

3X

2017 042874

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2017 JUL 13 AM 8:40

MICHAEL B. BROWN  
RECORDER



AFTER RECORDING, RETURN TO:  
Fidelity National Title Group  
7130 Glen Forest Dr., Ste. 300  
Richmond, VA 23226

Attn: Matt

After recording return to:  
YAM Capital III, LLC  
15475 N 84th Street  
Scottsdale, Arizona 85260  
Attention: Laura A. Patton, Esq.

Space above this line for Recorder's Use



This Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of June 20, 2017, is given by SHOUT OUTDOOR INDIANA, LLC, a Delaware limited liability company, as mortgagor ("Mortgagor"), to YAM CAPITAL III, LLC, an Arizona limited liability company, as mortgagee ("Mortgagee").

1. GRANT.

1.1 The Property. For the purpose of securing payment and performance of the Secured Obligations defined in Paragraph 2 below, Mortgagor hereby MORTGAGES AND WARRANTS to Mortgagee its successors and assigns, and grants it and them a security interest in and lien upon, all estate, right, title and interest which Mortgagor now has or may later acquire in Mortgagor's leasehold estate in the real property located in the County of Lake, State of Indiana, as described on Exhibit A attached hereto (the "Land") created by those leases listed on Schedule 1.1 attached hereto (collectively, the "Ground Leases"), together with all "accounts" (including "health-care insurance receivables"), "chattel paper" (including "electronic chattel paper" and "tangible chattel paper"), "inventory," "equipment," "instruments" (including "promissory notes"), "investment property," "documents," "deposit accounts," "letter-of-credit rights," "general intangibles" (including "payment intangibles" and "software"), "supporting obligations," "as-extracted collateral," "farm products" and "fixtures" (as such terms are defined in the Code (hereinafter defined)), now owned or hereafter acquired by the Mortgagor, now or hereafter existing, which is now or hereafter related to, located upon or intended to be used or useful in, on, about, in connection with, or appurtenant to the Land or that arises out of or in connection with, or out of the use of, the Land, and all other personal property of Mortgagor of

813070.4

-1-  
55 93182  
93143  
← PM

RECORDING ORDER

1 2 3 4 5

24954610  
IN

any kind now or hereafter related to, located upon or intended to be used or useful in, on, about, in connection with, or appurtenant to the Land or that arises out of or in connection with, or out of the use of, the Land, including without limitation the following (collectively, the “Property”):

(a) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land, and all apparatus and equipment now or hereafter attached in any manner to the Land or any building on the Land, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the “Improvements”);

(b) Any and all fixtures, appliances, machinery, and equipment of any nature whatsoever, and other articles of property (real, personal or mixed) at any time now or hereafter installed in, attached to or situated in or upon the Land or other real estate described above or the Improvements to be erected thereon, or used or intended to be used in connection with the Land, or in the operation of the Improvements, plant, business or dwelling situated thereon, whether or not the said buildings and improvements are or shall be affixed thereto, including, without limiting the generality of the foregoing, all building materials, fixtures, building machinery and building equipment delivered to the Land during the course of, or in connection with, any construction of any buildings and improvements, and all furniture, fixtures, and equipment hereafter located on the Property by way of replacement, substitution, addition, or otherwise;

(c) Any and all accounts, deposit accounts, accounts receivable, contract rights, chattel paper, documents, instruments, and other obligations, including supporting obligations, of any kind, now or hereafter existing, arising out of or in connection with or out of the use of or relating to the Property, and all rights now or hereafter existing in and to all security agreements, leases, and other contracts securing or otherwise relating to any such accounts, accounts receivable, contract rights, chattel paper, documents, instruments, or other obligations, including supporting obligations;

(d) Any and all general intangibles, letter-of-credit rights, and investment property, including without limitation, goodwill, trademarks, tradestyles, tradenames, books and records tenant or guest lists, advertising materials, telephone exchange numbers identified in such materials, all consumer lists, vendor lists, accounting software, franchise rights, option rights, purchase contracts, and leasehold interests arising out of the use of or relating to the Property;

(e) Any and all inventory in any form arising out of the use of or relating to the Property, wherever located, now or hereafter existing, including, without limitation, (i) all products sold in the ordinary course of business of the Mortgagor and raw materials and work-in-process therefor, finished goods thereof, and materials used or consumed in the manufacture or production thereof; (ii) goods in which the Mortgagor has any interest in mass or a joint or other interest or right of any kind (including, without limitation, goods in which the Mortgagor has an interest or right as consignee); and (iii)

goods which are returned to or repossessed by the Mortgagor, and all accessions thereto and products thereof and documents therefor;

(f) Any and all water and water rights, ditch and ditch rights, reservoir and reservoir rights, stock or interest in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, and lease or leasehold interest owned by the Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Property;

(g) All leases of the Property, or any part thereof, now or hereafter entered into or presently in existence and all rights, title, and interest of the Mortgagor thereunder, including cash and securities deposited under said leases to secure the performance by the lessees of their obligations thereunder or otherwise, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time or any successor statute thereto;

(h) All licenses, permits, authorizations, or approvals of any type or nature whatsoever, now owned or held or hereafter acquired which relate to the use, operation, development or occupancy of the Property;

(i) All insurance monies relating to the Property, and all funds, monies, certificates of deposit, instruments, letters of credit and deposits of the Mortgagor held by, deposited with, or paid or payable to the Lender;

(j) All rents from, all issues, income, uses, profits, proceeds (including insurance proceeds) and condemnation awards, all products of, all replacements and substitutions for, and other rights and interests now and hereafter belonging to, any of the foregoing, all regardless of whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time or any successor statute thereto;

(k) Any and all awards or payments accepted in lieu thereof, and including interest thereon and the right to receive the same, which may be made with respect to the Property to the extent of Mortgagor's right to same under the Ground Lease as the result of: (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street or (iii) any injury to or decrease in the value of the Property, to the extent of the Secured Obligations at the date of the receipt of any such award or payment by Mortgagor and to the extent of the reasonable attorneys' fees, costs, and expenses incurred by Lender in connection with the enforcement of this assignment and right and the collection of any such award or payment;

(l) All of Mortgagor's right, title and interest in and to all special declarant rights, including without limitation all development rights and all other comparable rights of Mortgagor as declarant or successor to declarant arising now or in the future under applicable law; and

(m) Any and all proceeds, cash and noncash, and products of the foregoing in whatever form and all accessions thereto and replacements therefor.

Mortgagor authorizes Lender to file, such financing statements as Lender may deem necessary or advisable from time-to-time pursuant to the Code, as amended from time to time (as such term is hereinafter defined), and Mortgagor shall execute and deliver, from time to time such other instruments and documents as may be requested by Lender to perfect, confirm and further evidence the security interest and assignments hereby granted and shall pay the fees incurred in filing all such financing statements. By signing this Mortgage, Mortgagor authorizes Lender to file such financing statements, with or without the signature of Mortgagor, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in any personal property or fixtures described herein. Mortgagor further authorizes Lender to file, with or without any additional signature from the Mortgagor, as Lender may elect, such amendments and continuation statements as Lender may deem necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in such personal property and fixtures. Mortgagor hereby expressly ratifies any financing statements that may have been filed by Lender in advance of the date hereof to perfect Lender's security interest in such personal property and fixtures.

