.

The Leasehold Mortgagor and the Fee Mortgagor hereby expressly agree that the Mortgagee shall have no obligation to process or prepare any Fixture Collateral for sale or other disposition.

4.6 **POWER OF ATTORNEY.**

- (a) The Leasehold Mortgagor and the Fee Mortgagor hereby irrevocably appoint the Mortgagee as the Leasehold Mortgagor's and the Fee Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact the Mortgagee may, without the obligation to do so, in the Mortgagee's name, or in the name of the Leasehold Mortgagor or the Fee Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of the Mortgagee's security interests and rights in or to any of the Fixture Collateral, and, upon the occurrence and during the continuance of an Event of Default hereunder, take any other action required of the Leasehold Mortgagor and/or the Fee Mortgagor; provided, however, that the Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by the Mortgagee.
- (b) The power of attorney granted by the Leasehold Mortgagor and the Fee Mortgagor to the Mortgagee above are powers coupled with an interest and shall be irrevocable and unaffected by the disability of any manager, officer, or principal of the Leasehold Mortgagor and/or the Fee Mortgagor so long as the Secured Obligations remain unpaid or unperformed. The Mortgagee shall have no obligation to exercise any of the rights and powers described therein in any event.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** The Fee Mortgagor hereby represents and warrants that the Fee Mortgagor lawfully holds and possesses a fee simple estate in and to the Mortgaged Premises, including, without limitation, the right to encumber said fee simple estate, and that this Mortgage is a first and prior lien on the Fee Mortgagor's fee simple estate and interest in and to the Mortgaged Premises, except for Permitted Encumbrances. The Leasehold Mortgagor hereby represents and warrants that the Leasehold Mortgagor lawfully holds and possesses a leasehold estate in and to the Mortgaged Premises, including, without limitation, the right to encumber said leasehold estate, and that this Mortgage is a first and prior lien on the Leasehold Mortgagor's leasehold interest in and to the Mortgaged Premises, except for Permitted Encumbrances.
- 5.2 **TAXES AND ASSESSMENTS.** The Leasehold Mortgagor shall pay, prior to delinquency, all taxes, assessments, levies, PILOT payments and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Mortgaged Premises or any interest therein. Promptly upon receipt of written notice from the Mortgagee, the Leasehold Mortgagor shall also pay, prior to delinquency, all taxes, assessments, levies, PILOT payments and charges imposed by any public authority upon the Mortgagee by reason of its interest in any Secured Obligation or in the Mortgaged Premises, or by reason of any payment made to the Mortgagee pursuant to any Secured Obligation.
- 5.3 **TAX AND INSURANCE IMPOUNDS.**
 - (a) Unless otherwise expressly agreed in writing by the Mortgagee, the Leasehold Mortgagor hereby covenants and agrees to deposit with such depository as the Mortgagee from time to time may in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee, c/o Voya Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349, Attention: Mortgage Loan Servicing Department, commencing on the date of disbursement of the Loan and on the first day of

each month thereafter until the Loan is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments (including, without limitation, *ad valorem* taxes, if and when applicable, or PILOT payments) for the last ascertainable year (if the current year's taxes and assessments are not yet ascertainable) (general and special) on the Mortgaged Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest (unless applicable law requires otherwise) and, subject to the terms, conditions, and provisions of Section 5.3(c) below, the Mortgagee shall apply such deposit to the payment of taxes and assessments (general and special), as applicable, on the Mortgaged Premises next due and payable when they become due. Upon written demand by such depository, the Leasehold Mortgagor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or such depository. If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Mortgaged Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment, or imposition upon or for any other property not covered by the lien of this Mortgage, then the computation of any amount to be deposited under this Section 5.3 shall be based upon the entire amount of such taxes or assessments, and the Leasehold Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

- (b) Unless otherwise agreed to in writing by the Mortgagee, it is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by the Leasehold Mortgagor, the Leasehold Mortgagor shall deposit with the Mortgagee or the depository referred to in this Section 5.3 (hereinafter referred to as the "Insurance Account") on the date of disbursement of the proceeds of the Loan and on the first day of each month thereafter, an amount equal to the annual premiums that will next become due and payable on such policies less any amount then on deposit with the Mortgagee or such depository, divided by the number of months to elapse thirty (30) days prior to the date when such premiums become delinquent. No interest shall be allowed to the Leasehold Mortgagor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of the Mortgagee or such depository. Subject to the terms, conditions, and provisions of Section 5.3(c) below, the Mortgagee shall use all such amounts deposited with Mortgagee in the Insurance Account to pay the annual premiums due on the insurance policies as the same become due and payable.
- (c) During the existence of an Event of Default, the Mortgagee may, at its option and without being required to do so, apply any monies at the time on deposit pursuant to this Section 5.3, on any of the Leasehold Mortgagor's, the Fee Mortgagor's, or Borrower's obligations herein or in the Note, the Guaranty or any of the Loan Documents contained,

in such order and manner as the Mortgagee may elect. When the Secured Obligations become due and owing hereunder (other than as a result of the occurrence of an Event of Default), the Mortgagee shall credit the amount of any funds then deposited with the Mortgagee pursuant to this Section 5.3 against the amount due from the Leasehold Mortgagor to discharge the Secured Obligations in full. A security interest within the meaning of the UCC is hereby granted to the Mortgagee in and to any monies at any time on deposit pursuant to this Section 5.3 and such monies and all of the Leasehold Mortgagor's rights, title, and interests therein are hereby assigned to the Mortgagee, all as additional security for the Secured Obligations and shall, in the absence of the occurrence of an Event of Default, be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Leasehold Mortgagor; provided, however, that neither the Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited. Neither the Mortgagee nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party entitled to payment of the real estate taxes or assessments or insurance premium. The Leasehold Mortgagor hereby covenants and agrees to cooperate with the Mortgagee in executing a control agreement, reasonably acceptable to the Mortgagee and the Leasehold Mortgagor, if necessary, with the depository chosen to manage the deposit account envisioned by this Section 5.3 for the purpose of perfecting the security interest in said account.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Each of Mortgagor and the Fee Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** The Leasehold Mortgagor and the Fee Mortgagor shall promptly discharge any lien not approved by the Mortgagee in writing that has or may attain priority over this Mortgage. The Leasehold Mortgagor and the Fee Mortgagor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Mortgaged Premises or the Fixture Collateral, or any interest therein, whether senior or subordinate hereto. Notwithstanding the foregoing to the contrary, the Leasehold Mortgagor and the Fee Mortgagor may contest such lien or such obligations provided that such contest is effected without cost or expense or civil or criminal liability to the Mortgagee, the contest shall have the effect of preventing the enforcement of any charge against the Mortgaged Premises arising from the matter contested or penalties relating thereto, and the Leasehold Mortgagor shall furnish security satisfactory to the Mortgagee against loss, injury or damage to the Mortgagee by reason of such contest.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) In case of loss or damage by fire or other casualty, the Leasehold Mortgagor and the Fee Mortgagor shall promptly give the Mortgagee and the insurance companies that have insured against such risks written notice of such occurrence.
- (b) In case of loss or damage by fire or other casualty, the Leasehold Mortgagor shall, if no Event of Default then exists hereunder, have the sole and exclusive right to settle, compromise or adjust any claim under, and receive, for the purpose of rebuilding and

restoration, the proceeds arising from, any and all losses payable under insurance policies to the extent the amount thereof does not exceed Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars (hereinafter referred to as the "Threshold Amount"), and all claims for losses in excess of said amount shall be settled, compromised or adjusted only with the mutual agreement of the Leasehold Mortgagor and the Mortgagee (which such agreement of the Mortgagee shall not be unreasonably withheld, conditioned or delayed) and the proceeds paid as hereinafter provided. In the event insurance proceeds in excess of the Threshold Amount are payable or if an Event of Default exists hereunder, then in either of such events, the Mortgagee is authorized to collect and receive any such insurance proceeds. Notwithstanding the foregoing to the contrary, the Mortgagee hereby agrees as follows with respect to insurance proceeds: insurance proceeds received by the Mortgagee as aforesaid, after deducting therefrom any expenses incurred in the collection thereof, shall, if requested in writing by the Leasehold Mortgagor within thirty (30) days after the proceeds of insurance covering such damage or destruction are received by the Mortgagee, be made available to the Leasehold Mortgagor for the purpose of paying the cost of rebuilding or restoring of the Improvements provided that (i) the Improvements, in the Mortgagee's reasonable discretion, are capable of being restored to that condition which existed immediately prior to the damage or loss, (ii) the insurance proceeds, together with all other funds which are to be provided by the Leasehold Mortgagor, are sufficient to restore the Improvements in accordance with clause (i) above, (iii) the Mortgagee determines that income from the Mortgaged Premises shall not be materially, adversely affected, as compared to the income produced by the Mortgaged Premises immediately prior to the casualty giving rise to such insurance proceeds, following (A) the completion of the restoration or rebuilding of the Improvements and (B) the expiration of such lease-up/stabilization period as the Mortgagee may reasonably determine is necessary given the circumstances, and (iv) no Event of Default then exists under this Mortgage or any other Loan Document, and no circumstance or condition exists that would constitute an Event of Default upon the giving of notice or the passage of time, or both, unless such Event of Default, circumstance or condition is cured by the Leasehold Mortgagor pursuant to the terms, conditions and provisions of the Loan Documents. In the event that the Mortgagee makes insurance proceeds available to the Leasehold Mortgagor to pay the cost of rebuilding or restoring of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may reasonably require to assure proper application of such proceeds. In the event such insurance proceeds are made available by the Mortgagee, the Leasehold Mortgagor shall pay all costs incurred by the Mortgagee in connection with the application of such insurance proceeds (including, but not limited to, reasonable costs incurred by Lender, and a title company or agent approved by the Mortgagee in overseeing the disbursement of such insurance proceeds). The Improvements shall be restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the projected cost of rebuilding, repairing or restoring of the Improvements exceeds the sum of Threshold Amount, then insurance proceeds shall not be made available to the Leasehold Mortgagor unless and until the Mortgagee has expressly approved in writing the plans and specifications for the proposed rebuilding and restoration, which approval shall not be unreasonably withheld. If the proceeds are to be made available by the Mortgagee to the Leasehold Mortgagor to pay the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of the costs of rebuilding or restoring the Improvements shall, at the option of the Mortgagee, be applied on

account of the Loan or be paid to the Leasehold Mortgagor under such conditions as the Mortgagee may reasonably require, but without any "Prepayment Premium" (as such term is defined in the Note). No interest shall be allowed to the Leasehold Mortgagor or the Fee Mortgagor on any proceeds of insurance held by the Mortgagee.

- (c) In the event proceeds of insurance are not required to be made available to the Leasehold Mortgagor for the purpose of paying the cost of the rebuilding or restoring of the Improvements, the Mortgagee, after deducting the costs of any collection, adjustment and compromise, shall apply such insurance proceeds in accordance with the terms of the Note upon the Loan, provided that any amount so applied by the Mortgagee in reduction of the outstanding principal balance of the Note shall be credited to installments of principal (without any Prepayment Premium) in the inverse order of their maturity but no such application shall delay or postpone any installment payment of principal and interest under the Note.
- (d) The Mortgagee may, at its option, in its own name (i) appear or proceed in any condemnation proceeding, and (ii) make any compromise or settlement thereof for any loss in excess of One Hundred Thousand and 00/100 (\$100,000.00) Dollars, provided that so long as the Leasehold Mortgagor promptly prosecutes any compromise or settlement thereof, the Leasehold Mortgagor shall control any compromise or settlement proceeding with the result thereof being subject to the Mortgagee's approval. The Leasehold Mortgagor and the Fee Mortgagor shall give the Mortgagee prompt written notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other items served in any condemnation proceeding. The Leasehold Mortgagor and the Fee Mortgagor hereby assign, transfer and set over unto the Mortgagee the entire proceeds of any award or any claim for damages for the Mortgaged Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Secured Obligations, whether due or not, or make said proceeds available for restoration or rebuilding of the Mortgaged Premises. In the event that the proceeds are made available to the Leasehold Mortgagor in accordance with the terms, conditions, and provisions of the immediately preceding sentence or in the event that the Mortgagee, in its sole and absolute discretion, otherwise elects to make said proceeds available to reimburse the Leasehold Mortgagor for the cost of the rebuilding or restoration of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may reasonably require. In the event that the condemnation proceeds are in an amount equal to or greater than One Hundred Thousand and 00/100 (\$100,000.00) Dollars, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee in its reasonable discretion prior to commencement of any building or restoration. If the proceeds are made available by the Mortgagee to reimburse a Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be applied on account of the Loan or be paid to any party entitled thereto. No interest shall be allowed to the Leasehold Mortgagor or the Fee Mortgagor on the proceeds of any award held by the Mortgagee.

