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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Doc#: 1305131132 Fee: \$114.00  
Karen A. Yarbrough RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/20/2013 03:58 PM Pg: 1 of 39

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 06-35-400-019-0000

**Address:**

Street: 802 East Devon Avenue

Street line 2:

City: Bartlett

State: IL

ZIP Code: 60103

Lender: Wilmington Trust National Association

Borrower: Shale-Inland Realty, LLC

Loan / Mortgage Amount: \$250,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: C5A54D33-D9AF-4ED9-89A4-CDCCFF85787A

Execution date: 02/04/2013

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

made by

**SHALE-INLAND REALTY, LLC  
(Mortgagor)**

for the benefit of

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as trustee and as collateral agent  
(Mortgagee)**

**Mortgage Property Location:**

**802 East Devon Avenue  
Bartlett, Illinois 60103**

**Dated as of February 4, 2013**

**Prepared by, recording requested by, and after recording, please return to:**

**Paul Hastings LLP  
191 N. Wacker Drive  
30th Floor  
Chicago, Illinois 60606  
Attn: Bradley V. Ritter**

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## **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (hereinafter, together with any and all amendments, supplements, modifications or restatements of any kind, referred to as this "Mortgage"), is made as of February 4, 2013, by **SHALE-INLAND REALTY, LLC**, a Delaware limited liability company, having its principal place of business at 6750 West Loop South, Suite 520, Bellaire, Texas 77401 ("Mortgagor"), for the benefit of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as trustee and as collateral agent for the Holders (as defined in the Indenture (as hereinafter defined)) (in such capacity, together with its successors and assigns, "Mortgagee"), whose address is Global Capital Markets, 50 South Sixth Street, Suite 1290, Minneapolis, MN 55402-1544, for itself and for each of the financial institutions and their respective successors and assigns which from time to time shall be a "Secured Party" under the Security Agreement (as hereinafter defined).

### **RECITALS:**

**WHEREAS**, Mortgagor is the owner and holder of fee simple title in and to the Land (as hereinafter defined) described on Exhibit A attached hereto and made a part hereof;

**WHEREAS**, pursuant to that certain Indenture dated as of November 6, 2012, among Shale-Inland Holdings, LLC and Shale-Inland Finance Company (collectively, the "Issuers"), the Subsidiary Guarantors (as defined herein), and Mortgagee (the "Indenture"), the Issuer has issued 8.75% Senior Secured Notes due 2019 ("Notes");

**WHEREAS**, Mortgagee, Issuers and Mortgagor and certain other subsidiaries of Issuers, are parties to that certain Intercreditor Agreement dated as of November 6, 2012 (as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement");

**WHEREAS**, Mortgagee, Issuers and Mortgagor and certain subsidiaries of Issuers, are parties to that certain Security Agreement dated as of November 6, 2012 (the "Security Agreement"); and

**WHEREAS**, it is a requirement under the Indenture that Mortgagor grant to Mortgagee, on behalf of the Secured Parties, a security interest and a first mortgage lien upon the Mortgage Property (as hereinafter defined), to secure the Indenture Obligations (as defined in the Intercreditor Agreement) (including with respect to any guarantee pursuant to Article 10 of the Indenture).

**NOW, THEREFORE**, in order to comply with the terms and conditions of the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby agrees with Mortgagee as follows:

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## ARTICLE I

### DEFINITIONS

**Section 1.01 Terms Defined Above.** As used in this Mortgage, the terms defined in the introductory paragraph to this Mortgage and in the Recitals set forth above shall have the meanings respectively assigned to such terms in such paragraph and Recitals.

**Section 1.02 Definitions.** As used herein, the following terms shall have the following meanings:

“Applicable UCC” means the Uniform Commercial Code as presently in effect in the State or Commonwealth where the Mortgage Property is located.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. § 101, et. seq.), as amended, and any successor statute.

“Buildings” means any and all buildings, structures, garages, utility sheds, workrooms, air conditioning towers, open parking areas and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

“Default Rate” means the rate of interest borne by the Notes.

“Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Mortgage Property and relate to Hazardous Materials and/or Microbial Matter.

“Financing Documents” means, collectively, the Indenture, this Mortgage, and all other instruments, agreements and other documents executed and delivered pursuant hereto or thereto or otherwise included in the definition of the term “Indenture Documents” in the Intercreditor Agreement.

“Fixtures” means all materials, supplies, equipment, apparatus and other items of Personalty now or hereafter acquired by Mortgagor and incorporated into the Mortgage Property so as to constitute fixtures under the Applicable UCC or otherwise under the laws of the state or commonwealth in which such items are located.

“Governmental Requirements” means any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor or the Mortgage Property, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof.

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“Impositions” means any and all real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgage Property; and any and all other taxes, charges and assessments, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgage Property or the ownership, use, occupancy, benefit or enjoyment thereof, together with any interest, costs or penalties that may become payable in connection therewith.

“Indemnified Parties” means, with respect to any Person entitled to the benefit of an indemnity, such Person and its officers, directors, shareholders, partners, members, managers, employees, agents, representatives, attorneys, accountants and experts. The term “Indemnified Party” means any one of such Persons.

“Land” means the real Mortgage Property or interest therein described in Exhibit A attached hereto, and all rights, titles and interests appurtenant thereto.

“Leases” means any and all leases, master leases, subleases, licenses, concessions or other agreements (whether written or oral, and whether now or hereafter in effect) which grant to third Persons a possessory interest in and to, or the right to use, all or any part of the Mortgage Property, Land, the Buildings, the Fixtures and/or the Personalty, together with all security and other deposits made in connection therewith and any guarantee of the obligations of the landlord or the tenant thereunder.

“License” has the meaning assigned to such term in Section 3.02(a) hereof.

“Losses” means all obligations, damages, claims, causes of action, costs, fines, fees, charges, penalties, deficiencies, losses, diminutions in value, expenses (including court costs, fees and expenses of attorneys, accountants, consultants and other experts) and other liabilities, and, with respect to any indemnity, includes all attorneys’ fees and expenses in connection with the enforcement and collection of such indemnity. The term “Loss” means any one of such Losses.

“Microbial Matter” shall mean fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including, but not limited to, mold, mildew and viruses, whether or not such Microbial Matter is living.

“Permitted Encumbrances” shall have the same meaning as “Permitted Liens” as defined in the Indenture.

“Personalty” means all of Mortgagor’s right, title and interest in and to all furniture, furnishings, equipment, machinery, goods, general intangibles, money, insurance proceeds, contract rights, option rights, inventory, together with all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any Governmental Authority, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other personal property (other than Fixtures) of any kind or character), and including such Mortgage Property that is now or



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hereafter located or to be located upon, within or about the Land and the Buildings, or which are or may be used in or related to the planning, development, financing or operation of the Mortgage Property, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof. Notwithstanding the foregoing, Personalty shall not include any property belonging to tenants under any Leases or which tenants are entitled to remove pursuant to the terms of such Leases, except, in each case, to the extent the Mortgagee shall have any right or interest therein.

“Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Mortgage Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other legal requirements relating to money laundering or terrorism.

“Rents” means all of the rents, revenues, income, proceeds, issues, profits, security and other types of deposits (after Mortgagor acquires title thereto), and other benefits paid or payable by parties (other than Mortgagor) for using, leasing, licensing, possessing, operating from, residing in, benefiting from or otherwise enjoying all or any part of the Land, the Buildings, the Fixtures and/or the Personalty.