This Mortgage constitutes a "Security Agreement" as that term is used in the Uniform Commercial Code of Indiana (as may be amended from time to time, the "UCC"). In the event of a foreclosure sale, the Land, together with the remaining portion of the Property may, at the option of Lender, be sold as a whole.

1.2 Fixture Filing. Part of the Property is or may become "fixtures" (collectively, the "Fixtures") within the meaning of the UCC. It is intended that, with respect to such Fixtures, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of the Mortgage for record with the Recorder of Lake County, Indiana. The information provided in this paragraph is provided in order that the Mortgage shall comply with the requirements of the UCC for a mortgage to be filed as a continuously perfected financing statement. Mortgagor, a limited liability company organized under the laws of the State of Delaware, is the "Debtor" and its name and mailing address are set forth in the paragraph entitled "Notices" below. Mortgagee is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are as set forth in the paragraph entitled "Notices" below. A statement describing the portion of the Property comprising the Fixtures hereby secured is set forth in Article 1 and Article 4 hereof. Mortgagor is record owner of the Property. Mortgagor's organizational number is 6365238. Mortgagor hereby acknowledges receipt of a copy of this Mortgage and that Mortgagee, as secured party, has furnished a copy of this financing statement as required pursuant to IC §26-1-9.1-502(f).

## 2. THE SECURED OBLIGATIONS.

2.1 Purpose of Securing. This Mortgage is granted all for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(a) Payment of all obligations of Mortgagor under that certain Promissory Note dated of even date herewith, between Mortgagor and Mortgagee that provides for extensions of credit in a principal amount not exceeding THREE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,500,000.00) (the "**Debt Instrument**"). The total principal sum under the Debt Instrument, or the amount thereof outstanding, together with any accrued but unpaid interest, shall be due and payable in full on July 1, 2019 or such earlier date, if any, to which the scheduled maturity date is accelerated under the terms of the Debt Instrument.

This Mortgage also secures payment of all obligations of Mortgagor under the Debt Instrument that arise after the Debt Instrument is extended, renewed, modified or amended pursuant to any written agreement between Mortgagor and Mortgagee, and all obligations of Mortgagor under any successor agreement or instrument which restates and supersedes the Debt Instrument in its entirety;

(b) Payment of all obligations of Mortgagor under that certain Loan Agreement dated of even date herewith, between Mortgagor, the other borrower parties thereto, and Mortgagee.

(c) Payment and performance of all obligations of Mortgagor under this Mortgage; and

(d) Payment and performance of all future advances and other obligations that Mortgagor (or any successor in interest to Mortgagor) or Mortgagee (if different from Mortgagor) may agree to pay and/or perform (whether as principal, surety or guarantor) to or for the benefit of Mortgagee to the extent set forth in Paragraph 2.3 below.

This Mortgage does not secure any obligation which expressly states that it is unsecured, whether contained in the foregoing Debt Instrument or in any other document, agreement or instrument. Unless specifically described in subparagraph (a) above or otherwise agreed in writing, "Secured Obligations" shall not include any debts, obligations or liabilities that are or may hereafter be "consumer credit" subject to the disclosure requirements of the Federal Truth in Lending law or any regulation promulgated thereunder.

**2.2 Terms of Secured Obligations.** All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Debt Instrument described in Paragraph 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Debt Instrument which provide a revolving credit facility which permits borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time. It is expressly agreed that the lien of this Mortgage shall continue despite the fact that the indebtedness evidenced by the Debt Instrument may, from time to time, be fully paid, and despite that the aggregate amount of the advances evidenced by the Debt Instrument may exceed the initial aggregate principal balance secured by this Mortgage, and despite certain advances may be non-obligatory, until the

obligations of Mortgagee to make further advances under the Debt Instrument are terminated and all the indebtedness and obligations secured hereby are fully and finally paid or performed.

2.3 Future Advances. Notwithstanding anything contained in this Mortgage or the Debt Instrument to the contrary, this Mortgage shall secure: (a) a maximum principal amount of up to FIVE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$5,250,000.00) exclusive of any items described in Paragraph 2.3 below, including, without limitation, any additional advances made from time to time after the date hereof pursuant to Debt Instrument whether made as part of the indebtedness secured hereby or made at the option of the Mortgagee; (b) all other amounts payable by Mortgagor, or advanced by Mortgagee for the account, or on behalf, of Mortgagor, pursuant to the Debt Instrument (including, without limitation, amounts advanced with respect to the Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Property) to the same extent as if the future obligations and advances were made on the date of execution of the Mortgage; and (c) future modifications, extensions, and renewals of the Debt Instrument or Secured Obligations secured by this Mortgage. Pursuant to IC §32-29-1-10, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time-to-time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after the Mortgage is executed. The maximum principal amount is stated herein for the purpose of any applicable law pertaining to future advances and is not deemed a commitment by Mortgagee to make any future advances.

### 3. ASSIGNMENT OF RENTS.

3.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"), and confers upon Mortgagee the right to collect such Rents with or without taking possession of the Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Property, any sums that may become due and payable to Mortgagor as bonus or royalty payments, and any damages or other compensation payable to Mortgagor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Paragraph. This is an absolute assignment, not an assignment for security only. Without limiting the scope of any other provisions of this Mortgage, the assignment of Rents and other income and benefits set forth herein shall constitute security interests in leases and rents that are immediately perfected upon recording of this Mortgage as set forth in Ind. Code §32-21-4-2.

3.2 Grant of License. Notwithstanding the provisions of Paragraph 3.1, Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Paragraph 6.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this

License without notice to or demand upon Mortgagor, and without regard to the adequacy of the security for the Secured Obligations.

3.3 Mortgagee's Right of Possession in Case of Event of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the Secured Obligations are declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or then owner of the Property relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any the leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, except for liabilities, losses or damages caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by

reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagee shall reimburse Mortgagee therefor immediately upon demand.

3.4 Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by this Mortgage, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property, and of placing the Property in such condition as will, in the judgment of Mortgagee, make it readily rentable;

(d) to the payment of any indebtedness secured hereby or any deficiency that may result from any foreclosure sale.

#### 4. GRANT OF SECURITY INTEREST.

4.1 Grant of Security Interest. Mortgagor grants to Mortgagee a security interest in, and pledges and assigns to Mortgagee, all of Mortgagor's right, title and interest now or hereafter acquired in and to all of the personal property comprising the Property.