5.7 **MAINTENANCE AND PRESERVATION OF THE MORTGAGED PREMISES.** The Leasehold Mortgagor, and, with respect to the following clauses (b), (c), (e), (f), (g), and (h) only,

the Fee Mortgagor each hereby covenants: (a) to insure the Mortgaged Premises and Fixture Collateral in accordance with the terms, conditions, and provisions of Section 5.14 hereof and, at the Mortgagee's request, to provide evidence of such insurance to the Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Mortgaged Premises and Fixture Collateral in good condition and repair; (c) not to remove or demolish the Mortgaged Premises or Fixture Collateral or any part thereof, not to alter, restore or add to the Mortgaged Premises or Fixture Collateral, except for normal maintenance and replacement as deemed reasonably necessary by the Leasehold Mortgagor, and not to initiate or acquiesce in any change in any zoning or other land classification without the Mortgagee's prior express written consent; (d) to complete or restore promptly and in good and workmanlike manner the Mortgaged Premises and Fixture Collateral, or any part thereof which may be damaged or destroyed, so long as the Mortgagee makes insurance or condemnation proceeds, as applicable, available to the Leasehold Mortgagor for such purposes; (e) to comply with all laws, ordinances, regulations, standards, covenants, conditions, restrictions, and equitable servitudes, whether public or private, of every kind and character which affect the Mortgaged Premises or the Fixture Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Mortgaged Premises or the Fixture Collateral; (g) to immediately pay when due or within any applicable grace period any indebtedness which may be secured by a lien or charge on the Mortgaged Premises, and, upon request, exhibit satisfactory evidence to Mortgagee of the discharge of such lien; and (h) to do all other acts which from the character or use of the Mortgaged Premises or the Fixture Collateral may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At the Leasehold Mortgagor's sole expense, the Leasehold Mortgagor and the Fee Mortgagor shall protect, preserve and defend the Mortgaged Premises and the Fixture Collateral, and its title to and right of possession of the Mortgaged Premises and the Fixture Collateral, the security hereof and the rights and powers of the Mortgagee hereunder against all adverse claims. The Leasehold Mortgagor and the Fee Mortgagor shall give the Mortgagee prompt written notice of the assertion of any adverse claim, of the filing of any action or proceeding, of the occurrence of any damage to the Mortgaged Premises or the Fixture Collateral and of any condemnation offer or action.

5.9 **DUE ON SALE OR ENCUMBRANCE.**

(a) Subject to the terms, conditions, and provisions of Sections 5.9(b) and (c) below, if, without the Mortgagee's prior express written consent, (i) the Leasehold Mortgagor's or the Fee Mortgagor's respective interests in and to the Mortgaged Premises or any part thereof or any interest in the Leasehold Mortgagor or the Borrower is sold or conveyed; (ii) title to the Mortgaged Premises or any of the Leasehold Mortgagor's or the Fee Mortgagor's respective interests therein is divested; (iii) the Mortgaged Premises or the Leasehold Mortgagor's or the Fee Mortgagor's respective interests in and to the Mortgaged Premises is further encumbered or pledged (other than in favor of the Mortgagee); (iv) any Lease (other than the Ground Lease) which gives the lessee any option to purchase the Mortgaged Premises or any part thereof is entered into; or (v) without limiting the generality of the foregoing, the ownership of shares of the Leasehold Mortgagor or the Borrower, if a corporation, or of any corporate general partner of the Leasehold Mortgagor or the Borrower, if a partnership, or the general partnership interests in any partnership which is a general partner of the Leasehold Mortgagor or the

Borrower, or any membership interest in the Leasehold Mortgagor or the Borrower which is a limited liability company, or any beneficial or fiduciary interest in the Leasehold Mortgagor or the Borrower which is a trust or trustee is sold or conveyed, the Mortgagee, in its sole and absolute discretion, shall be entitled to declare an Event of Default, accelerate the Secured Obligations and declare the then unpaid principal balance and all accrued interest and other sums due and payable under the Note due and payable and exercise all rights and remedies available to the Mortgagee under the Loan Documents. The Leasehold Mortgagor and the Fee Mortgagor understand that the ownership of the Mortgaged Premises and the Improvements by the Leasehold Mortgagor and the Fee Mortgagor is a material inducement to the Mortgagee in the making the Loan available to the Borrower.

- (b) Notwithstanding the terms, conditions, and provisions of the foregoing Section 5.9(a) to the contrary, the Mortgagee shall permit the following transfers without the Mortgagee's prior consent and without the payment of a transfer fee or any change in the terms, conditions, or provisions of the Loan provided that (i) no Event of Default exists, (ii) the Mortgagee is promptly notified of any such proposed transfer and provided with such documentation evidencing such transfer and the identity of the applicable transferee as may be reasonably requested by the Mortgagee, (iii) assumption documents, if deemed necessary by the Mortgagee, in a form that is acceptable to the Mortgagee are executed by the transferee and delivered to the Mortgagee, and (iv) the Leasehold Mortgagor reimburses the Mortgagee for all fees and expenses, including reasonable attorney's fees and costs, associated with the Mortgagee's review and documentation of such transfer:
- (1) Any interest in the Leasehold Mortgagor may be transferred upon the death of the holder of said interest but only by will or intestacy; and
 - (2) Any interest in the Leasehold Mortgagor may be voluntarily sold, transferred, conveyed or assigned to immediate family members or family trusts for estate planning purposes, provided that at all times there exists a minimum of fifty-one percent (51%) ownership and control of the Mortgaged Premises and the Leasehold Mortgagor by parties owning interests existing as of the date hereof. For the purposes of this Mortgage, the term "immediate family members" shall mean the spouse, children, grandchildren, siblings, and the children's siblings of each existing holder of an interest in the Leasehold Mortgagor as of the date hereof, or a trust for the benefit of one of more of any such persons; and
 - (3) Any interest in the Leasehold Mortgagor may be voluntarily sold, transferred or conveyed or assigned to another person owning an interest in the Leasehold Mortgagor as of the date hereof.

Notwithstanding the foregoing to the contrary, no transfer shall be permitted under this Section 5.9(b) if such transfer would result in a breach of the representations, warranties, and covenants contained in Paragraph [15(ii)] of the Note.

- (c) Notwithstanding the terms, conditions, and provisions of the foregoing Sections 5.9(a) and (b) to the contrary, the Mortgagee will permit a one time transfer of the Mortgaged Premises; provided that (i) the Mortgaged Premises and that certain property owned by Phenix Milledgeville, L.P., a Georgia limited partnership (hereinafter referred to as the

“Affiliate Borrower”), and located at 145 S Irwin Street, Milledgeville, Georgia 31061 (hereinafter referred to as the “Related Premises”), which Related Premises is encumbered by a security instrument in favor of the Mortgagee as security for a loan from the Mortgagee to the Affiliate Borrower made as of the date hereof (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “Affiliate Loan”, and hereinafter the Loan and the Affiliate Loan shall be collectively referred to as the “Affiliate Loans”) are similarly transferred in accordance with the terms, conditions, and provisions of the loan documents which evidence the Affiliate Loans; (ii) the transferee has a financial and credit standing and management expertise acceptable to the Mortgagee as being equal to or greater than that of the Leasehold Mortgagor, the Borrower and the Affiliate Borrower at the time of the original approval of the Affiliate Loans; (iii) assumption documents in form and substance satisfactory to the Mortgagee are executed by the transferee and delivered to the Mortgagee; (iv) the Mortgagee is paid a transfer fee equal to one percent (1%) of the then outstanding aggregate balance of the Affiliate Loans; (v) the Leasehold Mortgagor reimburses the Mortgagee at closing for all fees and expenses associated with the transfer including legal fees; (vi) the Mortgagee receives an endorsement to its title insurance policy, in form and substance acceptable to the Mortgagee; and (vii) at the Mortgagee’s option, the Mortgagee receives opinions of counsel and Mortgagor and transferee authorization documents in form and substance acceptable to the Mortgagee. Further, the Mortgagee, in its sole judgment and discretion, may require individuals specifically named by the Mortgagee to execute and deliver to the Mortgagee an environmental indemnification agreement on the Mortgagee’s standard form, and if said transferee desires to mirror the “borrower”, “guarantor” and ownership structure that exists as of the date hereof among the Leasehold Mortgagor, the Fee Mortgagor, and the Borrower, (A) the Mortgagee shall require a replacement borrower, with a financial and credit standing and management expertise acceptable to the Mortgagee as being equal to or greater than that of the Borrower at the time of the original approval of the Loan; and (B) the Mortgagee may require that such other individuals and/or entities (including, without limitation, the Fee Mortgagor and said replacement borrower) execute such other loan documents as the Mortgagee may reasonably require, including, without limitation, replacement guaranties, notes, and bond pledge agreements. The rights granted to the Leasehold Mortgagor in this Section 5.9(b) are personal to the Leasehold Mortgagor, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any subsequent transferee. Upon the closing and consummation of any such transfer, the Mortgagee shall release the Leasehold Mortgagor and, if applicable, the Borrower and any other presently obligated guarantor of the Loan from liability under the Loan Documents, other than any such liability (1) that arose on or prior to the effective date of the transfer or (2) that could be based on any event that occurred or any state of affairs that existed prior to or as of the effective date of the transfer; provided further that such release shall also be conditioned upon, without limitation, the execution of new guaranties and the Mortgagee’s then-current environmental indemnification agreement by one or more new guarantors as may be reasonably acceptable to the Mortgagee, which replacement guarantor(s) shall have an aggregate net worth of at least \$35,000,000.00 at the time of such transfer, and such other requirements as the Mortgagee may deem appropriate in its discretion.

5.10 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.**
 Without notice to or the consent, approval or agreement of any Persons having any interest at any

time in the Mortgaged Premises and Fixture Collateral or in any manner obligated under the Secured Obligations (hereinafter referred to as “Interested Parties”), the Mortgagee may, from time to time, release any Person from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Mortgaged Premises and Fixture Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Mortgaged Premises and Fixture Collateral.