“Mortgage Property” means all of Mortgagor’s right, title, interest and estate, whether now owned or hereafter acquired, in and to the Land, the Buildings, the Fixtures and the Personalty, together with:

- (i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, air rights, development rights or credits, zoning rights, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, and all right, title and interest of Mortgagor, if any, in and to all rights, royalties and profits with respect to all minerals, coal, oil, gas and other substances of any kind or character on or underlying the Land, together with all right, title and interest of Mortgagor in and to all water and water rights (whether riparian, appropriative or otherwise and whether or not appurtenant);
- (ii) all rights of Mortgagor (but not its obligations) under any contracts and agreements, including, without limitation, construction contracts and architectural agreements, relating to the Land, the Buildings, the Fixtures or the Personalty;
- (iii) all of Mortgagor’s right, title and interest in and to all permits, licenses, franchises, certificates, authorizations, consents, approvals and other rights and privileges (each, a “Permit”)

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- obtained in connection with the Land, the Buildings, the Fixtures or the Personalty or the use or operation thereof;
- (iv) all of Mortgagor's right, title and interest in and to all plans and specifications, designs, schematics, drawings and other information, materials and matters heretofore or hereafter prepared relating to the Land, the Buildings, the Fixtures or the Personalty;
  - (v) all of Mortgagor's right, title and interest in and to all proceeds arising from or by virtue of the sale, lease or other disposition of the Land, the Buildings, the Fixtures or the Personalty or any part thereof or any interest therein or from the operation thereof;
  - (vi) all of Mortgagor's right, title and interest in and to all Leases now or hereafter in effect and all Rents, royalties, bonuses, issues, profits, revenues or other benefits arising from or attributable to the Land, the Buildings, the Fixtures or the Personalty;
  - (vii) all of Mortgagor's right, title and interest in and to all betterments, additions, alterations, appurtenances, substitutions, replacements and revisions to the Land, the Buildings, the Fixtures or the Personalty and all reversions and remainders relating thereto;
  - (viii) all of Mortgagor's right, title and interest in and to any awards, remuneration, settlements or compensation now or hereafter made by any Governmental Authority pertaining to the Land, the Buildings, the Fixtures or the Personalty, including those arising from or attributable to any vacation of, or change of grade in, any streets affecting the Land or the Buildings;
  - (ix) all of Mortgagor's right, title and interest in and to all awards, payments and proceeds of conversion, whether voluntary or involuntary, of any of the Land, the Buildings, the Fixtures, the Personalty or any of the Mortgage Property and rights described in the foregoing clauses (i) through (viii), including without limitation, all insurance, condemnation and tort claims, refunds of real estate taxes and assessments, rent claims and other obligations dischargeable in cash or cash equivalents; and
  - (x) all other rights of Mortgagor of every kind and character relating to and/or used or to be used in connection with the foregoing, and all proceeds and products of any of the foregoing.

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

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**Section 1.03 Terminology; Other Defined Terms.** Any capitalized term used in this Mortgage and not otherwise defined herein shall have the meaning assigned to such term in the Indenture, the Intercreditor Agreement, or the Security Agreement, as applicable.

## ARTICLE II

### GRANT OF LIEN AND SECURITY INTEREST

**Section 2.01 Grant of Lien.** To secure the full and timely payment, performance and discharge of all of the Indenture Obligations, Mortgagor hereby irrevocably GRANTS, BARGAINS, SELLS, ASSIGNS, TRANSFERS, MORTGAGES, WARRANTS, CONVEYS and CONFIRMS unto Mortgagee and Mortgagee's successors, assigns and substitutes in trust hereunder, WITH POWER OF SALE and right of entry and possession, for the use and benefit of Mortgagee for the Secured Parties pursuant to the Indenture, the real and personal property, right, title, interest and estate in, to and under the Mortgage Property, subject, however, to the Permitted Encumbrances; TO HAVE AND TO HOLD the Mortgage Property unto Mortgagee and Mortgagee's successors, assigns and substitutes in trust hereunder, subject to the terms and conditions of this Mortgage, with POWER OF SALE, forever, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgage Property unto Mortgagee against every Person whomsoever lawfully claiming or to claim the same or any part, subject, however, to the Permitted Encumbrances; provided, however, that the Lien of this Mortgage may be released, in whole or in part, in accordance with the provisions of Section 9.16 hereof.

**Section 2.02 Grant of Security Interest.** This Mortgage shall be construed as a mortgage on the Land and the Buildings and it shall also constitute and serve as a "security agreement" within the meaning of, and shall constitute a first and prior security interest under, the Applicable UCC with respect to the Personalty and the Fixtures. To this end, Mortgagor by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, SELL, TRANSFER and SET OVER unto Mortgagee for the Secured Parties pursuant to the Indenture, a security interest in all of Mortgagor's right, title and interest in, to and under the Personalty and the Fixtures, to secure the full and timely payment, performance and discharge of the Indenture Obligations. Mortgagor hereby agrees to file and record financing statements (and continuations thereof) with the appropriate filing and recording offices in order to perfect (and maintain the perfection of) the security interests granted herein.

**Section 2.03 No Obligation of Mortgagee.** The assignment and security interest herein granted to Mortgagee shall not be deemed or construed to constitute Mortgagee as a mortgagee-in-possession of the Mortgage Property, obligate Mortgagee to lease the Mortgage Property or attempt to do the same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever.

**Section 2.04 Fixture Filing.** Without in any manner limiting the generality of any of the other provisions of this Mortgage: (a) some portions of the goods described or to which reference is made herein are or are to become fixtures on the Land described or to which reference is made herein or on Exhibit A attached to this Mortgage; (b) this Mortgage is to be filed of record in the real estate records as a financing statement and shall constitute a "fixture

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filing” for purposes of the Applicable UCC; and (c) Mortgagor is the record owner of the real estate or interests in the real estate constituting the Mortgage Property hereunder. Information concerning the security interest herein granted may be obtained at the addresses set forth on the first page hereof. The addresses of the Secured Party (Mortgagee) and of the Debtor (Mortgagor) are set forth on the first page hereof. In that regard, the following information is provided:

<u>Name of Debtor:</u>	Shale-Inland Realty, LLC
<u>Type of Organization:</u>	Limited Liability Company
<u>State:</u>	Delaware
<u>FEIN:</u>	90-0806424
<u>Organizational ID Number:</u>	4914033

**Section 2.05 Additional Notes.** It is the intention of Mortgagor and Mortgagee that this Mortgage (as renewed and extended from time to time) shall secure any Additional Notes, and the lien and security interest created by this Mortgage shall attach upon execution and have priority from, and related back to, the time of recording as to the Initial Notes, whether obligatory or discretionary, until this Mortgage is released of record.

## ARTICLE III

### ASSIGNMENT OF LEASES AND RENTS

**Section 3.01 Assignment.** For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Indenture, the receipt and sufficiency of which are hereby acknowledged and confessed, Mortgagor has presently, absolutely and irrevocably GRANTED, BARGAINED, SOLD, ASSIGNED, WARRANTED, TRANSFERRED, CONVEYED and CONFIRMED, and by these presents does presently, absolutely and irrevocably GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, CONVEY and CONFIRM, unto Mortgagee for the Secured Parties pursuant to the Indenture, as security for the payment, performance and discharge of the Indenture Obligations, all of the Leases and Rents (if any), subject only to the Permitted Encumbrances applicable thereto and the License (as hereinafter defined); TO HAVE AND TO HOLD the Leases and the Rents unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Mortgagee against every Person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) and perform and discharge (or cause to be performed and discharged) all of the Indenture Obligations on or before the date on which the same are to be paid, performed and discharged, then this assignment shall terminate, and all rights, titles and interests conveyed pursuant to this assignment shall become vested in Mortgagee.

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## Section 3.02 Revocable License.

(a) Mortgagee hereby grants to Mortgagor a revocable license (the "License"), nonexclusive with the rights of Mortgagee reserved in Sections 3.02(b), 3.04 and 3.05 hereof, to exercise and enjoy all incidences of the status of a lessor under the Leases and the Rents, including, without limitation, the right to collect, demand, sue for, attach, levy, recover and receive the Rents and to give proper receipts, releases and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund which, provided no Event of Default shall be continuing, may be applied in any manner not inconsistent with the Financing Documents.

(b) If an Event of Default shall occur and be continuing, the License shall immediately and automatically terminate without the necessity of any action by Mortgagee or any other Person, and Mortgagee shall have the right, but not the obligation, in such event to exercise the rights and remedies provided under this Mortgage or otherwise available to Mortgagee under applicable law. Upon demand by Mortgagee at any time that an Event of Default shall have occurred, Mortgagor shall promptly pay to Mortgagee all security deposits under the Leases and all Rents allocable to any period commencing from and after the occurrence of such Event of Default. Any Rents received hereunder by Mortgagee shall be applied and disbursed to the payment performance and discharge of the Indenture Obligations, subject to the terms of the Indenture, provided, however, that, subject to any applicable requirement of law, any security deposits actually received by Mortgagee shall be held, applied and disbursed as provided in the applicable Leases.