#### 5. RIGHTS AND DUTIES OF THE PARTIES.

5.1 Representations and Warranties. Mortgagor represents and warrants lawfully possesses and holds the leasehold interest in the Land and the Improvements as stated in Exhibit A. Mortgagor further represents that it is the owner of the tenancies created by the Ground Leases and has the right and authority to execute this Mortgage and to encumber the tenancies created by the Ground Leases, and further states that the Ground Leases are valid and subsisting leases of the property therein described and purported to be demised and are in full force and effect in accordance with its terms and has not been amended or modified in any respect, and Mortgagor has the full right, power, and authority, acting alone, to execute and deliver this Mortgage to and for the benefit of Lender.

5.2 Taxes, Assessments, Liens and Encumbrances. Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant



water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Mortgage.

5.3 Damages and Insurance and Condemnation Proceeds.

(a) Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, the following claims, causes of action, awards, payments and rights to payment (collectively, the "Claims"):

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it;

(ii) all other awards, claims and causes of action, arising out of any breach of warranty or misrepresentation affecting all or any part of the Property, or for damage or injury to, or defect in, or decrease in value of all or part of the Property or any interest in it;

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Mortgagee; and

(iv) all interest which may accrue on any of the foregoing.

(b) Mortgagor shall immediately notify Mortgagee in writing if:

(i) any damage occurs or any injury or loss is sustained to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

If Mortgagee chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on breach of warranty or misrepresentation, or for damage or injury to, defect in, or decrease in value of all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Mortgagee, if it so chooses, may participate in any action or proceeding

relating to condemnation or taking of all or part of the Property, and may join Mortgagor in adjusting any loss covered by insurance.

(c) All proceeds of the Claims assigned to Mortgagee under this Paragraph shall be paid to Mortgagee. In each instance, Mortgagee shall apply those proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds, including attorneys' fees. Mortgagor further authorizes Mortgagee, at Mortgagee's option and in Mortgagee's sole discretion, and regardless of whether there is any impairment of the Property, (i) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Mortgagee may determine, or (ii) to hold the balance of such proceeds, or any portion of them, in an interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property, or (iii) to release the balance of such proceeds, or any portion of them, to Mortgagor. If any proceeds are released to Mortgagor, Mortgagee shall not be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Mortgagee to be used to reimburse Mortgagor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing. Mortgagee may, at Mortgagee's option, condition disbursement of the proceeds on Mortgagee's approval of such plans and specifications prepared by an architect satisfactory to Mortgagee, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Mortgagee may reasonably require.

5.4 Insurance. Mortgagor shall provide and maintain in force at all times all risk property damage insurance (including without limitation windstorm coverage, and hurricane coverage as applicable) on the Property and such other type of insurance on the Property as may be required by Mortgagee in its reasonable judgment. At Mortgagee's request, Mortgagor shall provide Mortgagee with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be in an amount, for a term, and in form and content satisfactory to Mortgagee, and shall be written only by companies approved by Mortgagee. In addition, each policy of hazard insurance shall include a Form 438BFU or equivalent loss payable endorsement in favor of Mortgagee. Unless Mortgagor provides evidence of the insurance coverage required by this Paragraph, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing evidence that Mortgagor has obtained insurance as required by this Paragraph. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to outstanding principal balance of the Secured Obligations. The costs of the

insurance may be more than the cost of insurance Mortgagee may be able to obtain on its own.

5.5 Maintenance and Preservation of Property.

(a) Mortgagee shall keep the Property in good condition and repair and shall not commit or allow waste of the Property. Mortgagee shall not remove or demolish the Property or any part of it, or materially alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Mortgagee's express prior written consent in each instance.

(b) If all or part of the Property becomes damaged or destroyed, Mortgagee shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, provided that Mortgagee agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Paragraph 5.3.

(c) Mortgagee shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagee shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagee on the Property or any part of it under this Mortgage.

(d) If Mortgagee's interest in the Property is a leasehold interest, Mortgagee shall observe and perform all obligations of Mortgagee under any lease or leases and shall refrain from taking any actions prohibited by any lease or leases. Mortgagee shall preserve and protect the leasehold estate and its value.

(e) If the Property is agricultural, Mortgagee shall farm the Property in a good and workmanlike manner. Mortgagee shall keep all trees, vines and crops on the Property properly cultivated, irrigated, fertilized, sprayed and fumigated, and shall replace all dead or unproductive trees or vines with new ones. Mortgagee shall prepare for harvest, harvest, remove and sell any crops growing on the Property. Mortgagee shall keep all buildings, fences, ditches, canals, wells and other farming improvements on the Property in first class condition, order and repair.

(f) Mortgagee shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.6 Releases, Extensions, Modifications and Additional Security. Without affecting the personal liability of any person, including Mortgagee (or Mortgagee, if different from Mortgagee), for the payment of the Secured Obligations or the lien of this Mortgage on the remainder of the Property for the unpaid amount of the Secured Obligations, Mortgagee may from time to time and without notice:

- (a) release any person liable for payment of any Secured Obligation;
- (b) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (c) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;
- (d) alter, substitute or release any property securing the Secured Obligations;

(e) consent to the making of any plat or map of the Property or any part of it;

(f) join in granting any easement or creating any restriction affecting the Property;

(g) join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) release the Property or any part of it from the lien of this Mortgage.

5.7 Release. When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Mortgagee shall release the Property, or so much of it as is then held under this Mortgage, from the lien of this Mortgage.

5.8 Compensation and Reimbursement of Costs and Expenses.

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services.

(b) Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee to protect or preserve the Property or to enforce any terms of this Mortgage, including the exercise of any rights or remedies afforded to Mortgagee under Paragraph 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.



(c) Without limiting the foregoing, Mortgagor shall pay all costs incidental to the Property and/or the Secured Obligations, including, but not limited to, title insurance, survey charges, attorneys' costs and fees, appraisals, insurance, inspecting engineers' and/or architects' fees, fees for environmental assessments, any and all expenses incurred by Mortgagee with respect to environmental matters and all other incidental expenses of Mortgagee with respect to the Property and/or the Secured Obligations.