- 5.11 **RELEASE**. If the Secured Obligations are paid and performed in full in accordance with the terms of this Mortgage and the Note and other security instruments and documents and writings evidencing or securing all or any part of the Secured Obligations, and if the Leasehold Mortgagor and the Fee Mortgagor shall well and truly perform all of the Leasehold Mortgagor’s and the Fee Mortgagor’s respective covenants contained herein, then this conveyance shall be released promptly upon the Leasehold Mortgagor’s or the Fee Mortgagor’s request.
- 5.12 **SUBROGATION**. The Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by the Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.13 **RIGHT OF INSPECTION**. The Mortgagee, its agents and employees, may enter the Mortgaged Premises at any reasonable time during normal business hours on reasonable advance written notice for the purpose of inspecting the Mortgaged Premises and Fixture Collateral and ascertaining the Leasehold Mortgagor’s and the Fee Mortgagor’s compliance with the terms hereof, provided however that no such notice or hours restrictions shall apply to the Mortgagee while an Event of Default exists.
- 5.14 **INSURANCE**.
- (a) Until the Secured Obligations are fully paid, the Improvements and all fixtures, equipment, and property therein contained or installed shall be kept unceasingly insured against loss and damage by such hazards, casualties and contingencies in such amounts as is customary for similar properties in similar locations and for such periods as may from time to time be required by the Mortgagee. All insurance shall be written in policies, and by insurance companies, approved by the Mortgagee, which approval shall not be unreasonably withheld so long as an A.M. Best Key Rating Guide Class of at least A X is maintained and the policy otherwise conforms to the terms hereof. No policy of insurance shall contain a co-insurance clause or other clause limiting the amount of coverage under any conditions. All policies of insurance and renewals thereof shall contain standard noncontributory mortgagee loss payable clauses to the Mortgagee and any participating lender and shall provide for at least thirty (30) days prior written notice of cancellation, termination, modification, or non-renewal to the Mortgagee, as well as a waiver of subrogation endorsement, all as required by the Mortgagee, in form and content acceptable to the Mortgagee. Original Acord 28 (as to the property insurance only) and Acord 25 (as to the liability insurance only) certificates of insurance with respect to such policies shall be delivered to the Mortgagee, together with evidence that all premiums with respect thereto have been fully paid, at least thirty (30) days prior to the expiration of the existing policies until all sums hereby secured are fully paid. The Mortgagee and

any participating lender shall be named as first loss payee/mortgagee, as to any property or casualty insurance policies and as additional insured, as to any liability insurance policies. The Leasehold Mortgagor covenants and agrees to pay promptly when due all premiums for said insurance throughout the term of the Loan or to deposit funds into the Insurance Account for the payment of such premiums in accordance with the terms hereof. Upon request by the Mortgagee, the Leasehold Mortgagor shall furnish the Mortgagee evidence of the replacement cost of the Improvements. In case of a sale pursuant to a foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises and extinguishment of the Loan, complete title to all policies, other than liability insurance policies, held by the Mortgagee (and, if applicable, the Fee Mortgagor) and all prepaid or unearned premiums thereon shall pass to and vest in the purchaser or grantee. The Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

- (b) Without in any way limiting the generality of the foregoing, the Leasehold Mortgagor covenants and agrees to maintain or cause to be maintained insurance coverage on the Mortgaged Premises which shall include: (i) physical hazard insurance on an “all risks” basis with a Replacement Cost Endorsement, an Increased Cost of Construction Endorsement and an Agreed Amount Endorsement, covering the perils of fire, flood (if in a flood hazard zone), earthquakes (if in an earthquake zone), boiler and machinery (to include major components of HVAC systems, if not already included in the above coverage, and such other equipment as the Mortgagee may require), windstorm, and such other perils as the Mortgagee may require, and extended coverage in an amount at least equal to the amount of the Note and not less than the full replacement cost of the Improvements and the personal property collateral (“Full replacement cost” shall mean the cost of replacing the Improvements and the personal property collateral without deduction for physical depreciation); (ii) rental interruption insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in clause (i) above, in an amount equal to not less than the gross revenue from the Mortgaged Premises for twelve (12) months from the operation and rental of all Improvements now or hereafter forming part of the Mortgaged Premises, based upon one hundred percent (100%) occupancy of such Improvements, less any allocable charges and expenses which do not continue during the period of restoration and naming the Mortgagee in a standard mortgagee loss payable clause thereunder; (iii) commercial general liability insurance covering claims for bodily injury, death and property damage in an amount which the Mortgagee may reasonably require and sufficient to satisfy all Lease requirements; (iv) flood insurance whenever in the Mortgagee’s sole judgment such protection is necessary and is available and in such case in an amount acceptable to the Mortgagee and naming the Mortgagee as the loss payee thereunder; (v) insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the Improvements, in an amount satisfactory to the Mortgagee, such policies also to insure against physical damage to such buildings and improvements arising out of peril covered thereunder; (vi) earthquake and terrorism insurance, if required by the Mortgagee; and (vii) such other insurance that may be reasonably required from time to time by the Mortgagee.
- (c) Neither the Leasehold Mortgagor nor the Fee Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

5.15 **EXCULPATORY**. The liability of the Leasehold Mortgagor personally to pay the Note or any interest that may accrue thereon, or any Indebtedness or obligation accruing or arising hereunder is limited to the extent set forth in the Guaranty. The liability of the Fee Mortgagor with respect to any and all obligations, liabilities, and responsibilities under this Mortgage is limited to the extent set forth in Article 9 below.

5.16 **ENVIRONMENTAL MATTERS; NOTICE; INDEMNITY**. The Leasehold Mortgagor and the Fee Mortgagor hereby covenant and agree as follows:

(a) For purposes of this Mortgage, the following definitions shall apply:

(i) The term “Environmental Law” and “Environmental Laws” means and includes any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Mortgaged Premises, including without limitation each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.* (hereinafter referred to as the “CERCLA”); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 *et seq.* (hereinafter referred to as the “RCRA”); the Federal Hazardous Materials Transportation Act, as amended, 49 U.S.C. sections 5101 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. sections 2601 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. sections 1857 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.*; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state, county and municipal agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Mortgaged Premises or the use or operation of the Mortgaged Premises.

(ii) The term “Hazardous Substance” or “Hazardous Substances” means and includes: (1) those substances included within the definitions of “hazardous substances”, “hazardous materials”, “hazardous waste”, “pollutants”, “toxic substances” or “solid waste” in any Environmental Law; (2) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto); (3) those other substances, materials and wastes which are or become, regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (4) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a “hazardous substance” pursuant to section 311 or section 307 of the Clean Water Act (33 U.S.C. sections 1251 *et seq.*); (D) explosive; (E) radioactive; (F) a petroleum product, by-product, or fraction thereof; (G) infectious waste; or (H) mold or mycotoxins. Notwithstanding anything to the contrary herein, the term “Hazardous Substance” shall not include commercially sold products which are otherwise included within the definition of the term “Hazardous Substance”, but (X) which are used or disposed of by the

Leasehold Mortgagor or used or sold by tenants of the Mortgaged Premises in the ordinary course of their respective businesses, (Y) the presence of which is not prohibited by applicable Environmental Law, and (Z) the use, sale, and disposal of which are in all material respects in accordance with applicable Environmental Law.

- (iii) The term “Enforcement or Remedial Action” means and includes any action taken by any Person in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law.
 - (iv) The term “Environmental Liability” means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys’ fees and disbursements, resulting from or arising out of the violation or alleged violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.
- (b) Each of the Leasehold Mortgagor (for itself and its successors and assigns) and the Fee Mortgagor (for itself and its successors and assigns), after reasonable inquiry during the Leasehold Mortgagor’s and the Fee Mortgagor’s respective ownership of the Mortgaged Premises and to the knowledge of the Leasehold Mortgagor for all periods of time prior to such ownership, hereby covenants, warrants, and represents that, except as set forth in that certain [_____], dated as of [_____], being [**Project Number** _____]:
- (i) No Hazardous Substances have been or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate, or shall threaten to be injected, emptied, poured, leached, or spilled on or from the Mortgaged Premises.
 - (ii) No asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, placed on, or disposed of on the Mortgaged Premises.
 - (iii) No polychlorinated biphenyls (hereinafter referred to as “PCBs”) are or will be located on or in the Mortgaged Premises, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device.
 - (iv) No underground storage tanks are or will be located on the Mortgaged Premises or were located on the Mortgaged Premises and subsequently removed or filled.
 - (v) No investigation, administrative order, consent order and agreement, litigation, settlement, lien, or encumbrance with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Mortgaged Premises.
 - (vi) The Mortgaged Premises and the Fee Mortgagor’s ownership and operation of its

fee simple estate and interest in and to the Mortgaged Premises and the Leasehold Mortgagor's ownership and operation of its leasehold estate and interest in and to the Mortgaged Premises are in material compliance with all applicable Environmental Laws, including, without limitation, any state and local statutes, laws and regulations. No notice has been served on the Leasehold Mortgagor, or any subsidiary of the Leasehold Mortgagor, from any entity, government body, or individual claiming any law, regulation ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources. Copies of any such notices received after settlement shall be forwarded to the Mortgagee within three (3) days of their receipt.

- (vii) To the knowledge of the Leasehold Mortgagor, there has been no release or threat of release of any Hazardous Substances from any property adjoining or in the immediate vicinity of the Mortgaged Premises. The Fee Mortgagor has no knowledge of the release or threat of release of any Hazardous Substances from any property adjoining or in the immediate vicinity of the Mortgaged Premises.
 - (viii) No portion of the Mortgaged Premises is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. §1344) or any comparable state statute or local ordinance or regulation defining or protecting wetlands or other special aquatic areas, except as may be shown on any survey approved by the Mortgagee in connection with the Loan or as may have otherwise been expressly disclosed in writing to the Mortgagee.
 - (ix) There are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Mortgaged Premises that exceed background ambient air levels or are not being monitored in compliance and as required under all applicable Environmental Laws.
 - (x) To the knowledge of the Leasehold Mortgagor, there have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Mortgaged Premises. To the best of the Fee Mortgagor's knowledge, there have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Mortgaged Premises.
- (c) The Leasehold Mortgagor and the Fee Mortgagor shall give prompt written notice to the Mortgagee of:
- (i) any proceeding, known investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Mortgaged Premises or the migration thereof to or from adjoining property;
 - (ii) all claims made or threatened in writing by any individual or entity against the Leasehold Mortgagor, the Fee Mortgagor or the Mortgaged Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and
 - (iii) the discovery by the Leasehold Mortgagor or the Fee Mortgagor of any

occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Premises which may reasonably cause the Mortgaged Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law.

- (d) The Mortgagee shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the compliance of the Mortgaged Premises with Environmental Laws; and to (ii) have all costs and expenses thereof (including without limitation the Mortgagee's reasonable attorneys' fees and costs) paid by the Leasehold Mortgagor.
- (e) The Leasehold Mortgagor, its successors and assigns agree to protect, defend, indemnify and hold harmless the Mortgagee, its directors, officers, employees, shareholders, agents, contractors, sub-contractors, consultants, licensees, invitees, participants, successors and assigns, from and against any Environmental Liability and any and all claims, demands, judgments, settlements, damages, actions, causes of actions, injuries, administrative orders, consent agreements, and orders, liabilities, penalties, costs, including but not limited to any cleanup costs, remediation costs, response costs, and all expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of the Leasehold Mortgagor and/or the Fee Mortgagor, or their respective predecessors in interest, third parties who have trespassed on the Mortgaged Premises, or parties in a contractual relationship with the Leasehold Mortgagor or the Fee Mortgagor, or any of them, which:
 - (i) arises out of the actual, alleged or threatened migration, spilling, leaching, pouring, emptying, injecting, discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Hazardous Substances at, on or from the Mortgaged Premises; or
 - (ii) actually or allegedly arises out of, in connection with the Mortgaged Premises, the use, specification, or inclusion of any product, material or process containing Hazardous Substances, the failure to detect the existence or proportion of Hazardous Substances in the soil, air, surface water or ground water, or the performance or failure to perform the abatement of any Hazardous Substances source or the replacement or removal of any soil, water, surface water, or ground water containing Hazardous Substances; or
 - (iii) arises out of the breach of any covenant, warranty, or representation of the Leasehold Mortgagor or the Fee Mortgagor contained herein and relating to environmental matters; or
 - (iv) arises out of a judicial or administrative action brought pursuant to any other Environmental Laws or any similar state law that relates to the Mortgaged Premises.

The Leasehold Mortgagor, its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against the Mortgagee described in this subsection (e)

above, shall hold the Mortgagee harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all Persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this subsection (e).

The Leasehold Mortgagor's indemnifications and representations made herein shall survive any termination or expiration of the documents securing the Loan and/or the repayment of the Loan evidenced by the Note including, without limitation, any foreclosure on this Mortgage or deed-in-lieu of foreclosure, it being understood and agreed that the indemnity given herein is independent of the Secured Obligations and the Loan Documents. Further notwithstanding the foregoing to the contrary, the Leasehold Mortgagor's indemnifications and representations contained herein shall not extend to Hazardous Substances which first originate on the Mortgaged Premises subsequent to the Mortgagee's succession to title to the Fee Mortgagor's fee simple estate in and to the Mortgaged Premises and/or the Leasehold Mortgagor's leasehold estate and interest in and to the Mortgaged Premises by virtue of a foreclosure or the acceptance of a deed in lieu of foreclosure.