**Section 3.03 Enforcement of Leases.** Mortgagor shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the lessor under any Lease in all material respects; (b) maintain each Lease in full force and effect during the term thereof; (c) provide Mortgagee with prompt notice of each notice of default sent to a tenant under a Lease, provide Mortgagee with prompt notice of each notice of default received from (or relating to) a tenant under a Lease; (d) appear in and defend any action or proceeding in any manner connected with any of the Leases; (e) deliver to Mortgagee true and complete copies of all Leases; and (f) deliver to Mortgagee all such further information, and execute and deliver to Mortgagee such further assurances and assignments, with respect to the Leases as Mortgagee may from time to time reasonably request. Without Mortgagee's prior written consent, Mortgagor shall not (i) do or knowingly permit to be done anything to materially impair the value of any of the Leases; (ii) except for security or similar deposits, collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease; (iii) discount any future accruing Rents; (iv) amend, modify, accept the surrender of or terminate any of the Leases; or (v) assign or grant a security interest in or to the License or any of the Leases or Rents.

**Section 3.04 Direction to Tenants.** Upon and at any time following the occurrence and during the continuance of an Event of Default, Mortgagor hereby authorizes and directs, and shall, at the direction of Mortgagee, further authorize and direct, in writing, the tenant under each Lease to pay directly to, or as directed by, Mortgagee all Rents accruing or due under its Lease without proof to the tenant of the occurrence and continuance of such Event of Default. Mortgagor hereby authorizes the tenant under each Lease to rely upon and comply with

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any notice or demand from Mortgagee for payment of Rents to Mortgagee, and Mortgagor shall have no claim against any tenant for Rents paid by such tenant to Mortgagee pursuant to such notice or demand. All Rents actually collected by Mortgagee pursuant to this Section 3.04 shall be applied in accordance with the Indenture.

## **Section 3.05 Appointment of Attorney-in-Fact.**

(a) Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact, coupled with an interest, of Mortgagor and Mortgagor hereby confers upon Mortgagee the right, but not the obligation, in the name, place and stead of Mortgagor, to, upon the occurrence and during the continuance of an Event of Default, demand, sue for, attach, levy, recover and receive any of the Rents and any premium or penalty payable upon the exercise by any third Person under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as provided in the Indenture. Mortgagor hereby authorizes and directs any such third Person to deliver such payment to Mortgagee in accordance with this Article III, and Mortgagor hereby ratifies and confirms all that its said attorney-in-fact, the Mortgagee, shall do or cause to be done in accordance with this Mortgage and by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Mortgagee, and its successors and assigns, until the lien of this Mortgage is released pursuant to Section 9.16.

(b) Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact, coupled with an interest, of Mortgagor and Mortgagor hereby confers upon Mortgagee the right, but not the obligation, in the name, place and stead of Mortgagor, to subject and subordinate at any time and from time to time any Lease or any part thereof to the lien, assignment and security interest of this Mortgage and to the terms hereof, or to any other mortgage, Mortgage, assignment or security agreement, or to any ground lease or surface lease, with respect to all or a portion of the Mortgage Property, or to request or require such subordination, where such reservation, option or authority was reserved to Mortgagor under any such Lease, or in any case where Mortgagor otherwise would have the right, power or privilege so to do. The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Mortgagee, and its successors and assigns, so long as any part of the Indenture Obligations remains unpaid or unperformed. Mortgagor hereby represents and warrants that it has not at any time prior to the date hereof exercised (or appointed any Person as attorney-in-fact to exercise) any of the rights described in this Section 3.05(b), and Mortgagor hereby covenants not to exercise (or appoint any other Person as attorney-in-fact to exercise) any such right, nor (except at Mortgagee's written request) to subordinate any such Lease to the lien of this Mortgage or to any other mortgage, Mortgage, assignment or security agreement or to any ground lease or surface lease.

**Section 3.06 No Liability of Mortgagee.** Neither the acceptance hereof nor the exercise of the rights and remedies hereunder nor any other action or inaction on the part of Mortgagee or any Person exercising the rights of Mortgagee or any Secured Party hereunder shall be construed to: (a) be an assumption by Mortgagee or any such Person or to otherwise make Mortgagee or such Person liable or responsible for the performance of any of the obligations of Mortgagor under or with respect to the Leases or for any Rent, security deposit or

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other amount delivered to Mortgagor, provided that Mortgagee or any such Person exercising the rights of Mortgagee shall be accountable for any Rents, security deposits or other amounts actually received by Mortgagee or such Person, as the case may be; or (b) obligate Mortgagee or any such Person to take any action under or with respect to the Leases or with respect to the Mortgage Property, to incur any expense or perform or discharge any duty or obligation under or with respect to the Leases or with respect to the Mortgage Property, to appear in or defend any action or proceeding relating to the Leases or the Mortgage Property, to constitute Mortgagee as a mortgagee-in-possession (unless Mortgagee actually enters and takes possession of the Mortgage Property), or to be liable in any way for any injury or damage to Persons or Mortgage Property sustained by any Person in or about the Mortgage Property, other than to the extent caused by the willful misconduct or gross negligence of Mortgagee.

**Section 3.07 Mortgagor's Indemnities.** Mortgagor hereby agrees to protect, indemnify and hold harmless Mortgagee and each Indemnified Party related to Mortgagee from and against any and all Losses which Mortgagee or any Indemnified Party may incur under or by reason of this Article III, or for inaction or any action taken by Mortgagee or any such other Secured Party or Indemnified Party hereunder, or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Mortgagee or any Indemnified Party arising out of the Leases, including, without limitation, any claim by any third Person for credit on account of Rents paid to and received by Mortgagor, but not delivered to Mortgagee or its agents, representatives or employees, for any period under any Lease more than one (1) month in advance of the due date thereof. The foregoing indemnity shall include, in any case, such Loss as may result from the ordinary negligence of Mortgagee or any Indemnified Party, but not any such Loss that is caused by the gross negligence or willful misconduct of Mortgagee or any Indemnified Party. In the event that Mortgagee or any of the other Secured Parties or any Indemnified Party incurs any Losses covered by the indemnity set forth in this Section 3.07, the amount thereof, including reasonable attorneys' fees, with interest thereon at the Default Rate, shall be payable by Mortgagor to Mortgagee within ten (10) days after demand therefor, and shall be secured hereby and by all other security for the payment and performance of the Indenture Obligations, including, without limitation, the lien and security interest of this Mortgage. The liabilities of Mortgagor as set forth in this Section 3.07 shall survive the termination of this Mortgage and the repayment of the Indenture Obligations.

**Section 3.08 No Modification of Mortgagor's Obligations.** Nothing herein contained shall modify or otherwise alter the obligation of Mortgagor to make prompt payment of all Indenture Obligations as and when the same become due, regardless of whether the Rents described in this Article III are sufficient to pay the Indenture Obligations, and the security provided to Mortgagee pursuant to this Article III shall be cumulative of all other security of any and every character now or hereafter existing to secure payment of the Indenture Obligations.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Mortgagor hereby unconditionally represents and warrants to Mortgagee as follows:

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## **Section 4.01 Title to Mortgage Property and Lien of this Mortgage.**

Mortgagor has good, marketable and indefeasible fee simple title to the Land and the Buildings, and has good and valid title to the Fixtures, the Personalty and the other Mortgage Property. The Mortgage Property is free and clear of any and all Liens, charges, encumbrances, security interests and adverse claims whatsoever, except for all Liens, charges, encumbrances, security interests and adverse claims specifically identified as exceptions in the policy of title insurance accepted by Mortgagee in connection herewith, and other than Permitted Encumbrances and the Liens granted to the Mortgagee pursuant to any Financing Document.

## **Section 4.02 Legal Status and Authority.**

(a) Mortgagor (i) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (ii) is duly qualified to transact business and is in good standing in the state where the Mortgage Property is located; and (iii) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Mortgage Property in all material respects. Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Mortgage Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor's exact legal name is correctly set forth in the first paragraph of this Mortgage. Mortgagor is an organization of the type specified in the first paragraph of this Mortgage. Mortgagor is incorporated in or organized under the laws of the state specified in the first paragraph of this Mortgage. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of Mortgagor) and will continue to be the address of Mortgagor set forth in the first paragraph of this Mortgage (unless Mortgagor notifies Mortgagee in writing at least thirty (30) days prior to the date of such change). Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is 4914033.

**Section 4.03 Financing Documents.** Mortgagor has received a copy of and is fully familiar with the terms and provisions of the Indenture and the other Financing Documents. All representations and warranties made by Mortgagor in the Indenture and the other Financing Documents are incorporated herein by reference and are hereby made by Mortgagor as to itself and the Mortgage Property as though such representations and warranties were set forth at length herein as the representations and warranties of Mortgagor.