(d) Mortgagor shall pay all obligations arising under this Paragraph immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations; and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

5.9 Exculpation and Indemnification

(a) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to it in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage;

(iii) Mortgagee's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any lease covering the Property;

(iv) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(v) any loss sustained by Mortgagor or any third party resulting from any act or omission of Mortgagee in operating or managing the Property upon exercise of the rights or remedies afforded Mortgagee under Paragraph 6.3; unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(b) Mortgagor agrees to indemnify Mortgagee against and hold Mortgagee harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which Mortgagee may suffer or incur in performing any act required or permitted by this Mortgage or by law or because

of any failure of Mortgagor to perform any of its obligations. This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

5.10 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Representation and Warranty Regarding Hazardous Substances. Before signing this Mortgage, Mortgagor researched and inquired into the previous uses and ownership of the Property. Based on that due diligence, Mortgagor represents and warrants that to the best of its knowledge, no hazardous substance has been disposed of or released or otherwise exists in, on, under or onto the Property, except as Mortgagor has disclosed to Mortgagee in writing. Mortgagor further represents and warrants that Mortgagor has complied, and will comply and cause all occupants of the Property to comply, with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("**Environmental Laws**"). Mortgagor shall promptly, at Mortgagor's sole cost and expense, take all reasonable actions with respect to any hazardous substances or other environmental condition at, on, or under the Property necessary to (i) comply with all applicable Environmental Laws; (ii) allow continued use, occupation or operation of the Property; or (iii) maintain the fair market value of the Property. Mortgagor acknowledges that hazardous substances may permanently and materially impair the value and use of the Property. "**Hazardous Substance**" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant" or "contaminant" or a similar designation or regulation under any current or future federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

5.12 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time, after giving reasonable notice to Mortgagor, to enter and visit the Property for the purposes of performing appraisals, observing the Property, taking and removing environmental samples, and conducting tests on any part of the Property. Mortgagor shall reimburse Mortgagee on demand for the costs of any such environmental investigation and testing. Mortgagee will make reasonable efforts during any site visit, observation or testing conducted pursuant this Paragraph to avoid interfering with Mortgagor's use of the Property. Mortgagee is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by Mortgagee will be solely for the purposes of protecting Mortgagee's security and preserving Mortgagee's rights under this Mortgage. No site visit, observation or testing or any report or findings made as a result thereof ("**Environmental Report**") (i) will result in a waiver of any default of Mortgagor; (ii) impose any liability on Mortgagee; or (iii) be a representation or warranty of any kind regarding the Property (including its condition or value or compliance with any laws) or the Environmental Report (including its

accuracy or completeness). In the event Mortgagee has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to Mortgagor or any other party, Mortgagor authorizes Mortgagee to make such a disclosure. Mortgagee may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in Mortgagee's judgment. Mortgagor further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to Mortgagor by Mortgagee or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of Mortgagor) by Mortgagor without advice or assistance from Mortgagee.

5.13 Environmental Indemnity. Mortgagor agrees to:

(i) conduct and complete all investigations, studies, sampling and testing, and all remedial removal and other actions necessary to clean up and remove all Hazardous Substances on, under, from or affecting the Property in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, and in accordance with the orders and directives of all federal, state and local governmental authorities; and

(ii) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, including attorneys' fees, fees of environmental consultants and laboratory fees, known or unknown, contingent or otherwise arising out of or in any way related to:

- (1) the presence, disposal, release or threatened release of any Hazardous Substances on, over, under, from or affecting the Property or the soil, water, vegetation, buildings, personal property, persons or animals thereon;
- (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances;
- (3) any lawsuit brought or threatened, settlement reached or governmental order relating to such Hazardous Substances; and/or
- (4) any violation of laws, orders, regulations, requirements or demands of government authorities, which are based upon or in any way related to such Hazardous Substances.

In the event the Mortgage is foreclosed or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Property to Mortgagee free of any and all Hazardous Substances so that the condition of the Property shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Property. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive the repayment of the Secured Obligations and the satisfaction of all of the other obligations of Mortgagor hereunder and under the other Debt Instruments.

5.14. Performance Under Ground Leases.

(a) Mortgagor will pay or cause to be paid all rent and other charges required under the Ground Leases as and when the same are due and Mortgagor will keep, observe and perform, or cause to be kept, observed and performed, all of the other terms, covenants, provisions and agreements of the Ground Leases on the part of the lessee thereunder to be kept, observed and performed, and will not in any manner, cancel, terminate or surrender; or permit any cancellation, termination or surrender of the Ground Leases, in whole or in part, or, without the written consent of Mortgagee, either orally or in writing, consent to any subordination of the Ground Leases to any mortgage of the fee interest of the lessors under the Ground Leases (each, a "Lessor"); modify, amend or permit any modification or amendment of any of the terms thereof in any respect, and any attempt on the part of Mortgagor to exercise any such right without such written consent of Mortgagee shall be null and void and of no effect.

(b) Mortgagor will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Mortgagor as lessee under the Ground Leases, and to prevent any default under the Ground Leases, or any termination, surrender, cancellation, forfeiture or impairment thereof, and in the event of the failure of Mortgagor to make any payment required to be made by Mortgage or pursuant to the provisions of the Ground Leases or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Leases, Mortgagee agrees that Mortgagee may (but shall not be obligated to), after notice to Mortgagor (provided, however, that no such notice shall be required to be given after the occurrence of an Event of Default hereunder or under any of the other Loan Documents) take any action on behalf of Mortgagor, to make or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Property and take all such action thereof as may be necessary therefor, to the end that the rights of Mortgagor in and to the leasehold estate created by the Ground Leases shall be kept unimpaired and free from default, and all money so expended by Mortgagee, with interest thereon at the Default Rate provided for in Note from the date of each such expenditure, shall be paid by Mortgagor to Mortgagee promptly upon demand by Mortgagee and shall be added to the Obligations and secured by the Mortgage and Mortgagee shall have, in addition to any other remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sum by Mortgagor as in the case of a default by Mortgagor in the payment of any sums due under the Note. Mortgagee shall be entitled to rely on any notice of default received by Mortgagee and take any of the aforesaid actions even though Mortgagor denies or questions the existence of any such default.

For the purpose of preventing or curing any default by Mortgagor under the Ground Leases, Mortgagee may (but shall be under no obligation to) do any act or execute any document in the name of Mortgagor or as its attorney-in-fact, as well as in the name of Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the opinion of Mortgagee may be necessary or desirable to prevent or cure any default under the Ground Leases or to preserve any rights of Mortgagor, in to or under the Ground Leases, or any sublease thereof, including the right to effectuate a renewal of the Ground Leases or to preserve any rights of Mortgagor whatsoever in respect of any part of the Property.



The curing by Mortgagee of any default by Mortgagor under the Ground Leases shall not remove or waive, as between Mortgagor and Mortgagee, the Event of Default which occurred hereunder by virtue of the default by Mortgagor under such Ground Leases.

(c) Mortgagor will enforce the obligations of each Lessor under the Ground Leases to the end that Mortgagor may enjoy all of the rights granted to it under the Ground Leases. Mortgagor shall notify Mortgagee promptly of (i) the occurrence of any default by any Lessor under the Ground Leases or the occurrence of any event which, with the passage of time or service of notice, or both, would constitute a default by the Lessor under the Ground Leases, (ii) the receipt by Mortgagor of any written notice from any Lessor under the Ground Leases and of any written notice noting or claiming the occurrence of any default by Mortgagor under the Ground Leases or the occurrence of any event which, with the passage of time or service of notice or both, would constitute a default by Mortgagor under the Ground Leases, and will deliver to Mortgagee a true copy of each such notice. If pursuant to the Ground Leases, any Lessor shall deliver to Mortgagee a copy of any notice of default given to Mortgagor, such notice shall constitute full authority and protection to Mortgagee for any action taken or omitted to be taken by Mortgagee in good faith in reliance thereon to cure such default. Promptly upon demand by Mortgagee, Mortgagor shall obtain from each Lessor under the Ground Leases and furnish to Mortgagee the estoppel certificate of such Lessor to the effect that no defaults then exist under the Ground Leases.