- (f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (hereinafter referred to as the "Remedial Work") is required (in the case of an operation and maintenance program or similar monitoring or preventative program) or necessary, in each case as determined by an independent environmental consultant selected by the Mortgagee, under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental Person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Mortgaged Premises or any portion thereof in violation of any Environmental Law, the Leasehold Mortgagor shall within thirty (30) days after written demand by the Mortgagee for the performance (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by the Mortgagee and under the supervision of a consulting engineer approved in advance by the Mortgagee. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of the Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by the Leasehold Mortgagor. If the Leasehold Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of the Mortgagee's counsel), shall be paid by the Leasehold Mortgagor to the Mortgagee forthwith after written demand and shall be a part of the Secured Obligations. Without limiting the generality of the foregoing, if any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature is required under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental entity, board, commission or agency, because of or in connection with the current or future

presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Mortgaged Premises or any portion thereof in violation of any Environmental Law, the Leasehold Mortgagor shall prosecute to completion all such remedial work to the extent required by law, in the time frames and as required by said law, regulation, ordinance, order, judgment, entity, board, commission, or agency.

- (g) If recommended by any environmental report, assessment or audit of the Mortgaged Premises, the Leasehold Mortgagor shall establish and comply with an operations and maintenance program with respect to the Mortgaged Premises, in form and substance reasonably acceptable to the Mortgagee, prepared by an environmental consultant reasonably acceptable to the Mortgagee, which program shall address any asbestos containing material or lead based paint that may now or in the future be detected at or on the Mortgaged Premises. Without limiting the generality of the preceding sentence, the Mortgagee may require (i) periodic notices or reports to the Mortgagee in form, substance and at such intervals as the Mortgagee may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at the Leasehold Mortgagor's sole cost and expense, supplemental examination of the Mortgaged Premises by consultants specified by the Mortgagee, (iv) access to the Mortgaged Premises by the Mortgagee, its agents or servicer to review and assess the environmental condition of the Mortgaged Premises and the Leasehold Mortgagor's compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

5.17 **FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.**

- (a) The Leasehold Mortgagor hereby covenants and agrees that it will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Mortgaged Premises, which books and records of account shall, at reasonable times during business hours and, provided no Event of Default exists, on reasonable advance written notice, be open to inspection by the Mortgagee and the Mortgagee's accountants and other duly authorized representatives at, provided no Event of Default exists, the Mortgagee's cost and expense. Such books of record and account shall be kept and maintained in accordance with cash basis accounting principles, consistently applied.
- (b) The Leasehold Mortgagor covenants and agrees to furnish, or cause to be furnished to the Mortgagee, annually, within ninety (90) days following the end of each fiscal year of the Leasehold Mortgagor during the term of the Loan, unaudited annual financial reports covering the operation of the Mortgaged Premises and the Leasehold Mortgagor, prepared in accordance with cash basis accounting principles, consistently applied, including balance sheets, income statements and cash flow statements covering the operation of the Mortgaged Premises and the Leasehold Mortgagor for the previous fiscal year, and a current rent roll, all certified to the Mortgagee by the general partner of the Leasehold Mortgagor or its chief financial officer as being true, correct, and complete in all material respects as of the date made.

- (c) The Leasehold Mortgagor covenants and agrees to furnish, or cause to be furnished to the Mortgagee, quarterly, within thirty (30) days following the end of each fiscal quarter of the Leasehold Mortgagor during the term of the Loan, unaudited quarterly financial reports covering the operation of the Mortgaged Premises and the Leasehold Mortgagor, prepared in accordance with cash basis accounting principles, consistently applied, including balance sheets, income statements and cash flow statements covering the operation of the Mortgaged Premises and the Leasehold Mortgagor for the previous fiscal quarter, and a current rent roll, all certified to the Mortgagee by the general partner of the Leasehold Mortgagor or its chief financial officer as being true, correct, and complete in all material respects as of the date made.
- (d) The Leasehold Mortgagor covenants and agrees to cause the “Carveout Guarantor” (as such term is defined in the Note) to furnish to the Mortgagee annually, within thirty (30) days following the end of each calendar year of the Carveout Guarantor during the term of the Loan, unaudited annual financial reports for the Carveout Guarantor, prepared in accordance with cash basis accounting principles, consistently applied, certified to the Mortgagee by the Carveout Guarantor as being true, correct, and complete in all material respects as of the date made.
- (e) During the term of the Loan, the Mortgagee shall have the right to request, and the Leasehold Mortgagor shall provide to the Mortgagee upon such request, such additional financial information as the Mortgagee may determine is necessary or appropriate, in its sole and absolute discretion, as well as an updated rent roll for the Mortgaged Premises for the purposes of monitoring current leasing.
- (f) If the Leasehold Mortgagor omits to deliver, or cause to be delivered, as required any report or statement required by this Section 5.17, and said omission is not cured by the Leasehold Mortgagor within thirty (30) days after written notice of such omission has been given by the Mortgagee to the Leasehold Mortgagor, the Mortgagee may elect, in addition to exercising any remedy for an Event of Default as provided for in this Mortgage, to make an audit of all books and records of the Leasehold Mortgagor including its bank accounts which in any way pertain to the Mortgaged Premises and to prepare the statement or statements which the Leasehold Mortgagor failed to procure and deliver. Such statement or statements shall be prepared by an independent certified public accountant to be selected by the Mortgagee. The Leasehold Mortgagor shall pay all reasonable expenses of the audit and other services, which expenses shall be secured by this Mortgage as additional Secured Obligations and shall be promptly due and payable with interest thereon at the Default Rate and shall be secured by this Mortgage.
- (g) The Leasehold Mortgagor hereby represents and warrants to the Mortgagee that, as of the date hereof, that the financial condition of the Leasehold Mortgagor, the Borrower, the Carveout Guarantor, and their respective principals, as applicable, has not materially deteriorated from the financial condition indicated in the financial statements and other financial information provided to the Mortgagee at the time of Loan application, and, as of the date hereof, no action is threatened or pending under any bankruptcy or insolvency laws and there is no other litigation pending with respect to the Leasehold Mortgagor, the Borrower, the Carveout Guarantor, and/or their respective principals, as applicable, that might materially or adversely affect the security of the Loan.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **EVENT OF DEFAULT.** It is expressly agreed by the Leasehold Mortgagor and the Fee Mortgagor that time is of the essence hereof and that the whole of the Secured Obligations shall become immediately due and payable without notice to the Leasehold Mortgagor or the Fee Mortgagor at the option of the Mortgagee upon the occurrence and during the continuance of any of the following (hereinafter any such occurrence shall constitute an “Event of Default” under this Mortgage): (a) an “Event of Default” (as such term is defined in the Note or any of the other Loan Documents) under the Note and/or any of the other Loan Documents; (b) a default in the due observance or performance of the terms and conditions of Section 5.9 hereof (Due on Sale or Further Encumbrance) or Section 5.14 hereof (Insurance); provided that the Mortgagee will not commence foreclosure proceedings for a violation of Section 5.14 hereof (Insurance) if such violation is cured within ten (10) days following written notice of such violation by the Mortgagee to the Leasehold Mortgagor; or (c) a default or violation, beyond any applicable grace period, of any condition, covenant, or restriction which benefits or burdens the Mortgaged Premises and such default is not cured within thirty (30) days following written notice thereof by the Mortgagee to the Leasehold Mortgagor or within such longer period of time, not exceeding an additional thirty (30) days, as may be reasonably necessary to cure such non-compliance if the Leasehold Mortgagor is diligently and with continuity of effort pursuing such cure and the failure is susceptible of cure within an additional period of thirty (30) days.

If, while any insurance proceeds or condemnation awards are being held by the Mortgagee to reimburse the Leasehold Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Mortgaged Premises, the Mortgagee shall accelerate the Secured Obligations, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Secured Obligations and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to the Leasehold Mortgagor or any other party entitled thereto without interest.

- 6.2 **RIGHTS AND REMEDIES.** At any time after the occurrence and during the continuance of an Event of Default, the Mortgagee shall have all the following rights and remedies:

- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
- (b) With or without notice, and without releasing the Leasehold Mortgagor or the Fee Mortgagor from any of the Secured Obligation, and without becoming a mortgagor in possession, to cure any breach or Event of Default of the Leasehold Mortgagor or the Fee Mortgagor and, in connection therewith, to enter upon the Mortgaged Premises and do such acts and things as the Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of the Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either the Mortgagee, is or may be senior in priority to this Mortgage, the judgment of the Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage in the event such insurance is not then maintained by the Leasehold Mortgagor or any tenant of the Leasehold Mortgagor; or (iv) to employ counsel, accountants, contractors and other appropriate persons;

- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of the Leasehold Mortgagor and/or the Fee Mortgagor hereunder, and the Leasehold Mortgagor and the Fee Mortgagor agree that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, the Leasehold Mortgagor and the Fee Mortgagor waive the defense of laches and any applicable statute of limitations. It is further acknowledged and agreed that the Mortgagee may foreclose upon the Leasehold Mortgagor's leasehold estate and interest in and to the Mortgaged Premises without, at the same time, also foreclosing against the Fee Mortgagor's fee simple estate and interest in and to the Mortgaged Premises, and any such foreclosure against solely the Leasehold Mortgagor's leasehold estate and interest shall not adversely affect or exhaust the lien of this Mortgage against the Fee Mortgagor's fee simple estate and interest in and to the Mortgaged Premises, and the lien (and the terms) of this Mortgage shall thereafter continue in full force and effect against the Fee Mortgagor's fee simple estate and interest in and to the Mortgaged Premises until the Secured Obligations shall have indefeasibly been repaid in full;
- (d) To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Mortgaged Premises as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and the Leasehold Mortgagor and the Fee Mortgagor hereby consent to such appointment;
- (e) To enter upon, possess, manage and operate the Mortgaged Premises or any part thereof, to take and possess all documents, books, records, papers and accounts of the Leasehold Mortgagor or the then owner of the Mortgaged Premises, to make, terminate, enforce or modify Leases of the Mortgaged Premises upon such terms and conditions as the Mortgagee deems proper, to make repairs, alterations and improvements to the Mortgaged Premises as necessary, in the Mortgagee's or the Mortgagee's sole judgment, to protect or enhance the security hereof;
- (f) To give such notice of such Event of Default and of its election to cause the Mortgaged Premises to be sold as may be required by law or as may be necessary to cause the Mortgagee to exercise the power of sale granted herein;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by the Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as the Mortgagee determines in its sole discretion.
- (h) Upon sale of the Mortgaged Premises at any judicial or non-judicial foreclosure, the Mortgagee may credit bid (as determined by the Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations and become the purchaser at any sale under this Mortgage. In determining such credit bid, the Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Mortgaged Premises as such appraisals may be discounted or adjusted by the Mortgagee in its sole

and absolute underwriting discretion; (ii) expenses and costs incurred by the Mortgagee with respect to the Mortgaged Premises prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Mortgaged Premises after foreclosure, but prior to resale, including, without limitation, costs of any structural reports and other due diligence, costs to carry the Mortgaged Premises prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Mortgaged Premises, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by the Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Mortgaged Premises; (v) anticipated discounts upon resale of the Mortgaged Premises as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that the Mortgagee reasonably deems appropriate. In regard to the above, the Leasehold Mortgagor acknowledges and agrees that: (w) the Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon the Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of the Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between the Leasehold Mortgagor and the Mortgagee; and (z) the Mortgagee's credit bid may be (at the Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Mortgaged Premises; and/or

- (i) Upon the completion of any foreclosure or Mortgagee's sale of all or a portion of the Mortgaged Premises, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of the Mortgagee, including, without limitation, cost of evidence of title and reasonable attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, the Mortgagee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by the Mortgagee under the terms hereof and not then repaid, with accrued interest at the Default Rate; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the Person or Persons legally entitled thereto.