**Section 4.04 Validity of Documents.** (a) The execution, delivery and performance of this Mortgage (i) is within the power and authority of Mortgagor; (ii) has been authorized by all requisite organizational action; (iii) has received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating



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agreement, or other governing instrument of Mortgagor, or any indenture, agreement or other instrument to which Mortgagor is a party or by which it or any of its assets or the Mortgage Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Mortgage in appropriate land records in the State where the Mortgage Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and (b) to the best knowledge of Mortgagor, this Mortgage constitutes the legal, valid and binding obligation of the Mortgagor enforceable against the Mortgagor in accordance with its terms.

**Section 4.05 Litigation.** There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Mortgagor's knowledge, threatened or contemplated against Mortgagor or against or affecting the Mortgage Property that (a) has not been disclosed to Mortgagee by Mortgagor in writing, and has a material adverse affect on the Mortgage Property or Mortgagor's ability to perform its obligations under this Mortgage, or (b) is not adequately covered by insurance.

**Section 4.06 Status of Mortgage Property.**

(a) Mortgagor has obtained all material certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Mortgage Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Mortgage Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws, Prescribed Laws and other similar laws, except as would not have a material adverse affect on the value thereof.

(c) The Mortgage Property is not located in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards or if the Land or any part thereof is identified by the Federal Emergency Management Agency as an area having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), then Mortgagor has obtained flood insurance under the U.S. National Flood Insurance Program, in an amount equal to the full replacement cost of the Buildings, Fixtures and Personalty now or hereafter located on the Mortgage Property or the maximum limit of coverage available with respect to such Buildings, Fixtures and Personalty under the applicable federal statute, whichever is less, unless the Mortgage Property is located in a special flood hazard area in a community that does not participate in the National Flood Insurance Program.

(d) No part of the Mortgage Property subject to this Mortgage has been taken in condemnation or other like proceeding nor is any proceeding known to Mortgagor to be pending, threatened or contemplated for the partial or total condemnation or taking of the Mortgage Property.

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(e) To Mortgagor's actual knowledge (without duty of inquiry):

(i) The Mortgage Property is served by utilities sufficient for the current or contemplated use thereof and the Mortgage Property has accepted or is equipped to accept such utility service.

(ii) The Mortgage Property has access to a public street sufficient for the current or contemplated use thereof.

(iii) The Mortgage Property is served by water and sewer systems sufficient for the current or contemplated use thereof.

(iv) The Mortgage Property is free from damage caused by fire or other casualty, except as would not have a material adverse effect on the value thereof.

(v) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the improvements located on the Land which would be delinquent if not paid have been paid or are being contested in good faith.

(vi) Mortgagor has paid in full for or has a valid leasehold interest in, and is the owner or leasehold owner of, all furnishings, fixtures and equipment (other than any property belonging to tenants under any Leases or which tenants are entitled to remove pursuant to the terms of such Leases,) used in connection with the operation of the Mortgage Property, free and clear of any and all Liens other than Permitted Encumbrances and the lien and security interest created hereby.

(vii) All the improvements lie within the boundaries of the Land.

**Section 4.07 No Foreign Person.** Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

**Section 4.08 Separate Tax Lot.** The Mortgage Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots.

**Section 4.09 Leases.** Mortgagor is in possession of the Mortgage Property. Mortgagor is not a party to any leases, written or oral, for the Land other than that certain Lease dated February 28, 2011 by and between Shale-Inland Realty, LLC, a Delaware limited liability company, as landlord, and Main Street Polishing Company, Inc., a New Jersey corporation, as tenant.

**Section 4.10 Business Purposes.** The loan evidenced by the Notes secured by the Mortgage is solely for the business purpose of Mortgagor, and is not for personal, family, household, or agricultural purposes.

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**Section 4.11 Mailing Address.** Mortgagor's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

**Section 5.01 Lien Status.** Except as otherwise expressly provided in the Indenture or the Intercreditor Agreement, Mortgagor shall not place, or permit to be placed, or otherwise mortgage, hypothecate or encumber the Mortgage Property, or any portion thereof or interest therein, with any other Lien, other than Permitted Encumbrances. Mortgagor shall take all commercially reasonable efforts to defend Mortgagee's security interest and priority (subject to the qualifications and limitations described in the Indenture, the Security Agreement and the other Financing Documents), against the claims of all Persons, subject to the rights of the Mortgagor under the Financing Documents with respect to the Mortgage Property and subject to Permitted Encumbrances.

**Section 5.02 Payment of Impositions.** Mortgagor shall duly pay and discharge, or cause to be paid and discharged, all Impositions in accordance with the Indenture.

**Section 5.03 Insurance and Application of Insurance Proceeds.**

(a) During the term of this Mortgage, Mortgagor, at its sole cost and expense, shall maintain, or cause to be maintained, all insurance on the Mortgage Property that is required to be maintained under the Indenture and any other Financing Document. All such insurance policies with respect to the Mortgage Property shall contain a standard, non-contributory mortgagee clause naming Mortgagee, and its successors and assigns, as an additional insured under all liability insurance policies, as the first mortgagee and loss payee on all Mortgage Property insurance policies, and as the sole loss payee on all rental loss or business interruption insurance policies. Mortgagor shall not take out separate insurance with respect to the Mortgage Property concurrent in form or contributing in the event of loss with that required to be maintained hereunder or under the Indenture unless Mortgagee is named as an additional insured thereon under a standard mortgagee clause.

(b) In the event of the foreclosure of this Mortgage, or in the event of any transfer of title to the Mortgage Property, or any part thereof, by foreclosure sale or by power of sale or deed in lieu of foreclosure, the purchaser of the Mortgage Property, or such part thereof, shall succeed to all of Mortgagor's rights with respect to the Mortgage Property, including any rights to unexpired, unearned or returnable insurance premiums, subject to limitations on the assignment of blanket policies, but limited to such rights as relate to the Mortgage Property or such part thereof. If Mortgagee acquires title to the Mortgage Property, or any part thereof, in any manner, Mortgagee shall thereupon (as between Mortgagor and Mortgagee) become the sole and absolute owner of the insurance policies with respect to the Mortgage Property, and all

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insurance proceeds payable thereunder with respect to the Mortgage Property, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgage Property, or such part thereof, if any.

(c) If the Mortgage Property, or any material part thereof, shall be destroyed or damaged, Grantor shall give immediate notice thereof to Mortgagee. All insurance proceeds payable in connection with such destruction or damage shall be applied in the manner set forth in the Indenture and the Intercreditor Agreement. Notwithstanding any damage to, destruction or loss of or other casualty with respect to any of the Mortgage Property, Mortgagor shall continue to pay the Indenture Obligations at the time and in the manner provided for in the Indenture and the other Financing Documents until the Indenture Obligations have been paid in full. If the Mortgage Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such insurance proceeds, Mortgagee shall have the right, whether or not a deficiency judgment on any Financing Document shall have been sought, recovered or denied, to receive such insurance proceeds, or a portion thereof sufficient to pay the then unpaid Indenture Obligations, whichever is less.

## **Section 5.04 Condemnation and Application of Condemnation Proceeds.**

(a) Promptly upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation or other taking of the Mortgage Property, or any portion thereof or interest therein, Mortgagor shall notify Mortgagee of such proceeding. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall, subject to the terms of the Indenture, cause any awards or settlements to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage. Mortgagee shall be entitled, but not obligated, to participate in any such proceeding, and Mortgagor shall deliver or cause to be delivered to Mortgagee such instruments as may be requested by Mortgagee from time to time to permit such participation.

(b) All amounts and proceeds payable in connection with any such condemnation shall be applied in the manner set forth in the Indenture and the Intercreditor Agreement. Notwithstanding any condemnation or other taking of any of the Mortgage Property, Mortgagor shall continue to pay the Indenture Obligations at the time and in the manner provided for in the Indenture and the other Financing Documents, and the Indenture Obligations shall not be reduced until, and then only to the extent that, any condemnation award or settlement shall have been actually received and applied by Mortgagee to the discharge of the Indenture Obligations. If the Mortgage Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such condemnation award or settlement, Mortgagee shall have the right, whether or not a deficiency judgment on any Financing Document shall have been sought, recovered or denied, to receive such condemnation award or settlement, or a portion thereof sufficient to pay the Indenture Obligations, whichever is less.