(d) If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Property or for any other purpose affecting the Ground Leases or this Mortgage, Mortgagor will, immediately upon service thereof on or to Mortgagor, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(e) Mortgagor covenants and agrees that unless Mortgagee shall otherwise expressly consent in writing, the fee title to the property demised by the Ground Leases and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in a Lessor, Mortgagor, or a third party by purchase or otherwise; and in case Mortgagor acquires the fee title or any other estate, title or interest in the Property, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, Mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage. If both the Lessor's and Lessee's estates under any of the Ground Leases shall at any time become vested in Mortgagor, Mortgagor agrees upon the demand of Mortgagee to execute in form acceptable to Mortgagee a supplemental Mortgage subjecting Mortgagor's ownership interest to this Mortgage.

(f) No release or forbearance of any of Mortgagor's obligations under the Ground Leases, pursuant to the Ground Leases, or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Leases and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Leases, to be kept, performed and complied with by the tenant therein.

(g) Upon the occurrence of an Event of Default Mortgagor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right pursuant to Section 5.4(i) below) for which a right to do so is conferred upon Mortgagor as lessee under the Ground Leases without Mortgagee's prior written consent. In case of any Event of Default under this Mortgage, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Leases, all of which have been assigned for collateral purpose to Mortgagee, shall vest in and be exercisable solely by Mortgagee.

(h) Mortgagor will give Mortgagee prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Ground Leases. Mortgagee shall have the right to intervene and participate in any such proceeding and Mortgagor shall confer with Mortgagee to the extent which Mortgagee deems necessary for the protection of Mortgagee. Upon the written request of Mortgagee, if an Event of Default exists, Mortgagor will exercise all rights of arbitration conferred upon it by the Ground Leases. Mortgagor shall select an arbitrator who is approved in writing by Mortgagee, provided, however, that if at the time any such proceeding shall be commenced, Mortgagor shall be in default in the performance or observance of any covenant, condition or other requirement of the Ground Leases, or of this Mortgage, on the part of Mortgagor to be performed or observed, Mortgagee shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Mortgagor the arbitrator or arbitrators, or appraiser, in such proceeding.

(i) Mortgagor, as lessee under the Ground Leases shall, within the periods provided in the Ground Leases, exercise any rights to extend or renew the Ground Leases unless Mortgagor has received the prior written consent of Mortgagee allowing for the non-exercise of said options to extend or renew. Mortgagor will furnish Mortgagee, upon demand, proof of payment of all items which are required to be paid by Mortgagor pursuant to the Ground Leases and proof of payment of which is required to be given to the Lessor under the Ground Leases. Mortgagor shall not waive any of its rights under the Ground Leases, or refrain from exercising any right or remedy accorded to it under the Ground Leases on account of any default by the Lessor thereunder, or release the Lessor from any liability or condone or excuse any improper actions of the Lessor thereunder without first obtaining the written consent of Mortgagee. Nothing contained herein shall affect or limit any rights of Mortgagee granted under the Ground Leases.

(j) The lien of this Mortgage shall attach to all of Mortgagor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of Mortgagor's rights to remain in possession of the Property.

Mortgagor shall not, without Mortgagee's prior written consent, elect to treat the Ground Leases as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1). Any such election made without Mortgagee's consent shall be void.

Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection of any of the Ground Leases by a Lessor or any other fee owner of the Property under the Bankruptcy

Code. Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Leases, including, without limitation, the right to file and prosecute, either in its own name or in the name of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect to the Lessor or any fee owner 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 Obligations secured by this Mortgage shall have been satisfied and discharged in full. Any amount received by Mortgagee as damages arising out of the rejection of the Ground Leases as aforesaid shall be applied first to all costs and expenses of Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then in accordance with the provisions of this Mortgage. Mortgagor authorizes Mortgagee to file a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Mortgagee to effectuate and carry out the assignment made pursuant to this Section.

If pursuant to Subsection 365(h)(2) of the Bankruptcy Code, 11 U.S.C. § 365(h)(2), Mortgagor shall seek to offset against the rent reserved in the Ground Leases the amount of any damages caused by the nonperformance by a Lessor or any fee owner of any of their obligations under the Ground Leases after the rejection by a Lessor or any fee owner of the Ground Leases under the Bankruptcy Code, Mortgagor shall, prior to effecting such offset, notify Mortgagee of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of Mortgagee, would constitute a breach of the Ground Leases, and in the event of such objection, Mortgagor shall not effect any offset of the amounts so objected to by Mortgagee. Neither Mortgagee's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Mortgagee.

If any action, proceeding, motion or notice shall be commenced or filed in respect of any Lessor or any fee owner, the Property of the Ground Leases in connection with any case under the Bankruptcy Code, Mortgagee shall have the option, exercisable upon notice from Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Mortgagee's choice. Mortgagee may proceed in its own name or in the name of Mortgagor in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Mortgagee all costs and expenses (including attorneys' fees) paid or incurred by Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Mortgagor as aforesaid shall be secured by the lien of this Mortgage and shall be added to the principal amount of the Obligations. Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion (unless such motion is for the purpose of protecting the Ground Leases and its value as security for the Obligations secured by this Mortgage), in respect of the Ground Leases in any such case under the Bankruptcy Code without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed.

Mortgagor shall, after obtaining knowledge thereof, promptly notify Mortgagee of any filing by or against the Lessor or other fee owner of a petition under the Bankruptcy Code.

Mortgagor shall promptly deliver to Mortgagee, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code and Mortgagor, as lessee under the Ground Leases, shall determine to reject the Ground Leases pursuant to Section 365(a) of the Bankruptcy Code, Mortgagor shall give Mortgagee not less than thirty (30) days prior notice of the date on which Mortgagor shall apply to the Bankruptcy Court for authority to reject the Ground Leases. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such thirty (30) day period a notice stating that Mortgagee demands that Mortgagor assume and assign the Ground Leases to Mortgagee pursuant to Section 365 of the Bankruptcy Code. If Mortgagee shall serve upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Ground Leases and shall comply with the demand provided for in the preceding sentence.

(k) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Ground Leases and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage.

6. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

6.1 Accelerating Transfers

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, or other transfer, whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it, including any transfer or exercise of any right to drill for or to extract any water (other than for Mortgagor's own use), oil, gas or other hydrocarbon substances or any mineral of any kind on or under the surface of the Property. If Mortgagor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Mortgagor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Mortgagor is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of any managing member, termination of the limited liability company or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the voting power or in the aggregate more than fifty percent of the ownership of the economic interest in the Mortgagor.