6.4 **APPLICATION OF OTHER SUMS.** All sums received by the Mortgagee under Section 6.2 above or Section 3.2 hereof, less all costs and expenses incurred by the Mortgagee or any receiver under said Section 6.2 or Section 3.2, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as the Mortgagee shall determine in its sole discretion; provided, however, the Mortgagee shall have no liability for funds not actually received by the Mortgagee.

6.5 **NO CURE OR WAIVER.** Neither the Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Premises and Fixture Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by the Mortgagee

or any receiver shall, except to the extent prohibited by applicable law, cure or waive any breach, Event of Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and the Leasehold Mortgagor has cured all other defaults), or impair the status of the security, or prejudice the Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by the Mortgagee of any tenancy, lease or option or a subordination of the lien of or security interests created by this Mortgage.

6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** The Leasehold Mortgagor agrees to pay to the Mortgagee immediately and without demand all costs and expenses incurred by the Mortgagee pursuant to Section 6.2 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the Default Rate. Notwithstanding anything to the contrary contained herein, wherever it is provided that the Leasehold Mortgagor shall pay reasonable attorneys' fees or attorneys' fees, the Mortgagee acknowledges and agrees that the Leasehold Mortgagor shall only be obligated to pay attorneys' fees which are actually incurred or paid by the Mortgagee at such attorneys' standard billable rates, and the provisions of any Kentucky state statute, if any, providing for attorneys' fees based on a percentage of the loan balance shall be inapplicable.

6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Each of Mortgagor and the Fee Mortgagor hereby irrevocably appoints the Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, during the existence of any Event of Default: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that the Mortgagee deems appropriate to protect the Mortgagee's interest; (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Mortgaged Premises and Fixture Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose; and (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve the Mortgagee's security interests and rights in or to any of the Mortgaged Premises and Fixture Collateral. Upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default, the Mortgagee may perform any obligation of the Leasehold Mortgagor or the Fee Mortgagor hereunder; provided, however, that: (i) the Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by the Mortgagee; and (ii) the Mortgagee shall not be liable to the Leasehold Mortgagor, the Fee Mortgagor or any other Person for any failure to act (whether such failure constitutes negligence) by the Mortgagee under this Section 6.7.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to the Mortgagee and contain further agreements and affirmative and negative covenants by the Leasehold Mortgagor which apply to this Mortgage and to the Mortgaged Premises and Fixture Collateral and such further rights and agreements are incorporated herein by this reference.

- 7.2 **MERGER.** No merger shall occur as a result of the Mortgagee's acquiring any other estate in, or any other lien on, the Mortgaged Premises unless the Mortgagee expressly consents to a merger in writing.
- 7.3 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one Person has executed this Mortgage as "Mortgagor", the obligations of all such Persons hereunder shall be joint and several.
- 7.4 **WAIVER OF MARSHALLING RIGHTS.** The Leasehold Mortgagor and the Fee Mortgagor, for themselves and for all parties claiming through or under the Leasehold Mortgagor and/or the Fee Mortgagor, and for all parties who may acquire a lien on or interest in the Mortgaged Premises and Fixture Collateral, hereby waive all rights to have the Mortgaged Premises and Fixture Collateral and/or any other property, which is now or later may be security for any Secured Obligation (hereinafter referred to as an "Other Property") marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. The Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Mortgaged Premises and any or all of the Fixture Collateral or Other Property as a whole or in separate parcels, in any order that the Mortgagee may designate.
- 7.5 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Mortgaged Premises" and "Fixture Collateral" means all and any part of the Mortgaged Premises and Fixture Collateral, respectively, and any interest in the Mortgaged Premises and Fixture Collateral, respectively. The Leasehold Mortgagor and the Fee Mortgagor have been represented by their own independent counsel in this transaction, and this Mortgage shall not be construed more strongly against any party regardless of who was more responsible for its preparation.
- 7.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.6 does not waive or modify the provisions of Section 5.9 hereof.
- 7.7 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all Persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.8 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the Commonwealth of Kentucky, except to the extent that Federal law preempts the laws of the Commonwealth of Kentucky.

7.9 **INCORPORATION.** Exhibit "A", as attached hereto, is hereby incorporated into this Mortgage by this reference

7.10 **NOTICES.** All notices, demands, requests, and other communications desired or required to be given hereunder (hereinafter collectively referred to as the "Notices") shall be in writing and shall be given by: (a) hand delivery to the address for Notices; (b) delivery by overnight courier service to the address for Notices; or (c) sending the same by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices. All Notices shall be deemed given and effective upon the earliest to occur of: (i) the hand delivery of such Notice to the address for Notices; (i) one (1) Business Day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (3) three (3) Business Days after depositing the Notice in the United States mail as set forth in clause (c) above. All Notices shall be addressed to the following addresses:

Leasehold
Mortgagor: [_____]
[_____]
[_____]
Attention: [_____]

With a
copy to: [_____]
[_____]
[_____]
Attention: [_____]

Fee
Mortgagor: Louisville/Jefferson County Metro Government
527 W. Jefferson Street
Louisville, Kentucky 40202
Attention: Mayor

With a
copy to: Jefferson County Attorney
600 W. Jefferson Street
Louisville, Kentucky 40202
Attention: Civil Division

Mortgagee: Voya Retirement Insurance and Annuity Company
c/o Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Mortgage Loan Servicing Department

and

Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349

Attention: Real Estate Law Department

With a
copy to: Reed Smith LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540
Attention: Christopher J. Maurer, Esq.

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice; provided that the “copy to” Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

- 7.11 **CAPTIONS.** The captions or headings preceding the text of the sections or subsections of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.
- 7.12 **NO WAIVER; MODIFICATIONS IN WRITING.** No failure or delay on the part of the Mortgagee in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Mortgage, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Mortgage, any waiver of any provision of this Mortgage, and any consent to any departure from the terms of any provision of this Mortgage, shall be effective only in the specific instance and for the specific purpose for which made or given.
- 7.13 **FUTURE ADVANCES.** The parties intend that this Mortgage shall secure unpaid balances of loan advances and credit extensions made to the Borrower by the Mortgagee after this Mortgage is delivered for recording pursuant to the provisions of the Note, the Guaranty and the other Loan Documents. The maximum amount of the unpaid principal balance of said loan advances and credit extensions, in the aggregate and exclusive of interest accrued thereon and the advances described in the next paragraph, which may be outstanding at any time is double the face amount of the Note. In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances made for the payment of impositions, maintenance charges, real property taxes, assessments, insurance premiums or other costs incurred for the protection of the Mortgaged Premises.
- 7.14 **FILING AND RECORDING FEES.** The Leasehold Mortgagor will pay all filing, registration or recording fees and all reasonable expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, the Guaranty, and this Mortgage.
- 7.15 **BUSINESS PURPOSE.** The Leasehold Mortgagor represents, covenants and agrees that all of

the proceeds of the Note supported by the Guaranty which is secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Borrower.

- 7.16 **WAIVER OF STATUTORY RIGHTS.** The Leasehold Mortgagor and the Fee Mortgagor shall not, and will not, apply for or avail themselves of any homestead, appraisal, valuation, stay, extension or exemption laws, or any so-called “Moratorium Laws”, now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but to the extent lawfully allowed hereby waives the benefit of such laws. The Leasehold Mortgagor and the Fee Mortgagor, for themselves and all who may claim through or under the Leasehold Mortgagor and/or the Fee Mortgagor, waive any and all right to have the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. To the extent permitted by law, the Leasehold Mortgagor and the Fee Mortgagor do hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of the Leasehold Mortgagor and/or the Fee Mortgagor, the trust estate and all Persons beneficially interested therein and each and every Person, acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage.
- 7.17 **STAMP TAX.** If, by the laws of the United States of America, or of any state having jurisdiction over the Leasehold Mortgagor, Borrower and/or the Fee Mortgagor, any tax is due or becomes due in respect of the issuance of the Note supported by the Guaranty secured and this Mortgage, the Leasehold Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Leasehold Mortgagor further covenants to reimburse the Mortgagee for any sums which the Mortgagee reasonably expends by reason of the imposition of any tax on the issuance of the Note supported by the Guaranty secured hereby and this Mortgage.
- 7.18 **MARGIN SECURITIES.** The Leasehold Mortgagor covenants and agrees that it shall constitute an Event of Default hereunder if any of the proceeds of the Loan are given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of “purchasing” or “carrying” any “margin security” as such terms are defined in Regulation G of the Board of Governors of the Federal Reserve System (12 CFR Part 207) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.
- 7.19 **USURY.** In no event shall the amount of interest (and any other sums or amounts that are deemed to constitute interest under applicable legal requirements) due or payable hereunder or under any of the Loan Documents, including interest calculated at the Default Rate, exceed the highest rate of interest permissible under applicable law (hereinafter referred to as the “Maximum Amount”), and in the event such excess payment is inadvertently paid by the Leasehold Mortgagor or the Borrower or inadvertently received by the Mortgagee or the holder of the Note, then such excess sum shall be credited as a payment of principal on the Loan, and if in excess of the outstanding Loan, shall be immediately returned to the Leasehold Mortgagor or the Borrower, as applicable, upon such determination. It is the express intent hereof that the Leasehold Mortgagor and the Borrower not pay and the Mortgagee or the holder of the Note not receive, directly or indirectly, interest in excess of the Maximum Amount.
- 7.20 **SEVERABILITY.** In the event one or more of the provisions contained in this Mortgage or the

Guaranty secured hereby, or in any of the other Loan Documents, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

- 7.21 **FURTHER ASSURANCES.** The Leasehold Mortgagor and the Fee Mortgagor shall, from time to time, upon ten (10) Business Days prior written request from the Mortgagee, make, execute, acknowledge and deliver to the Mortgagee such supplemental certificates, agreements, and other documents, including, without limitation, UCC financing statements, as may be reasonably necessary for better assuring and confirming to the Mortgagee any of the Mortgaged Premises, or for more particularly identifying and describing the Mortgaged Premises, or to preserve or protect the priority of this Mortgage, and generally do and perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by the Mortgagee to carry out the intentions of this Mortgage.
- 7.22 **CONSENT RIGHTS.** Except for Permitted Encumbrances or as otherwise expressly approved by the Mortgagee in writing, which approval shall not be unreasonably withheld, conditioned, or delayed, the Leasehold Mortgagor and the Fee Mortgagor shall not by act or omission permit any building or other Improvement on any premises not subject to the lien of this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Leasehold Mortgagor and the Fee Mortgagor hereby assign to the Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used, which shall be reasonably exercised. Similarly, no building or other Improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement unless approved by the Mortgagee in writing which approval shall not be unreasonably withheld, conditioned or delayed. The Leasehold Mortgagor and the Fee Mortgagor shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot separate and apart from all other premises. Any act or omission by the Leasehold Mortgagor or the Fee Mortgagor which would result in a violation of any of the provisions of this Section 7.22 shall be void.
- 7.23 **CERTIFICATE.** Either party shall, from time to time, upon the written request of the other party and upon ten (10) Business Days prior written request, execute, acknowledge and deliver to the requesting party, a certificate stating that this Mortgage is unmodified and in full force and effect (or, if there have been modifications, that this Mortgage is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from the Leasehold Mortgagor shall also state to the best knowledge of the Leasehold Mortgagor whether any offsets or defenses to the Indebtedness exist and if so shall identify them.
- 7.24 **PROPERTY MANAGEMENT AGREEMENT.** The Leasehold Mortgagor shall exert its best efforts to include a “no lien” provision in any property management agreement hereafter entered into by the Leasehold Mortgagor or its beneficiary with a property manager for any portion of the Mortgaged Premises, whereby the property manager waives and releases any and all mechanics’ lien rights that he, or anyone claiming through or under such manager, may have. Such property management agreement containing such “no lien” provision or a short form thereof shall, at the Mortgagee’s request, be recorded in the office of the land records of the county wherein the Mortgaged Premises is situated, or such other office as reasonably requested by the Mortgagee.