**Section 5.05 Maintenance of Rights of Way, Easements, Licenses and Other Rights.** Mortgagor shall maintain, preserve and renew all rights of way, easements, tenements, hereditaments, development rights and credits, zoning rights, grants, privileges, appurtenances, licenses, franchises and other rights reasonably necessary for the use or operation of the Mortgage Property from time to time, which has a material adverse affect on the value thereof,

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and Mortgagor shall not, without the prior written consent of Mortgagee, initiate, join in or consent to any material private restrictive covenant or other material public or private restriction as to the present or future use or operation of the Mortgage Property. Mortgagor shall, however, comply in all material respects with all restrictive covenants which may at any time affect the Mortgage Property, all applicable zoning ordinances and all other public or private restrictions relating to the use of the Mortgage Property.

**Section 5.06 Payment and Performance of Obligations.** Mortgagor shall duly and punctually pay and perform all of the Indenture Obligations.

## ARTICLE VI

### NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee as follows:

**Section 6.01 No Further Encumbrances.** Mortgagor shall not, without the prior written consent of Mortgagee, create, incur or permit to exist any Lien, with respect to the Mortgage Property, or any portion thereof or interest therein, other than the Permitted Encumbrances and in accordance with the terms of the Indenture.

**Section 6.02 Transfer Restrictions.** Mortgagor shall not sell, lease, assign, transfer or otherwise dispose of or abandon all or any part of the Mortgage Property (or any interest therein), except as expressly permitted by, and in accordance with the terms of, the Indenture.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 Foreclosure and Sale.** If an Event of Default shall occur and be continuing, Mortgagee shall have the right and option, but not the obligation, to take possession of the Mortgage Property and/or proceed with foreclosure by directing Mortgagee, or Mortgagee's successors or substitutes in trust and to sell, to the extent and in the manner permitted by applicable law, all or any portion of the Mortgage Property at one or more sales, as an entirety or in parcels, at such place or places, in such manner and upon such notice as may be required by applicable law, or, in the absence of any such requirement, as Mortgagee may deem appropriate, and to make conveyance to the purchaser or purchasers. Where the Mortgage Property is situated in more than one county, notice as above provided shall be posted and filed in all such counties (if such notices are required by applicable law), and all such Mortgage Property may be sold in any such county and any such notice shall designate the county where such Mortgage Property is to be sold. Nothing contained in this Section 7.01 shall be construed so as to limit in any way Mortgagee's rights to sell the Mortgage Property, or any portion thereof, by private sale if, and to the extent that, such private sale is permitted under the laws of the applicable jurisdiction or by public or private sale after entry of a judgment by any court of competent jurisdiction so ordering. Mortgagor hereby irrevocably appoints Mortgagee to be the attorney-in-fact of Mortgagor (coupled with an interest) and in the name and on behalf of

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Mortgagor to execute and deliver any deeds, transfers, conveyances, assignments, assurances and notices which Mortgagor ought to execute and deliver, and to do and perform any other acts or things which Mortgagor ought to do and perform under the covenants herein contained and, generally, to use the name of Mortgagor in the exercise of any of the powers hereby conferred on Mortgagee. At any such sale: (a) whether made under the power herein contained or any other legal enactment, or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Mortgagee to have physically present, or to have constructive possession of, the Mortgage Property (Mortgagor hereby covenanting and agreeing to deliver to Mortgagee any portion of the Mortgage Property not actually or constructively possessed by Mortgagee immediately upon demand by Mortgagee) and the title to and right of possession of any such Mortgage Property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (b) each instrument of conveyance executed by Mortgagee shall be binding upon Mortgagor and its successors and assigns; (c) each and every recital contained in any instrument of conveyance made by Mortgagee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment and/or nonperformance of the Indenture Obligations and advertisement and conduct of such sale in the manner provided herein and otherwise required by applicable law; (d) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed; (e) the receipt of Mortgagee, or of such other Person or officer making the sale, shall be a sufficient discharge to the purchaser for its purchase money and neither such purchaser nor its assigns or personal representatives shall thereafter be obligated to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof; (f) to the fullest extent permitted by applicable law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, estate, claim and demand whatsoever, either at law or in equity (including any statutory or common law right of redemption, which is hereby waived to the fullest extent permitted by applicable law), in and to the Mortgage Property sold in any such event, and such sale shall be a perpetual bar, both at law and in equity, against Mortgagor and any and all other Persons claiming by, through or under Mortgagor; and (g) to the extent and under such circumstances as are permitted by applicable law, Mortgagee may be a purchaser at any such sale, and shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the then unpaid Indenture Obligations to the amount of its bid (in the order of priority set forth in Section 7.15 hereof) in lieu of cash payment. Each remedy provided in this instrument is distinct from and cumulative with all other rights and remedies provided hereunder or afforded by applicable law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

## **Section 7.02 Reserved**

**Section 7.03 Receivership.** If any of the Indenture Obligations shall become due and payable and shall not be promptly paid, Mortgagee shall have the right and power, but not the obligation, to proceed by a suit or suits in equity or at law, whether for the specific performance of Mortgagor, which notice is hereby expressly waived by Mortgagor, the appointment of a receiver to collect the Rents of the Mortgage Property and to preserve the security hereof, either before or after any foreclosure sale or the sale of the Mortgage Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, without regard to the value of the Mortgage Property as security for the amount then due

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to Mortgagee, or the solvency of any entity or entities, person or persons primarily or secondarily liable for the payment of such amounts; the Rents of the Mortgage Property, in any such event, having heretofore been assigned to Mortgagee pursuant to Section 3.01 hereof as additional security for the payment of the Indenture Obligations secured hereby. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee and shall be subject to the provisions of Section 9.07(b) hereof.

**Section 7.04 Judicial Foreclosure.** If an Event of Default shall occur and be continuing, Mortgagee shall have the right and power, but in the case of the Mortgagee, not the obligation, to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgage Property under the judgment or decree of any court or courts of competent jurisdiction, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgage Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee and shall bear interest from the date of such advance by Mortgagee until paid at the Default Rate.

**Section 7.05 Foreclosure for Installments.** If an Event of Default shall occur and be continuing, to the extent allowed by applicable law, Mortgagee shall also have the option, but not the obligation to proceed with foreclosure in satisfaction of any installments of the Indenture Obligations which have not been paid when due, either through the courts or otherwise, by non-judicial power of sale, in satisfaction of the matured but unpaid portion of the Indenture Obligations as if under a full foreclosure, conducting the sale as herein provided and without declaring the entire principal balance and accrued interest due. Such sale may be made subject to the unmatured portion of the Indenture Obligations, and any such sale shall not in any manner affect the unmatured portion of the Indenture Obligations, but as to such unmatured portion of the Indenture Obligations this Mortgage shall remain in full force and effect just as though no sale had been made hereunder. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indenture Obligations, it being the intent and purpose hereof to provide for a foreclosure and sale of the security for any matured portion of the Indenture Obligations without exhausting the power to foreclose and sell the Mortgage Property for any subsequently maturing portion of the Indenture Obligations.

**Section 7.06 Separate Sales.** If an Event of Default shall occur and be continuing, to the extent allowed by applicable law, the Mortgage Property may be sold in one or more parcels and in such manner and order as Mortgagee (acting pursuant to the terms of the Indenture), in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 7.07 Possession of Mortgage Property.** Mortgagor agrees to the full extent that it lawfully may, that, in case one or more of the Events of Default shall have occurred and be continuing, then, and in every such case, Mortgagee shall have the right and power, but

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not the obligation, to enter into and upon and take possession of all or any part of the Mortgage Property in the possession of Mortgagor, its successors or assigns, or its or their agents or servants, and may exclude Mortgagor, its successors or assigns, and all Persons claiming by, through or under Mortgagor, and its or their agents or servants wholly or partly therefrom; and, holding the same, Mortgagee may use, administer, manage, operate and control the Mortgage Property and conduct the business thereof to the same extent as Mortgagor, its successors or assigns, might at the time do and may exercise all rights and powers of Mortgagor, in the name, place and stead of Mortgagor, or otherwise as Mortgagee shall deem best. All costs, expenses and liabilities of every character incurred by Mortgagee in administering, managing, operating and controlling the Mortgage Property shall constitute a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee and shall and shall be subject to the provisions of Section 9.07(b) hereof. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact (coupled with an interest) to perform during the continuance of an Event of Default, such acts and execute such documents as Mortgagee (acting in accordance with the Indenture), in its sole discretion, shall deem appropriate, including endorsement of Mortgagor's name on any instruments. Regardless of any provision of this Mortgage, the Indenture or any other Financing Document, Mortgagee shall not be considered to have accepted any Mortgage Property other than cash or immediately available funds in satisfaction of any obligation of Mortgagor to Mortgagee, unless Mortgagee shall have given express written notice of Mortgagee's election to the contrary.