(b) Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Paragraph 6.3 of this Mortgage.

6.2 Events of Default. The occurrence of any one or more of the following events, at the option of Mortgagee, shall constitute an event of default (“**Event of Default**”) under this Mortgage:

(a) Mortgagor fails to make any payment, when due, under the Debt Instrument (after giving effect to any applicable grace period), or any other default occurs under and as defined in the Debt Instrument or in any other instrument or agreement evidencing any of the Secured Obligations and such default continues beyond any applicable cure period;

(b) Mortgagor fails to make any payment or perform any obligation which arises under this Mortgage;

(c) Mortgagor makes or permits the occurrence of an Accelerating Transfer in violation of Paragraph 6.1;

(d) Any representation or warranty made in connection with this Mortgage or the Secured Obligations proves to have been false or misleading in any material respect when made, or

(e) Any default occurs under any other mortgage on all or any part of the Property, or under any obligation secured by such mortgage, whether such mortgage is prior to or subordinate to this Mortgage.

6.3 Remedies. At any time after the occurrence of an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately without any presentment, demand, protest, or notice of any kind.

(b) Either in person or by agent, with or without bringing any action or proceeding, enter upon and take possession of the Property in accordance with applicable law, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same in accordance with this Mortgage. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Debt

Instruments or by law upon occurrence of any Event of Default;

(c) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(d) Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Mortgage; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted hereunder either with or without giving notice to any person.

(e) Mortgagee may exercise the remedies contained in this Mortgage, any Debt Instrument or in any other instrument or agreement evidencing any of the Secured Obligations.

(f) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Indiana, including, but not limited to:

(i) Either personally or by means of a court appointed receiver, take possession of all or any of the personal property that is part of the Property (the "Personal Property") and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Debt Instruments, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

(ii) Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting, or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(iii) Require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably

convenient to both parties, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale;

(v) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Mortgagor at the address set forth in Paragraph 7.16 hereof.

Notwithstanding anything contained in this Mortgage or in the Debt Instrument to the contrary, the Mortgagee shall be entitled to all rights and remedies that a mortgagee would have under Indiana law or in equity (including without limitation IC §32-30-10, Mortgage Foreclosure Actions, IC §32-30-5, Receiverships, and the UCC IC §26-1-9.1 (such laws, as amended, modified and/or recodified from time-to-time are collectively referred to herein as the "Applicable Law")). In the event of any inconsistency between the provisions of this Mortgage and the provisions of Applicable Law, the provisions of Applicable Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Applicable Law. Conversely, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor that are more limited than the rights or remedies that would otherwise be vested in the Mortgage under Applicable Law in the absence of said provision, the Mortgagee shall be vested with the rights and remedies granted under Applicable Law. Notwithstanding any provision in this Mortgage relating to a power-of-sale or other provision for sale of the Property upon default other than under a judicial proceeding, any sale of the Property pursuant to this Mortgage will be made through a judicial proceeding, except as otherwise may be permitted under the UCC.

6.4 Foreclosure; Expense of Litigation. When the Secured Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Secured Obligations or part thereof. In any suit to foreclose the lien hereof or to enforce the obligations of Mortgagor hereunder or under any Debt Instrument, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraisers' fees, inspecting engineers' and/or architects' fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers'

charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of, or the environmental condition of, the Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Debt Instruments or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any suit or proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the highest default rate provided in the Debt Instruments and shall be secured by this Mortgage.

6.5 Application of Sale Proceeds and Rents.

(a) Mortgagee shall apply the proceeds of any sale of the Property in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto.

(b) Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Mortgagee may receive or collect under Paragraph 6.3, in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Mortgagee shall have no liability for any funds which it does not actually receive.

6.6 Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the Property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee or any holder of the Debt Instruments may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be



entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any the leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the Secured Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; or (ii) the deficiency in case of a sale and deficiency.

## 7. MISCELLANEOUS PROVISIONS

### 7.1 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage:

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property;

(ii) Mortgagee collects and applies Rents, either with or without taking possession of all or any part of the Property;

(iii) Mortgagee receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies,

condemnation awards, or other claims, property or rights assigned to Mortgagee under this Mortgage;

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests thereon;

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(vi) Mortgagee or any receiver performs any act which it is empowered or authorized to perform under this Mortgage or invokes any right or remedy provided under this Mortgage.

7.2 Powers of Mortgagee. Mortgagee may take any of the actions permitted under Paragraphs 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

7.3 Waiver of Rights. To the extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisalment before sale of any portion of the Property, and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Debt Instruments or the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Paragraph and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Paragraph. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Indiana pertaining to the rights and remedies of sureties. To the extent permitted by Applicable Law, the Mortgagor hereby waives in all respects the applicability of IC §32-30-10-10 that prohibits concurrent legal actions for the same debt. The Mortgagor expressly waives and relinquishes any and all rights and remedies that the Mortgagor may have or be able to assert by reason of the laws of the State of Indiana pertaining to the rights and remedies of sureties. To the extent permitted by Applicable Law, the Mortgagor further waives and relinquishes any right it may have to require the Mortgagee to consolidate any or all of the actions filed by it with respect to the Secured Obligations of any

kind or nature whatsoever and the Mortgagor hereby agrees that each such party may proceed in separate actions contemporaneous with any other actions in such manner as it deems necessary or appropriate.

7.4 Intentionally Omitted.

7.5 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.6 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

7.7 Applicable Law. With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of Indiana, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of Indiana, the laws of the State of Arizona shall govern any and all matters, claims, controversies or disputes arising under or related to this Mortgage, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Mortgage and the Debt Instrument, and all of the indebtedness or obligations arising thereunder or hereunder.

7.8 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Paragraph does not waive the provisions of Paragraph 6.1.

7.9 Subrogation. To the extent any proceeds of the Debt Instruments are used to pay any outstanding lien, charge or prior encumbrance against the Property, Mortgagee shall be subrogated to any and all rights and liens owned or held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

7.10 CONSENT TO JURISDICTION. MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT WITHIN THE STATE OF ARIZONA HAVING PROPER VENUE AND ALSO CONSENT TO SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY ARIZONA OR FEDERAL LAW AND, WITH RESPECT TO EQUITABLE REMEDIES INCLUDING BUT NOT LIMITED TO FORECLOSURE AND RECEIVERSHIP, THE CIRCUIT OR SUPERIOR COURT OF LAKE COUNTY, INDIANA. THE PARTIES HERETO ACKNOWLEDGE, STIPULATE AND AGREE THAT (1) THE TRANSACTION EVIDENCED, GOVERNED AND/OR SECURED HEREBY BEARS A REASONABLE RELATIONSHIP TO THE STATE OF ARIZONA IN THAT, AMONG OTHER THINGS, MORTGAGEE HAS CONDUCTED A SUBSTANTIAL PART OF THE NEGOTIATIONS FOR THE TRANSACTION IN THE STATE OF ARIZONA, THE LOAN EVIDENCED BY THE DEBT INSTRUMENT HAS BEEN ORIGINATED

AND WILL BE FUNDED FROM THE STATE OF ARIZONA, MORTGAGEE WILL PERFORM A SUBSTANTIAL PART OF ITS OBLIGATIONS FOR THIS TRANSACTION IN THE STATE OF ARIZONA (INCLUDING THE SERVICING OF THE TRANSACTION), AND THE OFFICERS RESPONSIBLE FOR SERVICING THE TRANSACTION ARE RESIDENTS OF, AND OFFICE IN, THE STATE OF ARIZONA; AND (2) MORTGAGEE WOULD NOT HAVE ENTERED INTO THIS TRANSACTION BUT FOR THE FOREGOING STIPULATION.