7.25 **GENERAL INDEMNIFICATION.**

- (a) The Leasehold Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the “Indemnified Parties” (as such term is defined below) from and against any and all “Losses” (as such term is defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) any use, nonuse or condition in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Premises or any part thereof; (iv) any failure of the Mortgaged Premises to be in compliance with any applicable laws; (v) any and all claims, demands or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (vi) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan. Any amounts payable to the Mortgagee by reason of the application of this Section 7.25 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The term “Losses” shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys’ fees and other costs of defense). The term “Indemnified Parties” shall mean (1) the Mortgagee, (2) any prior owner or holder of the Note, (3) any servicer or prior servicer of the Loan, (4) any participant or any prior participant in any portion of the Loan, (5) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any participant or other third party, (6) any receiver or other fiduciary appointed in a foreclosure or other collection proceeding, (7) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (8) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan. **IT IS SPECIFICALLY INTENDED BY THE LEASEHOLD MORTGAGOR AND THE MORTGAGEE THAT ALL INDEMNITY OBLIGATIONS AND LIABILITIES ASSUMED BY THE LEASEHOLD MORTGAGOR HEREUNDER BE WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF (INCLUDING PREEXISTING CONDITIONS), STRICT LIABILITY, OR THE NEGLIGENCE OF ANY PARTY OR PARTIES (INCLUDING MORTGAGEE) WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR PASSIVE.**
- (b) Upon written request by any Indemnified Party, the Leasehold Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified

Parties. Notwithstanding the foregoing to the contrary, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, the Leasehold Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

- (c) The Leasehold Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents.

ARTICLE 8. GROUND LEASE PROVISIONS

8.1 **LEASEHOLD MORTGAGOR GROUND LEASE REPRESENTATIONS, WARRANTIES, AND COVENANTS.** With regards to the Ground Lease, the Leasehold Mortgagor hereby represents and warrants, and covenants and agrees, as applicable, with and for the benefit of the Mortgagee, as follows:

- (a) The Ground Lease is in full force and effect and has not been modified, amended, or supplemented, except as described in the definition of “Ground Lease”, and the Leasehold Mortgagor is the owner of the entire lessee’s interest in the Ground Lease and has the right and authority under the Ground Lease to execute this Mortgage and to encumber the Leasehold Mortgagor’s interest therein; and
- (b) All rents (including additional rents and other charges) reserved in the Ground Lease have been paid to the extent they were due and payable to the date hereof; and
- (c) There is no existing default (or any event which with the giving of notice or the passage of time would become a default) under the provisions of the Ground Lease or in the performance of any of the terms, covenants, conditions, or warranties thereof on the part of the Leasehold Mortgagor, as lessee, to be performed and observed; and
- (d) At all times throughout the term of this Mortgage, the Leasehold Mortgagor hereby agrees to fully perform and comply with all agreements, covenants, terms, and conditions imposed upon or assumed by the Leasehold Mortgagor, as lessee, under the Ground Lease, including, without limitation, the Leasehold Mortgagor’s obligations with respect to the payment of rent, prior to the expiration of any applicable notice and/or cure period provided for in the Ground Lease, and if the Leasehold Mortgagor shall not comply as stated, then the Mortgagee may (but shall not be obligated to) take any action the Mortgagee deems necessary or desirable to prevent or cure any default by the Leasehold Mortgagor in the performance of or compliance with any of the agreements, covenants, terms or conditions imposed upon or assumed by the Leasehold Mortgagor, as lessee under the Ground Lease, including, without limitation, the Leasehold Mortgagor’s obligations with respect to the payment of rent and all amounts so expended by the Mortgagee, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by the Leasehold Mortgagor to the Mortgagee promptly upon

demand by the Mortgagee and shall be added to the debt secured by, and shall have the benefit of the lien created by, this Mortgage. Upon the receipt by the Mortgagee from the Fee Mortgagor under the Ground Lease of any written notice of default by the Leasehold Mortgagor, as lessee thereunder, the Mortgagee may rely on said notice and take any action as aforesaid to cure such default event though the existence of such default or the nature thereof may be questioned or denied by the Leasehold Mortgagor. The curing by the Mortgagee of any default by the Leasehold Mortgagor under the Ground Lease shall not remove or waive, as between the Leasehold Mortgagor and the Mortgagee, the default which occurred hereunder by virtue of the default by the Leasehold Mortgagor under the Ground Lease (it being hereby acknowledged and agreed that a default under the Ground Lease shall constitute an Event of Default hereunder). All sums expended by the Mortgagee in order to cure any such default shall be paid by the Leasehold Mortgagor to the Mortgagee, upon demand, with interest thereon at the Default Rate. All such indebtedness shall be deemed to be secured by this Mortgage. No action or payment taken or made by the Mortgagee to prevent or cure a default by the Leasehold Mortgagor under the Ground Lease shall waive or cure the corresponding default under this Mortgage. The Leasehold Mortgagor hereby expressly grants to the Mortgagee, and agrees that the Mortgagee shall have, the absolute and immediate right to enter in and upon the Mortgaged Premises or any part thereof, to such extent and as often as the Mortgagee, in its sole and absolute discretion, deems necessary for any such purpose; and

- (e) The Leasehold Mortgagor hereby irrevocably names, constitutes, appoints, ratifies and confirms the Mortgagee, as the Leasehold Mortgagor's attorney-in-fact in the Leasehold Mortgagor's name, place, and stead, for the express purpose of, exercising any and all rights, privileges, powers and remedies granted to the Leasehold Mortgagor, as lessee under the Ground Lease. This power of attorney shall be binding upon any Person who claims an interest in the Mortgaged Premises by or through the Leasehold Mortgagor until this Mortgage is satisfied and discharged of record; and
- (f) The Leasehold Mortgagor hereby agrees that, at all times throughout the term of this Mortgage, (i) it shall not surrender its leasehold estate and interest in and to the Mortgaged Premises, (ii) it shall not terminate or cancel the Ground Lease (including, without limitation, a termination resulting from the Leasehold Mortgagor's failure to remain in possession of its portion of the Mortgaged Premises upon the occurrence of the institution of a proceeding under the Federal Bankruptcy Code, by or against the Fee Mortgagor under the Ground Lease and/or a termination resulting from the Leasehold Mortgagor's rejection of the Ground Lease in any proceeding under the Federal Bankruptcy Code against the Leasehold Mortgagor), and (iii) it shall not modify, change, supplement, alter or amend any of the terms, conditions or provisions of the Ground Lease without the prior express written consent of the Mortgagee. Any such termination, cancellation, modification, change, supplement, alteration, or amendment of the Ground Lease without the prior express written consent thereto by the Mortgagee shall be void and of no force or effect. As further security for the repayment of the indebtedness secured by this Mortgage, the Leasehold Mortgagor has delivered to the Mortgagee, as of the date hereof, an executed original (or a certified copy) of the Ground Lease and any and all amendments, supplements, and assignments thereto or thereof, all of which the Leasehold Mortgagor hereby agrees shall be held by the Mortgagee until such time as the indebtedness evidenced by the Note supported by the Guaranty secured by this Mortgage is paid in full; and

- (g) Solely for the benefit of the Mortgagee (and not for the benefit of any other Person) the Leasehold Mortgagor hereby agrees that no release or forbearance of any of the Leasehold Mortgagor's obligations as lessee under the Ground Lease (including the Leasehold Mortgagor's obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the other terms, provisions, covenants, conditions, and agreements contained in the Ground Lease, to be kept, performed and complied with by the Leasehold Mortgagor, as lessee therein) shall discharge the Leasehold Mortgagor from any of its obligations under the Guaranty, this Mortgage or any of the other Loan Documents; and
- (h) The Leasehold Mortgagor hereby agrees that there shall be no merger of the Leasehold Mortgagor's interest in the Ground Lease and the leasehold estate and interest created thereunder, with the fee simple estate of the Fee Mortgagor under the Ground Lease by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, all or part of the fee simple estate and the leasehold estate, and no such merger shall occur unless and until the Mortgagee (i) shall join in a written instrument effecting such merger and (ii) shall duly record the same. If the Leasehold Mortgagor or any of its successors or assigns acquires fee title to the Land, this Mortgage shall automatically constitute and create a lien on such fee title and the Leasehold Mortgagor hereby covenants and agrees to execute any documentation reasonably requested by the Mortgagee to evidence such lien; and
- (i) The Leasehold Mortgagor shall enforce the obligations of the Fee Mortgagor under the Ground Lease to the end that the Leasehold Mortgagor may enjoy all of the rights granted to it under the Ground Lease and shall promptly notify the Mortgagee in writing of any default in the performance and/or observance of any of the terms, conditions, and/or covenants of the Ground Lease on the part of any party thereto. The Leasehold Mortgagor shall further promptly advise the Mortgagee in writing of the occurrence of any event of default under the Ground Lease and of the giving of any notice to the Leasehold Mortgagor of any default of the Leasehold Mortgagor in the performance and/or observance of any of the terms, conditions and/or covenants of the Ground Lease to be performed or observed by the Leasehold Mortgagor and shall deliver to the Mortgagee a true copy of each such notice immediately upon its receipt of same; and
- (j) If any action or proceeding shall be instituted to evict the Leasehold Mortgagor or to recover possession of the Mortgaged Premises or for any other purpose affecting the Ground Lease or this Mortgage, the Leasehold Mortgagor shall, within three (3) Business Days of service thereof on or to the Leasehold Mortgagor, deliver to the Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause and any and all other provisions, pleadings and papers, however designated, served in any such action or proceeding; and
- (k) The Leasehold Mortgagor hereby assigns, transfers, and sets over to the Mortgagee, and hereby gives to and confer upon the Mortgagee, the right, power, and authority, following the occurrence and during the continuance of an Event of Default, to make any and all elections and/or determinations which the Leasehold Mortgagor now has or at any time may have the right to make with respect to the Ground Lease under or pursuant to the Federal Bankruptcy Code, if the Fee Mortgagor under the Ground Lease is the subject of

such bankruptcy proceeding. The Leasehold Mortgagor shall join with the Mortgagee and execute and file such documents and instruments as shall be necessary to give effect to any such election or determination made by the Mortgagee but will not otherwise act in any manner with respect to any such election or determination without first obtaining the Mortgagee's prior express written consent. The Leasehold Mortgagor shall give prompt written notice to the Mortgagee if the Leasehold Mortgagor obtains knowledge of the actual or threatened commencement of any proceedings which may give rise to the right to make any such election or determination and shall deliver to the Mortgagee copies of any and all papers served in connection therewith. The Mortgagee may make any such election or determination as, in its sole discretion, it shall determine; and

- (l) The Leasehold Mortgagor shall exercise any option or right to renew or extend the term of the Ground Lease at least eighteen (18) months prior to the date of termination of any such option or right, shall give prompt written notice thereof to the Mortgagee, and shall execute, deliver and record any documents requested by the Mortgagee to evidence the lien of this Mortgage on such extended or renewed lease term. If the Leasehold Mortgagor fails to exercise any such option or right as required herein, the Mortgagee may exercise the option or right as the Leasehold Mortgagor's agent and attorney-in fact pursuant to this Mortgage, or in the Mortgagee's own name or in the name of and on behalf of a nominee; and
- (m) The Leasehold Mortgagor shall not subordinate the Ground Lease or the leasehold created by the Ground Lease to any mortgage or other encumbrance of, or lien on, any interest in the real property subject to the Ground Lease without the prior express written consent of the Mortgagee. Any such subordination without such consent shall, at the Mortgagee's option be void; and
- (n) Notwithstanding anything to the contrary herein contained herein with respect to the Ground Lease:
 - (i) Section 365 Rights. The lien of this Mortgage shall attach to all of the Leasehold Mortgagor's rights and remedies at any time arising under or pursuant to Subsection 365 (h) of the Bankruptcy Code, 11 U.S.C. Section 365 (h), including, without limitation, all of the Leasehold Mortgagor's rights to remain in possession of the Mortgaged Premises.
 - (ii) Section 365 Election. Neither the Leasehold Mortgagor nor the Fee Mortgagor, without the Mortgagee's prior express written consent, shall elect to treat the Ground Lease as terminated under Subsection 365 (h) (1) of the Bankruptcy Code, 11 U.S.C. Section 365 (h) (1). Any such election made without the Mortgagee's prior express written consent shall be void and of no force or effect.
 - (iii) Assignment of Rights and Claims. The Leasehold Mortgagor hereby unconditionally assigns, transfers and sets over unto the Mortgagee all of the Leasehold Mortgagor's claims and rights to the payment of damages arising from any rejection of the Ground Lease by the Fee Mortgagor under the Bankruptcy Code, 11 U.S.C. Section 101, *et seq.* The Mortgagee shall have the right to proceed in its own name or in the name of the Leasehold Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground

Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Leasehold Mortgagor, any proof of claim, complaints, motions, application, notices and other documents, in any case in respect of the Fee Mortgagor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Secured Obligations shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Ground Lease by the Fee Mortgagor shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, reasonable attorneys' fees) incurred in connection with the assertion, defense, determination or exercise of any of its rights or remedies under this subsection (iii).