**Section 7.08 Occupancy After Foreclosure.** In the event that there is a foreclosure sale hereunder and at the time of such sale Mortgagor or Mortgagor's representatives, successors or assigns or any other Person claiming any interest in the Mortgage Property by, through or under Mortgagor, are occupying or using the Mortgage Property or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either the landlord or tenant, at a fair market rental per day based upon the value of the Mortgage Property as a whole; and such fair market rental to be due daily to the purchaser. To the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. In the event that the tenant fails to surrender possession of said Mortgage Property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the Mortgage Property (such as an action for forcible entry and detainer) in any court having appropriate jurisdiction.

**Section 7.09 Remedies Cumulative, Concurrent and Nonexclusive.** Every right, power and remedy herein given to Mortgagee shall be cumulative and in addition to every other right, power and remedy herein specifically given or now or hereafter existing in equity, at law or by statute (including specifically those granted by the Applicable UCC). Each such right, power and remedy, whether specifically herein given or otherwise existing, may be exercised from time to time and so often and in such order as may be deemed expedient by Mortgagee, and the exercise, or the beginning of the exercise, of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing such remedies. No delay or omission by Mortgagee in the exercise of any such right, power or



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remedy shall impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.

**Section 7.10 No Release of Obligations.** Neither Issuer, Mortgagor, any Subsidiary Guarantor, nor any other Person now or hereafter obligated for the payment or performance of all or any part of the Indenture Obligations shall be relieved of any such obligation by reason of (a) the failure of Mortgagee to comply with any request of Issuer, Mortgagor, any Subsidiary Guarantor or any other Person so obligated to foreclose the Lien of this Mortgage to enforce any provision hereunder or under the Indenture; (b) the release, regardless of consideration, of the Mortgage Property or any portion thereof or interest therein or the addition of any other Mortgage Property to the Mortgage Property; (c) any agreement or stipulation between any subsequent owner of the Mortgage Property and Mortgagee extending, renewing, rearranging or in any other way modifying the terms of this Mortgage without first having obtained the consent of, given notice to or paid any consideration to Issuer, Mortgagor, any Subsidiary Guarantor, or any other Person, and in any such event Issuer, Mortgagor, all Subsidiary Guarantors, and all such other Persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Mortgagee; or (d) any other act or occurrence save and except the complete payment and performance of all of the Indenture Obligations.

**Section 7.11 Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration, any part of the Mortgage Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the Lien or security interest created in or evidenced by this Mortgage or its stature as a first and prior Lien and security interest in and to the Mortgage Property, and without in any way releasing or diminishing the liability of any Person liable for the payment or performance of the Indenture Obligations. Mortgagee may resort to any other security for the Indenture Obligations held by Mortgagee in such manner and order as Mortgagee may elect.

**Section 7.12 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by applicable law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Mortgagor by virtue of any present or future moratorium law or other law exempting the Mortgage Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) except for notices expressly provided for herein or in the Indenture, all notices of any Event of Default or of Mortgagee's intention to accelerate maturity of the Indenture Obligations or of Mortgagee's election to exercise or actual exercise of any right, remedy or recourse provided for hereunder or under the Indenture; (c) any right to a marshalling of assets or a sale in inverse order of alienation; and (d) any and all conflicts with any provisions of any of the Financing Documents. If any law referred to in this Mortgage and now in force, of which Mortgagor or its successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall thereafter be deemed not to constitute any part of the contract herein contained or to preclude the operation or application of the provisions hereof.

**Section 7.13 Discontinuance of Proceedings.** In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the Indenture

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and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indenture Obligations, this Mortgage, the Indenture, the Mortgage Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

**Section 7.14 Application of Proceeds.** After the occurrence and during the continuance of an Event of Default, the proceeds of any sale of and any other amounts generated by the holding, leasing, operating or other use of the Mortgage Property shall be applied by Mortgagee (or the receiver, if one is appointed), to the extent that funds are so available therefrom, in accordance with Section 7.2 of the Security Agreement.

**Section 7.15 Uniform Commercial Code Remedies.** Mortgagee shall have all of the rights, remedies and recourses with respect to the Personalty and the Fixtures afforded to it by the Applicable UCC, including, without limitation, the right to take possession of the Personalty and the Fixtures or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personalty and the Fixtures, in addition to, and not in limitation of, the other rights, remedies and recourses afforded by this Mortgage and the other Financing Documents.

**Section 7.16 Indemnity.**

(a) Mortgagor shall defend, indemnify, and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, any of the following, to the extent related to Mortgagor's ownership or operation of Mortgage Property, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (x) any personal injury (including wrongful death) or Mortgage Property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees and expenses, investigation and laboratory fees, court costs and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5108, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local Environmental Law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities each Mortgagor may have to any indemnified party at common law, and shall survive the termination of this Mortgage and any resignation or removal of Mortgagee in accordance with the Indenture.

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(b) Mortgagor agrees to pay, and to save the Mortgagee harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Mortgage Property or in connection with any of the transactions contemplated by this Mortgage.

(c) Mortgagor agrees to pay, and to hold Mortgagee, and its officers, directors, employees and agents harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Mortgage to the extent the Issuers would be required to do so pursuant to the Indenture.

(d) The agreements in this Section 7.16 shall survive repayment of the Indenture Obligations, all other amounts payable under the Financing Documents and the resignation or removal of the Mortgagee.

## ARTICLE VIII

### RESERVED

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01 Instrument Construed as Mortgage, Etc.** This Mortgage may be construed as a mortgage, Mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements set forth herein.

**Section 9.02 Performance at Mortgagor's Expense.** The cost and expense of performing or complying with any and all of the Indenture Obligations shall be borne solely by Mortgagor, and no portion of such cost and expense shall be, in any way or to any extent, credited against any installment on or portion of the Indenture Obligations.

**Section 9.03 Survival of Obligations.** Each and all of the Indenture Obligations shall survive the execution and delivery of this Mortgage and shall continue in full force and effect until all of the Indenture Obligations shall have been fully satisfied.

**Section 9.04 Further Assurances.** Mortgagor shall execute, acknowledge, deliver and record and/or file such further instruments, including financing statements, and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of this Mortgage and to subject to the Liens and security interests hereof any Mortgage Property intended by the terms hereof to be covered hereby, including any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgage Property.

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**Section 9.05 Notices.** All notices, requests, demands and other communications hereunder shall be given in accordance with Section 13.2 of the Indenture; provided, however, that service of notice as required by the laws of any State or Commonwealth in which portions of the Mortgage Property may be situated shall for all purposes be deemed appropriate and sufficient with the giving of such notice thereunder.

**Section 9.06 No Waiver.** Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of this Mortgage shall not be deemed to be a waiver of the same or of any other terms, provision or condition hereof, and Mortgagee shall have the right, but not the obligation, at any time or times thereafter, to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions. Mortgagee may, in Mortgagee's sole and absolute discretion, (i) in the case of a Default, determine whether such Default has been cured, and (ii) in the case of an Event of Default, accept or reject any proposed cure of an Event of Default. In no event shall any provision of this Mortgage or any other Financing Document which provides that Mortgagee shall have certain rights and/or remedies only during the continuance of an Event of Default be construed so as to require Mortgagee to accept a cure of any such Event of Default. Unless and until Mortgagee accepts any proposed cure of an Event of Default, such Event of Default shall be deemed to be continuing for purposes of this Mortgage and the other Financing Documents.

**Section 9.07 Mortgagee's Right to Perform; Mortgagee's Expenditures.**

(a) Mortgagor agrees that if Mortgagor fails to perform any act or take any action which Mortgagor is required to perform or take hereunder or under the Indenture or to pay any money which Mortgagor is required to pay hereunder or under the Indenture, Mortgagee may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money.