7.11 WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE EACH WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

7.12 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.13 In-House Counsel Fees. Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel to the extent permitted by applicable law.

7.14 Waiver of Marshaling. Mortgagor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Mortgage. Each successor and assign of Mortgagor, including any holder of a lien subordinate to this Mortgage, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

7.15 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.16 Notices. Mortgagor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Mortgagor as debtor under the Uniform Commercial Code. Mortgagee's address given below is the address for Mortgagee as secured party under the Uniform Commercial Code.

Addresses for Notices to Mortgagor: Shout Outdoor Missouri, LLC  
120 N. Racine, Suite 200  
Chicago, Illinois 60607  
Att.: James Neumann

Address for Notices to Mortgagee: YAM Capital III, LLC  
15475 N. 84th Street  
Scottsdale, Arizona 85260  
Attention: Laura A. Patruno, Esq.

7.17 Ground Leases. The lien of this Mortgage shall be subject to the terms of the Ground Leases, and this Mortgage does not encumber the City of Lake Station, Board of Public Works and Safety's interest in the Ground Leases or any fee interest in the Land (other than Mortgagor's ownership of the Improvements on the Property during the term of the Ground Leases).

[Remainder of page intentionally blank.]



IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

**MORTGAGOR:**

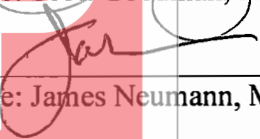
SHOUT OUTDOOR INDIANA, LLC,  
a Delaware limited liability company

By: Shout Outdoor Media, LLC,  
a Delaware limited liability company  
Its: Member

By: Shout Intermediate, LLC,  
a Delaware limited liability company  
Its: Member

By: Shout Holdings, LLC,  
a Delaware limited liability company  
Its: Member

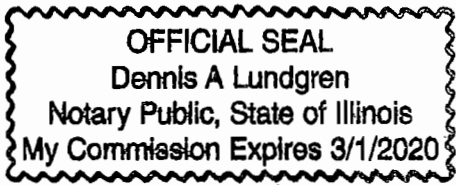
By:   
Name: Scott Goodman, Manager

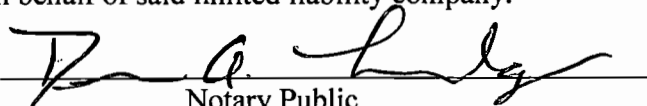
By:   
Name: James Neumann, Manager



STATE OF ILLINOIS )  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2017, by James Neumann, the Manager of Shout Holdings, LLC, a Delaware limited liability company, Member of Shout Intermediate, LLC, a Delaware limited liability company, Member of Shout Media, LLC, a Delaware limited liability company, Member of Shout Outdoor Indiana, LLC, a Delaware limited liability company, for an on behalf of said limited liability company.



  
Notary Public  
Print Name: DENNIS A LUNDGREN  
County of Residence: LAKE  
My Commission Expires: 3/1/2020

(NOTARY STAMP/SEAL)

STATE OF ILLINOIS )  
 )  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me this 12<sup>TH</sup> day of May, 2017, by Scott Goodman, the Manager of Shout Holdings, LLC, a Delaware limited liability company, Member of Shout Intermediate, LLC, a Delaware limited liability company, Member of Shout Media, LLC, a Delaware limited liability company, Member of Shout Outdoor Indiana, LLC, a Delaware limited liability company, for an on behalf of said limited liability company.

Dennis A Lundgren  
Notary Public

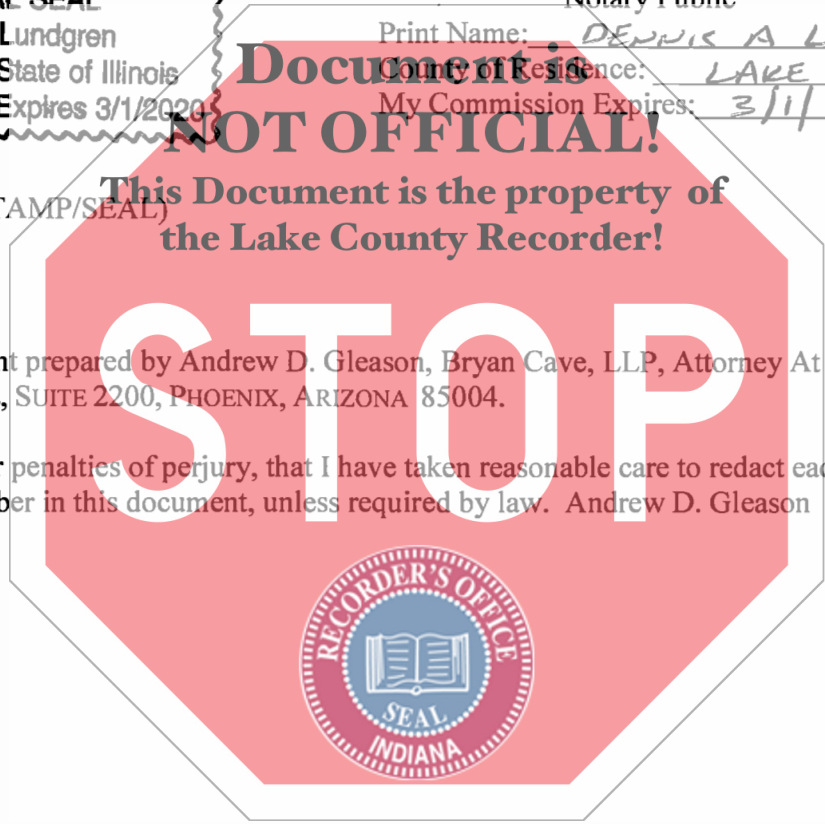
OFFICIAL SEAL  
Dennis A Lundgren  
Notary Public, State of Illinois  
My Commission Expires 3/1/2020

Print Name: DENNIS A LUNDGREN  
County of Residence: LAKE  
My Commission Expires: 3/1/2020