- (iv) Notification to the Mortgagee. If, pursuant to Subsection 365 (h) (2) of the Bankruptcy Code, 11 U.S.C. Section 365 (h) (2), the Leasehold Mortgagor seeks to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the Fee Mortgagor of any of the Fee Mortgagor's obligations under the Ground Lease after the rejection by the Fee Mortgagor of the Ground Lease under the Bankruptcy Code, the Leasehold Mortgagor shall, prior to effecting such offset, notify the Mortgagee in writing of its intent so to do, setting forth the amounts proposed to be offset and the basis therefore. The Mortgagee shall have the right to object to all or any part of such offset, and, in the event of such objection, the Leasehold Mortgagor shall not effect any offset of the amounts so objected to by the Mortgagee. If the Mortgagee fails to object within thirty (30) days after receipt of notice from the Leasehold Mortgagor in accordance with the first sentence of this subparagraph (iv), the Leasehold Mortgagor may proceed to effect such offset in the amounts set forth in the Leasehold Mortgagor's notice. Notwithstanding anything to the contrary contained herein, neither the Mortgagee's failure to object nor any objection or other communication between the Mortgagee and the Leasehold Mortgagor relating to such offset shall constitute an approval of any such offset by the Mortgagee. The Leasehold Mortgagor shall pay and protect the Mortgagee, and indemnify and save the Mortgagee harmless from and against, any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, reasonable attorneys' fees) arising from or relating to any offset by the Leasehold Mortgagor against the rent reserved in the Ground Lease.
- (v) Control of Proceedings. If any action, proceeding, motion or notice shall be commenced or filed in respect of the Fee Mortgagor, the Mortgaged Premises or the Ground Lease in connection with any case under the Bankruptcy Code, 11 U.S.C. Section 101, *et seq.*, the Mortgagee shall have the option, to the exclusion of the Leasehold Mortgagor, exercisable upon such notice from the Mortgagee to the Leasehold Mortgagor, to conduct and control any such litigation with counsel of the Mortgagee's choice. The Mortgagee may proceed in its own name or in the name of the Leasehold Mortgagor in connection with any such litigation, and the Leasehold Mortgagor agrees to execute any and all powers, authorizations, consents or other documents required by the Mortgagee in connection therewith. The Leasehold Mortgagor shall, upon demand, pay to the Mortgagee all costs and

expenses (including reasonable attorneys' fees) paid or incurred by the Mortgagee in connection with the prosecution or conduct of any such proceedings. Payment and performance by the Leasehold Mortgagor of its obligations under and pursuant to this subparagraph (v) shall be secured by the lien of this Mortgage and shall be added to the Secured Obligations. The Leasehold Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior express written consent of the Mortgagee.

- (vi) Notice of Bankruptcy Filing. The Leasehold Mortgagor shall, after obtaining knowledge thereof, promptly notify the Mortgagee orally of any filing by or against the Fee Mortgagor of a petition under the Bankruptcy Code, 11 U.S.C. Section 101, *et seq.*, by telephonic notice to the location for the Mortgagee stated herein for notice. The Leasehold Mortgagor shall immediately thereafter give written notice of such filing to the Mortgagee setting forth any information available to the Leasehold Mortgagor as to the date of such filing, the court in which such petition was filed and the relief sought therein. The Leasehold Mortgagor shall promptly deliver to the Mortgagee, following receipt, copies of any and all notices, summonses, pleadings, applications, adversary proceedings, contested matters and other documents received by the Leasehold Mortgagor in connection with any such petition and any proceedings relating thereto.

- (vii) Rejection of Ground Lease. If there shall be filed by or against the Leasehold Mortgagor a petition under the Bankruptcy Code, 11 U.S.C. Section 101, *et seq.*, and the Leasehold Mortgagor, as lessee under the Ground Lease, shall (A) determine to reject the Ground Lease pursuant to Section 365 (a) of the Bankruptcy Code, (B) be ordered by a specified date (hereinafter referred to as the "Determination Date") to determine whether to assume the Ground Lease, the Leasehold Mortgagor shall give the Mortgagee (1) not less than thirty (30) days prior express written notice of the date on which the Leasehold Mortgagor will apply to the Bankruptcy Court for authority to reject the Ground Lease, and (2) immediate telephonic notice of the order referred to in subparagraph (B) above. The Mortgagee shall have the right, but not the obligation, to serve upon the Leasehold Mortgagor within such thirty (30) day period or prior to the Determination Date, as the case may be, a notice stating that (x) the Mortgagee demands that the Leasehold Mortgagor assume and assign the Ground Lease to the Mortgagee pursuant to Section 365 of the Bankruptcy Code, and (y) the Mortgagee covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If the Mortgagee serves upon the Leasehold Mortgagor the notice described in the preceding sentence, the Leasehold Mortgagor shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (x) of the preceding sentence within thirty (30) days after receipt of the notice, subject to the performance by the Mortgagee of the covenant provided in clause (y) of the preceding sentence.

- (viii) Assignment of Extension Right. Effective upon the entry of an order for relief in respect of the Leasehold Mortgagor under Chapter 7 of the Bankruptcy Code, 11

U.S.C. Section 101, *et seq.*, the Leasehold Mortgagor hereby assigns and transfers to the Mortgagee a nonexclusive right to apply to the Bankruptcy Court under Subsection 365 (d) (1) of the Bankruptcy Code for an order extending the period during which the Ground Lease may be rejected or assumed.

(ix) Section 363 Rights. If there shall be filed by or against the Fee Mortgagor a petition under the Bankruptcy Code, then in furtherance of any obligations of the Leasehold Mortgagor stated otherwise in this Mortgage to preserve the Ground Lease and the leasehold estate represented thereby and not in limitation thereof, the Leasehold Mortgagor hereby covenants and agrees as follows:

- (1) the Leasehold Mortgagor shall promptly inform the Mortgagee in writing of any attempted sale of the Premises by the Fee Mortgagor under Section 363 of the Bankruptcy Code (i.e. 11 U.S.C. Section 363) (hereinafter referred to as a “Section 363 Sale”); and
- (2) the Leasehold Mortgagor shall object to any proposed Section 363 Sale by the Fee Mortgagor; and
- (3) the Leasehold Mortgagor shall be deemed to have irrevocably appointed the Mortgagee as its true and lawful attorney, coupled with an interest, with full power of substitution and with full power for the Mortgagee in its own name and capacity or in the name and capacity of the Leasehold Mortgagor, to file any response, answer or other motion or pleading or take any other action, either in its own name or in the name of the Leasehold Mortgagor or otherwise, which the Mortgagee may deem necessary or desirable; provided, however, such appointment shall be limited in scope for the purpose of the Mortgagee’s protection of the collateral provided under the Loan Documents, including without limitation, this Mortgage. Such appointment shall be deemed effective and self-operative without the necessity of executing any further instrument immediately upon the filing of any such petition by or against the Fee Mortgagor.

ARTICLE 9. FEE MORTGAGOR PROVISIONS

Notwithstanding any term, condition, or provision of this Mortgage to the contrary, the following provisions of this Article 9 shall govern, control, and prevail in any conflict between any of said provisions and the other provisions of this Mortgage:

9.1 **LIMITATION ON LIABILITY.** With respect to the Fee Mortgagor, its elected officials, officers, employees, and agents shall have no personal liability hereunder, or in their capacity as elected officials, officers, employees, and agents of the Fee Mortgagor. The Fee Mortgagor has executed this Mortgage to subject the Ground Lease and the Fee Mortgagor’s fee simple estate and interest in and to the Mortgaged Premises to the lien of this Mortgage for the purposes set forth in the recitals to this Mortgage; however, the Mortgagee shall have no recourse to the Fee Mortgagor or its assets, except to the extent of the Fee Mortgagor’s interest in and to the Ground Lease and its fee simple estate and interest in and to the Mortgaged Premises. No provision,

covenant, or agreement contained in this Mortgage or any obligations herein imposed upon the Fee Mortgagor or the breach thereof, shall constitute or give rise to or impose upon the Fee Mortgagor a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Mortgage, the Fee Mortgagor has not obligated itself except with respect to its interests in and to the Ground Lease and its fee simple estate and interest in and to the Mortgaged Premises.

- 9.2 **FEE MORTGAGOR IS ACTING AT LEASEHOLD MORTGAGOR'S DIRECTION; INDEMNIFICATION.** The Leasehold Mortgagor has requested that the Fee Mortgagor execute and deliver this Mortgage to Mortgagee, and further agrees to indemnify and hold harmless the Fee Mortgagor (and its elected officials, officers, employees, and agents), including, without limitation, the Leasehold Mortgagor shall pay all costs and expenses, including reasonable attorneys' fees and expenses, incurred by the Fee Mortgagor in connection with the execution, delivery, recording, performing and enforcing of this Mortgage. The execution of this Mortgage has been duly authorized by the Metro Council of the Fee Mortgagor. The Leasehold Mortgagor's indemnification obligations made herein shall survive any termination or expiration of the documents securing the Loan, including, without limitation, this Mortgage, and/or the repayment of the Loan evidenced by the Note including, without limitation, any foreclosure on this Mortgage or deed-in-lieu of foreclosure, it being understood and agreed that the indemnity given herein is independent of the Secured Obligations and the Loan Documents. Notwithstanding the foregoing to the contrary, the Fee Mortgagor hereby expressly subordinates all of such obligations of the Leasehold Mortgagor to the Secured Obligations and the lien of this Mortgage, and shall not request payment thereof until the Secured Obligations shall have been indefeasibly repaid in full.

9.3 **GROUND LEASE REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

- (a) The Fee Mortgagor hereby acknowledges and agrees that the Ground Lease (including, without limitation, any provisions regarding insurance, condemnation and/or options or obligations to purchase the Mortgaged Premises) is subject and subordinate to this Mortgage, and this Mortgage is and shall remain the "First Mortgage" and the "Leasehold Mortgage" (as each such term is defined in the Ground Lease) referred to in the Ground Lease.
- (b) In the event that the Mortgagee succeeds to the interests of the Leasehold Mortgagor under the Ground Lease (hereinafter referred to as the "Tenant's Interest") by reason of a default under, and foreclosure of, this Mortgage or the surrender thereof (whether voluntary or by operation of law), then (i) the Mortgagee or, at the Mortgagee's election, any designee or nominee of the Mortgagee which has been approved by the Fee Mortgagor, such approval not to be unreasonably withheld, delayed, or conditioned (hereinafter referred to as a "Lender Entity") shall be bound to the Fee Mortgagor under all of the terms, covenants, and conditions of the Ground Lease for the balance of the remaining term thereof, (ii) the Mortgagee or Lender Entity, as applicable, shall attorn to the Fee Mortgagor, as its landlord thereunder, subject to the terms of this Mortgage, and (iii) the Fee Mortgagor shall recognize and accept such attornment from the Mortgagee or Lender Entity, as applicable, and the Ground Lease shall continue as a direct lease between the Fee Mortgagor and the Mortgagee or Lender Entity, as applicable. The foregoing attornment and recognition shall be effective and self-operative without the execution of any further instrument by the Fee Mortgagor, provided that the Mortgagee

shall not be obligated to pay any "Lease Payments" (as such term is defined in the Ground Lease) or other amounts due and owing under the Ground Lease to the Fee Mortgagor which accrue prior to the date on which the Mortgagee or Lender Entity, as applicable, succeeds to the Tenant's Interest.