(b) All costs and expenses incurred by Mortgagee (or any Indemnified Party), including, without limitation, attorney's fees and expenses, all monies paid by (or on behalf of) Mortgagee and the monetary value of all services performed by (or on behalf of) Mortgagee in connection with a Default or Event of Default, including, without limitation, the (i) the enforcement of any term or provision of this Mortgage or any other Financing Document, (ii) the performance by Mortgagee of any obligation of Mortgagor under this Mortgage or any other Financing Document if Mortgagee elects to so perform, in its sole and absolute discretion (acting pursuant to the Indenture), and (iii) any action Mortgagee elects to take, in its sole and absolute discretion (acting pursuant to the Indenture), to protect its interest in or the value of the Mortgage Property, shall be a demand obligation owing by Mortgagor to Mortgagee, as the case may be, and to the extent any payment is made to a third Person, Mortgagee, upon making such payment, shall be subrogated to all of the rights of the Person receiving such payment. All such costs and expenses, monies and the monetary value of such services performed shall (x) bear interest at the Default Rate from the date of such incurrence, payment or performance, as applicable, until paid, and (y) constitute (together with such interest) a portion of the Indenture Obligations and shall be secured by this Mortgage and all of the other Financing Documents. If Mortgagee shall elect to pay any Imposition or other sums due with reference to the Mortgage Property, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof.

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**Section 9.08 Successors and Assigns.** All of the terms hereof shall apply to, be binding upon and inure to the benefit of the parties hereto, their successors, assigns, heirs and legal representatives, and all other Persons claiming by, through or under them; provided, however, that nothing herein shall be deemed to imply any right on behalf of Mortgagor to assign its interest in any of the Mortgage Property except as may be expressly set forth in the Indenture.

**Section 9.09 Severability.** This Mortgage is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws and regulations of applicable Governmental Authorities and the provisions hereof are intended to be limited to the extent necessary that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any provision hereof or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Mortgage nor the application of such provision to other Persons or circumstances shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

**Section 9.10 Reserved**

**Section 9.11 Entire Agreement and Modification.** This Mortgage may not be amended, supplemented or otherwise modified except in writing signed by the Mortgagee and in compliance with the terms of Article 9 of the Indenture and then only to the extent in such writing specifically set forth. Any agreement made by Grantor and Mortgagee after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate Mortgage, lien or encumbrance.

**Section 9.12 Applicable Law.** THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE IN WHICH THE MORTGAGE PROPERTY IS LOCATED; PROVIDED, HOWEVER, THAT THE INDENTURE IS GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK AS PROVIDED THEREIN, AND, IN THE EVENT THAT IT BECOMES NECESSARY, IN CONNECTION WITH THE ENFORCEMENT OF THIS MORTGAGE OR OTHERWISE, TO CONSTRUE OR ENFORCE THE OBLIGATIONS (WHICH OBLIGATIONS ARE SECURED BY THIS MORTGAGE), THE INDENTURE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK.

**Section 9.13 Satisfaction of Prior Encumbrance.** To the extent that proceeds advanced pursuant to the Indenture are used to pay indebtedness secured by any outstanding Lien, security interest, charge or prior encumbrance against the Mortgage Property, such proceeds shall be deemed to have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and Liens owned by any owner or holder of such outstanding Liens, security interests, charges or encumbrances, irrespective of whether said Liens, security interests, charges or encumbrances are released, and it is expressly understood that, in consideration of the payment of such other indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments to, upon and in connection with the said indebtedness.

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**Section 9.14 No Partnership.** Nothing contained in this Mortgage is intended to, or shall be construed to, create to any extent and in any manner whatsoever any partnership, joint venture, or association between Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgage Property, and any inferences to the contrary are hereby expressly negated.

**Section 9.15 Headings.** The Article, Section and Subsection headings hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 9.16 Release of Mortgage.** Without affecting the lien or charge of this Mortgage upon any portion of the Mortgage Property not then or theretofore released as security for the full amount of the Indenture Obligations, any Lien upon the Mortgage Property granted hereunder may be released, in whole or in part, in accordance with Articles VIII, XI or XII of the Indenture or as consented to by a written direction of the requisite percentage of holders of Notes (or the Mortgagee on behalf of the holders of Notes) as permitted by, and in accordance with the Indenture. Mortgagee shall forthwith cause satisfaction and discharge of this Mortgage to be entered upon the record, at the sole cost and expense of Mortgagor, and shall execute and deliver (or cause to be executed and delivered) such instruments of satisfaction and discharge as may be requested by Mortgagor, such instruments to be duly acknowledged and in form for recording, at the sole cost and expense of Mortgagor.

**Section 9.17 Limitation of Obligations with Respect to Mortgage Property.**

(a) Neither Mortgagee or any Secured Party shall have any duty to protect or preserve, or any liability with respect to the protection or preservation of, any Mortgage Property or to preserve rights pertaining thereto other than the duty to use reasonable care in the custody and preservation of any Mortgage Property in its actual possession. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any Mortgage Property in its possession if such Mortgage Property is accorded treatment substantially equal to that which Mortgagee accords its own like Mortgage Property. Mortgagee shall be relieved of all responsibility for any Mortgage Property in its possession upon surrendering it, or tendering surrender of it, to Mortgagor or to such other Person entitled thereto by applicable law.

(b) Nothing contained in this Mortgage shall be construed as requiring or obligating Mortgagee or any Secured Party, and neither Mortgagee or any Secured Party shall be required or obligated, to (i) make any demand or inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or notice or take any action with respect to any Mortgage Property or the monies due or to become due thereunder in connection therewith, (ii) ascertain or take action with respect to calls, conversions, exchanges, maturities, tenders, offers or other matters relating to any Mortgage Property, whether or not Mortgagee or any of the other Secured Parties has or is deemed to have knowledge or notice thereof, (iii) take any necessary steps to preserve rights against any prior parties with respect to any Mortgage Property, or (iv) notify Mortgagor or any other Person of any decline in the value of any Mortgage Property.

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**Section 9.18 Inconsistency with Indenture.** In the event any of the terms or provisions of this Mortgage conflict with any of the terms or provisions of the Indenture, the terms or provisions of the Indenture shall govern and control for all purposes.

**Section 9.19 Covenants To Run With the Land.** All of the grants, representations, warranties, undertakings, covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor. If there shall be more than one Mortgagor, the covenants, representations and warranties made herein shall be deemed to be joint and several.

**Section 9.20 Amount Secured; Last Dollar.** So long as the balance of the Indenture Obligations exceeds the portion of the Indenture Obligations secured by this Mortgage, no payment on account of the Indenture Obligations shall be deemed to be applied against or to reduce the portion of the Indenture Obligations secured by this Mortgage, but shall, instead, be deemed to be applied against only such portions of the Indenture Obligations that are not secured by this Mortgage.

**Section 9.21 Defense of Claims.** Mortgagor shall promptly notify Mortgagee in writing of the commencement of any legal proceedings affecting Mortgagor's title to the Mortgage Property or Mortgagee's Lien on or security interest in the Mortgage Property, or any part thereof, and shall take all such action, employing attorneys agreeable to Mortgagee, as may be necessary to preserve Mortgagor's and Mortgagee's rights affected thereby. If Mortgagor fails or refuses to adequately or vigorously, in the sole judgment of Mortgagee, defend Mortgagor's or Mortgagee's rights to the Mortgage Property, Mortgagee may, but shall not be obligated to, take such action on behalf of and in the name of Mortgagor and at Mortgagor's expense. Moreover, Mortgagee may, but shall not be obligated to, take (or cause its agents to take) such independent action in connection therewith as they may in their discretion deem proper, including, without limitation, the right to employ independent counsel and to intervene in any suit affecting the Mortgage Property. All costs, expenses and attorneys' fees incurred by Mortgagee (or its agents) pursuant to this Section 9.21 or in connection with the defense by Mortgagee of any claims, demands or litigation relating to Mortgagor, the Mortgage Property or the transactions contemplated in this Mortgage shall be paid by Mortgagor on demand, plus interest thereon from the date of the advance by Mortgagee until reimbursement of Mortgagee at the Default Rate.

**Section 9.22 Exculpation Provisions.** Each of the parties hereto specifically agrees that it has a duty to read this Mortgage; and agrees that it is charged with notice and knowledge of the terms of this Mortgage; that it has in fact read this Mortgage and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Mortgage; that it has been represented by independent legal counsel of its choice throughout the negotiations preceding its execution of this Mortgage and has received the advice of its attorney in entering into this Mortgage; and that it recognizes that certain terms of this Mortgage result in one party assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. Each party hereto agrees and covenants that it will not contest the validity or enforceability of any exculpatory provision of this Mortgage on the basis that the party had no notice or knowledge of such provision or that the provision is not "conspicuous."