**Document is NOT OFFICIAL!**

(NOTARY STAMP/SEAL)

**This Document is the property of the Lake County Recorder!**



This instrument prepared by Andrew D. Gleason, Bryan Cave, LLP, Attorney At Law, 2 NORTH CENTRAL AVE, SUITE 2200, PHOENIX, ARIZONA 85004.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Andrew D. Gleason

## EXHIBIT A

### Legal Description of the Land

An interest in land, said interest being over the following described parcels:

#### Parcel 1:

A parcel of land in the Northwest quarter of Section 18, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Lake Station, Lake County, Indiana, said parcel also being a portion of unimproved Decatur Street, described as follows:

Commencing at the Southeast corner of Lot 24, Block 5, in the Fourth Subdivision to East Gary, as per Plat thereof, recorded in Plat Book 13, Page 27 in the Office of the Recorder of Lake County, Indiana; thence North, along the East line of said Block 5, said East line also being the West right-of-way line of Decatur Street, 106.00 feet to the point of beginning; thence East, parallel with the South line of said Block 5, 66.00 feet to the West line of Lot 6, Block 7 in Garden Addition to East Gary, as per Plat thereof, recorded in Plat Book 14 Page 12, said West line also being the East right-of-way line of said Decatur Street; thence North, along the West line of said Block 7, 93 feet, more or less, to the South right-of-way line of Interstate Highway 94; thence West, along said South right-of-way line, to the East line of said Block 5; thence South, along the East line of said Block 5, 76 feet, more or less, to the point of beginning.

Containing 5600 sq. ft., more or less, and subject to all legal highways and easements of record.

Property Location: I-94 and Decatur Street, Lake Station, Indiana

Tax Parcel: N/A; owned by the City of Lake Station property (not taxed)

#### Parcel 2:

A parcel of land in the Northeast quarter and in the Southeast quarter of Section 13, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Lake Station, Lake County, Indiana, said parcel also being a portion of unimproved 25th Avenue, described as follows:

Commencing at the Northeast corner of Lot 1, Block 22, in the First Addition to East Gary, as per plat thereof, recorded in Plat Book 16, Page 10, in the Office of the Recorder of Lake County, Indiana; thence West, along the North line of said Block 22, said North line also being the South right-of-way line of 25th Avenue, 62 feet; thence North, parallel with the East line of said Block 22, 55 feet, more or less, to the South right-of-way line of Interstate Highway 94; thence Northeasterly, along said South right-of-way line, 20 feet, more or less, to the South line of Lot 24, Block 1, in the Second Addition to East Gary Gardens, as per Plat thereof, recorded in Plat Book 24, Page 57, said South line also being the North right-of-way line of said 25th Avenue; thence East, along the South line of said Block 1, 42 feet to the East line of said Block 1, said East line also being the West right-of-way line of Clay Street; thence South, along said West right-of-way line, 60 feet to the point of commencement.

Containing 3670 sq. ft., more or less, and subject to all legal highways and easements of record.



Property Location: I-94 and 25th Avenue, Lake Station, Indiana  
Tax Parcel: N/A; owned by the City of Lake Station property (not taxed)

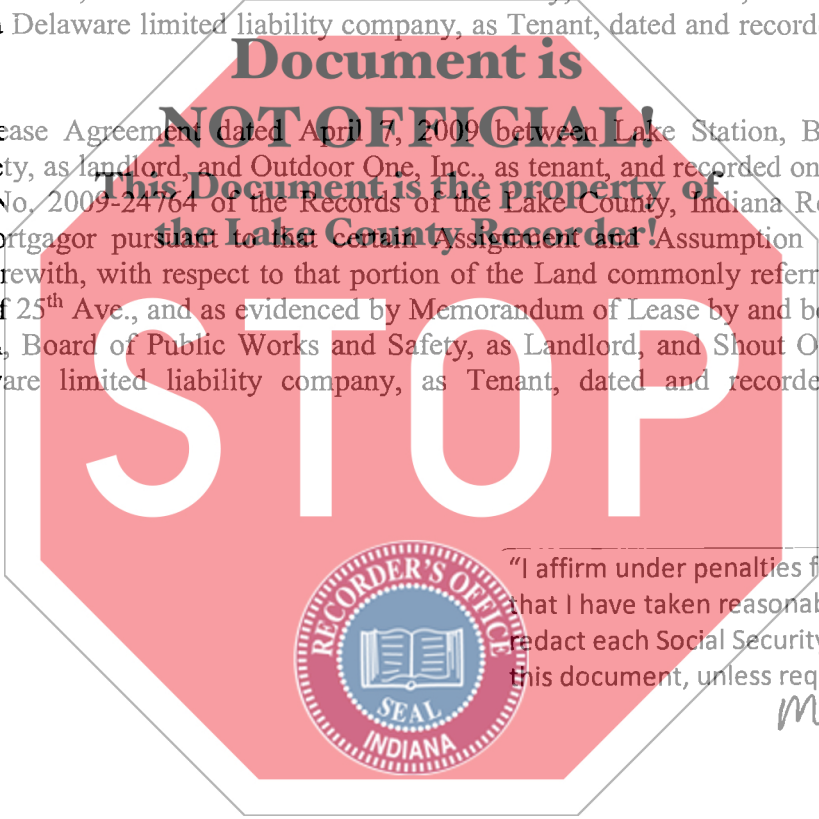


**SCHEDULE 1.1**

**List of Ground Leases**

1. Land Lease Agreement dated April 7, 2009 between Lake Station, Board of Public Works and Safety, as landlord, and Outdoor One, Inc., as tenant, and recorded on April 17, 2009 as Instrument No. 2009-24765 of the Records of the Lake County, Indiana Recorder, and as assigned to Mortgagor pursuant to that certain Assignment and Assumption of Lease dated concurrently herewith, with respect to that portion of the Land commonly referred to as I-94 at the North End of Decatur Street, and as evidenced by Memorandum of Lease by and between the City of Lake Station, Board of Public Works and Safety, as Landlord, and Shout Outdoor Indiana, LLC, a Delaware limited liability company, as Tenant, dated and recorded concurrently herewith.

2. Land Lease Agreement dated April 7, 2009 between Lake Station, Board of Public Works and Safety, as landlord, and Outdoor One, Inc., as tenant, and recorded on April 17, 2009 as Instrument No. 2009-24764 of the Records of the Lake County, Indiana Recorder, and as assigned to Mortgagor pursuant to that certain Assignment and Assumption of Lease dated concurrently herewith, with respect to that portion of the Land commonly referred to as I-94 at the West End of 25<sup>th</sup> Ave., and as evidenced by Memorandum of Lease by and between the City of Lake Station, Board of Public Works and Safety, as Landlord, and Shout Outdoor Indiana, LLC, a Delaware limited liability company, as Tenant, dated and recorded concurrently herewith.



"I affirm under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law"

*McAttie*