- (c) The Fee Mortgagor hereby consents to the Leasehold Mortgagor mortgaging and assigning the Ground Lease to the Mortgagee pursuant to this Mortgage and the other Loan Documents, and to the performance by the Leasehold Mortgagor of its obligations under this Mortgage and the other Loan Documents in accordance with their terms. The Fee Mortgagor's consent shall not be required for any modification, amendment, or transfer of the Loan Documents (other than this Mortgage). Furthermore, notwithstanding the provisions of the Ground Lease, if any, to the contrary, (i) the Fee Mortgagor's consent shall not be required for any transfer of the Tenant's Interest to the Mortgagee pursuant to a foreclosure, deed-in-lieu of foreclosure, or other enforcement action taken by the Mortgagee pursuant to the terms of this Mortgage and (ii) the Mortgagee or the Lender Entity, as applicable, shall have the right to further assign, transfer, or sell the Tenant's Interest without the consent of the Fee Mortgagor.
- (d) The Fee Mortgagor hereby represents and warrants to, and covenants and agrees with, the Mortgagee as follows:
 - (i) The Fee Mortgagor shall send to the Mortgagee, by certified or registered mail, return receipt requested, simultaneously with the sending of same to the Leasehold Mortgagor, a copy of any default notice sent by the Fee Mortgagor to the Leasehold Mortgagor.
 - (ii) The Fee Mortgagor agrees that if the Leasehold Mortgagor shall have failed to cure any default under the Ground Lease within the time provided for therein, then the Mortgagee shall have up to an additional sixty (60) days after its receipt of notice of such default from the Fee Mortgagor within which to cure such default and up to an additional sixty (60) days (not to exceed one hundred twenty (120) days in the aggregate) to cure such default, should the default not be capable of being cured within the first sixty (60) day period and the Mortgagee is in good faith attempting to cure such default within said first sixty (60) day period.
- (e) In the case the Fee Mortgagor desires to terminate the Ground Lease in accordance with its terms (whether as a result of the occurrence of a default thereunder or otherwise), the Fee Mortgagor shall give prompt notice thereof to the Mortgagee. On written request of the Mortgagee made at any time within sixty (60) days after its receipt of such notice, the Fee Mortgagor agrees to execute and deliver within sixty (60) days, a new lease (hereinafter referred to as the "New Lease") of the Mortgaged Premises, including, without limitation, any and all improvements located thereon, to the Mortgagee or a Lender Entity, such New Lease to be (i) for an initial term equal to the remaining term of the Ground Lease and (ii) on all of the same covenants, conditions, limitations, and agreements as set forth and contained in the Ground Lease, provided that the Mortgagee or such Lender Entity, as applicable, (A) pays to the Fee Mortgagor simultaneously with the execution and delivery of the New Lease any and all unpaid "Lease Payments" (as such term is defined in the Ground Lease) due and owing under the Ground Lease to and

including the date of the commencement of the term of the New Lease, (B) cures any other defaults under the Ground Lease which are capable of being cured by the Mortgagee or such Lender Entity, and (C) pays all expenses, including without limitation, reasonable attorneys fees and disbursements, incurred by the Fee Mortgagor in connection with the termination of the Ground Lease and the preparation of the New Lease, it being acknowledged and agreed that any such sums so expended by the Mortgagee shall be added to the Secured Obligations and secured by the lien of this Mortgage.

- (f) The Fee Mortgagor agrees that it will not, without the Mortgagee's prior express written consent, elect to treat the Ground Lease as terminated under Section 365 of the Bankruptcy Code (i.e., 11 USC §365). Any such election made without the Mortgagee's prior express written consent shall be void and of no force or effect.
- (g) The Fee Mortgagor agrees that it will not, without the Mortgagee's prior express written consent, attempt to sell the Mortgaged Premises under Section 363 of the Bankruptcy Code (i.e., 11 USC §363). Neither the Leasehold Mortgagor nor the Mortgagee shall be deemed to have consented to such a sale unless such consent is expressly provided to the Fee Mortgagor in a written statement signed by both the Leasehold Mortgagor and the Mortgagee. Notwithstanding anything contained in the Ground Lease to the contrary, the Fee Mortgagor agrees that neither the Leasehold Mortgagor nor the Mortgagee shall be compelled to accept a monetary payment in place of the leasehold interest provided under the Ground Lease.
- (h) The Fee Mortgagor does hereby represent and warrant to, and covenant with, the Mortgagee that:
 - (i) The Fee Mortgagor is a consolidated local government and political subdivision of the Commonwealth of Kentucky.
 - (ii) The Ground Lease is in full force and effect, and all "Lease Payments" (as such term is defined in the Ground Lease), and any and all other payments due and owing pursuant to the provisions of the Ground Lease have been paid through December ___, 2014.
 - (iii) To the best knowledge of the Fee Mortgagor, it has, and there are, no claims, defenses, or offsets of any kind or character with respect to the Ground Lease, and all provisions of the Ground Lease are in full force and effect.
 - (iv) To the best knowledge of the Fee Mortgagor, there are no material judgments in any court in the Commonwealth of Kentucky or of any other state or in any court of the United States of America against the Fee Mortgagor remaining unpaid, unsatisfied, or uncanceled of record which are or may be attached to the Mortgaged Premises, and no proceedings in bankruptcy or insolvency have been instituted by or against the Fee Mortgagor.
 - (v) To the best knowledge of the Fee Mortgagor, the Fee Mortgagor has not executed any contract or agreement for the sale of the Mortgaged Premises or granted to

any person or entity an option to purchase all or any portion of the Mortgaged Premises, except as set forth in the Ground Lease.

- (vi) To the best knowledge of the Fee Mortgagor, the execution and delivery of the Ground Lease, the performance by the Fee Mortgagor of its obligations thereunder, and the consummation and performance of the transactions contemplated thereby do not and will not violate or constitute a default under, or conflict with or violate any provisions of any term or provision of any indenture, mortgage, lease, deed of trust, contract, agreement or other instrument, or of any judgment, decree, governmental order, statute, rule or regulation by which the Fee Mortgagor is bound or to which the Mortgaged Premises is subject.
- (vii) There is no action, proceeding, or investigation at law or in equity before or by any court, public board, or body, pending or threatened, nor is the Fee Mortgagor aware of or been informed of any basis for such action, proceeding, or investigation which calls into question the ability of the Fee Mortgagor to perform its obligations under the Ground Lease or this Mortgage.
- (viii) No cancellation, termination, surrender, acceptance of surrender, amendment, or modification of the Ground Lease which modifies the term, the rent, or affects, in any manner the economic value of the Ground Lease, shall be made without the Mortgagee's prior express written consent.
- (ix) The Mortgagee assumes no liability or obligations under the Ground Lease, or any extension or renewal thereof, unless or until it takes possession of the leasehold estate in and to the Mortgaged Premises and then only for such obligations arising from and after such possession date.
- (x) The Leasehold Mortgagor took possession of the Mortgaged Premises under the Ground Lease on or about October 10, 2008.
- (xi) The term of the Ground Lease commenced on October 10, 2008, and terminates on the date on which full payment of principal and interest is made on the Bonds.
- (xii) The Ground Lease is unmodified as of the date hereof.
- (xiii) No default has occurred and no act, event, omission, or condition has occurred which, with the giving of notice, the passage of time, or both, would constitute a default by any party under the Ground Lease.

ARTICLE 10. LOCAL LAW PROVISIONS

Notwithstanding any term, condition, or provision of this Mortgage to the contrary (other than Article 9 above), the following provisions of this Article 10 shall govern, control, and prevail in any conflict between any of said provisions and the other provisions of this Mortgage:

- 10.1 **MATURITY DATE**. The maturity date of the Note supported by the Guaranty that is secured by this Mortgaged is [**January 1, 2037**].

10.2 **FUTURE ADVANCES.** This Mortgage is taken to secure a loan for the purpose of creating a lien on real property in order to secure not only existing indebtedness, but also “Future Advances”, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, and whether made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution hereof, although there may be no advance made at the time of the execution hereof and although there may be no indebtedness outstanding at the time any advance is made. The types of future advances secured by and having priority under this Mortgage shall include (a) advances and re-advances of principal under the Note or other Loan Documents and, (b) disbursements and other advances for the payment of taxes, assessments, maintenance charges, insurance premiums or costs relating to the Mortgaged Premises, for the discharge of liens having priority over the lien of this Mortgage, for the curing of waste of the Mortgaged Premises and for the payment of service charges and expenses incurred by reason of default and including late charges, attorneys’ fees and court costs, together with interest thereon. The lien of this Mortgage, as to third persons with or without actual knowledge thereof, shall be valid as to all such indebtedness and future advances, from the date of recordation, in accordance with the provisions of KRS 382.520, as the same may hereafter be amended. The total amount of the indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid principal balance at any one time shall not exceed the maximum principal amount of the Secured Obligations. The maximum indebtedness including all future advances shall not exceed double the face amount of the Note.

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IN WITNESS WHEREOF, the Leasehold Mortgagor and the Fee Mortgagor have executed this Mortgage as of the day and year set forth above, for the purposes more fully set forth and described herein.

PHENIX LOUISVILLE, L.P., a Georgia limited partnership

By: **Phenix Louisville GP, LLC**, a Georgia limited liability company, its General Partner

By: _____
Name:
Title:

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a consolidated local government and political subdivision of the Commonwealth of Kentucky

By: _____
Greg Fischer
Mayor

[NOTARY PAGES TO FOLLOW]

COMMONWEALTH OF KENTUCKY :
: **SS**
COUNTY OF JEFFERSON :

On this ____ day of December, 2014, the foregoing instrument was acknowledged before me, _____ a Notary Public in and for the Commonwealth of Kentucky, by **Greg Fischer**, the Mayor of **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a consolidated local government and political subdivision of the Commonwealth of Kentucky, a party to the foregoing instrument, for and on behalf of said party.

WITNESS my hand and official seal aforesaid

Signature: _____
My commission expires: _____
[SEAL]

STATE OF [_____] :
: **SS**
COUNTY OF [_____] :

On this ____ day of December, 2014, the foregoing instrument was acknowledged before me, _____ a Notary Public in and for the [_____] of [_____] by _____, a _____ of **Phenix Louisville GP, LLC**, a Georgia limited liability company, being the General Partner of **PHENIX LOUISVILLE, L.P.**, a Georgia limited partnership, the Leasehold Mortgagor named in the foregoing instrument, for and on behalf of said Mortgagor.

WITNESS my hand and official seal aforesaid

Signature: _____
My commission expires: _____
[SEAL]

THIS MORTGAGE PREPARED BY:

Christopher J. Maurer, Esq.
REED SMITH LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540

EXHIBIT "A"

TO THAT CERTAIN FIRST FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING EXECUTED BY PHENIX LOUISVILLE, L.P., AS LEASEHOLD MORTGAGOR, AND THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, AS FEE MORTGAGOR, IN EACH CASE IN FAVOR OF VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY, AS MORTGAGEE, DATED DECEMBER ____, 2014

Description of Land

See Attached.