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**Section 9.23 No Merger of Estates.** So long as any part of the Indenture Obligations remain unpaid, unperformed or undischarged, the fee, easement and leasehold estates to the Mortgage Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgage, Mortgagee, any lessee, any third-party purchaser or otherwise.

**Section 9.24 The Collateral Agent.** Mortgagee has been appointed Collateral Agent for the Secured Parties hereunder pursuant to Article XII of the Indenture and Article 6 of the Security Agreement. It is expressly understood and agreed by the parties to this Mortgage that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Secured Parties to the Collateral Agent pursuant to the Indenture, and that the Collateral Agent has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in such Article XII of the Indenture. Any successor Collateral Agent appointed pursuant to Article XII of the Indenture shall be entitled to all the rights, interests and benefits of the Collateral Agent hereunder. The Collateral Agent shall be entitled to all of the rights and privileges afforded to it under the Indenture. Each Secured Party, by its acceptance of the benefits hereof, agrees that, except for rights of the Holders to exercise remedies upon an Event of Default in accordance with the terms of the Indenture, it shall have no right individually to realize upon any of the Collateral, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the ratable benefit of the Secured Parties in accordance with the terms of the Security Agreement and the Indenture.

**Section 9.25 Taxes.** Any taxes (including income taxes) payable or ruled payable by Federal or State or other taxing entity or authority in respect of this Mortgage shall be paid by Mortgageor, together with interest and penalties, if any. Mortgageor shall reimburse the Mortgagee for any and all out-of-pocket expenses paid or incurred by the Mortgagee in connection with the preparation, execution, delivery, administration, collection and enforcement of this Mortgage and in the audit, analysis, administration, collection, preservation or sale of the Mortgage Property (including the expenses and charges associated with any periodic or special audit of the Mortgage Property). Any and all costs and expenses incurred by the Mortgageor in the performance of actions required pursuant to the terms hereof shall be borne solely by the Mortgageor.

**Section 9.26 Intercreditor Agreement.** Notwithstanding anything to the contrary contained in this Mortgage, the Liens, security interests and rights granted pursuant to this Mortgage or any other Financing Document shall be as set forth in, and subject to the terms and conditions of (and the exercise of any right or remedy by the Mortgagee hereunder or thereunder shall be subject to the terms and conditions of), the Intercreditor Agreement. In the event of any conflict between this Mortgage or any other Financing Document and the Intercreditor Agreement, the Intercreditor Agreement shall control, and no right, power, or remedy granted to the Mortgagee hereunder or under any other Financing Document shall be exercised by the Mortgagee, and no direction shall be given by the Mortgagee in contravention of the Intercreditor Agreement.



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## ARTICLE X

### STATE SPECIFIC PROVISIONS

**Section 10.01 Principals of Construction.** The provisions of this Article X are an integral part of this Mortgage. In the event of any inconsistencies between the terms and conditions of this Article X and the other provisions of this Mortgage, the terms and conditions of this Article X shall control and be binding.

**Section 10.02 Description of Notes.** The Notes secured hereunder have an original principal amount of Two Hundred Fifty Million and No/100 Dollars (\$250,000,000.00), an interest rate of eight and three quarters percent (8.75%) and mature on November 15, 2019.

**Section 10.03 Illinois Mortgage Foreclosure Law.** It is the intention of the Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq. and with respect to such Act Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Mortgage or the Financing Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or lender until confirmation of sale;

(c) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, or the Financing Documents or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to:

(i) all advances by Mortgagee in accordance with the terms of this Mortgage or the Financing Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgage Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Mortgagor of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or

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encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgage Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgage Property;

(v) Mortgagee's fees, costs and expenses, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Section 15-1512(a) and (b) of the Act; and

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgage Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Mortgage Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgage Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Mortgage Property or required to be made by the owner of the Mortgage Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgage Property; (vi) shared or common expense assessments payable to any associated or corporation in which the owner of the Mortgage Property is a member in any way affecting the Mortgage Property, (vii) if the Loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, Financing Documents or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Mortgage Property and (ix) if this Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

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**(d)** All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Financing Documents;

**(e)** This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the Act;

**(f)** All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) any determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act.

**(g)** In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgage Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Mortgage Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act;

**(h)** Mortgagor acknowledges that the Mortgage Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption;

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(i) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes;

(j) At all times, regardless of whether any loan proceeds have been disbursed, the Mortgage secures (in addition to the amounts secured hereby) the payment of any and all loan commissions, service charges and fees, liquidated damages, expenses and advances (whether obligatory or at the option of the Mortgagee) due to or incurred by Mortgagee in connection with the loan, provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Notes; and

(k) As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Mortgagor is hereby notified that in the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Mortgagee may, but shall not be obligated to, procure such insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgage Property. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgage Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the terms of this Mortgage. If Mortgagee purchases insurance for the Mortgage Property as set forth herein, Mortgagor shall pay all amounts advanced by Mortgagee, together with interest thereon as described provided in the Indenture, from and after the date advanced by Mortgagee until actually repaid by Mortgagor, promptly upon demand by Mortgagee. Any amounts so advanced by Mortgagee, together with interest thereon, shall be secured by this Mortgage and by all of the other Financing Documents securing all or any part of the indebtedness evidenced by the Notes. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

**[No Further Text On This Page; Signature Page Follows]**

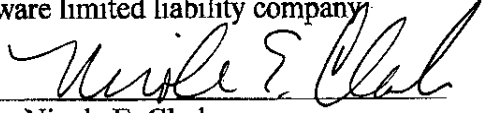
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**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

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

**MORTGAGOR:**

**SHALE-INLAND REALTY, LLC, a  
Delaware limited liability company**

By:   
Name: Nicole E. Clark  
Title: Vice President

Property of Cook County Clerk's Office

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## ACKNOWLEDGEMENT

STATE OF TEXAS                    )  
  ) ss.:  
COUNTY OF Harris                    )

The foregoing instrument was acknowledged before me this 1<sup>ST</sup> day of February, 2013, by Nicole E. Clark, as the Vice President of **SHALE-INLAND REALTY, LLC**, a Delaware limited liability company on behalf of the limited liability company.

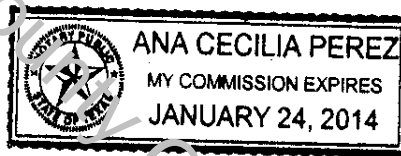
Ana Cecilia Perez  
Notary Public, State of Texas

Notary's name printed:

Ana Cecilia Perez

My Commission Expires:

01/24/2014



Property of COOK COUNTY Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

The following tract of land situate in the Village of Bartlett, the County of Cook, and the State of Illinois, being more particularly described as follows:

**Parcel 1:**

Lot 1 in Bartlett Industrial Park, being a subdivision of part of the southeast 1/4 of Section 35 and part of the southwest 1/4 of Section 36, Township 41 North, Range 9, East of the Third Principal Meridian in the Village of Bartlett in Cook County, Illinois.

**Parcel 2:**

The East 15 feet (as measured at right angles to the South line of the above said Lot 1), of the following parcel:

COMMENCING at the southeast corner of Section 35, Township 41 North, Range 9, East of the Third Principal Meridian; Thence westerly along the South line of said southeast 1/4, a distance of 703.33 feet to the southwest corner of Bartlett Industrial Park, being a subdivision of part of Section 35 and Section 36 aforesaid, for the point of beginning; Thence northerly along the West line of said Bartlett Industrial Park and parallel with the East line of said southeast 1/4, a distance of 777.52 feet to the southerly Right of Way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; Thence northwesterly along said southerly Right of Way line, a distance of 672.19 feet; Thence southerly parallel with the East line of the southeast 1/4 of said Section 35, a distance of 900.09 feet to the South line of said southeast 1/4; thence easterly along said South line, a distance of 665.0 feet to the point of BEGINNING, all in Cook County, Illinois.

Parcel ID Nos. 06-35-400-009 and 06-35-400-019

**COMMON STREET ADDRESS: 802 East Devon Avenue, Bartlett, Illinois 60103**

**REAL ESTATE TAX PINS: 06-35-400-009 and 06-35-400-019**